

Negotiated justice for crimes against the EU's financial interests – a Croatian perspective

Restorative Justice, Mediation and Protection of EU Financial Interests

DRAMP Project

University of Perugia, Department of Law, 28 April 2022

Elizabeta Ivičević Karas, Marin Bonačić, Zoran Burić

Faculty of Law, University of Zagreb

This work has been supported in part by the Croatian Science Foundation under the project “Systematic approach to models of negotiated justice in Croatian criminal procedure” (IP-2019-04-1275)

Introduction

- *Implementation of PIF Crimes*
- *Conditional deferral (and withdrawal) of criminal prosecution in Croatia*
- *Overview of other consensual forms in Croatian criminal procedure*
- *Final remarks*

Implementation of PIF Crimes – instrument(s)

■ *Criminal Code*

– *Kazneni zakon, Narodne novine, no. 125/22, 114/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21*

■ *EPPO* – Zakon o provedbi Uredbe Vijeća (Eu) 2017/1939 od 12. listopada 2017. o provedbi pojačane suradnje u vezi s osnivanjem Ureda europskog javnog tužitelja («EPPO»)

Implementation of PIF Crimes – Art. 3 PIF Directive (1)

- *3 crimes: Tax or Customs Duty Evasion and Subsidy Fraud, Fraud in Business Operations*
- *Critique: it is necessary to introduce a new offence of Fraud in public procurement which would criminalize the conduct referred to in (3)(b)*

Implementation of PIF Crimes – Art. 3 PIF Directive (2)

- ***Tax or Customs Duty Evasion (Art. 256)***
- (1) Whoever, with the aim that he/she or another person evade paying in full or in part a tax or customs duty, provides false or incomplete information on income, objects or other facts of relevance for determining the amount of tax or customs duty payable or whoever, in the case of mandatory declaration, fails, with the same aim, to declare his/her income, object or other facts of relevance to the determination of tax or customs duty payable, which results in a reduction of the tax or customs duty payable by an amount exceeding twenty thousand kuna or to its non-determination in the said amount shall be sentenced to imprisonment for a term of between six months and five years.

...
- (4) The provisions of paragraphs 1 through 3 of this Article shall also be applied to the perpetrator who reduces European Union funds by committing the acts described therein.
- It does not cover the third modality of VAT fraud committed in cross-border fraudulent schemes: presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Implementation of PIF Crimes – Art. 3 PIF Directive (3)

■ *Subsidy Fraud (Art. 258)*

- (1) Whoever, with the aim that he/she or another person receive a state subsidy, provides a state subsidy provider with false or incomplete information concerning the facts on which the decision on the granting of a state subsidy depends, or fails to inform a state subsidy provider of changes important for making the decision on the granting of a state subsidy shall be sentenced to imprisonment for a term of between six months and five years.
- ...
- (5) State subsidies within the meaning of this Article shall be equated with subsidies and aid granted from European Union funds.

Implementation of PIF Crimes – Art. 3 PIF Directive (4)

■ **Fraud in Business Operations (Art. 247)**

- (1) Whoever in business dealings, with the aim of acquiring an unlawful pecuniary advantage for a legal person he/she is representing or another legal person, misleads another by misrepresenting or concealing facts or keeps another in error and thus induces him/her to do or omit to do something to the detriment of his/her property or the property of a third party shall be sentenced to imprisonment for a term of between six months and five years.

Implementation of PIF Crimes - Art. 4 PIF Directive (1)

■ Money Laundering (Art. 265)

- (1) Whoever invests, takes over, converts, transfers or replaces a pecuniary advantage derived from criminal activity for the purpose of concealing or disguising its illicit origin shall be sentenced to imprisonment for a term of between six months and five years.

....

Implementation of PIF Crimes - Art. 4 PIF Directive (2)

- **Abuse of Position and Authority (Art 291)**
- **(1) A public official or responsible person who takes advantage of his/her position or authority, oversteps the limits of his/her authority, or fails to perform a duty and thus obtains for himself/herself or another an advantage or causes damage to another shall be sentenced to imprisonment for a term of between six months and five years.**

Implementation of PIF Crimes - Art. 4 PIF Directive (3)

■ Taking a Bribe (Art. 293)

- (1) A public official or responsible person who demands or takes a bribe, or who accepts an offer or a promise of a bribe for himself/herself or another in return for performing within or beyond the limits of his/her authority an official or other act which should not be performed, or for failing to perform an official or other act which should be performed shall be sentenced to imprisonment for a term of between one and ten years.

....

Implementation of PIF Crimes - Art. 4 PIF Directive (4)

■ Giving a Bribe (Art. 294)

- (1) Whoever offers, gives or promises a bribe to a public official or responsible person in order that he/she perform, within or beyond the limits of his/her authority, an official or other act which he/she should not perform, or fail to perform an official or other act which he/she should perform, or whoever mediates in such an act of bribery of a public official or responsible person shall be sentenced to imprisonment for a term of between one and eight years.

....

Implementation of PIF Crimes - Art. 4 PIF Directive (5)

- **Misappropriation**
- Has not been transposed

Consensual forms in Croatian criminal procedure

Conditional deferral (or withdrawal) of criminal prosecution (article 206.d CPA)

- Croatian model of *diversion*
- Introduced with the CPA 1997
- Based on the principle of discretionary prosecution
- For criminal offences punishable with a fine or imprisonment of up to five years
- The suspect/defendant agrees to assume one or more obligations and the state attorney assumes the obligation to desist or withdraw from criminal prosecution
- **Consent from the victim**

Consensual forms in Croatian criminal procedure

Conditional deferral (or withdrawal) of criminal prosecution

Obligations of suspect/defendant (Article 206.d(1) CPA):

- to repair or compensate the damage,
- to pay a certain contribution to a public institution, or for humanitarian or charitable purposes,
- to pay alimony due or due liabilities,
- to carry out community service work,
- to undergo treatment for drug addiction or other addiction, or a psychological treatment to treat violent behavior

Consensual forms in Croatian criminal procedure

Conditional deferral (or withdrawal) of criminal prosecution

- Only for less serious criminal offences
- **Specific purpose: restorative justice** (besides procedural economy)

Consensual forms in Croatian criminal procedure

- a) Consensual forms based on the principle of mandatory prosecution / the principle of discretionary prosecution

- b) Gravity of criminal offences and particular purposes of consensual forms

Consensual forms in Croatian criminal procedure

Consensual forms based on the principle of mandatory prosecution

- a) Judgment based on agreement of the parties - Croatian model of plea-bargaining
- b) Penal order
- c) Judgment rendered after conviction at the main hearing

Consensual forms in Croatian criminal procedure

Consensual forms based on the principle of discretionary prosecution

- a) Conditional deferral (and withdrawal) of criminal prosecution – Croatian model of diversion
- b) Crown witness
- c) Witness immunity

Consensual forms in Croatian criminal procedure

For criminal offences punishable with fine or imprisonment of up to five years

- Diversion (restorative justice, humanization, procedural economy)
- Penal order (procedural economy)
- Judgment after confession at the main hearing (procedural economy)
- Judgment based on agreement of the parties (procedural economy)

Consensual forms in Croatian criminal procedure

For criminal offences punishable with imprisonment of more than five years:

- Crown witness (obtaining witness testimony)
- Witness immunity (obtaining witness testimony)
 - + Judgment based on agreement of the (procedural economy, obtaining witness testimony)

Final remarks

Conditional deferral (or withdrawal) of criminal prosecution

→ Croatian model of „negotiated justice” with specific restorative justice purpose for PIF crimes

→ Other consensual forms

THANK YOU FOR YOUR ATTENTION!

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