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STRUKTUR, INSTRUMENTELLER RAHMEN UND INSTITUTIONELLER HINTERGRUND DER  
ERMITTLUNG SOWOHL IN DER EU ALS AUCH IN DEN MITGLIEDSTAATEN. VERGLEICH DER  
EINSCHLÄGIGEN PRAKTIKEN UND ERFAHRUNGEN IN DEN MITGLIEDSTAATEN

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# **Criminal proceedings against legal persons in Croatia: Investigation, rights and consensual forms**

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# **Basic issues of criminal liability of legal persons**

- 1. Legal persons with criminal liability**
- 2. Model of criminal liability**
- 3. Responsible person**
- 4. Types of criminal offences**
- 5. Representation in the criminal proceedings**
- 6. Rights of accused legal persons**
- 7. Consensual forms / procedures**

# Croatian Act on the liability of legal persons for criminal offences

(passed by the Parliament in 2003; in force 2004)

## Content of the Act: - Grounds for the Liability of Legal Persons

- Lex specialis**
- Punishment and other criminal sanctions
  - Criminal procedure

## Models of criminal liability of legal persons

I. Derived criminal liability – indirect, accessory, classical

Autonomous criminal liability – direct, original

II. Objective criminal liability

Subjective criminal liability

III. Subsidiary criminal liability

Combined criminal liability of the natural and legal person

# Derived criminal liability of legal persons

- A legal person shall be punished for criminal offence committed by a responsible person (Art. 3/1)
- Liability of a legal person shall be founded on guilt of responsible person (Art. 5/1)
- A legal person shall be punished for criminal offence of a responsible person also if there are legal or factual impediments for determination of liability of responsible person. (Art. 5/2)
- Joint Criminal Proceedings against a responsible and legal person
- Exceptionally, only against a legal person if there are legal or other obstacles to prosecute a responsible person.

# Responsible person and offences

## Responsible person

- a) natural person who is the head of the business
- b) natural person who is entrusted with particular tasks from the field of activities of the legal person.

## All criminal offences

### Specific criteria:

- a) if it breaches a duty of the legal person
- b) if the legal person acquired or should have acquired illegal pecuniary gain for itself or for another person.

# **Basic issues in criminal proceedings against legal persons**

## **Criminal proceeding – anthropomorphic.**

### **1. Representation of legal entities in criminal proceedings**

- **characteristics of the representative**
- **determining of the representative**
- **application of coercive measures**
- **role of representative and role of a defence lawyer**

### **2. Validity of fundamental human rights for legal persons**

- **the right to private and family life**
- **the right to freedom of expression**
- **the right to a fair trial and the rights of the defense**

### **3. Obligation to conduct internal investigations in legal entities**

- **no such criminal law obligation in Croatia**

# Representative of legal person

- **only one**
- **business ability + Croatian language**
- **no conflict of procedural roles - witness, responsible person, defense counsel**
- **appointment of representatives: the body or persons representing the legal person**
- **procedural role of the defendant**
  - **no coercive measures except compulsory appearance**
  - **authorized to take all actions as defendant**
  - **right to silence only for representative**
  - **the privilege against self-incrimination**
    - **temporary seizure of objects – prohibition for the defendant**

# Consensual form

**Prosecution and investigation: The principle of legality - rule**

**The principle of opportunity – only legal person – YES, only responsible person – NO**

**The State Attorney may withdraw charges if:**

- a) the legal entity has no assets,**
- b) the assets are so insignificant, not sufficient to cover the costs of the proceedings,**
- c) bankruptcy proceedings are being conducted against the legal entity**

**Judgment based on the agreement of the parties, guilty plea**

- for all offences, legal persons**

**Penal order**

- offences up to 5 years of imprisonment, without trial**

- In practice - from 37% in 2017 40.5% of all indictments**
- Legal persons - between 22.7% and 34.5%**

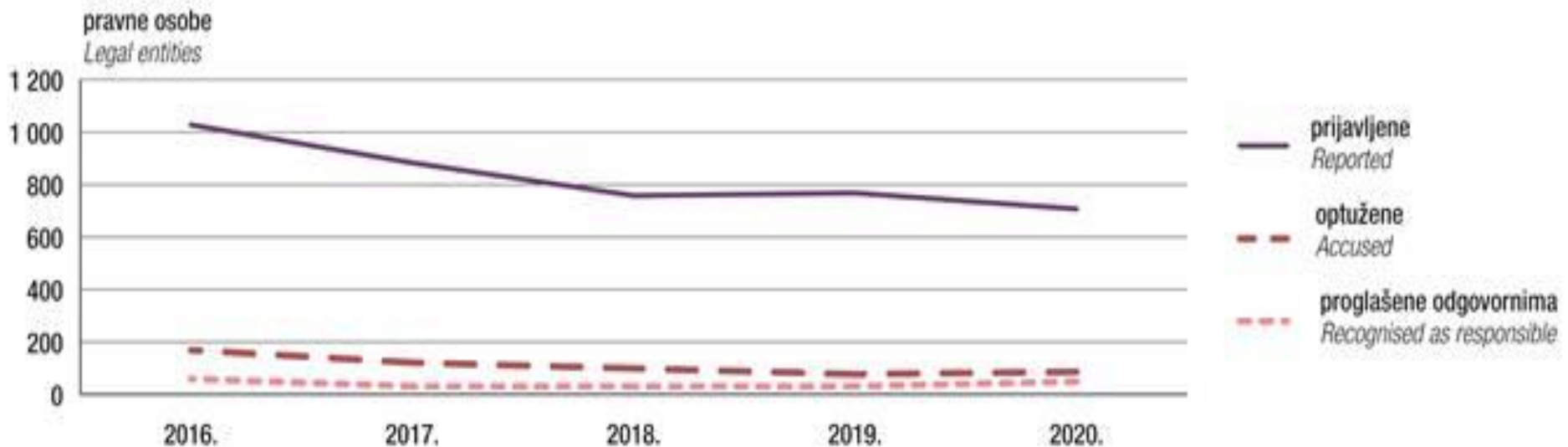


# LEGAL ENTITIES – REPORTED, ACCUSED AND CONVICTED

| 2016. | 2017. | 2018. | 2019. | 2020. |                                  |
|-------|-------|-------|-------|-------|----------------------------------|
| 1 028 | 883   | 758   | 768   | 707   | <i>Reported</i>                  |
| 169   | 121   | 99    | 77    | 86    | <i>Accused</i>                   |
| 59    | 31    | 31    | 31    | 49    | <i>Recognised as responsible</i> |

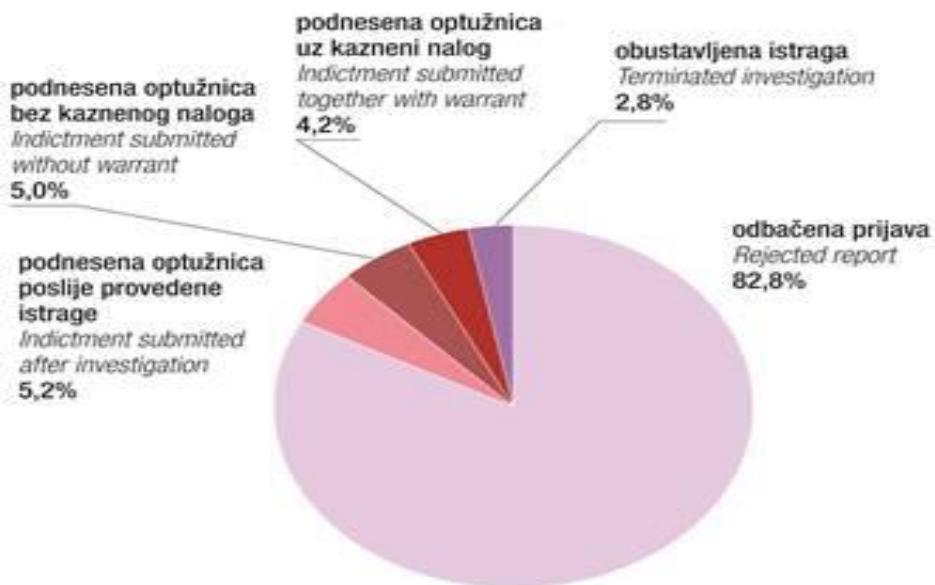
G-1. PRIJAVLJENE, OPTUŽENE I OSUĐENE PRAVNE OSOBE OD 2016. DO 2020.

REPORTED, ACCUSED AND CONVICTED LEGAL ENTITIES, 2016 – 2020



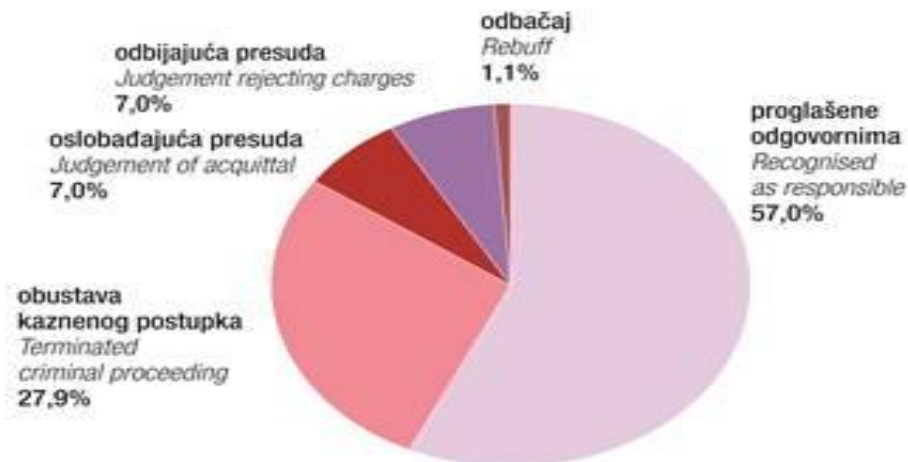
**G-2. ODLUKE DRŽAVNIH ODVJETNIŠTAVA U POVODU KAZNENE PRIJAVE ZA PRAVNE OSOBE U 2020.**

DECISIONS OF PUBLIC PROSECUTOR'S OFFICES UPON REPORTS FOR LEGAL ENTITIES, 2020



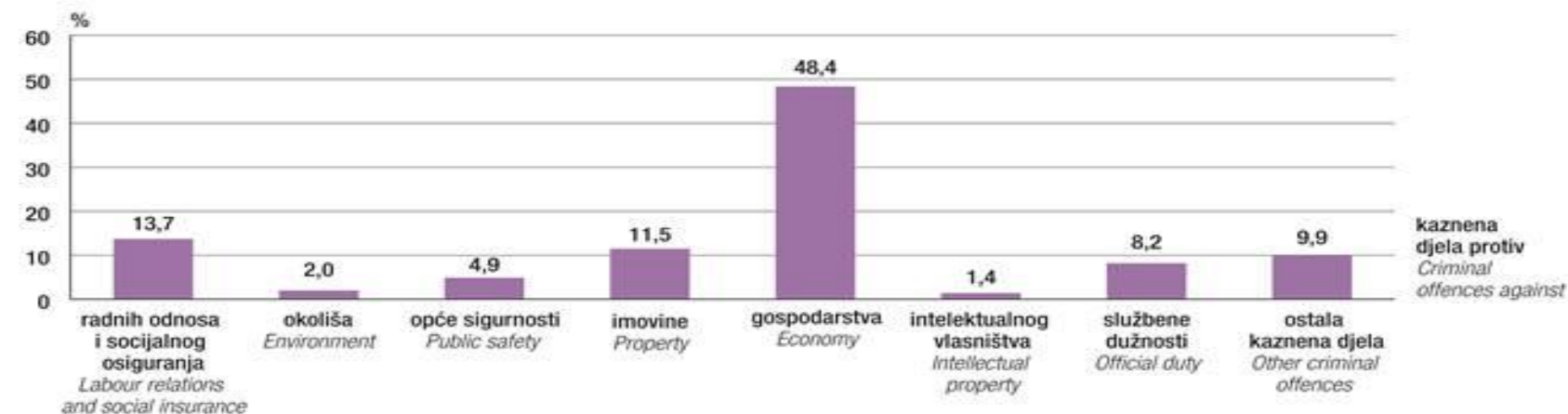
**G-3. ODLUKE SUDOVA U POVODU OPTUŽBE ZA PRAVNE OSOBE U 2020.**

COURTS DECISIONS UPON ACCUSATIONS FOR LEGAL ENTITIES, 2020



**G-4. UDIO POJEDINIH VRSTA KAZNENIH DJELA ZA PRIJAVLJENE PRAVNE OSOBE U 2020.**

SHARES OF DIFFERENT TYPES OF CRIMINAL OFFENCES IN THE TOTAL NUMBER OF REPORTED LEGAL ENTITIES, 2020



**THANK YOU FOR YOUR  
ATTENTION!**

