

Informalities in Plea-bargaining:

Croatian Perspective

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Formal consensual procedures

Specific purposes:

- Efficiency of criminal proceedings
 - speed
 - economy
- Restorative justice
- Probative purposes → rewarding measures for collaborators of justice

Formal consensual procedures

In Croatia:

- Penal order
- Conditional deferral or withdrawal from criminal prosecution
- Judgment after confession at the trial

- Judgment based on agreement of the parties
- Crown witness
- Witness immunity

Purpose of procedural form?

- Respect for fundamental human rights (defendant, victim, witness etc.)
 - Quality of action and its results
 - Results may be preserved and used in later stages of proceedings
- + Complying with the principle of mandatory prosecution and the principle of discretionary prosecution (an exception)

Research

1. Theoretical, normative and comparative legal research + analysis of jurisprudence
 2. Empirical research
 - semi-structured interviews with 60 practitioners (20 judges, 20 state attorneys, 20 defence counsels)
 - 4 focus groups (judges, state attorneys, defence counsels, multi-professional)
- Qualitative analysis

Informal consensual procedures?

„Gentleman’s agreement” – various forms do occur in practice

- For the same purposes as formal consensual forms
- **Procedural economy** – judges often (defence counsels) / sometimes (state attorneys) propose that the parties conclude a plea agreement

Informal consensual procedures?

„Gentleman's agreement”

■ For probative purposes?

- Majority of interviewees (judges, state attorneys, attorneys) have experience with informal agreements, more than with formal agreements serving probative purposes
- Problem of mixing procedural roles
- Which legal remedies to use? → credibility, lawfulness, both?
- Judicial control?

Conclusion

Informal agreements:

- Used in practice
- Sometimes take precedence over formal consensual procedures serving probative purposes
- There is no clear legislative framework or practice regarding the efficient legal remedies
- Inadequacy of judicial control

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