

Reforming plea-bargaining in Croatia – Challenges and perspectives

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Prof. dr. sc. Elizabeta Ivičević Karas, University of Zagreb Faculty of Law

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Project „Systematic approach to models of negotiated justice in Croatian criminal procedure” - NegJusCro

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

→ Proposals for legislative amendments and better practice

Judgment based on agreement of the parties

Croatian model of plea-bargaining

Inconsistencies concerning:

- The scope of criminal offences
- Position of the parites
- (In)efficient judicial control

Scope of criminal offences

- It may be delivered for any criminal offense (regardless of the severity and type)
- In practice, often used for OSCOC offences
- Comparative legal perspective:
 - for less/medium serious offenses (with the exclusion of organized crime and corruption):
France, Italy, Switzerland
 - Germany – exception
 - Austria – this consensual form does not exist
- Risks?

Position of the parties

- Discretion of the state attorney \leftrightarrow The defence right to plea bargain?
- Take it or leave it offers \leftrightarrow Bargaining?
- Equality before the law?
- Plea-bargaining for probative purposes?

(In)efficient judicial control

In Croatia – the tendency of narrowing down the possibilities of judicial control

- Legislation: the court controls legality of the agreement and adequacy of the agreed punishment
- Practice of the Supreme Court: the court does not control the adequacy/purposefulness of the agreed punishment

(In)efficient judicial control

Comparative legal perspective

- Large powers of the court to reject the agreement if the proposed sentence does not fit the purpose of punishment: Italy, France, Switzerland
- In Germany – the court is directly involved in the parties' negotiations and reaching an agreement
- Broad powers of the court (only for less/medium serious offences (with the exception of Germany))
- Inconsistencies in Croatian law

Conclusion

Proposals for legislative amendments:

- Narrowing down the scope of criminal offences subject to plea-bargainig
- Exclusion of the right to settlement from the catalog of defense rights
- Reinforcing judicial control

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