



Panel *'Negotiated justice
in Croatian criminal
procedure – Recent trends
and possible
developments'*

8 September 2023



Appealing consensual forms - Croatian experience with appealing penal order and judgment based on the agreement of the parties



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

Overview:

- **Introduction:** interconnection of consensual forms and the right to appeal
- Croatian legislative framework
- Previous research of Croatian practice


- **Analysis of practice and statistics from the Municipal Criminal State Attorney Office in Zagreb**
- **Qualitative analysis of semi-structured interviews**

- **Concludatory remarks: *de lege ferenda* in regards to appealing penal order**

Current trends:

Consensual justice/simplified institutes	Right to appeal
accelerate criminal proceedings, manage case overload	often imply waiver of right and/or limited grounds to appeal
efficiency	PA CoE Resolution 2245 (2018): <i>8.5. prohibit the waiver of appeal rights, in order to ensure sufficient control, at the national level, of the actual practice of lower courts in the field of plea bargaining</i>
contractual nature	Constitutional and Conventional right (!)

De lege lata legislative framework:

- **Judgment based on the agreement of the parties:** Art. 364. CPA – no appeal to criminal sanction (costs of criminal proceedings) - *ultra petita partium*
- **limited appeal** erroneous or incomplete determination of the factual situation – threshold: evidence of the exclusion of illegality or guilt
- substantive violation of the criminal procedure provisions; violation of the Criminal Code 

- **Penal order:** Art. 542. para 2. CPA - the defendant and the defense attorney **complaint** within **8 days** of receiving
- general principle of prohibition of *reformatio in peius* is not applicable
- public prosecutor right to **appeal** – regular time limit (**15 days**)
- the prosecutor's decision to issue the penal order is delivered to but **cannot be appealed by the victim**

Previous research of Croatian practice:

26,97% **waiver** of the right to appeal to judgment based on the agreement of the parties (Ivičević Karas, Puljić, 2011-2013)

'*only*' 22,2% **complaints** on penal order (2000, Novosel) rated as '*solidly effective*' (Cambj, 2013; '*excellent*', NegJusCro, 2021) – approximately 25% of cases

Statistics from the Municipal Criminal State Attorney Office in Zagreb:

Year	Number of Penal Orders	Number of Objections	Percentage of Objections (%)
2020	1150	305	25
2021	969	179	18
2022	869	252	29

Why do prosecutors appeal penal order?

Problematic collection of data: not separate register in CTS

Mostly: Courts did not include the claim of the injured party or confiscation of pecuniary benefit

imposed a heavier criminal sanction than the proposed one and, contrary to the prosecutor's request, defendant was exempted from paying the costs of the criminal proceedings

Inconsistent practice: Court's omission referred to as a relatively significant violation (**Art. 468. para. 3**) of the CPA or as a violation of **Art. 468, para. 1 sub. 7** of the CPA: (*court by its judgment did not completely decide on allegations set forth in the charge*) --- **new substantive violation of criminal procedure?** (Bonačić, 2015)

Qualitative analysis of semi- structured interviews on the usage of the appeal:

- 60 participants (ZG, ST, OS, RI), 2021, follow up - focus group
- **Penal order:** 17 **public prosecutors** never appealed; 2 did; 1 no sure; *'their colleagues did'*
- **Request for the protection of legality:** 17 no; *'never heard'*; 1 did, 2 not sure
- **Victim** – 18 satisfactory role; 2 introduction of complaint or previous consent
- Instruction that defendant receives is not enough precise (!)
- **Unanimously judges:** *'Defendant's rights adequately preserved due to possibility to file the complaint.'*
- **Judgment based on the agreement of the parties:** appeals rare

Concluding remarks -

de lege ferenda in
regards to appealing
penal order:

- **Balancing exercise:** necessary to ensure that this specific right is adequately preserved in accordance with recommendations by the CoE
- **Penal order:** instead of two legal remedies – opt for complaint for both of parties and the same time limit to lodge it
- New substantive violation of criminal procedure provision?
- Increasing visibility of victim's role – complaint?
- Possible consequences of *reformatio in peius* if filing a complaint should be included in an instruction to the defendant



Thank you for your attention!

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