

International Academic Conference „Rule of Law and Academia in the Turbulences of 100 years”, Bratislava, 12-13 September 2022

Judgement based on agreement of the parties in
Croatian criminal proceedings –
between legislative ideas and practical
consequences

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1. Notes on plea bargaining in Croatia – „Judgment based on agreement of the parties

- Judgment based on agreement of the parties-Croatian model of plea bargaining
- regulated in the Criminal Procedure Act since 2008
- allowed in relation to all criminal offences
- can be concluded *earliest*: once the indictment have been filed before the court, *latest*: at the preparatory hearing before maing hearing
- negotiations leading to the agreement are not regulated in detail by law
- mandatory defence is prescribed during the negotiations and court proceedings for confirmation of the agreement

Judgement based on agreement of the parties in Croatian criminal proceedings – between legislative ideas and practical consequences

1. Notes on plea bargaining in Croatia – „Judgment based on agreement of the parties

- State attorney bound by the principle of mandatory prosecution (legality principle)
- Parties allowed to negotiate only on a sentence (sentence bargaining)
- Negotiating on legal qualification of criminal offence not allowed
- exception is prescribed for criminal offences against life and limb and against sexual liberties, for which a punishment of more than five years' imprisonment is prescribed by law, and for which the state attorney must obtain the **victim's consent** for the negotiation

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2. Some problematic aspects of „Judgment based on agreement of the parties

1. True objectives of the judgment based on agreement of the parties

- Croatian legislator drastically widened the scope of application of judgment based on agreement of the parties to all criminal offences
- including the most serious ones and those under the jurisdiction of the Office for the Suppression of Corruption and Organised Crime
- the specific purpose of the traditional form of plea bargaining was supplemented with another one – **obtaining witness testimony** against the defendant’s co-defendant!

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2. Some problematic aspects of „Judgment based on agreement of the parties

2. Mandatory judicial review

- The court may refuse to accept the plea agreement for two reasons (Art. 361(3) CPA):
 - firstly, if the acceptance of the agreement is not in accordance with the sentencing prescribed by law, or,
 - secondly, if the agreement is not otherwise lawful.

Although this provision could provide relatively large possibilities for the court to control the plea agreement, the jurisprudence of the Supreme Court of the Republic of Croatia gave a different interpretation.

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2. Some problematic aspects of „Judgment based on agreement of the parties

2. Mandatory judicial review

“the court is not at all aware of the circumstances that the parties had in mind when agreeing on a certain sentence, because the law does not oblige them to state them in the plea agreement, and the court itself, given the stage of the proceedings (preparatory hearing), has no legal possibilities to determine those circumstances, and it is self-evident that circumstances which are not known cannot even be judged”.

1. the court is not authorized to reject the agreement if it considers that the punishment is too lenient
2. the court only checks whether the sentence is mitigated within the legal framework

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2. Some problematic aspects of „Judgment based on agreement of the parties

3. Rights of the defendant

The defendant may initiate the negotiations with the state attorney, but the state attorney is not obliged to engage in the negotiations

- the possibility to bargain on the punishment and to reach an agreement is a possibility, **not a defence right.**

Another defence rights issue concerns situations where an agreement cannot be reached, or where it is not accepted by the court.

- the fact that the defendant was willing to negotiate, and that he or she actually engaged in those negotiations, should not be to the defendant's detriment.

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2. Some problematic aspects of „Judgment based on agreement of the parties

4. Victim's position

- Victim is not included in the negotiations between the parties on the agreement
- An exception is prescribed for criminal offences against life and limb and against sexual liberties, for which a punishment of more than five years' imprisonment is prescribed by law, and for which the state attorney must obtain the victim's consent for the negotiation (Art. 360(6) CPA).

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3. *Pro futuro* challenges

1. Objectives of the judgment based on agreement of the parties

- gravity of the criminal offences that may be subject to bargaining
- obtaining witness testimony (co-defendant)

2. Role of the court

- very limited possibilities for the court to reject an agreement of the parties

3. Victim and public interest

- Victims are not included in the negotiation process
- The court decides on plea agreement without summoning victim

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4. Concluding remarks

1. scope of criminal offences that may be subject to judgment based on agreement of the parties should be reconsidered, as well as the specific purpose of this consensual form in Croatian law.
2. Croatian legislator, in its future initiatives, should enable the court to exercise complete judicial review over the plea agreement even the proposed sanction in order to protect the public order
3. opening to the public a hearing where the court decides on the agreement of the parties and delivers a judgment based on that agreement, as well as allowing the victim to be at least heard, is among the first steps to be taken in any future legislative initiative in this field
4. The presence of victims, and particularly the presence of the public when the court renders a judgment of conviction, contributes to the transparency of criminal proceedings which should be the legislator's priority in any democratic society founded on the rule of law.

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THANK YOU FOR YOUR ATTENTION

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