

PRACTITIONERS' EXPERIENCES IN THE APPLICATION OF CONDITIONAL DEFERRAL (AND WITHDRAWAL) OF CRIMINAL PROSECUTION IN THE REPUBLIC OF CROATIA

Izv. prof. dr. sc. Zoran Burić*
Izv. prof. dr. sc. Marija Đuzel**
Doc. dr. sc. Ivana Radić***

UDK 343.13(497.5)
<https://doi.org/10.30925/zpfsr.44.3.1>
Ur.: 19. siječnja 2023.
Pr.: 28. ožujka 2023.
Izvorni znanstveni rad

Summary

Conditional deferral of (and withdrawal from) criminal prosecution is a consensual institution of criminal justice regulated by the provision of Art. 206.d of the Croatian Criminal Procedure Act that can be applied in cases of a minor crime (one for which a fine or a prison sentence of up to 5 years is prescribed). This institution was implemented more than 20 years ago into the Croatian criminal procedure but is very rarely used in practice. In order to identify possible reasons for this, the authors have conducted, after a comparative legal analysis, empirical research in two phases: the first phase comprised 60 semi-structured interviews with practitioners followed by discussions in four focus groups. The goal of the empirical research was to discover the practitioners' experiences with the application of the institution in practice. The paper presents the results of the conducted research divided into five issues that have been established as the key elements in the application of this institution: the lack of clear legal guidelines, the scope of application, the lack of judicial control, defendants' rights, and the position of the victim. In conclusion, the paper analyses whether the initial theses are confirmed and provides certain de lege ferenda solutions.

Keywords: *conditional deferral of criminal prosecution; Croatian criminal procedure; practitioners' experiences; defence rights; victim's position.*

* Zoran Burić, Ph.D., Associate Professor, University of Zagreb, Faculty of Law; zoran.buric@pravo.hr. ORCID: <https://orcid.org/0000-0001-5353-8478>.

** Marija Đuzel, Ph.D., Associate Professor, University of Split, Faculty of Law; marija.pleic@pravst.hr. ORCID: <https://orcid.org/0000-0001-8868-0079>.

*** Ivana Radić, Ph.D., Assistant Professor, University of Split, Faculty of Law; iradic@pravst.hr. ORCID: <https://orcid.org/0000-0003-4946-6437>.

This paper 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).

1 INTRODUCTION

Conditional deferral of (and withdrawal from) criminal prosecution is a typical consensual institution of criminal justice. In Croatia, this institution has been available for application since 1997.¹ The basic characteristics of the institution, which are regulated in 206.d of the Criminal Procedure Act (further in text: CPA)² are as follows: when there is reasonable suspicion that a minor crime has been committed (one for which a fine or a prison sentence of up to 5 years is prescribed), the state attorney may, with the previously obtained consent of the victim, conditionally defer (or withdraw from) criminal prosecution, if the defendant undertakes one or more of the total of six obligations provided by the statute; if the defendant fulfills his/her obligations within the time limit set by the state attorney, the state attorney is obliged to finally withdraw from the criminal prosecution and the criminal matter is thereby considered to be finally resolved. It is an agreement between the state attorney and the defendant, which enables the out-of-court settlement of minor criminal cases. This institution has a number of advantages for the criminal justice system, the defendant, but also for the victim of the crime. Despite a number of advantages of the institution, earlier research has shown that it is rarely used in practice. In order to detect the causes for such a rare application of the institution in practice, the authors conducted research in two phases.

In the first phase, theoretical-normative research was conducted, based on a comparison of theoretical foundations and legislative arrangements of this or similar institutions in 6 European countries: Croatia, Austria, Germany, Italy, France and England. The results of that part of research have already been published³ and represented the starting point for conducting the second part of research, which is focused on the analysis of practice, i.e., on the study of the attitudes of judges, state attorneys and defence attorneys in relation to those issues that required further analysis according to the results of the first part of research.

The empirical part of research was conducted in two phases. In the first phase, 60 semistructured interviews were conducted with practitioners – 20 with judges, state attorneys and defence attorneys, respectively. In relation to judges and state attorneys, an equal number of interviewed practitioners represented the county and municipal levels of jurisdiction. Practitioners from different parts of the country were involved in the research: 27 from Zagreb, 15 from Split, and 9 from Rijeka and Osijek, respectively. These numbers are evenly distributed in relation to the members of included professions.

In the second phase, discussions were conducted within four focus groups. Three focus groups were homogeneous in terms of profession (judge, state attorney and defence attorneys), and the fourth was heterogeneous. In addition, 4 to 6 practitioners

1 Art. 175 of Criminal Procedure Act, Official Gazette, no. 110/97.

2 Criminal Procedure Act, Official Gazette, no. 152/08, 76/09, 80/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/20.

3 Zoran Burić, Marija Pleić, and Ivana Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution from National and Comparative Perspective," *Pravni vjesnik* 37, no. 1 (2021): 83-104.

from different parts of the country participated in each of the focus groups. The goal of the focus groups was to additionally discuss the issues which remained ambiguous after the analysis of the data collected through the interviews.

This paper presents the results of both phases of the empirical part of research based on the qualitative analysis. As already indicated in the introduction, the driving thought of the research was to find the causes of extremely low application of the institution in practice. The initial theses were that the reasons for this can be found in: 1) the lack of clear legal and by-law guidelines for the application of the institution, 2) the overly narrow catalogue of criminal offences to which the institution applies, 3) the absence of judicial control, which puts state attorneys in the position of the “adjudicator”, 4) the absence of clearly prescribed guarantees for the protection of the right of defence, and 5) the disproportionately strong position of the victim. Each of these theses will be analysed separately in the paper through the prism of results of the empirical part of research.

2 LACK OF CLEAR LEGAL GUIDELINES

As stated above, the first thesis examined through interviews with practitioners was whether the lack of clear statutory and by-law guidelines affects the low level of application of the institution in practice. Within this research unit, the views of practitioners were examined regarding the following issues: the need to legally regulate the goal(s) of the institution and the need to adopt standardised procedures for the application of the institution at the level of the state attorney’s office, which would regulate the key aspects of its application (to which defendants and criminal offences this institution applies; which criteria are used when deciding on the obligations for the defendant and determining the deadlines within which this obligation should be fulfilled; when to apply the institution, and when to apply a penal order).

2.1 Defining the Goal(s) of the Institution by Statute

The goal(s) of conditional deferral (and withdrawal) of criminal prosecution is not statutorily regulated in the CPA.⁴ All groups of respondents were asked whether they consider it necessary to incorporate the goals of the institution in the CPA in order to achieve its better application in practice. Although the theoretical-normative part of research showed that, in the comparative perspective, the goals of similar institutions are not statutorily regulated,⁵ it was deemed nevertheless necessary to examine the attitudes of Croatian practitioners towards this issue.

In the group of state attorneys, twelve of them responded that it was not required to statutorily regulate the goals of the institution in the CPA. Several respondents mentioned that all practitioners are well-acquainted with the goals of this institution

4 Burić, Pleić, and Radić, “Conditional Deferral (and Withdrawal) of Criminal Prosecution,” 86-87.

5 Burić, Pleić, and Radić, “Conditional Deferral (and Withdrawal) of Criminal Prosecution,” 87-96.

(the relief of court system workload, shorter duration of criminal procedure, the avoidance of hearing before the court). The rest of state attorneys (8) believe that special statutory regulation regarding the goals of the institution would be useful and helpful. In general, the respondents did not further elaborate on their answers, however some of them stated that such a provision would be potentially helpful only if the content of the special provision was appropriately drafted.

Defence attorneys expressed similar opinions as the state attorneys and did not generally explain their answers. Half of them (9) answered that the purpose of conditional deferral should be prescribed in a special provision, while six of them believe that a special provision would be redundant. The rest of them did not answer this question. A couple of defence attorneys emphasised that a special provision would be most helpful to state attorneys, "because then they can refer to that provision in their decisions," while others believe it would only further complicate the implementation of the institution in practice.

In the group of judges, only twelve of them answered this question, the rest of them did not answer due to the lack of experience in their practice. The majority of the judges who answered this question (7) believe that the goals of this institution should not be statutorily regulated because most practitioners are already acquainted with its purpose. Only five judges stated that there should be special provision because "in practice, people prefer to have everything prescribed, then there would be no excuse that it has not been prescribed by the CPA. If it is not prescribed by an act, it is less frequently applied."

In conclusion, the majority of respondents believe that a special provision defining the goals of conditional deferral of criminal prosecution in the CPA is redundant and would not significantly contribute to increasing the application of the institution in practice.

2.1.1 Potential Goals

All respondents were asked to identify the goals of this institution. The majority of respondents in all groups specified different goals in their answers but often emphasised one aspect more than other. Their answers were classified in three categories, depending on which aspect of conditional deferral of criminal prosecution they prioritised. A half of state attorneys (9) believe that the primary goal of conditional deferral is to facilitate the position of the defendant in criminal proceedings: provide a second chance for first-time offenders who committed a minor, situational criminal offence and have agreed to fulfill the imposed obligation. In addition, the defendant is not entered in the criminal records, which further benefits them and protects them from negative stigmatisation. In the second group, seven state attorneys associated the goal of this institution with the legal-economic purpose in criminal proceedings: to reduce the number of formal criminal proceedings, shorten the duration of criminal proceedings, relieve the courts of less severe cases, avoid hearings before the court and reduce the costs of criminal proceedings. The third group of state attorneys (8) associated the goals of conditional deferral with the victim's rights. According to

their opinion, the main purpose of this institution is to compensate the victim, in a short period of time, for the damage caused by the criminal offence.

Eleven defence attorneys stated that the main goal of conditional deferral of criminal prosecution is to achieve the legal-economic purposes mentioned before. Eight defence attorneys emphasised the benefits for the defendant as the primary purpose of this institution while four of the respondents did not answer this question. According to them, this institution provides the defendant with a second chance and should be used in cases when the defendant had admitted guilt as to a minor criminal offence, when the defendant is a first-time offender, and is ready to fulfill the imposed obligation. One defence attorney indicated that "people are often terrified of court proceedings, criminal records, etc., so the initiation of criminal proceedings does not have a favourable psychological effect on them (...), especially when the proceedings last a long time." Only a few defence attorneys stated that the goal of conditional deferral is to enable the victim to receive compensation for the sustained criminal offence.

In the group of judges, seven of them did not answer this question. In terms of the judges who responded, their answers primarily referred to the positive aspects of this institution for the defendant. In their opinion, conditional deferral should be applied in cases of first-time offenders, who committed a less serious criminal offence and when the circumstances of the case show that the criminal offence is a result of excessive behaviour in an individual situation or recklessness. There should also be a positive prognosis of the defendant's future behaviour. Only a couple of judges mentioned legal-economic purposes of conditional deferral and the protection of the victims' rights in their answers.

In conclusion, the majority of respondents believe that the purpose of conditional deferral of criminal prosecution is complex and includes various aspects of criminal procedure, but they also associate the goals of the institution primarily with the benefits for the defendant and legal-economic purposes.

2.2 Need for Practical Guidelines

The hypothesis tested with the practitioners was that there is a lack of clear practical guidelines that could instruct state attorneys when and how to apply this institution in practice. For example, in many German states there are guidelines for prosecutors that have been issued in order to achieve a more unified application of conditional dismissal of criminal proceedings.⁶ This hypothesis is the result of the finding of the first part of research – that the application of the institution is regulated as a matter of prosecutor's discretion. A considerable margin of discretion in the absence of clear practical guidelines may present a strong discouragement for the prosecutors to apply the institution.

6 Gwaldys Gillièreon, *Public Prosecutors in the United States and Europe, A Comparative Analysis with Special Focus on Switzerland, France, and Germany* (Cham: Springer International Publishing, 2014), 271.

In order to test this hypothesis, the state attorneys were primarily asked whether there is a certain standardised procedure (internal instructions from the higher-instance state attorney's office) they use in the event of application of conditional deferral of criminal prosecution. Ten state attorneys believe that such a procedure exists, four of them that it does not exist, two of them that they do not know if it exists, and four state attorneys did not answer the question, referring to the lack of relevant experience. In relation to the procedure that is applied, the answers vary significantly: three state attorneys referred to the obligation to notify the municipal state attorney of the intention to enter into such an agreement, two mentioned the Manual from 2011, two mentioned the Instructions of the State Attorney's Office of the Republic of Croatia, and one mentioned the Rules of Procedure of the State Attorney's Office of the Republic of Croatia. It is interesting that one interviewed state attorney stated that a standardised procedure could not be established due to a rare use of this institution in practice. The answers clearly indicate a lack of standardised procedure in the work of prosecutors in Croatia regarding the application of this institution, which indicates the need to adopt practical guidelines.

2.2.1 The Content of Guidelines

In order to determine the scope of possible practical guidelines, and because the implementation of this institution in practice depends on state attorneys, only the group of state attorneys was asked about the defendants and criminal offences this institution applies to, the guiding criteria when deciding on the obligations for the defendant and determining the deadlines within which this obligation should be fulfilled, and the guiding criteria in deciding when to apply this institution, and when to apply a penal order.

2.2.1.1 Defendants

The state attorneys were asked whether, in practice, they apply this procedure only to first-time offenders. According to the answers received, it can be concluded that conditional deferral is not generally applied to recidivists, but only to defendants appearing for the first time in criminal proceedings. Nine state attorneys responded affirmatively, three answered that such a restriction is not applied in practice, while eight of them did not answer the question, referring mainly to the lack of relevant experience. One out of three who said that such a restriction does not apply noted that this is, notably, a circumstance evaluated negatively when considering the possibility of applying the institution in practice.

2.2.1.2 Criminal Offences

They were also asked whether there are individual criminal offences or a group thereof where the application of this institution is excluded in practice. Considering the answers received, it can be concluded that the practice varies significantly. Seven state attorneys stated that such a practice exists, seven that it does not exist, i.e. that

this institution can, nominally, be applied in relation to all criminal offences falling within the legal framework, while the remaining six did not answer the question citing a lack of relevant experience. The interviewed state attorneys mentioned the following criminal offences or groups thereof where this institution does not apply: criminal offences of violence (2), grievous bodily harm (1), receiving and giving bribes (1), assault on the police (1), sexual offences (3), criminal offences against official duty committed by civil servants or officials (1), and blood offences (1). One of the interviewed state attorneys identified the criminal offence of causing a traffic accident with minor consequences committed through negligence as one of the rare criminal offences in which the application of this institution is even considered.

2.2.1.3 Obligations

There are six different obligations that can be imposed upon the defendant as a part of conditional deferral of criminal procedure.⁷ The state attorneys were asked to explain how they decide and which criteria they use when deciding on the obligations for an individual defendant. A half of state attorneys (11) answered that when deciding on the obligations for the defendant, they primarily consider the type of criminal offence in question. In practice, state attorneys try to connect the committed criminal offence with the imposed obligation. The other half of respondents stated that they first consider the defendant's personal circumstances, i.e. whether they are ready to undertake the obligation, their ability to compensate for the damage, whether they have a job, whether they are first-time offenders, etc. One third of respondents mentioned that they also consider the interests of the victim. It derives from the answers of the state attorneys that the most frequently imposed obligation in practice is the compensation for the damage caused by a criminal offence, followed by the obligation to pay a certain amount of money for charity purposes, or issuing an apology to the victim. For the criminal offence of "Breach of the maintenance duty"⁸ they usually impose the obligation of payment of due legal maintenance and the orderly payment of due obligations⁹ which has proven to be very successful in practice.

2.2.1.4 Deadlines

When the state attorney decides on which obligation to impose upon the defendant, they must also specify a deadline within which the defendant is required to fulfill that obligation. The deadline must not exceed one year.¹⁰ For example, in Germany the obligations must be fulfilled within a period from six months to one

7 Davor Krapac, *Kazneno procesno pravo, Prva knjiga: Institucije* (Zagreb: Narodne novine, 2020), 105-106.

8 Art. 172 of Criminal Code, Official Gazzete, no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21. See more: Leo Cvitanović et al., *Kazneno pravo - Posebni dio* (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2018), 237- 244.

9 Art. 206.d para 1.3 of the CPA.

10 Art. 206.d para 3. of the CPA.

year,¹¹ while in France they must be fulfilled within a period of six months.¹² The state attorneys were asked about the time frame they usually provide for the defendant to fulfill the imposed obligation. Six state attorneys stated that obligations are fulfilled within a period of up to 3 months, seven of them answered that this period is up to 6 months, while the rest of them did not answer this question. It derives that in practice the deadlines are shorter than a year and that defendants usually fulfill their obligations within 3 to 6 months, which is the same as in the cases of juvenile offenders in Croatia.¹³ Several state attorneys emphasised that when determining the deadline, they consider the personal circumstances of the defendant as well as the type of imposed obligation.

2.2.1.5 Relation to the Penal Order

Conditional deferral (and withdrawal) of criminal procedure and penal order are institutions that represent a form of consensuality in Croatian criminal proceedings. The data indicates that in practice, the institution of penal order is implemented much more frequently¹⁴ in relation to conditional deferral.¹⁵ Because both of these institutions may be applied to the same group of criminal offences (offences punishable by a fine or imprisonment for a term not exceeding five years) and the final decision about their implementation in practice depends on the state attorney, they were asked about the criteria they use when deciding on which of these institutions to apply in practice.

Four state attorneys answered that they prefer the conditional deferral of criminal prosecution to a penal order. Conditional deferral has priority in cases of less severe criminal offences, when the circumstances of the case and the characteristics of the defendant indicate that said institution can be used. In these situations, the victim is expeditiously compensated for the damage caused by the criminal offence and the defendant is not entered in the criminal records, which further benefits them. Six state attorneys stated that they prefer the penal order which has, in practice, proven to be more practical and effective. In their answers, they mentioned that the procedure for implementing a penal order is simpler and that the penal order proved to be a very good solution in the case of property crimes. Four state attorneys did not answer this question, while the remaining respondents stated that when deciding on a suitable institution, they consider the victim's and the defendant's will, i.e. whether there is a possibility for an agreement and cooperation between the involved parties.

11 Gillièron, *Public Prosecutors in the United States and Europe*, 271-272.

12 Peter J.P. Tak, "Methods of Diversion Used by the Prosecution Services in the Netherlands and other Western European Countries," in *Resource material series no. 74.*, ed. Grace Lord (Tokyo: UNAFEI, 2008), 59.

13 Biljana Puharić, and Ivana Radić, "Načelo svrhovitosti u kaznenom postupku prema maloljetnicima," *Hrvatski ljetopis za kaznene znanosti i praksu* 22, no. 2 (2015): 661-662.

14 Zlata Đurđević, Marin Bonačić, and Marija Pleić, "Rule of Law Concernes in Croatian Penal Order Procedure Linked to Deprivation of Liberty, Judicial Control, Admissibility of Evidence and Procedural Rights," *Pravni vjesnik* 37, no. 1 (2021): 60-62.

15 Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 87.

In their answers, the state attorneys emphasised that the procedure for applying conditional deferral is long and complicated, which makes it difficult to apply it in practice.¹⁶ Several respondents mentioned that they are overloaded with cases and timeconstrained, and that is why they choose a penal order more frequently as a simpler solution. If the state attorney decides to implement conditional deferral, they have to invite the defendant and the victim for a conversation, explain the procedure to each of them, obtain the consent of the victim and reach an agreement with the defendant regarding the fulfillment of the obligation. This part of the procedure often includes solving complex interpersonal relationships, which further complicates the procedure and requires additional engagement from the state attorneys. Respondents emphasised that according to the internal rule, in order to make a final decision about conditional deferral, the deputy state attorneys must have the approval of their superiors. In order to receive their approval, they have to explain the case to them, which also prolongs and complicates the procedure. During the procedure, the state attorney has to make two different decisions and has to be active all the time because they are required to monitor the progress of the performance of obligations.¹⁷

The state attorneys were asked to specify the form of negotiation they prefer in the case of minor criminal offences – a penal order or conditional deferral, or another form of consensual justice from the CPA. Their answers were similar as in the previous question. Seven state attorneys prefer penal order, four of them prefer conditional deferral and only one state attorney said that his decision depends primarily on the circumstances of the case in question. Eight state attorneys did not answer this question.

At the focus groups with the state attorneys, it was pointed out that in the case of minor criminal offences, defendants usually commit property crimes. In those cases, defendants are usually persons of poor financial status who also exhibit behavioural problems. Special obligations cannot be imposed on such defendants because they are simply unable to fulfill them, which also affects the application of conditional deferral in practice.

3 NARROW SCOPE OF APPLICATION

Conditional deferral of criminal prosecution in current legislation can be implemented only for less severe criminal offences. In the past there have been some changes in the quantitative limitation in relation to the scope of criminal offences to which this institution can be applied.¹⁸ The situation is the same with similar institutions in France¹⁹ and Austria, while in Germany this institution can be applied

16 Ana Garačić, and Dragan Novosel, *Zakon o kaznenom postupku u sudskoj praksi – I. knjiga* (Rijeka: Libertin naklada, 2018), 538.

17 Krapac, *Kazneno procesno pravo, Prva knjiga: Institucije*, 106.

18 Vlado Sirotić, “Uvjetna odgoda kaznenog progona punoljetnog počinitelja kaznenog djela,” *Hrvatski ljetopis za kaznene znanosti i praksu* 19, no. 1 (2012): 172-176.

19 Jaqueline Hodgson, “Guilty Pleas and the Changing Role of the Prosecutor in French Criminal Justice,” in *The Prosecutor in Transnational Perspective*, eds. Erik Luna, and Marianne Wade (New York: Oxford University Press, 2012), 126.

to misdemeanours, criminal offences that are punishable by no more than 1 year of imprisonment or by a fine.²⁰ The respondents from all groups were asked whether they believe that the scope of criminal offences to which conditional deferral can be applied should be expanded to criminal offences punishable by fine or imprisonment for a term not exceeding eight years or reduced to criminal offences punishable by fine or imprisonment for a term not exceeding three years.

The majority of state attorneys (15) responded that they agree with the current legal provision and believe there is no need for any amendments to the legislation. Only three state attorneys believe that the application of conditional deferral should be extended to criminal offences punishable by imprisonment not exceeding 8 years, while only one state attorney stated that the application of this institution should be reduced to criminal offences punishable by imprisonment for a term not exceeding 3 years. The defence attorneys were not uniform in their answers. A half of them (9) stated that they agree with the current legal solution because conditional deferral is not implemented in practice to a sufficient extent, so there is no need to expand the scope of criminal offences to which this institution can be applied. Several defence attorneys indicated that the existing legal solution is consistent with other forms of negotiation in criminal proceedings in the CPA, which means that a legislative change in this institution would lead to inconsistency with other forms of negotiation. Other half of the respondents (10) stated that the scope of criminal offences to which this institution can be applied should be expanded to criminal offences punishable by a fine or imprisonment for a term not exceeding eight years. Some of them emphasised that they are always in favour of expanding the defendants' options in criminal proceedings. Only one defence attorney believes that the application of this institution should be reduced to criminal offences punishable by imprisonment for a term not exceeding 3 years.

Similar to state attorneys, fifteen judges answered that they agree with the current legal solution and that there is no need for change. Only two judges believe that the application of this institution should be expanded to criminal offences punishable by imprisonment for a term not exceeding 8 years, while three judges did not answer this question.

The general conclusion is that the majority of all respondents believe there is no need to change the scope of criminal offences to which this institution can be applied. Some respondents mentioned that the application of this institution should not be extended because then this institution could be used in cases of serious criminal offences where, in their opinion, the court needs to make the final decision. In addition, few respondents mentioned that a better solution would be to introduce a catalogue of criminal offences for which conditional deferral could be implemented in order to achieve a wider application of this institution in practice.

20 Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 87-90.

4 ABSENCE OF JUDICIAL CONTROL

Conditional deferral of criminal prosecution implies broad discretionary powers of the state attorney who, with the compliance of the suspect and the consent of the victim, imposes obligations on the suspect and decides on the deferral and withdrawal of criminal prosecution.²¹ According to the Croatian CPA, the court does not have the authority to decide on and supervise the application of this institution, and its only role is to adjourn the proceedings once the state attorney withdraws the charges at the hearing, after the formal commencement of the proceedings.²²

Deriving from a comparative analysis which revealed that certain legislations, such as Austrian, German and French, foresee a role of the court in deciding on the application of this institution, and considering that a form of judicial control had existed in the Croatian legislation until 2002, when this provision was deleted as a superfluous formality,²³ one of the goals of this research was to determine the views of practitioners on the need for judicial control of conditional deferral of criminal prosecution.

All respondents were asked whether they considered it necessary to introduce judicial control over the state attorney's decision on conditional deferral and withdrawal of criminal prosecution, and state attorneys were furthermore asked whether the introduction of judicial control would slow down the procedure and avert them from applying this institution. The majority of all respondents believe that there is no need to introduce judicial control over the state attorney's decision on conditional deferral of criminal prosecution. State attorneys are particularly unanimous in their negative view of the introduction of judicial control (18) arguing that they conscientiously and restrictively apply this institution, that the victim is involved in the decision-making process and that judicial control is not necessary unless it has been proven that there have been considerable abuses. Two state attorneys did not answer this question. State attorneys are also unanimous (18) in their opinion that judicial control would slow down and complicate the procedure of deciding on conditional deferral, but at the same time few state attorneys (2) believe that slowing down the procedure would not deter state attorneys from applying it. Only one state attorney believes that the introduction of judicial control would not affect the decision-making process itself, because, in any case, this institution is rarely applied in practice, only at the initiative of the defence and only in relation to a petty crime. One state attorney indicated that the introduction of judicial control would certainly slow down the procedure, but on the other hand it could serve as the controller of the entire procedure, because it would otherwise occur that the same subject brings charges and adjudicates.

21 Elizabeta Ivičević Karas, "Consensual Justice in Croatian Criminal Procedural Law: The Need for a Systematic Approach," in *EU and Comparative Law Issues and Challenges Series (ECLIC) – EU 2020 Lessons from the Past and Solutions from the Future*, eds. Dunja Duić, and Tunjica Petrašević (Osijek: Pravni fakultet u Osijeku, 2020), 411-412.

22 Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 98.

23 Until 2002 when this provision was deleted as a superfluous formality. Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 97-98.

Defence attorneys are on the same line of thought, as the majority (16) considers judicial control unnecessary. It is stated that the institution was designed to be short and efficient; it would be an excessive formalism that would only prolong the procedure, that there are no abuses of that institution in practice and that the court should not be overburdened. If the suspect has a defence attorney and if they have agreed with the proposal of the state attorney, the court should not interfere, because then it supersedes the discretion of the state attorney. One defence attorney emphasised that the court is not a “controller” of the work of the state attorney’s office, both according to the constitutional definition and according to the legal definition, and especially according to the obligation to respect the principle of legality, since the state attorney makes such decisions autonomously. Instead of judicial control, other options related to the internal reorganisation of the state attorney’s office could be considered, such as the introduction of the possibility of a legal remedy against any decision of the state attorney’s office. Only two defence attorneys responded affirmatively, but without further explanation of their position.

The majority of judges (12) also consider the introduction of judicial control redundant. Four judges did not answer the question due to the lack of experience. Four judges consider judicial control useful, arguing that the role of the state attorney should not be transformed into the role of a judge and that, according to legal reasoning, the court should control the decision of the state attorney because it otherwise occurs that one party decides on the fate of the entire proceedings. However, it is emphasised that the introduction of judicial control would probably further complicate the procedure.

Finally, it can be concluded that the practitioners’ answers confirm the position that there is no need to introduce and strengthen the role of the court in deciding on conditional deferral of criminal prosecution. In particular, since this institution is applied so rarely in practice, so the state attorney’s office evidently does not tend to expand its discretionary powers in terms of deferring and withdrawing from criminal prosecution and of imposing obligations on the defendant, and judicial control would only further deter state attorneys from applying this institution.

5 ADEQUATE DEFENCE RIGHTS GUARANTEES

Although the application of conditional deferral of criminal prosecution is an institution that favours the defendant since it excludes the initiation or further conduct of criminal proceedings, certain obligations, which are considered informal sanctions by their content, are imposed on the defendant, and the defendant therefore must be informed about the consequences and the procedural rights. Based on the previously conducted research, it follows that the application of this institution in comparative legislation generally implies the obligation to inform the defendant about their procedural rights and the requirements for the application of conditional deferral and withdrawal of criminal prosecution.²⁴ However, there are differences with regard to

24 Burić, Pleić, and Radić, “Conditional Deferral (and Withdrawal) of Criminal Prosecution,” 98-99.

the legal consequences of the application of the institution, hence unlike the Croatian law, English²⁵ and French²⁶ law require an explicit admission of the defendant's guilt, and the fact of conditional deferral and withdrawal of criminal prosecution is entered in the criminal records.

Relying on the results of the theoretical normative research, in the second part of this research the respondents were asked questions related to the scope and content of the rights which are guaranteed to the defendant during the procedure of conditional deferral, and potential legislative amendments regarding stronger protection of procedural guarantees for the defendant. Given that this institution is very rarely applied at the stage after the formal commencement of criminal proceedings,²⁷ and judges do not, generally, have relevant experience in its application, most of the questions about the defendant's rights were directed at the other two actors – the state attorney and the defence attorney.

5.1 Information on Procedural Rights

State attorneys and defence attorneys were asked whether they believe that the defendant fully understands the consequences of conditional deferral of criminal prosecution. All state attorneys except for one respondent who had no experience with this institution believe that the defendant understands all the consequences of conditional deferral of criminal prosecution. Nevertheless, some state attorneys additionally emphasise that it depends on how it is explained to the defendant, that there may be problems in understanding the significance of this institution, but that the defendants understand it is in their favour. It is of particular importance that the defendant be properly briefed about everything, especially the fact that nothing will be entered in their criminal records.

Most defence attorneys (9) explicitly confirmed that the defendant fully understands the consequences of this institution, only one responded in the negative, but without further explanation, and four of them did not answer the question due to the lack of relevant experience. The remaining respondents indicated the significant role of a defence attorney in such situations, who additionally explains all the consequences of this consensual form.

As a follow-up to the previous question, these two categories of respondents were also asked whether they deem necessary the incorporation of special provisions on informing the defendant about the consequences of conditional deferral of criminal prosecution and about their rights in the procedure. This is because the CPA does not specifically regulate the defence rights of the defendant who has been offered conditional deferral, but the general rules pertaining to defence rights apply.²⁸

25 S 23 Criminal Justice Act of November 20, 2003, UK Public General Acts, no. 2003 c. 44 with the latest amendments on February 1, 2015 (hereinafter: CJA).

26 Hodgson, "Guilty Pleas and the Changing Role of the Prosecutor in French Criminal Justice," 126.

27 Vera Glasnović Gjoni, and Vlado Sirotić, "Uvjetni odustanak od kaznenog progona i praksa Općinskog suda u Puli – Pola," *Pravni vjesnik* 32, no. 3-4 (2016): 159.

28 Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 86.

The majority of state attorneys believe that there is no need for this because the state attorney in practice explains all the circumstances to the defendant. Only a small number of state attorneys (4) consider it necessary to foresee provisions on the rights and consequences of this institution by the CPA. On the other hand, the majority of defence attorneys (14) expressed an affirmative attitude towards such a proposal. Three defence attorneys believe that there is no need to introduce such provisions in the CPA, and the remaining ones did not explicitly refer to the question in their answers or they stated that they had no experience. This issue clearly indicates the difference in procedural positions, and thus also the views of state attorneys and defence attorneys.

All three categories of respondents were asked whether they believe that the defendant's rights are sufficiently guaranteed when applying this institution. All state attorneys except for one who stated that he had no relevant experience believe that the defendant's rights are sufficiently guaranteed. This institution was designed in favour of the defendant, because otherwise criminal proceedings would be conducted against them. At the beginning of the procedure, the defendant is informed about all the rights during the procedure, especially because the defendant must consent to the imposition of obligations.

Defence attorneys are not so unanimous in their views. In fact, seven defence attorneys believe that the defendant's rights are sufficiently guaranteed, four did not answer due to the lack of experience, and only three responded in the negative. The other defence attorneys (6) highlighted some circumstances upon which the extent of guarantee of the defendant's rights depends. In fact, it is pointed out that if the prosecutor acts in accordance with the law, they also protect the rights of the defendant, because a defence attorney rarely appears in these situations. One defence attorney believes that these rights would be better protected if the defendant were appointed a defence attorney at the expense of the budget funds. The majority of respondents from this category emphasised that although the rights are guaranteed by law, it all depends on how it is applied in practice and whether the defendant will be briefed in such a way that they really understand it.

The majority of the judges (12) consider that the defendants' rights are sufficiently guaranteed. A significant number of judges (7) did not answer the question due to the lack of experience in practice. One judge expressed doubts about the way in which the defendant is informed of the rights and obligations and about the state attorney's ability to explain everything in an adequate manner, indicating that there should potentially be some form of control, such as assistance of a defence attorney or introduction of the obligation to record the agreement between the parties.

It can be concluded from the respondents' answers that the procedural guarantees for the defendant are adequately protected at this stage of the procedure and that in practice there are no pronounced problems regarding the understanding of the rights guaranteed by the CPA or the exercise of these rights in the course of conditional deferral of criminal prosecution procedure. The reasons for this can be found in the fact that the institution is rarely applied in practice, so in the exceptional

cases when they do decide to apply it, the state attorneys thoroughly inform the defendant on their rights and obligations.

Over the past decade, the Croatian legislator has been developing and strengthening the defendant's procedural rights guided by the need to harmonise with the EU law,²⁹ and the legal framework thus established is sufficient in cases of application of this diversion model which aims to avoid criminal proceedings. Although the defendant is guaranteed all the rights they normally have at a given stage of the procedure, it would be useful, for the sake of precision and clarity, to explicitly prescribe the state attorney's obligation to inform the defendant of the consequences of conditional deferral of criminal prosecution, especially of the effects of their failure to comply with the agreement, in the form of a letter of rights.

5.2 Right to an Attorney

The next category of questions is related to the right to an attorney in the course of the conditional deferral procedure. All respondents were asked whether the provisions on the mandatory defence should be extended to the cases of conditional deferral of criminal prosecution. In fact, the CPA provides for mandatory defence in certain specified cases in which the defendant's ability to defend themselves is hindered, either because of the gravity of the crime, the fact of deprivation of liberty or some other personal or legal circumstances when the defendant must have legal representation, and if the defendant does not choose one for themselves, they will be assigned legal representation *ex officio* at the expense of the budget funds.³⁰ The cases of mandatory defence should be distinguished from cases in which the presence of a defence attorney is not necessary, but the special circumstances of the case and the defendant's financial situation justify the appointment of a defence attorney at the expense of the budget funds (free legal aid).³¹

The majority (13) of state attorneys do not consider it necessary to extend the mandatory defence to the cases of conditional deferral of criminal prosecution. They argue that conditional deferral does not apply to criminal offences requiring mandatory defence as per the Act, that it is a simplified form of procedure favouring the defendant and that the state attorney can explain all rights and obligations to the defendant in a simple way. On the other hand, five state attorneys are inclined to the possibility of prescribing mandatory defence in these cases as well. It has been indicated that when concluding an agreement between the parties, and this institution is a form of an agreement, the presence of a defence attorney who represents the

29 Ante Novokmet, "The Europeanization of the Criminal Proceedings in the Republic of Croatia through the Implementation of the Directive 2013/48/EU," *European Journal of Crime, Criminal Law and Criminal Justice* 27, no. 2 (2019): 98-99.

30 Art. 66 of the CJA. Krapac, *Kazneno procesno pravo, Prva knjiga: Institucije*, 243-244.

31 Art. 72 and Art. 72.a of the CPA. For a more detailed analysis of this institute and the harmonization of Croatian legislation with the Directive (EU) 2016/1919 on the legal aid see: Elizabeta Ivičević Karas, and Zoran Burić, "Na putu prema transponiranju Direktive o besplatnoj pravnoj pomoći u hrvatski kazneni postupak? Osvrt na prijedlog osme novele ZKP-a," *Hrvatski ljetopis za kaznene znanosti i praksu* 26, no. 2 (2019): 427-433.

interests of the defendant is necessary. However, this would make the procedure even more expensive, and the purpose of this institution is to shorten and reduce the costs of the procedure. One state attorney believes that mandatory defence should be introduced in criminal proceedings for all criminal offences for which a prison sentence is prescribed.

The majority of judges who answered this question also consider the introduction of mandatory defence unnecessary (9), explaining this mainly by the fact that conditional deferral is an institution that benefits the defendant. One judge believes that the participation of a defence attorney prevents the application of this institution because the defence attorney will prefer to insist on criminal proceedings. Five judges did not provide an answer to this question, while six judges believe that the introduction of mandatory defence would be useful in these cases as well. In fact, it is pointed out that the participation of the defence attorney is a guarantee of the protection of the defendant's rights and that they will be aware of the consequences of accepting the state attorney's offer. Some state that it is not necessary to provide mandatory defence, but that defence with a defence attorney is certainly useful, and that it should at least be provided at the expense of the budget funds, if the defendant cannot afford legal representation.

In contrast to state attorneys' and judges' opinion, as expected, the majority of defence attorneys (13) believe that mandatory defence should be provided to the defendant in case of conditional deferral of criminal prosecution. Four defence attorneys believe to the contrary. In fact, one defence attorney argues that the issue of mandatory defence has to be related only to the gravity of the criminal offence and the economic and social circumstances of the defendant. Therefore, the provisions on mandatory defence should not be extended to the cases of conditional deferral. Three defence attorneys did not express their position on this issue.

Furthermore, state attorneys and defence attorneys were asked whether the defendant should have the right to a (temporary) legal aid at the expense of the budget funds in the procedure of conditional deferral of criminal prosecution.³² Opposing views of the state attorneys and the defence attorneys were presented regarding the scope of the right to a defence attorney. In fact, the majority of state attorneys (13, the same as in the previous question) answered this question in the negative, four believe that the defendant should be provided with this right, and three did not answer the question. The answers of the defence attorneys are diametrically opposed – thirteen of them believe that the provision of legal assistance at the expense of the budget funds is necessary, while five do not consider such assistance necessary.

Although the acceptance of obligations by the defendant does not imply an admission of guilt nor is this fact entered in the criminal records, these obligations represent a certain burden for the defendant as if they were sanctions, so it is justified to enable the defendant to appoint the defence attorney. Consequently, in order to equalise the procedural position of all defendants when deciding on whether to consent to the proposed obligations, regardless of their financial situation, the right to a defence attorney at the expense of the budget funds should be potentially

32 Art. 72.a of the CPA.

incorporated in the law for the cases where, due to the financial situation, the defendant cannot afford a defence attorney. On the other hand, the gravity of the criminal offences for which conditional deferral can be applied, as well as the nature, purpose, content and consequences of the application of this institution do not justify mandatory defence. The Croatian law foresees mandatory defence in a relatively broad manner, and since conditional deferral is a simplified procedure that aims to avoid criminal proceedings and incurring additional costs, and considering the results of the conducted research from which it follows that there are no significant problems in relation to the defendant's rights, the introduction of mandatory defence in this procedure is neither expedient nor justified.³³

6 EXCESSIVELY STRONG POSITION OF THE VICTIM

One of the peculiarities of this institution in Croatia is that the consent of the victim is a mandatory precondition for the application of the institution in all cases, except in situations of victimless crimes.³⁴ The tested hypothesis was that this provides the victim with an inadequately strong position within the institution, which affects the application of the institution in practice.

6.1 Adequate Position of the Victim

All categories of practitioners were asked the same group of questions in relation to the way the position of the victim is regulated within the framework of this institution. The first question inquired whether they considered, based on their own experience, that the victims were given an appropriate role within the institution of conditional deferral of criminal prosecution. Nine judges did not provide an answer, referring mainly to the lack of relevant practice in the application of this institution. None of the judges answered that they believed that victims are not provided with an adequate role in the application of this institution, while 11 judges responded that they believe that victims are provided with an adequate role. It is evident from this that all the judges who had an opinion or position regarding this issue agree that the victims are given an appropriate role within the institution of conditional deferral of criminal prosecution.

Eleven interviewed state attorneys answered this question in the affirmative, none of them answered in the negative, and 9 of them did not give an answer citing the lack of relevant experience. The numbers and the attitudes are identical as those presented by the judges. Twelve interviewed defence attorneys did not answer this question, five of them answered that they believe the position of the victim within this institution is regulated in a satisfactory manner, while three of them answered that it is not satisfactory. The latter three further explained that the victim should not, at least not always, consent to the conclusion of such an agreement.

33 Ivičević Karas, "Consensual Justice in Croatian Criminal Procedural Law," 427-428.

34 Burić, Pleić, and Radić, "Conditional Deferral (and Withdrawal) of Criminal Prosecution," 85-86.

6.2 Mandatory Consent of the Victim

The second question inquired whether they considered it an appropriate solution that in every case the consent of the victim is a necessary precondition for the application of this institution. Eleven judges answered in the affirmative, six answered that they did not consider it a proper solution, and four did not answer the question. It is evident from the above that the majority of judges support the consent of the victim as a prerequisite for the application of this institution. In relation to the reasons given as an argument against seeking the victim's consent, the following answers stand out: that seeking the victim's consent paralyses the meaning of this consensual form, that it is a form of distrust towards the prosecutor, and that prosecutors should be trusted more when applying this institution, and that the victim's consent should not be insisted on in all cases, but only in cases of less serious crimes.

Twelve state attorneys responded that they consider this a proper solution, seven responded that they do not consider it a proper solution, and one did not answer, referring to the lack of relevant experience. Among those who responded affirmatively, one pointed out that this is an important correction for the actions of the state attorney ("a kind of correction for this institution, especially since there is no judicial control and therefore no transparency"), while one responded that he considers the victim's consent necessary, although obtaining it makes it difficult to act ("Actually, sometimes it makes it difficult for us to act, but I still think that in principle it is okay to ask for their consent"). It is interesting to point out certain objections against the victim's consent as a mandatory step in the application of this institution: it complicates the procedure, hinders the application of the institution, conditional deferral could exceptionally be applied even without the consent of the victim, it suffices to inform the victim about the application of the institution, and it is not necessary to ask for their consent as well, the possibility of eliminating the victim's disagreement with a special explanation, the victim's consent should not be a form of control over the work of the state attorney ("I think that the goal is not for the victim to become a controller of the work of the state attorney, it should not block or limit the state attorney's actions").

Eight interviewed defence attorneys answered this question in the affirmative, seven of them answered that they believe it is not a proper solution, while the remaining five did not answer the question. Those who are opposed to such a solution believe that this gives too much power to the victim and that the issue of the victim's consent should be regulated by this institution in the same way as in the judgment based on the agreement of the parties.

6.3 Protection of the Victim's Rights

The third question inquired whether they considered that the rights of the victims are adequately protected with regard to the application of this institution.

Eleven judges answered in the affirmative, while nine judges did not answer the question, referring mainly to the lack of relevant experience in the application of the institution. In view of the above, it is clear that none of the judges has answered that

they believe the rights of the victims are not sufficiently protected when applying this institution. It is evident from this that all the judges who had an opinion or position regarding this issue agree that the rights of the victims are adequately protected within the framework of the institution of conditional deferral of criminal prosecution. The interviewed state attorneys agree to a great extent (18) that the rights of the victim are adequately protected. Only one state attorney stated that he believes that this is not the case, because often the victims do not sufficiently understand the meaning and consequences of the application of this institution. One state attorney did not respond due to the lack of relevant experience. Eleven interviewed defence attorneys answered in the affirmative, one answered that he believes that the rights of the victim are not sufficiently protected, and eight of them did not answer the question.

6.4 Victim's Consent and Application of the Institution in Practice

The fourth question inquired whether they considered that the need to acquire the mandatory consent of the victim affects the low level of application of this institution in practice. Five judges did not answer the question, three judges stated that they believe that this does not affect the low level of application of the institution, while the rest of the judges, namely twelve of them, answered that there is a correlation between the low level of application of the institution and the need to obtain the victim's consent. Several of them expressed the opinion that the low level of application of the institution is primarily a consequence of the negative attitude of the state attorney's office towards the application of this institution, and not the absence of the victim's willingness to give consent. Eleven state attorneys believe that it does affect it, seven believe that it does not, while two of them did not provide an answer. Interviewed defence attorneys mostly agree that the need to seek the victim's consent affects the low level of application of the institution in practice, but a significant number of defence attorneys (8) believe that this is not a decisive reason. As a decisive reason, they emphasise the reluctance of the state attorney's office to apply this institution.

7 PRACTITIONERS' OPINIONS

After all the hypotheses had been tested, the members of different professions included in this research were asked to provide their opinion on the factors which affect the low level of application of this institution in practice. It was an open-ended question and it was not suggested that any of the factors included in the previously tested hypotheses might be the appropriate answer.

One group of state attorneys emphasised in their answers that the main problem is a lengthy, complicated procedure that requires a great deal of commitment and time from the state attorneys who, on the other hand, are pressed by deadlines and overburdened by cases. The other group of state attorneys believe that uncooperative defendants who refuse to undertake the execution of the obligation expecting to have a better outcome and a better position in formal criminal proceedings are the main

problem. Only several state attorneys stated that obtaining the victim's consent is the issue. In the focus groups, it was emphasised that the victim should participate in the institution, but perhaps in a different way. Sometimes victims refuse to give consent because they feel that they are helping the defendant in a certain way.

On the other hand, the majority of respondents in the group of judges and defence attorneys answered that the main problem regarding conditional referral is the organisation of work in the state attorney's office. They mentioned that the state attorney's office is overloaded with cases, too bureaucratically structured and does not allow a high degree of autonomy in the work of state attorneys. Some judges emphasised that the perception that the state attorney's decisions have on the general public plays a big role in their decision-making. In their opinion, there is an impression that the state attorneys do not want to take responsibility for their decision because the public may think that they did someone a favour, hence they prefer that the cases be ultimately resolved by the court.

In the answers of the respondents from all groups, it was observed that some of them believe this institution is primarily appropriate for juvenile offenders, not for adults, and such an opinion certainly additionally contributes to the low application of the institution in practice.

8 CONCLUSION

The research showed that there is a lack of clear statutory or practical guidelines which would provide the adequate normative framework for the decision-making process of the state attorney in the application of this institution. An improvement may be achieved primarily by the adoption of practical guidelines, which would provide the state attorneys with the basic instructions about the situations in which the application of the institution is adequate. However, research did not show that the absence of guidelines is a factor which significantly affects the low level of application of this institution in practice. The research results also indicate that the narrow catalogue/scope of criminal offences to which this institution applies does not constitute one of the reasons for a low level of application of conditional deferral in practice. The majority of respondents from all categories believe that the current legal solution is satisfactory and that there is no need for expanding the scope of criminal offence to which this institution can be applied.

Although some respondents from the ranks of judges and defence attorneys stated, among other reasons for the scarce application of this institution in practice, that the state attorneys do not want to take responsibility for withdrawing criminal prosecution but prefer to leave the decision on the outcome of criminal proceedings to the court, empirical research and the previous theoretically normative analysis do not indicate that the absence of judicial control would be the reason for scarce application of this institution in practice, that it would lead to an unjustified expansion of the state attorney's discretion or that it would harm the defendant's procedural position. On the contrary, the majority of respondents, including the state attorneys, stated that judicial control would only further slow down and complicate the decision-making

process on conditional deferral, and thereby partly deter state attorneys from applying the institution in practice. Since no abuses by the state attorney have been observed in practice nor that the state attorney has a tendency to expand their powers of informal sanctioning, it can be concluded that the introduction of judicial control over the conditional deferral of criminal prosecution into Croatian criminal procedural law does not currently find its foundation in theory or practice.

It derives from research that even the possible absence of clearly prescribed guarantees for the protection of defence rights would not be the reason for the sporadic application of this institution in practice, especially considering the general/majority expressed view that the rights of the defendant are adequately protected in applying conditional deferral of criminal prosecution and that neither the scope nor the content of these rights in practice is disputed. However, relying both on certain comparative legislative solutions and on the views of the interviewed defence attorneys, the authors believe that *de lege ferenda* would be useful to explicitly prescribe the obligation to inform the defendant about the consequences of accepting obligations, as well as the consequences of their non-compliance. In addition, considering that this is a consensual form of procedure that implies the imposition of obligations on the defendant, the defendant who cannot afford a defence attorney should have the possibility to request a defence attorney at the expense of the budget funds.

The research showed that the requirement of a mandatory consent of the victim is also not perceived as a primary obstacle to the application of this institution in practice. Most of practitioners from all professional groups do not perceive it as such. A certain number of them considers that there is a need to review the provisions which regulate the position of the victim, including the need to acquire the victim's consent in order to reach an agreement with the defendant.

In general, when analysing the answers from all groups of respondents and focus groups, it can be concluded that one of the main reasons why conditional deferral is not applied more frequently in practice refers to the very application procedure. State attorneys emphasised that the procedure is lengthy, complicated and often includes complicated interpersonal interactions that sometimes stall the procedure. In some cases, for objective or subjective reasons, it is simply not possible to achieve cooperation with the defendant or the victim. Because the procedure is time-consuming and because of the possible complications that may occur during the application of the institution, the state attorneys are not motivated to implement the institution more frequently. Although, if all of the above is considered, it derives that even if the procedure for application of the institution was more simplified, the application of the institution in practice would not increase significantly. It is thus because in the current CPA there are other more efficient and practical institutions that can be used for the same criminal offences, especially the penal order. The procedure for the penal order proved to be more effective, especially for minor property criminal offences which are prevalent in practice.

BIBLIOGRAPHY

Books and Articles:

1. Burić, Zoran, Marija Pleić, and Ivana Radić. "Conditional Deferral (and Withdrawal) of Criminal Prosecution from National and Comparative Perspective." *Pravni vjesnik* 37, no. 1 (2021): 83-103. <http://doi.org/10.25234/pv/13819>.
2. Cvitanović, Leo, Davor Derenčinović, Ksenija Turković, Maja Munivrana Vajda, Marta Dragičević Prtenjača, Aleksandar Maršavelski, and Sunčana Roksandić Vidlička. *Kazneno pravo - Posebni dio*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2018.
3. Đurđević, Zlata, Marin Bonačić, and Marija Pleić. "Rule of Law Concerns in the Croatian Penal Order Procedure Linked to Deprivation of Liberty, Judicial Control, Admissibility of Evidence and Procedural Rights." *Pravni vjesnik* 37, no. 1 (2021): 57-82. <http://doi.org/10.25234/pv/13884>.
4. Garačić, Ana, and Dragan Novosel. *Zakon o kaznenom postupku u sudskoj praksi, I. knjiga*. Rijeka: Libertin naklada, 2018.
5. Gillièron, Gwaldys. *Public Prosecutors in the United States and Europe: A Comparative Analysis with Special Focus on Switzerland, France, and Germany*. Cham: Springer International Publishing, 2014.
6. Glasnović Gjoni, Vera, and Vlado Sirotić. "Uvjetni odustanak od kaznenog progona i praksa Općinskog suda u Puli – Pola." *Pravni vjesnik* 32, no. 3-4 (2016): 157-181.
7. Hodgson, Jaquiline. "Guilty Pleas and the Changing Role of the Prosecutor in French Criminal Justice." In *The Prosecutor in Transnational Perspective*, eds. Erik Luna, and Marianne Wade, 116-134. New York: Oxford University Press, 2012. <https://doi.org/10.25234/ecllc/11910>.
8. Ivičević Karas, Elizabeta. "Consensual Justice in Croatian Criminal Procedural Law: The Need for a Systematic Approach." In *EU and Comparative Law Issues and Challenges Series (ECLIC) - EU 2020 Lessons From the Past and Solutions From the Future*, eds. Dunja Duić, and Tunjica Petrašević, 405-432. Osijek: Pravni fakultet u Osijeku, 2020.
9. Ivičević Karas, Elizabeta, and Zoran Burić. "Na putu prema transponiranju Direktive o besplatnoj pravnoj pomoći u hrvatski kazneni postupak? Osvrt na prijedlog osme novele ZKP-a." *Hrvatski ljetopis za kaznene znanosti i praksu* 26, no. 2 (2019): 417-446.
10. Krapac, Davor. *Kazneno procesno pravo, Prva knjiga: Institucije*. Zagreb: Narodne novine, 2020.
11. Novokmet, Ante. "The Europeization of the Criminal Proceedings in the Republic of Croatia through the Implementation of the Directive 2013/48/EU." *European Journal of Crime, Criminal Law and Criminal Justice* 27, no. 2 (2019): 97-125. <https://doi.org/10.1163/15718174-02702002>.
12. Puharić, Biljana, and Ivana Radić. "Načelo svrhovitosti u kaznenom postupku prema maloljetnicima." *Hrvatski ljetopis za kaznene znanosti i praksu* 22, no. 2 (2015): 635-670.
13. Sirotić, Vlado. "Uvjetna odgoda kaznenog progona punoljetnog počinitelja kaznenog djela." *Hrvatski ljetopis za kazneno pravo i praksu* 19, no. 1 (2012): 161-207.
14. Tak, Peter J.P. "Methods of Diversion Used by the Prosecution Services in the Netherlands and Other Western European Countries." In *Resource material series no. 74.*, ed. Grace Lord, 53-64. Tokyo: UNAFEI, 2008. https://www.unafei.or.jp/publications/pdf/RS_No74/No74_07VE_Tak.pdf.

Legal Sources:

1. Criminal Justice Act of November 20, 2003, UK Public General Acts, no. 2003 c. 44 with the latest amendments on February 1, 2015.
2. Criminal Procedure Act, Official Gazette, no. 152/08, 76/09, 80/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/22.
3. Criminal Code, Official Gazette, no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.

Zoran Burić*
Marija Đuzel**
Ivana Radić***

Sažetak

ISKUSTVA PRAKTIČARA U PRIMJENI UVJETNE ODGODE (I ODUSTANKA OD) KAZNENOG PROGONA U REPUBLICI HRVATSKOJ

Uvjetna odgoda (i odustanak od) kaznenog progona jedan je od oblika sporazumijevanja u okviru kaznenog pravosuđa uređenog odredbom čl. 206.d. hrvatskoga Zakona o kaznenom postupku koji se može primijeniti kod lakših kaznenih djela (za koje je propisana novčana kazna ili kazna zatvora do pet godina). Ovaj je institut prije više od 20 godina implementiran u hrvatski kazneni postupak, ali se vrlo rijetko koristi u praksi. Kako bi se utvrdili mogući razlozi za to, autori su nakon komparativnopravne analize proveli empirijsko istraživanje u dvije etape. U prvoj je etapi provedeno 60 polustrukturiranih intervjua s praktičarima, a druga je etapa obuhvatila četiri fokus grupe u kojima se raspravljalo o najznačajnijim pitanjima. Cilj je empirijskog istraživanja bio otkriti iskustva praktičara u primjeni navedenog instituta u praksi. U radu su prikazani rezultati provedenog istraživanja koje je obuhvatilo pet pitanja koja su utvrđena kao ključni elementi u primjeni ovog instituta: nepostojanje jasnih pravnih odrednica o primjeni instituta, opseg primjene, nepostojanje sudske kontrole, prava okrivljenika i položaj žrtve. Zaključno, u radu se analizira jesu li početne teze potvrđene te autori daju određena *de lege ferenda* rješenja.

Ključne riječi: *uvjetna odgoda (odustanka od) kaznenog progona; hrvatski kazneni postupak; iskustva praktičara; prava obrane; položaj žrtve.*

* Dr. sc. Zoran Burić, izvanredni profesor, Sveučilište u Zagrebu, Pravni fakultet; zoran.buric@pravo.hr. ORCID: <https://orcid.org/0000-0001-5353-8478>.

** Dr. sc. Marija Đuzel, izvanredna profesorica, Sveučilište u Splitu, Pravni fakultet; marija.pleic@pravst.hr. ORCID: <https://orcid.org/0000-0001-8868-0079>.

*** Dr. sc. Ivana Radić, docentica, Sveučilište u Splitu, Pravni fakultet; iradic@pravst.hr. ORCID: <https://orcid.org/0000-0003-4946-6437>.