

## SETTLEMENTS OF PARTIES IN CRIMINAL PROCEEDINGS

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### Abstract

Resocialization acts on the perpetrator of the criminal part requires that the scope of the state authorities entrusted with the initiation of the criminal procedure (state attorney's office) be expanded so that the legitimate goals of rehabilitation and resocialization of the perpetrator can now be realized and regardless of the use of state force for punishing the perpetrators of the criminal part. In continental criminal justice, under the influence of the American plea bargaining, various forms of consensual procedures have appeared which allow the state attorney to apply the latter in agreement with the perpetrator of the criminal offense even before the start of the criminal process. maintained type of criminal sanction. This avoids the initiation of criminal legal proceedings. Since the state does not confront the perpetrator of criminal acts, they are considered to contribute to rehabilitative goals.

*Key words:* criminal justice, American plea bargaining, criminal sanction, avoid criminal legal proceedings, criminal acts

### INTRODUCTION

The overall societal and technological development has brought numerous benefits but also a considerable number of negative aspects, such as the evolution and complexity of criminal behavior. Modern society is structured in layers and interconnected through both domestic and international relations, within which crime functions as a parasitic phenomenon. Organized crime has shown a remarkable ability to adapt quickly to changing societal conditions, consistently aiming to achieve substantial financial gain in a short period and often accompanied by violence. Consensual procedures agreements between parties to avoid or terminate criminal proceeding have emerged as a response to the increasing burden placed upon public administration and the judiciary. This evolution in criminal procedure reflects the broader movement toward resocialization and humanization of criminal law, especially influenced by criminal law schools of thought in the second half of the 20th century. These trends challenge the traditional perception that criminal proceedings must be initiated and conducted solely in the interest of the state, serving merely as

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instruments for punishing perpetrators, irrespective of the private interests of victims or defendants.

In light of these developments, it has become necessary to expand the authority of state institutions, particularly public prosecutors, to pursue the legitimate goals of rehabilitation and resocialization without relying exclusively on punitive force. In continental criminal law, various forms of consensual procedures – particularly inspired by American plea bargainin have been introduced. These mechanisms allow prosecutors to apply specific criminal sanctions in agreement with the offender, even before the initiation of formal criminal proceedings. As the state refrains from adversarial confrontation with the offender, these procedures are considered to contribute to rehabilitative objectives.

### PRINCIPLE OF LEGALITY

Traditional criminal law principles, including the principle of legality, official duty, inquisitorial maxim, accusation, publicity, immediacy, and orality, derived from Enlightenment-era liberal thought, are increasingly being adapted in modern legal systems. A legitimate question arises regarding the extent to which these principles can be reconciled with innovations in criminal procedure, many of which are drawn from Anglo-Saxon and Japanese criminal justice systems and introduced to address overloaded judicial organs.

In adapting to new circumstances, it becomes necessary to interpret legal maxims functionally. The principle of legality must be balanced with the principle of opportunity. Judicial decisions should reflect greater autonomy for defendants, emphasizing the importance of their confession (Eser, 2001).

The principle of legality of prosecution dictates that public prosecutors are obligated to initiate prosecution whenever legal conditions are fulfilled (Tomašević, 2011). Originating from the Latin word "lex" (law), this principle mandates that prosecutors must pursue criminal charges when specified conditions in the law are satisfied.

It is distinct but related to the principle of official duty, both of which direct prosecutorial actions. While the principle of official duty emphasizes prosecution in the public interest, regardless of victim or defendant preferences, the principle of legality centers on the prosecutor's obligation to act when the statutory conditions are met.

According to the Croatian Criminal Procedure Act (ZKP), Article 2 states that criminal proceedings are initiated at the request of an authorized prosecutor. For offenses pursued ex officio, the public prosecutor assumes this role, while private offenses fall under private prosecution. In cases where the law stipulates prosecution based on a victim's proposal, the prosecutor must act accordingly, or else the victim may assume prosecutorial authority under certain legal conditions.

Under Article 2(3) of the ZKP, if there is reasonable suspicion that a specific person has committed an offense pursued ex officio and no legal obstacles exist, the public prosecutor must initiate prosecution. This obligation stems from the material concept of justice that prosecution is a necessary response to criminal behavior. The absence of legal obstacles (such as death, immunity, statute of limitations, or amnesty) is critical;

only when both positive and negative conditions are satisfied does the duty to prosecute arise (Krapac, 2020).

Thus, the principle of legality promotes equal treatment under the law and builds public trust in the criminal justice system. It also deters arbitrary conduct by ensuring that prosecutions occur wherever legal grounds exist, regardless of social status or influence. Nevertheless, flexibility is permitted where prosecution may harm broader state interests or appears disproportionate, paving the way for the complementary principle of purposefulness.

### PRINCIPLE OF PURPOSEFULNESS

The principle of purposefulness in criminal procedure represents a procedural flexibility granted to prosecutorial bodies, allowing them within the scope of their statutory powers to refrain from prosecution, even when legal conditions for prosecution are met. This discretionary authority is justified by the broader goals of procedural economy and the intended purpose of criminal prosecution (Krapac, 2009). The main objective of this principle is to ensure that prosecutors and other state authorities initiate prosecution equally and without discrimination against all known offenders of criminal acts, regardless of their social status or external influence. It thus upholds the fair application of substantive criminal law and strengthens legal certainty (Krapac, 2009).

For example, the Austrian Code of Criminal Procedure (Strafprozessordnung) was amended through the “Diversionenovelle” in 1999 (BGBl I 1999/55), introducing provisions in Chapter IXa that regulate conditional dismissal of prosecution by the public prosecutor, based on a specific out-of-court agreement between the defendant and the prosecutor. This legal framework enables the prosecutor to refrain from pressing charges before indictment in certain cases of offenses prosecuted *ex officio* (Carić, 2009).

The principles of legality and purposefulness are conceptually opposed application of one generally excludes the other. However, both operate under the same legal prerequisites: reasonable suspicion that a specific person has committed a criminal offense. Under the principle of legality, prosecution becomes mandatory, while under the principle of purposefulness, it becomes discretionary.

The discretionary nature of the opportunity principle allows for a more pragmatic and humane approach to criminal justice, especially in minor cases where prosecution would be unjust or counterproductive. For example, Croatian law permits the prosecutor to refrain from initiating prosecution despite reasonable suspicion, if doing so would better serve public interest or support social harmony.

Moreover, Article 2(3) of the Croatian Criminal Procedure Act (ZKP) stipulates that the prosecutor must initiate proceedings when there is a reasonable suspicion and no legal barriers to prosecution exist unless the law provides otherwise. This exception explicitly opens space for the principle of purposefulness to be applied, such as in cases involving conditional dismissal, juvenile offenders, or cooperation with members of organized crime groups who offer valuable testimony (Krapac, 2020).

These two principles, legality and purposefulness, are not mutually exclusive in modern criminal justice systems but rather serve as complementary tools. Legality ensures consistency and equality, while purposefulness enables efficiency, fairness, and flexibility particularly when prosecution would cause disproportionate harm or undermine rehabilitative efforts.

## CONSENSUALITY IN CRIMINAL PROCEDURE

The concept of consensuality (from latin consensus agreement or concord) refers to the voluntary agreement between parties, most commonly the prosecutor and the defendant, on how to avoid or expedite the conclusion of criminal proceedings. This agreement has legal consequences and is governed by specific legal provisions. The growing use of such agreements is driven by the need to alleviate the caseload of the courts, provide more efficient resolution of criminal disputes, avoid dissatisfaction among parties, and enhance the overall effectiveness of the criminal justice system (Tomašević et al., 2020).

Consensual procedures in criminal law involve pre-trial agreements or settlements between the parties that can lead to avoiding or discontinuing formal criminal proceedings. In the context of modern criminal law, such mechanisms have emerged as a response to the increasing administrative burdens placed on prosecutors and courts, while also promoting rehabilitative justice. These approaches reflect the evolution of criminal law doctrine, especially since the second half of the 20th century, which increasingly emphasizes resocialization, restorative justice, and individualization of sanctions over purely retributive aims (Krapac, 2020).

Within continental criminal law systems, various consensual mechanisms inspired by American plea bargaining have been introduced. These mechanisms allow public prosecutors, in agreement with the defendant, to apply a particular type of criminal sanction even before initiating formal prosecution. This enables the avoidance of a full trial and is considered to support criminal policy goals of rehabilitation, efficiency, and financial sustainability of the justice system (Krapac, 2020).

Such practices also allow for conditional dismissal of charges or conditional suspension of prosecution for offenses punishable by a fine or imprisonment of up to five years. This is contingent upon the victim's consent and the suspect's willingness to fulfill specific obligations, such as paying compensation, contributing to charitable causes, undergoing treatment or therapy, or performing community service (Tomašević, 2011). These measures aim to repair harm, encourage accountability, and avoid stigmatizing criminal proceedings, particularly in cases of minor or first-time offenses.

An example of a formalized consensual procedure is the "judgment based on a plea agreement" under articles 360 - 365 of the Croatian criminal procedure act (ZKP). These provisions allow the parties to submit a jointly signed statement to the court requesting a judgment based on their agreement. This procedural tool aims to preserve the defendant's free will and requires their informed consent and legal representation during negotiations (Ljubanović et al., 2020).

The scope of such agreements is broad, covering all criminal offenses prosecuted ex officio. However, for crimes punishable by more than five years of imprisonment, the prosecutor must obtain the victim's prior consent before entering into negotiations. The process unfolds in two phases: negotiations between the prosecutor and the defendant (in the presence of legal counsel) and the formal submission of the agreement to the court. The court then evaluates the agreement's legality, verifies the parties' consent, and, if all conditions are met, renders a non-public ruling reflecting the agreed sentence or measure (Turudić et al., 2016).

In cases involving juvenile offenders, consensuality also plays an important role. articles 71–73 of the Juvenile courts act (ZSM) allow for both unconditional and conditional dismissal of prosecution based on the nature of the offense, the offender's background, and their willingness to comply with rehabilitative obligations (Krapac, 2020). The law thus prioritizes educational and social goals over punitive outcomes.

Another important aspect of consensuality is its application in cases involving organized crime. According to the act on the office for the suppression of corruption and organized crime (ZUSKOK), the chief state attorney may dismiss or refrain from prosecution of a member of a criminal organization in exchange for cooperation in uncovering crimes and identifying other members, provided the proportionality between the severity of offenses and the value of testimony is respected (Kos, 2001; Krapac, 2009).

These various forms of consensual procedures ranging from plea agreements and conditional dismissals to the use of cooperative witnesses demonstrate the increasing flexibility of modern criminal justice systems. They serve not only the practical needs of overloaded courts but also support individualized justice, rehabilitation, and effective crime prevention.

## CONCLUSION

The contemporary criminal justice system increasingly relies on consensual mechanisms to address the growing complexity of crime and the evolving expectations of justice. Croatian legislation, in alignment with global trends, incorporates both the principle of legality and the principle of opportunity, enabling prosecutors to employ flexible, yet legally regulated, strategies to resolve criminal matters.

The use of consensual procedures such as plea agreements, conditional non-prosecution, and collaboration with offenders in dismantling organized crime – illustrates a shift toward a more rehabilitative and pragmatic approach to criminal justice. These procedures promote efficiency, reduce trial burdens, and foster the reintegration of offenders, while still safeguarding the rule of law and victims' rights. Particularly significant is the application of these mechanisms in cases involving minor offenses, juvenile offenders, or situations where public interest justifies alternatives to prosecution. Furthermore, the institution of cooperation with members of criminal organizations (e.g., the use of "crown witnesses") demonstrates the importance of flexible legal tools in combating complex forms of crime.

Ultimately, the integration of consensual mechanisms within the framework of legality reflects a nuanced understanding of justice one that acknowledges the limits of

punitive responses and recognizes the value of restoration, rehabilitation, and efficient legal resolution. As such, consensual procedures are not merely pragmatic innovations; they represent a deeper transformation in how justice is conceptualized and implemented in modern legal systems.

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