

Procedural agreements in the light of the criminal proceedings' objectives

Summary

A Polish version of plea bargaining was introduced into the system of procedural criminal law by the Code of Criminal Procedure of 1997 (CCP). This term – in the strict sense – currently refers to the conviction without trial under Art. 335 § 1 or § 2 CCP, the voluntary submission to criminal liability pursuant to Art. 387 CCP and the new mechanism – added on 1 July 2015 – described in Art. 338a CCP. Since the introduction of the agreements to the Polish criminal procedural law, these institutions have gradually gained in importance and have developed both in the statutory perspective and in the field of practical application of the law. At the same time, they were designed to constitute the main remedy for the excessive length of criminal proceedings', and the legal scholars even attempted to distinguish consensual resolution of criminal disputes as an autonomous procedural model, as well as to distinguish a new procedural principle which would indicate the need to regulate the criminal process in such a way that the parties could co-shape a consensual decision.

The issue of plea bargaining and similar procedural agreements was analysed from the perspective of the objectives of the criminal proceedings due to the fact that such a perspective had been rarely adopted in the previous legal writing, as well as due to the importance of the issue of the objectives proceedings both for the legal scholars and for the functioning of the criminal justice system. The basic research problem was formulated as follows: how should the model of negotiated justice in the Polish criminal procedural law be constructed in order to provide an optimal way of achieving the objectives of the criminal proceedings? This model should ensure the highest possible probability of achieving these goals – and thus provide a specific balance between the efficiency of the procedure and the fairness of the results achieved and the way to achieve them. Undoubtedly, the requirement to accomplish specific goals marks the limit of simplifying the criminal process and relying on the parties' consensus.

The main objective of the study is therefore to analyse the procedural agreements in the strict sense from the perspective of the criminal proceedings' aims, to answer the question about the degree of accomplishment of the objectives of the criminal proceedings in these modes, to indicate possible shortcomings in this respect and to propose the optimal shape of procedural agreements in terms of achieving the goals of criminal proceedings'.

The doctoral dissertation has been divided into five chapters.

The first chapter analyses the objectives of the criminal process in light of normative and doctrinal perspectives, as well as presents the basic comparative legal remarks on the objectives of the criminal proceedings' in the countries which legal systems were compared in the fourth chapter. The conclusion was reached that, for the purposes of further considerations, the purpose of the criminal trial is to achieve the state of substantive and procedural justice – as well as to accomplish the normative objectives, derived from Art. 2 § 1 CCP.

The second chapter is devoted to defining the notion of plea bargaining (and similar negotiated justice institutions) and reflecting on their goals, functions and justification for their introduction to selected legal orders. It was concluded that the justification for the establishment and development of plea bargaining and similar mechanisms is generally only of a pragmatic nature, which does not depreciate them as an essential part of contemporary criminal justice systems. The adopted definition of plea bargaining (and other negotiated justice instruments in the strict sense) was formulated as follows: these are contracts concluded by at least two participants to criminal proceedings, acting within the boundaries of their rights expressly provided for by the law, consisting in reaching a consensus – not later than before the issuance of the decision concluding the proceedings – as to the formation of criminal liability of the accused without conducting the main hearing or with its significant limitation, even if the parties' consent to a specific resolution of proceedings was communicated only in an implied way. The second chapter also distinguishes six determinants of the negotiated justice models that define their ability to achieve the goals of the criminal proceedings. The determinants include: the scope of application procedural agreements (both temporal and material), the subject of the agreement, the role of the court, the position of the accused, the position of the injured party and the limitations on the right to appeal the issued decisions.

In the third chapter, a dogmatic analysis of the institution of procedural agreements in the Polish legal order was carried out according to the determinants distinguished in the previous chapter. In turn, in the fourth chapter – in accordance with the same order – a comparative analysis of these mechanisms was conducted with regard to five selected countries: the USA, England, France, Italy and Germany. These considerations led to the distinguishment of three models of negotiated justice: Anglo-Saxon (with the broadest material and temporal scope of the agreement as well as the subject of negotiations and a low level of guarantees protecting the accused), Romanesque (characterized by a particularly high level of guarantees protecting the accused) and German (distinguished by the active role of the court, being a party

to the agreement). Polish procedural agreements do not, however, belong to any of these models, but combine some of the features of each of them.

Finally, Chapter V identifies three basic shortcomings of the Polish model of plea bargaining: the lack of procedural guarantees protecting the accused, the failure to introduce a mechanism for awarding the accused with benefits resulting from entering an agreement and the position of the injured party, which had to be assessed as too strong. A proposal to solve the research problem was also presented, with a number of *de lege ferenda* postulates, the implementation of which would lead to the elimination of the identified shortcomings and ensure the greatest probability of achieving the objectives of the criminal proceedings when they are concluded in a consensual manner.

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