

THE CRIMINAL TAX PROCEDURE UNDER THE INFLUENCE OF CONSENSUAL ELEMENTS

International workshop  
15 November 2021

# Position of Fiscal Authority in Criminal Proceedings, Plea Agreements at the Interface of Tax and Criminal Tax Proceedings in Croatia

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Supported by the Croatian Science Foundation under the project “Systematic approach to models of negotiated justice in Croatian criminal procedure” (IP-2019-04-1275)

# The Position of Tax and Customs Authorities in Misdemeanor and Criminal Procedure (1)

- *Different role*

- *For tax and customs evasion the limit is approx. € 2.700 in Croatian Kunas*
- *Intention for criminal offence*
- *In misdemeanour procedure: authorised prosecutor, but also the adjudicator in the first instance (High Misdemeanor Court in the second instance)*
- *In criminal procedure: file a crime report to the State Attorney's Office, assists with detection and investigation of criminal offences – municipal and county courts*

# The Position of Tax Authorities in Misdemeanor and Criminal Procedure (2)

- *The problems with ne bis in idem principle*
- *The solutions – temporary instructions, the prosecutor has to chose one option*
  - *Problem – the prosecutors are not the same*
- *Art 10 of MA – if a criminal procedure has commenced, the misdemeanour proceedings cannot be instituted, and if they were instituted, proceedings has to be terminated*
- *Maybe it will change after ECtHR A. and B vs. Norway judgment*

# Consensual procedures in criminal procedure

- *Introduction of many procedures in the last 20 years*
- *Conclusion that the legislator has not always been consistent*
- *Regarding gravity of criminal offences, the role of the court, victims' rights and procedural and defence rights*
- *Some procedures are being used in tax and customs cases*

# Consensual procedures in fiscal criminal proceedings

- *For less serious offences – up to five years of imprisonment*
  - the penal order and
  - judgment in the case of a guilty plea at the trial
- *For all criminal offences - judgment based on the agreement of the parties*
- *For more serious offences*
  - the crown witness (or abolishment or reduction of sentences)
  - witness immunity

# Penal Order

- Criminal offences punishable by a fine or imprisonment of up to five years
- A conviction without holding a trial if:
  - The court agrees with the request
  - The defendant tacitly agrees by not lodging an objection
- Lodging an objection results in holding a trial
- *In practice* - from 37% in 2017 40.5% of all indictments
  - Legal persons - between 22.7% and 34.5%
  - *In practice no informal plea bargaining before issuing of penal order*

# Guilty Plea at the Trial

- Tacit agreement, introduced in 2002
- For criminal offences punishable by a fine or imprisonment of up to five years
- In the indictment, the state proposed (has to) certain type and measure of punishment to the court
- if the accused pleaded guilty and agreed with the proposal, the court could not impose another type or greater measure of punishment than the proposed one

# Judgment based on the agreement of the parties

- *First introduced in 2002, but widened in 2008*
- For all criminal offences
- The statement of the parties on the agreement is submitted to a court
  - The court may refuse it (only) if it is not in accordance with the sentencing prescribed by law, or if the agreement is not otherwise lawful
  - Practice – the court cannot reject if not satisfied with the proposed sentence
    - In misdemeanor proceedings it is possible reject if the sentence is to the detriment of the accused or the purpose of punishment will not be achieved



# Conclusion

- *Different roles in Misdemeanor and Criminal proceedings*
- *Many consensual forms that can be used for tax and customs related criminal offences*
- *The decision – tax or customs authorities in misdemeanor proceedings*
  - *state attorney in criminal procedure*

Thank you for your  
attention!

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