

THE CRIMINAL TAX PROCEDURE UNDER THE
INFLUENCE OF CONSENSUAL ELEMENTS
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Rights of the individual and collective offender in criminal tax proceedings under the rule of law



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EUROPEAN PERSPECTIVE (1)

- European Convention for Human Rights
 - Art. 6 of the Convention (independent and impartial tribunal, public trial within a reasonable time (para 1), presumption of innocence (para 2), minimum rights of the defence (para 3: information, appropriate time, lawyer and legal aid, confrontation, interpretation and translation))
 - Jurisprudence of the ECtHR (right to remain silent, right not to incriminate oneself)
- EU Directives harmonizing rights of the suspect and the accused person in criminal proceedings
 - Information, interpretation and translation, lawyer, presumed innocent and present at the trial, legal aid (and specific safeguards for children)
- Difference between criminal tax proceedings and criminal proceedings for other offences?

EUROPEAN PERSPECTIVE (2)

- Article 2(4) Directive access to a lawyer /Directive legal aid

Without prejudice to the right to a fair trial, in respect of **minor offences**:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

CROATIAN PERSPECTIVE (1)

- Tax evasion:
 - a. misdemeanour**
 - when the amount of tax unpaid does not exceed 20.000,00 kunas (approx. 2.700,00 euros); punishable by a fine
 - b. criminal offence**
 - when the amount of tax unpaid exceeds 20.000,00 kunas (approx. 2.700,00 euros); punishable by imprisonment from 6 months to 5 years
 - when the amount of tax unpaid exceeds 600.000,00 kunas (approx. 80.000,00 euros); punishable by imprisonment from 1 to 10 years

CROATIAN PERSPECTIVE (2)

- Misdemeanour: Misdemeanour Act
 - Proceedings conducted before the tax authority, appeals proceedings before the court (High Misdemeanour Court)
- Criminal offence: Criminal Procedure Act
 - What about the collective offender?
- Pursuant to the (Engel) criteria of the ECTHR misdemeanour proceedings in Croatia are (generally speaking) also considered criminal
- Equal level of protection of the rights of the individual and collective offender?

CROATIAN PERSPECTIVE (3)

- Right to lawyer and legal aid:
 - Comparison between the guarantess provided by the MA and the CPA

CONCLUSION

- EUROPEAN LEVEL: no differences in standards of protection in tax proceedings and in proceedings for other criminal offences. Possibility of reduced standards of protection in relation to minor offences, but only in the part of the proceedings which does not take place before the court
- NATIONAL (CROATIAN) LEVEL: different levels of protection in proceedings for misdemeanours (petty offences) and in proceedings for criminal offences

**THANK YOU
FOR YOUR ATTENTION!**

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