

PLEA BARGAINING AND THE ROLE OF THE LAYER

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Dear colleagues, Dear friends

The first of all I would like to say I am glad being here with you, speaking to you about the legislation in my country and sharing our experience and knowledge with you.

About the history

For the beginning I have to remind you The Republic of Slovenia was a part (one of the federal units) of a former Socialist Federal Republic of Yugoslavia, situated in the most northern part of the former Yugoslavia, surrounded by Italy, Austria, Hungary and Croatia.

Already as a part of former Yugoslavia, Slovenia has had a status of a sovereign state and like all other republics of former Yugoslavia (Croatia, Bosnia and Herzegovina, Serbia, Montenegro and Macedonia), was exercising only part of its sovereign rights within former Yugoslavia.

In December 1991, after the Slovenian people expressed their will by plebiscite and after the Parliament enacted The Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Slovenia declared its independency.

One of the reasons for that decision was the fact that Yugoslavia at that time was found to be a state with no observation of the rule of law, and human rights. Minority rights and the rights of constituent republics and autonomous provinces were grossly violated (within The Republic of Serbia there were Kosovo and Vojvodina as autonomous provinces).

It was the fact that the existing federal system in the former Yugoslavia didn't provide for the resolution of the current political and economic crisis and the republics within had also been unable to reach an agreement that would enable them to achieve independence concurrently with restructuring of the Yugoslav federation into an alliance of sovereign state.

The very next, one of the most important goal was a membership in the European Union. Slovenia became a full member of the EU on May 1st, 2004.

Slovenian legislation

Former Yugoslavia's legislation in the fields that were in its competence remained in use until our parliament (which in Slovenia is called National Assembly) enacted our own statutes. Such was also the case in the field of legislation that pertains to criminal justice.

Already in former Yugoslavia, criminal procedure and general principles and provisions of the Penal Code of the Republic of Slovenia were rules under federal jurisdiction. On the other side each of its republics also had its own penal code that mainly consisted of the formulations of criminal offences which were under their jurisdiction.

But some of the criminal offences, for example all the criminal offences against humanity and international law (including Genocide, Article 141 of the former federal PC) were under federal jurisdiction. Just for example shall I explain that The Penal Code of the Republic of Slovenia, when entered into force, it described genocide as a criminal offence in its Article 373, Paragraph 1, in equal way as The Penal Code of The SFRY (former Yugoslavia).

The Penal Code of the Republic of Slovenia and The Code of criminal Procedure both entered into force on the 1st of January, 1995.

Despite separation and fission, the basic principles and criminal law as well, were still connected to previous federal legislation. A lot of regulations were simply the same as were federal despite new statutes in Slovenia.

The reason was the tradition, common previous political system – socialism and perhaps very little time to prepare and change so comprehensive field of law.

For that reason, the first few years after Slovenia declared its independency, there were little alterations in criminal regulations.

Some changes were made, but not so basically and essentially as this year, we have got a new very renewed Penal Code which will enter into force on the first of November 2008..

The new statute was enacted life imprisonment for the most exquisite outrages such as criminal offences against humanity (genocide, crimes against humanity, war crimes ..) and some of brutal murders.

The renewed Penal Code was also enacted house imprisonment as substitute imprisonment, intermediate perpetrator, special procedure for juvenile offenders is prospective by new statute, new definition of intent and negligence, new rules for protection of injured party, etc.

The proceeding in Slovenia

Important novelty we can find in the chapter of criminal offences against sexual integrity. We can see that some of them shall be initiated by motion, what is very new in our criminal system.

When the criminal offence was made toward a spouse, partner from cohabitation or partner from registered sexual-identical communion, when they live together, non state prosecutor shall initiate the criminal procedure, just private prosecutor – injured party is reasonable to fulfill the motion. As well as the worst crimes are in questions, such as rape and sexual violence.

The field of plea bargaining in our criminal legislation is very limited, very strait. For the most criminal offences there are no possibilities of plea bargaining.

Mostly, it shall just be an official procedure leading by state prosecutor without plea bargaining.

The motion by injured party and private action by private prosecutor are at their disposal. They freely determine to fulfill them or not, without cooperation of a state prosecutor.

Such criminal offences are separately determine in The Penal Code. They are mostly criminal offences against honor and good name.

But there is difference between the procedure leading by a private action or leading by a motion of injured party.

The very little room for plea bargaining we can find in the frame of filed of offences initiated by motion of injured party.

The private action is leading by private prosecutor from the beginning to the end, without state prosecutor involved.

The procedure with the motion by injured party is rather different.

The motion shall be filed with the state body authorized to receive crime report.

The injured party may until the conclusion of the main hearing withdraw the motion by submitting a statement to that effect to the court which conducts the proceedings, nevertheless the proceedings is run by state prosecutor.

In that case they shall forfeit the right to make the motion anew.

If the public prosecutor finds that there are no grounds to prosecute a criminal offence by virtue of office he shall inform the injured party thereof and shall instruct him that he may start prosecution by himself. The same procedure shall

be applied by the court when the public prosecutor abandons prosecution during the beginning proceeding.

If the public prosecutor withdraws the indictment the injured party may continue prosecuting under the preferred indictment or file a new one.

The injured party in his capacity as prosecutor shall have the same rights as the public prosecutor, excepting those vested in the public prosecutor ex officio.

In proceedings conducted at the request of the injured party in his capacity as prosecutor, the public prosecutor shall be entitled to take over and act for the prosecution at any time pending the conclusion of the main hearing.

The public prosecution may resign the criminal information or the motion by injured party to the proceeding of a compromise in case of criminal offences punishable up to three years imprisonment, by a fine or some special criminal offences mentioned in the statute.

Compromise proceeding is leading by third person, but only with consent of both party : accused person and injured party. The third person is independent and has to proceed the compromise proceeding to strive achieving the settlement.

The settlement shall be in balance to weight and to consequences of the crime. If it would be rich the prosecutor would resign from the continuing proceeding.

On the other side the public prosecutor may also with the consent of injured party suspend prosecution of a criminal offence punishable by a fine, prison term of up to three years or some special criminal offences if the suspect binds himself over to behave as instructed by the public prosecutor and to perform certain actions to allay or remove the harmful consequences of the criminal offence. These actions may be :

1. elimination or compensation of damage
2. payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences
3. execution of some generally useful work
4. fulfilment of a maintenance liability

The public prosecutor shall invite the accused person and the injured person to the office of the public prosecutor. If they were accept the invitation the public prosecutor have informed them that he would reject the crime information if the accused person has bound himself over to behave as instructed by the public prosecutor.

If within a time limit the suspect fulfils the obligation undertaken the crime report shall be dismissed.

In the third situation the public prosecution shall not be obliged to start criminal prosecution, or shall be entitled to abandon prosecution :

1. where the Penal Code lays down that the court may grant remission of penalty to a criminal offender and the public prosecutor assesses that in view of the actual circumstances of the case a sentence alone without a criminal sanction is not necessary;
2. where the Penal Code provides for a specific offence a fine or imprisonment up to one year and the suspect or the accused having genuinely repented of the offence, has prevented harmful consequences or compensated for damage and the public prosecutor assesses that in view of actual circumstances of the case a criminal sanction would not be justified..

In conclusion, in our procedure you can find many worldwide recognized general principles, but typical plea bargaining you can not find.

Just in occasions mentioned above the lawyer can bargaining for the client. It is not typical plea bargaining.

There is only room for negotiation with the state prosecutor not to start criminal prosecution or abandon it; or make a good agreement to perform suitable certain actions in a view of accused person.

A big changes in criminal proceeding of Slovenia are expected in the near future.

Investigation and investigation judges shall be abolish completely.

All the pre-trial procedure shall be conducted only by police and public prosecutor.

The proceeding intent to be more adversary procedure and so we can anticipate more room for plea bargaining in criminal procedure.

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Tatjana Markelj