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PLEA BARGAINING – LEGAL CONCEPTS AND PRACTICES

DISCLOSURE ISSUES IN PLEA BARGAINING

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Preface

Until recently, Serbia had a typical inquisitorial code. Nevertheless, with the assistance of US DOJ (office of overseas prosecutorial development assistance and training), there has been a significant change in a criminal procedure legislation. These changes encountered a strong opposition from the majority of the Serbia's legal community and been seen as interfering with its legal tradition, due to the said shift from traditional inquisitorial towards adversarial system. Although it did exist in a certain form in the previous legislation, one of the novelties brought by this shift certainly is a plea agreement.

Legal Concept

In Serbia - it is possible to decline to contest criminal charges in exchange for an agreed-upon sentence, by entering into plea agreement with the prosecutor. The court shall accept the agreement by rendering a judgement provided that: 1) the defendant has knowingly and voluntarily confessed the criminal offence or criminal offences which are the subject matter of the charges; 2) the defendant was aware of all the consequences of the agreement (especially that he has waived his right to a trial and that he accepts a restriction of his right to file an appeal); 3) the other existing evidence does not run contrary to the defendant's confession of having committed a criminal offence; and 4) the penalty, other criminal sanction or other measures, is in line with criminal and other law.

Practice

There has been a significant increase of application of plea agreements as they should contribute towards efficiency of criminal proceedings, faster resolution of cases, reduction in costs and time savings although their application still has not gained a full scope, as seen in traditional adversarial systems.

The practice also shows that it is crucial to preserve the protection fundamental rights especially those relating to access to case file guaranteed by the ECHR and Right to Information Directive (although formally not binding to Serbia yet). In this manner, if the case is in the very early stage i.e. shortly after the issuance of the investigation order, the disclosure issues usually occur so defendant cannot fully assess the case against him and as a corollary cannot fully ascertain whether to enter into the plea agreement. Similarly, it is somewhat questionable (and the practice has not been entirely consistent) whether the court's judgement on accepting the plea agreement can be used in a different criminal proceedings by simply accepting its content into evidence or the court should allow a challenge of this evidence by a cross-examination of the person who originally entered into the plea agreement.

Therefore, it is crucial to disclose all relevant materials (both inculpatory and exculpatory) before submission of the plea agreement to the court so all parties are fully aware of all aspects of its impact.

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Vladimir has worked with international and domestic clients and advised on various procedural law matters. He counselled and represented clients before courts and arbitration tribunals in Serbia and abroad and cooperated with the law firms Schoenherr and Karanovic-Nikolic, and was actively involved in two high-profile cases before the UN court (ICTY) in The Hague. Vladimir started his career with Dragoslav Cetkovic, an esteemed defence attorney in 2005.

Vladimir is a member of Serbian Bar Association, European Criminal Bar Association (Anti-Corruption in Europe working group) and International Bar Association Human Rights Institute. He is active in the Balkans Regional Rule of Law Network of the American Bar Association Rule of Law Initiative (founding member), European Criminal Justice Observatory (deputy chair), Fair Trails International (Legal Experts Advisory Panel) and ICC Commission on Corporate Responsibility and Anti-Corruption. He also co-heads the business crime practice group of Roxin Alliance.

Vladimir is a certified trainer of the Council of Europe's Human Rights Education for Legal Professionals Programme, with the aim of ensuring high-quality further training on the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights for legal professionals.

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