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Plea bargaining under the Polish criminal procedure
Summary of the essential information

Polish criminal procedure has seen several important changes in past three years. In the years 2012-2015 the Ministry of Justice had worked on serious change in the course of criminal procedure in Poland. The idea was to speed up the proceedings and to increase the meaning of parties to the proceedings. Particularly the court trial, after investigation conducted by the public prosecutor, was to be more like a dispute between the parties (public or private prosecutor and the accused), rather that the investigation carried out by the judge.

One of the means to obtain these goals was to increase the meaning of plead bargaining in the procedure. Under the Polish criminal procedure, there are now currently three forms of concluding an agreement between the parties, that could result in shortening the investigation and the trial.

First of those forms is the motion filed by the public prosecutor instead of an act of accusation. If the accused is charged with an offense that is not penalized with imprisonment for at least three years ["wystepek" – an offense], the public prosecutor and the accused may agree on the terms of terminating the case. The condition is that the accused has to plead guilty and that the circumstances of committing an offense are indisputable. If they agree to a specific penalties and other means of reaction, the prosecutor may file a motion to the court with request not to conduct a full trial, but to sentence the accused in accordance with the agreement. This form of plead bargaining is very favorable for the accused due to at least two reasons. Firstly, the prosecutor is not obliged to receive a victim's consent. It is also only an option for the court, which means, that the court may apply to the motion even if the victim does not agree to the terms concluded by the prosecutor and the accused. The victim can only appeal from the court's judgement. Secondly, the parties can agree to suspend the imprisonment, even if other provisions of the law do not provide them with such possibility.

The second form of plead bargaining was added to the criminal procedure act in 2015. It is to be used, when the accused and the prosecutor do not agree on the terms in the case regarding accusation of committing an offense penalized with imprisonment of not more than 15 years. The accused, before delivering the calling for the first trial, may file a motion to sentence him /her for the proposed penalty. The court is obliged to ask the public prosecutor for opinion. There is no need to receive the victim's consent.

Finally, if both possibilities described above fails, the accused may file another motion during his first deposition before the court. It pertains to the cases, when the accused is charged with committing an offense penalized with imprisonment of less than 15 years. The court may apply, if the public prosecutor and the victim agree.

These three institutions of plead bargaining give the accused many possibilities to shorten the proceedings. Please note than not in all of these forms the procedure secures the victim's right. Only in the third one, when the accused files a motion during the court trial, the victim's consent is necessary to apply to the request. In all other cases the victim can only appeal from the court's decision, if he/she does not agree with the judgement.

During the first 6 months of 2017, 154 217 persons were judged on the trial with the prosecutor's participation. In 8 310 cases the court applied request filed on the trial (5,5 %) to the accused. However, in 45 658 cases it was the prosecutor, who asked the court to sentence the accused for concluded penalty and the court applied. It makes 29% of all convictions during this period. Only 134 cases were terminated due to the accused motion filed before delivering the calling for the trial.

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