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The contribution of the defense counsel in reaching plea agreement

Abstract

The aim of the doctoral dissertation is to characterize the role of defendant's counsel in consensual modes in Polish criminal procedure. The choice of that participant of criminal proceedings is not accidental. Uniqueness of the defense counsel's legal position displays in action in favor of the defendant. The boundaries of the defense counsel's actions are marked by the law (*sensu stricto*) and codes of professional conduct. Reaching the plea agreement is very often preceded by negotiations between defense counsel (or defendant himself) and prosecutor, injured party or court. The legal and ethical analysis of the action of defense counsel in connection with reaching plea agreements is a very interesting scientific challenge. The example of significant issue is lawyer confidentiality during negotiations, the scope of the negotiation mandate, the counsel's influence on defendant's decision to enter or not into plea agreement.

The object of study concerns plea agreements *sensu stricto* (called also plea bargaining). It means that it refers to:

- "conviction without a trial" (article 335 CCP in conjunction with art. 343 CCP)
- "voluntarily submission to a penalty" (article 338 CCP 387 CCP)

It also refers to plea agreements *sensu largo* (institutions, that have some consensual elements):

- "conditional discontinuation of criminal proceedings" (art. 66 PC)
- "sentencing by the penal order" (art. 500 CCP)

Setting proper research hypothesis should be preceded by answering a few preliminary questions:

1. Does the plea agreements are inextricably linked to a restriction of the right to defense ?
2. Does the principle of equality of arms also applies to plea agreement negotiations ?
3. Does the counsel's participation in reaching the plea agreement should be mandatory ?

4. Is the view of the purely legal issues, and ethics is acceptable to the defender advised the defendant to use the consensual modes of termination of criminal proceedings ?
5. What negotiation tactic should apply the counsel because the “action in favor of the defendant” context ?

A law is a multidimensional phenomenon, that is why the researcher should use more than one method. Due to the subject of author's interest, which is some separate set of legal norms, the main method of research is formal and dogmatic analysis, which is an analysis of legal texts and drawing from them the legal consequences. Its main purpose is to remove any possible semantic doubts, which may show up in legal text in a variety of possible situations of use [A. Kozak (in:) A. Bator (ed.) *The introduction to the jurisprudence. The lexicon.* (orig. title *Wstęp do prawoznawstwa. Leksykon tematyczny*) Warsaw 2006, p. 23].

In addition, the comparative method was used by the author. The best comparative data are the American and British regulations, because of the history of plea agreements and Italian and Germans regulations, because of the similarities between them and Polish system.

The author did also use the statistics concerned formal plea agreements worked out by the Polish Ministry of Justice and Prosecutor General of Poland. It was very helpful to research the practical functioning of the plea agreements. Apart from the official statistic data, it was very appropriate to use the results of empirical research made by other academics in the recent past and make use of participant observation.

The doctoral dissertation consists of four chapters proceed by the introduction and finalised by the conclusion. In the first chapter concerns the research on the right to counsel in Poland, the second one pertains to the problem of plea agreements in foreign (American, English and Welsh, Italian, German) and Polish criminal procedure. The main part of the dissertation is the third chapter, where the author elaborates issue of the contribution of the defense counsel in reaching plea agreement in Poland. The last chapter applies to the role of the court (judge) and other participants of the criminal proceedings (the public prosecutor, the injured party).