

The role and importance of consent in compliance and enforcement

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Establishment of probation service in Croatia



Five Year Strategy 2008-2012 was adopted for establishment of the Croatian National Probation Service



The Law on Probation was adopted; Directorate for Probation was established



Croatian Government adopted an Action Plan for the Development of Probation in Croatia 2010-2014, all legal implementation and execution regulation determined by the Law on Probation were adopted

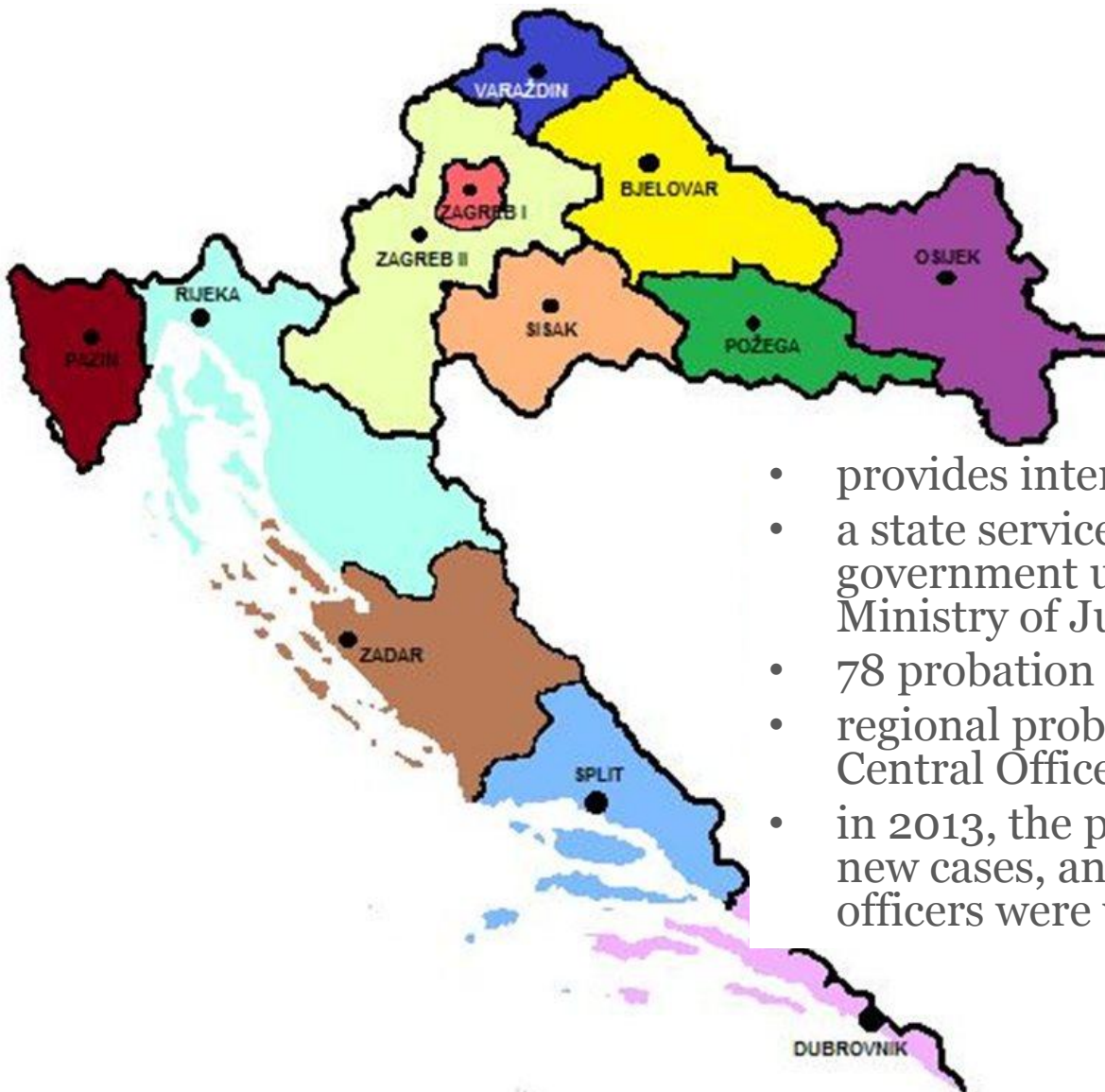


first probation officers and probation offices started with work ;
beginning of IPA 2008 EU project “Development of Probation System in the Republic of Croatia”



new Law on Probation was adopted ; 12th probation office started with work

Probation service in Croatia today



- provides interventions for adult offenders
- a state service that is financed by the government under the jurisdiction of the Ministry of Justice
- 78 probation workers
- regional probation offices (k=13) and the Central Office
- in 2013, the probation service received 3304 new cases, and by the end of 2013, probation officers were working on 2907 cases

Community sanctions in Croatia

- an alternative to or suspension of a monetary sanction or a prison sentence (up to one year)
- function as a form of conditional release from prison
 - (1) community service
 - (2) suspended sentence (+ protective supervision and/or some special obligations)
 - when the court assesses that person needs help, guidance and supervision
 - recommended for younger than 25 who are initially sentenced to prison sentences of more than six months
 - *a core* probation sanction due to its emphasis on a treatment orientation
 - within the remit of the probation service only when protective supervision and/or special obligations are added as conditions of suspension
 - is not considered as a replacement of prison sanction, but as a form of *not* executing an adjudicated prison sanction

Consent

nominal, hypothetical,
implied, passive

not explicitly granted by a person

inferred from a person's (in)action

e.g. absence of a specific objection at the trial level - consent to probation conditions negotiated under the threat of incarceration

informed,
active

provision of approval or agreement, particularly and especially after thoughtful consideration granted in full knowledge of the possible consequences

related to voluntarism - respecting the offender's decision on whether he/she needs support and requests help

Active consent - informed -

Assumptions:

- full comprehension of the nature, content, consequences and extent of the imposed sanction
- information provided was clearly comprehended
- consent was obtained without coercion or undue influence
- respects person's autonomy and well-being
- probationers' participation and co-operation
- active role of attorneys, judges, probation officers

Croatian legislation

Criminal Code

- execution of community work, special obligations (treatments) assumes offenders' consent

Criminal Procedure Act

- after pronouncing a verdict of a suspended sentence the judge must warn the convicted person about the meaning of the sentence and the obligations he/she must comply with

Law on Probation

- active involvement of probationer in ITP development
- signing ITP – acceptance (and cooperation)
- officers should obtain probationers' consent to community service (when?)

Croatian - EU legislation

- offender's consent is incorporated in Croatian legislation as a necessary element for the execution of probation measures and sanctions
- legal provisions are harmonized with contemporary international conventions, standards and European recommendations and Rules

BUT

- explicit term *informed consent* is never used
- lack of clear definition of the procedures required and responsibilities of official bodies in the criminal process when it comes to seeking offender's (informed) consent
 - when and who is seeking consent – judges/ attorney/ probation officers - during/ after the trial - probation service is not involved at the trial phase

JUDGE - warning about the meaning of the sanction, (information about the expected obligations - to report to the probation service) + right to appeal

SENTENCE IMPLEMENTATION

PROBATION OFFICER – information about the full content of the sanction and obligations

VERDICT

**APPEAL
OR
NON
APPEALABLE
VERDICT**

**FIRST REPORT
TO PROBATION
OFFICE**

**WITHIN 30
DAYS
ITP
DEVELOPMENT**

**NO plea entered–
IMPLIED CONSENT?**

CONSENT TO WHAT?
to sanction (without knowing it's content) OR
avoiding prison sentence???

**Active
involvement
and signing
ITP**

**INFORMED
CONSENT**

EU regulations emphasise
voluntarism, cooperation, active
participation and informed
consent on all sanction elements

ERCSM do not define where and
when this consent should be
given (*when it is known* what
conditions or obligations might
be appropriate and whether the
offender is prepared to co-
operate and comply with
them.”), nor *who should seek
consent*

guilt and sanction are
determined all in one stage
(the same day at the court -
little space for seeking
informed consent for a
community sanction at the
court

probation services - the task of
seeking consent –
simultaneously establishing
positive relationship while
defining content and
obligations of sanction

• Is then seeking the
offender's consent
JUST formality?
• Should the
involuntarism also be
expected and
acceptable?

(duration of the) process affect
offenders' motivation,
willingness to co-operate and
readiness to change

offenders – voluntary in the
context of complying to avoid
prison sanction, but not
necessarily voluntary with
regard to the content of
supervision

Study aims

1. How do the probationers perceive procedure of giving consent to suspended sentences with protective supervision and do they consider themselves as voluntary clients?
2. How do probation officers perceive this procedure and probationers' compliance with the sanction?
3. What experiences do probationers and probation officers have with signing the individual treatment program, and what meaning does this written record of consent have for them?

Method

- focus groups with :
 - probation officers (n=8)
 - offenders sentenced to suspended sentences with protective supervision (SSPS) (n=12)
- convenience samples
- heterogeneous characteristics
- same discussion guide questions
- qualitative analysis

Probation officers

Gender	Male	1
	Female	7
Age range		29-60
	(M/SD)	(38.1/11.3)
Years of work experience		5-40
	(M/SD)	(14.2/11.8)
Years working in probation service		1-3
	(M/SD)	(2.8/0.5)
Vocation	Social worker	6
	Psychologist	1
	Other	1

Gender	Male	10
	Female	2
Age range		21-59
	(M/SD)	(40.3/10.7)
Level of education	Primary school	3
	Secondary school	9
Occupation	Unemployed	8
	Employed	3
	Other	1
Living Arrangement	Alone	4
	Lives with partner and children	3
	Lives with children	2
	Lives with parents	1
	Other	2

Probationers

Criminal offenses	Domestic violence	5
	Violence (fights/ severe bodily injuries/ threat)	4
	Child abuse and/ or neglect	2
	Attempted infanticide	1
Previous convictions	No	8
	Yes, one	3
	Yes, two	1

Consent at the court and/or at the probation service

- SSPS is just a form of not executing an imposed prison sanction and does not require offender's active consent at the court
- (implied) consent is given by not appealing on the verdict, and informed consent by signing individual treatment program in the probation office

THUS

PO and P = judges did not seek offender's consent to this sentence, nor did probationers explicitly consented

PO and P = judges merely pronounced the sentence, without explaining the major obligations within the sanction to it

PO = offenders are overwhelmed at the court, implied consent to the verdict due to observed instrumental gain from the SSPS (even though they are not informed about the content of the sanction yet)

At that moment [during the adjudication] it is just important to them [probationers] that they will not be sent to the prison, so they will comply with any other option.

P = offenders not having any expectation prior to sentence execution, experienced great surprise once they talked to the probation officer and heard details about the way SSPS will be executed

It was big surprise. I thought, I got suspended sentence, and that is it, I shouldn't breach it, but I did not know that I'll have to come here [in the probation office] for conversations

PO = probationers should come to their offices better informed about the content of the sanctions and expectations they will have to meet

PO = must deal with mistaken expectations (the belief that sanction will not be executed at all, or too big expectations) and often confronted with offenders' negative reactions

....they think our duty is to react if they do something wrong [e.g. when they breach conditions of SSPS]... to exercise surveillance...

...they misinterpret our authority...expect that we will solve problems in some other segments of their life which are not even under our authority, or are out of the area of our interest...

...that they will not have the obligation...

PO = current practice as good, in favour of probationers' not having a right to choose due to expected negative effects of prison sanction

...they think their life is ruined, that they will spent all the time in probation, in treatments, that they will not have personal life at all, that they will not be able to travel abroad or to work because they have to report here....

... if someone asks them to choose whether they will report to probation office every two weeks for the next 5 years or would they rather serve 2 years of prison sentence, 90% of them [offenders] would probably choose going to prison...

The process of developing the individual treatment plan, its function and meaning

- the signing of the individual treatment plan (ITP) is the only formal act where offenders give informed consent to the sanction
- PO should seek consent for the content of the sanction to which offender was sentenced some time ago, while offenders know that potential refusal would probably result with revocation of SSPS and imprisonment

is then consent really informed - *secured without coercion or undue influence?*

PO = emphasise is also given to the possibility of NOT giving consent (concrete tool / document in hands)

*...no one forces them into reporting here for the next 5 years by all means.
If they do not want to, there is always the alternative, isn't there?*

... they can, if they really want to, go to prison. They are never put in front of a dead end... there is always the possibility of a choice...

PO = several obstacles to probationers' active participation in ITP development

- too short time period to develop ITP (first 30 days of probation)
- lack of necessary information relevant for ITP
- fabrication, concealing of some facts, portray in a socially desirable way, resistance
- too long period from sentence to signing the ITP - offenders' motivation, compliance, willingness to co-operate and readiness to change
- offenders' active participation in the development of ITP is mainly limited - lack of goals, avoidance of obligations

P = could not recollect any active participation in ITP

P = could not remember the content

P = do not read it

P = it is only important when and how often they should report to probation office

*...Well, listen...she [probation officer] has her own program, which, in the end was a product of some professionals, so how could I participate in it...
...I am here against my will, regardless of someone's saying that I am here voluntary. I am coerced to be here and I am supposed to do what they say. If you ask me what I want, I obviously wouldn't want to be coming here...
... I have no idea [what is written in ITP]. ...
... I just signed what they gave me...
...If someone says I should stand upside down, I would...*

an 'aha-effect' (after detailed elaborated what the ITP is)

P = completely agree to ITP's content

P = no need to make any amendments, nothing specific was included against their will

Areas of complaints

P = a wish to change some obligations that were part of the sentence and thus *had* to be incorporated in ITP (e.g. special obligations), or which are in conflict with their self-representation

I do not have drinking problems, so why do I need to report to AA club? If I beat up my wife after I drank one beer, it does not mean I am an alcoholic!

P = area the frequency of reporting to the probation office (finances represent quite a challenge)

PO = probationers mostly consent to ITP in the end

PO = mainly willing to make certain changes and adapt the ITP to probationers, especially if those changes are not in conflict with the sentence itself

PO = technical detail that imposes difficulties in securing probationers' consent with ITP - risk assessment is a part of ITP (as a document) and an officer's opinion about the probationer's personality and behaviour are thus revealed to the probationer

- is it that by signing ITP probationers also agree with how the officer assesses their characteristics or just with the goals drafted in it?
- assessment information available to offenders – YES or NO, to what degree?
- resistance to consent or concealing complete information

...they think they are signing to everything, and that they accept everything we said. Obviously, they do not have to give consent to our opinion and assessment, but it is a part of the same document... They more easily agree with treatment goals... and that actually is what they have to give their consent to... it is more problem of the formality than content...

Signing of the ITP

informed consent and agreement of co-operation
OR

additional obstacle to psychosocial treatment and relationship building

PO = questionable suitability and readability of ITP to probationers given their levels of comprehension and literacy

PO = agreement to collaborate and they refer to it during the whole period of conducting SSPS

PO = just a formality and not as informed consent or an act of voluntarism

PO = probationers do not attach any specific importance or symbolism to this act, nor do they recognize it as the *contract of co-operation*

PO = it serves only for the court, as a proof and as a formality

PO = additional obstacle in their work

...signing this program, is again, another point that compromises the relationship we start to build up [with the probationer]

Conclusion

➤ from the perspectives of POs and Ps:

- pressure to consent by the CJ system, procedures and practice
- at best short-term formal compliance
- active involuntarism and resistance towards the SSPS
- legal and symbolic meaning of signing the ITP overestimated
- practice focuses on formality instead of making the most of the signing of the ITP in terms of the substance of the intervention
- further considerations needed with regard to officers' risk assessment and professional opinion inclusion in ITP document



insufficient and inadequate preparation

Recommendations

- execution of community sanctions starts at the court
- the role of judges, state attorneys and lawyers in this process is very important, they should:
 - communicate information to prospective probationers – describe/explain expected obligations to the offenders
 - be better informed and educated about the true meaning of SSPS
- when imposing an SSPS, judges should inform offenders about all of the basic elements this sanction represents and that are known in advance, in a clear and appropriate way
 - e.g. reporting to the probation office once in 14 days, co-operation with probation officer, collaboration in writing ITP, expected changes in risk behaviour and life circumstances

- brochures with basic information about SSPS, that already exist and are currently given out in probation offices, should be handed out to offenders at the court, when they are sentenced, possibly also by lawyers
- judges should explicitly, possibly in written form, inform offenders at the court that if no plea to this sanction is entered within legal deadlines, their consent will be assumed, as will their motivation to co-operate with probation officers
- they should also inform offenders that signing ITPs in probation offices will be the next step in providing informed consent, but on the content of the legal requirements of the sentence
- the need for systematic evaluation of understanding of ITPs and the process of consenting to them

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