Andrzej Lewna, L.L.M. MA.
Department of Substantive Criminal Law and Criminology
Faculty of Law and Administration
University of Gdansk

**Summary of the doctoral dissertation**
**in the field of social sciences, in the discipline of legal sciences**

**prepared under the supervision of dr hab. Slawomir Steinborn, prof. UG**
**on the subject:**

# Factors determining the defendant's decision to use the consensual mode of ending criminal proceedings. A comparative analysis of the practice in the systems of Poland, England and Wales and United States of America

## I. Research problem addressed by the dissertation

The introduction of formal criminal procedural agreements into the legal order with the entry into force of the currently binding Code of Criminal Procedure of 1997, being a culmination of the discussion in the domestic doctrine on the phenomenon of agreement between the parties to a criminal trial that had been going on since the beginning of the 1990s, permanently changed the reality of the functioning of the Polish justice system. Since then, it is possible to observe a steadily increasing role of procedural agreements as consensual forms of completion of criminal proceedings in court practice, expressed in an increasing number of cases resolved in these modes in relation to judgements made after full jurisdictional proceedings, which is confirmed by file studies. Also, statistics from judicial authorities over the last two decades illustrate the increasing practical use of agreements. Criminal-procedural agreements, as institutions primarily geared towards speeding up the process and reducing the

costs of justice by limiting the traditional role of the trial and reducing evidentiary proceedings, have therefore had unquestionable success in the domestic reality, and the resulting benefits in terms of procedural economy have been recognised by the legislator. Subject to the slightly different direction of the changes resulting from the Acts of 11 March 2016 and 7 July 2022, constituting a partial retreat from the concept of increasing the role of procedural consensualism in domestic practice, under successive amendments to the Code of Criminal Procedure, the scope of admissibility of voluntary submission to punishment (Article 387 of the Code of Criminal Procedure) and sentencing without trial (Article 335 of the Code of Criminal Procedure) was gradually extended to further categories of offences, and a new consensual mode was introduced in the form of a motion of the accused for sentencing without taking evidence (Article 338a of the Code of Criminal Procedure). However, in order to make a reliable assessment of the functioning of penal-procedural agreements in Poland, it seems necessary to look beyond considerations of procedural economy. This is because the development of the discussed institutions may potentially entail a threat to basic procedural guarantees, in particular in the aspect of providing the accused with unfettered freedom of decision to use the consensual mode of ending the proceedings, which is in fact on their part an expression of waiver of the right to challenge the prosecution's theses in the course of the trial at the main hearing, and the removal of the burden of proof of guilt from the side of the prosecution.

The aim of this dissertation was to empirically investigate the mechanism of defendants' decision to use consensual institutions, and in particular to identify the procedural and extra-procedural factors determining such a decision. Starting point here is the studies conducted on the legal system of England and Wales and the United States of America, as the two jurisdictions that are the historical cradle of the discussed mechanisms of criminal trial resolution. In England and Wales, the phenomenon of *plea bargaining*, relatively uncommon in the practice of justice until the end of the eighteenth century, has developed dynamically especially since the second half of the

nineteenth century, with the granting of broader powers to defence lawyers to participate constructively in court proceedings, and today become one of the central (although still only residually regulated by law) tools of putting a practical end to criminal proceedings. It is used in more than 90 per cent of the cases of minor offences tried at first instance by the Magistrate Court in *summary proceedings* and in about 75 per cent of the cases tried by the Crown Court (the more serious offences falling into the category of *either way offences* and the group of the most serious *indictable offences*). Statistics relating to the US system indicate an even wider spread of *plea bargaining* practice. Taking into account the differences resulting from local circumstances, the analogous observation can also be extended in a generalised manner to the vast majority of other countries belonging to the *common law* legal culture, whose historical links with the tradition of British law are expressed, inter alia, in the development of local forms of *plea bargaining,* and the predominant method of resolving a significant proportion of criminal cases ending in a conviction remains the defendant's confession. It should be noted in this regard that, although the high degree to which the criminal justice practice of common law countries has been dominated by the instruments of plea bargaining, at least since the early 1970s has drawn the attention of the local representatives of the science of procedural criminal law and criminologists to the problem of identifying the motivational mechanisms underlying the abandonment by defendants of their fundamental right to challenge their responsibility for the alleged offence in a formalised, adversarial trial, these efforts have so far not led to the development of a single, clearly dominant conception of the description of the *plea bargaining* phenomenon by the Anglo-Saxon literature on the subject. Discussing the existing body of literature in *common law* countries on the practical aspects of *plea bargaining,* the dissertation draws attention to the internal diversity of perspectives, within which theories developed to describe the phenomenon on the grounds of criminology and criminal policy science (especially the so-called *focal concerns theory* and *courtroom community theory*) clash with those dominating among representatives of legal sciences (the construction of negotiations "in the shadow of the trial").

The presented dissertation is the first attempt in Poland to identify factors, from the perspective of the accused, determining the use of the consensual mode of ending criminal proceedings. This aim was served by an empirical study in the form of questionnaires supported by a direct interview, conducted in the period from May 2021 to April 2023 in 8 organisational units of common courts from the jurisdiction of three appellate areas in the country (Gdańsk appellate jurisdiction, Łódź appellate jurisdiction and Kraków appellate jurisdiction) among a sample of persons appearing as defendants in the observed criminal proceedings in the course of the study. Drawing on the body of Anglo-Saxon literature on the practical aspects of the *plea bargaining* phenomenon, the study was carried out in order to answer the question about the actual mechanism of the defendant's decision-making with regard to *plea bargaining* in the Polish system currently in force.

## II. Structure of the work

The presented dissertation consists of an introduction, four chapters and a final conclusion. The introduction defines the research problem, defines the basic notions of penal-procedural agreement and consensual mode used in the work, defines the scope of analysed institutions of agreements concluded in cases of common crimes (Article 335 § 1 and § 2 of the Code of Criminal Procedure, Article 338a of the Code of Criminal Procedure, Article 387 of the Code of Criminal Procedure), as well as presents the structure of the work and the research methods used in its preparation.

The first chapter of the thesis discusses issues related to the development of procedural consensualism as a broader trend shaping the evolution of criminal justice systems in Europe, particularly in the light of Council of Europe documents such as Recommendations of the Committee of Ministers of the Council of Europe No. R (87) 18 of 17 September 1987. on the Symplification of Criminal Justice, Recommendations of the Committee of Ministers of the Council of Europe No. R (96) 8 of 5 September 1996 on Criminal Policy in Europe in Transition, and Resolution of the Parliamentary

Assembly of the Council of Europe No. 2245 (2018) of 12 October 2018 on Agreements in Criminal Proceedings: the need for minimum standards for systems involving the abandonment of the trial. Further, the problem of the proper design of consensual modes of criminal procedure is discussed in relation to the *fair trial* standard developed under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights. This section of the work also presents a synthetic overview of subsequent normative changes within the construction of consensuses in the Polish system, starting from the original formulation of the institutions in question in the Code of Criminal Procedure of 6 June 1997, through the amendments of 10 January 2003, 27 September 2013 and 20 February 2015, and finally also of 16 March 2016 and in the light of subsequent amendment changes up to the Act of 7 July 2022. The reference of the Polish regulations of consensual modes to the standard of fair trial, in the last part of the first chapter, served to identify the basic threats to the procedural guarantees of the accused in consensual modes against the background of national regulations.

The second chapter of the work is devoted to consensual modes of settling criminal cases in the legal systems of England and Wales and the United States of America. The historical conditions accompanying the evolution of *plea bargaining* in the indicated *common law* systems are discussed, identifying the basic reason for the development of this type of institution, in particular in the crisis of effectiveness of the jury trial model observed from the mid-19th century onwards. Reference is also made to specific elements of criminal procedural systems of common law countries determining the fact that it was this legal culture that developed the phenomenon of *plea bargaining.* Next, the current picture of the phenomenon of settlement negotiation in the American system was discussed in detail, taking into account the regulations of the Federal Rules of Criminal Procedure and selected case law of the Supreme Court of the United States. Lastly, the American federal system is contrasted with the English and Welsh system in this respect, discussing the mechanisms existing in the latter jurisdiction to support

the practice of settlement negotiation within the dynamics of criminal procedure and the regulation of *plea barganing* in the Anglo-Welsh system in the light of procedural pragmatics and selected judicial case law.

The third chapter of the thesis reviews the literature of *common law* countries in terms of researching the practical aspects of the use of consensual modes of criminal proceedings. The concept of "*shadow of the trial*", which grew out of the economic analysis of law, was discussed as a theoretical model for reconstructing the process of negotiating a *plea bargaining* agreement. The assumptions of the model are presented, along with the results of a number of empirical studies published in the literature of *common law* countries (especially the United States) aimed at testing its validity, and a reference is made to the critical voices in Anglo-American studies concerning the model, pointing to its over-simplification and inadequacy for describing the complex realities of the criminal justice system. Research on the practice of *plea barganing* in the criminological tradition of common law countries is discussed, with particular reference to the two dominant currents of thought in this regard: the so-called '*focal concerns*' theory and the '*courtroom community*' theory. Finally, in the last part of the chapter, the output of selected other studies on the phenomenon of *plea barganing is* presented, which, while not falling unequivocally into any of the above-mentioned research directions, also provide important clues as to the elements of the procedural situation, potentially relevant to the decision-making mechanisms underlying the involvement of participants in criminal proceedings in negotiations on the consensual termination of the case.

Constituting the culmination of the dissertation, the fourth chapter deals with the factors determining the defendant's decision to use consensual modes of criminal proceedings in the light of domestic research. It first presents a synthetic review of earlier Polish empirical studies on various aspects of the functioning of criminal-procedural agreements, starting from the relatively distant in time research of K.

Girdwoyń, through the results of the project carried out at the Institute of Justice in 2003-2004, presented by M. Jankowski and A. Ważny, to the project of the research team of the Department of Criminal Procedure of the Faculty of Law at the University of Białystok, led by C. Kulesza (2010). Recognising, on the one hand, the practical relevance of the previous research for the research problem, but on the other hand, the significant gaps existing in the previous achievements of national empirical analyses, resulting in particular from their focus on the purely quantitative aspect and on the perspective of professional trial participants, the methodology of own research and its results are presented in detail in this section of the paper. The presentation of the results begins with the characteristics of the obtained sample of defendants using consensual procedures, then referring to the problem of admitting guilt in these procedures, the initiative of concluding agreements and the course of negotiations, and finally the factors taken into account by the defendants when considering the decision to use consensual instruments. The empirical part of the work was concluded with an agreement on the results of a survey of a small sample of respondents, whose proceedings, formally qualifying for termination with the use of one of the consensual instruments under consideration, for various reasons did not reach such a conclusion. The work concludes with a section of synthetically formulated final conclusions *de lege lata* and *de lege ferenda.*

## III. Methodology of the empirical study and the research material obtained

The basic research tool used in the empirical work was a highly standardised anonymised questionnaire addressed to the persons acting as defendants in the observed criminal proceedings, comprising a total of 45 questions (in all variants of the survey course), including single-choice, multiple-choice, closed questions, open questions and tabulations. The questionnaire consisted of four parts. The first was aimed at identifying the manner in which the case was resolved, the type and amount of penalties and other measures of criminal response imposed, as well as indicating the court hearing the case, the legal qualification and the number of individual charges against the accused, and finally whether the accused in the observed case was tried as

a result of a full jurisdictional procedure (ordinary procedure) or as a result of the consensual procedure, in the latter case also indicating the consensual mode used. The second part of the questionnaire focused first on collecting basic personal information about the defendant (including age, type of residence, marital status, level of education held, type of employment, income ceiling) in order to obtain comprehensive information about the demographic characteristics of the sample. This section also collected the following data relating to the trial itself: the type of act under investigation (identified by the accused), the declaration concerning the admission of guilt in whole or in part, the declaration concerning the charge of committing the offence in cooperation with other persons, the use of detention or pre-trial detention and the length of application of these measures, information on the use of other categories of coercive measures against the accused, information on the representation by a defence counsel during the proceedings and the type of appointment of the defence counsel (elected, ex officio), information on the accused's previous criminal record (as declared by the accused) and whether there are any other parallel criminal proceedings against the accused. Although the main object of the research remained the defendants making the decision to enter into a consensual trial, due to the adopted method of direct interaction, when designing the study we also took into account the possibility of encountering such persons in relation to whom, despite the formal admissibility, the completion of the trial using the consensual mode will not take place (either due to their own decision to engage in ordinary proceedings, or due to other factors, such as objections from the victim, the prosecutor or a court decision). In order to obtain a more complete picture of the surveyed practice, such respondents were devoted to the third part of the questionnaire, which contained two questions: the first concerning the respondent's consideration during the trial of the possibility of using the consensual procedure, and (in the case of an affirmative answer to the above) the second concerning the reasons which, in the respondent's opinion, ultimately determined that such a conclusion of the proceedings did not take place. The fourth and final section of the questionnaire was dedicated to respondents whose

proceedings were concluded using one of the four consensual instruments indicated above. Within this section, questions aimed at reconstructing the course of the negotiations on the terms of consensus were included, i.e. relating to the content of the originally formulated proposal as to the level of punishment or other response measures, the identification of the initiator of the agreement, whether the proposal was modified during the proceedings, as well as the initiator and the content of any changes. Central to the study, question 29 (*Were the following reasons important to you in your decision to use the consensual procedure, and to what extent?*) used a tabulation of 12 proposals of predefined elements of the defendant's procedural or personal situation, treated as factors potentially influencing the decisions analysed, as well as one open-ended option (*other-what?).* Respondents were asked to refer to each of the proposed options by rating its importance on a 5-point scale.

In order to increase the cognitive usefulness of the study, the questionnaire method was supported by a face-to-face interview conducted by the interviewer with the examined accused in a semi-structured format. To the extent that the interviews conducted concerned representatives of the main target group, i.e. defendants using consensual modes of criminal proceedings, the assumed directions of the interview focused in particular on the options indicated in the content of question No. 29, assuming, if necessary, the need to clarify the meaning of the question, as well as serving the purpose of obtaining a broader statement from the respondent on the subject of factors determining his decision to enter into a criminal procedural agreement.

As already indicated, the survey was carried out between May 2021 and April 2023 in the jurisdiction of 8 organisational units of common courts. These were: District Court Gdańsk-Północ in Gdańsk, District Court in Malbork, District Court in Gdańsk, District Court for Kraków-Śródmieście in Kraków, District Court in Wadowice, District Court in Kraków, District Court in Pabianice, District Court in Łódź.

In the common court units selected for the study, cooperation was undertaken with the authorities of the courts and the management of the criminal divisions in order to obtain information on the dates of hearings set pursuant to Article 343 of the Code of Criminal Procedure and Article 343a of the Code of Criminal Procedure, as well as about the first dates of the main hearing in the case (in view of a possible submission of an application under Article 387 of the Code of Criminal Procedure). On the basis of court data, direct observation of the hearings and sessions selected in this way was undertaken. The vast majority of interviews were conducted with defendants appearing in court, immediately after the observed activities, although in a small number of cases (12 in the surveyed sample), with the consent of the respondent and, in the case of the appearance of a defence counsel in the case, also with his consent, the interview was supplemented later by telephone. In one case, the interview was carried out in a penitentiary unit in connection with the respondent's incarceration to serve a sentence. After completing the field stage of the project and carrying out a selection, which included eliminating from the scope of the analysed results questionnaires containing incomplete information or incorrectly filled in, the final research material was obtained comprising a total of 58 questionnaires, including 41 from defendants whose proceedings ended with a consensual motion and 17 from respondents whose cases were proceeded with under the ordinary procedure. As far as qualitative material is concerned, a total of 55 interviews were obtained (including 38 from respondents entering into a criminal procedural agreement). The content of 50 of these was originally recorded in audio form, which was then transcribed using the naturalised technique. In the case of a further 5 interviews, however, the original recording was made in writing, through a detailed interviewer's note of the interview.

## IV. Key findings of the study

The results of the empirical research conducted within the framework of the preparation of the present study show unequivocally that the declaration of a confession of guilt with regard to the entirety of the charges against the accused is

currently the rule with regard to all considered consensual institutions of the Polish criminal procedure. The indicated element of the procedural situation has been analysed on two levels: a collective one, covering the full spectrum of the examined forms of agreements, and a narrow one, covering only the cases of use of Article 387 of the Code of Criminal Procedure, Article 335 § 2 of the Code of Criminal Procedure, occurring in the research sample. and Article 338a of the Code of Criminal Procedure. In the overall sample (N=41), full confessions were recorded in 38 cases (92.7%). One respondent (2.4% of the sample), pleaded guilty to part of the charges against him, while agreement to conviction despite consistent denial of guilt throughout the course of the proceedings, was only observed in relation to 2 defendants (4.9% of the sample). Even when excluding agreements taking the form of a spontaneous prosecution motion from the pool under consideration, the percentage of defendants admitting in full under Article 387 of the Code of Criminal Procedure, Article 335 § 2 of the Code of Criminal Procedure. and Article 338a of the Code of Criminal Procedure. still amounted to 91.7% of the trial.

In the context of the identification of the entity taking the initial initiative to use the consensual mode, the study observed that the relatively high percentage of respondents within the obtained sample, using the assistance of defence counsel during the trial, translated into the recorded high activity of defence counsel in initiating agreements in all forms considered. For the entire sample (N=41), the percentage of respondents indicating the defence counsel as the initiator of the agreement was as high as 48.78% (20 indications). This was followed by representatives of the prosecution (24.39% - 10 indications), the accused himself (14.63% - 6 indications) and the court hearing the case (9.76% - 4 indications). At the same time, contrary to what one would expect on the basis of the results of previous national studies, even with regard to the institution of conviction without trial in both forms (a total of 15 cases in the sample), the distribution of respondents' answers revealed a high involvement of defence lawyers. Indeed, there were 7 indications for

the defence counsel, against the same number of indications for the prosecution, as well as with one indication for the accused. In the vast majority of cases, the first formulated proposal as to the specific terms of consensual sentencing was not changed at all during the proceedings, at least according to the accused themselves, which, however, does not necessarily correspond to reality, given that the accused is not always personally directly involved in the negotiations.

As regards the factors indicated by the respondents as decisive for the activation of the consensual mode, there was a strong impact of motivations related to the reduction of the burden of criminal response, understood as the subjective conviction of defendants that the conditions of sentencing with the application of the institution of penal-procedural agreements (regardless of the form of the agreement concluded in a specific case), would be more favourable than the hypothetical results of sentencing in ordinary proceedings (82.9% of indications in the sample). It should be noted that in view of the current form of national legislation, which does not provide for any specific instruments for such a reduction, the perception of defendants in this regard seemed to be based on colloquial intuitions, treating consent to conviction as an expression of a critical attitude to the alleged act and thus as a basic mitigating circumstance, such attitudes often being reinforced by the suggestion of other participants in the proceedings.

An overwhelming proportion of the respondents in the sample of defendants using consensual instruments (95.1%) cited motivations linked to the desire for a quicker end to criminal proceedings and a return to a normal life, the pursuit of normal family, professional or other responsibilities as justification for their decision to abandon the ordinary procedure. In this respect, the interviews conducted within the framework of the study pointed to the strong impact of pressures that do not arise directly from the threat of punishment, but rather from the need to devote significant resources and time in connection with participation in the proceedings, which in itself interferes with the

daily functioning of the defendants in other, from their point of view, important spheres of activity. Another clearly emerging aspect of this category of motivation from the interviews was the stress associated with the uncertainty of the final outcome of the case, as well as the frustration communicated by a number of respondents at the mere fact of being charged. This is in line with the observations made in the context of the US system by M. Feeley, stating that for a significant number of defendants, especially those facing the prospect of relatively mild non-custodial sentences and with no prior trial experience, the burdens of mere involvement in the procedure often outweigh the expected harshness of the criminal response. The prospect of alleviating the aforementioned extra-legal burdens and removing the state of uncertainty as to the outcome of the trial is therefore in itself sufficient, from the point of view of many such persons, to warrant the abandonment of the ordinary procedure and its associated guarantees.

As regards the influence of other actors in the proceedings on the decisions of defendants using consensual modes of trial, it should be noted that the statements of the survey participants in this regard remained broadly consistent with the results relating to the initiation of agreements. In particular, the reported significant impact of the suggestion of defence counsel (a total of 79.3% of indications in the group of respondents using defence counsel) is consistent with the observed high involvement of professional representatives in the procedures in question. At the same time, the recorded statements of the respondents, referring to the description of their interactions with defence lawyers, did not indicate the existence of questionable practices on the part of the latter to impose a consensual termination of the case on their clients. The defendants surveyed expressed a high degree of trust in the opinions of defence lawyers, in a significant proportion of cases leaving the negotiation of the specific terms of the agreement to their sole discretion. 34.1% of the respondents in the group of sentenced defendants surveyed as a result of the consensual mode pointed to the suggestion of the prosecutor, police officers or other persons in law enforcement

agencies as a factor playing an important role in the decision considered here, the latter being notable for the individual cases revealed in the qualitative part of the survey indicating pressure on defendants to admit guilt and accept agreements, particularly taking the form of the threat of the application of isolationist preventive measures.

46.3 per cent of all respondents in the sample cited motivations related to the desire to avoid or reduce the coercive measures used as an important factor in their decision to enter into criminal plea agreements. Bearing in mind the body of literature in *common law* countries indicating the existence of a positive correlation between the fact that the most severe, from the defendant's point of view, coercive measures are used and the likelihood of filing a declaration of *guilty plea* and consensual termination of proceedings, two categories of information were juxtaposed in the development of the survey results: information on the detention or provisional arrest of respondents, and their assessment of the strength of the impact of the factor in question on their decision to enter into a criminal *plea* agreement. In the sample of defendants using consensual criminal procedural instruments, the results of the test thus shaped met the criteria of statistical significance, showing that those who had been provisionally arrested or detained during the trial were more likely to be guided, when deciding on a consensual procedure, by the desire to avoid or shorten the use of coercive measures. The strong influence of this factor in this particular group is also indicated by the results of the qualitative part of the study.

In order to secure due transparency of the procedures related to the conclusion of a penal-procedural agreement in the context of the initial negotiating position of the accused, as well as to strengthen the evidentiary basis of the sentence thus passed, it should be postulated that the institution of conviction without trial should be re-unified in the formula of a non-substantive motion, supplemented, however, with the condition of the accused's confession of guilt, as well as the introduction of an analogous condition to the regulation of Article 387 of the Code of Criminal Procedure. and Article 343a § 2 of the Code of Criminal Procedure, in a way bringing the Polish

regulation of consensual modes of criminal proceedings closer to the Anglo-Saxon model of *plea barganing*. At the same time, bearing in mind the voices of the domestic doctrine, identifying in the requirement of an explicit admission of guilt a potential threat to the guarantees of the right to defence, actualising in a situation in which the conclusion of the proceedings through a penal-procedural agreement would not take place for reasons beyond the control of the accused, the realisation of the postulate of harmonisation of the premises of the institutions under consideration here should be combined with the simultaneous introduction of an appropriate evidentiary ban, excluding the possibility of the procedural use of previous explanations of an accused pleading guilty in the event of the final referral of the case for examination under the ordinary procedure.

It is necessary to join the postulates, already expressed in the literature, of extending the possibility of using a public defender by the accused, in the cases of signalling by him/her of the desire to conclude a penal-procedural agreement and for establishing its conditions, without the necessity of fulfilling additional prerequisites, in particular without the necessity of proving the conditions of Article 78 § 1 of the Code of Criminal Procedure. Since already on the basis of the regulations currently in force, when the prerequisites of mandatory defence and the conditions set out precisely in the so-called "law of the poor" are not fulfilled, the accused may request the appointment of a defence counsel ex officio *in the* scope of the institution of voluntary submission to punishment (Article 387 § 1 *in fine of the Code of Criminal Procedure*), there are no rational grounds for objecting to extending an analogous entitlement to the institutions of sentencing without trial or the request under Article 338a of the Code of Criminal Procedure.

It should be postulated that national legislation should once again clearly regulate the grounds for mitigating the punishment of an accused who concludes a plea bargain, and that this should be done in a formula covering all the forms of plea bargains operating under the provisions of the Code of Criminal Procedure. and at the

same time independent of the fulfilment of further substantive or procedural conditions. The postulated changes concerning the clear determination of grounds and level of permissible mitigations of criminal reactions in consensual modes should also be supplemented by modification of the principles of sentencing measures in these modes. Such a solution should assume, as a rule, the optional character of decisions on the application of penal measures for sentences passed as a result of concluding a penal-procedural agreement in those cases in which the pronouncement of a given measure would remain obligatory in the case of a conviction under the ordinary procedure.

In order to mitigate the effect of uncertainty observed in the empirical study as to the anticipated shape of the sentence, the introduction to the Polish criminal procedural order *of* an equivalent of the English-Welsh institution of *advance indication of sentence,* adjusted to the local conditions, should be considered, covering in particular the forms of agreements concluded at the stage of court proceedings, i.e. under Article 387 of the Code of Criminal Procedure. and Article 338a of the Code of Criminal Procedure. The essence of the postulated regulation boils down to equipping the accused and his/her defence counsel with the right to request from the court, at the stage preceding the final decision on voluntary submission to punishment, to give an indication of the forecast, maximum level of punishment and other measures of reaction, which the court would be inclined to impose in the case of proceedings under the ordinary procedure, taking into consideration the evidence gathered during the pre-trial proceedings. As is the case with the English Model Institution, such a proposal would remain non-binding on the court - the court could therefore refuse to give an indication in any event if, for any reason, it considered it premature to do so. However, if a decision is taken to formulate a prognosis, its content should acquire a relatively binding character. In the absence of specific prerequisites set out in the provisions of the Criminal Procedure Act, in particular those related to the disclosure in the further course of the examination of the case of new circumstances and evidence

previously unknown, and affecting the size of the measures of criminal reaction, it should be excluded to issue a more severe sentence in relation to the accused than that resulting from the indication. A normative innovation of this kind, in addition to the aforementioned reduction of the state of uncertainty of the accused as to the actual prospects of the probability of conviction and the severity of the sentence, would have an additional function, expressed in the establishment of an unambiguous authoritative reference point for the negotiation of the terms of a possible voluntary surrender of sentence, thus fostering greater transparency of the consensual procedures in question. At the same time, in order to counteract the potential abuse of the proposed institution as a means of putting pressure on the accused, it would be advisable to limit the circle of entities entitled to launch the procedure in question to the accused and the defence counsel only, thus excluding the prosecutor, the auxiliary prosecutor (the victim) or the possibility for the court to act *ex officio*.