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Justice in the fast lane: The implications of penal orders in Czech criminal proceedings

Sprawiedliwość na szybkim pasie: konsekwencje stosowania nakazów karnych w czeskim postępowaniu karnym

Abstract: This article presents the first systematic empirical analysis of the Czech penal order procedure. It uses a dataset of 623 criminal cases from 66 district courts (2010–2018) in which a penal order was issued and subsequently annulled following an objection. Drawing on theoretical parallels with plea bargaining, the study examines whether objections lead to harsher sentencing outcomes, whether this effect varies depending on who files the objection and how frequently compensation for victims is addressed. The findings show that objections broaden the range of potential sanctions, including a higher incidence of unsuspended prison sentences, yet they also lead to acquittals or dismissals in roughly one quarter of cases. Crucially, defendants who object do not face a systemic trial penalty: sentence severity increases primarily when objections are filed by prosecutors, not by defendants. The analysis further reveals that victims' claims are addressed less frequently and awarded in lower amounts in penal orders compared to judgments following a full trial, highlighting structural limits on victims' participation and access to compensation within fast-track procedures. Overall, the study provides new evidence on how simplified criminal proceedings shape sentencing dynamics and victims' rights in Europe.

Keywords: penal order, sentencing, trial penalty, compensation, plea bargaining

Abstrakt: Niniejszy artykuł stanowi pierwszą systematyczną analizę empiryczną czeskiej procedury nakazu karnego. Wykorzystano w niej zbiór danych obejmujący 623 sprawy karne (z lat 2010–2018) z 66 sądów rejonowych, w których wydano nakaz karny, a następnie unieważniono go w wyniku wniesienia sprzeciwu. Opierając się na teoretycznych podobieństwach do ugody sądowej, celem badania jest analiza, czy sprzeciw prowadzi do surowszych wyroków, jak również czy efekt ten różni

się w zależności od tego, kto wnosi sprzeciw. Ponadto analizie podlegało, jak często rozpatrywane są kwestie odszkodowań dla ofiar. Wyniki pokazują, że sprzeciwy poszerzają zakres potencjalnych sankcji, w tym zwiększają częstotliwość orzekania kar pozbawienia wolności bez zawieszenia, ale prowadzą również do uniewinnień lub umorzeń w około jednej czwartej spraw. Co istotne, oskarżenia, którzy wnoszą sprzeciw, nie ponoszą systemowej kary procesowej; surowość wyroku wzrasta przede wszystkim wtedy, gdy sprzeciw wnoszą prokuratorzy, a nie oskarżeni. Analiza ujawnia ponadto, że roszczenia ofiar są w tym postępowaniu rozpatrywane rzadziej, a przyznawane im kwoty są niższe w nakazach karnych w porównaniu z wyrokami wydawanymi po pełnym procesie, co podkreśla strukturalne ograniczenia udziału ofiar i dostępu do odszkodowań w ramach procedur przyspieszonych. Ogólnie rzecz biorąc, badanie dostarcza nowych dowodów na to, jak uproszczone postępowania karne kształtują dynamikę orzekania i prawa ofiar w Europie.

Słowa kluczowe: nakaz karny, orzekanie, kara procesowa, odszkodowanie, ugoda sądowa

Introduction

Penal orders are mechanisms of summary criminal justice that enable courts to impose sanctions without a full public trial. They have become a common response to the growing burden on courts struggling with high caseloads and delays in criminal justice administration. Such delays undermine the rule of law, reduce the quality of adjudication and weaken the certainty of punishment, which may ultimately affect crime rates (Beccaria 1872; Listokin 2007; Dušek 2015). In 1987, the Council of Europe encouraged its member states to simplify criminal procedures through discretionary prosecution, out-of-court settlements and summary proceedings for minor and mass offences (Recommendation of the Committee of Ministers 1987). In line with this, many European countries introduced simplified criminal procedures during the 1990s and 2000s, including plea bargaining and penal orders.¹ These tools, typically reserved for less serious crimes, aim to streamline adjudication by lowering administrative costs and expediting the resolution of cases (Dušek 2014).

Today, most European criminal procedure codes allow minor cases to be tried under simplified procedures. Penal orders in particular serve to speed up justice for minor-to-moderate offences by allowing prosecutors to request punishment orders, which a judge can issue based on the case file without a public hearing. As stated in the Council of Europe's recommendations, penal orders are to be applied "in cases which are minor due to the circumstances of the case." As a widely used sentencing shortcut, penal orders reflect a utilitarian theory of punishment in their focus on efficiency, deterrence and system throughput. While they may also

¹ In the past 30 years the number of penal orders has risen throughout Europe and beyond, in countries such as Italy, France, Croatia, Finland, the Netherlands, Scotland, Hungary, Norway and Slovakia. While it has been historically used in Germany, Switzerland and Sweden (Wade et al. 2008), Greece is the latest country to have introduced penal orders on the model of *Strafbesehle* (Germany's penal order model), in July 2019 (Alvanou 2019).

align with retributive ideas through proportionate punishment, they limit judicial discretion and reduce opportunities for deeper moral evaluation (Bagaric 2001). Typically, only milder sanctions – such as fines or short suspended sentences – can be imposed via this procedure.

Much like plea bargaining, penal orders aim to expedite the resolution of less serious cases by incentivising defendants to waive full trials in exchange for milder sanctions. This procedural shortcut is hypothesised to have similar systemic effects as plea bargaining – namely, reducing the time to conviction, lowering the likelihood of imprisonment and enhancing overall courtroom throughput. Steven Kemp and Daniel Varona (2024) show that plea bargaining produces substantial “trial penalties,” as defendants who opt for trial face significantly higher odds of incarceration and longer sentences. I argue that penal orders can be seen as an informal offer similar to plea bargaining: the accused has the option to accept the punishment and resolve the case swiftly without a full public trial. However, by rejecting it, they risk receiving a stricter penalty. This raises an important theoretical and empirical question: Do penal orders offer a sentencing discount, and if so, how large is it? And inversely, do defendants who decline them face a “trial penalty”?

Additionally, this article addresses a frequently overlooked dimension of summary justice: the impact on victims’ rights. Victims are often not included in the proceedings and have no opportunity to claim compensation, as penal orders can be issued without their knowledge or involvement. This challenges the broader legitimacy of penal orders as a fair and balanced form of justice.

The article begins with a theoretical discussion of penal orders and their place within the broader framework of punishment theory. It then introduces the Czech legal context, including the legislative development of penal orders and their current application. Particular attention is paid to the issue of victim compensation. After presenting the key research questions, the article describes the empirical design, including characteristics of the research sample and the variables. The core of the article reports the findings, both in terms of sentencing outcomes and victim claims.

1. Theory

Penal orders are not a novel concept; their roots can be traced back to 19th-century Germany, where the *Strafbefehlsverfahren* was developed as a means of handling less serious cases efficiently and with minimal court involvement (Thaman 2012; 2015).² Over time, this mechanism became an essential part of

² In 1830, the Prussian police struggled to handle the growing number of minor criminal cases due to an uprising in the Polish territories. To address this, a new summary procedure known as *Mandatsverfahren* was introduced and later incorporated into Prussian procedural law in 1845. This system, widely used by police courts across the empire, enabled authorities to

the German criminal justice system, widely applied to expedite adjudication and reduce the workload of courts (Putzke, Putzke 2019). The practical significance of the procedure is evident, yet its application raises concerns about procedural fairness and potential miscarriages of justice – particularly in more complex cases, such as economic and tax-related crimes.

Researchers have examined how prosecutorial and police practices adapt to the logic of the penal order, sometimes simplifying cases or constructing narratives that fit the fast-track model. Mirjam Stoll (2018), for example, identifies how formal and informal strategies can shape the presentation of cases to ensure quick convictions through penal orders. Similarly, Jochen Metz (2019) highlights how the inclusion of auxiliary participants (such as victims, through adhesion procedures) may complicate the simplified structure, potentially undermining the efficiency gains that penal orders aim to achieve.

The penal order procedure, along with other consensual criminal procedure modes such as specific diversions and plea bargaining, grants prosecutors substantial influence in determining trial results in the form of guilt and punishment (Thaman 2015). As the penal order system continues to evolve, it may become a model for resolving a wider range of cases, similar to how plea bargaining has become prevalent in the United States (Thaman 2012).

Plea bargaining is widely used in many jurisdictions to expedite criminal proceedings and alleviate judicial system overload. It allows defendants to plead guilty in exchange for a more lenient sentence, benefiting both the accused and the justice system by avoiding lengthy trials (Johnson 2019). However, this process requires defendants to waive key procedural rights, such as the right to a public hearing and the presumption of innocence (Helm 2019). Additionally, it grants significant discretionary power to prosecutors, often with minimal oversight (Davis 2005; Shermer, Johnson 2010).

A primary justification for plea bargaining is its role in improving the efficiency of overburdened criminal justice systems (Langer 2021). However, studies suggest that it can pressurise innocent defendants into guilty pleas out of fear of harsher trial sentences (Cooper, Meterko, Gadtula 2019). As with plea bargaining, penal orders have become increasingly prevalent in European justice systems in order to relieve the overloaded courts (Enescu 2020; 2023). While they do offer procedural economy, they also pose similar significant risks of wrongful convictions and erroneous sanctions (Enescu 2020; 2023).

The debate over the magnitude of “plea discounts” (benefits for pleading guilty) versus “trial penalties” (harsher sentences for going to trial) remains unresolved,

swiftly respond to minor offences. Initially, it applied only to cases where imprisonment was not an option, but it was soon expanded to include offences carrying sentences of up to six weeks in prison. If an offender objected to the penalty, the judge had no authority to alter it – only the prosecutor could do so. However, in such cases prosecutors often responded by threatening a harsher punishment. In 1877, this procedure was integrated into the newly established German Empire’s Code of Criminal Procedure and became known as *Strafbefehlsverfahren*, or the penal order procedure.

though research generally shows that defendants who plead guilty receive more lenient sentences (Yan, Bushway 2018; Lehmann 2021). Recent research indicates that plea bargaining significantly impacts sentencing outcomes in various jurisdictions. In Spain, defendants who accept plea deals receive shorter sentences and have a lower probability of being imprisoned compared to those convicted at trial (Kemp, Varona 2024). This disparity raises concerns about equality and the presumption of innocence. Suspended sentences are often used to encourage guilty pleas, potentially coercing defendants (Kemp, Varona 2020). In the United States federal system, the trial penalty is substantial, with defendants receiving 64% longer sentences on average when choosing to go to trial rather than plead guilty (Kim 2015).

If penal orders function in practice like plea bargains, as this study hypothesises, they may introduce similar risks of sentencing disparities. Jonathan Hasson and Yosef Zohar (2023) show that in systems with widespread plea bargaining, prosecutors adapt their behaviour over time, exploiting their position to offer individualised deals based on a defendant's perceived willingness to accept guilt. This feedback loop widens the "bargaining range" and leads to a greater variety of sanctions across similar cases that depends not on legal merits, but on subjective negotiation dynamics.

Penal orders, while formally distinct from plea bargains, share some key features: they rely on the defendant waiving their trial rights and consenting to a proposed sanction, often without full judicial scrutiny. If their use becomes widespread, penal orders may similarly enable discretionary and opaque decision-making, leading to unequal outcomes among comparable defendants and raising concerns about transparency, coercion and fairness in sentencing.

This prominent theoretical framework for understanding plea discounts suggests that the likelihood of a conviction at trial and the expected sentencing outcome play key roles in the participants' decision-making (Bushway, Redlich 2012; Bushway, Redlich, Norris 2014). This framework, known as the "shadow of the trial," assumes that defendants act rationally and are likely to accept a plea agreement if the sentence they would receive through a plea is less severe than the anticipated sentence at trial, adjusted for the probability of being convicted. On the other hand, participants in the criminal process have imperfect information or are influenced by the court community culture; they do not base their behaviour on a simple predicted outcome model (Bibas 2004).

Despite their growing relevance, penal orders remain under-researched compared to plea bargaining. Few studies have empirically assessed the sentencing outcomes of penal orders or examined whether objections lead to harsher sanctions. Similarly, the impact of penal orders on other aspects of criminal proceedings – such as victims' ability to claim compensation – remains insufficiently understood.

This article examines the theoretical parallels between penal orders and plea bargaining, focussing on whether penal orders function as an informal offer that reflects the incentive structure found in plea agreements. It explores key aspects

such as the presence of sentencing benefits, the potential penalisation of defendants who file objections and the overall impact on sentencing outcomes.

2. Research questions

The penal order procedure – though procedurally distinct from plea bargaining – increasingly fulfils a similar function: to resolve a large share of criminal cases efficiently, often without a full public trial, and in a manner that relies on the defendant's passive acceptance. While penal orders in Czechia are formally subject to judicial review and offer defendants the opportunity to object without risk, as described below, several features of the system suggest that the decision to object may carry informal consequences. The international literature on plea bargaining consistently identifies the trial penalty – the risk of receiving a harsher sentence after a full trial – as one of the key mechanisms that encourages guilty pleas. Whether a similar dynamic is present in the Czech penal order system remains largely unexplored.

This article therefore seeks to answer the following questions:

1. Do defendants who object to penal orders receive different sentences than those who do not? Specifically, is there evidence that objecting leads to higher penalties – suggesting a form of trial penalty – or are courts generally consistent or even lenient towards defendants who assert their procedural rights?
2. Does the outcome of criminal proceedings depend on who files the objection against the penal order – the defendant or the public prosecutor? Because either of these parties can file an objection against a penal order, it is important to examine whether this distinction influences the subsequent course of the proceedings, particularly the final sentence.
3. How often do penal orders address the claims of injured parties, and what happens to these claims when the procedure is used? Given that penal orders can only resolve victim compensation if the amount is uncontested and clearly established, it is important to understand whether this form of adjudication limits access to restitution or shifts the burden onto victims to pursue civil litigation.

These questions contribute to a growing body of research on the informalisation of criminal justice and the procedural incentives that shape defendants' behaviour. Unlike most studies focussed on plea bargaining, this article explores how similar pressures and outcomes may arise with penal orders. By combining descriptive statistics and outcome comparisons based on case data from Czech district courts, this study offers new empirical insight into how penal orders work in practice. Questions are therefore considered specifically in the context of Czechia.

3. Penal orders in Czechia

A penal order is the most commonly used method of simplified criminal proceedings (diversions) in Czechia.³ Approximately 50%–60% of all criminal cases are decided by first-instance courts through a penal order.⁴ According to the Czech Code of Criminal Procedure, under Section 1(1), the purpose of criminal proceedings is to properly ascertain when a criminal offence occurs and to fairly punish the perpetrators. Considering the fundamental principles of criminal proceedings – particularly the principles of publicity, orality and immediacy – offenders should generally be punished in a main hearing. However, if the factual circumstances are reliably proven by the evidence, a single judge may issue a penal order under the conditions set out in Section 314e of the Code of Criminal Procedure.

This procedure mandates that low-severity crimes with straightforward evidence can be handled through a simplified, “fast-track” process. Under this regime, certain procedural steps are omitted, paperwork is significantly reduced and strict deadlines are imposed. In practice, the penal order “fast-track” approach is mainly applied to cases involving petty theft, traffic offences and other minor offences. Although this procedural economy succeeds in unburdening the courts, it comes at a cost for the defendants.

The essence of a penal order is that the case is not tried in a main hearing, and the court does not decide based on evidence presented before it, but solely on the basis of the case file. A single judge may issue a penal order without a main trial only if the facts of the case are reliably established by the available evidence. A peculiar feature of the penal order is that it is not accompanied by a justification, and a judge may usually impose only certain types of penalties and only within a limited scope. The defendant has the right to file an objection, which directly and automatically annuls the penal order; the case then proceeds to a standard main hearing before a first-instance court. The case remains at the same district court and is decided by the same judge who issued the original penal order.

Therefore, the Czech system of penal orders allows the same single judge who issued the original decision to continue deciding the case. While this approach is administratively efficient, it can raise questions of objective impartiality, as the judge has already expressed a preliminary view on the defendant’s guilt and an appropriate sentence. In light of the case law of the European Court of Human Rights and comparative approaches in other jurisdictions, where a different judge

³ The institution of the penal order was first introduced in the Czech Criminal Procedure Code by Act No. 150/1969 Coll. The deputies of the Federal Assembly then described the penal order as an unlawful institution denying the accused’s right to defence and, in repealing that Act and passing Act No. 178/1990 Coll., they simultaneously abolished the penal order by amending the Criminal Procedure Code. Four years later, however, the deputies of the Parliament of the Czech Republic reintroduced the institution by the same name into the Criminal Procedure Code.

⁴ Overview of non-standard reports – penal orders, Ministry of Justice of the Czech Republic, CSLAV.

may be assigned at a later stage, this feature of the Czech procedure represents a potentially sensitive aspect of the right to a fair trial that may warrant further attention.

Similarly to the defendants' rights to file an objection, the public prosecutor may challenge the penal order by filing an objection. This dynamic raises important questions about the strategic role of penal orders within the fast-track procedure, particularly since there is no prohibition against *reformationis in peius* and there may be potential consequences for defendants who choose to challenge them. Given this absence, a judge may impose either a lighter or a harsher sentence on the defendant after a penal order is annulled.

The issue of penalties imposed by penal orders has once again become the subject of debate.⁵ The possibility to impose an unsuspended prison sentence through a penal order, which existed under the legislation in force since 1994, was abolished as of 1 January 2002. Recently, attention has been drawn to the discussion of a government bill currently under consideration.⁶ This proposed amendment would reinstate the possibility of imposing an unsuspended prison sentence through a penal order.⁷

According to the Czech Code of Criminal Procedure, a single judge may issue a penal order if the evidence is sufficient, although there are certain limitations on the sentences that can be imposed. However, the court is not obligated to use this procedure; if there are any doubts, the case proceeds to a full public trial. In general, there should not be major differences between a sentence imposed through a penal order and one issued after a main trial, unless the evidence changes. In practice, however, a penal order can sometimes serve as an informal incentive to accept the punishment without objection – the accused receives a milder sanction, and the court avoids a full public trial. If no objection is filed, the accused is considered to accept the punishment imposed by the penal order. Previous studies (Drápal 2017) have shown that penal orders often result in more lenient sentences.

The Constitutional Court of the Czech Republic has emphasised that a district court must not impose a harsher sentence after the annulment of a penal order as a sort of sanction “for the accused having exercised their right to file an objection” (II. ÚS 213/2000 2002; III. ÚS 39/09 2010). Where the court continues to rely on the

⁵ The importance of the penal order is further emphasised by the amendment that came into effect on 1 January 2025, which allows penal orders to be issued in misdemeanour proceedings, which are handled by a single judge. Until the end of 2024, a penal order could only be issued in cases where the maximum statutory penalty did not exceed five years.

⁶ In January 2025, the Chamber of Deputies of the Czech Republic discussed an amendment concerning penal orders, which had been reviewed and adopted by the Guarantee Constitutional and Legal Committee. On 17 January 2025, the committee issued a resolution – submitted to the deputies as print 861/1 – that suspended further discussion of the bill.

⁷ The explanatory report for the amendment of Section 314e of the Code of Criminal Procedure, introduced by Act No. 265/2001 Coll., stated: “A penal order represents one of the so-called simplified types of proceedings, whose essence lies in the fact that the court does not decide based on evidence presented before it in a main trial but on the basis of the case file containing records of actions carried out by the police and the public prosecutor.”

same facts as those in the penal order, it should provide a reasonable explanation for why the newly imposed sentence is more severe.

More recent research (Drápal 2021) has shown that sentences imposed through penal orders tend to be more lenient. Although the sentencing decisions issued after an objection have been empirically analysed, they were not compared with the sentences imposed in the penal orders. Understanding these differences can help clarify an unresolved issue in both legal theory and case law: whether penal orders function as an informal agreement on guilt and punishment.

If the defendant objects, the court may impose a harsher sentence in the main trial, even if the evidence has not significantly changed, as the prohibition against *reformationis in peius* does not apply in these cases. This dynamic can be understood through the “shadow of the trial” theory, which suggests that defendants make rational choices and are more likely to accept a penal order if the sentence is lower than the sentence they anticipate at trial, adjusted for the likelihood of conviction. Understanding this process could shed light on an unresolved issue in both legal theory and jurisprudence: whether a penal order functions as an informal “plea bargain.”

In addition to the defendant, the public prosecutor also has the right to file an objection against a penal order. This procedural aspect sets penal orders apart from plea bargaining, where the prosecutor’s role in offering a plea deal differs. While plea bargaining is fundamentally a negotiation between the defendant and the prosecution, with the defendant agreeing to plead guilty in exchange for a more lenient sentence, the objection process in penal orders allows the prosecutor to challenge a penal order if they believe the imposed sanction is inadequate.

This dynamic introduces an additional layer of strategic decision-making, where the prosecutor can influence the final outcome by not only issuing the initial charge, but also determining whether the penal order should be upheld or modified. In contrast to plea bargaining, the prosecutor’s objection in the penal order process does not involve any negotiation and is solely based on their assessment of the case. This procedural difference means that while both mechanisms involve discretion in sentencing, they operate under distinct rules and are not directly comparable in terms of the balance of power between the defendant and the prosecution.

4. Problems of victims’ right to compensation

Recent research highlights growing concerns regarding the position of victims within penal order procedures, particularly with regard to their right to compensation. While penal orders aim to streamline the criminal process, efficiency may come at the cost of victims’ procedural and substantive rights. Expanding the

use of penal orders to a wider range of offences raises important questions about whether sufficient safeguards exist for victims, especially in relation to their right to participate in proceedings and to seek redress (Đurđević, Bonačić, Pleić 2021; Saukāne 2023).

From a victims' rights perspective, access to compensation is not merely a procedural technicality, but rather a fundamental element of access to justice. The right to an effective remedy is deeply rooted in legal and philosophical traditions, from early legal codes such as the Code of Hammurabi and Anglo-Saxon law, through the Magna Carta's emphasis on access to justice, to modern international human rights instruments. In particular, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) states that victims should be treated with compassion and respect for their dignity, should have access to justice mechanisms and should receive prompt redress for the harm they have suffered. This framework emphasises that victims are not merely passive observers in criminal proceedings, but rightsholders entitled to restoration, participation and recognition.

These principles closely align with restorative justice theory, which views crime primarily as harm done to individuals and communities, rather than solely as a violation of state law (Zehr 2005). From this perspective, justice should focus on repairing harm, restoring dignity and empowering victims. Research shows that when victims are able to actively participate in the justice process, express their experiences and pursue redress, they experience greater validation, a stronger sense of control and better psychological outcomes (Lloyd, Borrill 2019). Compensation therefore plays a symbolic and psychological role as well as a financial one, signalling acknowledgement of harm and contributing to the victim's recovery and empowerment.

In this context, the possibility for victims to be heard again as witnesses in a main hearing should not be viewed solely as an evidentiary formality, but rather as a concrete manifestation of access to justice. Participating in the main hearing allows victims to present their experience in their own words, to have their harm publicly recognised and to directly engage with the criminal process. Such participation is repeatedly identified in the victimology and restorative justice literature as a crucial factor in restoring dignity, empowerment and procedural fairness (Umbreit 2002).

Within this theoretical framework, penal order procedures appear problematic. As a summary procedure, the penal order is designed to adjudicate cases without a full main hearing. In the Czech context, this creates tension with victims' rights. Victims must assert their claim for compensation at the beginning of the main hearing, yet courts are not obliged to inform them in advance that a penal order is being considered. In practice, a penal order may be issued without the victim's knowledge or participation, effectively eliminating their opportunity to file a claim within the criminal proceedings. This undermines both their procedural rights and their broader right to access justice.

Such exclusion stands in direct contrast to the principles of both restorative justice and access to justice. If access to justice is understood as the ability to claim rights, participate meaningfully and obtain effective remedies, as articulated by the United Nations Development Programme, then a procedure that systematically excludes victims from asserting their claims cannot be considered fully just. It risks reinforcing what trauma-informed scholars describe as secondary victimisation: a process in which institutional practices intensify, rather than alleviate, the harm suffered by victims (Herman 2015).

5. Sample and variables

The empirical dataset consisted of 623 criminal cases decided between 2010 and 2018 in which a penal order was issued and subsequently annulled following an objection. The cases were obtained from 66 of the 86 Czech district courts, representing approximately 76.7% of all first-instance courts in the country. No data were available from 15 courts, and an additional 5 courts failed to provide the follow-up decision that was issued after the penal order was annulled. The most common reason for not providing this data was the high administrative fee required to anonymise court decisions.

The initial population consisted of all cases between 2010 and 2018 in which a penal order was issued and later annulled by an objection. From this group, a random sample of 2,000 cases was generated. From this pool, a further random subsample of 1,000 cases was selected, and formal requests under the Freedom of Information Act were submitted to the respective courts for both the annulled penal order and the subsequent judicial decision following the main hearing. Due to missing or incomplete responses, the final analysable sample consisted of 623 complete case pairs (penal order + subsequent decision).

Each case was manually coded using a structured coding sheet containing predefined variables and fixed categories. These variables were organised into three main groups: (1) identifying information, (2) offence characteristics and procedural history and (3) sentencing outcomes, including both primary and secondary sanctions and variables related to the adhesion procedure and compensation claims. To minimise the risk of individual bias or coding errors, all coding decisions were reviewed at least twice at different stages of data collection and analysis.

However, the chosen method of recording data is inherently limited in that the coding was carried out by a single researcher, which may have increased the risk of subjective influence. This risk is further compounded by the author's professional background: the author is a PhD candidate at the Faculty of Law of Charles University, specialising in criminal procedure and compensation for victims of crime, who also currently works as a trainee lawyer, participating in criminal

cases both as defence counsel and as a legal representative of victims. Although this background provides an informed understanding of criminal procedure, it may also influence the author's perspective. Nevertheless, the study was conducted strictly in an academic capacity and independently.

The sample consists primarily of low-to-medium severity offences typically addressed through the penal order procedure, including property offences (e.g. theft, fraud or damage to property), violent offences (e.g. bodily harm or disorderly conduct), traffic-related offences and other less serious crimes. In terms of the specific offences represented, the most frequent ones were Negligence of Mandatory Support (section 196), Menace under the Influence of an Addictive Substance section 274), Theft (section 205) and Obstruction of Justice and Obstruction of a Sentence of Banishment (section 337), followed by other common property and violent offences such as Fraud (§209), Bodily Harm (sections 146–148) and Disorderly Conduct (section 358). The dataset also contains smaller proportions of offences such as Damage to Property (section 228), Breaking and Entering (section 178) and selected sexual offences (section 241). These offences and their proportions correspond with the use of penal orders in the practice of the Czech criminal justice system.

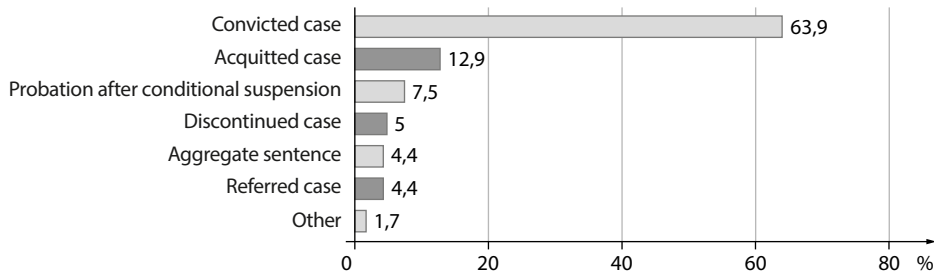
6. Results

Drawing upon the research questions posed, this section presents the empirical findings. Firstly, I examine how filing an objection against a penal order influences the outcome of the criminal proceedings – specifically, whether the defendant is found guilty or acquitted or the case is otherwise resolved. Secondly, I compare the sentences imposed in penal orders and in the subsequent judgments rendered after the objection. I analyse the types of sentences (e.g. suspended sentences, fines, unsuspended imprisonment and community service) and their severity or duration, paying particular attention to whether the entity filing the objection – the defendant or the public prosecutor – impacts the sentences. This aims to ascertain whether filing an objection leads to systematically harsher sentences, potentially indicating a “trial penalty” as seen in plea bargaining. Finally, I address the issue of compensation for victims.

The distribution of outcomes in criminal proceedings, as depicted in Figure 1, provides insight into how cases are resolved following objections to penal orders. Most of the cases (63.9%) resulted in a conviction, reinforcing the idea that most objections do not ultimately overturn the original finding of guilt. However, a notable portion of cases did not lead to a conviction: 12.9% ended in acquittal, and an additional 7.5% were conditionally discontinued, often because the offender was cooperative or the offence minor. Discontinued proceedings (5%) and transfers to other authorities (4.4%) made up the remainder.

This distribution suggests that while the dominant trend was towards confirming guilt, a meaningful share of the objections did result in more favourable outcomes for defendants. In particular, the combined 25% of cases which did not end in a conviction indicates that objecting to a penal order can, in some instances, lead to acquittal or alternative resolutions – supporting the idea that exercising procedural rights does not inherently lead to harsher penalties. Instead, it may offer defendants a chance for re-evaluation, and in some cases, even a more lenient or just outcome.

Figure 1. Percentage distribution of case outcomes

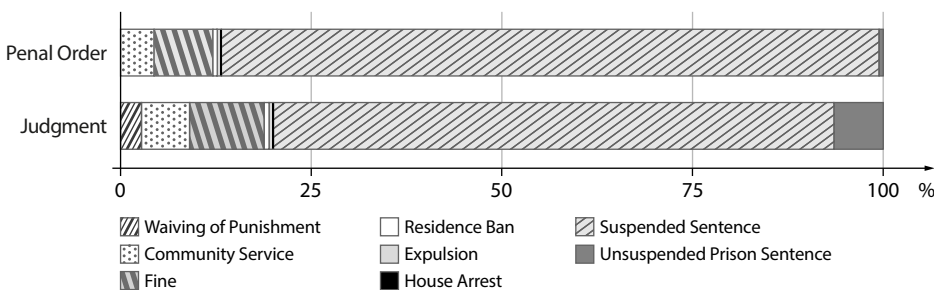


Source: Own elaboration.

Figure 1 shows on x-axis different types of case outcomes (e.g. conviction, acquittal, conditional discontinuation, etc.), while the y-axis represents the percentage of cases. The graph illustrates that convictions make up the majority of outcomes, with smaller proportions for acquittals and other resolutions. It shows that although most objections lead to conviction, a significant share results in alternative outcomes.

Understanding the types of punishment imposed before and after objections to penal orders is essential for evaluating the existence and magnitude of a trial penalty. If objecting to a penal order systematically results in more severe or qualitatively different sanctions, this may indicate that defendants are discouraged from asserting their procedural rights. By comparing the distribution and severity of punishments across both procedures, we can assess whether penal orders operate as a form of coercive sentencing incentive.

Figure 2. Primary punishments distributions



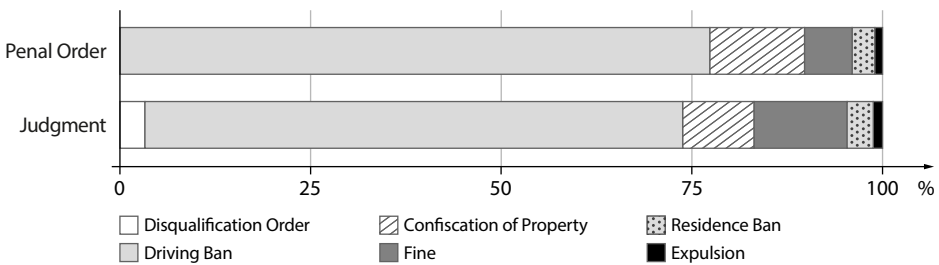
Source: Own elaboration.

Figure 2 displays types of primary punishments (such as suspended sentences, fines, community service, and imprisonment), the y-axis shows their percentage distribution. The graph compares two categories: penal orders and judgments after objection. It demonstrates that penal orders are dominated by suspended sentences, while judgments show a more varied distribution including more severe penalties.

The distribution of primary punishments highlights notable differences between the penal orders and the subsequent judgments, providing further context for understanding the effects of objection. Penal orders overwhelmingly relied on suspended sentences (86.4%), with fines (7.5%) and community service (4.3%) playing a relatively minor role. Other forms of punishment occurred in less than 2% of these cases. Judgments, on the other hand, exhibited a more diverse sentencing profile: while suspended sentences still dominated (73.7%), there were significantly more fines, unsuspended prison sentences and community service orders (roughly 6%–10% each).

This variation suggests that objecting to a penal order and proceeding to trial may expose defendants to a broader range of sentencing outcomes, including more severe penalties such as unsuspended prison terms. While penal orders appear to serve as a streamlined mechanism for handling lower-severity offences – often resulting in lenient, suspended sentences – the judgments were more likely to reflect the complexities and seriousness of individual cases. Importantly, despite this broader range, suspended sentences remained the most common outcome across both mechanisms, indicating a general judicial tendency to prioritise conditional sanctions over immediate incarceration or financial penalties. Nonetheless, the shift in punishment types following an objection suggests that while asserting one’s procedural rights does not always lead to harsher sentences, it may introduce greater variability and the potential for more serious outcomes.

Figure 3. Secondary punishments distribution



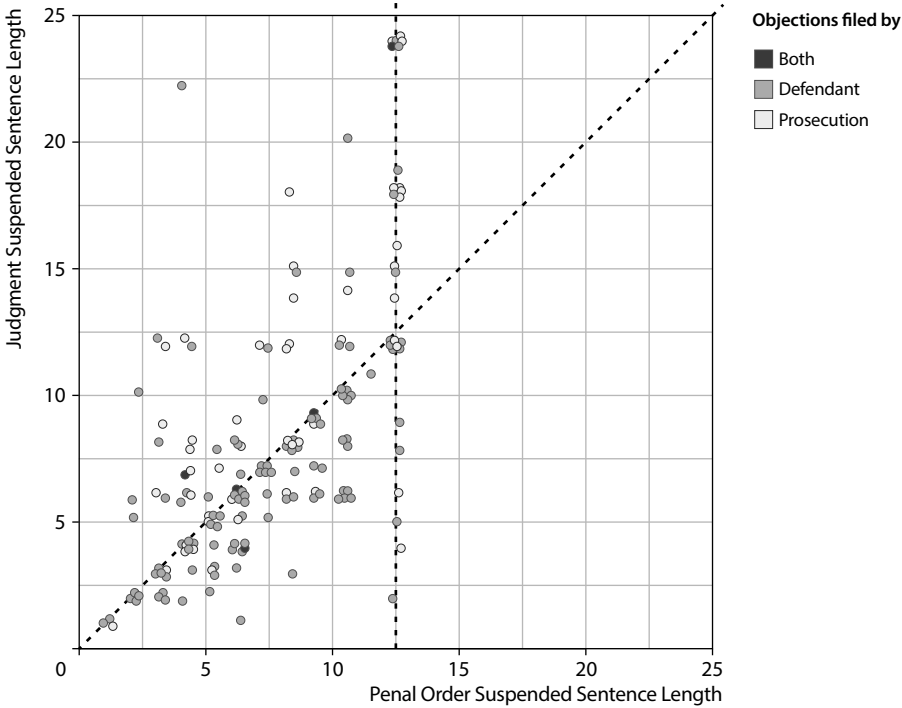
Source: Own elaboration.

Figure 3 lists different types of secondary punishments (e.g. driving bans, fines, confiscation), while the y-axis indicates their proportion. The graph compares how frequently these punishments occur in penal orders versus judgments. It shows that driving bans are the most common in both, but other sanctions vary more in judgments, reflecting broader judicial discretion.

The distribution of secondary punishments reveals significant differences between penal orders and the judgments subsequent to objections. Driving bans constituted the predominant secondary punishment in both procedural outcomes, accounting for approximately 70% of all secondary sanctions. However, the remaining punishment types showed varying patterns of application. Fines represented the second most common secondary punishment (12.1% in judgments), followed by confiscation of property (9.6%). Less frequently imposed ones were disqualification orders and residence bans (3.3% each), with expulsion measures being the least common (1.3%).

These proportional differences highlight how judicial discretion may shift when cases transition from the simplified penal order procedure to a full public trial, potentially reflecting more nuanced considerations of individual circumstances and the impact of defendants directly participating in the judicial process. This pattern suggests that while the core punitive approach remains consistent across both procedural tracks, the distribution of alternative sanctions demonstrates meaningful variation in judicial decision-making. Having examined the distribution of punishment types, we now turn to an analysis of their magnitude – specifically, the length or severity of the sentences that were imposed.

Figure 4. Suspended sentence lengths



Source: Own elaboration.

Figure 4 represents the length of suspended sentences in penal orders on x-axis, while the y-axis shows the length after objection (in judgments). Each point corresponds to a case, and the diagonal reference line indicates equal sentence lengths before and after objection. The graph reveals that sentences tend to increase more when the prosecutor files the objection, while changes are minimal when the defendant objects.

The scatter plot in Figure 4 illustrates how suspended sentence lengths differed depending on who filed the objection, offering insights into whether defendants who object to penal orders receive different outcomes. The analysis revealed that the overall mean suspended sentence was 0.89 months longer for cases that proceeded to trial, suggesting that, on average, judgments result in slightly longer suspended sentences than the original penal orders. This difference may point to the existence of a small trial penalty, where objecting leads to harsher outcomes.

The observations in the plot are colour-coded according to the party who filed the objection, and the jittered points show that most cases in the “Prosecution” group are clustered above the 45-degree reference line, indicating longer sentences following an objection. Specifically, when the public prosecutor objected, the average sentence increased from 8.10 to 10.51 months. In contrast, when the defendant objected, the change was minimal – from 7.35 to 7.59 months – implying that courts are relatively consistent or only slightly more punitive towards defendants who challenge penal orders. The dark green vertical line at the 12-month mark further emphasises how most outcomes remain within typical sentencing boundaries. These findings suggest that while prosecutorial objections are associated with noticeably higher penalties, defendants who assert their procedural rights do not face substantially harsher sentences.

The analysis also shows that defendants who filed objections tended to receive marginally reduced penalties for both probation periods and driving bans. For the former, defendants saw a mean reduction of about 0.44 months (-1.98%), whereas for the latter they experienced a reduction of about 1.21 months (-5.45%). In contrast, prosecutors’ objections were associated with slight increases: a 1.42-month increase (5.32%) for probation periods and a 0.78-month increase (2.77%) for driving bans.

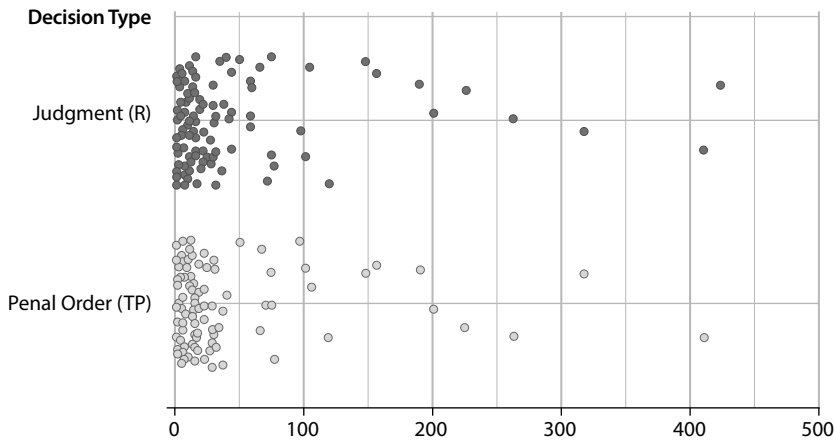
These findings suggest that when defendants assert their procedural rights they might be slightly favoured by the system, compared to when objections come from the prosecution. Overall, while the differences were modest, they provide valuable insight into how the identity of the objecting party can influence sentencing outcomes in penal orders and subsequent judgments.

6.1. Victim compensation

The analysis of compensation for victims in penal orders reveals distinct patterns across different types of offences. Theft (section 205) and Fraud (section 209)

emerged as the most frequent offences where compensation was awarded by penal order. This was followed by cases of Disorderly Conduct (section 358) and Damage to Property (section 228). Bodily Harm cases (section 146) and cases involving Harm to Health out of Excusable Motives (section 147) also comprised a significant part of the compensation awards. The data suggests that property-related offences (Theft, Fraud and Damage to Property) dominate the compensation landscape in penal orders, which aligns with the nature of these offences, where financial losses are more readily quantifiable.

Figure 5. Compensation amounts



Source: Own elaboration.

Figure 5 distinguishes between penal orders and judgments, while the y-axis represents the amount of compensation awarded (in CZK). The graph shows the distribution and spread of compensation amounts for both types of decisions. It illustrates that judgments generally involve higher and more variable compensation amounts compared to penal orders.

Figure 5 shows the distribution of compensation amounts for both decision types, making it easy to compare the typical awards and the spread of values in each category. The analysis of victim compensation in criminal proceedings reveals clear patterns in both the amounts awarded and the outcomes of compensation claims. With penal orders, the victim's claim is most often fully granted, with the majority of cases leading to the entire requested compensation being awarded. In a smaller number of penal order cases, only part of the claim was recognised, while in some instances victims were directed to pursue their claims through civil proceedings rather than within the criminal process.

Judgments, on the other hand, displayed a broader range of outcomes. While some judgments fully granted compensation, others only partially recognised the victim's claim, and a notable portion referred the victim to civil proceedings. This

suggests that penal orders are typically used in more straightforward cases where the facts and entitlement to compensation are clear, allowing for a quicker and more complete resolution for victims. Judgments are more likely to be employed in complex or disputed cases, where the outcome may be less certain or only partially favourable to the victim.

When comparing the amounts awarded, penal orders were associated with slightly lower median and mean compensation than judgments. The median compensation for penal orders was CZK 13,000, while for judgments it was CZK 14,029. The average amount awarded in judgments was also higher, at CZK 52,809, compared to CZK 36,103 for penal orders. This indicates that while penal orders are effective at efficiently resolving less complex claims and providing full compensation in most cases, judgments play a crucial role in addressing higher-value or more complicated claims.

The victims received compensation in judgments approximately 10% more often than in penal orders. Specifically, compensation was awarded in 118 cases with judgments compared to 107 with penal orders, meaning that judgments accounted for about 52.4% of all compensated cases, while penal orders accounted for about 47.6%. This highlights the fact that judgments were slightly more likely to result in compensation for victims than penal orders.

The opportunity to testify in open court may have implications that extend beyond the symbolic or therapeutic dimension. By fully articulating the extent, context and consequences of the harm suffered, victims may influence the court's assessment of the damages, including the seriousness of the offence and the scope of compensation. In this sense, victim participation in the main hearing can also be understood as a factor that may contribute to higher compensation awards in judgments when compared to penal orders, where such interaction is largely absent. The data presented in this study, showing higher mean and median compensation in judgments, may therefore be partly explained by the greater visibility of victims and their harm within the adversarial process.

These findings illustrate a fundamental paradox. On the one hand, penal orders can be efficient instruments for compensation in straightforward cases. On the other hand, their procedural design may exclude victims altogether, depriving them of agency, voice and legal remedy. From a normative perspective grounded in victims' rights, restorative justice and access to justice theory, this tension raises serious concerns. A justice system that seeks legitimacy, equality and fairness cannot prioritise procedural efficiency over the fundamental right of victims to recognition, participation and redress. Consequently, restricting cases to penal order procedures not only reduces opportunities for victims' expressive and participatory rights, but may also indirectly limit the amount of compensation they are able to obtain. From the perspective of access to justice, this further reinforces the argument that summary procedures, while efficient, require additional safeguards to ensure that victims are not systematically disadvantaged in both procedural and material terms.

Penal orders will remain a central feature of contemporary criminal procedures, but stronger safeguards are necessary. These may include mandatory notification of victims when a penal order is being considered, an extended timeframe for submitting compensation claims or alternative mechanisms through which victims can exercise their rights even in summary procedures. Without such reforms, penal orders risk contributing not only to procedural inequality, but also to further psychological and moral harm to those already victimised.

7. Discussion

Firstly, filing an objection alters the nature of the outcome and broadens the range of potential sentences. While penal orders were predominantly associated with suspended sentences (86.4%), filing an objection and proceeding to a full public trial led to a wider spectrum of sanctions. Notably, there was a significantly higher proportion of unsuspended prison sentences, appearing in roughly 10% of cases following an objection. This finding supports theoretical concerns that defendants who choose to challenge a penal order expose themselves to a tangible risk of a more severe punishment.

However, the dynamic is not uniformly punitive; objections frequently result in more favourable outcomes. Despite the risk of a harsher sentence, a substantial portion of cases conclude differently than with a conviction after an objection is filed. As much as 25% of all objections led to an outcome other than conviction, with 12.9% of defendants being fully acquitted and another 7.5% of cases being conditionally discontinued.

These data represent a significant contribution to the theoretical understanding of the “shadow of the trial.” While theory suggests that defendants might rationally accept the potentially milder sanction of a penal order to avoid the risk and severity of a trial sentence, the fact that a considerable number of objections resulted in acquittal or discontinuation complicates a simple model of rational choice. It suggests that defendants (or their counsel) may perceive a sufficient chance of a favourable outcome, or that factors beyond just predicting the sentence influence the process. Our findings thus expand on the understanding of defendant decision-making dynamics in systems that make use of simplified procedures.

Thirdly, the analysis reveals that the “trial penalty” is contingent on who files the objection. Our findings demonstrate that the pattern of sentencing after an objection differs based on the objecting party. While objections filed by the public prosecutor were demonstrably correlated with stricter sentences – longer suspended sentences in particular (an average increase of 2.41 months, from 8.10 to 10.51 months) – objections filed by the defendant did not result in harsher punishment overall. The average increase in the length of suspended sentences for

defendant-filed objections was minimal (only 0.24 months, from 7.35 to 7.59 months), and for some secondary penalties such as driving bans and probation periods, there was even a slight average reduction compared to penal orders.

This finding directly addresses a key research question and contributes to the theoretical debate surrounding the “trial penalty.” It indicates that in the Czech penal order system, while the risk of a more severe sentence exists (including imprisonment), courts do not systematically penalise defendants merely for exercising their right to object, which aligns with the jurisprudence of the Supreme Court and the Constitutional Court. A stricter outcome after an objection seems more linked to the procedural activity of the public prosecutor, possibly reflecting a different strategic assessment of the case or an effort to achieve a more severe punishment.

Most importantly, this study does not provide evidence of a widespread “trial penalty” affecting defendants who exercise their right to object to a penal order. Although the risk of a more severe sanction, including unsuspended imprisonment, cannot be entirely excluded in individual cases, the data clearly show that the defendants were not, on average, punished significantly more harshly for filing an objection. On the contrary, approximately one quarter of all objections resulted in outcomes other than conviction, including acquittals and conditional discontinuations.

Any observable increase in sentence severity is primarily linked to the objections filed by the public prosecutor, not by the defendants themselves. This finding directly challenges assumptions drawn from the plea bargaining literature and suggests that, in the Czech context, the penal order procedure does not function as a systematic coercive instrument discouraging the exercise of procedural rights.

Finally, the study highlights a significant issue concerning the rights of victims within the penal order procedure. The analysis of the results shows that penal orders most frequently addressed compensation in cases of property crimes, such as theft, fraud or damage to property, where financial losses are more readily quantifiable. The findings of this study indicate that the limited involvement of victims in penal order proceedings may negatively affect not only their procedural rights, but also the amount of compensation they are awarded. Unlike in main hearings, victims in penal order proceedings lack the opportunity to be heard as witnesses and to directly communicate the impact of the offence. From the perspective of access to justice, this represents a significant limitation, as being heard in court is both a symbolic and practical component of recognition and redress. This diminished participation may partly explain why compensation awarded through judgments tended to be higher than that granted through penal orders.

The ability of victims to testify in a main hearing should be understood as a key expression of access to justice. It enables courts to gain a fuller understanding of the harm caused and may directly influence the assessment of compensation. In contrast, the summary nature of penal orders prioritises efficiency over participation, which can result in a more superficial evaluation of the victim’s claim. While this procedural simplification benefits judicial economy, it risks placing victims at a structural disadvantage when seeking adequate redress.

These findings suggest that if penal orders are to remain widely used, additional safeguards for victims' rights should be considered. This may include requiring victims to be informed before a penal order is issued, expanding opportunities for written victim impact statements, or strengthening judicial scrutiny of compensation claims in summary proceedings. Such reforms could help balance efficiency with fairness and ensure that victims' access to justice is not compromised by procedural shortcuts.

Conclusion

This study provides the first systematic empirical analysis of penal orders and subsequent objections in Czechia. Based on a dataset of 623 cases from 66 district courts between 2010 and 2018, the findings demonstrate that, while filing an objection to a penal order may broaden the range of potential sentencing outcomes, it does not result in a systemic trial penalty for defendants. Approximately 25% of cases ended in acquittal or discontinuation following an objection, and only a marginal average increase in sentence severity was observed – primarily in cases where the objection is filed by the prosecution rather than the defendant.

The results demonstrate that, although objections broaden the range of potential sentencing outcomes, they do not produce a systemic trial penalty for defendants. Instead, sentencing patterns reveal a more nuanced dynamic: while some defendants faced harsher punishment – including unsuspended imprisonment – approximately one quarter of the objections resulted in acquittal or discontinuation of the case. Any observable increase in sanction severity was driven primarily by objections filed by public prosecutors, suggesting that higher sentences reflect prosecutorial strategy rather than judicial retaliation against defendants who exercise their procedural rights.

These results have broader implications for sentencing discretion. Penal orders shift part of the sentencing process from full judicial reasoning to a streamlined, file-based assessment, which may limit opportunities for individualised judicial evaluation. However, the absence of a consistent punitive response to defendant-filed objections indicates that courts retain – and exercise – discretion in a manner that does not penalise procedural participation. This suggests that sentencing discretion remains meaningfully preserved despite the procedural simplification inherent in penal orders.

The findings also contribute to the trial penalty debate. Much of the literature, particularly from common-law jurisdictions, portrays trial penalties as a structural feature of negotiated justice systems. By contrast, the Czech penal order system shows a more differentiated pattern: while harsher outcomes are possible, they are neither systematic nor automatic. This challenges assumptions that fast-track mechanisms inherently coerce defendants into accepting summary decisions. Instead,

the data point to a hybrid dynamic in which some defendants rationally anticipate favourable outcomes at trial, consistent with the more complex decision-making models emphasised in recent critiques of the “shadow of the trial” theory.

Finally, the study carries significant implications for fast-track criminal procedures in continental Europe. Many European jurisdictions rely increasingly on summary mechanisms to reduce caseload pressures and accelerate adjudication. The Czech case shows that such procedures can operate without generating systemic coercion – yet they may create other structural imbalances, particularly concerning victims’ rights and compensation. The limited participation of victims and the lower frequency of compensation awards in penal order proceedings compared to full trials highlight an asymmetry that is not merely procedural but substantive. As fast-track procedures continue to expand across Europe, ensuring fairness for both defendants and victims will be essential to maintaining the legitimacy of simplified justice.

Overall, this study demonstrates that penal orders occupy an ambivalent position within modern criminal justice: they enhance efficiency and reduce delay, yet they raise important questions about discretion, participation and equality. By empirically testing assumptions derived from the plea bargaining scholarship within a civil-law framework, the study contributes to comparative debates on summary justice and highlights several avenues for further research, including international studies of fast-track sentencing and qualitative analyses of decision-making among judges, prosecutors and defence lawyers.

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