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Analysis of Early Termination in Criminal Proceedings: A Systematic Review

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Abstract

Early termination was introduced in criminal procedural reforms in Latin America and other regions to speed up times, decongest courts, and improve efficiency. It emerged from Anglo-Saxon plea bargaining, which had pragmatically proven its usefulness. A systematic review of 20 articles was applied between 2013-2023 on the effectiveness of early termination in improving the efficiency of criminal proceedings in Europe, America, and Australia. It was found that there is no clarity on whether early termination fulfills the purpose of making criminal justice systems more efficient. Some studies see positive aspects such as reduced deadlines in simple cases and more agile processes in specific stages. Others are skeptical about persistent problems in complex cases, negative side effects on rights, and doubts about the quality and fairness of agreements. Controversies were seen between positions for and against regarding this procedural tool's potential benefits and limitations. Consequently, it is concluded that there is not enough evidence to validate that early termination efficiently meets the expectations that motivated its adoption. It is necessary to rigorously recapitulate its real scope before expanding these procedural modalities whose effectiveness is not empirically proven in most criminal justice systems.

Keywords: Anticipated termination, plea bargaining, criminal procedure efficiency, judicial reforms.

Introduction

Early termination, also known as an abbreviated procedure or plea bargaining, is a procedural mechanism that allows a criminal proceeding to end before trial. It is generated through a negotiation between the prosecutor and the accused so that the latter pleads guilty in exchange for a reduced sentence (Jahn & Schmitt, 2020). In this way, the oral debate of the trial is avoided, promoting a quick and economical solution to resolve cases, mainly related to petty crime (Rusman, 2022).

This instrument has its historical roots in plea bargaining emerged in the Anglo-Saxon criminal system in the first half of the twentieth century (Helm,

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2019). Faced with a massive increase in criminal cases that threatened the collapse of their courts, a pragmatic way out was chosen granting the defendant the benefit of a lesser sentence in exchange for pleading guilty and thus avoiding a long and costly trial (Wilford et al., 2020).

The success of plea bargaining in decongesting the Anglo-Saxon criminal system caught the attention of European countries, which, in the mid-twentieth century began to implement the so-called “defendant's compliance”, taking elements of this plea bargaining (Dervan, 2019). Italy, Germany, and Portugal incorporated early on some regulations in this regard.

Towards the end of the 20th century and the beginning of the 21st century, this mechanism gained more strength in the context of more comprehensive reforms of criminal systems around the world to incorporate adversarial oral trials (Petrakova, 2019). Both in Latin America and Spain, early termination or plea bargaining became a centerpiece of the new criminal procedural models, with the understanding that it would contribute decisively to decongesting courts, speed up processes, and reserve resources (Turner, 2020).

Thus, in the last two decades, early termination has expanded to become standard in the vast majority of criminal procedures in the world (Kolesnik, 2023). Both Anglo-Saxon criminal systems and civil law countries have incorporated it under various modalities and nomenclatures, to offer an agile solution to the process in exchange for an agreed penalty and thus avoid an oral trial (Kuzmin, 2021).

However, in recent years serious questions have arisen about the effectiveness of early termination to meet the purposes of procedural efficiency and prompt resolution of less serious cases (Lim, 2019). On the one hand, in some countries, there is an upward trend in the use of this simplified route, with prosecutors' offices reporting that a large proportion of cases are resolved by this route (Palcu & Morostes, 2022). At the same time, lawyers, academics, and civil organizations have expressed concern regarding arbitrariness, lack of transparency, and proportionality of penalties.

Given this lack of consensus, a thorough review of the available empirical evidence on the true effectiveness of early termination is necessary. The high rates of use may not reflect a real positive impact if qualitative aspects of its implementation are not analyzed in detail. There are also insufficient comprehensive studies that evaluate this procedural tool by contrasting its results with the purposes for which it was created.

The present review follows a structured methodology in a broad analysis of the existing literature on the actual effectiveness of early termination to determine whether or not it is fulfilling its original purpose of contributing to more

efficient and expeditious criminal proceedings. It critically examines available empirical studies from around the world, seeking to clarify the current debate through an in-depth examination of quantitative and qualitative data.

First, global statistics on the rates of use of early termination and its reported correlation with the duration of criminal proceedings are evaluated. In this regard, possible explanations are explored as to why early termination is not yielding the expected results in various national contexts, despite its widespread use. Among the factors identified are limited monitoring and control systems, risks of overcriminalization to pressure agreements, delays in updating regulatory frameworks, and insufficient training of prosecutors.

Finally, considering these findings, specific recommendations are made to maximize the benefits of early termination and mitigate the shortcomings detected in its practical implementation. These are mainly aimed at ensuring greater levels of transparency, external control, and procedural balance between parties to protect the rights of the accused. Better training of prosecutors and explicit guidelines on criminal proportionality are also suggested.

In short, although early termination represents a positive contribution as an expeditious way to decongest the courts, its actual application is far from being free of complications. It is imperative to urgently address the problems identified and adopt corrective measures to protect individual rights that could be violated. Only in this way can this extended procedural mechanism effectively fulfill its purpose and contribute to greater efficiency in criminal justice systems around the world.

Methodology

A systematic review of the available empirical literature on the effectiveness of early termination in criminal procedure systems around the world was carried out. A search, selection, and structured analysis of relevant publications was made to synthesize the current evidence on this topic. The basic research question is: what is the real effectiveness of early termination of criminal proceedings to achieve more efficient and expeditious processes, according to the existing evidence in the literature?

In this regard, a series of inclusion and exclusion criteria were considered (Table 1).

Table 1.
Criteria for the selection of scientific articles

Inclusion criteria	Exclusion criteria
Scientific publications between 2013 and 2023, inclusive	**Publications published before 2013**
Research on the Penal Systems of the following places: - Europe - South America - Central America - North America: United States of America, Canada, Mexico - Australia - East	**Publications on Penal Systems in other regions.**
Scientific articles analyze in a general way the functioning, characteristics, and reforms, among other aspects of the penal systems of the places mentioned above.	**Analysis of special criminal law programs not directly related to the general functioning of the penal system.**
Research that specifically studies the effectiveness, results, or impacts of the application of early termination or resolution of criminal proceedings.	**Research related to other criminal procedural mechanisms other than early termination or resolution.**
Articles that present quantitative or qualitative measurements on the results of the implementation of this criminal procedure mechanism.	**Articles without presentation of results, quantitative or qualitative analysis on the implementation of early termination of proceedings.**

Source: Own elaboration

The systematic literature search will be performed in specific databases, using a location string with keywords and Boolean operators (Table 2). Filters will be applied by date of publication, geographic area, discipline, and type of document.

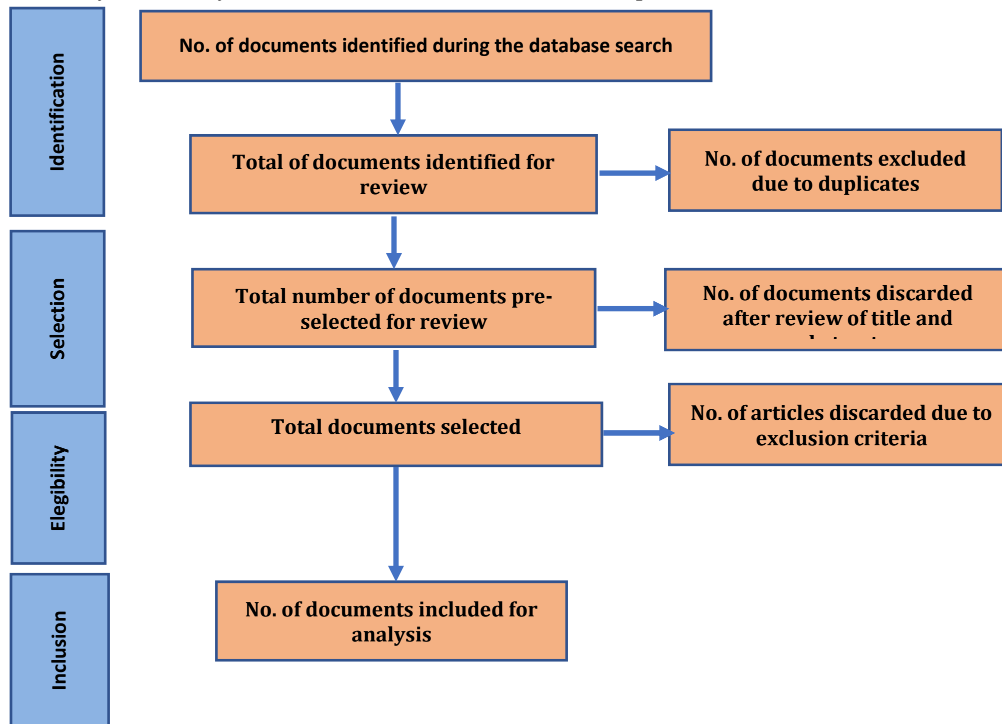
Table 2.
Search Equations

Database	Search string
Scopus	("plea bargaining" OR "early resolution" OR "abbreviated trial") AND (effectiveness OR evaluation OR impact)
Web of Science	TI=("anticipated termination" AND effectiveness) OR AB=("penal settlement" AND impact)
HeinOnline	KW=("guilty plea" AND benefits) OR FT=("negotiated justice" AND outcomes)
Westlaw	TW=("procedimiento abreviado" AND eficacia) OR TW=("terminación anticipada" AND evaluación)
Scielo	("justiça negociada" AND "resultados") OR ("salidas tempranas" AND "eficiência") OR ("procedimiento monitorio" AND beneficios)

After eliminating duplicates, the selection of potential articles for full review was carried out in two stages: 1) Systematic review of titles and abstracts to identify the inclusion of variables of interest; 2) Full reading to confirm methodological quality, systematized presentation of empirical results on the effectiveness of early termination, and consistency between data and conclusions. All this follows the Prisma flowchart (Figure 1).

Figure 1.

Prisma flowchart for the article search and selection process



Source: Own elaboration

Results

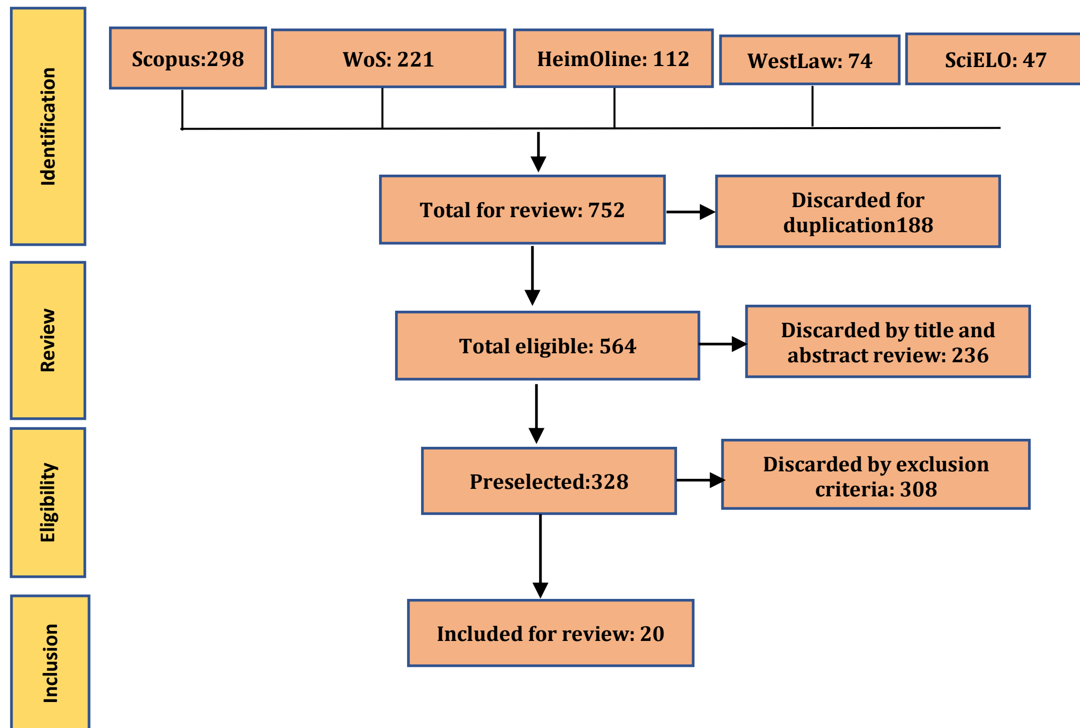
In the first stage, 752 documents were identified, of which 298 were found in Scopus, 221 in Web of Science, 112 in HeinOnline, 74 in WestLaw, and 47 in Scielo. After eliminating duplicates, the initial number was reduced to 564 eligible texts. In the review of titles and abstracts, 236 documents were discarded if they did not meet the thematic or methodological criteria. Finally, according to the strict application of pre-established inclusion and exclusion criteria, 20 texts were selected for the systematic review of the effectiveness of early termination in improving the efficiency of criminal proceedings. This applied procedure is graphically summarized in Figure 2.

In general, the results show positive impacts in terms of procedural efficiency, although with certain warnings about potential adverse effects such as undue coercion of defendants. In this regard, the need to establish adequate safeguards and supervision to ensure that the use of alternatives is voluntary, informed, and free of undue pressure is highlighted. It also poses the challenge of

finding a balance between procedural efficiency and material justice in each particular case.

Figure 2.

Diagram of results in the application of PRISMA on the search and selection process of articles

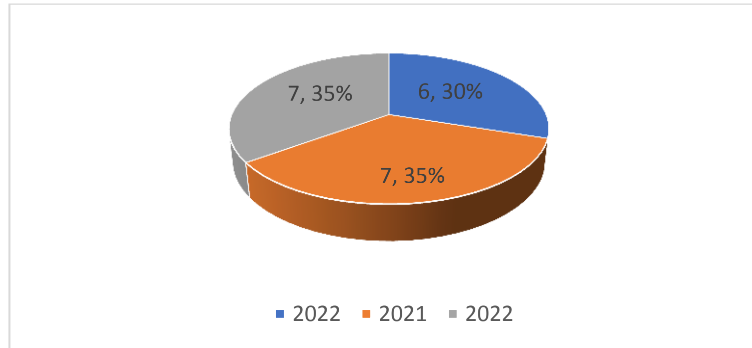


Source: Own elaboration

Table 3 shows the qualitative results of the systematic review performed, presenting the findings of the 20 scientific articles selected according to the pre-established inclusion and exclusion criteria. All the research analyzed falls within the period 2020-2022 (Figure 3). This shows that the topic has gained increasing attention in the recent academic debate.

Figure 3.

Articles published by year in the study period



Source: Own elaboration

The main findings and positions of some authors reiterate optimistic views on the impact of early termination on the efficiency of criminal procedure. Similarly, many skeptical positions emphasize persistent problems and negative effects that overshadow their results. In turn, it schematically condenses this state of controversy and lack of consensus in the specialized literature regarding the real effectiveness of procedural reforms implemented in different criminal justice systems to introduce modalities of negotiated early termination of the process.

However, despite the lack of consensus, certain trends and regularities can be observed in the arguments put forward by both advocates and critics of these procedural reforms, and of the early termination of criminal proceedings. On the positive side, the ability to decongest the courts by reducing the number of cases that go to trial is emphasized. For example, the reduction in costs and use of resources associated with the processing of cases, the obtaining of confessions and collaboration of the accused to clarify facts, and the greater speed in the resolution of cases and punishment of those responsible.

On the other hand, the following risks were noted: the possibility of judicial error and unjust convictions due to pressure to confess guilt; the lack of transparency, control, and citizen participation in discretionary agreements between prosecutors and defense attorneys; the perpetuation of inquisitorial practices under new procedural forms; the inequality between the prosecution and the defense in negotiating equitably; and the increase in criminal and punitive power under the logic of effectiveness.

Likewise, there are still gaps in knowledge about the factors that influence a more or less successful implementation of these procedural reforms. Among them are the political will of authorities, budgetary resources, institutional capacities, support of legal operators and receptiveness in legal cultures, but there is a lack of more in-depth empirical analysis in this regard.

In this regard, almost three decades after the adoption of adversarial criminal procedure reforms in Latin America, the heated doctrinal debates and antagonistic approaches to early termination of criminal proceedings have not yet been settled and do not seem close to being reconciled. While some continue to ponder its benefits for the sake of a more efficient, restorative, and restorative criminal justice system, its opponents insist on denouncing the perpetuation of inquisitorial practices under new rhetoric and procedural garb.

Table 3.

Qualitative Results

Author	Research title	Finding
Rodríguez-García & Machado de Souza (2021)	La justicia negociada en el sistema penal de Estados Unidos: mitos y realidades	*Plea bargaining* developed in the U.S. in the twentieth century until it was accepted by the courts, prosecutors, and defendants who negotiated unofficially because it showed high effectiveness in solving some basic legal problems.
Rojas (2022)	La colaboración eficaz como valor probatorio en el proceso penal peruano	*Plea bargaining* is an instrument for the defendant to plead guilty and receive a more lenient sanction in exchange for waiving a full trial, thus showing its effectiveness in expediting jurisprudential proceedings.
Robles (2020)	Dos reflexiones para la construcción dogmática de la fase de corroboración en la colaboración eficaz	In *plea bargaining*, the defendant must comply with requirements such as admitting guilt and providing information to the investigation to receive a reduced sentence, a feature that makes early termination have a positive effect on the judicial burden.
Gaddi (2020)	Materiales para una conformidad restaurativa	The Italian *patteggiamento* allows for a reduction of the sentence up to 1/3 in exchange for the defendant's guilty plea, without considering the aggrieved party.
Varona *et al.* (2022)	La conformidad en España. Predictores e impacto en la penalidad	Spanish conformity allows sentencing without trial if the defendant pleads guilty and accepts the charges presented by the Prosecutor's Office, which generates greater procedural speed.

Álvarez-Yanza *et al*. (2022)	La mediación en el metaverso	The Spanish mediation seeks that the parties reach an agreement with the help of a mediator, which is voluntary, flexible, and confidential, which reduces the procedural burden of the courts.
Moreno & Morales (2021)	La propuesta de Código Procesal Penal Iberoamericano y su influencia en el derecho procesal penal peruano	The Model Code of Criminal Procedure served as the basis for criminal procedure reforms in Latin America, guaranteeing rights and introducing early termination as an effective mechanism to reduce the procedural burden and increase the speed of proceedings.
Lujan (2022)	The early termination in environmental crimes in Chachapoyas, Amazonas	Early termination reduces resolution times for less complex criminal cases, but its impact on complex proceedings is marginal.
Ivanov & Martinov (2021)	The Nature and Importance of Discontinuance of Criminal Proceedings (Prosecution) in Criminal Justice	Early termination reduces evidentiary requirements but does not necessarily reflect fairer settlement decisions.
Ali *et al*. (2021)	Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia	Early termination has not succeeded in speeding up resolution times in criminal justice systems as much as initially hoped.
Kirushenko (2021)	Early termination of the powers of judges in the context of constitutional reforms	The expansive use of early termination faces risks of validating questionable alternative outcomes for defendants.
Ordóñez (2021)	La conformidad: negociar, pactar, rebajar y ¿renunciar a derechos para agilizar el proceso?	The purported efficiency benefits of early termination present significant ethical and practical questions.
Kemp & Varona (2022)	Is there a penalty for going to trial in Spain? Plea bargaining and courtroom efficiency	Early termination has succeeded in improving the standards of procedural efficiency initially expected in judicial systems.
Nurumov (2020)	The essence and features of the plea bargain as A simplified procedure for criminal proceedings	The evidence on improvements in criminal procedural efficiency by early termination is not entirely conclusive, which raises questions about this procedure.

Varona & Kemp (2020)	Suspended Sentences in Spain: An Alternative to Prison or a "Bargaining Chip" in Plea Negotiations?	The use of early termination does resolve some cases more quickly, but doubts persist about the quality of these agreements.
Wu (2020)	On the effect of the Chinese version of speedy trial and plea bargaining pilot programs: observation from DUI cases in Fujian Province	Early termination faces the dilemma of resolving ongoing criminal proceedings more quickly or with greater deliberation.
Bolifaar (2022)	Access to justice of plea bargaining in addressing the challenge of tax crime in indonesia	Evidence shows that early termination has improved the resolution times of criminal proceedings as much as expected.
Widianto *et al.* (2020)	Plea bargaining in realizing effective and efficient criminal justice systems	The results of early termination are effective: advances in procedural time and quality of resolution.
Cover (2022)	The Constitutional Guarantee of Criminal Justice Transparency	The supposed greater procedural speed of early termination has been overshadowed by negative collateral effects.
Bertran & Nabuco (2021)	Whistleblowing to a Latin Tune: The Adaptation Problems of the OECD/FCPA Paradigm in Environments with Disseminated Corruption through the Lenses of the Odebrecht Case in Latin America	Early termination has failed to meet the expectations of procedural efficiency with which it was conceived.

Source: Own elaboration

Discussion

Early termination of criminal proceedings, also known as negotiated justice or alternative means of conflict resolution, has expanded in recent decades in the judicial systems of Latin America and other regions. It was conceived as a mechanism to expedite the resolution of criminal cases, decompress the procedural burden of the courts, and improve the efficiency of the administration of justice.

Authors such as Rodríguez-García & Machado de Souza (2021) point out that this figure has its origins in American plea bargaining, which dates to the 20th century and gained acceptance among judges, prosecutors, and defendants who negotiated unofficially due to its apparent effectiveness in resolving basic legal problems.

In this regard, Rojas (2022) indicates that plea bargaining allows the defendant to plead guilty and receive a mitigated sanction in exchange for avoiding a full trial, which in theory shows its usefulness in expediting judicial proceedings. Along the same lines, Robles (2020) adds that the defendant must admit guilt and collaborate with the investigation to benefit from the figure, a characteristic that positively influences the reduction of the judicial burden.

Likewise, in the European context, authors such as Gaddi (2020) and Varona et al. (2022) describe similar figures such as the Italian patteggiamento and the Spanish compliance, which allow sentencing without trial if the defendant pleads guilty and accepts the charges presented by the prosecution. Álvarez-Yanza et al. (2022) add that criminal mediation also operates in Spain, where with the help of a mediator the parties attempt a voluntary, flexible, and confidential agreement, contributing to procedural efficiency.

Regarding the adoption of these figures in Latin America, Moreno & Morales (2021) explain that the Model Criminal Procedure Code for Ibero-America, inspired by guaranteed principles, incorporated early termination and influenced criminal procedure reforms in several countries in the region, by introducing a mechanism to reduce the judicial burden and speed up times.

Going deeper into the specific impact, Lujan (2022) considers that early termination effectively shortens resolution times in less complex criminal cases, although its effect is marginal in more elaborate processes. Ivanov and Martinov (2021) point out that this procedure reduces the evidentiary requirements in proceedings, although it does not necessarily imply that settlements are fairer.

In a more critical perspective, Ali et al. (2021) points out that early termination has not succeeded in speeding up justice times as much as initially envisioned in procedural reforms. Likewise, Kirushenko (2021) warns about the risk of validating questionable alternative outcomes for defendants through an expansive use of this tool. Along these lines, Ordóñez (2021) considers that the supposed efficiency benefits present important ethical and practical concerns.

Other authors such as Kemp & Varona (2022) argue that early termination has indeed improved the expected standards of procedural efficiency. However, such claims have been denied by scholars such as Nurumov (2020), who argues that the available evidence on efficiency gains in this way is inconclusive and legitimate questions remain.

Going deeper into this skeptical view, Varona & Kemp (2020) acknowledge that early termination allows faster resolution of some cases, but doubts persist about the quality and rigor of such agreements. Coinciding with this, Wu (2020) states that there is an unresolved dilemma between prioritizing speed or greater deliberation in criminal proceedings that are resolved in this way.

On a more optimistic note, Bolifaar (2022) and Widianto et al. (2020) point out that the available data show significant improvements in case resolution times thanks to early termination, as expected with its implementation. However, Cover (2022) objects that such greater procedural speed is overshadowed by negative collateral effects. Finally, Bertran & Nabuco (2021) conclude that early termination has failed to meet the original expectations of substantially increasing efficiency in criminal prosecution.

Thus, the current state of the empirical evidence available in the specialized literature shows that there is no clear or definitive consensus on the actual effectiveness of early termination in meeting the objective of substantially improving the efficiency and speed of criminal proceedings.

Although several studies identify advantages in terms of reduced resolution times in some cases, streamlining of specific procedural aspects, and reduction of evidentiary requirements in certain processes, thanks to the application of early termination, there is also a proliferation of skeptical studies that emphasize the lack of significant impacts on the complexity of more elaborate criminal proceedings, negative side effects such as validation of questionable alternative outcomes for defendants, persistent questions about the quality of resolution and intrinsic fairness of this type of negotiated decisions, among other critical aspects.

This lack of consensus is reflected in the different positions among researchers regarding the balance between the potential advantages and the real limitations of early termination as a public policy instrument to improve the functioning of criminal justice systems in terms of their efficiency. It is also key to analyze whether the use of early termination is effectively allowing the redirection of limited institutional resources from the judicial system to serious and complex crimes.

Conclusions

Early termination was introduced in the criminal procedure reforms of recent decades in Latin America and other regions with the expectation of speeding up time, decongesting courts, and improving the efficiency of the administration of justice. Its historical roots come from Anglo-Saxon plea bargaining, which had pragmatically proven its usefulness in expeditiously resolving basic legal issues. Thus, this procedural tool expanded with the promise of replicating such benefits.

However, several decades after these reforms, the available empirical evidence shows that it is unclear whether early termination is effectively transforming criminal justice systems into more efficient and expeditious entities.

However, some studies identify limited positive aspects, such as shorter time limits in simple cases, more agile procedures in specific stages, and a reduced evidentiary burden.

There is a state of academic controversy between conflicting positions regarding the real balance between the potential benefits and the effective limitations that this procedural tool exhibits today to fulfill its foundational objectives. While some researchers continue to optimistically insist on the innate benefits of early termination, others enumerate a wide range of institutional problems and perverse effects that overshadow its original virtues. To fully unveil the chiaroscuro of early termination requires, therefore, digging deep into the inner workings of justice administrations historically opaque to outside scrutiny.

For now, the existing evidence is insufficient to validate that early termination is efficiently fulfilling the expectations of procedural improvement that motivated its original adoption. In short, there are many aspects of the phenomenon of early termination that have not yet been sufficiently investigated and require more exhaustive empirical analysis, with a variety of methodological approaches (qualitative, quantitative, experimental, and comparative, among others).

Recommendations

The observed lack of consensus requires urgent attention, considering the high impact of these increasingly standardized procedural modalities in the daily functioning of criminal justice systems around the world. However, achieving clarity will not be an easy task, given that it involves highly complex legal, political, and social issues in which diverse visions and conflicting interests intersect. This brings to the table normative tensions between procedural efficiency, individual guarantees, evidentiary rigor, accountability, and other principles that often collide in common places of informal discretionally far from public scrutiny. Precisely, the relative secrecy that still prevails in judicial-criminal areas makes it difficult to empirically contrast laudatory discourse with critical evidence.

Therefore, it is recommended to actively promote empirical research of high methodological quality that critically examines this procedural tool, contrasting its theoretical merits versus its results observed in a multiplicity of national experiences under different institutional contexts.

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