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Karol Juszka

Influence of monetary benefit on the effectiveness of conditional discontinuation of criminal proceedings

Wpływ świadczenia pieniężnego na efektywność instytucji warunkowego umorzenia postępowania karnego

I. Introduction

The conditional discontinuance of criminal proceedings is a facultative measure applied to subject the perpetrator to a test. This legal institution is defined as the temporary postponement in issuing a decision on guilt and criminal responsibility of a perpetrator¹, as the mildest means of reaction to the act by a perpetrator².

M. Leonieni and W. Michalski define the effectiveness of conditional discontinuance of criminal proceedings as the correlation between the objectives (targets) of the provisions pertaining to the studied institution and their implementation i.e. results of their application in the practice of courts³.

Essential changes in the legal provisions in enforcing binding laws include giving the courts exclusive competence to apply the conditional discontinuance of criminal proceedings⁴, and setting the form of the sentence as the only one

¹ W. Wróbel, A. Zoll, *Polish Penal Law. General part*, Cracow 2012, p. 477. [in Polish]

² T. Bojarski (ed.), *Polish Penal Law. General part. Outline*, Warsaw 2008, p. 303. [in Polish]

³ M. Leonieni, W. Michalski, *Conditions for the effectiveness of the conditional discontinuance of criminal proceedings in judicial practice*, Warsaw 1975, p. 44. [in Polish]

⁴ A. Zoll (in:) A. Zoll (ed.), *The Penal Code. General part: Comment to articles 1–116*, Warsaw 2012, p. 914–915 [in Polish]; Z. Ćwiąkowski, *Selected issues of the conditional discontinuance of criminal proceedings*, a paper presented in the IXth Bielany Penal-law Colloquium “*The measures associated with placing a perpetrator under probation*”, Warsaw, 16 May 2012, published on the website of *Czasopismo Prawa Karnego i Nauk Penalnych* <http://www.czpk.pl/index.php/wideo/>

provided for pronouncing this institution⁵. This sentence given either under the provisions of Art. 341§5 of the Polish Code of criminal procedure, or Art. 414§1 of the same Code, is not a convicting judgement⁶. The basis for adjudicating monetary compensation in judgements conditionally discontinuing criminal proceedings is the provision of Art. 67§3 of the Polish Penal Code⁷.

W. Wróbel and A. Zoll note that adjudicating monetary consideration together with the conditional discontinuance of criminal proceedings has a sanction of symbolic nature, satisfying the social sense of justice and is aimed at preventing the impression that the perpetrator completely escaped criminal responsibility⁸. In cases pertaining to any crime, monetary consideration can be adjudicated for the benefit of social purpose⁹.

The objective of this paper is to present the monetary consideration from both the viewpoint of the opinions in legal doctrine, and the correlations between its individual resolutions and their impact on the way of ending the probation period. The analysis of these correlations will be presented by showing factors resulting from the author's own research of 405 court cases, pertaining to the effectiveness of the conditional discontinuance of criminal proceedings. These were cases individually numbered in the archives of the District Court in Krakow and the regional courts situated within the area of its jurisdiction. The presented analysis also includes a presentation of postulates *de lege ferenda* concerning both legislative amendments to the statutory construction of the legal institution of conditional discontinuance of criminal proceedings, as well as the action which should be undertaken in the area of its practical application within the framework of binding regulations of their application in the practice of courts.

In the author's own studies, all ways for completion of the probation period by the accused, hereby called procedural situations, were listed:

- a) Successful completion of the probation period, and of the period referred to in Art. 68§4 of the Polish Penal Code,

bielanskie-kolokwium-karnistyczne/ix-bielanskie-kolokwium-karnistyczne (as of 13 February 2016). [in Polish]; K. Juszka, *Judicial protection of human rights in the practice of applying the conditional discontinuance of criminal proceedings* (in:) R. Sztuchmiller, J. Krzywkowska (ed.), *Problems with judicial protection of human rights*, Olsztyn 2012, p. 273-278. [in Polish]

⁵ A. Zoll, *Substantive law issues of the conditional discontinuance of criminal proceedings*, "Scientific issue of Jagiellonian University. Part of Law" 1973, nr 62, p. 10-26 [in Polish]; A. Zoll (in:) A. Zoll (ed.), op. cit., p. 916-917 [in Polish]; P. Hofmański (ed.), *Polish code of criminal procedure. Comment to articles 297-467*, Warsaw 2011, p. 369. [in Polish].

⁶ T. Bojarski (ed.), op. cit., p. 303. [in Polish].

⁷ The sentence of 1 March 2007 of the Supreme Court, unpublished [in Polish].

⁸ W. Wróbel, A. Zoll, op. cit., p. 468. [in Polish].

⁹ M. Filar (ed.), *The Penal Code. Comment*, Warsaw 2008, p. 315. [in Polish].

- b) Successful completion of the probation period, and of the period referred to in Art. 68§4 of the Polish Penal Code arrived at as a result of proceedings during which a decision about not resuming conditionally discontinued criminal proceedings was issued,
- c) Decision about resuming conditionally discontinued criminal proceedings,
- d) Decision about resuming the conditional discontinuance of criminal proceedings arrived at as a result of proceedings during which a decision about not resuming conditionally discontinued criminal proceedings was issued,
- e) Decision about the discontinuance of enforcement proceedings due to the lapse of the probation period provided for in Art. 68§4 of the Polish Penal Code,
- f) Decision about the discontinuance of enforcement proceedings due to the lapse of the probation period provided for in Art. 68§4 of the Polish Penal Code, arrived at as a result of proceedings during which a decision about not resuming conditionally discontinued criminal proceedings was issued,
- g) Decision about the discontinuance of enforcement proceedings due to the death of the accused,
- h) Decision about the discontinuance of enforcement proceedings due to the death of the accused, arrived at as a result of proceedings during which a decision about not resuming conditionally discontinued criminal proceedings was issued.

The measure of the effectiveness of the institution of conditional discontinuance of criminal proceedings, which is used in the author's presented research, is the criterion of either successful or unsuccessful course or completion of the probation period¹⁰ broadened by adding the analysis of procedural decisions and the circumstances of the decision-making process affecting the decisions during all stages of criminal proceedings.

In 405 studied court cases, the courts, in judgements conditionally discontinuing criminal proceedings, imposed monetary consideration to 316 accused (78%).

¹⁰ W. Ciechanowicz, *Effectiveness of the conditional discontinuance of criminal proceedings in the practice of military prosecutors' offices*, "Wojskowy Przegląd Prawniczy" 1978, nr 2, p. 220-221. [in Polish]; M. Leonieni, W. Michalski, op. cit., p. 6-7 [in Polish].

II. Presentation of the correlations between solutions

The presentation of the correlations between particular solutions adopted in a judgement conditionally discontinuing criminal proceedings should start from the statistical analysis describing these correlations¹¹.

In statistical analysis, the following scale is usually adopted for correlation:

$r=0$	the variables are not correlated,
$0 < r < 0,1$	there is a meagre correlation
$0,1 \leq r < 0,3$	weak correlation
$0,3 \leq r < 0,5$	average correlation
$0,5 \leq r < 0,7$	high correlation
$0,7 \leq r < 0,9$	very high correlation
$0,9 \leq r $	almost full correlation

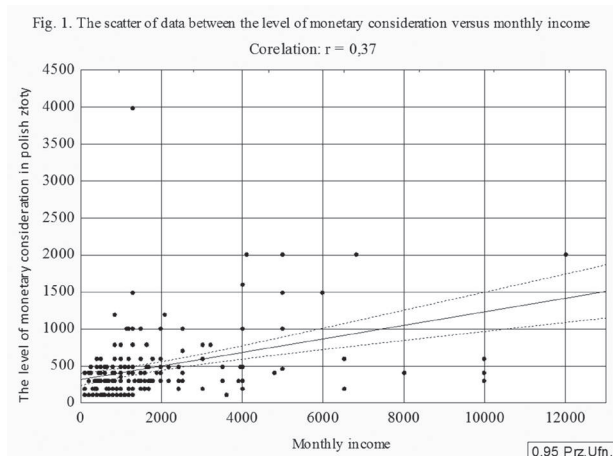
The first statistical analysis was presented by the results of correlation between the number of persons supported by the perpetrator and his/her monthly income *versus* the level of monetary consideration adjudicated in the judgement conditionally discontinuing criminal proceedings (Table 1, Fig. 1, Fig. 2).

Table 1. The results of correlation between the number of persons supported by the perpetrator and his/her monthly income *versus* the level of monetary consideration adjudicated in the judgement conditionally discontinuing criminal proceedings.

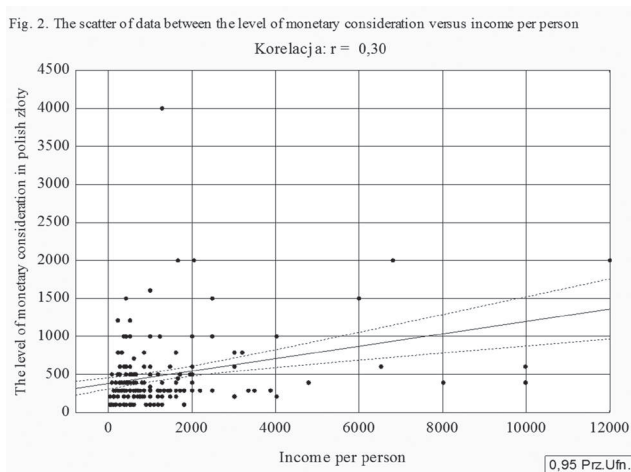
VARIABLE	Level of monetary consideration The correlation coefficients found are statistically significant with $z p < 0,05$
The number of persons supported by the perpetrator	$r=0,0042$
	$N=317$
	$p=0,94$
The level of monetary consideration	$r=0,37$
	$N=207$
	$p=0,00$
Monthly income	$r=0,30$
	$N=207$
	$p=0,00$

¹¹ Statistical analysis was consulted with Dr. Adam Ćmiel Eng. from the Department of Applied Mathematics of Stanisław Staszic AGH University of Science and Technology in Krakow.

The graph (Fig. 1) presents the scatter of data between the level of monetary consideration versus monthly income with 0.95 confidence interval.



The graph (Fig. 2) presents the scatter of data between the level of monetary consideration versus income per person with a 0.95 confidence interval.



In the above analysis, an average (weak) positive correlation was found between the monthly income (income per person) and the level of monetary consideration adjudicated in the judgement conditionally discontinuing criminal proceedings.

The analysis of the results obtained in the author's own studies confirms the above correlation, as among all 405 examined cases, incorrect relations between the aforementioned factors only occurred in 103 cases. In 91 of these 103 cases, the accused supported by other persons paid consideration in time, in 4 cases

there was the untimely fulfilment of the obligation to pay injury compensation, monetary consideration, or court costs whose time limit fell within the dates of probation, and 8 cases where the payments decided in the judgement occurred after the probation.

The next statistical analysis presents the results of the correlation between the amount of monetary consideration and the time limit for the payment, given in the judgement of conditionally discontinuing criminal proceedings (Table 2).

Table 2. The correlation between the amount of monetary consideration and the time limit for the payment, given in the judgement of conditionally discontinuing criminal proceedings.

Two variables	The Spearman R coefficient of rank The correlation coefficients found are statistically significant with z $p < 0,05$			
	N important	R Spearmana	t(N-2)	P
The amount of monetary consideration and the time limit for the payment	130	0,35	4,23	0,00

Because two of the observations stand out, the Spearman R coefficient of rank correlation was used. This measures the strength of the monotonic correlation between the variables, whereas the Pearson r coefficient – the strength of linear correlation. After these observations are removed, the Pearson correlation coefficient approximates the Spearman coefficient.

In analysing the above relationship, it should be noted that the higher the amount of monetary consideration in the judgement conditionally discontinuing criminal proceedings, the longer the period for its fulfilment given in this judgement ($R=0,35$, $p < 0,001$).

The above conclusion is supported by the analysis of the results of the author's own research examining the receipts, indicating that in only 40 out of 316 cases, the accused paid the said consideration after the time limit resulting from the judgement. It should be underlined that applying the principle stemming from the aforementioned relation should consider, in each case, the mobilising and resocialising impact of the conditional discontinuance of criminal proceedings.

In the last analysis, the correlation between the number of persons supported by the perpetrator and his/her monthly income, and the time limit to pay in the monetary consideration set in the judgement conditionally discontinuing criminal proceedings, was analysed (Table 3)

Table 3. The results of correlation between the number of persons supported by the perpetrator and his/her monthly income, and the time limit to pay in the monetary consideration.

Variables	The time limit provided for the performance of the monetary consideration The correlation coefficients found are statistically significant with $z p < 0,05$
The number of persons supported by the perpetrator	$r = 0,123$
	$N = 130$
	$p = 0,165$
Monthly income	$r = 0,089$
	$N = 85$
	$p = 0,42$
Income per person	$r = 0,066$
	$N = 85$
	$p = 0,55$

In analysis of the above mutual relationship, no correlation was found between the above variables.

The analysis of the author's own results confirmed the correlation but indicated that the time limit to pay the monetary consideration was affected by the form in which the judgement conditionally discontinuing criminal proceedings specified the time limit, and the manner of paying the monetary consideration in the judgement (address of the beneficiary, account number, dividing into instalments), the current ability of the accused to pay it, as well as the manner in which the court reacted to the non-performance of the consideration within the time limit indicated in the judgement conditionally discontinuing criminal proceedings.

The author's first proposal to the legal institution is amending the law (art. 336§3 Polish Code of Criminal Procedure) by giving prosecutors an additional possibility to extend the range of his/her contribution to the judgement conditionally discontinuing criminal proceedings by suggesting the manner and time limit to perform punitive obligations and measures, also for the purpose of synchronising this provision with binding Art. 68§2 of the Polish Penal Code.

The author's second proposal pertains to the amendment (art. 342§2 Polish Code of Criminal Procedure) concerning introducing the determination of manners and time limits for the fulfilment of punitive measures into the judgement conditionally discontinuing criminal proceedings, also for the purpose of synchronising this provision with binding Art. 68§2 of the Polish Penal Code..

The legitimacy of this proposal is supported by the results of the author's own research. In 190 out of 316 cases where the monetary considerations were adjudicated, the court did not indicate the time limit for their payment in the judgement conditionally discontinuing criminal proceedings. In 141 of the studied cases, the court did not determine the manner of paying the monetary consideration in the judgement.

One of the author's own proposals concerning the application of conditional discontinuance of criminal proceedings with respect to the accused being supported by other persons results from a negative assessment of the practice used in 76 out of 91 examined cases. The modification of the above-referred practice consists particularly in the choice of restitution as the principle for performing the obligation to redress damage, and on refraining from the imposition of monetary consideration and court costs on the accused supported by other persons. Such practice will prevent doubts about personal compliance with the said decision in the judgement. The example of the aforementioned doubts was the content of the reasons for a decision on not reinstating the conditionally discontinued criminal proceedings after monetary consideration had been paid in by the mother of the accused.

The author's next proposal of changes in applying the legal institution examined in this paper is to determine, each time, the time limits and ways of meeting the obligations and performing punitive measures in judgements conditionally discontinuing criminal proceedings. Considering the method of payment, two practical factors should be mentioned: address of the beneficiary and his/her account number. The precise indication of the manner of implementing the judgement by providing the above details enhances the possibility of its implementation within the probation period and limits attempts by the accused to delay the decision of properly implementing the decision on the obligation to redress damage imposed in the judgement conditionally discontinuing criminal proceedings.

A change in practice, important from the viewpoint of evidence is to impose, in the judgement conditionally discontinuing criminal proceedings, the obligation of an apology in written form.

The pertinence of the above postulate has been confirmed by the analysis of the study of 24 cases pertaining to the provisions of settlement in mediation proceedings, as well as in two cases concerning the form of this obligation in a valid judgement conditionally discontinuing criminal proceedings.

It is disturbing to see the practice of courts which issue the decision to not reinstate conditionally discontinued criminal proceedings, or the decision to

reinstate such proceedings within the period of probation when the accused evaded, in particular, the implementation of the obligation to redress damage, in these cases where the court did not determine the time limit for its implementation in judgements conditionally discontinuing criminal proceedings.

M. Leonieni rightly stated that the court should establish in its judgement not only the period of probation but also the time limit to fulfil the obligation. In M. Leonieni's opinion if the court has not set the time limit it is presumed to be equal with the period of probation, therefore a court implementing that judgement may not, by its own decision, and to the detriment of the accused, change the content of legally binding judgement and to set a shorter time limit¹². The current lack of consequence on the part of Polish legislature should be pointed out: on the one hand, it differentiates between obligations and punitive measures in terms of material basis for applying the legal institution studied in this paper but (art. 67§3 Polish Penal Code and art. 68§2 Polish Penal Code), on the other hand, in procedural provision mentions only the obligations and forgets the punitive measures.

It should also be pointed out that the proceedings aimed at reinstating the conditionally discontinued criminal proceedings should be initiated immediately after the lapse of the time limit indicated in the judgement of conditionally discontinuing criminal proceedings, in particular, when it occurs due to lack of fulfilment of the obligations to pay monetary consideration.

This group encompassed 48 out of 405 cases where the accused delayed both the monetary consideration and the payment to redress the damage, not suffering the consequences in the form of initiating the proceedings to reinstate the conditionally discontinued criminal proceedings. It is likely that such practice results from preferring the late performance of the obligation set in the judgement conditionally discontinuing criminal proceedings by the accused, over the meticulous observation of time limits for this performance.

Summary

In summary, it should be emphasised that the direct effect on the effectiveness of the conditional discontinuance of criminal proceedings, and in particular on its practical application is exerted by the form of the judgement conditionally

¹² M. Leonieni, *Reinstating the conditionally discontinued criminal proceedings by the court*, „Problemy Wymiaru Sprawiedliwości” 1973, nr 2, p. 95. [in Polish].

discontinuing criminal proceedings. The proper analysis presented in this paper of the correlations between the decisions adopted in the judgement, and fulfilling the postulates *de lege ferenda* concerning with monetary consideration will contribute to the improvement and more effective use as well as to enhancing the importance of the institution of conditional discontinuance of criminal proceedings.

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Streszczenie

Celem artykułu jest przedstawienie teoretycznych i praktycznych aspektów i zależności statystycznych związanych z orzekaniem świadczenia pieniężnego w wyroku warunkowo umarzającym postępowanie karne. Niniejsza prezentacja jest oparta na analizie wyników badań własnych 405 spraw sądowych dotyczących efektywności warunkowego umorzenia postępowania karnego opatrzonych sygnaturą akt Sądu Okręgowego w Krakowie oraz sądów rejonowych położonych na obszarze jego właściwości. Przedmiotowa analiza obejmuje także przedstawienie postulatów *de lege ferenda* dotyczących zarówno modyfikacji ustawowej konstrukcji badanej instytucji, jak również działań jakie należy podjąć w praktyce jego stosowania w ramach obowiązujących przepisów.

SŁOWA KLUCZOWE: warunkowe umorzenie postępowania karnego, świadczenie pieniężne, badania spraw sądowych, analiza statystyczna, postulaty *de lege ferenda*

Abstract

The aim of this article is to present the theoretical and practical aspects of statistical relationships, which are connected with awarding a monetary benefit in a criminal judgement, on conditional discontinuation of criminal proceedings. This presentation was determined by the results of the author's research, which consisted in an analysis of court records 405 cases concerning the effectiveness of conditional discontinuance of criminal proceedings from courts within the area of jurisdiction of the Appellate Court in Krakow from the years 2003-2009. In statistical analysis, the writer applied Spearman correlation coefficient and r-Pearson correlation coefficient. The result of research process is *de lege ferenda* proposals, which consist in modification of the legislative construction of the institution in question, and proposals of measures to be taken in its practical application with the framework of provisions in force.

KEY WORDS: conditional discontinuation of criminal proceedings, monetary benefit, research of court cases, statistical analysis, *de lege ferenda* proposals.

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