

Piotr Gensikowski

District Court in Grudziądz

gensikowskipiotr@poczta.onet.pl

Selected Procedures Used in Community Courts and Changes in the Institution of Conditional Discontinuance of the Proceedings and Conditional Sentencing in the Years 2015-2016

Abstract: In the years 2015-2016 regulations of instruments present in Polish criminal law such as conditional discontinuation of proceedings and conditional sentencing changed. The aim of this study is therefore to answer the question whether the regulations resulting from these acts change the institution of conditional discontinuation of criminal proceedings and institution of conditional sentencing in such a way that they can contribute to the increased use of the procedures used within the model of a community court.

Keywords: procedures used in community courts, conditional discontinuation of proceedings, conditional sentencing

1. Introduction

In the end of the 1980s, courts applying procedures referring to the assumptions of philosophy and problem-solving¹ were established in the USA. Community courts, that is courts cooperating with local social organizations in order to solve problems of a given local community, should also be classified therein. The essence of an innovative nature of such courts lies in a close cooperation between their representatives and social organizations. As part of this cooperation, courts following the model of community courts implement distinctive procedures such as: collecting as much information about a perpetrator as possible, applying legal measures

1 See: S. Burdziej, Funkcjonowanie *community court* w praktyce – na przykładzie Red Hook Justice Center w Nowym Jorku, (in:) C. Kulesza, D. Kuzelewski, B. Piliłowski (ed.), Współpraca organizacji społecznej z wymiarem sprawiedliwości, Białystok 2015, p. 17-18.

containing elements of restorative justice and legal measures containing elements to help the perpetrator, applying legal measures that are alternative to deprivation of liberty, and undertaking activities to increase the efficient fulfilment of obligations perpetrators have been imposed on². Courts following the model of a community court use the above mentioned procedures with regard to minor and petty offences. In the Polish criminal law, a catalogue of instruments which may be applied within the above scope encompasses, among others, two institutions of probation, i.e. conditional discontinuation of proceedings and conditional sentencing. Each institution may, within a specified scope, apply procedures used in the model of a community court³. In 2015-2016, however, the regulation of the above mentioned instruments of the Polish criminal law was subject to normative changes. They mainly resulted from the Act of 27 September 2015 on the Amendment of the Act – Code of Criminal Procedure and Some Other Acts⁴, the Act of 20 February 2015 on the Amendment of the Act – Criminal Code and Some Other Acts⁵ as well as the Act of 11 March 2016 on the Amendment of the Act – Code of Criminal Procedure and Some Other Acts⁶. A purpose of this study is, therefore, to answer the question whether changes ensuing from the above amendments affecting regulation of the institution of conditional discontinuation of proceedings and conditional sentencing may contribute to the increased application of the procedures applied in the model of a community court within their scope.

2. Conditional discontinuation of criminal proceedings

Considering a possibility of using procedures applied in the model of a community court within the institution of conditional discontinuation of proceedings, the extended scope of prohibited acts the above mentioned institution may be applied to should be positively assessed. Before 1 July 2015, the scope of conditional discontinuation of proceedings referred to misdemeanours punished by deprivation of liberty not exceeding three years as well as misdemeanours punished by deprivation of liberty not exceeding five years if the victim reconciled with the perpetrator, or the perpetrator redressed damage, or the victim and perpetrator mutually agreed how to redress damage (Art. 66 § 2 and 3 of the Criminal Code)⁷. In effect of the above men-

2 See more: P. Gensikowski, Analiza możliwości implementacji wybranych procedur stosowanych w Midtown Community Court oraz Red Hook Community Justice Center w Nowym Jorku w warunkach polskiego prawa karnego, (in:) C. Kulesza, D. Kuzelewski, B. Piliowski (ed.), Współpraca organizacji społecznej z wymiarem sprawiedliwości, Białystok 2015, p. 46-47.

3 *Ibidem*, p. 48 et seq.

4 Journal of Laws, item 1247.

5 Journal of Laws, item 396.

6 Journal of Laws, item 437.

7 Until 1 July 2015 the exception from rules specified in Art. 66 § 2 and 3 of the CC was envisaged in Art. 72 par. 1 i item 4 of the Act of 29 July 2005 on Counteracting Drug Addiction (uniform text: Journal of Laws of 2012, item 124 as amended). In the light of Art. 72 par. 1 i 4 of the quoted Act, conditional discontinuation of proceedings could be applied in case of prohibited acts punished by deprivation of liberty not exceeding 5 years if it concerned

tioned amended Act of 27 September 2013 coming into force, conditional discontinuation of proceedings may be applied with regard to all misdemeanours punished by deprivation of liberty not exceeding five years (Art. 66 § 2 of the Criminal Code). Due to this, as an example thereof, it should be pointed out that since 1 July 2015 conditional discontinuation of proceedings may be applied with regard to offenders who committed theft (Art. 278 § 1 of the CC), qualified conversion of items (Art. 284 § 2 of the CC), damaged items belonging to another person (Art. 288 § 1 of the CC), or committed assault or caused injury treated for more than seven days (Art. 157 § 1 of the CC). In effect of the changes in force since 1 July 2015, conditional discontinuation of proceedings may also apply to offences “without a victim”, punished by deprivation of liberty not exceeding five years⁸, that is, for instance, to offenders who forged or redrafted or reedited a document (Art. 270 §1 of the CC). From the perspective of a possibility of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings, the extended probation period a court may apply thereto should also be positively assessed. Before 1 July 2015, a maximum probation period in case of conditional discontinuation of proceedings amounted to two years. However, the content of Art. 67 § 1 of the CC was changed by the Amended Act of 20 February 2015. Pursuant to this provision under the amended reading thereof, conditional discontinuation of proceedings is effected for the probation period from one to three years. In effect of this change, since 1 July 2015 a maximum probation period in case of the above mentioned institution has been extended to three years. Raising an upper time limit of the probation period by a year corresponds to the extended scope of offences in Art. 66 of the CC where conditional discontinuation of proceedings may be applied to⁹. This solution should be positively assessed because the application of conditional discontinuation of proceedings for a longer probation period allows to control the perpetrator’s conduct for a longer period of time. An extended period of control over the perpetrator’s conduct in most cases should, in turn, contribute to a positive course of the probation period, particularly if during this period the perpetrator is subject to probation by one of the entities listed in Art. 67 § 2 of the CC, i.e. a probation officer or a trustworthy person, association, institution or organization whose activities involve educational care, prevention of demoralization or help and assistance provided to offenders.

From the perspective of a possibility of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings, a changed scope of measures that may be concurrently imposed on a perpetrator to fulfil a purpose of restorative justice should also be positively evaluated. Before 1 July 2015, applying conditional discontinuation of proceedings, a court could only im-

a person addicted from or using harmful psychoactive substances who was charged with an offence in connection with using drugs or psychotropic substances.

8 See: J. Majewski, *Kodeks karny. Komentarz do zmian 2015*, Warszawa 2015, p. 227.

9 *Ibidem*, p. 229.

pose on a perpetrator a duty to redress damage and exemplary damages¹⁰ within the scope of these measures. Due to the fact that a duty to redress damage is a probation measure in its nature, pursuant to Art. 67 § 4 of the CC in connection with Art. 74 § 1 of the CC, imposing this obligation on a perpetrator, a court had to set a time limit for its performance. However, the amended Act of 20 February 2015 changed a subjective scope of the above mentioned obligation. According to the amended reading of Art. 67 § 3 of the CC, applying conditional discontinuation of proceedings, a court may impose on a perpetrator not only a duty to redress damage but also, as far as possible, a duty to compensate inflicted harm, or otherwise adjudicate exemplary damages instead of these duties. Since 1 July 2015, the introduction of such a solution has allowed a procedural settlement on conditional discontinuation of proceedings to contain elements aimed at compensating the victim not only for the financial loss ensuing from the committed offence but also for non-financial damage, i.e. harm¹¹. The extended scope of harm suffered by the injured party, ensuing from the amended reading of Art. 67 § 3 of the CC, which may be compensated in criminal proceedings is of particular importance for conditional discontinuation of proceedings in case of offences in result of which the injured party suffers harm, e.g. in a case of a traffic accident (Art. 177 § 1 of the CC). Since 1 July 2015, imposing on a perpetrator a duty to redress damage or a duty to compensate the inflicted harm, the court cannot set a time limit during which the perpetrator should fulfil his or her obligations towards the victim. The nature of these obligations, which constitute *de lege lata* compensatory measures¹², was also changed by the above mentioned amended Act of 20 February 2015. Thus the above mentioned legal nature of these duties now excludes the application of the provision of Art. 74 § 1 of the CC the legislator refers to in Art. 67 § 4 of the CC while these obligations are adjudicated. Inadmissibility of setting a time limit during which a perpetrator should redress damage or compensate the inflicted harm adjudicated pursuant to Art. 67 § 3 of the CC means that these duties are enforceable immediately after the judgment becomes valid and binding (*argumentum ex Art. 9 § 2 of the Criminal Executive Code*). Since then the injured party may already demand the perpetrator to perform obligations of a compensatory nature he or she has been imposed on. Therefore, such a solution may undoubtedly favour a faster pace of obtaining financial compensation for the harm suffered by the injured party in effect of the committed offence.

From the perspective of a possibility of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings,

10 More about issues connected with adjudicating exemplary damages in case of conditional discontinuation of criminal proceedings in: P. Gensikowski, Problematyka nawiązki jako środka towarzyszącego warunkowemu umorzeniu postępowania karnego, "Probacja" 2012, No. 1, p. 133 et seq.

11 The same J. Lachowski, (in:) M. Królikowski, R. Zawłocki (ed.), Kodeks karny. Część ogólna. Tom. II, Warszawa 2015, p. 351.

12 The same: A. Zoll, Środki związane z poddaniem sprawcy próbie i zamiana kary, (in:) W. Wróbel (ed.), Nowelizacja prawa karnego 2015. Komentarz, Kraków 2015, p. 433; J. Majewski, Kodeks karny..., *op. cit.*, p. 229.

changed bases allowing the initiation of proceedings should also be positively evaluated. Similar to American courts operating within the model of a community court, in case of conditional discontinuation of proceedings, the fulfilment of duties imposed on the perpetrator or implementation of other measures adjudicated towards him or her are also subject to control¹³. During the probation period, the perpetrator's conduct is subject to control by persons listed in Art. 67 § 2 of the CC as well as by the court. In the latter case, it involves a possibility of initiating proceedings if the legal bases envisaged in Art. 68 § 1 of the CC, or in Art. 68 § 2 of the CC have been confirmed during executive proceedings. The amended Act of 20 February 2015 changed the second provision mentioned above by completing previously applied bases allowing to initiate proceedings that have been conditionally discontinued to include evasion of the fulfilment of compensatory measures or forfeiture imposed on the perpetrator. This change resulted from the separation of a duty to redress damage, a duty to compensate the inflicted harm, exemplary damages or forfeiture from the catalogue of penal measures and classifying them as separate instruments of a response to prohibited acts¹⁴. The solution introduced in Art. 68 § 2 of the CC by the above mentioned amended Act should be approved of because despite granting a new legal nature to the above mentioned measures, it allows courts to maintain control over the perpetrator's conduct during the probation period within the scope of the fulfilment of these measure.

The amended Act of 11 March 2016 changed the determination of a manner of performance of a duty to refrain from contacting the victim or other persons in a specific way, or approaching the victim or other persons envisaged in Art. 72 § 1 point 7 of the CC. This change involved adding to the provision of Art. 67 § 3 sentence 2 of the CC a reference to Art. 72 § 1a of the CC. This way, since 15 April 2016, imposing on a perpetrator a duty envisaged in Art. 72 § 1 point 7a of the CC, the court must establish a minimum distance the perpetrator is obliged to keep from protected persons¹⁵. The duty envisaged in Art. 72 § 1 point 7a of the CC, however, is not an instrument aimed at the implementation of restorative justice or an element of help or assistance provided to a perpetrator. That is why the above mentioned change within the scope of determining a manner of the performance of this duty by a perpetrator is not connected with increasing a possibility of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings. The change in the regulation of the catalogue of other duties that can be imposed on a perpetrator within conditional discontinuation of proceedings should be assessed in a similar way. The amended Act of 20 February 2015 changed the reading of Art. 67 § 3 of the CC within the scope of probation duties envisaged in Art. 72 § 1

13 See: P. Gensikowski, *Analiza...*, *op. cit.*, p. 50.

14 The same: J. Majewski, *Kodeks karny...*, *op. cit.*, p. 236.

15 The same: V. Konarska-Wrzosek, (in:) V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz*, Warszawa 2016, p. 406.

of the CC which may be applied in case of conditional discontinuation of proceedings. Nevertheless, the above quoted amendment was merely an adjustment to the new reading of Art. 72 § 1 of the CC. For this reason, it should be acknowledged that it did not matter from the perspective of increasing possibilities of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings.

3. Conditional sentencing

In the system of Polish criminal law, procedures applied in the model of a community court may be used not only in conditional discontinuation of proceedings but also conditional sentencing. Bearing this in mind, changes concerning principles of probation duties imposed on a perpetrator that may be applied towards him or her due to conditional sentencing should be approved of. In the light of the reading of Art. 72 § 1 of the CC binding until 1 July 2015, probation duties accompanying a conditional suspension of a sentence could be imposed electively, at the court's discretion. At the same time, the content of this provision lacked a decision determining a number of probation duties that could be imposed on a perpetrator. The above mentioned principles of imposing probation duties on a perpetrator have been changed as of 1 July 2015. In the light of Art. 72 § 1 of the CC, *in principio* in the reading enacted by the amended Act of 20 February 2015, suspending a sentence, the court shall oblige a convicted offender to perform specified duties whereas adjudicating a penal measure, the court may oblige a convicted offender to perform such duties. The above described change of the principle of imposing probation duties was connected with the introduction of a decision determining a minimum number of duties that may be imposed on a perpetrator during the probation period. In the light of Art. 72 § 1 of the CC *in fine*, in the reading enacted by the above mentioned amended Act of 20 February 2015, a conditional suspension of a sentence implies that at least one duty shall be imposed. Solutions changing principles of imposing probation duties within conditional sentencing deserve positive assessment. The introduction of these changes supports a thesis according to which conditional suspension of a sentence is connected with specified discomfort suffered by a perpetrator, thanks to which it is not identified with the remission of a penalty¹⁶. Introduction of the assessed solution into Art. 72 § 1 of the CC may, however, mostly contribute to

16 The same: V. Konarska-Wrzosek, *Kodeks karny...*, *op. cit.*, p. 422. It results from the reasoning to the governmental draft of the Act which became the basis of the amended Act of the Criminal Code of 20 February 2015 that the reason for the introduction of discussed solutions was replacing "pure" probation by the structure which will always contain some concrete and burdensome discomfort suffered by a perpetrator from the moment the judgment becomes valid. See: *Uzasadnienie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, Druk nr 2393 cz. 1, p. 16.

the reinstatement of conditional sentencing having a nature of a probation measure¹⁷. A new reading of this provision is indeed a way of increasing a number of sentences where deprivation of liberty which has been conditionally suspended will be accompanied by probation duties, including duties aimed at the implementation of restorative justice known in the model of a community court, or duties aimed at helping the perpetrator. Such a structure of conditional sentencing, distinct from conditional suspension of a sentence not combined with duties imposed on a perpetrator may, in turn, contribute to increased efficiency of this institution's functioning in the practice of the administration of justice.

From the perspective of a possibility of using procedures applied in the model of a community court within the scope of conditional sentencing, changed bases allowing to activate the suspended sentence should also be positively evaluated. Similar to American courts operating within the model of a community court, in case of conditional sentencing, the fulfilment of duties imposed on the perpetrator or implementation of other measures adjudicated towards him or her are also subject to control¹⁸. During the probation period, the perpetrator's conduct is subject to control by persons listed in Art. 73 § 1 of the CC as well as by the court. In the latter case, it involves a possibility of activating the suspended sentence if the legal bases envisaged in Art. 75 § 1 of the CC, Art. 75 § 1a of the CC, Art. 75 § 3 of the CC, or in Art. 75 § 2 of the CC have been confirmed during executive proceedings. The amended Act of 20 February 2015 changed the last provision mentioned above by completing previously known bases allowing to activate the suspended sentence to include evasion of the fulfilment of compensatory measures or forfeiture imposed on the perpetrator. This change resulted from the separation of a duty to redress damage, a duty to compensate inflicted harm, exemplary damages or forfeiture from the catalogue of penal measures and classifying them as separate instruments of response to prohibited acts¹⁹. The solution introduced in Art. 75 § 2 of the CC by the above mentioned amended Act should be approved of because despite granting a new legal nature to the above mentioned measures, it allows courts to maintain control over the perpetrator's conduct during the probation period within the scope of the fulfilment of these measure.

From the perspective of a possibility of using procedures applied in the model of a community court within the scope of conditional sentencing, a narrowed category of wrongdoers against whom the above mentioned institution may be applied should

17 The same: P. Gensikowski, *Obowiązki probacyjne związane z poddaniem sprawcy próbie w świetle najnowszych zmian kodeksu karnego*, (in:) A. Adamski, M. Berent, M. Leciak (ed.), *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, Warszawa 2016, p. 247; A. Zoll, (in:) W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część ogólna*, T. I, Warszawa 2016, p. 319.

18 See: P. Gensikowski, *Analiza...*, *op. cit.*, p. 55-56.

19 The same: J. Majewski, *Kodeks karny...*, *op. cit.*, p. 257-258.

be disapproved of²⁰. Before 1 July 2015 the subjective scope of this institution referred to perpetrators who were sentenced to two years of deprivation of liberty, restriction of liberty, or a fine. The amended Act of 20 February 2015 changed the reading of Art. 69 § 1 of the CC, in effect of which conditional sentencing *de lege lata* may indeed be applied solely towards wrongdoers who were sentenced to deprivation of liberty not exceeding a year if they were not convicted of an offence when committing the act²¹. A narrowed subjective scope of conditional sentencing also corresponded to a shortened probation period the court may apply it for²². Until 1 July 2015 the probation period amounted from two to five years in case of conditional suspension of deprivation of liberty, whilst in case of juvenile offenders or perpetrators of offences committed under conditions specified in Art. 64 § 2 of the CC, this period amounted from three to five years. The amended Act of 20 February 2015 changed the provision of Art. 70 of the CC, in effect of which the probation period amounts from one to three years in case of conditional suspension of deprivation of liberty, whilst in case of juvenile offenders or perpetrators of offences committed with the use violence harming a person they reside with, this period amounts from two to five years²³. The introduced solution does not foster increasing possibilities of implementation of procedures used in the model of a community court. A shortened probation period in conditional suspension of sentence indeed means a shorter time of control over the perpetrator's conduct by the entities listed in Art. 73 § 1 of the CC as well as by the court. A purpose of this control is to counteract reoffending. From this perspective, we cannot exclude that a shortened time of control over the perpetrator may, in some cases, impede satisfaction of the above mentioned objective²⁴.

Changes of the regulation concerning a way of performing probation duties by a perpetrator did not matter for increasing possibilities of implementation of procedures used in the model of a community court within the scope of conditional sentencing. In this regard, the amended Act of 20 February 2015 changed the content

20 In the context of the discussed limited scope of application of conditional sentencing, the following opinion expressed in the doctrine deserves attention. According to it, a solution introduced in Art. 69 § 1 of the CC may result in an increased number of adjudicated absolute deprivation of liberty. See: A. Zoll, Regulacja warunkowego zawieszenia wykonania kary pozbawienia wolności w ustawie z 20 lutego 2015 r., (in:) M. Bojarski, J. Brzezińska, K. Łuczczak (ed.), *Problemy współczesnego prawa karnego i polityki kryminalnej. Księga jubileuszowa Profesor Zofii Sienkiewicz*, Wrocław 2015, p. 412.

21 The exception from these principles was envisaged in Art. 60 § 5 of the CC, according to which in situations specified in Art. 60 § 3 of the CC, Art. 60 § 4 of the CC, conditional sentencing may also apply to perpetrators sentenced by the court to deprivation of liberty up to 5 years. The same: V. Konarska-Wrżosek, *Ustawowe przesłanki stosowania warunkowego zawieszenia wykonania kary po nowelizacji kodeksu karnego*, (in:) A. Adamski, M. Berent, M. Leciak (ed.), *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, Warszawa 2016, p. 168; J. Lachowski, *Kodeks karny...*, *op. cit.*, p. 369; A. Zoll, *Kodeks karny...*, *op. cit.*, p. 303.

22 The same: J. Majewski, *Kodeks karny...*, *op. cit.*, p. 243.

23 Only in case of conditional suspension of deprivation of liberty under conditions specified in Art. 60 § 5 of the CC, the probation period may amount to 10 years.

24 Yet, shortened probation period in case of conditional sentencing was also positively assessed by the doctrine. See: J. Skupiński, *Zalety i wady instytucji warunkowego zawieszenia wykonania kary po nowelizacji kodeksu karnego*, (in:) A. Adamski, M. Berent, M. Leciak (ed.), *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, Warszawa 2016, p. 186.

of Art. 72 § 1a of the CC, according to which imposing a duty listed in § 1 point 7a, the court establishes a minimum distance the perpetrator is obliged to keep from protected persons. What is more, the above mentioned Act added the provision of Art. 72 § 1b of the CC, according to which imposing on a perpetrator who committed an offence with the use of violence or unlawful threat against the closest person the obligation listed in § 1 point 7b, the court establishes how the convicted offender shall contact the victim. The first above quoted change is related to the merits while the second one is merely editorial²⁵. Obligations envisaged in Art. 72 § 1 point 7a of the CC and in Art. 72 § 1 point 7b of the CC are not instruments aimed at the implementation of restorative justice or elements aimed at helping the perpetrator. For this reason, the above quoted changes, which are to determine how these obligations should be performed by a perpetrator, are not connected with increasing possibilities of implementation of procedures used in the model of a community court within the scope of conditional sentencing. What is more, changes regulating the catalogue of probation duties that may be applied within this institution should be also similarly assessed. Most of these modifications do not ensue any substantial changes as they are formal and simplifying in nature. Nevertheless, moving a duty to participate in correctional-educational undertakings from the previous point 6a of Art. 72 § 1 of the CC to a newly created point 6b of this provision should be evaluated the same²⁶. Furthermore, a new reading of Art. 72 § 1 point 8 of the CC referring to a possibility of imposing on a perpetrator a duty not listed in the catalogue specified in Art. 72 § 1 point 1-7b of the CC and replacing the words “if it may prevent” from this provision by the expression “which may prevent”²⁷ should be evaluated in a similar way. Moreover, a formal meaning had to be given to the amended content of Art. 72 § 1 point 6a of the CC, according to which a perpetrator can be obliged to undertake therapy with his or her consent, in particular psychotherapy or psycho-education. Nevertheless, the above solution is indeed not *novum* in comparison to the legal status in force before 1 July 2015, where pursuant to Art. 72 § 1 point 6 of the CC *in fine*, the court could also oblige a convicted offender to undertake therapy, which also required his or her consent due to the previous content of Art. 74 § 1 of the CC²⁸. Furthermore, elimination of a possibility of obliging a convicted offender to undertake treatment from the catalogue of probation duties did not matter for the changed scope of possibilities of using of procedures used in the model of a community court within the scope of conditional sentencing, which ensues from the annulment of previous expressions used in point 6 of Art. 72 § 1 of the CC “to undertake treatment, in particular detoxification or rehabilitation”. However, the introduction of this solution does not mean that the court is deprived of an effective instrument of impacting perpetra-

25 See: J. Majewski, Kodeks karny..., *op. cit.*, p. 251.

26 See: P. Gensikowski, Obowiązki probacyjne..., *op. cit.*, p. 254.

27 *Ibidem*.

28 *Ibidem*.

tors who committed an offence due to their addiction, or who may commit such an act during the probation period. The amended Act of 20 February 2015 replaced the expression “to undertake treatment, in particular detoxification or rehabilitation” in Art. 72 § 1 point 6 of the CC with the expression “to undertake addiction therapy”.

4. Conclusion

The changes introduced into the criminal law in 2015-2016 within the scope of the regulation of the institution of conditional discontinuation of proceedings may only partly contribute to its increased use within procedures applied in the model of a community court. From this perspective, the extended scope of prohibited acts the institution of conditional discontinuation of proceedings may be applied to as well as the extended length of the probation period the court may apply thereto should be approved of. The changes introduced with regard to measures aimed at the implementation of restorative justice which may be imposed on a perpetrator when proceedings were conditionally discontinued as well as changes in legal bases allowing to activate conditionally discontinued proceedings deserve a similar assessment. On the other hand, changes determining how a perpetrator should fulfil this obligation as well as changes regulating the catalogue of other duties that may be imposed on him or her within this institution do not matter for increasing possibilities of using procedures applied in the model of a community court within the scope of conditional discontinuation of proceedings.

The changes introduced into the criminal law in 2015-2016 within the scope of the regulation of the institution of conditional sentencing may also only partly contribute to its increased use within procedures applied in the model of a community court. From this perspective, changed principles of imposing probation duties on a perpetrator which may be applied towards him or her in connection with conditional sentencing as well as changed legal bases allowing to activate the suspended sentence should definitely be approved of. From this point of view, however, a narrowed category of wrongdoers against whom conditional sentencing may be applied should be assessed differently. Finally, changes of regulations concerning a manner of performance of probation duties accompanying conditional sentencing as well as changes in the regulated catalogue of these duties did not matter for increasing possibilities of implementing procedures known in the model of a community court within the scope of conditional sentencing.

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