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Mediation discontinuation in light of the draft amendments of the Criminal Law Codification Commission

Jakub KOSOWSKI

Maria Curie-Skłodowska University in Lublin

ORCID: 0000-0001-6888-5771

E-mail: jakub.kosowski@mail.umcs.pl

Abstract

The article refers to draft amendments to the Code of Criminal Procedure prepared by the Criminal Law Codification Commission operating under the Minister of Justice. Among a number of changes concerning consensual procedures and their wider application in the practice of criminal justice, a new type of discontinuation of proceedings deserves attention. The draft provides for mediation discontinuation, i.e. discontinuation after mediation and the conclusion and execution of a settlement by the suspect. The author presents the premises for the new institution, exclusions from its application, and the relationship between the proposed regulations of Articles 11a and 11b of the Code of Criminal Procedure. An important aspect of the study is the comparison of the proposed institution with solutions that have already been in place in Polish criminal proceedings over the last few decades. After conducting the analysis, the author formulates conclusions regarding the systemic assumptions of the new type of discontinuation of proceedings and presents doubts related to the practical application of the proposed provisions.

Keywords

mediation, discontinuation, victim, benefit, justice fund

Introduction

For several months, the Criminal Law Codification Commission operating under the Minister of Justice has been proposing solutions to key areas that pose a challenge to the modern criminal process. In addition to revolutionary changes in areas such as electronic detention and videoconferencing¹, the Codification Commission has analysed and proposed solutions concerning consensual procedures². This issue is crucial in terms of the speed of proceedings, but also the ability of the justice system to function efficiently in criminal cases. The justification for the proposed changes indicates that judgments issued in consensual proceedings account for almost 25% of all convictions, which means that every fourth criminal trial ending with such a judgment is conducted efficiently, duly takes into account the interests of the victim, and does not generate lengthy, often multi-year and costly appeal or extraordinary proceedings, with the associated costs and involvement not only of the courts, but also of the prosecution and defence³.

When analysing the justification for the proposed changes, it should first be noted that they aim to further develop consensual procedures as an effective form of concluding criminal proceedings. Consensual procedures, i.e. agreements between the defendant, the prosecutor and the victim, are a response to an overburdened system and growing public expectations. The proposed amendments to the Code of Criminal Procedure are a step in this direction - they develop existing mechanisms and introduce new ones that allow cases to be concluded without a trial, but with justice being served, enabling faster resolutions while taking into account the interests of the victim. The current organisational and staffing problems of the criminal justice system are also significant. As one might expect, the aim of reducing the number of cases referred to the courts and the number of cases referred to trial at the court proceedings stage is to reduce the burden on the entire system of conducting trials, which are the most organisationally and substantively demanding forms of criminal case examination.

The new regulations are based on three assumptions: the expansion of conviction procedures without a trial, the introduction of the institution of discontinuation by the prosecutor, and specific guidelines for sentencing. The Codification Commission presented the proposed amendments in three legal acts: 1) in the Act of 6 June 1997, Code of Criminal Procedure (i.e. Journal of Laws of 2025, item 46, as amended); 2) the Act of 6 June 1997, the Criminal Code (i.e. Journal of Laws of 2025, item 383); 3) the Act of 6 June 1997, the Executive Criminal Code (i.e. Journal of Laws of 2025, item 911). Due to the extensive nature of the

¹ For more information, see <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

² See Set of amendments to consensual proceedings with justification <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

³ Justification for changes in consensual proceedings, p. 1, <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

proposed regulations, this study will focus on mediation discontinuation, i.e. the proposed regulations of Articles 11a and 11b of the Code of Criminal Procedure.

Grounds for applying mediation discontinuation

The explanatory memorandum to the proposed amendments notes that the proposed provisions of Article 11a of the Code of Criminal Procedure provide for the introduction of a new institution of discontinuation of criminal proceedings based on successful mediation between the suspect and the victim already at the preparatory stage of the proceedings, but this institution is limited to a narrowly defined category of offences and depends on the circumstances of the case and the situation of the perpetrator of the offence⁴. The justification refers to these new procedural solutions as „mediation discontinuation”⁵, which undoubtedly emphasises the key prerequisite for the application of the proposed solutions, i.e. mediation between the victim and the suspect.

The proposed provision of Article 11a of the Code of Criminal Procedure stipulates that, upon a joint request of the suspect and the victim (provided that the suspect has not been convicted of an intentional offence), in a case involving an offence against property worth up to PLN 20,000 without the use of violence or threats, the investigating authority may refer the case to mediation proceedings. The decision to refer the case to mediation does not require justification.

The decision to discontinue the proceedings is subject to the cumulative occurrence of several conditions: 1) the circumstances of the offence must be beyond doubt; 2) the settlement reached during the mediation proceedings must be enforced; 3) the discontinuation does not conflict with the need to achieve the objectives of the punishment; 4) the suspect must not have been previously convicted of an intentional offence; 5) the case must concern a non-violent offence against property or unlawful threat, the value of which does not exceed PLN 20,000, with the exception of Articles 280-283 of the Criminal Code, and an offence under Article 157 § 3, Article 160 § 3, Article 177 § 1 of the Criminal Code, with the exception of Article 178 § 1 of the Criminal Code. The prosecutor may additionally make the discontinuation conditional upon the suspect paying a sum of up to PLN 20,000 to the Victim Support and Penitentiary Assistance Fund. In the event of such a decision by the prosecutor, the payment of the above benefit will constitute the sixth mandatory condition for the application of mediation discontinuation.

It is also worth noting that in the proposed Article 11a § 2 of the Code of Criminal Procedure, the maximum amount of the benefit is PLN 20,000, and the legislator has not specified a minimum amount, so it should be assumed that it will be PLN 1. The draft amendments do not specify precise rules for determining

⁴ Justification for changes in consensual proceedings, p. 3, <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

⁵ Ibidem.

the amounts of this benefit. Given the similar nature of this benefit to the penalty measure under Article 39(7) of the Criminal Code, it would be reasonable to refer to the literature and case law on determining the amount of this benefit⁶. Certainly, the prosecutor should make the amount of the benefit dependent on the perpetrator's financial situation, family situation, income and earning capacity. Making the application of this institution conditional on the payment of a benefit in an amount close to the upper limit specified in the proposed Article 11a § 2 of the Code of Criminal Procedure will result in the suspect being unable to pay it, and thus indirectly the prosecutor will make the institution of mediation discontinuation impossible to apply in a specific factual situation. The prosecutor should undoubtedly also take into account the content of the settlement, which in most cases will certainly refer to the payment by the suspect to the victim of a specific amount as compensation and/or damages.

It should be noted that the existence of the above-mentioned conditions does not oblige the prosecutor to apply the institution in question, which means that it is optional, and refusal to apply it does not require justification and is not subject to procedural review. Furthermore, if, despite the settlement reached, the prosecutor considers that there are no grounds for discontinuing the proceedings, the prosecutor shall apply to the court for a conviction and the imposition of penalties agreed with the defendant, or may apply for conditional discontinuation of the proceedings, unless the circumstances of the case preclude this (draft Article 11a § 4 of the Code of Criminal Procedure). This provision expands the catalogue of consensual instruments in criminal proceedings, introducing a new path for terminating proceedings without the need to refer the indictment to the court. Its effect is to create a new path for terminating proceedings without the need to refer the indictment to the court. The introduction of Article 11a of the Code of Criminal Procedure also constitutes a significant change in the scope of the prosecutor's powers. Until now, only the court had the power to discontinue criminal proceedings (e.g. in the case of conditional discontinuation of proceedings under Article 66 of the Criminal Code), while the prosecutor could only apply discontinuation in the case of negative circumstances specified in Article 17 of the Code of Criminal Procedure.

Exclusions from the application of mediation discontinuation

In order to meet the above-mentioned positive conditions for the application of mediation discontinuation, it is necessary to analyse that there are no negative conditions with regard to the act committed. According to the proposed Article 11a § 1 of the Code of Criminal Procedure, the exclusion of the application of the procedural institution in question covers the following groups of cases: 1)

⁶ See, inter alia, W. Zalewski [in:] M. Królikowski, R. Zawłocki (eds.), Criminal Code. General Part. Volume I. Commentary. Articles 1–116, Warszawa 2021, Article 43a.

offences other than those against property without the use of violence or unlawful threats; 2) offences against property without the use of violence or unlawful threats specified in Articles 280-283 of the Criminal Code (robbery, aggravated theft, extortion), whose value does not exceed PLN 20,000; 3) offences other than those specified in Article 157 § 3, Article 160 § 3, Article 177 § 1 of the Criminal Code; 4) offences under Article 177 § 1 of the Criminal Code committed under the conditions specified in Article 178 of the Criminal Code (the perpetrator is intoxicated or under the influence of intoxicating substances, or has fled the scene of the incident, or has consumed alcohol, or has taken an intoxicating substance after committing the act specified in Article 173 § 1 or 2, Article 174 or Article 177 § 1 of the Criminal Code, and before being subjected to a test by an authorised body to determine the alcohol content or presence of an intoxicating substance in the body).

When analysing the group of exclusions, one must agree with the justification for the draft law in question that mediation discontinuation is envisaged as an institution applicable only to a narrowly defined group of offences, as it covers only the following four categories: 1) offences against property without the use of violence or unlawful threats, the value of which does not exceed PLN 20,000, with the exception of Articles 280-283 of the Criminal Code; 2) offences under Article 157 § 3 of the Criminal Code (unintentional minor or moderate bodily harm); 3) offences under Article 160 § 3 of the Criminal Code (unintentional exposure to danger); 4) an offence under Article 177 § 1 of the Criminal Code, excluding Article 178 § 1 of the Criminal Code (causing a traffic accident resulting in no more than moderate damage to health, where the perpetrator is not intoxicated or under the influence of any other intoxicating substance)⁷. From the point of view of the types of prohibited acts, this aspect undoubtedly allows us to conclude that there is a narrow group of acts that may be subject to absorption discontinuation. However, police statistics indicate that offences against property are the most common, so the group of offences against property without the use of violence or unlawful threats is extremely large⁸. For example, in 2023, there were 117,477 cases of theft of another person's property, and the perpetrators were detected in 53,902 cases. For comparison, in 2016 there were 145,464 offences and 42,046 offences, respectively. Burglary offences in 2023 amounted to 62,689, while the perpetrators were detected in 34,384 cases. For comparison, in 2016, there were 77,190 offences and 27,535 perpetrators detected⁹. It should be noted that these are only statistics for crimes which, due to the concept of halving in the case of crimes against property, refer to crimes in which the value of the object of the crime exceeds PLN 800 (see Article 119 of the Code of Petty Offences). The proposed amendments are not reflected in the Code of

⁷ Justification for changes in consensual proceedings, p. 3, <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

⁸ See <https://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-kryminalne/63470,Przestepstwa-kryminalne-ogolem.html> [access: 10.10.2025].

⁹ Ibidem.

Misdemeanours. This allows us to conclude that if the analysed provisions are adopted, it will be possible to apply the regulations in question in a large number of situations.

Mediation discontinuation in the light of the repealed Article 59a of the Criminal Code

With regard to the proposed provision of Article 11a of the Code of Criminal Procedure, it should be noted that this is not an entirely new solution in the Polish legal system. Polish law (2015¹⁰-2016), Article 59a of the Criminal Code¹¹, which provided for the possibility of discontinuing criminal proceedings against a perpetrator of an offence punishable by up to 3 years' imprisonment if the perpetrator reconciled with the victim and repaired the damage or otherwise compensated for the harm caused.

However, Article 59a of the Criminal Code was repealed by the amendment of 1 July 2015¹², mainly due to concerns about its abuse and the lack of effective mechanisms for controlling the prosecutor's decisions. The overly broad and imprecise grounds for applying this provision and the lack of uniform case law were also criticised. A. Lach noted at the time that doubts may arise as to whether it is justified to grant the prosecutor such far-reaching powers, and that the arguments put forward when the prosecutor was deprived of the possibility of conditional discontinuation of proceedings in 1995 could be cited as grounds for this¹³. R. Koper, referring to the of the regulations at the time, noted that the concept, which is to be implemented in practice from 1 July 2015, is not perfect, and that it is necessary to strengthen the protection of the directive of an appropriate criminal response and the legitimate implementation of the idea of substantive criminal justice through certain changes in the formulation of these conditions, which would make the application of Article 59a of the Criminal Code more

¹⁰ Article 59a added by the Act of 27 September 2013 (Journal of Laws of 2013, item 1247, as amended by the Journal of Laws of 2015, item 396), which entered into force on 1 July 2015.

¹¹ Article 59a. [Discontinuation of proceedings at the request of the victim. Grounds for application] § 1. If, before the commencement of court proceedings in the first instance, the perpetrator, who has not previously been convicted of an intentional violent crime, has reconciled with the victim, in particular as a result of mediation, and has repaired the damage or compensated for the harm caused, the criminal proceedings for an offence punishable by up to 3 years' imprisonment, as well as for an offence against property punishable by up to 5 years' imprisonment, and for an offence specified in Article 157 § 1, shall be discontinued at the request of the victim.

§ 2. If the act was committed to the detriment of more than one victim, the application of § 1 shall be conditional upon reconciliation, compensation for the damage by the perpetrator and redress for the harm caused to all victims.

§ 3. The provision of § 1 shall not apply if there are special circumstances justifying that the discontinuation of proceedings would be contrary to the need to achieve the objectives of the punishment.

¹² Article 59a repealed by the Act of 11 March 2016 (Journal of Laws of 2016, item 437), which entered into force on 15 April 2016.

¹³ A. Lach, Discontinuation of criminal proceedings under Article 59a of the Criminal Code, „Prokuratura i Prawo” 2015, No. 1, pp. 10-11.

rigorous by criminal proceedings authorities¹⁴ The cited author compared the advantages of the then regulation and pointed to the risks associated with the „privatization” of the criminal process to an excessive extent, implying irreversible consequences for the public's attitude towards crime and punishment¹⁵. B. Myrna, on the other hand, considered that Article 59a of the Criminal Code was unconstitutional, as the authorisation of the public prosecutor's office to discontinue criminal proceedings at the request of the victim as a result of the perpetrator of the crime repairing the damage or compensating for the harm was incompatible with the constitutional principle of judicial justice laid down in Article 175 § 1 of the Polish Constitution¹⁶. The risk of unequal treatment of perpetrators was also pointed out. It was emphasised that compensatory discontinuation is a manifestation of unacceptable privatisation of criminal responsibility, threatening a flagrant violation of the principle of equality and privileging wealthy individuals who, by taking advantage of Article 59a of the Criminal Code, can buy their way out of punishment¹⁷.

When assessing the proposed Article 11a of the Code of Criminal Procedure, it is impossible not to refer to the problems identified in the repealed Article 59a of the Criminal Code, which granted the prosecutor powers that had previously belonged exclusively to the court. In the new situation, the prosecutor may in practice replace the court in deciding on the scope of criminal liability, which undermines the balance between the law enforcement authority and the independent court.

In the justification for the proposed changes, the authors see only positive aspects. They point out, for example, that the institution of mediation-based discontinuation will have a positive impact primarily on the situation of the victim, ensure efficient criminal proceedings with respect for the interests of justice, and also enable the suspect to conclude criminal proceedings with significant benefits in the form of discontinuation of criminal proceedings. A positive impact on the criminal process was also noted, even if, after its application, mediation discontinuation does not ultimately occur¹⁸.

Interestingly, the authors do not see any risks in their justification, including the short period of validity of Article 59a of the Criminal Code, even though mediation discontinuation in its structural sense significantly refers to institutions that have already been repealed. Although the purpose of introducing the provision – to facilitate mediation and repair the damage caused to the victim – is

¹⁴ R. Koper, Conditions for discontinuation of criminal proceedings under Article 59a of the Criminal Code, „Ius Novum” 2014, No. 3, p. 24.

¹⁵ Ibidem.

¹⁶ B. Myrna, Article 59a of the Criminal Code – success or failure of the legislator, „New Codification of Criminal Law”, Vol. L, AUWr No. 3897 Wrocław 2018, p. 35. DOI: 10.19195/2084-5065.50.3

¹⁷ W. Wróbel, Compensatory discontinuation under Article 59a of the Criminal Code - issues to be resolved, „Journal of Criminal Law and Penal Sciences”, Year XIX: 2015, issue 2, p. 7.

¹⁸ Justification for changes in consensual proceedings, p. 5, <https://www.gov.pl/web/sprawiedliwosc/projekty-aktow-prawnych> [access: 10.10.2025].

undoubtedly justified, in my opinion, granting the prosecutor such broad powers is not justified without judicial control.

Mediation discontinuation and discontinuation in minor cases without a victim

Discontinuation of proceedings through mediation under the proposed Article 11a of the Code of Criminal Procedure should be distinguished from another proposed institution, specified in Article 11b of the Code of Criminal Procedure. This provision provides for the possibility of discontinuation of proceedings by the prosecutor in cases of minor document forgery, minor invoice forgery, minor certification of untruth in a document, minor certification of untruth in an invoice, and use of a false document. The purpose of the provision is to speed up proceedings and relieve the burden on the courts, but this solution raises similar doubts as in the case of the proposed Article 11a of the Code of Criminal Procedure. Article 11b of the Code of Criminal Procedure allows the prosecutor to terminate the proceedings independently, without the participation of the victim and, thus, without mediation. This institution therefore does not fit into the concept of mediation discontinuation. Granting the prosecutor the power to discontinue proceedings in minor cases, on very general grounds, means that in practice the prosecutor will decide on the criminal liability of the perpetrator.

The draft indicates several grounds for applying prosecutorial discontinuation. The following positive grounds are listed: 1) commission of an offence under Article 270 § 2a and 3, Article 270a § 3, Article 271 § 2, Article 271a § 3, Article 273 of the Criminal Code; 2) the suspect has no previous convictions for intentional offences; 3) the circumstances of the case are not in doubt; 4) payment of up to PLN 20,000 to the Victim and Penitentiary Assistance Fund; 5) discontinuation would not be contrary to the objectives of the penalty.

It should be noted that the discontinuation proposed in Article 11b of the Code of Criminal Procedure is not a mediation discontinuation, but a significant part of the grounds for applying this institution is similar to the mediation discontinuation under Article 11a of the Code of Criminal Procedure. The aspects of appealing against the decision in question will also be identical. The fact that there are significant doubts as to whether the decision in question should be taken is not without significance, particularly in the absence of a victim who could effectively appeal against the decision to discontinue the proceedings. This makes the role of the notifying party, in particular institutions which, in the course of their activities, suspect that a crime has been committed, all the more important. It seems that the institution referred to in Article 11b of the Code of Criminal Procedure is intended to meet the expectations of the public and law enforcement authorities regarding crimes related to the authenticity of documents. My experience shows that in few cases is an indictment referred to the court, and in most cases, obvious cases are classified as acts of negligible social

harm, resulting in discontinuation under Article 17 of the Code of Criminal Procedure. Unfortunately, in most cases, these decisions are upheld by the court in the appeal procedure. It therefore seems that the new solution will have some impact on the practice of law enforcement authorities, given that discontinuation under the proposed Article 11b of the Code of Criminal Procedure entails the obligation to pay a contribution to the Victim and Penitentiary Assistance Fund. It therefore seems that this solution, due to the financial interest of the state, will be preferred by law enforcement authorities over discontinuation under Article 17 of the Code of Criminal Procedure.

Appeals against the prosecutor's decision to discontinue proceedings

The prosecutor, recognising that there are grounds for applying Article 11a or 11b of the Code of Criminal Procedure in a specific case, will issue a decision to discontinue the preparatory proceedings. It should be noted that failure to use the proposed solution does not necessitate the issuance of a procedural decision. In this respect, failure to take the procedural decision to discontinue proceedings cannot be considered as inaction. Therefore, only a decision to discontinue proceedings taken on the basis of Article 11a or Article 11b of the Code of Criminal Procedure will be subject to appeal. The proposed regulations do not indicate a specific legal basis for appealing against the decision in question, therefore the general rules on appealing against decisions in preparatory proceedings will apply.

Pursuant to Article 306 § 1a of the Code of Criminal Procedure (applied in investigations under Article 325a of the Code of Criminal Procedure), the following parties are entitled to appeal against a decision to discontinue an investigation: 1) the parties; 2) the state or local government institution that reported the offence; 3) a person who is not an injured party and who reported a crime specified in Articles 228-231, Article 233, Article 235, Article 236, Article 245, Articles 270-277, Articles 278-294 or Articles 296-306c of the Criminal Code, if criminal proceedings were initiated as a result of their report and their rights were violated as a result of the offence.

The list of entities entitled to lodge a complaint is therefore limited and, apart from the parties, it may be an institution or a person who reported the suspected offence, whereby in the case of a natural person who is not the victim of the offence, the possibility of lodging a complaint is limited to certain acts. Comparing the list of positive grounds for applying mediation discontinuation and the list indicated in Article 306(1a) of the Code of Criminal Procedure, one can note identical acts, for example those relating to acts against property (e.g. Article 278 of the Criminal Code). This proposal may prove crucial, given that the parties will be satisfied with the decision and will not be interested in appealing against it. The role of the active entity may therefore be taken over by the notifying party,

which may be an institution or a natural person. It should be noted that in the case of the proposed institution under Article 11b of the Code of Criminal Procedure, there will be no injured party, and therefore the list of entities entitled to lodge a complaint will be limited.

At this point, it is also worth considering the grounds for lodging a complaint by the parties to the proceedings. The parties have concluded a settlement in mediation, which is, after all, a prerequisite for discontinuation of mediation. It should also be noted that the prerequisite for applying the discontinuation in question is also the performance of the settlement. The injured party may therefore be satisfied with the signing and implementation of the settlement, but consider that the payment to the Justice Fund determined by the prosecutor is too low. Alternatively, after reflection, they may decide that the content of the settlement is not entirely satisfactory and wish to continue the proceedings in order to obtain a court judgment, even if it is a conditional discontinuation of proceedings containing an element of probation. However, it should be remembered that in this situation, they will have to prove the existence of gravamen, i.e. in accordance with Article 425(3) of the Code of Criminal Procedure, the appellant may only appeal against decisions or findings that violate their rights or harm their interests. Demonstrating a violation of rights or damage to interests through an excessively low contribution to the Justice Fund seems to be a questionable solution. In the case of questioning, after consideration, the issue of the settlement, it also seems problematic to question the findings of the settlement, given that it was signed several weeks earlier. However, each case should be considered individually, for example in terms of the victim's health/mental/professional situation at the time, or evidence of pressure from the prosecutor or suspect to refer the case to mediation and subsequently to a settlement. The victim may come to such conclusions subsequently, for example through consultation with a professional representative. In such cases, these circumstances should be considered in the light of Article 425(3) of the Code of Criminal Procedure.

The benefit specified in the proposed Articles 11a and 11b of the Code of Criminal Procedure as a new source of revenue for the Victim Support and Post-Penitentiary Assistance Fund

In addition to the aforementioned amendments to the Code of Criminal Procedure, the introduction of the institution of absorption discontinuation entails amendments to the Act of 6 June 1997 – Executive Criminal Code (Journal of Laws of 2024, item 706).¹⁹ The benefit in question is not a criminal measure, as such measures can only be imposed by a criminal court. Due to the fact that the decision on mediation discontinuation is made by the prosecutor, the drafters had

¹⁹ For more details, see R. A. Stefański, Commentary Article 39 [in:] R. A. Stefański (ed.), Criminal Code. Commentary, Warsaw 2025, Lex/el.

limited possibilities to shape the benefit in question. Therefore, a decision was made to classify the benefit as income of the Victim and Post-Penitentiary Assistance Fund (Justice Fund), which required expanding the closed catalogue of the Fund's income specified in the Executive Penal Code. This proposal does not significantly affect the administration of justice, as it is of a technical nature. According to the proposed wording of Article 43 § 7 of the Criminal Executive Code, the Fund's revenues would include funds from: 1) fines and monetary benefits imposed by courts; 2) deductions of 7% of the remuneration due for the work of convicts employed in the forms specified in Article 121 § 2 of the Criminal Executive Code; 3) the enforcement of disciplinary penalties referred to in Article 143 § 1(7) of the Criminal Executive Code; 4) inheritances, bequests and donations; 5) subsidies, collections and other sources; 5) benefits referred to in Articles 11a and 11b of the Code of Criminal Procedure.

Conclusions

The proposals of the Criminal Law Codification Commission are clearly aimed at streamlining proceedings. The idea is undoubtedly sound, although it seems that it is currently motivated by organisational and staffing problems in the criminal justice system. In my opinion, the first priority should be to digitise the criminal process, which is extremely archaic and does not take advantage of the technological possibilities commonly used in everyday life. I am referring here to the electronic transmission of documents, the use of electronic signatures, electronic files, etc.

The expansion of the use of consensual procedures proposed by the Commission draws on the experiences of some European countries and the United States of America.²⁰

The draft significantly expands the prosecutor's powers to discontinue proceedings. The proposed Article 11a of the Code of Criminal Procedure introduces the possibility of discontinuation through mediation by the prosecutor, regardless of the grounds for discontinuation specified in Article 17 of the Code of Criminal Procedure. In addition to the mutual consent of the parties to the proceedings to participate in mediation and to settle the issues between them at the level of a settlement, a negative condition has been indicated, which assumes that discontinuation would be contrary to the need to achieve the objectives of the punishment. Importantly, this aspect relates to an analysis that is currently the role of the court, not the prosecutor's office. When analysing the history of criminal

²⁰ For more details, see, among others, S. Steinborn, *Agreements in Polish criminal proceedings. Conviction without trial and voluntary submission to criminal liability*, Kraków 2005; C. Kulesza, *Procedural agreements in European justice systems*, https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/13156/1/C_Kulesza_Porozumienia_procesowe_w_europejskich_systemach_wymiaru_sprawiedliwosci.pdf [access: 10.10.2025]; D. Czerwińska, *Procedural agreements in criminal cases*, Warsaw 2024.

proceedings, one can see institutions in which the decision could be made by the prosecutor, e.g. conditional discontinuation of proceedings under the 1969 Code of Criminal Procedure²¹, or the use of pre-trial detention at the very beginning of the current Code of Criminal Procedure.²² The legislator changed this formula, pointing to the practice at the time, and judicialised these decisions. The proposed amendment, at the expense of the speed of proceedings, therefore grants the prosecutor an important role, which has a particular impact on the position of the accused, who may avoid the hardship associated with a conditional discontinuation of proceedings or a conviction. This seems to be too far-reaching a change, considering that criminal proceedings are not just a relationship between the defendant and the victim. Such an important decision in the context of criminal liability should be made by the court. This is particularly true given that mediation proceedings and settlements may be taken into account in consensual proceedings, with a significant extension of their scope under the draft bill of the Criminal Law Codification Commission.

The formal aspect resulting from a final conviction or conditional discontinuation is not without significance for the assessment of the institution in question. I am referring here to recidivism and demonstrating recidivism, but also to the probation period in the context of conditional discontinuation of proceedings by a court judgement. The proposed institution of mediation discontinuation does not address this issue. Obviously, this is not a final conviction, there is no probation period, and thus, in terms of preventing the commission of another prohibited act, it will not have a significant impact in terms of either general or specific prevention. It will also be a significant obstacle for the procedural authorities conducting the preparatory proceedings for another offence, given the lack of a central database of information on these forms of discontinuation. In such proceedings, the suspect will continue to remain unpunished. However, the argument of public perception of the solution in question seems to be crucial. The conclusion of a settlement, assuming that it will be reflected in the suspect's obligation to pay compensation and/or damages to the victim, as well as the payment of a fee to the Justice Fund, may give the impression of „buying one's way out of punishment”, with the option of full availability for people with the appropriate financial status and unavailable to people with low incomes and insignificant assets.

In summary, it should be recognised that the current and projected staffing and organisational problems of the criminal justice system cannot influence the shaping of criminal procedure institutions, which have such a significant impact on the issue of criminal responsibility and have important social implications. These changes should be independent in nature and aim to transfer substantive decisions on the subject matter of the trial to an independent and impartial court. This will avoid the doubts indicated in this study, which have arisen so far on the

²¹ J. Bednarszak [in:] M. Mazur (ed.), *Code of Criminal Procedure. Commentary*, Warsaw 1976, pp. 384-386.

²² For more information, see, among others, J. Izydorczyk, *The use of pre-trial detention in Polish criminal proceedings*, Kraków 2002.

basis of several historical institutions transferring significant substantive powers to the prosecutor's office, bypassing the court.

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