

Abstract

Conditional discontinuance of criminal prosecution and settlement in prosecutorial practice - comparison

At the outset, the first chapter outlines the possible alternatives in criminal proceedings and describes the principles of restorative justice. Following this, the thesis also elaborates on alternative sentences and alternatives to punishment, focusing on diversions. This thesis deals mainly with two diversions in criminal proceedings, which are conditional discontinuance of prosecution and settlement. These diversions are defined and compared using the method of literature search.

The second chapter is devoted in detail to the legal conditions for the application of the CDCP. In particular, it discusses in more detail the concept of the offence, the circumstances of the accused's confession and his consent to the application of the CDCP. This chapter also discusses the obligation of the accused to compensate for the damage and to hand over the unjust enrichment and, last but not least, a part is also devoted to the specification of when the application of the CDCP can be considered a sufficient solution.

Subsequently, the third chapter is again theoretical and describes the settlement in more detail. It first compares which conditions are the same for a CDCP and a settlement and then discusses those legal conditions that are different for a settlement. In particular, attention is paid to the accused's declaration that he committed the act and the interview of the accused and the injured party, which the prosecutor must obligatorily conduct before approving the settlement. However, there are also subchapters on the consent of the injury party or the amount of money designated by the state to assist victims of crime.

The next chapters are devoted to the application of diversions in prosecutorial practice. The main aim of this thesis is to find out why prosecutors use these two diversions differently, whether they are used appropriately and whether the purpose of criminal proceedings is still fulfilled even in the absence of punishment. The analysis of statistical data and the results of a questionnaire answered by prosecutors are the main tools used to obtain answers.

The fourth chapter focuses on the frequency of the use of these diversions, especially in the last year 2022, when CDCP is applied many times more often than the settlement. It also compares this data to previous years and also compares prosecutorial and court data. Attention

is also focused on the specific crimes that are most likely to receive a CDCP or settlement. Personal injury and property crimes are at the forefront. The results obtained are then justified in subsection 4.2, where the main reasons for the low use of settlement include the necessary consent of the injured party, the obligatory financial amount per victim of the crimes or the absence of a probationary period. Of course, the personality of the defence counsel or prosecutor also plays a large role in diversions.

The following section briefly summarizes the advantages and disadvantages of these diversions. The main advantages include conflict resolution, prevention, speed and efficiency of criminal proceedings. However, when applied inappropriately, the diversion used may also have the opposite effect to that which we would wish.

The last sixth chapter presents *de lege ferenda* proposals. In the case of the CDCP, the thesis considers the possibility of extending the trial period, expanding the range of crimes to which the CDCP could be applied or transferring certain elements of the settlement also to the CDCP. There are also some remarks on how the settlement could be improved. The ideas focus mainly on the abolition of the mandatory interrogation or the possibility to conclude a settlement without the injured party.

Finally, the data obtained are transformed into answers to the research questions. Diversions are used differently primarily because each is intended to serve a slightly different purpose and also because settlement has stricter conditions of use. I think that the diversions are not always used appropriately, as their application is also affected by the different attitudes of prosecutors towards the diversions. Despite the absence of punishment, diversions are a better preventive solution to crime than conviction and imposition of punishment by the court.

Keywords: conditional discontinuance of criminal prosecution, settlement, diversions, prosecutors, comparison, restorative justice