

Judgment of 16<sup>th</sup> May 2000, P 1/99  
**CONDITIONAL DISCONTINUANCE OF CRIMINAL PROCEEDINGS  
 AND THE PRESUMPTION OF INNOCENCE**

<b>Type of proceedings:</b> Question of law referred by a court <b>Initiator:</b> Military Garrison Court for Warsaw	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Procedural nature of the decision, taken prior to the hearing, regarding conditional discontinuance of criminal proceedings [Criminal Procedure Code 1997: Article 342, read in conjunction with Article 341 § 2]	Presumption of innocence [Constitution: Article 42(3)]

Conditional discontinuance of criminal proceedings is one of the so-called probationary measures envisaged within the Criminal Code 1997, resulting in a defendant being “put on probation” instead of being punished. Such a measure may be applied by courts upon fulfillment of the following conditions: no doubts may exist concerning the defendant’s commission of a prohibited act; that act must involve an insignificant degree of guilt and societal harm; there must exist a so-called positive prognosis regarding the defendant; and the criminal offence committed must, in principle, be punishable by no more than 3 years imprisonment (cf. Article 66 of the Criminal Code). Conditional discontinuance occurs for a period of probation lasting between 1 and 2 years and may be accompanied by certain obligations imposed upon the defendant. Conditionally discontinued proceedings may be resumed during the period of probation; in such circumstances, proceedings are recommenced on the basis of general principles.

Conditional discontinuance may occur at different stages of criminal proceedings. A motion concerning discontinuance may be lodged with the court by the prosecutor during preparatory proceedings, instead of an indictment (Article 336 of the Criminal Procedure Code). Following the submission of an indictment, the President of the court may, within the so-called procedure for the preliminary review of charges, direct that the case be heard in a sitting in camera to consider the possibility of conditional discontinuance (Article 339 § 1 point 2 of the Criminal Procedure Code). Pursuant to legal provisions operative at the date on which the judgment summarised herein was issued, the conditional discontinuance of proceedings in both of the aforementioned cases took the form of a procedural decision (i.e. judicial decision of a procedural nature), as opposed to a judgment, being a decision on the merits of the case (Article 342 of the Criminal Procedure Code). The defendant was entitled to object to conditional discontinuance, which resulted in the case being sent for the hearing and considered on the basis of general principles (Article 341 § 2 of the Criminal Procedure Code). In the event that circumstances justifying conditional discontinuance came to light during the hearing (and specifically, following the reading of the indictment by the prosecutor), the court would adopt a ruling thereupon in

the form of a judgment (Article 414 § 1 of the Criminal Procedure Code).

The court referring the question of law in the present case doubted the permissibility of adjudicating upon the conditional discontinuance of proceedings in the form of a procedural decision prior to the hearing (Article 342 of the Criminal Procedure Code). In particular, since one of the conditions for the conditional discontinuance of proceedings was the existence of an insignificant degree of guilt on the part of the defendant, the court argued that this required a premature decision upon the defendant's guilt and commission of an offence. Meanwhile, in the light of Article 42(3) of the Constitution, the presumption of innocence continues until the defendant's guilt is confirmed by a final court "judgment".

## RULING

### **The challenged regulation conforms to Article 42(3) of the Constitution.**

#### PRINCIPAL REASONS FOR THE RULING

1. The presumption of innocence principle is addressed, in particular, to public authority organs (Article 42(3) of the Constitution). This presumption is one of the elements determining a citizen's position within society and vis-à-vis public authorities, guaranteeing citizens appropriate treatment, particularly where they are accused of committing a criminal offence. This presumption is connected with personal liberty and protection of a person's dignity and freedom (Article 30 of the Constitution). The discussed principle requires the creation of a specified procedural situation for the accused. It requires those alleging that the defendant has committed a criminal offence (the prosecutor) to prove such allegations. Certain obligations are also imposed upon the court, whose role is to assess the usefulness of the evidence submitted and the need to hear evidence *ex officio*, as well as ruling upon the inadmissibility of evidence. The defendant, however, need not prove anything. When all available evidence has been heard and the facts of the case remain unexplained, they should be determined in favour of the defendant (the *in dubio pro reo* principle).
2. The presumption of innocence prevails until such time as the defendant's guilt is confirmed by a final court judgment. This presumption is also called the "temporary truth", becoming permanent truth whenever it is not rebutted in the aforementioned manner. In a State governed by the rule of law, final judgments confirming guilt should be passed upon completion of proceedings wherein the defendant enjoys procedural guarantees. It is impermissible to interpret Article 42(3) of the Constitution expansively, thereby assimilating the notion of a "court judgment" with any court decision pronounced not in the form of a judgment but, for example, as a procedural decision.
3. The Criminal Procedure Code deals with conviction and conditional discontinuance of proceedings separately (cf. Article 415 § 1 of the Code). A convicting judgment should, inter alia, contain a precise description of the act attributed to the defendant and the legal

qualification of that act (Article 413 § 2 of the Criminal Procedure Code). A judicial decision regarding conditional discontinuance should precisely describe the act committed by the defendant, indicate the provision of a criminal statute within which the act falls and determine the period of probation (Article 342 § 1 of the Criminal Procedure Code). In the latter case, in contrast to a convicting judgment, no act is attributed to the defendant, in the sense of determining the existence of guilt, which is a precondition for committing a criminal offence. The aforementioned distinction between an “attributed act” (in the event of conviction) and an “act” highlights the principal difference between a convicting judgment and any other criminal decision, even when the latter is based upon a determination of the defendant’s guilt. This is also expressed in rulings of both types of decisions. A convicting judgment contains a formula that the court “finds the accused guilty of having committed the act with which they were charged”, or some similar phrase. No finding of the defendant’s guilt exists within a decision regarding conditional discontinuance of proceedings, which merely recognises the perpetration of an act. The formula to be regarded as a “determination of guilt” within the meaning of Article 42(3) of the Constitution may only be found in convicting judgments.

4. Attributing the defendant with a criminal offence within judicial decisions regarding conditional discontinuance of proceedings is not final but, rather, “provisional” in nature. Firstly, the defendant may object to conditional discontinuance. In such circumstances, the case must be recommenced on the basis of general principles (Article 341 § 2 of the Criminal Procedure Code). Secondly, upon successful completion of a period of probation, the conditional discontinuance of proceedings transforms, by virtue of law, into definitive discontinuance, following which proceedings may not be resumed and the defendant is recognised as a person without a criminal record (Article 68 § 4 of the Criminal Code). Thirdly, if during the period of probation the defendant commits an action falling within Article 68 § 2 and § 3 of the Criminal Code and proceedings are resumed, the case is recommenced on the basis of general principles (Article 551 of the Criminal Procedure Code). If a judicial decision regarding conditional discontinuance determined guilt in the same way as a convicting judgment, the defendant’s guilt, having been confirmed by a final judicial decision, should in no way be the subject of the latter proceedings. However, the presumption of innocence operates within these proceedings and any decision may be pronounced therein, including an acquitting judgment.

#### Provisions of the Constitution

**Art. 30.** The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

**Art. 42.** [...] 3. Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.