

Conditional Discharge

Management summary Evaluation of the law Conditional Discharge

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Introduction

On 1 July 2008 the penal code has changed and conditional discharge (in Dutch: voorwaardelijke invrijheidstelling) has been introduced. With that, the early release with which no conditions were connected, has been substituted by a release which is always connected to the general condition that the convicted is not allowed to commit a crime before the end of the probation. Besides, special conditions can be connected to the early release.

By order of the Research and Documentation Centre (in Dutch: WODC) of the Ministry of Security and Justice DSP-groep has evaluated the amended law. Goal of the evaluation is twofold. Firstly, by means of a so-called 'plan evaluation' the evaluation aimed to identify the ideas that underlie the conditional discharge. Secondly, by means of a process evaluation the evaluation aimed to determine how the law conditional discharge (in Dutch: Wet voorwaardelijke invrijheidstelling) is executed in practice and which problems and effects occur.

Research method

Different methods have been used in this evaluation. The plan evaluation consisted of a document analysis, six interviews with the founding fathers of the law conditional discharge and the construction of a theoretical causal model. The process evaluation consisted of an analysis of the registrations of the conditional discharge process in the period April 2009- July 2011 which are administered by the CJIB in their process system Robein. Complementary to this analysis document analysis has been conducted on all conditional discharge cases which were finished in the period April 2009- July 2011. Besides, 35 interviews were conducted with the representatives of the organizations which are involved with the conditional discharge process.

Limitations

Those who were prosecuted under the old regulation before July 2008 cannot be considered for conditional discharge. The fieldwork for the evaluation was held three years after the law amendment. During this period gradually more people were released conditionally. As a result, the share long-term inmates on the total population of conditionally discharged during this period was relatively low (but will increase gradually till a stable situation in 2015). A consequence for the process evaluation is that the current conditional discharge population is characterized by a strong overrepresentation of light convicted. Furthermore, it has to be noted that as a result of the slow increase of the amount of conditional discharge cases, the different parties (in particular the judiciary) involved in the conditionals discharge process up to the present haven't had a lot of experience with the regulation. This can also influence the assessment till so far.

Plan evaluation

Which ideas underlie attaching conditions to the early release and by means of which behavioral mechanisms would this lead to a reduction of recidivism of the consumers of legal services? The policy theory behind the conditional release is quite uncomplicated. The intervention consists of three ingredients: threatening with the remainder of the punishment (or another negative reaction on the undesirable behavior), supervision (consisting of guidance and control) and offering behavior alternatives. These three aspects must motivate the conditional discharged person to behavioral change by the behavioral mechanisms deterrence and confirmation. This must subsequently lead till resocialization of offenders which, according to the policy theory, results in less recidivism and a safer society. The link from intervention to intended policy effects is not directly, but runs through a process of knowledge, attitude and eventually behavioral change.

This policy theory is plausible, but only if a certain amount of preconditions are met: a quick reaction on an offence, good supervision for confirmation of desirable behavior and a coordinated, consequent, and consistent implementation of the policy by all parties involved.

Apart from that, an analysis of Parliamentary debates prior to the law amendment and the interviews we conducted in 2011 shows that this policy theory is not new. The introduction of conditional discharge in 2008 was not a consequence of new insights on the best way to get and keep (ex)-convicted straight on the right path. Much more important were the political-societal views on penalty goals and discussions about the pressure on the penitentiary system.

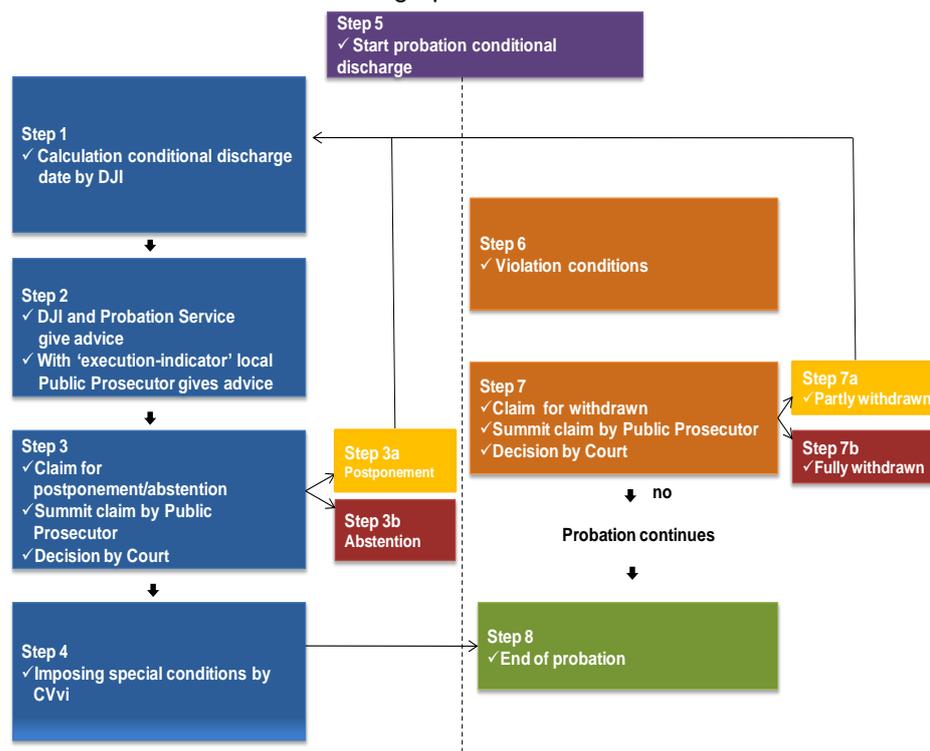
Process evaluation

How is the law conditional discharge executed in practice and which problems and effects occur? To answer this question this summary will describe the main structure of the conditional discharge process as it is determined in the current policy and working agreements. Then the actual implementation of the conditional discharge process will be discussed.

The main structure of the conditional discharge process

The conditional discharge process consists of eight steps in which different parties are involved. The diagram below summarizes the overall process.

Diagram 1 Overview of conditional discharge process



DJI calculates for each convicted whether, and if so, when this person is conditionally discharged. The start of the conditional discharge process is marked by the DJI reporting the preliminary conditional discharge date to the CJIB. The next step consists of the request of the CJIB to the Probation Service and DJI to give advice about the candidate. In this advice the advisory parties can indicate whether conditions should be attached to conditional discharge or that postponement/abstaining is more obvious. When the 'execution-indicator' is placed by the local Public Prosecutor, the local Prosecution Service will also be asked to give advice about the conditional discharge and on any special conditions to be imposed.

The opinions of the Probation Service, DJI and the local prosecution service are received by the Centrale Voorziening v.i (CVvi) of the Public Prosecutor. The CVvi decided on the basis of the opinions if the consumer of legal services can be conditionally discharged or if there is any reason to start later with the conditional discharge or to omit it. In this case, a claim for postponement or abstention has to be submitted to the court.

When a convicted will be conditionally discharged, the CVvi will decide on the basis of the opinions if special conditions will be attached to the conditional discharge. Beside freedom restrictive conditions (a notification obligation, a restraining order, a location prohibition or injunction, an alcohol and/or drug prohibition) there are also behavior-influencing conditions (a behavioral intervention) and care-oriented conditions (out-patient treatment, treatment in an institute or admission to a 24-hours facility).

All conditionally discharged are not allowed to commit criminal acts before the end of the probation (which is always at least one year). The police checks whether a suspect is still in the probation of the conditional discharge. Upon violation of the general conditions the discharge can be withdrawn. A judge decides on this.

When special conditions have been imposed on a conditionally discharged person, the Probation Service will be charged with supervision and guidance of the released convicted. The Probation Service may involve the police in the supervision, for example when there is a restraining order or location prohibition. As with the general conditions, by violation of the special conditions the discharge can be withdrawn. When the judge decides that the conditional discharge has to be withdrawn (partially), the conditional discharged person must still serve (part) of his prison sentence.

If there are no problems during the probation and the conditional discharged person complies to the specific and general conditions, the conditional discharged case will be closed after the probation.

Nature and amount of conditionally discharged cases

Since April 2009, for each conditionally discharged case data is systematically recorded by the CJIB. These data show that in the period April 2009-July 2011 there is a gradual increase of the amount of conditionally discharged cases to approximately 100 cases per month. On about half of the conditional discharged persons besides the general conditions also specific conditions were imposed. In July 2011, the total amount of persons in the conditional discharge regulation has increased to more than 2.000. This amount is relatively small compared to the total amount of persons released of detention in general: only 2.1% of them were eligible for conditional discharge. Most important reason for this low rate is the fact that 93% of the convictions is shorter than one year and as a result is not eligible for conditional discharge.

Conditional discharge in practice

The process evaluation shows that the conditional discharge process is in essence applied well and there is no evidence for structural deficiencies. However, the evaluation yielded a number of points to be considered that can be divided into three phases of the conditional discharge process:

- 1 determine conditional discharge date and advising by 3RO, DJI and local prosecution service;
- 2 decision making;
- 3 supervision and probation.

The process evaluation shows that the process and policy agreements made by the ministry with the designated parties regarding the first phase of conditional discharge process were largely met. However, point to be considered is the timeliness of the advice reports. The Probation Service and especially the local prosecution service do not always deliver their advice within the period prescribed. Moreover, especially the local prosecution service frequently does not give an advice at all, while they are obliged to do so.

Another point of attention in the first phase of the conditional discharge process is the fact that, in spite of the current policy and process agreements, consultation between DJI and the Probation Service about the content of the advice does not always occur. Reason for this is that the DJI made the internal working agreement that to the national Bureau Selectiefunctiefunctionarissen (BSF) should submit its opinions for verification to the advice reports one week before the expiry of the formal deadline. At that moment the Probation Service is often not finished with their research.

The evaluation shows that the process agreements considering the decision making are properly lived up to. Only with respect to the postponement or abstention a number of deficiencies are noted. It turns out that the local prosecution service does not always submit the by the CVvi prepared claims timely to the court, where as a result the court declared itself not admissible and the conditionally discharged candidate could still start its probation.

The evaluation shows that considering the conditional discharge phase of supervision and probation the current working and process agreements are not all consistently followed. Indeed the CJIB, in those cases where there are special conditions applicable, does inform the responsible Probation Service desk timely about the final date of detention. However, the Probation Service in turn does not always consistently inform the CJIB about the actual start of the supervision. It also shows that the police – who formally has to check if a suspect is in probation of a conditional discharge- does not have a comprehensive procedure for this task.

Of the total amount of conditionally discharged cases, approximately 5% officially reported violation of the general conditions. For the special conditions, this percentages was around 33%. In reality this percentage is probably higher because the evaluation shows that not every violation leads to an official report.

Responses to the violations were mixed. In case of violation of the general conditions, it shows that a guiding principle in the decision is whether or not to claim withdrawal is proportionality.

In practice it turns out that the 3RO does not always expect and is not always satisfied with the reaction of the CVvi on a by the Probation Service identified violation of the condition. Where the local prosecution service is usually willing to quickly claim the withdrawal of the probation, the CVvi is, in opinion of the Probation Service, more likely to give the conditional discharged person a second or third change.

The judge rules variable to the claims for withdrawal of the conditional discharge. The available data show that the judge more often grants withdrawal following violation of general conditions, than withdrawal following violation of special conditions.

Points of consideration

The evaluation shows that conditional discharge process in general is successful. Nevertheless, the evaluation exposes some points to be considered. Firstly, the conditional discharge process has some working agreements who are little efficient in practice. Although the law does not proscribe this, advice is also given about cases in which the consumers of legal services after the end date detention will never be released, whereby the question if special conditions are designated is not opportune (these include among others illegal aliens who are placed in detention pending expulsion, or people placed under hospital order who are after the end of detention transferred to a forensic psychiatric center). Also, the (three) double advising does not always appear efficient. The local prosecution service and DJI are strongly inclined to follow the advice of the Probation Service and where the opinions do differ, this is mostly due to the fact 3RO does and the other two parties do not advice special conditions. Notice that in the limited amount of cases that the DJI and/or the local prosecution service do advice special

conditions, while the 3RO does not, the CVvi usually does adopts this advice.

The evaluation also showed that during the supervision the response to non-compliance with the general and special conditions is not guaranteed well or is implemented differently. Regarding the supervision of the general conditions there are currently no working agreements that ensure the police to consistently determine at every arrest if the suspect is on probation of the conditional discharge. This causes a situation in which not for every conditional discharged person who violates the general conditions, a withdrawal of the case occurs. The evaluation also shows that regarding the supervision on the special conditions difference exists between supervisors of 3RO to the extent to which they report and sanction violations. As a result, similar cases of violation are not always acted upon similarly.

