



Gone with the Wind.

Case study of a restorative provision in Poland.

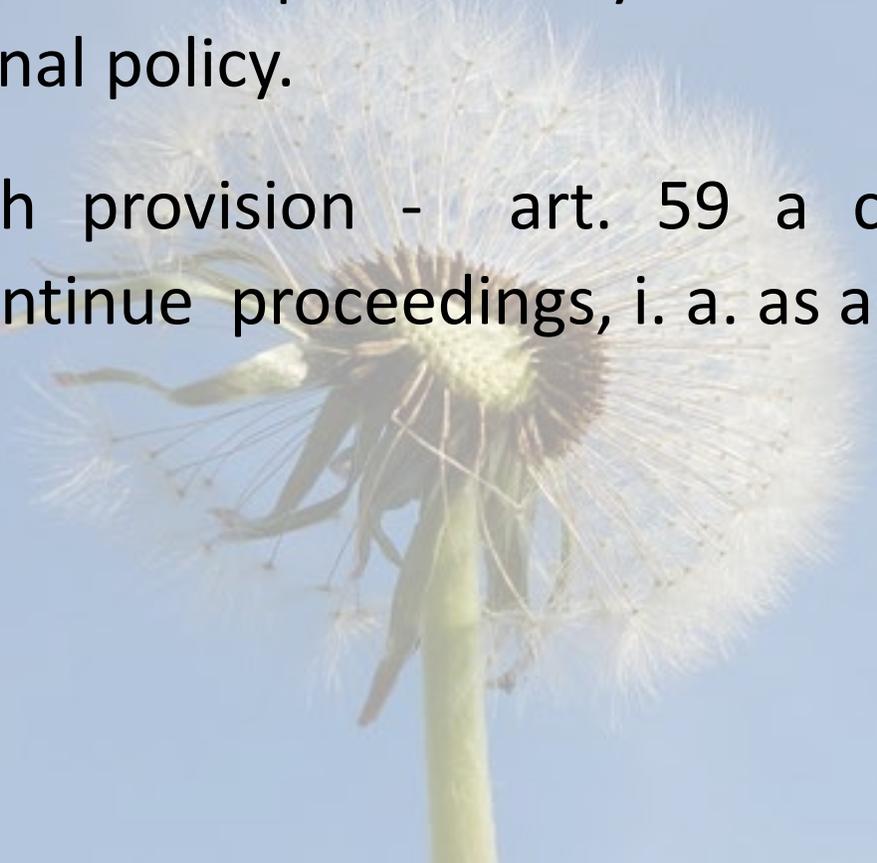
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Leiden'2016

What's about?

- History of long elaboration and short life of one provision important for RJ development may reflect the change of attitude of new criminal policy.
- Which provision - art. 59 a c.c. enabling public prosecutor to discontinue proceedings, i. a. as a result of a successful mediation.



Context - basis

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- Intensive development of interest and activities in favour of the victims
- Reform of the penal law on the turn of 80's - 90's of the 20th century assumed improvement and more effective guarantees of victim interests (fulfilled, at least in significant part, in new penal codes of 1997, especially in c.c.p.)
- Introducing VOM to the criminal codes
- Birth and activity of the organizations helping the victims
- Polish Victims' Charter – 1999
- Law on state compensation 2005 (limited scope)
- Country Programme on behalf of Crime Victims 2006 and Network for Victims Assistance
- Interest with the restorative justice
 - - literature
 - - NGO's activity
 - - introducing VOM programs
 - - research
 - - penal policy
- Resolution of Senat of the Republic of Poland of June 3rd, 2004 claims for the new penal policy grounded on restorative justice idea
- Ministry of Justice – Year of Restorative Justice
- Advisory Council for Alternative Dispute Resolution

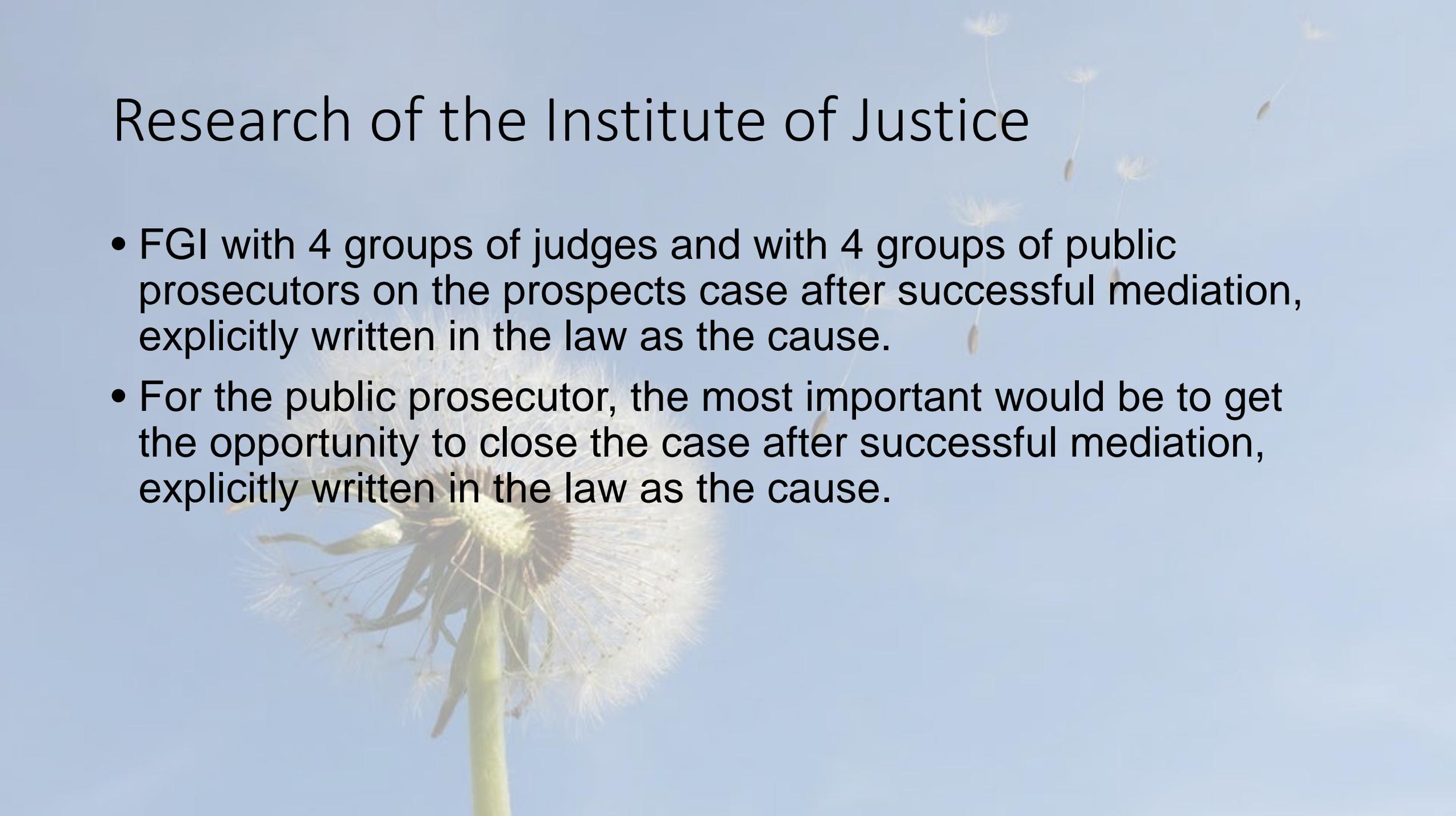
Advisory Council for Alternative Dispute Resolution by the Minister of Justice (2nd term)



Context

- **Mediation in penal cases available in Poland since 1998 (c.c and c.c.p. of 1997); in juveniles cases since 2000 (law on juveniles)**
- **Development of mediation centres and number of individual mediators**
- **Growth of mediation number but – still low**
 - * **criminal cases - about 4500 yearly (3/4 referred by courts) ,**
 - * **juveniles cases – less than 300 yearly**
- **Still low (even if raising) level of knowledge about mediation in society as well as among magistrates**
- **Magistrates would expect more practical benefits for the criminal justice system (quicker procedure, possibility to close the case),**

Research of the Institute of Justice



- FGI with 4 groups of judges and with 4 groups of public prosecutors on the prospects case after successful mediation, explicitly written in the law as the cause.
- For the public prosecutor, the most important would be to get the opportunity to close the case after successful mediation, explicitly written in the law as the cause.

Drafting the provision enabling to discontinue proceedings after successful mediation

There were several proposals and shifts in concepts of such a provision (from procedural institution in c.c.p. to substantive one in c.c.).

First – prof. Andrzej Murzynowski

Group of public prosecutors

Group of academics

Advisory Council for Alternative Dispute Resolution by the Minister of Justice

Motions to the Criminal Law Codification Committee from the provision

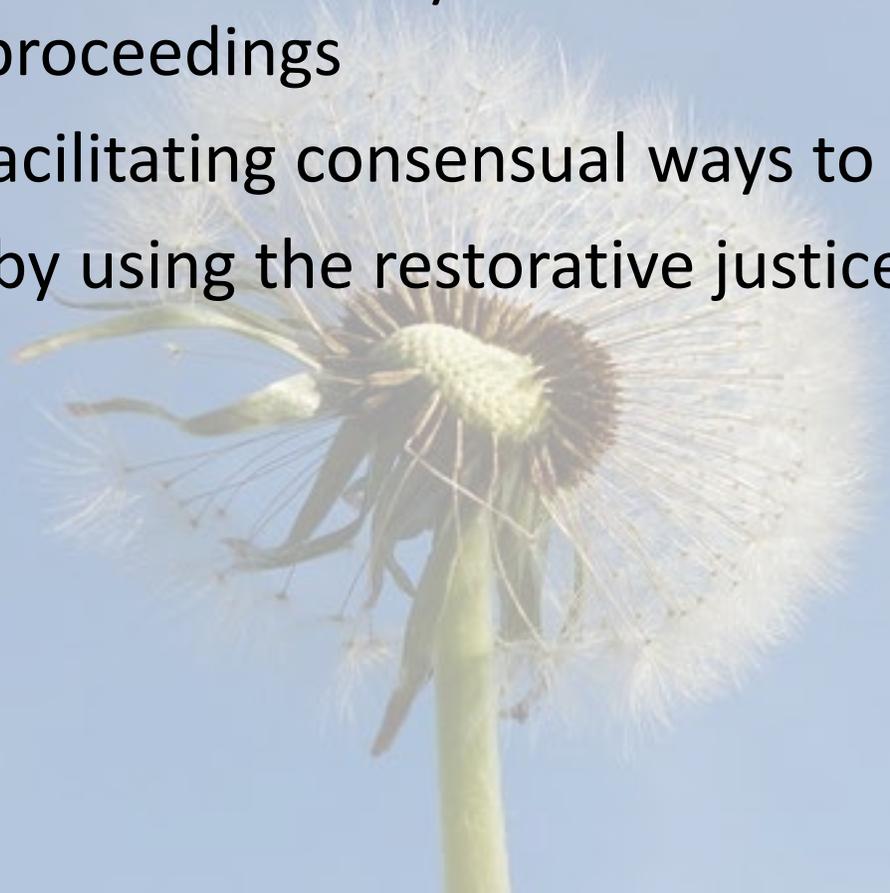
Disappearing of mediation from the provision adopted in 2013; back in 2015 amendment

Professor Andrzej Murzynowski

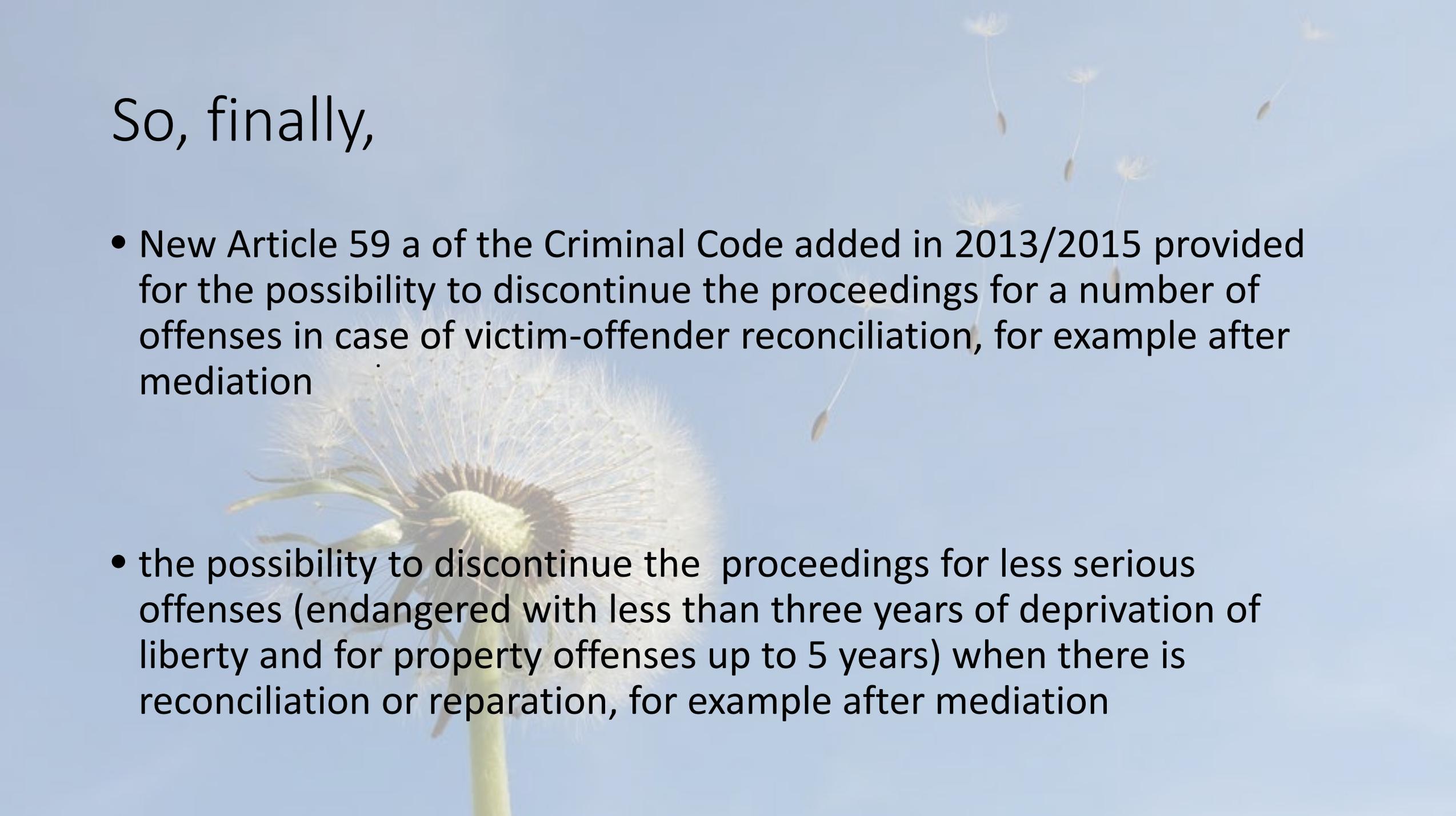


Reform

- One of the objectives of the wide-ranging reform of the criminal procedure of 2013/2015 was the improvement of the efficiency of the proceedings
- by facilitating consensual ways to terminate it
- and by using the restorative justice institutions more widely







So, finally,

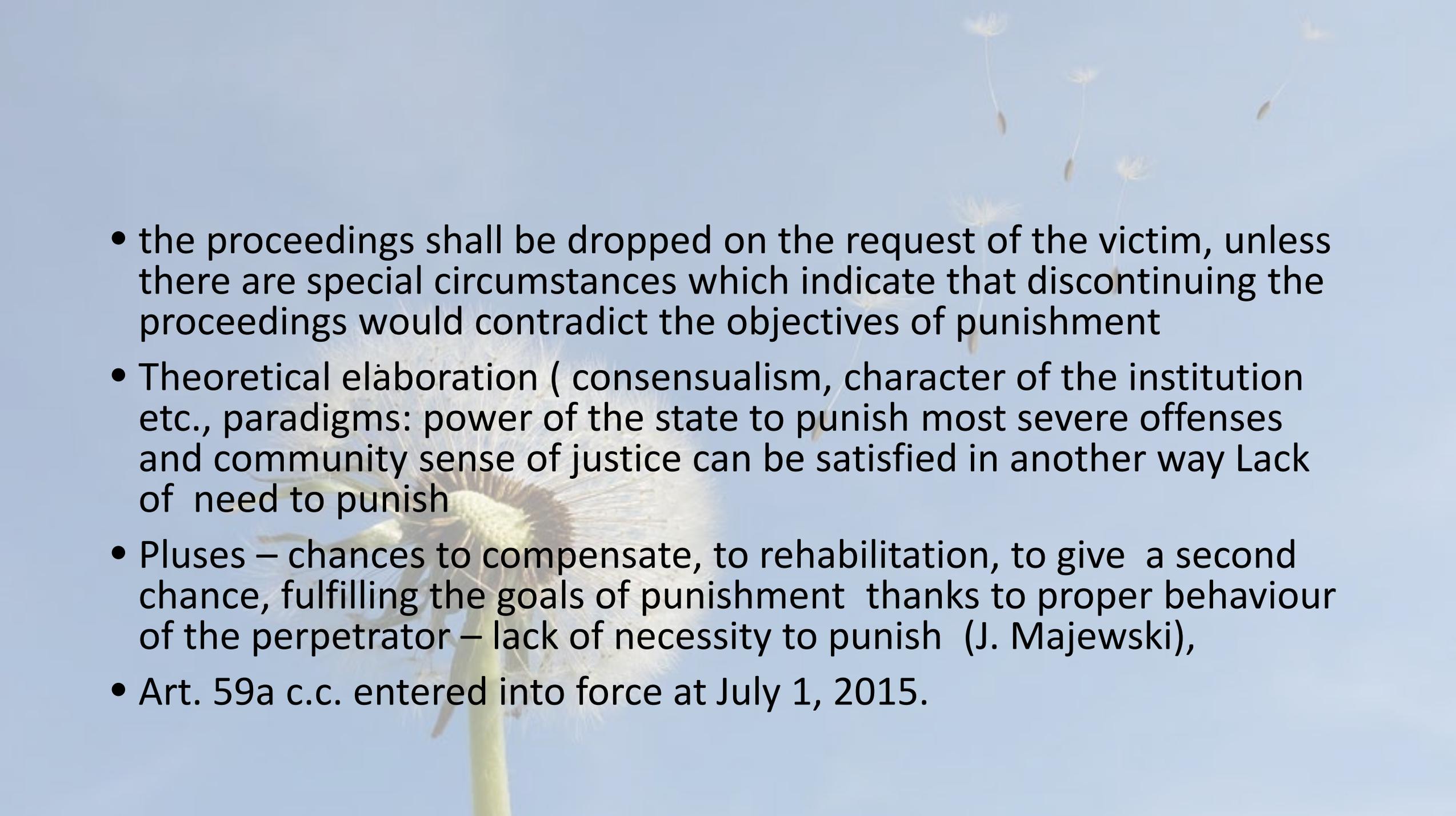
- New Article 59 a of the Criminal Code added in 2013/2015 provided for the possibility to discontinue the proceedings for a number of offenses in case of victim-offender reconciliation, for example after mediation
- the possibility to discontinue the proceedings for less serious offenses (endangered with less than three years of deprivation of liberty and for property offenses up to 5 years) when there is reconciliation or reparation, for example after mediation

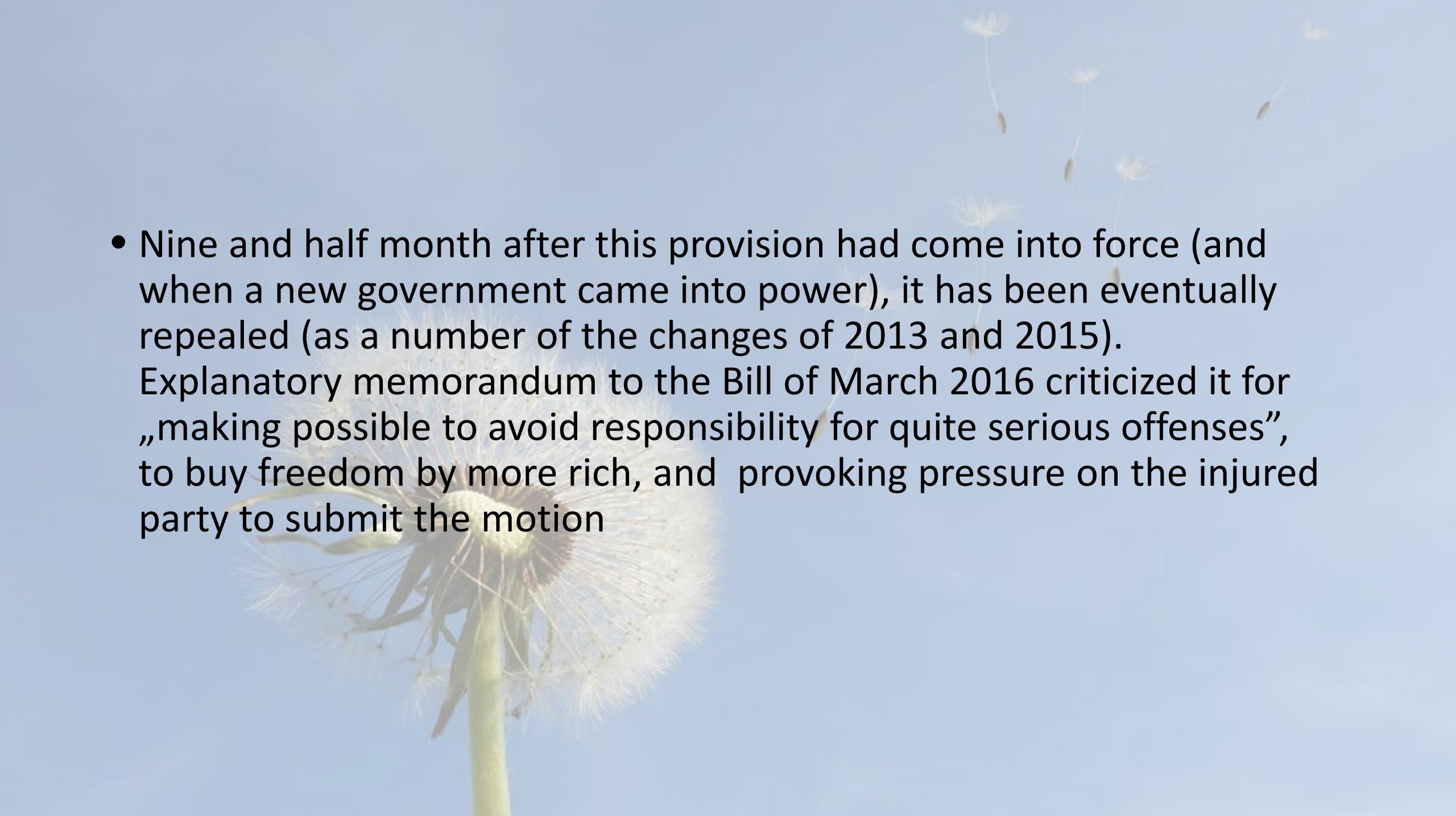
Art. 59a c.c.

Par.1 If, prior to the commencement of the judicial proceedings of the first instance, the perpetrator who has not been punished before for a commission of intentional offence with the use of violence reconciliated with the injured party, in particular in result of mediation and redress the damage or compensates for the harm inflicted, the criminal proceedings for misdemeanour, for which the statutory penalty range does not exceed 3 years of imprisonment, or for the misdemeanour against property, for which statutory penalty does not exceed 3 years of imprisonment, shall be discontinued on the motion of the injured party.

Par. 2 (in brief). More than single injured party – the damage has to be redressed and the harm is compensated for to all injured parties

Par. 3 (in brief). Provision 1 shall not be applied if there is a special circumstance which serves as evidence that discontinuing the proceedings would preclude the achievement of the objectives of the penalty

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- the proceedings shall be dropped on the request of the victim, unless there are special circumstances which indicate that discontinuing the proceedings would contradict the objectives of punishment
 - Theoretical elaboration (consensualism, character of the institution etc., paradigms: power of the state to punish most severe offenses and community sense of justice can be satisfied in another way Lack of need to punish
 - Pluses – chances to compensate, to rehabilitation, to give a second chance, fulfilling the goals of punishment thanks to proper behaviour of the perpetrator – lack of necessity to punish (J. Majewski),
 - Art. 59a c.c. entered into force at July 1, 2015.

- 
- Nine and half month after this provision had come into force (and when a new government came into power), it has been eventually repealed (as a number of the changes of 2013 and 2015).
Explanatory memorandum to the Bill of March 2016 criticized it for „making possible to avoid responsibility for quite serious offenses”, to buy freedom by more rich, and provoking pressure on the injured party to submit the motion

What was known on the beginning of 2016 on applying art.59a c.c.

- not much
- applied in 2nd half of 2015 by public prosecutors – 1492 cases
by judges – 508

Only after the art. 59 a is abolished there was a research of the group of law students of the Jagiellonian University, Cracow – collective master thesis; to be defended at June 24, 2016

Umorzenie kompensacyjne, mediacja, nadzwyczajne złagodzenie kary po 1 lipca 2015 r. Alternatywne podejście do kwestii wymierzania sprawiedliwości w sprawach karnych i przejawy regresji karania - analiza teoretyczno-empiryczna

(.. On „compensative discontinuance of the proceedings, mediation, extraordinary limitation of penalty after July 1, 2015. Alternative approach to criminal justice and degression of pu

Adrian Duda

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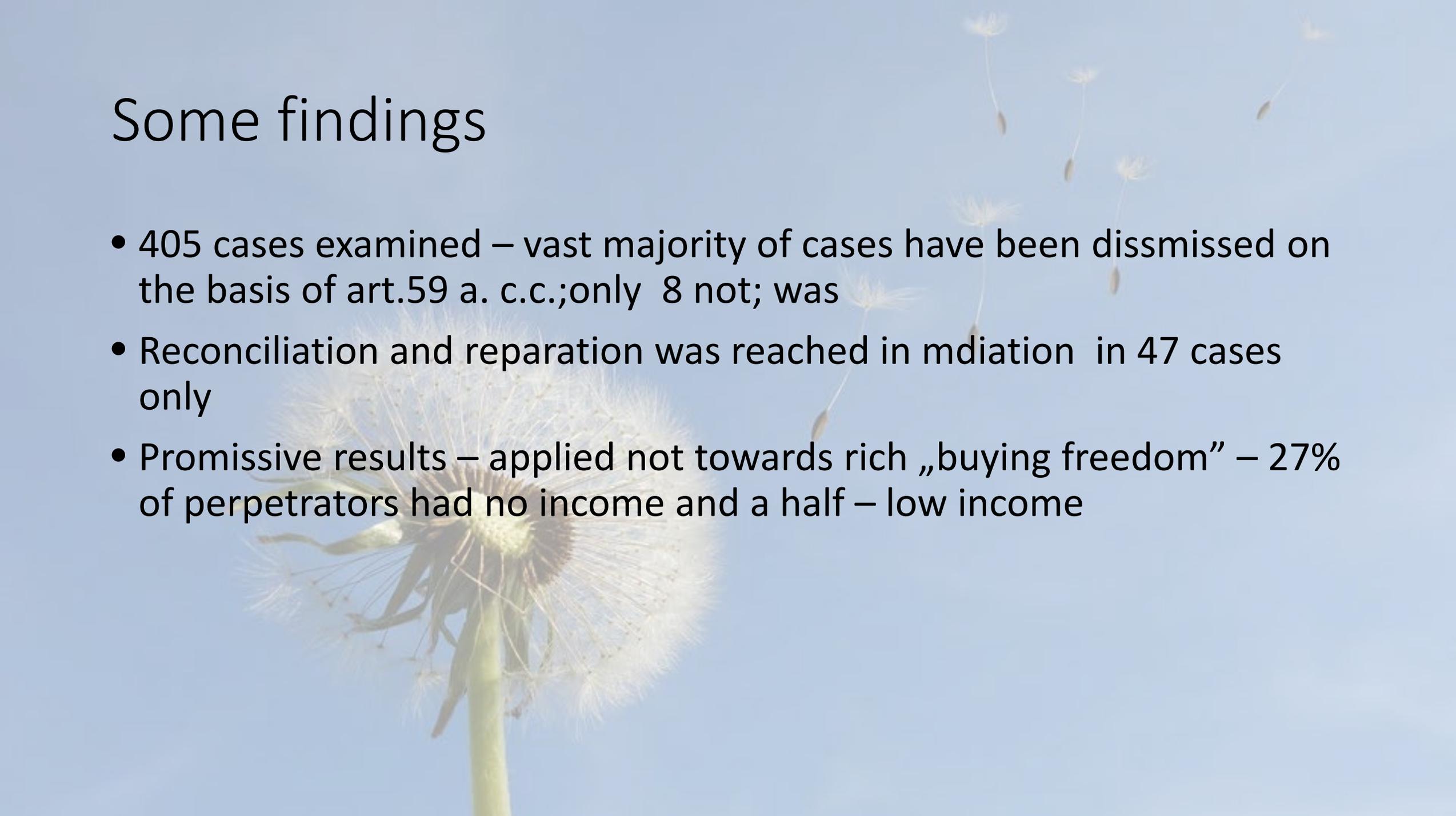
Dominika Sokołowska

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**Praca magisterska napisana pod kierunkiem
prof. dr. hab. Piotra Kardasa, Kraków 2016**

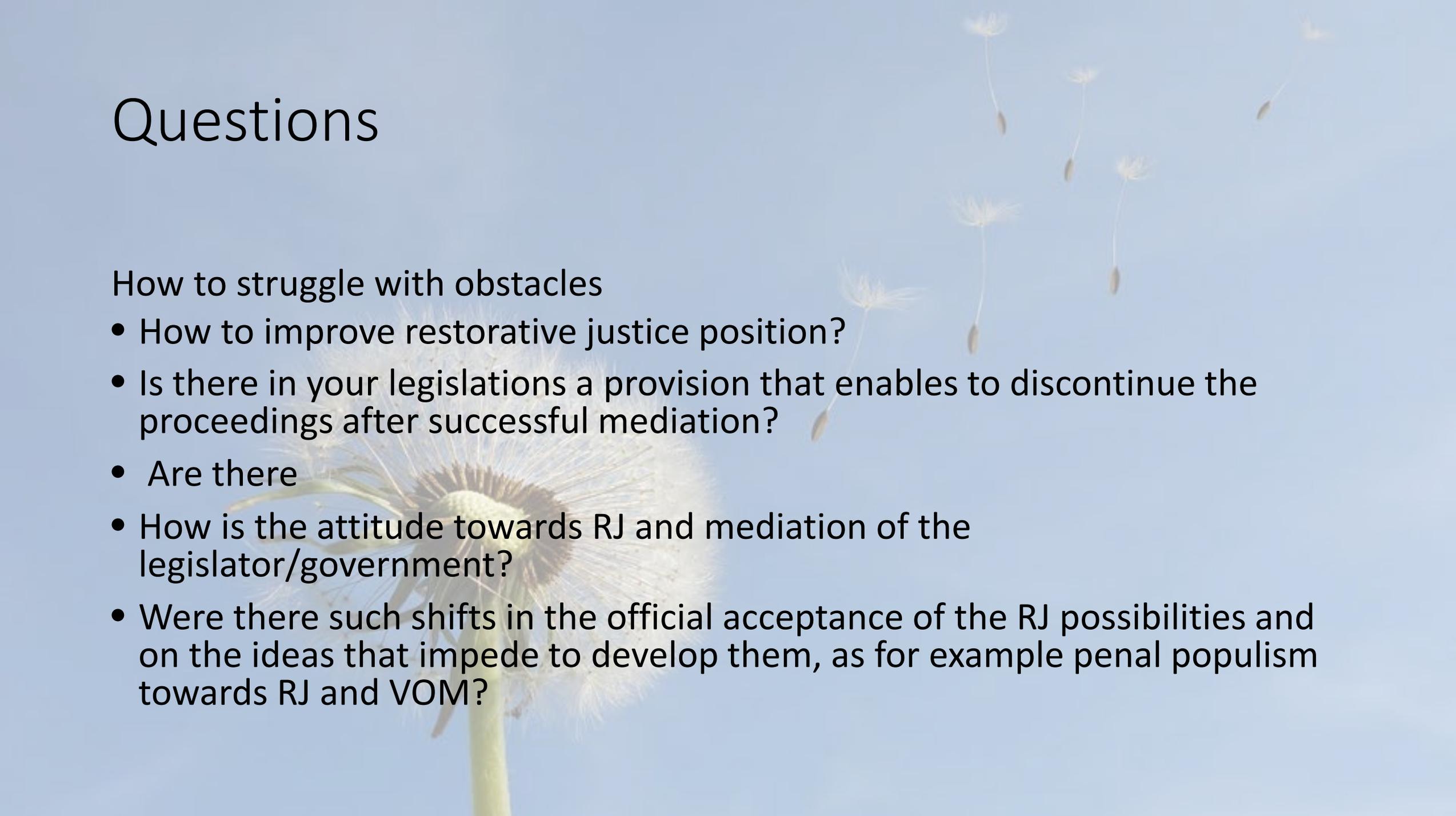


Some findings



- 405 cases examined – vast majority of cases have been dismissed on the basis of art.59 a. c.c.; only 8 not; was
- Reconciliation and reparation was reached in mediation in 47 cases only
- Promissive results – applied not towards rich „buying freedom” – 27% of perpetrators had no income and a half – low income

Questions



How to struggle with obstacles

- How to improve restorative justice position?
- Is there in your legislations a provision that enables to discontinue the proceedings after successful mediation?
- Are there
- How is the attitude towards RJ and mediation of the legislator/government?
- Were there such shifts in the official acceptance of the RJ possibilities and on the ideas that impede to develop them, as for example penal populism towards RJ and VOM?

Thank you!

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