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Too many suspended sentences? Polish or Central and Eastern European Problem?

Abstract. *This paper starts with an analysis of certain problems and issues regarding penal law and penal policies in Poland. However, it appears that these problems are not limited to Poland only. An analysis of comparative statistical data shows that they have a broader /European or, more precisely, a Central and Eastern European dimension. That is, they seem to be of a more general character and of significance in the context of a broader European discussion. Moreover, they may constitute a crucial component of the discussion on the approximation and unification of criminal law and penal policies in the European Union. Today, there are still substantial differences in this area not only between all the member states but particularly between the “old” and “new” members. Hence, there is a great need for considerable efforts to change and improve the existing situation.*

Keywords: crime control policy, imprisonment, suspended sentences, “penal divide”.

In Poland, a vivid debate on crime-control policies has been taking place for many years. As a matter of fact, this debate started long before the fall of the communist system in 1989. Although, in the 1970s and 1980s, due to political circumstances and the imposed limitations on the freedom of expression, including academic debate, the scope of that discussion remained quite narrow and was deprived of public character. The main focus points of the discussions at that time regarded issues of rationality,

effectiveness and punitiveness of the penal law under the system of “real socialism”.

During the time of the People’s Republic of Poland, critics of the communist crime-control policies pointed out, first of all, to a growing tendency to increase the severity of penalties and other sanctions imposed by the courts. It became especially visible after 1970, following the enactment of the new penal code¹. Subsequently, two tendencies could be observed: a growing proportion of imprisonment sentences among

¹ The penal code of the 1969 was enacted on January 1st 1970. It substituted the pre-World War II criminal code of 1932, which remained in force, although changed and supplemented, for the substantial portion of the communist era in Poland. Nevertheless, the code of 1969 was the first “real” socialist criminal code in Poland.

all sentences imposed by the courts and a growing average duration of imprisonment. For example, only during the years 1972 – 1976 the average duration of imprisonment sentence increased from 19 to 25 months (Jasiński 1982, p.86).

In consequence, the structure of penalties and sanctions imposed at that time by courts as well as the internal structure of imprisonment sentences in Poland were significantly different when compared to Western Europe. To begin with, Poland had a very high proportion of imprisonment sentences as well as a very high proportion of relatively long imprisonments. The result of this was huge prison population and imprisonment rates sometimes several times higher than imprisonment rates in Western Europe and even higher than imprisonment rates in the United States during the 1960s (Krajewski 2000; Krajewski 2004).

After the fall of communism in 1989, the reform-minded experts put forward various initiatives and actions aimed at reducing the punitiveness of the Polish penal law and reducing imprisonment rates.

Consequently, in the 1990s, we observed a significant reduction of the prison population (Krajewski 2005), a decreasing proportion of imprisonment sentences among all sentences imposed by the courts, as well as some reduction of the average duration of imprisonment. It is important to stress that

these tendencies could be observed already when the old criminal code of 1969 was still in force (up till 1998).

This statement holds true despite the fact that the 1969 code was generally recognised as the main source of the punitive trend of the previous era, mainly due to its rigid and inflexible provisions regarding sentencing. These provisions of mandatory character limited judicial discretion and flexible sentencing. It seems, however, that substantial changes in sentencing policies, which took place in Poland between 1990 and 1997, did not necessarily result from the changes in the law.

As a matter of fact, there were few such changes of significant importance during the first half of the 1990s. The first change took place in 1995 and lifted the widely criticised restrictive sentencing regulations on recidivists which mandated increased sentence with every consecutive conviction. Beside this change, the old “socialist” criminal code remained practically untouched². For example, there were no changes regarding sentencing directives regulated in the general part of the code nor changes of statutory minima and maxima for offences defined in its special part.

This meant that initially the evolution of sentencing policy in Poland took place not as a result of legislative activities but rather as a result of changes in judicial attitudes and

² What was changed were various provisions of special part of relevance to political freedom and civil liberties, which were either lifted or amended. However, these changes were usually of little importance for broader issues of sentencing policies and penal policy.

perceptions within the framework of the old regulations. In other words, it was “law in action” which changed substantially whereas the “law on the books” was still subject to relatively little change. It appears that the main reason for this important change of the “penal climate,” apart from the political turnover, was the lifting of restrictions and limitations of judicial independence, which earlier had played an important role and which provided communist authorities with the means to both formally and informally influence the sentencing policy. The restrictions exercised by the communists authorities over penal policies meant not only the direct influence over judicial decisions in individual cases (which was, as a matter of fact, nominally illegal even at the time), but also various instructions, directives, and recommendations which were more or less binding.

Significant legislative change in Polish penal law took place in 1998 with the enactment on September 1st of the new criminal code³. The 1998 code intended to introduce entirely new principles of penal and sentencing policy. The drafters of the new code had intended these principles to be also in accordance with what they considered to constitute modern European developments in criminal law. It was their goal that the

new criminal code would be the crowning achievement in the process of “civilising” the Polish criminal law system.

The reality, however, constituted a somewhat bitter paradox: the enactment of the new criminal code did not amount to the turning point in crime-control policies in Poland. Contrary to many opinions expressed by the popular media and some politicians, the penal policy was not further liberalised as a consequence of the ascent of the new code. To a large extent, it remained unchanged. In some instances, the opposite tendencies towards growing punitiveness were even observed. Instead, the enactment of the new code became the turning point in the public discourse on crime-control policies and penal law. It initiated an unprecedented campaign run by the media and some political parties against “liberal” tendencies in the penal law in general and the new code in particular.

During this campaign the new code was accused of every possible sin, especially a senseless leniency, which was said to be irrational and unjustified in the times of growing crime rates. “Reduction of penal responsibility,” a term coined by one of the 1998 code critics (Kochanowski 2000), was said to have taken place in the 1990s and crowned by the new criminal code.

³ Before that date one significant change took place, namely the introduction of the formal moratorium on executions introduced by the Parliament in 1995. Although its significance was rather symbolic it was obeyed as an informal moratorium since 1989. The last execution took place in Poland in 1988. Death penalty was abolished altogether by the new penal code.

This policy has been directly blamed for the growth of crime in post-communist Poland. Additionally, critics of the new criminal code argued that the code was in contradiction to penal policy tendencies in other countries. In their opinion, not only in the United States but also, to a certain extent, in Western Europe sentencing policies became more restrictive, and imprisonment rates were growing. And what most important such policies proved “successful” in reducing crime rates or, at least, they contributed towards balancing the growth trend.

However, the critics seemed to have forgotten that the strongly condemned “liberalisation” of criminal law and sentencing policies, although resulting in a significant reduction of the prison population and lowering of the imprisonment rates as compared with the situation before 1989, did not bring Polish indicators close to the level of the “old” member states of the EU. Poland had during the 1990s and has nowadays imprisonment rates much higher than the most repressive Western European countries. In other words, the “infamous” phenomenon of the “reduction of criminal responsibility” did not bring Polish indicators close to the European average. They still remain much higher than the highest ones in Western Europe and the “drastically liberalised” Polish criminal law remains still very repressive as compared to the Western part of the continent.

Discussion on the “unforgivable leniency” of Polish criminal law refers to many of

its provisions. One theme of this discussion, quite intensive in recent months, regards the use, or as the critics formulate it, the abuse of suspended sentence in the sentencing policies of the courts. It is necessary to stress that this problem, as opposed to many other charges levied against the new criminal code, could in fact be a real one. That is why, it deserves special consideration. As it will be shown later, in recent years, suspended sentences have, in fact, constituted a significant proportion of all penalties and measures imposed by the courts, as they amount to more than 50% of all judicial sentencing decisions.

Some critics say that this constitutes a very problematic tendency as suspended sentence, especially in the eyes of the public and the offenders, amounts to nothing more than an offender being able to “get away” with his or her offence without any real consequences. This perception may be reinforced by the reality of the criminal justice system in Poland, particularly the underdevelopment of the probation system. Despite its recent reform there are still too few probation officers and their caseloads are much too big to allow for any sensible social work with probationers.

As a matter of fact, the caseloads are so big, that probation officers are not able to effectively supervise probationers’ behaviour. Consequently, a probation order accompanies a minority of suspended sentences imposed by the courts, meaning in a majority of such cases a defendant is left completely

alone during the test period. For example, recently, from 2002 to 2004, supervision by a probation officer accompanied slightly less than $\frac{1}{3}$ of all suspended sentences, with a slightly decreasing tendency. Therefore, the argument that such offenders, apart from being tried and convicted, experience practically no consequences of their offences may, to a certain extent, be true. However, one also has to remember that, at least in some cases, suspended sentence may be accompanied by an additional fine.⁴

Details of the Polish debate regarding this issue, including questions as to whether a suspended sentence actually constitutes a penalty or not, are beyond the scope of this paper. It may be worth mentioning only that, critics claim that suspended sentence is no penalty at all since it does not involve any real "pain" for the offender. This obviously supports the "get away" thesis. It may be certainly true that within the framework of a purely retributive theory of punishment or offence-oriented sentencing concept, the suspended sentence as a type of penalty may be somewhat problematic.

However, within an alternative framework of rehabilitative punishment theory or

offender-oriented sentencing concept, a suspended sentence, undoubtedly, constitutes a particular type of sanction, which serves a certain purpose from the point of view of the need of social reaction towards crime. Nevertheless, the argument against a broad use of suspended sentences, especially in such a form, as prevailing in Poland, is based on theoretical considerations of E. Durkheim, recently further developed by R. Dahrendorf (Dahrendorf 1985). According to this thinking, punishing criminals and other norm-violators has a very important social function, that is maintaining the validity of social norms and general social order.

In other words, norms constitute binding rules for the members of the society mainly through the fact that norm violations are sanctioned. Therefore, if norm violations are not sanctioned appropriately, their influence erodes which leads to anomie and disrupted social order. In such a situation the problem does not necessary lie in the fact that punishments imposed by courts in Poland are so lenient, which is a standard argument of the "law and order" oriented media and politicians. In reality, effective punishments involving real "pain" for the offender, are

⁴ Under the Polish law, fine may accompany both imprisonment sentence and suspended sentence. Unfortunately statistical data are available only on the general number of fines accompanying imprisonment sentences without differentiating between suspended and not-suspended ones. For example, in 2004, 327,331 imprisonment sentences were accompanied by 111,154 additional fines, meaning 33.9%. Of the 327,331 imprisonment sentences 278,338 were suspended, meaning more than 85%. It is impossible, however, to tell what percentage of these fines accompanied suspended sentences and what percentage the not-suspended sentences. Generally, it may be assumed that in a substantial part fines accompanied suspended sentences. It is also impossible to say whether fines were rather cumulated with supervision by probation officer or whether they were imposed in such cases in which supervision was not imposed.

imposed, just not often enough. And it is the widespread use of suspended sentence that contributes significantly to this problem.

Notwithstanding these arguments, it is necessary to take a look at some statistical data regarding the structure of sanctions imposed by Polish courts during the last 50 years. It is necessary to answer the question whether this structure is, in fact, as problematic as it is often portrayed as well as whether these problems have, in the last few years, become more profound. In other words, one has to ask whether the main problem of Polish sentencing policies is a high proportion of suspended sentences or maybe the problem is of completely different nature.

Data in figures 1 and 2 illustrate the structure of sanctions imposed by the Polish courts. Figure 1 refers to the communist period (i.e. years 1956 – 1988) and figure 2 refers to years 1989 – 2004⁵. There are a few interesting patterns in the evolution of the penal sanctions structure since 1989, especially when compared to the situation in the earlier period. Since 1989, there have been two parallel tendencies. On the one hand, the proportion of imprisonment sentences was decreasing; on the other hand, the proportion of suspended sentences was increasing. Starting with the year 1994 the proportion of imprisonment sentences has decreased below 20%. In the 1980s, the proportion of imprisonment sentences was usually above 30%, and in the 1970s it

would sometimes reach as high as 40% (in 1974) of all sentences imposed.

Starting with 2002 (i.e. already after the enactment of the new criminal code), the proportion of imprisonment sentences has declined further below 10%. Importantly, however, this had nothing to do with the enactment of the new code in 1998. It rather resulted from the fact that in 2000 driving of a car under the influence of alcohol was reclassified from its previous status of the administrative offence and “upgraded” to the status of criminal offence. As a consequence from 2001 onward, a large new group of offenders started to be sentenced in courts. In such cases, a suspended sentence is most commonly used. Generally speaking it seems that the new criminal code exerted no significant influence on the prevalence of suspended sentence, as its reduction took place already in the first half of the 1990s. In the 1970s and 1980s suspended sentences amounted to 30% to 45% of all sentences. Already in 1992, however, this proportion was higher than 50%. In 1999 and 2000 increase further to more than 60%. But since that time, a slight, decrease in proportion of suspended sentences has occurred.

These tendencies were accompanied by two other phenomena. First, a dramatic decrease occurred in the use of the limitation of liberty, a penalty similar to community service. In the 1970s and 1980s, this sanction amounted to 17 – 18% of all

⁵Data for 1998 are not provided due to the fact that the new criminal code was enacted on September 1st of that year. Therefore, data for this year consist of two sets which are not comparable with each other.

sanctions imposed. But in the 1990s it decreased to no more than 3 – 4%. Only in 1999, some sort of revitalisation of this measure took place. In 2004, its proportion reached 14%, resembling the situation before 1989. These “ups” and “downs” of the limitation of liberty resulted mainly from problems with the execution of this penalty. It was much easier to arrange for a well-working system of its execution in a state-directed economy than it became in the system of a free-market with huge unemployment.

As a result, the 1990s witnessed a near demise of this measure, although this tendency seems to be changing slowly. The question of the limitation of liberty appears to explain, at least to a certain extent, a sudden expansion of suspended sentences. It originated, not necessarily from the leniency of judges and their reluctance to imprison the criminals, but rather from the fact that they had to come up with a substitute for the limitation of liberty. Considering the kind of offenders who were sentenced earlier to the limitation of liberty a suspended sentence constituted here the only realistic alternative. Therefore, there is nothing irrational or particularly lenient in the fact that the mentioned near-demise of the limitation of liberty in the 1990s resulted in the increased use of suspended sentence.

An equally interesting tendency could be seen in the evolution of the fine. Its proportion was growing in the 1990s. In 1996 and 1997, fines amounted to more than 27% of all penalties, much more than in the 1970s

and 1980s. This tendency was, certainly, very positive. The use of financial sanctions during the period of “real socialism” was always somewhat suspicious due to ideological reasons. Communist authorities were always “concerned” that this sanction may result in offenders being treated unequally, depending on their financial situation.

It appears that since 1989 these prejudices started to fade away. Therefore, it may sound astonishing that after the enactment of the new criminal code, the use of fines suffered a terrible blow. It first dropped drastically only to come back recently. This situation may appear as a great paradox. It was the intention of the 1998 code to stimulate the use of fines. For that purpose the system of day-fines has been introduced. Theoretically, it enables a better adjustment of fines to the financial situation of an offender. It also better guarantees an equal treatment for all offenders.

It seems, however, that the day-fine system was originally not accepted by the judges who thought it would further complicate the sentencing process. The new system requires more adequate information on the financial situation of an offender than the traditional one. In an unstable economy, where many people are deprived of a stable income or have an “unofficial” income, such a system may not work most effectively. Additionally, it has to be mentioned that the second half of the 1990s was marked by a particularly rapid growth of the unemployment rate in Poland, which

by the end of the decade reached 18%. This phenomenon could have resulted in additional problems in identifying the financial situation of the offenders and increased the number of fine defaulters. Again, it appears that due to all those circumstances in lieu of fines judges started to increasingly use suspended sentences, as the only realistic alternative available. This contributed further to the expansion of suspended sentences.

It appears that the expansion of suspended sentences in recent years, along with a parallel tendency of the non-custodial measures and fine to loose ground, constituted the consequence of certain developments in the sanction system before the year 1989. Since 1945, Poland, like many other former socialist countries, was isolated from the penal developments in the Western world. The essence of these developments constituted, to a large extent, a search for alternatives to imprisonment (Bottoms et. al. 2004).

This process of searching for alternatives has undergone various phases and was by no means universal throughout Europe. It resulted from both theoretical influences of such criminological theories as labelling theory and practical considerations resulting from prison experience. It also resulted from the realisation that today's "criminals" constitute quite a different population than 100 or 150 years ago. The expansion of criminalisation or "net-widening" brought to courts offenders who were hardly similar to the "lombrosian" type of "born criminal". Among those are traffic violators, and per-

petrators of negligent offences as well as white-collar criminals or tax evaders. These offenders should obviously be sanctioned in some way, but, in most cases, they do not have to be sent to prison. Therefore, the above-mentioned search for alternative sanctions beyond the suspended sentence and efforts to increase their practical significance took place. The effects of this search may be seen in current sanction systems of most Western criminal codes (Kalmthout, Tak 1988; Kalmthout, Tak 1992).

Furthermore, it appears that purely legislative changes in the Western part of the continent were accompanied by respective institutional arrangements, which made it possible for the sanctions to work in practice and to be effectively implemented. During this crucial period in the development of the contemporary penal climate of Western Europe, the Polish penal law, as well as the penal law of other communist-ruled countries, was dominated by a deeply conservative attachment towards the deprivation of liberty as the main type of sanction. Despite official talk about a search for alternatives, which took place from the 1960s onward, in reality, apart from a few legislative changes very little was done to turn these alternatives into real and viable measures.

In practice, the traditional suspended sentence remained the main alternative to imprisonment, although it was deprived of its crucial foundation, namely a well-developed probation system. In consequence, as since 1989, the use of the deprivation of

liberty started to be curtailed, no immediate alternatives to it were available. Not only were they very often not present in the legislation, but more importantly, they did not exist in the mentality of judges and other criminal justice system officials. The result of this situation was the expansion of what was available: a suspended sentence.

A question arises: is suspended sentence and the phenomenon of its widespread use in Poland, a particularly Polish problem as it is often maintained by some Polish authors? Is the structure of sanctions imposed by the Polish courts something exceptional and an aberration when compared to European standards? Not necessarily. The answer emerges upon a closer look at the data presented in *European Sourcebook of Crime and Criminal Justice Statistics*. Regrettably, the newest edition of the sourcebook (Sourcebook 2006) does not include a table with information on the structure of sanctions imposed by the courts of the member states of the Council of Europe. Such data are available only in the 2003 edition of the Sourcebook (Table 3.2.3.1. p.145) and only with respect to the year 1999.

Although these data are not the most up-to-date they could be used for the purpose of this analysis. In the relatively stable systems of European countries, revolutionary changes in the criminal justice system are rather uncommon. Therefore, it is justified to assume that the changes which took place in Europe after 1999 with respect to the system and structure of sanctions did not change

substantially the general picture of the situation. Figures 3 to 7 each contain the same data for each member state of the Council of Europe with the information regarding the proportion of imprisonments (deprivation of liberty), suspended sentences, non-custodial measures such as community service, as well as fines imposed in 1999. Each figure, however, has a different arrangement of these data. Figure 3 lists countries alphabetically, just like the sourcebook, whereas in the other figures ranking orders are created according to the role of a given sanction type: imprisonment (figure 4), suspended sentence (figure 5), non-custodial measures (figure 6), and fine (figure 7).

There are some interesting consequences of this simple ranking procedure. Quite obviously, alphabetical ordering, as used in the sourcebook, is quite standard and does not reveal anything unusual about the data. Clearly, patterns of sentencing in each European country are quite different. Therefore, the role played by each sanction type differs substantially. Interestingly, rankings in the four remaining figures disclose clear patterns. Ranking according to the role played by imprisonment (figure 4) shows that Poland ranks 19 among 27 countries on the list, i.e. it belongs to countries where the deprivation of liberty plays a relatively marginal role.

However, there are important countries in Europe where the proportion of imprisonment sentences is even lower than in Poland. Such is the case for the United

Kingdom, a country often praised by Polish “hawks” for appropriately “tough” criminal law. However, it is equally important to note, that apart from Italy and Cyprus, which use imprisonment the most often among all Western European countries, the leaders in its use were almost exclusively the post-communist countries: Albania, Romania, Bulgaria, Lithuania, Russia, the Czech Republic, Estonia, and Latvia. The only Western European countries where a proportion of deprivation of liberty was higher than 20% (apart from the above-mentioned Italy and Cyprus) were Holland and Denmark. A large majority of Western European countries, or the old EU members, were located below that line. Therefore, Poland with its 12.6% did not drastically deviate from that pattern.

The results are, however, more interesting when countries are ranked according to the role played by suspended sentence (figure 5). Altogether 10 countries had a proportion of suspended sentences higher than 50%. From these 10 countries only two belonged to the “old EU”, namely Greece (which was the European leader in this category) and Switzerland (with a proportion only slightly higher than 50%). The remaining countries were Central and Eastern European countries, namely Slovakia, Slovenia, Poland, the Czech Republic, Latvia, Croatia, Lithuania, and Bulgaria.

Furthermore, Estonia ranked 11, right after Switzerland, with a proportion of suspended sentences only slightly lower

than 50%. Only Hungary with a 22.6% of suspended sentences placed itself within the average for Western Europe. Undoubtedly, this proves that high prevalence of suspended sentences, in fact a dominating position of that measure within the structure of penal sanctions, does not constitute a particularly Polish problem. As a matter of fact, it is rather a “problem” faced by all post-communist countries regardless whether they were former “people’s democracies”, former Soviet republics, or republics of former Yugoslavia. The broad use of suspended sentence and its role in sentencing policies appears to be an inheritance of the communist system and the isolation of the Eastern and Central European countries from penal developments in the Western part of the continent. This inheritance is a result of the aforementioned lack of alternatives to imprisonment. In this part of the continent, 10 years after the fall of the Berlin wall, it was still customary to send people to prison, for offences that would never get an imprisonment verdict in most West European countries. Similarly, law-breakers who in Western European countries would be given community service, probation orders or fines, in Eastern and Central Europe were given mostly traditional suspended sentence. Hence, we could point to a certain “penal divide” in Europe which still splits the continent into two “penal climates”: Western and Eastern.

The above conclusions are confirmed by two sets of the following data. Figures

6 and 7 rank the same countries according to the role that the non-custodial measures and fines play. The issue of non-custodial sanctions is somewhat less clear. There are substantial differences across European countries in the use of this form of punishment, and no clear-cut pattern of an East-West divide emerges. Non-custodial sanctions are most often used in the Netherlands, Scotland, Sweden, Hungary, and Romania. Very rarely this type of punishment is used in Austria, Latvia, Finland, and Estonia.

Therefore, we cannot associate the use of such sanctions and their role with either the "old" or "new" EU members. The ranking of countries according to the use of fines, however, brings quite different results. Hungary is the only Central European country with a proportion of fines (43.5%) similar to that prevailing in the majority of Western European countries. All other countries of the region, without any exception, are placed very low in the ranking. The only "old" EU member placed at such a low position is Greece. In none of those countries fines constitute more than 25% of all sanctions and this proportion very often is below 10%. The average proportion of fines for 15 top countries in the ranking is 57%. Four of them, Germany, England and Wales, Norway, and Portugal, have this proportion above 70%. Finland, in the lead, has 91.3% of fines. Interestingly again, the ranking of the UK is quite high, both in use of non-custodial measures and fines. This data,

once again does not confirm the image of the United Kingdom in Poland as a country of very tough crime control policies.

Notably, the above comparison has a very preliminary character and requires further, more detailed, analysis. Clearly a comparison of international criminal justice systems can have many pitfalls. For instance, the role of fines in the structure of sanctions imposed depends, at least to certain degree, on the characteristics of the legal system. The main problem is whether in a given system petty violations of an administrative nature, which are generally dealt with fines, are considered to constitute criminal offences and are included in criminal statistics, or they are considered to constitute a separate category of offences of administrative nature and are not included into criminal statistics. The inclusion of such petty offences into criminal statistics (which is true for all Scandinavian countries but also for the UK) may increase, even quite significantly, the role of fines in the structure of sanctions. When such offences are not included in criminal statistics (as it is the case of Poland) the role of fines may be substantially underrepresented. This is only one of the possible limitations of the above analysis.

Therefore, it is advisable to treat these results somewhat cautiously. Nonetheless, it is quite reasonable to assume that even if a leading and dominating role of fines in Scandinavia, the UK, and some other Western European countries results, at least

partially, from the particularities of their legal systems it is hardly imaginable that this is the only reason for it. In fact, fines are used more often in these countries than they are in Central and Eastern Europe. The opposite is true for suspended sentence, which is more often used in Central and Eastern Europe. That is why, the thesis about the existence of a “penal divide” in Europe, resulting from differences in position and use of imprisonment, accompanied by the differences in the use of suspended sentences on the one hand, and non-custodial measures and fines on the other hand seems to be well-supported.

A few conclusions could be drawn from the above analysis. First of all, it is necessary to stress that although imprisonment has different role in sentencing policies across Europe, in the majority of European countries, particularly in Western Europe, this form of punishment is not regarded as the most important one and consequently not the most often used. This situation may not only be a result of these countries’ lamentable leniency of criminal justice systems, as it is suggested by R. Dahrendorf and some Polish “hawks,” but rather a consequence of the realities in which the contemporary criminal law system functions. Today, courts deal more often with offenders whose offences do not justify imprisonment, even for a short period of time.

In such situations, Western European legal systems and courts have turned towards alternatives to imprisonment. The

evolution of the system of sanctions and practice of their application in the West is a result of such measures playing an important role in sentencing decisions. In Central and Eastern Europe, due to years of neglect, courts facing similar cases and similar types of offenders are left with limited possibilities. As a matter of fact, in most cases when a judge does not want to incarcerate the offender, the only alternative left is a suspended sentence.

The conclusion is clear: the new members of the EU have to work hard in the near future to establish a firm position of such measures as diversion, community service, probation, and fines in their crime-control policies. Only success of these measures may diminish the role in the criminal justice system of a simple suspended sentence. This, more than anything else, may also guarantee that law violators will not “get away” with their offences without any real “pain” suffered, and the scope of effective sanctioning of lawbreaking will be enlarged.

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