Consistency in sentencing
Consistency in sentencing
Aims and scope
The European Journal on Criminal Policy and Research is a platform for discussion and information exchange on the crime problem in Europe. Every issue concentrates on one central topic in the criminal field, incorporating different angles and perspectives. The editorial policy is on an invitational basis. The journal is at the same time policy-based and scientific, it is both informative and plural in its approach. The journal is of interest to researchers, policymakers and other parties that are involved in the crime problem in Europe.

The European Journal on Criminal Policy and Research is published by Kugler Publications in cooperation with the Research and Documentation Centre of the Dutch Ministry of Justice. The RDC is, independently from the Ministry, responsible for the contents of the journal. Each volume will contain four issues of about 130 pages.

Editorial committee

Dr. J. Junger-Tas
RDC, editor-in-chief

Dr. J.C.J. Boutellier
RDC, managing editor

Prof. Dr. H.G. van de Bunt
RDC / Free University of Amsterdam

Dr. G.J.N. Bruinsma
University of Twente

Prof. Dr. M. Killias
University of Lausanne

Dr. M.M. Kommer
RDC

Editorial address
Ministry of Justice, RDC, room H1422
European Journal on Criminal Policy and Research, P.O. Box 20301,
2500 EH The Hague, The Netherlands
Tel.: (31 70) 3706552
Fax: (31 70) 3707948

Production
Marianne Sampiemon
Huub Simons (coordination copy-editing)
Max Velthuijs (cover)

Advisory board
Dr. H.-J. Albrecht, Germany
Max Planck Institute
Dr. A.E. Bottoms, Great Britain
University of Cambridge
Prof. Dr. N.E. Courakis, Greece
University of Athens
Prof. Dr. J.J.M. van Dijk, The Netherlands
Ministry of Justice / University of Leiden
Dr. C. Faugeron, France
Cesdip
Prof. K. Gönczöl, Hungary
Eötvös University
Dr. M. Joutsen, Finland
Heuni
Prof. Dr. H.-J. Kerner, Germany
University of Tübingen
Prof. Dr. M. Levi, Great Britain
University of Wales
Dr. P. Mayhew, Great Britain
Home Office
Prof. Dr. B. De Ruyver, Belgium
University of Ghent
Prof. Dr. E.U. Savona, Italy
University of Trento
Prof. Dr. A. Siemaszko, Poland
Institute of Justice
Prof. Dr. C.D. Spinellis, Greece
University of Athens
Dr. D.W. Steenhuis, The Netherlands
Public Prosecutor's Office
Dr. A. Tsitsoura, Strasbourg
Council of Europe
Dr. P.-O. Wikström, Sweden
National Council for Crime Prevention

Subscriptions
Subscription price per volume: DFL 175 / US $ 105 (postage included)
Kugler Publications, P.O. Box 11188,
1001 GD Amsterdam, The Netherlands
Fax: (31 20) 6380524
For USA and Canada:
Kugler Publications, P.O. Box 1498,
New York, NY 10009-9998, USA
Fax: (212) 4770181

Single issues
Price per issue DFL 43.75 / US $ 26.25
For addresses, see above
# Contents

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editorial</td>
<td>5</td>
</tr>
<tr>
<td>Towards European sentencing standards</td>
<td>7</td>
</tr>
<tr>
<td><em>Andrew Ashworth</em></td>
<td></td>
</tr>
<tr>
<td>Recommandation No. R (92) 17</td>
<td>12</td>
</tr>
<tr>
<td>Sentencing reform – from rhetorics to reducing sentencing</td>
<td>19</td>
</tr>
<tr>
<td>disparity</td>
<td></td>
</tr>
<tr>
<td><em>Martin Killias</em></td>
<td></td>
</tr>
<tr>
<td>Punitiveness in Europe – a comparison</td>
<td>29</td>
</tr>
<tr>
<td><em>Max Kommer</em></td>
<td></td>
</tr>
<tr>
<td>Alternative sanctions: myth and reality</td>
<td>44</td>
</tr>
<tr>
<td><em>Josine Junger-Tas</em></td>
<td></td>
</tr>
<tr>
<td>The Swedish sentencing law</td>
<td>67</td>
</tr>
<tr>
<td><em>Nils Jareborg</em></td>
<td></td>
</tr>
<tr>
<td>Sentencing and prison overcrowding</td>
<td>84</td>
</tr>
<tr>
<td><em>Sonja Snacken and Kristel Beyens</em></td>
<td></td>
</tr>
<tr>
<td>Varia</td>
<td>100</td>
</tr>
<tr>
<td><em>Henk van de Bunt and Elly van den Heuvel</em> on the European</td>
<td></td>
</tr>
<tr>
<td>Documentation and Research Network</td>
<td></td>
</tr>
<tr>
<td><em>Gennady Dashkov</em> on changes in Russia – influences on crime</td>
<td>105</td>
</tr>
<tr>
<td><em>Wolfgang Häseker</em> on foreign relations of the ‘Polizei-Führungsakademie’</td>
<td>108</td>
</tr>
<tr>
<td><em>Elly van den Heuvel</em> about a book on police cooperation in Europe</td>
<td>111</td>
</tr>
<tr>
<td>Crime institute profile</td>
<td>114</td>
</tr>
<tr>
<td>Research Institute on the problems of strengthening legality and the</td>
<td></td>
</tr>
<tr>
<td>legal order of the General Procuracy of the Russian Federation</td>
<td></td>
</tr>
<tr>
<td>Abstracts</td>
<td>119</td>
</tr>
</tbody>
</table>
From a judicial point of view *sentencing* can be seen as the heart of the criminal justice system. In the sentencing process several objectives (retribution, prevention, deterrence, rehabilitation) and several perspectives (the prosecutor’s, the solicitor’s, the defendant’s – and the victim’s) combine to produce the final judgement. Emile Durkheim saw the criminal procedure as ‘a celebration of morality’: in the sentencing process a community sets its own standards. At the same time political opportunities to influence the process of sentencing in most countries are nil. The judge, and in some countries the jury, has an independent status; Lady Justice is blindfolded.

This independency of jurisdiction can be seen as a cornerstone of the constitutional state. This state of affairs however has the disadvantage of disparity. There can be disparity in sentencing between different courts of justice: a crime may be punished quite differently, not only according to the background of the defendant but also depending on the personal view of the judging party. A wider problem is the disparity between the European countries. It seems reasonable for a unifying Europe to aspire to a coherent and consistent sentencing policy.

In 1992 the Committee of Ministers of the Council of Europe adopted the Recommendation ‘Consistency in sentencing’ in which the governments of the member states were incited to take measures in order to avoid unwarranted disparity in sentencing. The text of this Recommendation is given in this issue of the European Journal and has inspired the compilation of this special issue on sentencing. The Recommendation is elucidated by A. Ashworth, Chairman of the Sentencing Committee which did the preparatory work: ‘what the committee has tried to produce is a set of attainable standards that should succeed in bringing the sentencing systems of member states closer together on many important issues’.

M. Killias (University of Lausanne) discusses, in his comment on the Recommendation, the American experience with sentencing guidelines and gives an outline of a sentencing model for European countries. When standard penalties are set for different types of offences, the judge is forced to explain the motives behind his
discretion. In this way the 'ritualistic' motivation of penalties can be substituted by a more substantial one. He favours a more explicit policy on sentencing guidelines than the Sentencing Committee and proposes to start 'rather empirically' with the development of guidelines at the roots of the sentencing system, i.e. with local and regional courts.

In order to gain an objective insight in the disparity problem M. Kommer (RDC, the Netherlands) analyzed punitiveness in some countries in Europe. With some caution he compares several statistics (mostly up to 1990) on imprisonment, prosecution and sentencing in order to describe some trends in punitory level. 'The Netherlands appears to be less punitive than the other European countries based on most indicators presented in this article; it is followed by the Scandinavian countries while France and Germany hold a middle position and Britain, though not homogeneous, tends to be the most punitive.'

A topic related to the problem of consistency in sentencing is the integration of alternative sanctions in the sentencing arsenal. J. Junger-Tas explains the development of alternatives to detention which have proliferated as a result of rising crime and the growth of the prison population; changing conceptions of punishment ('just deserts') and the trends towards humanization of the criminal justice system. She gives an overview of the objectives, the types (from mediation to boot camps) and the effects of alternative sanctions in terms of reduction of costs and of recidivism. Despite the somewhat disappointing results she strongly advocates alternative sanctions in order to attain more flexibility in the sentencing process.

N. Jareborg writes about the Swedish sentencing law which was adopted in 1988. The central perspective of this law is proportionality. Therefore, the 'penal value' of the crime, based on the harmfulness of the criminal act and the culpability of the offender, has to be determined. The law contains a list of aggravating and mitigating circumstances which have to be taken into account. 'We now have a number of fairly detailed legal provisions and a legal structure where we earlier had a black box'.

S. Snacken en K. Beyens finally analyze the problem of prison overcrowding in relation to sentencing policy. They describe the use of imprisonment in several European countries, the length of the prison sentence, the policy regarding juveniles, the application of non-custodial sanctions and initiatives to curb disparity in sentencing. In addition they distinguish three policies in response to rising prison populations: an expansionist policy, a reductionist policy and a 'stand still' policy. The authors conclude that only a reductionist policy offers a real solution to the lack of prison capacity.
The Council of Europe has long been concerned about issues of sentencing policy. Twenty years ago its European Committee on Crime Problems issued an influential report on ‘Sentencing’ (Council of Europe, 1974). Between 1985 and 1987 a small committee worked on the subject again, and this resulted in the Eighth Criminological Colloquium on ‘Disparity in Sentencing: causes and solutions’ (Council of Europe, 1989). Subsequently the CDPC proposed that the issues identified in that colloquium should be investigated by a Select Committee of Experts from the member states, and thus the sentencing committee began its work in 1989. Its report, ‘Consistency in Sentencing’, was accepted by the CDPC and became the basis of Recommendation No. R (92) 17, adopted by the Council of Ministers.

The committee’s terms of reference included ‘the drawing up of general sentencing principles which would enable the development of a coherent and consistent sentencing policy in Europe’. It is fair to say that the committee encountered some fundamental difficulties in working towards this ideal. Even among the fourteen member states whose experts formed the members of the committee, there are diverse legal traditions and sentencing practices. For example, the emphasis on individualization in France may be contrasted with the different shades of neo-classicism in Sweden, in the Netherlands and in England and Wales. Moreover, member states were hardly waiting for the report of the sentencing committee. Several have been pressing ahead with changes in sentencing law, some of them motivated by consistency but many motivated by other concerns as different as greater severity, reducing the use of imprisonment, and reducing public expenditure.

In the maelstrom of conflicting principles and policies, how could the committee hope to make progress? From an early stage in its deliberations it abandoned any expectation that it would be possible to formulate a primary rationale for sentencing that would be

---

acceptable to all member states. However, this was not the end of
constructive discussion but rather the beginning. How far could we go
towards the goals of consistency and common standards? We could
certainly call for greater clarity and consistency of rationales within
member states, in accordance with the principle of legality, and for a
fuller exchange of information about new developments and research
findings. These would be significant steps along the road towards
harmonization. Such is the movement of people and goods between
member states, for business, for pleasure and for crime, that wide
differences in approaches to sentencing are hard to justify. As
paragraph A.5 states, ‘the tendency to establish uniform rationales and
priorities at European level should be encouraged and promoted’.

One respect in which this has been done is through A.4, which
states the importance of ensuring proportionality between the
seriousness of the offence and the sentence (or at least avoiding
disproportionality). Whatever rationale is adopted by a particular legal
system, this overall principle should apply. The requirements to state
and to rank the leading rationales of sentencing may be seen as
enhancing the principle of legality (article 7 of the European
Convention on Human Rights and Fundamental Freedoms). The
committee also took the opportunity to re-affirm the principle of
non-discrimination in article 14 of the Convention (see A.7), and to
re-state the Council of Europe’s commitment to the minimum use of
custodial sentences (A.6),\(^2\) to greater decriminalization and diversion
(A.6),\(^3\) and to the minimization of delays (A.9).

Perhaps the most innovative part of the proposals is to be found
under heading B, ‘Penalty Structure’. Questions are raised about the
use of minimum sentences, especially when there is no possibility of
the court going below them (B.1, B.2), and one implication of the
overall principle of proportionality is that the sentence ranges for
crimes should not be too wide (B.2). A particularly significant
advance comes in the set of proposals at B.3 and B.4. Much interest
has been shown in the various systems of ‘sentencing guidelines’
adopted in United States jurisdictions, but it quickly became apparent
that the committee preferred to adopt a more European approach.
We therefore examined some of the techniques of structuring
sentencing discretion that are used in member states, and decided to
propose the greater use of two techniques. The first is ‘sentencing

\(^2\) Committee of Ministers Recommendation No. R (76) 10, Alternative Penal
Measures to Imprisonment; European Rules on Community Sanctions and

\(^3\) Committee of Ministers Recommendation No. R (87) 18, The Simplification of
Criminal Justice.
orientations', so named in order to distinguish them from 'guidelines', and defined in B.3.c. The second is 'starting points', defined in B.3.d. The objective is to attempt to shape the discretion of the courts but not to remove it - to propose common starting points, whilst leaving the court sufficient room to take account of the facts of the particular case.

No doubt there will be some resistance to these notions, especially in those member states in which judges have hitherto enjoyed a wide discretion within the law. However, it is vital to appreciate that there is nothing in this proposal to reduce the amount of discretion possessed by the judge under the law. The aim is to ensure that the discretion is exercised by the use of a consistent approach, and with a degree of accountability. By what means should these starting points or orientations be declared? The committee took the view that this depends on the legal traditions of the member state, and so we set out five possible methods (B.4.b), and there may be more. Some states would utterly reject a method that is regarded as normal in another state, but this is a secondary matter. Each state should choose what is appropriate. The substance of the proposal is that consistency in sentencing is only likely to be achieved if there is a common judicial approach to the exercise of discretion in sentencing. Judges are right to insist that they should have the discretion to take account of the facts of individual cases. But others are equally right to insist on consistency of approach, and on some accountability for the sentence chosen. On the latter point, the committee's apparently 'normal' proposal that reasons should be given for sentence should be read carefully. Paragraphs E.1 and E.2 require 'specific' reasons which clearly relate the sentence to the normal range of sentences for that type of crime. General reasons will not suffice.

Perhaps less needs to be written here about the proposals in B.5 to B.8. They are no less important in practice - restricting the use of imprisonment, promoting non-custodial sentences and grading them in order of severity, ensuring that provisions for default are not disproportionately harsh - but they are not new. We tried to sharpen the details, but the fundamental principles are consistent with the Council of Europe's approach for several years. In C.1, C.2 and C.3 we applied the principle of legality to factors which aggravate or mitigate sentence. On the question of the effect of previous convictions on sentencing, the committee came to an agreement more quickly than on almost any other subject. Thus the principles in D.1 to D.5 spell out the need to consider the effect of particular convictions with care, not applying any mechanical rule but considering their relevance and ensuring that the sentence is kept in proportion to the seriousness of the latest offence.
One set of proposals that is central to the committee's approach is contained in J, 'Statistics and Research'. Many of the points made here are not new: they were made twenty years ago in the 1974 report on 'Sentencing'. But progress on these two matters has been slow, with much defensiveness on the part of officials and judges in member states. Paragraph J spells out the minimum requirements for the proper evaluation of sentencing practice. Without reliable statistics it is difficult to assess what is going on. Without research into the process of decision-making we shall for ever be reliant on anecdotes rather than systematic analysis. Half of the members of the sentencing committee were judges, and they agreed with this proposal. How can we be serious about consistency in sentencing if we lack the means to measure it?

The proposals on statistics and research must also be linked with two other proposals. It is essential that information from these statistics should be given, in a readily understandable form, to judges and others in the criminal justice system (1.1); it is also desirable that seminars should be available to judges, as an aid to consistency (1.2). So far as policy-making is concerned, paragraph K argues the case for a systematic exchange of information on sentencing, through some form of European newsletter and through periodic meetings of judges and other criminal justice personnel. The benefits would lie not merely in learning about how other member states are responding to similar problems, but also in reducing some of the strangeness sometimes felt about 'other legal traditions'.

To those who expected the committee to produce a set of sentencing standards that cover all the important issues in European sentencing, Recommendation No. R (92) 17 might come as a disappointment. But this was always an unrealistic expectation. Matters such as the rationales for sentencing are often deeply ingrained in the legal tradition of member states, and could not be swept away by a few strokes of the pen in Strasbourg. What the committee has tried to produce is a set of attainable standards that should succeed in bringing the sentencing systems of member states closer together on many important issues. Some of the proposals are innovative, and will test the commitment of member states to the ideal of consistency – the ideal that led originally to the creation of the sentencing committee. The Recommendation as a whole shows that it is possible to reach agreement on a range of central issues in sentencing, without infringing the principle of the independence of the judiciary, and despite the diversity of legal traditions. As a member of the committee I welcomed the opportunity to learn about varying approaches to similar problems and to search for the common ground. If member states do promote the principles contained in the
Towards European sentencing standards

Recommendation, then a sentencing committee in the future will be in a strong position to take this important work further.

References

Council of Europe
Sentencing
Strasbourg, CDPC, 1974

Council of Europe
Disparities in Sentencing: Causes and Solutions
Strasbourg, 1989

Collected Studies in Criminological Research, vol. XXVI

Council of Europe
Delays in the Criminal Justice System
Strasbourg, 1992

Collected Studies in Criminological Research, vol. XXVIII
Recommendation No. R (92) 17

of the Committee of Ministers to member states concerning consistency in sentencing

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members;
Considering that it is one of the fundamental principles of justice that like cases should be treated alike;
Considering that in member states there has been increasing awareness that unwarranted disparity in sentencing sometimes occurs at different levels;
Considering that unwarranted disparity and perceptions of injustice might bring the criminal justice system into disrepute;
Taking into account Articles 3, 5 and 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms and also the fundamental principle of the independence of the judiciary;
Bearing in mind that the decision of the court must always be based on the individual circumstances of the case and the personal situation of the offender;
Considering that consistency in sentencing should not lead to more severe sentences;
Recalling the conclusions of the 8th Criminological Colloquium in Strasbourg, 1987,

Recommends that the governments of member states, while taking into account their own constitutional principles and legal traditions, and in particular the independence of the judiciary, take appropriate measures for the promotion of the principles and recommendations set out in the appendix to this recommendation, so as to avoid unwarranted disparity in sentencing.

Appendix to the Recommendation No. R (92) 17

A. Rationales for sentencing

1. The legislator, or other competent authorities where constitutional principles and legal traditions so allow, should endeavour to declare

---

1 Adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies.
the rationales for sentencing.
2. Where necessary, and in particular where different rationales may be in conflict, indications should be given of ways of establishing possible priorities in the application of such rationales for sentencing.
3. Wherever possible, and in particular for certain classes of offences or offenders, a primary rationale should be declared.
4. Whatever rationales for sentencing are declared, disproportionality between the seriousness of the offence and the sentence should be avoided.
5. The rationales for sentencing should be reviewed from time to time. The tendency to establish uniform rationales and priorities at European level should be encouraged and promoted. Sentencing practice should be subjected to critical reappraisal so as to avoid undue severity.
6. Sentencing rationales should be consistent with modern and humane crime policies, in particular in respect of reducing the use of imprisonment, expanding the use of community sanctions and measures, pursuing policies of decriminalisation, using measures of diversion such as mediation, and of ensuring the compensation of victims.
7. No discrimination in sentencing should be made by reason of race, colour, gender, nationality, religion, social status or political belief of the offender or the victim. Factors such as unemployment, cultural or social conditions of the offender should not influence the sentence so as to discriminate against the offender.
8. In proposing or imposing sentences, account should be taken of the probable impact of the sentence on the individual offender, so as to avoid unusual hardship and to avoid impairing the possible rehabilitation of the offender.
9. Delays in criminal justice should be avoided: when undue delays have occurred which were not the responsibility of the defendant or attribute to the nature of the case, they should be taken into account before a sentence is imposed.

B. Penalty structure
1. Maximum penalties for offences and, where applicable, minimum penalties should be reviewed so that they form a coherent structure which reflects the relative seriousness of different types of offence.
2. The range of available sentences for an offence should not be so wide as to afford little guidance to courts on its relative seriousness. States should therefore consider the grading of offences into degrees of seriousness, provided, however, that minimum penalties, where applicable, do not prevent the court from taking account of particular
circumstances in the individual case.

3. a. Wherever it is appropriate to the constitution and the traditions of the legal system, some further techniques for enhancing consistency in sentencing may be considered.

b. Two such techniques which have been used in practice are 'sentencing orientations' and 'starting points'.

c. Sentencing orientations indicate ranges of sentence for different variations of an offence, according to the presence or absence of various aggravating or mitigating factors, but leave courts with the discretion to depart from the orientations.

d. Starting points indicate a basic sentence for different variations of an offence, from which the court may move upwards or downwards so as to reflect aggravating and mitigating factors.

4. a. In particular, for frequently committed or less serious offences or offences which are otherwise suitable, consideration may be given to the introduction of some form of orientations or starting points for sentencing as an important step towards consistency in sentencing.

b. Wherever it is appropriate to the constitution or the traditions of the legal system, one or more of the following means, among others, of implementing such orientations or starting points may be adopted: i. legislation; ii. guideline judgements by superior courts; iii. an independent commission; iv. ministry circular; v. guidelines for the prosecution.

5. a. Custodial sentences should be regarded as a sanction of last resort, and should therefore be imposed only in cases where, taking due account of other relevant circumstances, the seriousness of the offence would make any other sentence clearly inadequate. Where a custodial sentence on this ground is held to be justified, that sentence should be no longer than is appropriate for the offence(s) of which the person is convicted. Criteria should be developed for identifying the circumstances which render offences particularly serious. Wherever possible, negative criteria to exclude the use of imprisonment, in particular in cases involving a small financial loss, may be developed.

b. The introduction of legislative restrictions on the use of custodial sentences, in furtherance of paragraph a, should also be considered, in particular as regards short-term custodial sentences.

c. In order to promote the use of non-custodial sanctions and measures, and in particular where new laws are created, the legislator should consider indicating a non-custodial sanction or measure instead of imprisonment as a reference sanction for certain offences.

6. Consideration should be given to grading the available non-
custodial sentences in terms of relative severity, taking account not only of the different forms of sanction (for example suspended sentence, fine) but also the varying degrees of harshness (for example high or low fines, long or short community orders); such grading would enable courts to select the non-custodial sentence appropriate for the offender and, subject possibly to the offender's consent, from among a group of sentences which also reflect the relative seriousness of the offence.

7. Where there is a failure to comply with the requirements of a non-custodial order (other than by the commission of a subsequent offence), the offender should not be sent to prison unless the court is satisfied that all other legally prescribed methods have been used or are inappropriate, and that the offender has had the ability to comply with the order. So far as fines are concerned
   a. as a matter of principle, every fine should be within the means of the offender on whom it is imposed;
   b. custody should be avoided so far as possible in cases of inability to pay, in view of the fact that the original offence was considered insufficiently serious for imprisonment or because such a penalty was inappropriate for other reasons;
   c. states should, as a matter of urgency, explore other non-custodial means of enforcing the payment of fines, including suspension of payment and modification of the sentence.

8. In states where the suspended sentence of imprisonment is available, it is important to ensure that, where an offender breaches the suspended sentence, the implementation of the suspended sentence is a judicial decision which allows some discretion, in terms of full implementation, part implementation or other possibilities.

C. Aggravating and mitigating factors
1. The factors taken into account in aggravation or in mitigation of sentence should be compatible with the declared rationales for sentencing.
2. The major aggravating and mitigating factors should be clarified in law or legal practice. Wherever possible, the law or practice should also attempt to define those factors which should not be considered relevant in respect of certain offences.
3. The factual basis for sentencing should always be properly proved. Where a court wishes to take account, as an aggravating factor, of some matter not forming part of the definition of the offence, it should be satisfied that the aggravating factor is proved beyond reasonable doubt and before a court declines to take account of a factor advanced in mitigation, it should be satisfied that the relevant factor does not exist.
D. Previous convictions
1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.
2. Although it may be justifiable to take account of the offender's previous criminal record within the declared rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s).
3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal record. Thus, any effect of previous criminality should be reduced or nullified where:
   a. there has been a significant period free of criminality prior to the present offence; or
   b. the present offence is minor, or the previous offences were minor; or
   c. the offender is still young.
4. There should be a coherent policy with regard to the relevance of discontinued proceedings, foreign judgements, amnesty, pardon or time-barred offences.
5. Where an offender is sentenced on one occasion for several offences, the decision on the severity of the sentence or combination of sentences should take some account of the plurality of offences but should also remain in proportion to the seriousness of the total criminality under consideration.

E. Giving reasons for sentences
1. Courts should, in general, state concrete reasons for imposing sentences. In particular, specific reasons should be given when a custodial sentence is imposed. Where sentencing orientations or starting points exist, it is recommended that courts give reasons when the sentence is outside the indicated range of sentence.
2. What counts as a 'reason' is a motivation which relates the particular sentence to the normal range of sentences for the type of crime and to the declared rationales for sentencing.

F. Prohibition of reformatio in peius
1. The principle of the prohibition of reformatio in peius should be taken into account where only the defendant appeals.
2. In states where such a remedy exists, the powers of prosecutors to use their right to accessory appeal should not be used their right to accessory appeal should not be used with a view to undermining the principle of the prohibition of reformatio in peius, thereby deterring offenders from appealing.
G. Time spent in custody
In principle, time spent in custody before trial or before appeal shall count towards the sentence. There should be a coherent policy with regard to time spent in custody abroad.

H. Role of the prosecutor
The sentencing policies and training of prosecutors should ensure that prosecutorial practices make a contribution to overall consistency in sentencing.

I. Sentencing studies and information
1. Arrangements should be made to ensure that judges and the public are regularly provided with information about the overall functioning of the criminal justice system, and in particular of sentencing practice.
2. In order to promote consistency in sentencing, judges and magistrates should have the opportunity to attend seminars and conferences on sentencing on a regular basis.

J. Statistics and research
1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).
2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.
3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.
4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.
5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant’s plea, and the execution of sentences).

K. European co-operation on sentencing information
1. States should consider the establishment of some method of a continual exchange of information about trends and new developments in sentencing law, policy and practice, in order to spread knowledge
of the sentencing practices of other European states and to inform
states about possible methods of improving consistency in sentencing.
2. To this end, states should encourage the establishment of a regular
European newsletter on sentencing, prepared by an appropriate
institution and distributed to judges and other interested parties in
greater Europe. States should also consider the desirability of
providing a forum for meetings of judges and others involved in the
criminal justice systems of member states, so as to spread awareness
of shared problems and possible solutions.
The American experience

When the Sentencing Reform Movement took off in the United States in the 1970s, it started as an attempt to reduce disparity in the decisions made by parole boards (cf. Gottfredson et al., 1978, pp. 13-39; Gottfredson and Gottfredson, 1980, pp. 299-306; Kress, 1980, p. 227). At that time and in most states as well as at the federal level, the time actually spent in prison depended on parole decisions much more than on the sentences imposed by judges, given the predominance of indeterminate sentences at that time (Kennedy, 1980; Kress, 1980, p. 31; ). There was an obvious risk of keeping prisoners, in some instances, for a length of time out of proportion with the crime they had committed. It was also considered unfair to leave them in uncertainty about how long they would have to spend in prison (Von Hirsch, 1976, p. 102; Kress, 1980, p. 31). The terrible prison riots of the late 1960s (Brodeur, 1985) and in particular the famous Soledad Brothers and Angela Davies, highlighted this problem worldwide in the late 1960s.

Since parole boards tended to make their decisions on the grounds of criteria of equity, i.e., the seriousness of offence, the record of the offender and related circumstances, rather than exclusively on grounds of the offender’s rehabilitation and chance of repeating the offence in the future, the decision-making process of parole boards resembled very much what has traditionally been seen as characteristic of judges’ sentencing decisions (Gottfredson et al., 1978, p. 77). Therefore, it was rather obvious that any guidelines for parole decisions would ultimately need to be sentencing guidelines, and that their logic could easily be applied to sentencing decisions as well (Gottfredson et al., 1978, p. 79).

When – during the 1970s – American legislators moved increasingly to abolish parole and parole boards, the research on guidelines for parole decisions could easily be used to develop

1 Professor and Dean, School of Forensic Science and Criminology, University of Lausanne, Place du Château 3, 1015 Lausanne, Switzerland.
sentencing guidelines for judges (Kennedy, 1980). In that connection, they were helpful for checking political initiatives aimed at introducing determinate sentencing, minimum sentences (flat time, presumptive sentences) and similar proposals popular among legislators at that time (Kress, 1980, pp. 6-8). Ultimately, such initiatives seemed to rediscover ideas which were popular at the time of enlightenment. Montesquieu (in Esprit des lois, part 11, chapter 6) and others advocated indeed that legislators should abolish judicial discretion wherever possible, making of judges nothing more than a Subsumtionsapparat (Rüping, 1981, p. 68). Such ideas not only threatened judicial independence, but were also historically naive in so far as they completely ignored the failure of such rigid sentencing systems during the 19th century in Europe (Schmidt, 1965) as well as in the United States (Kress, 1980, p. 30).

The development of sentencing guidelines has, therefore, never been free of political overtones. First designed as a tool to defend parole and/or judicial discretion, they may have served, in the views of some of their promoters, a hidden agenda, namely to reduce the length of time spent in prison and, indirectly, of incarceration rates. As we know by now, they were not very successful in this regard (Savelsberg, 1989). Sentencing guidelines actually in use in most American jurisdictions also no longer reflect some of the basic principles cheered by their inventors. They may, as the Council of Europe Committee on Consistency in Sentencing claims in its explanatory report (B.3), have become unduly rigid and excessively reduce judicial discretion. Such criticisms have been raised particularly concerning the US Sentencing Commission’s (federal) guidelines. Their most criticized features are, however, departures from the original guidelines model, such as the serious restrictions on the judge’s right to depart from the standard sentence (Tonry, 1993, pp. 136-140). Although certain limitations of judicial discretion have also occurred under some state sentencing guidelines, usually under the form of determinate sentencing laws (Savelsberg, 1989; Tonry, 1991), such guidelines continued generally to be well accepted by practitioners and to reduce effectively sentencing disparity (Brodeur, 1985; Tonry, 1991 and 1993). There is also some evidence that, in some cases, guidelines may have provoked a shift of discretion from sentencing judges to prosecutors who, through plea bargaining, can easily offset any sentencing standards (Savelsberg, 1989; Tonry, 1993). This outcome, however, had already been anticipated by many of the early promoters of sentencing guidelines (Von Hirsch, 1976, p. 106; Gottfredson et al., 1978, p. 125) and should not be a reason to dismiss the underlying idea. Given the more limited discretion of European prosecutors, the risk of a similar shift of discretion from
judges to prosecutors, police, and defense attorneys seems rather remote. Europeans should, therefore, not assess the merits of sentencing guidelines only on the grounds of existing American models, but look at the original models as they were developed and tested in the 1970s (see the detailed description of four pilot models given by Kress, 1980, in Appendices A, B, C, and D). The evaluation of, e.g., the federal parole board guidelines (by Gottfredson, 1979) showed that they were very successful at reducing sentencing disparity, and similar results were found in Minnesota (Savelsberg, 1989). Kress (1980, pp. 113-141) reports encouraging results concerning the fit of the guidelines with actual sentencing patterns in the four pilot jurisdictions.

In summary, Europeans miss a substantial bulk of innovative insight into the mechanisms of the sentencing process by not looking more closely at the original guideline models.

The traditional European approach to structuring sentencing decisions

European criminal law has developed an impressive doctrinal framework on how sentencing decisions should be made (for Germany’s particularly elaborate doctrine, see Bruns, 1974). According to this doctrine (which exists in slightly varying forms in most European countries), the judge has to consider a comprehensive set of aggravating and mitigating factors and to balance them against each other in order to reach an appropriate sentence. This elaborate set of principles is extremely familiar to each practitioner: the author of these lines, having drafted hundreds of opinions during his former practice as a court clerk, feels – probably like most practitioners – that, in a final stage, he might eventually no longer be able to pray the pater noster, but certainly to repeat the structuring principles of sentencing decisions ... This may show to what extent the sentencing principles have become a litany which one recites without much reasoning. Sentencing judges know that the best strategy to ensure that a decision will survive any appeal is to mention all feasible mitigating (and, eventually, aggravating) circumstances in the opinion. Even if the sentence is rather harsh, no court of appeal will intervene as long as it remains within a certain range which, as a general rule, is rather wide in most countries. This relative irrelevance of the reasons given, i.e., the mitigating and/or aggravating factors indicated in the opinion, is well expressed by the joke according to which there are three kinds of justification of sentencing decisions: those given at the end of the hearing, those
written in the opinion, and those which the judge actually meant. Empirical research in Germany has indeed shown that the reasons given in the opinion are largely unrelated to the sentence actually imposed (Hassemer, 1983). In such circumstances, opinions are meaningless rituals whose sole purpose is to render successful appeals as difficult as possible.

This critique should not be read as an attempt to dismiss European sentencing principles. As a structuring point of departure, they certainly are helpful (see, e.g., Peters, 1972), and they probably have widely influenced Andrew von Hirsch and other American writers (although it is not usual to quote continental sources in such texts). But, without any quantification of the different factors which are to be taken into account, the actual sentence is, despite the impressive rhetoric, in no way logically determined by these same factors. Thus, the outcome of the sentencing process remains uncontrollable for the parties, the judge himself, and higher courts who might eventually have to review it (Hassemer, 1983).

Outline of an alternative sentencing model

A possible way out of this dilemma might be to quantify the several sentencing factors. For example, one could set a standard penalty for any type of offence defined by the criminal code. From this point of departure, the judge would have to consider the several aggravating factors, such as, e.g., the number and kind of preceding convictions, or other elements from his record, and turn to the mitigating circumstances, such as the fact that the offence was only attempted but not completed, that the offender had been instigated or provoked by a third person, that he had acted out of desperation, that he had made the investigation of the case much easier by his confession and cooperation, etcetera. For any of these aggravating and mitigating factors, a standard weight would be needed. Thus, the presence of any such circumstance would increase or diminish the sentence by, say 10 percent, or by a proportion which the judge would have to set within a set range of, say, 10-20 percent. By summing up all the aggravating and mitigating factors which the judge would find in a given case, and taking the set standard penalty as the point of departure, the judge would end up by finding a recommended sentence resulting from these sentencing guidelines.

The decisive element, however, would be that the judge would, within the range of legally possible sentences for the given offence, have free discretion to deviate from the sentence resulting from the guidelines. This discretion to depart from the standard has always
been one of the decisive features of the original American guidelines (Von Hirsch, 1976, pp. 99-100; Gottfredson et al., 1978, p. 35; Kress, 1980, p. 12; Kennedy, 1980, p. xx; Gottfredson and Gottfredson 1980, p. 195). However, he would then need to indicate in his opinion the reasons why, in his view and for the given case, the standard sentence resulting from the guidelines seemed inappropriate. This kind of motivation would necessarily be substantial and not merely ritualistic, since meaningful justifications always refer to some standard by giving the reasons for departing from it (Walker, 1969, p. 158). By the same token, such motivations would also be controllable and subject to criticism by the parties and, eventually, higher courts.

European reservations – and ignorance

So far, Europeans have widely rejected or ignored the idea of assigning any sentencing (aggravating and/or mitigating) factor a certain quantitative weight (for UK, see Pease, 1990, pp. 115-116; for Germany, see Hassemer, 1989, and Hortskotte, 1989; see also, as a positive example, Hauser, 1985). In this context, the Council of Europe report on Consistency in Sentencing (Recommendation R (92) 17) comes neither as an exception nor as a surprise. Its recommendation of (fairly wide) legal ranges of sentences, or of points of departure for ‘typical’ offences (B.3), may even bring slight progress compared to current standards. But, in broader terms, the Committee offers not much beyond restating continental jurisprudence and criminal law doctrine on sentencing. This, however, is insufficient to make sentencing decisions intelligible and controllable, since nearly all sentencing decisions make at least some allowance to mitigating and/or aggravating factors. If the Committee’s recommendations are going to be applied in practice, one may safely predict that they will affect the justification of sentencing decisions much more than actual sentencing outcomes. Whenever a court feels that an immediate custodial sentence is warranted, it will face no difficulty in repeating the ultima ratio principle expressed in section B.5.a – and flatly state that such a sentence seems ‘unavoidable’ in the present case. The question is not whether or not one adheres to the Committee’s hidden agenda of promoting community sanctions instead of incarceration; the problem stems from the Committee’s rejection of ‘guidelines’ and any attempt at structuring, in a more controllable fashion, the choice between several types of sanction. By favouring a ‘European’ over an ‘American’ approach (pp. 20-21), the Committee has implicitly given up the goal of reducing disparity in sentencing decisions.
The rejection of the idea to quantify sentencing factors in Europe is even more surprising when one considers the frequent use European sentencers tend to make of all sorts of informal sentencing guidelines in mass offences such as, e.g., drunken driving. Sentencing standards are also common for offences where unlimited discretion of judges in setting financial sanctions would likely be unaffordable, as in tax offences. For such types of offence, either the prosecutors, the revenue service, or the judges tend to set some crude guidelines which are widely applied in practice. In many studies of sentencing in Europe, the vast majority of sentences has been shown to correspond with the standard sentence recommended for that particular type of offence (for Germany, see Hassemer, 1983, who found more than 90 percent agreement; informal sentencing standards also tend to override personal attitudes of judges and prosecutors, see Oswald, in press, respectively, Langer, in press; on England and Wales, see Moxon, 1988). Even the Council of Europe's Committee seems to favour such 'guidelines' in connection with mass offences (E.1, pp. 38-39).

Unfortunately, such guidelines are frequently insufficiently detailed and suffer, therefore, from many logical inconsistencies. In some jurisdictions, they are neither published nor publicly available, and magistrates and judges may officially even deny their existence. They also tend to elude the limits within which the judge keeps discretion, including the power to deviate from the standard sentence in appropriate cases. Nevertheless, these guidelines are helpful in bringing at least some consistency into an area where the diversity of sentences would otherwise be considerable and where, due to the high number of defendants found guilty of such mass offences, it would likely be detrimental to the legitimacy of judicial decisions in general. On the other hand, they reinforce a tendency which has been observed in England (Pease, 1990), Germany (Rolinski, 1969), and Switzerland (Kuhn, 1993), that sentences tend to be meted out in 'round' figures, i.e., decimals in the case of fines and products of 3, 6 or 12 in the case of sentences which are expressed in units of time (as in the case of custodial and some community sanctions). This preference for 'round' figures leads to a sentencing scale with many inconsistent, non-linear relative increases (Pease, 1990). Again, sentencing guidelines may be an interesting way out of this dilemma, since they will yield many sentences between two 'round' figures, i.e., 27 instead of 24 or 30 months, for example.

Given these constraints and the frequency of such mass offences, at least unwritten and unspoken sentencing standards are likely to develop spontaneously and independently of the official sentencing doctrine. Reducing disparity in sentencing decisions would, however,
be most urgently needed in serious and rare offences. In such cases, individual judges may have less previous experience to which they could refer, and even fellow judges might be less helpful in such situations. On the other hand, disparities are likely to be much larger when it comes to long sentences, and defendants’ interests might call for consistency even more when so much is at stake.

In summary, even reluctant Europeans cannot live without some standardization in the form of informal guidelines. Therefore, there is no reason to reject building more elaborate and logically consistent sentencing guidelines. Let us see how this goal could practically be achieved in the given circumstances.

Practical steps to sentencing reform

The sentencing guidelines model set out above does not need to be enacted by legislators or superior courts. It can easily be implemented by any court within its jurisdiction and without interference from other authorities. This is exactly how the first sentencing guidelines were developed in several pilot jurisdictions within the United States (see the examples described by Kress, 1980).

Throughout Europe, judges usually have discretion to set the sentence within a relatively wide range. The structure of mitigating and aggravating factors is largely determined by law, higher court decisions, and jurisprudence (for Germany, see, e.g., Bruns, 1974). Therefore, there is no reason why the judges at any given court should not convene to build up a system of sentencing rules of their own. They would need to set standard penalties for the offences they would find suitable to do so, such as shoplifting, street robbery, street assault, spouse assault, rape, burglary of dwellings, etcetera. In addition, they would need to quantify the weight of usual aggravating and mitigating factors. Once this is done, they would have an easily applicable system of sentencing rules which would offer them, in individual cases, a standard from which they would retain the power to deviate, giving the reasons why they preferred to do so.

Such a system of guidelines at lower courts would probably need no legal changes in most European countries. They would also offer the advantage of being open to further change and amendment whenever the participating judges felt the need to do so. Indeed, the flexibility and openness to change of judicial guidelines has always been seen as an important advantage over legislative reforms, such as mandatory determinate sentences which will remain law even years after their shortcomings have become obvious to almost any observer (Kress, 1980, p. 7). It also is doubtful whether legislators would be
able to anticipate with sufficient precision any practical offence/offender combination which might arise in the future, making such systems too crude to satisfy in practice (Gottfredson et al., 1978, p. 148). In more philosophical terms, one can also argue that courts and not legislators are the appropriate body for structuring judicial discretion (Wilkins, 1984, pp. 80-81). In any case, court developed guidelines would be close to practice, i.e., to those people who actually do the job of sentencing defendants. For all these reasons, such a system might be superior to the intervention of higher courts or legislators in setting standard penalties, which the Council of Europe's Recommendation (B.4-5) seems to favour.

Finally, local judges and researchers could easily and efficiently work together in developing such guideline schemes, in a quasi-experimental approach of trial and error. Presumably, such efforts would start with developing guidelines that reflect current sentencing policy of the particular court. This does not imply that guidelines developed through this empirical approach would necessarily abandon the idea of change in sentencing policies: as Wilkins said in a well-known oral statement (quoted from Gottfredson and Gottfredson, 1980, p. 195), every 'what is' was once a judge's 'what ought'. If the use of guidelines is monitored by researchers who provide some feedback to judges, they easily can reshape the guidelines whenever they feel that they ought to be changed (Gottfredson and Gottfredson, 1980, p. 195; Kress, 1980, p. 226). Indeed, monitoring and evaluation have always been closely related to the guidelines concept (Gottfredson et al., 1978, pp. 36-37), as the American examples impressively demonstrate (Kress, 1980), and they continue to be an essential condition of their success (Tonry, 1991, p. 318). Guidelines, adequately monitored and evaluated, are even the precondition to any effort at changing sentencing policy in a consistent, well-planned manner (Gottfredson and Gottfredson, 1980, p. 196), whereas the 'informal', i.e., hidden sentencing standards cheered throughout Europe may be the best way to frustrate any effort at change (see the 'frustrating' results found by Oswald, in press, and Langer, in press, which suggest that judges' and magistrates' personal attitudes do not affect sentencing). On the other hand, the existence of a guidelines scheme does not imply that the standardized, 'equal' sentences will be 'just' rather than 'equally unjust' (Wilkins, 1991, p. 2). Thus, guidelines are no alternative to value choices, but they may make such choices transparent and open sentencing policies to critical review.

Thus, developing guidelines might be an ideal field for cooperation between local or regional judiciaries and research teams. The latter would have the responsibility of assisting judges in designing
consistent guideline schemes and, in the following stage, of monitoring and evaluating the practical experience made during their implementation. It certainly will be possible to coordinate subsequent guideline schemes at regional or even national levels; it also might be possible to charge a central judicial body, i.e., a sentencing commission, with the task of designing a guideline scheme (Kress, 1980, pp. 217 and 219). For practical reasons, however, it definitively might be advisable to start rather empirically at the roots of the sentencing system, i.e., with local and regional courts.

Let us hope that initiatives of this kind will develop here and there by innovative practitioners. Such experiments could be much more instructive than any new theory of sentencing.

References

Brodeur, P.-P.
Réforme pénale et sentences: expériences nord-américaines

Bruns, H.-J.
Strafzumessungsrecht, 2nd ed.
Köln, Heymann, 1974

Council of Europe
La cohérence dans le prononcé des peines
Recommendations No. R (92) 17, 1993

Gottfredson, D.M., L.T. Wilkins, P.B.
Hoffman
Guidelines for Parole and Sentencing

Gottfredson, M.R.
Parole guidelines and the reduction of sentencing disparity; a preliminary study

Gottfredson, M.R., D.M. Gottfredson
Decisionmaking in Criminal Justice: Toward the Rational Exercise of Discretion
Cambridge (Mass.), Ballinger, 1980

Hassemer, W.
Strafungleichheit: Strafrechtliche Aspekte.
In: Chr. Pfeiffer, M. Oswald (eds.), Strafzumessung. Empirische Forschung und Strafrechtsdogmatik im Dialog
Stuttgart, Enke, 1989, pp. 297-301

Hauser, G.
Die Verknüpfungsproblematik in der Strafzumessung
Fribourg, Fribourg University, 1985 (dissertation)

Horstkotte H.
Praktische Konsequenzen der Strafzumessungsforschung. In: Chr. Pfeiffer, M. Oswald (eds.), Strafzumessung. Empirische Forschung und Strafrechtsdogmatik im Dialog
Stuttgart, Enke, 1989, pp. 281-290

Kennedy, E. (Senator)
Foreword to J.M. Kress, Prescription for Justice. The Theory and Practice of Sentencing Guidelines
Cambridge (Mass.), Ballinger, 1980

Kress, J.M.
Prescription for Justice. The Theory and Practice of Sentencing Guidelines
Cambridge (Mass.), Ballinger, 1980

Kuhn, A.
Punitivité, politique criminelle et surpeuplement carcéral ou comment réduire la population carcérale
Bern, Paul Haupt, 1993

Recherches criminologiques suisses, vol. 6
Langer, W.
*Der Einfluss der Staatsanwaltschaft auf die richterliche Strafzumessungsentscheidung*
Hannover (forthcoming)
Research Report of the Kriminologisches Forschungsinstitut Niedersachsen

Moxon, D.
*Sentencing Practice in the Crown Court*
London, HMSQ, 1988
Home Office Research Study, no. 103

Oswald, M.E.
*Eine sozialpsychologische Analyse richterlicher Strafzumessungsentscheidungen*
Hannover (forthcoming)
Research Report of the Kriminologisches Forschungsinstitut Niedersachsen

Pease, K.
Punishment demand and punishment numbers. In: D.M. Gottfredson, R.V. Clarke (eds.), *Policy and Theory in Criminal Justice; contributions in Honour of Leslie T. Wilkins*

Rolinsky, K.
*Die Prügnanztendenz im Strafurteil*
Hamburg, Kriminalistik Verlag, 1969
Kriminologische Schriftenreihe, no. 37

Rüping, H.
*Grundriss der Strafrechtsgeschichte*
Jus-Schriftenreihe, no. 73

Savelsberg, J.J.
Sentencing guidelines: über die Grenzen einer neoklassischen Reaktion auf Disparitäten der Strafzumessung. In: Chr. Pfeiffer, M. Oswald (eds.), *Strafzumessung. Empirische Forschung und Strafrechtsdogmatik im Dialog*
Stuttgart, Enke, 1989, pp. 290-296

Schmidt, E.
*Einführung in die Geschichte der deutschen Strafrechtspflege, 3rd ed.*
Göttingen, Vandenhoeck & Ruprecht, 1965

Tonry, M.
The politics and processes of sentencing Commissions

Tonry, M.
The failure of the US Sentencing Commission's Guidelines
*Crime and Delinquency*, vol. 39, no. 2, 1993, pp. 131-149

Von Hirsch, A.
New York, Hill and Wang, 1976

Walker, N.
*Sentencing in a Rational Society*

Wilkins, L.T.
*Consumerist Criminology*
London, Heinemann, 1984
Cambridge Studies in Criminology no. LI

Wilkins, L.T.
Punishment, Crime & Market Forces
Aldershot, Dartmouth, 1991
In 1982, Steenhuis et al. discussed the penal climate in the Netherlands relative to that in West Germany and Sweden. Their report shows that an international comparison of levels of punitiveness leads to different conclusions, depending on what one looks at. The 1978 detention rates (the number of prisoners per 100,000 head of population) they reported were 89 for West Germany, 52 for Sweden and 22 for the Netherlands. Adding length of sentence to the picture confirms the conclusion of a 'sunny penal climate' in the Netherlands: only 11 percent of the sentences were over six months, compared to 17 percent in Sweden and 70 percent in Germany. However, when they related these figures to the number of suspects, the picture was reversed. In the Netherlands the proportion of suspects sentenced to an unconditional prison sentence was 9 percent, as opposed to 5 percent in Sweden and only 3 percent in Germany. Based on the number of convicted suspects, the proportion of unconditional prison sentences tells the same story: high in the Netherlands (23 percent), somewhat lower in Sweden (19 percent) and the lowest in Germany (6 percent).

These were, and still are, interesting findings. Firstly because they lead one to question exactly what constitutes a 'mild' penal climate: a relatively small percentage of unconditional prison sentences but with relatively long terms (as in West Germany and Sweden) or the opposite (the Netherlands). Secondly because they clearly illustrate that international comparisons of criminal justice statistics should be treated with care. Most of all, however, they are interesting in themselves: differences in levels of punitiveness between countries that are relatively alike have always attracted policymakers and politicians. Over the last decade, in the Dutch debate about crime control and criminal justice the notion has frequently emerged that

---

1 Research and Documentation Centre, Ministry of Justice, Schedeldoekshaven 131, 2511 EM The Hague, The Netherlands. The author would like to thank Gordon Barclay, Hanns von Hofer, Jörg-Martin Jehle, Martin Killias, Chris Lewis and Pierre Tournier for the data and comments they provided. They are not responsible for any mistakes and misinterpretations that may have been made in using these data.
criminals from all over Europe would come (or actually have come) to the Netherlands because of the relatively low prison sentences, and only a few months ago the latest plans for increasing the Dutch prison capacity were defended with – among other things – the argument that this would take the Netherlands to the European level.

It is mainly for this last reason that I want to pass over all the objections that rightly exist against international comparisons of levels of punishment and imprisonment (cf. Steenhuis et al., 1982; Bondeson, 1989, pp. 220-221; Kommer, 1993, pp. 1-4). If comparisons like these are used for policymaking, they should at least be based on the best available data and be brought to the fore in order to provoke an informed discussion. In writing this article, I intend to do both. Being a member of the Council of Europe’s ‘Group of Specialists on trends in crime and criminal justice’ I am in the fortunate position of having been provided with the best available prosecution and sentencing statistics by a number of distinguished statisticians and criminologists from various European countries; presenting some of these figures in this journal is a good opportunity to bring them to the attention of both policymakers and scientists.

Some preliminary remarks

Discounting all objections does not mean that they should not be mentioned, and it certainly does not mean that what is done should not be accounted for. A discussion of the objections can be quite short: they have been discussed extensively elsewhere (cf. Hall Williams et al., 1982; Farrington and Langan, 1992; Farrington and Wickström, 1993). In my view, the most important are:

— comparison of overall rates does not take into account the differences in composition of the universes of crimes cleared and suspects sentenced, while breaking down to more specifically delineated types of crimes leads to definitional problems (not to mention the question whether these data are even available);

— comparison of just one measure for punitiveness (e.g. the rate of imprisonment) does not take into account the structural differences between criminal justice systems and the availability of alternative sanctions, while comparing several measures leads to unanswerable questions like the one that Steenhuis’ results put to us, and any effort to combine several measures into one will at the very least be disputable.

These problems cannot be overcome, but they can at least be made as clear as possible at the moment one decides to ignore them in order to
proceed in the quest for simple and straightforward answers. That is exactly what I intend to do.

At the same time, I want to present a number of measures of punitiveness, based on different indicators, just to test the feasibility of such an approach and to see exactly what they indicate. Refining them, making them more valid and reliable is the next step.

**Overall rates**

As has been noted before, probably the rawest indicator of the level of punitiveness is the imprisonment rate. Furthermore, it is also the one most readily available: the results of the Council of Europe’s six-monthly survey on prison populations are always published in the Prison Information Bulletin. From this source, flow statistics (admissions and average length of stay) are also available for a number of European countries. In table 1 (p. 39), a selection of the most recent figures is presented.

The imprisonment rate (column 2) can be used to rank the countries in an ascending order, i.e. by the level of punitiveness as indicated by the number of people imprisoned per 100,000 head of the population. The rank number is presented in the table, in column 2, between brackets; a second rank number is calculated leaving out the countries without entries in columns 5 to 8.

By comparing columns 2 and 4 in the table it becomes clear why the gross imprisonment rate is not a very useful indicator of the level of punitiveness: it is strongly dependent on the number of remand prisoners, and this number may be more influenced by legal restrictions on the use of remand than by a society’s willingness to incarcerate people. A better indicator might be the net imprisonment rate, i.e. the number of convicted prisoners per 100,000 head of the population. Using this net rather than the gross imprisonment rate to rank the countries in the table in an ascending order leads to a somewhat different configuration: Belgium becomes the third least punitive country rather than the sixth, Norway the fourth rather than the second and Sweden the ninth rather than the fourth. Both indicators put the Netherlands in the first place, and England and Wales and Northern Ireland in the penultimate and last place, respectively.

The number or rate of people incarcerated at a given moment is one way of looking at the matter in hand, looking at the number of people admitted is an alternative way. There is no apparent reason why one should prefer one more than the other; it might in fact be argued that the combination of the two helps to shed a more discerning light on
the question of punitiveness. A low imprisonment rate, for instance, does not imply a low rate of punitiveness in the sense that just a small number (or proportion) of defendants receives a prison sentence, it may also reflect a large number of short remand terms and/or prison sentences.

In table 1 the total number admitted and the admission rate are given in columns 5 and 6, respectively. Ranking the countries in the table by admission rate again changes the picture: France appears to have the lowest rate (135.3), followed by the Netherlands, the Federal Republic of Germany and Belgium. Sweden tops the bill now with almost 600 admissions per 100,000 head of population. Of course it is possible to correct the admission rate for remand imprisonment, but that does not lead to a measure that can be easily interpreted: it is, again, entirely dependent on criminal procedure whether a large proportion of defendants who eventually serve a prison sentence has been remanded or not. From the figures in column 7 (percentage unconvicted on entry), however, it is clear that France and Belgium use remand imprisonment far more often (relative to later conviction) than Norway, Sweden and Northern Ireland, while the Netherlands and England and Wales hold a middle position.

The final measure of punitiveness that can be found in table 1 is the average length of detention. Using it to rank the countries for which figures are available one would come to the conclusion that Norway, Sweden and the Netherlands are the least punitive countries, Northern Ireland, Belgium and England and Wales the middle-ranked ones and France and the FRG the most punitive countries.

For the countries for which all data are available, from these four rankings an overall measure can be constructed in a way that is as simple as it is questionable: adding the rank numbers. This results in the following order: the Netherlands (7), Norway (12), Belgium (15), Sweden and France (19), Germany (20), England and Wales (25) and finally Northern Ireland (27). Interestingly, this order is not very different from the one based on the gross imprisonment rate; one might thus conclude that it is not such a bad measure after all.

As Steenhuis et al. have already argued, however, imprisonment rates as such are not a very useful measure as they are related to a society's crime level as well as to its level of punitiveness: the number of prison sentences can hardly surpass the number of crimes, or rather the number of apprehended suspects. Though it would be feasible to relate the figures in table 1 to police data on crimes reported or persons arrested (cf. Farrington and Langan, 1992; Farrington and Wickström, 1993), it is easier to go one step further and look at prosecution and conviction data directly. In table 2 (p. 40)
these data are presented for a selection of countries.\footnote{This selection is smaller than in table 1 because these data are (as yet) not available at a European level.}

Unfortunately, due to problems of definition, prosecution and conviction statistics are less compatible than imprisonment statistics. The first problem is that for some countries only figures on all offences (from serious crimes to small traffic offences) are available. So, for Germany the number of cases processed by the public prosecutor includes infractions of police and administrative regulations, while the corresponding figures for the Netherlands, Sweden and Norway relate to offences of the Penal Code and Drugs Act only. For England and Wales two figures are available (‘all offences’ and ‘indictable offences’); neither is fully compatible with the aforementioned. A second problem is that it is not clear whether in some countries the number of cases processed by the prosecuting authorities include crimes that are reported but not cleared (which might account for a large proportion of cases being dropped, as is the case for France). A third problem, of course, is that the countries included in the table have very different criminal justice systems, especially when it comes to prosecution (Norway, for instance, has different prosecutorial procedures for infractions and crimes; cf. Van Kalmthout and Tak, 1992, p. 817).

When it comes to conviction data, the difficulties have less to do with definitions (apart from the problems with regard to England and Wales already mentioned) than with differences in statistical bases of the figures available. Some countries, in their official statistics, report the number of court convictions; others report the number of sentences imposed. Especially where it is possible to impose more than one (type of) sentence for one conviction this may lead to incompatibility. A second problem is that the number of convictions to totally suspended custody and/or community sentences proved very hard to find for most countries. For these reasons, the percentages in the last four columns in the table do not add up to one hundred.

However inconvenient, these problems are insufficient reason for a total abandonment of table 2: only the prosecution statistics seem to be useless for our purpose, though it is interesting to see that between the countries for which they seem most compatible (the Netherlands, Norway and Sweden) the proportions of cases dropped/sanctioned by the prosecutor respectively, differ so markedly. If we concentrate then on the court convictions the first thing that catches the eye is the position of Norway, where half of the cases end in a custodial sentence. Compared to the other countries, where this proportion varies between 3.8 and 27 percent, this would indicate a very punitive
climate.\(^3\) Norway is followed in descending order by Sweden, Germany, the Netherlands and England and Wales.

The question now is whether the picture arising from the prison sentences is changed when we take the other possible sanctions into account. Though there is no indisputable way to equate a prison sentence with a fine or a community sentence, for our purpose it seems appropriate to do so by simply giving them an arbitrary weight. For this purpose, let's first suppose that the number of 'other sanctions' equals the total number of sanctions minus the number of fines plus the number of immediate prison sentences (we thus suppose that the percentages in the last four columns, if data were available, would add up to one hundred). Next, we attribute a weight of 3 to prison sentences, 1 to fines and 2 to 'other sanctions'. Summing up, Norway still scores highest (223.2 points), followed by Sweden (197.5), England and Wales (indictable offences, 174.6), the Netherlands (172) and Germany (153.6).\(^4\)

The exercise so far fails to not lead to a general conclusion: punitiveness indicators based on convictions are not consistent with indicators based on imprisonment data. The only country that scores low on both types is the Netherlands.

**Three individual offence types**

As was mentioned before, looking at overall rates does not take into account differences in crime definitions. Therefore, it is at least interesting to see what happens when we look at individual types of offence. Using the data from the 'Group of Specialists' it is possible to do so for two offences that are probably quite comparable for all countries involved (homicide and rape) and one category of offence that may in itself represent a measure for punitiveness: drug offences. As prosecution data did not prove to be very useful (and were, moreover, not available for most countries) they have been left out from the tables to be discussed here; the space thus created was used to present data on sentence length (cumulative percentages).\(^5\)

The first table to look at is the one which gives the data on

---

\(^3\) This would be consistent with the conclusion Van Kalmthout and Tak (1992, pp. 812-813) reached that the Norwegian prosecution and sentencing policy has become a lot harsher over the last ten years.

\(^4\) Of course this method of scoring in a sense just enlarges the differences already apparent when looking at the prison sentences only: the number of fines / other sanctions is (computed to be) complementary to the number of prison sentences.

\(^5\) Unfortunately these data are not (yet) available for all countries in the tables. Moreover, the categorization of sentence length in the official statistics differs
homicide (table 3, p. 41). From it, it is clear that there is little
difference between the ten countries for which data are available.
With the exception of Germany, in all countries over 80 percent of
the homicide cases end with (immediate) custody; the fact that in
Germany a number of homicide cases end with a fine suggests that in
the total number some less serious cases (attempts?) are included.
Anyway, the imprisonment rate for homicide as such does not seem to
be a very interesting candidate as a measure of punitiveness: it would
not lead to a lot of distinction between countries.

However, by including the length of sentence in our consideration
the picture changes again. In the Netherlands and Switzerland about
15 percent of the (unconditional) prison terms appear to be one year
or less; in the other countries less than 3 percent of the sentences are
that short. At the other end of the range we find France and Italy,
where about 60 percent of the sentences are of 10 years duration or
longer. This leads us to the conclusion that these countries are more
punitive than the others (for which data are available), where the
Netherlands and Switzerland are the least punitive. Norway and
Sweden, using the same measure, seem to be somewhat more punitive
than the Netherlands and Switzerland, but far less than Italy and
France.

Of course, if we use the length of sentence imposed we leave out
possible reductions such as parole, pardon, early release etcetera.
Taking these into account might change the picture again;
unfortunately, however, data are only available for a very limited
number of countries.6

Table 4 (p. 42), in which the data for rape are presented, shows
more or less the same picture if we look at sentences imposed: in all
countries almost all cases result in a prison sentence. The Netherlands
and France, however, show a relatively low percentage of immediate
prison sentences. Taking into account length of sentence singles out
the Netherlands, where over 60 percent of the sentences are one year
or less. The other countries can be divided into two categories, with
France, Italy and Sweden showing the highest percentages of long
prison sentences and Norway and Switzerland the lowest (but still

between countries; the categorization in the tables is chosen in such a way that
maximum comparability results.

6 In Italy, parole has been a right since 1974 providing a number of objective and
subjective conditions are met. In 1985, 40 percent of the requests were turned
down. Up to 50 percent of the sentence may be granted (cf. Van Kalmthout and
Tak, 1992, p. 543). In the Netherlands early release (unconditional parole) after
the prisoner has served two-thirds of his sentence has been a right since 1987
(cf. ibid., pp. 707-708). In Norway parole conditions are very similar to the
Dutch ones (cf. ibid., p. 831).
considerably higher than the Netherlands).

The last type of offence, 'drug offences', constitutes a very heterogeneous category. In the Netherlands, for instance, a distinction is made between trafficking, dealing and possession of drugs and between so-called 'hard drugs' (heroin, cocaine, amphetamines etcetera) and 'soft drugs' (hashish, marihuana etcetera); in Norway drug offences can be found in the penal code as well as in the Act relating to medicinal goods (*Lov om legemidler med videre*). This heterogeneity is reflected in the conviction statistics: although, except for Scotland and Northern Ireland, the proportions of prison sentences do not differ too much, in a number of countries a relatively high proportion of cases end with a fine (the percentages for Norway and Sweden would be even higher if the prosecutorial fines were also included). Or might one conclude that differences in levels of punitiveness actually account for the figures in table 5 (p. 43)?

While five out of eight countries show about the same proportion of (immediate) prison sentences (45-55 percent), Scotland and Northern Ireland both show a proportion of only 10 percent, while France holds a middle position with nearly 34 percent. Compared to the figures in tables 3 and 4, this is a remarkable finding. Still, if we leave out Scotland and Northern Ireland, drug offences fail to provide a more interesting basis as a measure of punitiveness than rape or homicide. As data on sentence length are only available for four countries, taking this particular factor into account does not add much to the picture. Not surprisingly, France shows the longest sentences while in the Netherlands, Norway and Sweden sentences appear to be milder. With the differences in sentence length reported in the previous two tables in mind, however, it is in itself interesting to see that between these last three countries the differences are relatively small.

**Trends**

An opinion shared by most people who set out to compare national crime statistics is that one should not look at levels but at trends. By doing so, a lot of the problems of incomparability can be overcome, and at the end of the day it is more interesting to know whether countries are developing in the same direction and/or at the same pace rather than just to know how they relate to each other at one random point in time. Unfortunately, at the moment of preparing this article only data for 1990 were available for most of the countries under scrutiny. However, looking back to the findings reported by Steenhuis et al. (1982) we can at least conclude that things have changed. While
the detention rate for Germany dropped from 89 in 1978 to 78 in 1990, it doubled for the Netherlands (from 22 to 44). In Sweden there was just a small increase, from 52 to 58.

Farrington and Langan (1992) and Farrington and Wickström (1993) also present figures from previous years, but these can not easily be compared with those presented here. Their data for 1981 and 1987 show an increase of over 10 percent in sentence length for residential burglary, vehicle theft, robbery and assault in England and Wales, and a relatively stable picture for Sweden (only the sentence length for robbery increased by more than 10 percent).

Conclusion

The data presented here, apart from being very incomplete and sometimes of a less than desirable reliability, provide no solid basis for clear conclusions about the punitiveness of European countries. Using incarceration rates produces as many rankings as there are varieties of those rates; using overall conviction data just adds another ranking. From these rankings, only one thing emerges more or less consistently: a relatively mild penal climate in the Netherlands. In other countries for which data on imprisonment as well as sentencing are available, the picture is quite blurred: based on the combined imprisonment data one would be inclined to say that Norway and Sweden are not that punitive either, but this is not what one would gather from the large proportion of prison sentences in Norway (table 2, p. 40). On the other hand, the very low proportions of custodial sentences for drugs offences in Scotland and especially Northern Ireland are surprising after having seen their high place in the rankings based on imprisonment data.

Delving into the matter further by looking at sentencing data for individual offences proves to be more interesting than helpful: most countries seem to have relatively similar patterns of sentencing when we look solely at sentence type. Only the lengths of prison sentences imposed for the different types of offence vary in a way that might make one or more rankings possible. It would seem then, that France and Italy impose relatively harsh sanctions on homicide and rape, but the problem here is that data are only available for a small number of countries. For this reason they can only be used to corroborate the findings from the overall rates: the Netherlands appears to be less punitive than the other European countries based on most indicators presented in this article; it is followed by the Scandinavian countries while France and Germany hold a middle position and Britain, though not homogeneous, tends to be the most punitive.
In writing this article, I had to ignore almost all caveats that can be found in the literature and that were issued by those colleagues with whom I spoke about this endeavour. Of course, they were right: one should not treat statistical data as I have done and the conclusions reached when you do so are as solid as quicksand. Still, this 'quick and dirty job' may help to show two things. Firstly that indicators for punitiveness, however they may vary according to exactly what you look at, can be constructed and may even point in the same direction. Secondly that the Council of Europe's effort to produce a European Sourcebook of crime and criminal justice statistics deserves support: the data contained will be able to be used for interesting exercises.

References

Bondeson, U.

Criminal Statistics England and Wales 1992

Criminaliteit en strafrechtspelging 1990
The Hague, Sdu / Centraal Bureau voor de Statistiek, 1992

Farrington, D.P., P.A. Langan
Changes in crime and punishment in England and America in the 1980s Justice Quarterly, vol. 9, no. 1, 1992, pp. 5-46

Farrington, D.P., P.-O.H. Wickström

Hall Williams, J.E. et al.

Kommers, M.M.

Kriminalstatistikk 1990
Oslo-Kongsvinger, Statistisk Sentralbyrå, 1992

Rättsstatistik årsbok 1991
Stockholm, Statistiska Centralbyrå, 1991

Steenhuis, D.W., L.C.M. Tigges, J.A. Essers
The Penal Climate in the Netherlands: Sunny or Cloudy
The Hague, Ministry of Justice, 1982

Tournier, P.

Van Kalmthout, A.M., P.J.P. Tak
Table 1: Prison statistics for several European countries (1990)

<table>
<thead>
<tr>
<th>(column no.)</th>
<th>1 total prison population²</th>
<th>2 imprisonment rate² (/100,000)</th>
<th>3 percentage convicted prisoners²</th>
<th>4 convicted prisoner rate²</th>
<th>5 total admitted³</th>
<th>6 admission rate³ (/100,000)</th>
<th>7 percentage unconvicted on entry³</th>
<th>8 average duration of detention³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>6,525</td>
<td>66.1 (6/4)</td>
<td>53.2</td>
<td>35.2 (3/2)</td>
<td>18,202</td>
<td>184.4 (4)</td>
<td>75.6</td>
<td>4.5 (5)</td>
</tr>
<tr>
<td>Denmark</td>
<td>3,243</td>
<td>63.0 (5/-)</td>
<td>73.5</td>
<td>46.3 (5/-)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>France</td>
<td>47,449</td>
<td>82.2 (9/6)</td>
<td>59.3</td>
<td>48.7 (7/4)</td>
<td>75,940</td>
<td>135.3 (1)</td>
<td>84.3</td>
<td>6.9 (8)</td>
</tr>
<tr>
<td>FRG</td>
<td>48,792</td>
<td>77.8 (8/5)</td>
<td>73.6</td>
<td>57.3 (8/5)</td>
<td>92,370</td>
<td>149.6 (3)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Italy</td>
<td>32,588</td>
<td>56.6 (3/-)</td>
<td>59.4</td>
<td>33.6 (2/-)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>6,662</td>
<td>44.4 (1/1)</td>
<td>61.2</td>
<td>27.2 (1/1)</td>
<td>19,965</td>
<td>137.8 (2)</td>
<td>50.9</td>
<td>3.9 (3)</td>
</tr>
<tr>
<td>Norway</td>
<td>2,260</td>
<td>56.5 (2/2)</td>
<td>79.5</td>
<td>44.9 (4/3)</td>
<td>9,478</td>
<td>237.1 (6)</td>
<td>31.2</td>
<td>2.7 (1)</td>
</tr>
<tr>
<td>Sweden</td>
<td>4,895</td>
<td>58.0 (4/3)</td>
<td>79.8</td>
<td>58.8 (9/6)</td>
<td>49,521</td>
<td>591.5 (8)</td>
<td>30.9</td>
<td>3.0 (2)</td>
</tr>
<tr>
<td>Switzerland⁴</td>
<td>5,074</td>
<td>76.9 (7/-)</td>
<td>61.1</td>
<td>47.0 (6/-)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England &amp; Wales⁵</td>
<td>45,659</td>
<td>90.3 (10/7)</td>
<td>77.9</td>
<td>70.3 (10/7)</td>
<td>114,251</td>
<td>226.7 (5)</td>
<td>46.7</td>
<td>5.1 (6)</td>
</tr>
<tr>
<td>Scotland</td>
<td>4,737</td>
<td>-</td>
<td>83.9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>1,733</td>
<td>109.5 (11/8)</td>
<td>77.1</td>
<td>84.4 (11/8)</td>
<td>4,961</td>
<td>314.4 (7)</td>
<td>36.2</td>
<td>4.3 (4)</td>
</tr>
</tbody>
</table>

1 Figures in brackets: rank number if ordered by the measure in the column (for columns 2 and 4: based on all countries / based on countries with entries in columns 5 to 8).

2 Taken from Tournier (1992) table 2 (Situation of prison populations on September 1, 1990) p. 29; except Scotland: data communicated in Council of Europe’s group of specialists.


4 The number of convicted persons in 1989 was 11,311; cf. Tournier, 1992, p. 31.

5 Figures on flow and duration not directly comparable with those of other countries because they are based on persons imprisoned (without double countings) rather than imprisonments (with the possibility of multiple counting); cf. Tournier, 1992, p. 31.
Table 2: Prosecution and sentencing statistics for several European countries (1990); all offences, where possible only Penal Code and Drugs Act*

<table>
<thead>
<tr>
<th></th>
<th>cases processed by prosecution</th>
<th>% cases dropped by prosecutor</th>
<th>% cases sanctioned by prosecutor</th>
<th>court convictions / sentences imposed</th>
<th>% fines (immediate custody)</th>
<th>% suspended custody</th>
<th>% community sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>4,484,054</td>
<td>81.9</td>
<td>16.5</td>
<td>577,170</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FRG</td>
<td>2,876,475</td>
<td>50.9</td>
<td>19.8</td>
<td>692,363</td>
<td>67.5</td>
<td>21.1</td>
<td>-</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>251,454</td>
<td>30.0</td>
<td>31.3</td>
<td>89,439</td>
<td>45.0</td>
<td>17.0</td>
<td>-</td>
</tr>
<tr>
<td>Norway</td>
<td>22,873</td>
<td>17.5</td>
<td>31.3</td>
<td>11,037</td>
<td>26.9</td>
<td>50.1</td>
<td>-</td>
</tr>
<tr>
<td>Sweden</td>
<td>70,139</td>
<td>20.6</td>
<td>20.7</td>
<td>41,141</td>
<td>29.6</td>
<td>27.1</td>
<td>18.9</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>all offences</td>
<td>1,599,000</td>
<td>20.5</td>
<td>-</td>
<td>1,513,900</td>
<td>78.8</td>
<td>3.8</td>
<td>6.7</td>
</tr>
<tr>
<td>indictable offences</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scotland</td>
<td>381,272</td>
<td>10.7</td>
<td>34.6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

1 Including cases that were brought before a court by a public prosecutor or other prosecutorial body. For France, the number is the total number of people 'mises en cause'. For the FRG, the number relates to all offences, including police and administrative regulations. Only about 17% of the cases are dealt with by the public prosecutor, the rest is dealt with by the police and tax, customs and administrative authorities. For Norway the number shown is the number of persons charged by the police (Kriminalstatistik 1990, p. 63).
2 For all reasons (policy and/or technical).
3 FRG: motion to penal order; The Netherlands: settlement (transactie); Norway: ticket fine (Forelegg); Sweden: summary fine (Strafföreläggande); Scotland: conditional offer and fiscal fine.
4 FRG: convictions (for all offences with the exception of motoring offences); The Netherlands: convictions; Norway: sanctions imposed; Sweden: persons sentenced; England & Wales: convictions.

Sources
Table 3: Prosecution and sentencing statistics for several European countries; homicide, 1990

<table>
<thead>
<tr>
<th>Country</th>
<th>Court convictions/ sentences imposed</th>
<th>% fines</th>
<th>% immediate custody</th>
<th>% suspended custody</th>
<th>% community sentence</th>
<th>Length of (unconditional) prison sentence cumulative percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 year</td>
</tr>
<tr>
<td>France</td>
<td>620</td>
<td>0.0</td>
<td>87.9</td>
<td>-</td>
<td>0.0</td>
<td>1.5</td>
</tr>
<tr>
<td>FRG</td>
<td>570</td>
<td>1.7</td>
<td>78.9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Italy</td>
<td>519</td>
<td>0.0</td>
<td>100.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>The Netherlands¹</td>
<td>111</td>
<td>0.0</td>
<td>94.6</td>
<td>5.4</td>
<td>-</td>
<td>16.2</td>
</tr>
<tr>
<td>Norway</td>
<td>44</td>
<td>0.0</td>
<td>100.0</td>
<td>0.0</td>
<td>0.0</td>
<td>-</td>
</tr>
<tr>
<td>Sweden</td>
<td>123</td>
<td>-</td>
<td>97.6</td>
<td>-</td>
<td>2.4</td>
<td>2.7</td>
</tr>
<tr>
<td>Switzerland</td>
<td>41</td>
<td>0.0</td>
<td>85.0</td>
<td>-</td>
<td>-</td>
<td>14.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>437</td>
<td>0.0</td>
<td>81.2</td>
<td>-</td>
<td>7.3</td>
<td>-</td>
</tr>
<tr>
<td>Scotland</td>
<td>112</td>
<td>0.9</td>
<td>84.8</td>
<td>-</td>
<td>4.5</td>
<td>-</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>44</td>
<td>0.0</td>
<td>95.5</td>
<td>4.5</td>
<td>0.0</td>
<td>-</td>
</tr>
</tbody>
</table>

¹ 1989 micro-data; outcome unknown for 241 cases due to data processing problems.

Source: Council of Europe’s group of specialists.
Table 4: Prosecution and sentencing statistics for several European countries; rape, 1990

<table>
<thead>
<tr>
<th>Country</th>
<th>Court convictions/sentences imposed</th>
<th>% fines</th>
<th>% (immediate) custody</th>
<th>% suspended custody</th>
<th>% community sentence</th>
<th>length of (unconditional) prison sentence cumulative percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>729</td>
<td>0.0</td>
<td>79.7</td>
<td>5.2</td>
<td>0.0</td>
<td>6 months 1 year 3 years 4 years 10 years</td>
</tr>
<tr>
<td>FRG</td>
<td>923</td>
<td>1.0</td>
<td>98.6</td>
<td>0.0</td>
<td>0.0</td>
<td>-</td>
</tr>
<tr>
<td>Italy</td>
<td>181</td>
<td>0.0</td>
<td>100.0</td>
<td>0.0</td>
<td>0.0</td>
<td>1.7 8.3 67.4 100.0</td>
</tr>
<tr>
<td>The Netherlands¹</td>
<td>257</td>
<td>1.6</td>
<td>83.7</td>
<td>7.8</td>
<td>7.0</td>
<td>26.4 61.6 94.0 97.2 100.0</td>
</tr>
<tr>
<td>Norway</td>
<td>69</td>
<td>0.0</td>
<td>95.6</td>
<td>2.9</td>
<td>0.0</td>
<td>1.6 6.5 - 83.9 -</td>
</tr>
<tr>
<td>Sweden</td>
<td>172</td>
<td>0.0</td>
<td>96.5</td>
<td>-</td>
<td>2.9</td>
<td>4.1 19.0 - 93.2 -</td>
</tr>
<tr>
<td>Switzerland</td>
<td>74</td>
<td>0.0</td>
<td>89.2</td>
<td>-</td>
<td>-</td>
<td>4.5 15.2 - - -</td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>541</td>
<td>0.6</td>
<td>90.6</td>
<td>-</td>
<td>2.2</td>
<td>- - - - - -</td>
</tr>
<tr>
<td>Scotland</td>
<td>45</td>
<td>0.0</td>
<td>91.0</td>
<td>-</td>
<td>4.4</td>
<td>- - - - - -</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>36</td>
<td>0.0</td>
<td>91.6</td>
<td>2.7</td>
<td>5.6</td>
<td>- - - - - -</td>
</tr>
</tbody>
</table>

¹ 1989 micro-data; outcome unknown for 521 cases due to data processing problems.

Source: Council of Europe's group of specialists.
Table 5: Prosecution and sentencing statistics for several European countries; drug offences, 1990

<table>
<thead>
<tr>
<th>Country</th>
<th>court convictions/sentences imposed</th>
<th>% fines</th>
<th>% (immediate) custody</th>
<th>% suspended custody</th>
<th>% community sentence</th>
<th>length of (unconditional) prison sentence cumulative percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6 months</td>
</tr>
<tr>
<td>France</td>
<td>20,428</td>
<td>12.2</td>
<td>33.7</td>
<td>-</td>
<td>4.5</td>
<td>32.1</td>
</tr>
<tr>
<td>FRG</td>
<td>24,295</td>
<td>40.5</td>
<td>47.4</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Italy</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>2,997</td>
<td>14.0</td>
<td>53.4</td>
<td>-</td>
<td>-</td>
<td>54.0</td>
</tr>
<tr>
<td>Norway</td>
<td>1,646</td>
<td>37.4</td>
<td>49.1</td>
<td>-</td>
<td>-</td>
<td>64.6</td>
</tr>
<tr>
<td>Sweden</td>
<td>2,555</td>
<td>25.6</td>
<td>54.6</td>
<td>-</td>
<td>16.1</td>
<td>59.8</td>
</tr>
<tr>
<td>Switzerland</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>5,952</td>
<td>22.7</td>
<td>46.4</td>
<td>-</td>
<td>28.5</td>
<td>-</td>
</tr>
<tr>
<td>Scotland</td>
<td>3,016</td>
<td>73.2</td>
<td>10.1</td>
<td>-</td>
<td>6.4</td>
<td>-</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>113</td>
<td>67.3</td>
<td>9.7</td>
<td>9.7</td>
<td>1.8</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: Council of Europe's group of specialists.
Alternative sanctions: myth and reality

Josine Junger-Tas

Background and origins of alternative sanctions

Over the last ten or fifteen years new forms of punishment, called alternative sanctions, community sanctions or intermediate sanctions have spread over the western world.

The introduction of alternative sanctions is one of the most important developments in sentencing in the last two decades. The significance lies in a totally different attitude being adopted towards offenders, victims, the community and punishment in general.

According to a definition of the American Office of Justice Programs (US Department of Justice, 1990) an alternative sanction is 'a punishment option that is considered on a continuum to fall between traditional probation and traditional incarceration'. The origins of the new sanctions are to be found in the United States and the United Kingdom, two countries being confronted in the 1970s with a growing prison population and – in England's case – with an old and collapsing prison system. However, most of the alternatives were developed in the eighties.

The question is why the need was felt to experiment with new sanctioning options and why the traditional sanctions were no longer satisfactory. Let me try to give some answers.

First, one might mention the rising crime rate during the 1970s, which was one reason for the public outcry for more severe punishment. Judges, despite their independence, are sensitive to public opinion, and in most western countries one sees a tendency among judges to impose more and longer prison sentences. Facing the increase in prison sentences, the first reaction of the authorities was
to build new prisons. In the US a total of 3.2 million persons were under correctional control in 1987. In 1990 this number had increased to over 4 million: more than one million (1,155,000) were sentenced to prison, 2.5 million were under probation supervision, and 400,000 were under parole supervision (Bureau of Justice Statistics). This represents a 44 percent increase in the correctional population since 1985. These changes are not unique to the US. The prison population in Canada increased by 10.6 percent between 1975 and 1979 and another 10.3 percent between 1979 and 1982. The length of the prison sentence increased in the same period by 31 percent and is still increasing (Billingsley and Hann, 1984). In Europe there also was a growth in the prison population and more prisons were built. In France the prison population increased by 20 percent between 1980 and 1992, despite a number of collective pardons.

However, the growing prison population is not so much the result of more prison sentences being past but rather their increased length. In Quebec (Canada) in 1984, only 7 percent of the prisoners had sentences longer than 6 months, but they occupied half the prison capacity (Landreville, 1988). The average period of detention in the French prisons was 4.6 months in 1980 and 6.5 months in 1991, while the number of prison sentences hardly changed (Cesdip, 1993). Even in Switzerland, a country with a relatively low crime rate, the detention length increased by 50 percent between 1982 and 1991. Moreover, sentences longer than 6 months form 17 percent of all prison sentences, but they account for 73 percent of the prison capacity (Kuhn, 1993). Surveys carried out by the Council of Europe show that similar changes took place in nearly all the member states.²

A second important factor is the change in attitude towards the aims and usefulness of punishment. In the 1960s and 1970s one of the major objectives of the criminal justice system was the rehabilitation of the offender. The rise in crime in the 1980s and the negative results of treatment programmes led to a loss of confidence in social work in general and in the probation service in particular. Rehabilitation as an important aim of penal intervention was gradually abandoned. This shift in objectives is also related to the individualization of society, an expression of which is the growing emphasis on the position of the victim and the development of the victim movement. Actually the victim movement achieved an important and consequential reappraisal of the rights of the victim in the penal process. Consequently, the position of the offender has also

² One of the consequences is an increase in the detention of women, members of ethnic minorities and foreigners.
changed. Before the 1970s the offender was essentially seen as a victim of the organization of society and of his personal miserable situation. Over the last twenty years a growing emphasis has been placed on the responsibility of the offender for the consequences of his actions. There is a clear tendency to make the offender accountable for the damage and the suffering he has caused to the victim. In this respect there has been a rediscovery of neoclassical, retributive principles, which have been best expressed by Von Hirsch (1976) in ‘Doing Justice: the Choice of Punishments’, the report of a Commission charged with the reform of the American prison system. The principles developed by Von Hirsch and his colleagues are based on three interrelated concepts. The first one, ‘just deserts’, expresses the general justification of punishment. It means that a person should get the punishment he deserves for the crime he has committed, taking into account the seriousness of previous convictions. But he should not be punished with a view to the crimes he might eventually commit in the future. The second principle is ‘proportionality’, which states that the severity of punishment should be proportional to the seriousness of the crime. The third principle is ‘equality’, meaning that equal crimes have to be punished in the same way. Von Hirsch and his colleagues are opposed to the arbitrariness of indeterminate sentences. They want to limit judicial discretion and to have a fairer and more just system. Therefore they proposed ‘presumptive sentences’, that is specific punishments based on the crime’s seriousness. They rejected not only indeterminate sentences, but also the principle by which, in addition to the seriousness of the act and the offender’s criminal record, the judge considers mitigating or aggravating circumstances of the criminal act. According to the Commission this did increase the discretionary power of the judge to an uncontrollable degree and threatened the rights of the defendant.

However, the coming together of a more severe penal climate, a renewed emphasis on the classical principles of criminal justice, and the development of ‘mandatory sentences’, in the United States, led in fact to less consideration for the offender and to the imposition of more and longer prison sentences on adults and juveniles. By proposing a penalty scale, based on the seriousness of both the crime and the criminal record, the Commission tried to scale down the severity of sentences and to reduce the recourse to imprisonment. In reality the results have been contrary to what was expected, and this important and influential reform movement has instead led to a more retributive justice system with a strong emphasis on punishment and deterrence.

Third, there is the secular trend towards the humanization of the criminal justice system. This development should be seen in the
framework of long-term changes in punishments, where the death penalty, exile and corporal punishments have gradually come to be considered as degrading and unacceptable and have been replaced by the more humane prison sentence. At present there is a slow but certain tendency to replace the prison, seen as a dehumanizing and criminogenic environment, with punishments within the community. All these punishments are considered to be both retributive and rehabilitation. A new element is that the community is more actively involved in the punishment process than has been the case before.

These changes have made it imperative to examine the question of how to integrate the new sanctions into the criminal justice system and how to achieve a more comprehensive and more flexible sentencing system, where traditional and alternative sanctions each have their part to play. One of the obstacles in this respect is the fact that prison may be seen as the only ‘real’ punishment. In that perspective all other punishments are considered as weak alternatives or as ‘soft options’.

Another important movement that should be mentioned in this respect is the development of sentencing guidelines for the courts, initially in the United States but later also in Canada and in Europe. Two main factors may explain this development: the wide disparity in sentencing among judges and the question of how to apply alternative sanctions and make sure that they are used as a substitute for prison.

In the United States, sentencing commissions have developed guidelines in most of the states. There have been sentencing commissions in other countries, such as the Australian Law Reform Commission in 1980 and the Canadian Sentencing Commission in 1987. In Europe a different model than the American one has been proposed by the United Kingdom and by the Council of Europe, while Sweden has effectively changed its Penal Law, adopting some of the neoclassical principles.

The first step in the United States was taken by the courts themselves. They developed guidelines which might be followed by judges on a voluntary basis. This was unsuccessful as it had no impact at all on the practice of sentencing. The second step, the introduction of ‘mandatory sentences’ by law led to longer prison sentences and to more prison overcrowding but not to more use of alternatives. The third step was the introduction of ‘presumptive guidelines’ by sentencing commissions on the basis of characteristics of the offence and the offender. One of the first examples was the Minnesota guidelines of 1978. The problem is that these guidelines gave specific indications on the use of prison sentences but not on the sentences of 80-85 percent of the other offenders who would not be
sentenced to prison. So efforts were deployed to integrate all sentences into one model and place them on a scale ranging from a warning or restitution to various community sanctions, such as fines, community service and intensive supervision – eventually combined with restrictions and obligations – to custody (Morris and Tonry, 1990). As offenders can also be placed on a continuum according to the seriousness of the committed offence and the length and nature of their criminal record, Morris and Tonry plead for a model where the judge – within certain margins – has a large choice of possible combinations of sanctions. This would imply that prison sentences and community sanctions are to a certain extent interchangeable and can be combined in different ways. In that case specific equivalences or ‘exchange rates’ would have to be developed in order to give guidance to the courts.

Such a model was designed for adults by the Delaware Sentencing Reform Commission in 1983 and for minors by the Minnesota Citizens Council on Crime and Justice in 1982. The Delaware Commission proposed an integrated and graduated scale of alternative sanctions to prison but it did not develop the interchangeability concept. The Minnesota model has been rejected because of its very detailed and mechanical character, but it represents a real effort to achieve a comprehensive scale of punishments. The final attempt in this direction has been made by the staff of the US Sentencing Commission, who have developed ‘punishment units’ for every combination of offence seriousness and past record, taking into account the circumstances of the offence (damage, loss and injury) and of the offender. Exchange rates have been proposed for custody, community confinement, home detention, community service and fines. Unfortunately, these proposals have not become part of the federal guidelines (Morris and Tonry, 1990, p. 75).

Canada has shown much more reticence in changing its system. The Canadian government had proposed sentencing principles in accordance with the American principles of ‘just desert’, ‘proportionality’ and ‘equality’, except that the judge was obliged to take into account the mitigating or aggravating circumstances of the act. Moreover, it continues to support the principle of rehabilitation as one of the major aims of punishment, although it acknowledges that the impact of the criminal justice system on the behaviour of individuals is limited. Both the Canadian Sentencing Commission and the Canadian parliament have made recommendations to develop alternatives for imprisonment. Although the Canadian parliament has opted for ‘advisory sentencing guidelines’ instead of ‘mandatory’ or ‘presumptive’ guidelines, it has not yet taken any definite decisions on the subject.
Sentencing guidelines also attracted growing attention in Europe. In 1989 the Council of Europe set up a Select Committee of Experts on Sentencing in which 14 member states participated. In 1992 the Committee issued a report ‘Recommendation on Consistency in Sentencing’ (in this issue).

The Committee indicates that although judges in many countries do impose alternative sanctions, this is not always done as a substitute for a (short) prison sentence. They sometimes impose alternatives on offenders who would not be sent to prison anyway, a procedure which is called net-widening. In this respect the Committee is convinced that there can be no consistent sentencing policy without ranking both prison and non-prison sentences according to severity, and relating them to the seriousness of the offence and the circumstances of the act. Thus the judge should first decide on the severity of the sanction and then make a choice from a range of available punishments on that particular severity level.

A somewhat different approach is used by the English government. Concern about sentencing was presented for the first time in a White Paper in 1990 (Crime, Justice and protecting the Public). Although the government recognizes the independence of the courts it clearly indicates certain restrictions: ‘no government should try to influence the decisions of the judge in individual cases’. However, ‘principles of sentencing and sentencing practice are matters of legitimate concern to Government’ (section 2.1). The British government expressed its appreciation for the way in which the Court of Appeal has developed sentencing principles through case-law jurisprudence. For example the Court of Appeal has proposed 190 hours community service in burglary cases where usually a 9-12 months prison sentence is imposed, and 40-60 hours community service for all cases where no custody would be required (National Standards for Community Service Orders, Home Office, 1989). However, the English government considers that there is still too little guidance with respect to the principles of sentencing. Therefore it proposes a partnership between the legislator and the courts: parliament should provide a legal framework regarding the requirements for custodial and non-custodial sanctions, and the Court of Appeal should work out the legal principles in more detail. In this way the English government hopes to achieve changes in sentencing practice.

It is perhaps surprising that Scandinavian countries such as Finland and Sweden have introduced legislative reform which has more
similarities with American principles than the other European countries. Finland changed the law a number of times between 1970 and 1990. It has taken public drunkenness out of the penal code so that substitutive detention for not paying the fine has disappeared. New legislation introduced in 1976 has led to the increased use of a conditional sentence in combination with an unconditional fine (from 42 percent in 1975 to 58 percent in 1987). Revision of the penal code with respect to property offences and drunken driving led to an increase in fines from 37 percent in 1971 to 77 percent in 1987. The objective of all these changes was to reduce the recourse to prison. It should be emphasized that besides the legislative measures, the government organized an intensive programme of courses and seminars for the judiciary, in order to introduce the new practice and to achieve consensus on the objectives to be reached. An important favourable condition for the reform was that crime has never been a political issue in Finland, and there was no public opinion urging judges to impose harsher sentences (Törnudd, 1991).

Sweden differed from most of the other European countries, because based on its rehabilitation and general-prevention principles, it practised the indeterminate sentence (for example for juveniles and habitual offenders) (Von Hirsch, 1987). Dissatisfaction with the fairness of existing law, its lack of structured sentencing decisions, as well as the loss of confidence in its effects on rehabilitation, led to an interest in the neoclassical principles of 'just desert' and 'proportionality' in sentencing. In 1979 and 1981 the indeterminate sentences were abolished. The Swedish approach - according to Von Hirsch – can be placed between the English one, where the Court of Appeal is expected to issue sentencing guidelines and punishment tariffs by case-law jurisprudence, and the American approach, whereby a grid with numerical sentencing options are proposed (such as the Minnesota guidelines). The former model seemed too vague and inconclusive, and the latter too mechanical. The underlying idea of the new Swedish law, which was adopted in 1988, is that the punishment of an offender should be proportionate to the seriousness of the offence committed. Therefore, the penal value of the crime, based on the harmfulness of the criminal act and the culpability of the offender has to be determined. However, the law contains a list of aggravating and mitigating circumstances, which have to be taken into account. The law also offers two criteria for imprisonment: a prison sentence is indicated when the crime is serious – that is, has a considerable penal value – and when the criminal record justifies this punishment (see for more details Jareborg in this issue).

Concluding this section on sentencing reform, it may be said that the current philosophy in the western world, including Australia, is
based on three concepts: ‘just desert’, ‘proportionality’ and ‘equality’. These are expressed most clearly in the United States. Canada and Europe have introduced important nuances. For example the principle of rehabilitation continues to be part of the legislation and the policy in these countries. Moreover, aggravating and mitigating circumstances, that is the circumstances of the criminal act and the character of the offender, continue to play an important role in the sentencing decision.

Finally, let me repeat the main goals of the new sentencing rules: to reduce the large and widespread disparities in sentencing, and to achieve a consistent and comprehensive sentencing system which includes both custodial and non-custodial sanctions.

Objectives of alternative sanctions

One should distinguish between offender-related objectives and system-related objectives.

In the beginning there was an emphasis on the rehabilitative character of alternatives (Switzgebel, 1969), but gradually there was a shift towards retribution, punishment, and even incapacitation. It seems fair to say that today the main objectives with respect to the individual offender are to make sure the sanction is real punishment, satisfying the need for retribution and the need for a certain degree of incapacitation, through very intensive supervision and control in the community. Reparation to the victim or the community is an objective of some specific alternatives, such as community service, restitution or mediation. Rehabilitation clearly comes second and is sometimes even irrelevant, although countries do differ in this respect.

The system-related objectives are mainly threefold: the reduction of the prison population, the reduction of costs through the substitution of expensive prison terms by cheaper alternatives, and the decrease of recidivism. Sometimes other objectives are mentioned, such as the increase of public safety or the reinforcement of the role of the Probation service.

Considering all these objectives it is obvious that there are too many of them, that they are contradictory, and that they are too pretentious: indeed it is hard to imagine that all could be realized (Thorvaldson, 1982).

However, alternatives also have some latent functions. The authorities want to show the public that they are tough on crime – without increasing the costs – and the Probation service sees there an excellent opportunity to improve their credibility by increased supervision and control of offenders. This will give
probation a central role in the penal process once again, which means more funding and more job satisfaction for probation workers (Tonry, 1990).

What alternatives are there?

I will present only those sanctions that are most frequently used in the countries I have studied. If one considers a comprehensive scale of sanctions increasing in severity, the first ones may be defined as forms of diversion. They are:

— mediation, victim-offender reconciliation, Täter-Opfer Ausgleich: these are meetings of victim and offender, usually accompanied by restitution;

— restitution or compensation: payment of damages, restitution of stolen objects, working for the victim as reparation. In some countries (Canada) compensation payments are made from a state fund.

It is clear that these sanctions in most cases are not used as substitutes for prison. That is why we will not elaborate on them any further.

The following alternatives have been designed – partly and not exclusively – to replace a short prison sentence:

— Day-fines, which were introduced in Sweden but are now applied in a growing number of European countries. Day-fines are individualized fines, defined by the seriousness of the offence and the offender’s financial capacity. The number of day-fines is determined according to the seriousness of the offence; then the daily income of the offender is calculated, taking into account subsistence costs and the number of dependent family members. Finally a fixed percentage of the daily income is multiplied by the number of day-fine units. In Germany and Austria day-fines are explicitly meant to replace a prison sentence of up to 6 months.

— Community service, the carrying out of useful – in some cases demanding – unpaid work as reparation to the victim or the community, expressed in number of hours during a specified period; community service has been developed in Europe as an alternative to a short prison sentence (less than six months). Finally, there are four alternatives that are explicitly designed to replace prison for a more serious offender category.

— Day centres, attendance centres, day probation, day reporting centres: these have all been developed in the United Kingdom and in the United States and are meant to replace detention and to increase supervision. In England, offenders may be sent to a day
centre as a condition of probation (‘4B order’), in the US day centres are used as substitutes for pre-trial detention or as a form of early release for parolees.

— Electronic monitoring: this is essentially an American invention, although there has been one trial in England with offenders in pre-trial detention. The offender is detained in his home and controlled by an electronic device. There are two different systems of electronic monitoring: one is by a transmitter – on the wrist or ankle – sending signals to a central computer, the other operates through irregular telephonic calls. The main objective is to create more cell capacity in prison, while making sure, by strict surveillance, that the offender is not on the street.

— Intensive supervision programmes (ISPs) consist of a number of punishment options under the very intensive control of probation officers. Intensive supervision is also an American invention and is exercised on a fairly serious category of offenders. Intensive supervision is imposed in different ways. Byrne distinguished three different models (Byrne, 1986). First, the ‘justice’ model, based on the principle of ‘just desert’. Sentencing responsibility is with the legislator or a sentencing commission and the model implies clear retribution and punishment. Second, the ‘risk control’ model, which tries to reconcile the reconviction risk of the offender with the concern for fair punishment. This model implies some prediction of future criminal behaviour. Given the fact that the power to predict future criminality is extremely limited, it is better to speak about a ‘limited risk control’ model. This model is especially interested in the reduction of recidivism and not so much in rehabilitation. As some have said: ‘A supervision agency is not a welfare agency, and an extension of its activities beyond a crime control focus is both inappropriate and dangerous’ (O’Leary and Clear, 1984, p. 18). Third, the ‘treatment’ model, which has a number of punishment elements but treatment is explicitly required. This model operates with individual treatment plans regarding such elements as training, employment, community service etc. Treatment is not an optional choice but is mandatory. Although ISP is meant for serious delinquents, in reality most projects deal with property offenders and small-scale drug dealers.

— Boot camps or shock incarceration is meant for young adult non-violent first offenders who would be sentenced to 1.5-2 years imprisonment. Maximum detention term in a boot camp prison is 6 months, but the average term is three months. The idea is that this should be followed by a period of intensive supervision. Participation is voluntary but the alternative is the traditional – much longer – detention period. The first boot camp was built in
1983 in Oklahoma. Its success was so great that in 1991 there were 34 boot camp prisons in 23 states accommodating more than 4,000 young men (MacKenzie and Souryal, 1991; Osler, 1991). Boot camps are characterized by a military regime: a lot of drilling, marching, physical training, and military discipline, where even the slightest infraction is severely punished (Morash and Rucker, 1990). This is combined with hard physical labour, education, professional skills training, and sometimes counselling. It is expected that the combination of a strict military regime with rehabilitation activities will lead to a reduction of recidivism in these convicted young men. This is expressed in the following citation of the White House: ‘Military-style boot camps, with their rigorous regimes and austere conditions, bring a sense of order and discipline to the lives of youthful, non-violent, first-time offenders, and perhaps serve as a deterrent against future crimes ...’ (National Drug Control Strategy, the White House, September 1989).

Although boot camps have become quite popular in the United States, ISPs as a second phase of the punishment, have rarely been employed. Despite the popularity of boot camps there are a number of sceptics, criticizing the principles that govern this type of detention. Is it realistic, they say, to expect positive results in terms of conventional social behaviour from a system that is meant to prepare people for war and is based on a strict hierarchy, unconditional obedience and submission, strict discipline and the acquisition of a fighting spirit (Morash and Rucker, 1990).

Effects of alternative sanctions

According to the objectives of alternative sanctions, there are various effects that have to be examined. The questions that should be answered in this respect are: to what extent do alternatives really replace prison; to what extent is there a reduction of costs; and finally how effective are alternatives in reducing recidivism?

Alternatives as a substitute for prison

Some of the sanctions have been developed as alternatives for short prison sentences. This is true for the day-fine, which has considerably reduced the number of prison sentences for drunken driving in Finland (Törnudd, 1991) and led to a sharp reduction in short prison sentences in Germany and Austria. However, in the latter

4 A short prison sentence in Europe generally does not exceed 6 months.
countries the initial reduction was followed by a rise in somewhat longer prison sentences, showing the resistance of the judiciary to abandoning imprisonment. This is all the more so in the absence of clear sentencing guidelines. Other sanctions which are meant to replace a short prison sentence are community service, day centres, electronic monitoring, boot camps and intensive supervision. The main risk with all these sanctions is that they replace other community sanctions instead of prison.

This has been the case in England with community service (CS). Pease and his colleagues (1977) have measured substitution of prison in four different ways. First, they asked probation workers to predict the sentence to come. Second, they examined the cases where a recommendation for CS was made but not honoured by the judge. Third, they examined what happened when CS failed. Finally they studied the sentences in cases where the judge had asked for a probation report. The conclusion was that CS replaced prison in approximately half of the eligible cases.

In Australia, Rook (1978) compared the number of prison admissions before introduction of CS with the number of admissions after the introduction. Moreover, he compared the number of admissions plus the number of sentences to CS after introduction of the scheme, with the projection of the number of prison admissions before introduction. These calculations led to a substitution proportion of about 50 percent, a proportion that was also found in other parts of the country. In fact, independent of the research method, there is reasonable consensus that community service is a substitute for prison in 45-55 percent of eligible cases.

Day centres serve a rather heterogeneous target group. However, in the case of so-called ‘4B orders’, where day probation is ordered by the judge as a special condition of probation, there is probably some substitution. A serious category of offenders is involved here: 51 percent had been sentenced to prison for earlier offences versus only 26 percent of the other clients (Mair, 1987 and 1988; Mair and Nee, 1992).

Electronic monitoring (EM) is a real substitute. It is frequently used either as an alternative to pre-trial detention, in the case of early release (for study or work) or as a transition to parole. However, there is no absolute guarantee of substitution. In a number of cases EM is used instead of early release or as part of an ISP.

One of the first ISPs was set up in Georgia. Some researchers claim that ISP keeps a large number of offenders out of prison (Erwin and Bennett, 1987). That conclusion is based on the fact that they find a 10 percent decrease in the prison population coupled with a simultaneous 10 percent increase in the number of those on probation.
Moreover, the target group more closely resembled prisoners than probationers.

In other cases clients must first serve a prison term before being put on an ISP. An evaluation of all offenders who participated in New Jersey’s ISP (Pearson, 1988; Pearson and Harper, 1990) compared the average prison term of ISP clients with the average detention period of the other prisoners and concluded that ISP saves 200 detention days per client. This seems a rather overdrawn conclusion as the authors do not include 40 percent of ISP clients who were resentenced to prison because of condition violations (which is a consequence of frequent drug-testing). It is clear that the more ISP clients are sent back to prison the less cell capacity is freed. An evaluation, based on random assignment of parolees to an experimental group and a control group found that after a period of one year, 30 percent of ISP clients were back in prison versus only 18 percent of the other parolees. However, this is mainly due to the fact that they were kept under closer surveillance, which revealed a far greater number of technical violations than are usually found under normal probation supervision. That is why some researchers observed that there is a contradiction between the objective to avoid any security risk and the objective to save prison cells (Petersilia and Turner, 1992).

Finally, boot camps should replace prison, because young adult first offenders who would have been sentenced to 1.5-2 years imprisonment, can be sentenced to 3-6 months boot camp (MacKenzie, 1990). Again the problem is that one can never be sure that judges operate in this way. It is quite conceivable – even probable – that judges consider boot camps as an excellent punishment for young non-violent first offenders and impose it frequently as a sanction sui generis.

What can be concluded on the basis of the research literature? In a critical article Chan and Zdenkowski (1986) claim that there is hardly any evidence that alternative sanctions have an effect on prison space, considering the explosive growth of prisons in the US, the United Kingdom, Canada and Australia. They conclude that most alternatives lead to net-widening, and if there is any substitution it is only for short prison sentences. Taking together the different varieties of alternatives, and considering that as yet we don’t have any long-term statistics, the conclusion on the basis of available research must be that alternative sanctions substitute for prison in 50-60 percent of cases at best.

Moreover, the report of the US General Accounting Office (1990) observes that it is an illusion to expect an effect on prison overcrowding, because of the size of most alternative programmes compared to the total prison population. For example New Jersey’s
ISP has a capacity of 400, compared to a total of 12,000 prisoners in that state. New York’s boot camp programme serves 450 young men, but the prison population is 40,000! On the other hand, although in Florida EM is imposed on 6,500 offenders, the state’s prison population continues to grow. The problem is of course that although one can demonstrate substitution effects on the individual offender’s level, this is hardly possible on the system’s level. Moreover, the size of the prison population depends on many other factors, such as public and judicial perceptions of the seriousness of the crime problem, penal legislation, sentencing policy and the existence of sentencing guidelines.

**Reductions in costs**

There are only two ways to really reduce costs: one is to close down penitentiary institutions, the other is to stop building new ones. In fact there are a number of problems in estimating cost reductions in a reliable way. First, costs are directly related to substitution. If there is no substitution there can hardly be any cost savings. Considering the fact that substitution takes place in only half the cases, cost reductions must be estimated accordingly. Also, when there is a great deal of net-widening, the costs will increase instead of decrease. Another problem is the number of failures. To the extent that EM and ISPs involve serious offenders, the conditions will be stricter and supervision and control more intensive. The simple truth is that the more control there is, the more violations will be observed, leading to more breach proceedings and to more returns to prison. These complications have sometimes been forgotten by overoptimistic evaluators. For example Erwin and Bennett (1987) calculated that the placement of 2,322 offenders in ISPs between 1982 and 1985, taking into account only detention costs and supervision costs, resulted in a cost reduction of $13 million. The authors based their calculations on full substitution of detention, on the absence of any net-widening and on the hypothesis that there would be no returns to prison.

There are other pitfalls threatening the validity of these calculations. Most researchers base their calculations simply on the daily prison costs divided by the number of prisoners. But these figures also include personnel and maintenance costs which will not be reduced by non-occupancy of prison beds (Wiebush, 1993). In other words, most of the costs are fixed costs that are not influenced by fluctuations in the prison population. Moreover, in most countries prison overcrowding is the rule and not the exception, so empty beds will be filled almost immediately. On the other hand, total costs may even increase, when, as in Vermont, ISP is used to
intensify traditional probation (Bagdon, 1993). This was also done in Texas where the authorities expected a reduction of the returns to prison during probation, which ultimately should have led to lower costs. Unfortunately this did not happen and prison costs actually went up: total ISP costs increased by a factor of 1.7 compared to the costs of traditional probation, while, during the follow-up year, ISP clients spent more days in prison than the control group (Turner and Petersilia, 1992). The Rand evaluation of 14 ISPs (Petersilia, 1991) concluded that ISP is more expensive than most people think. Although ISP is cheaper than prison per individual offender, it may lead to higher total costs. All 14 ISPs had more technical violations, which led to more hearings and to more returns to prison. Finally this resulted in ISP being twice as expensive as traditional probation.

Cost variations greatly depend on the prevailing policy as far as violations of the conditions are concerned: a strict policy leads to higher costs and a flexible policy leads to cost reductions (Petersilia et al., 1992).

In fact, calculating and comparing the costs of detention with those of alternative sanctions is far from easy. Variables that greatly influence total costs are: the number of prison substitutions, length of the prison sentence that has been replaced, nature of the penal institution, number of returns to prison, marginal detention costs, changes in the eligibility criteria for alternative sanctions, case-load size, personnel costs (probation workers), intensity of the supervision, number and extent of additional rehabilitation programmes.

**Effects on the behaviour of offenders**

Although one might think of a number of success criteria for alternative sanctions, such as the unproblematic execution of the sanction, satisfaction of the judicial authorities, improved socio-economic integration of the offender in society or other social benefits such as restitution, community service or fines, the most important criterion is the reduction of recidivism. This is because the one and only justification for state intervention in the offender’s life is his criminal behaviour. Therefore the state will continue to intervene until it is satisfied the offender has stopped offending. As a consequence most evaluations try to measure the effects of the different sanctions in terms of recidivism, mainly by comparing groups of offenders who have been sentenced to alternative sanctions with groups of offenders who have received traditional sentences. Recidivism is measured in different ways: by counting new arrests, new convictions, self-report measures and in many cases also by
counting breaches of the sanction’s conditions, so-called technical violations. This type of evaluation is not without problems as we will see later. Most of the evaluations I report here are North-American studies. The main reason is that with the exception of England, Germany and the Netherlands, European evaluation studies in this field are rather scarce. The following is based on the available research literature.

As far as community service is concerned, most failures are due to non-attendance at the workplace rather than to bad performance or to offending. Unjustified absences often do not lead to breach proceedings, because of the fact that probation workers tend to take into consideration personal circumstances of the offender - such as family conflict, depression, employment problems - and they operate the rules with some flexibility (Pease, 1985). Breach proceedings are really the last resort, as shown by Vass who found that about half of all sentence revisions were caused by the committing of new offences (Vass, 1980). In an earlier study Pease and his colleagues (1977) compared reconvictions of offenders sentenced to community service with a control group. After one year 44.2 percent of those given community service orders recidivated versus 33.3 percent of the control group.

Electronic monitoring programmes have been imposed in two variations. One is EM as an alternative for pre-trial detention, the other is EM as a sentence, or as part of a sentence to ISP. A comparison between the two models in the US (where in 1990 12,000 offenders had already been in an EM programme), showed that 81 percent of those sentenced, versus 73 percent of those detained completed their terms successfully (Maxfield and Baumer, 1992). Although both programmes had the same number of technical violations (13 and 14 percent), the main difference was the number of evasions: 5 percent among those sentenced and 14 percent among the detainees. The authors attribute this finding to the fact that future prospects for those in pre-trial detention are not very bright, while EM as a punishment can be endured because liberty lies ahead. Other factors which influence the success rate are marriage or living with a partner or parents: 92 percent of offenders with such a lifestyle completed EM versus 60 percent of the others. Only 1.3 percent of all offenders had been arrested while participating in the programme, which seems quite an acceptable risk.

With regard to treatment elements, Petersilia and Turner (1992) observed that the intensification of control had little effect on the offenders’ behaviour, but that close surveillance combined with treatment, work, restitution and community service resulted in lower reconviction rates.
A study in Oregon compared three programmes: an experimental one combining EM with drug therapy, a control programme based on early work release and another control programme placing offenders in a residential day centre (Jolin and Stipak, 1992). An interesting finding is that no matter what the programme was, those who completed the programme had similar recidivism rates. Moreover, those who completed the programme were older, married and were employed. The researchers note that programme failure was always due to technical violations and never to re-offending. Strict enforcement of conditions underlined the punishment character of the sanctions but impeded treatment. Because of the fact that treatment is associated with a reduction of recidivism, the authors plead for some flexibility in enforcing conditions.

Day centres are quite popular in the United Kingdom. A Home Office study analyzed 1,000 cases in 38 day centres over a two year period from the moment the offenders were sentenced to probation with the condition of attending a day centre for a period of 6 months (Mair and Nee, 1992). During the two year period 63 percent were reconvicted once and 31 percent twice. There was a strong relationship with age (two thirds of those under 25 recidivated versus 49 percent of those over 36) and earlier convictions (73 percent of those with a prison record were reconvicted versus 60 percent of the others): the younger the offender, the more previous convictions and the longer the prison record, the higher the risk of new convictions.

The authors note big differences between day centres. These are essentially related to differences in the clients in terms of past offending and past sentences. The research suggests that day centres do not seem to have more impact on the later behaviour of their clients than prisons do.

There have been an impressive number of (American) evaluations of ISPs but they are of variable quality. Most are not based on random assignment of the experimental and control conditions. An exception has to be made for the Rand studies (Petersilia and her colleagues): they are all based on random assignment and are in my opinion the best.

ISPs seem full of promise for mandatory treatment of alcohol dependents and drug addicts. An Australian study of alcoholics, drug addicts and a group of doubly addicted offenders measured results in terms of regular attendance at therapy, abstinence from alcohol and drug use and absence of offending (Skene, 1987). Success was achieved by 71 percent of the alcohol group, 38 percent of the drug group and 62 percent of the doubly addicted group. Stable personal relations were related to success in the alcohol group, but not in the other two groups. The reason for this is that the partners of drug users
are frequently users themselves and thus cannot have a rehabilitating influence on their partners in the programme. Main results are:
- twice as many drug addicts as alcoholics were unable to complete the programme;
- alcoholic traffic offenders had relatively high success scores;
- alcoholics with only one previous conviction had higher success scores than those with two or more convictions.

A number of evaluators have compared offenders in ISPs with (juvenile or adult) offenders in detention, probationers or parolees (Erwin and Bennett, 1987; Barton and Butts, 1990; Pearson and Harper, 1990; Wiebush, 1993). In general the results depend on the research design. In the case of random assignment one finds no differences in recidivism between experimental and control groups. Where there are only comparison groups – matched on some selected variables, such as current offence and number of previous convictions – reconviction rates of ISP groups are lower than those of parolees, but higher than those of probationers. This in fact reflects the nature of the different groups, essentially their criminal and punishment history, rather than programme differences.

In most of the ISPs the target group consists of non-violent property or drug offenders. This is because the authorities are reluctant to allow violent offenders to be punished in the community: they fear that this would present an unacceptable security risk. An exception to this approach is the state of Iowa where four ISPs have been designed for violent offenders (Iowa Department of Corrections, 1988). Clients are either sentenced directly to the programme or referred to it by the probation service. Clients were followed during 21 months and compared with traditional probationers. The conclusion was that ISP is reasonably successful: ISP clients did commit less offences than probationers, although their offences were of a more serious nature.

Finally, two evaluations, one in California and the other in Massachusetts, explicitly examine a dimension of ISPs that is of special importance with respect to the reduction of recidivism: the treatment dimension (Petersilia and Turner, 1992; Byrne and Pattavina, 1992). As far as the ISPs in California are concerned, the evaluators again find no difference in arrests for criminal behaviour between experimental and control groups. However, recidivism was lower among ISP clients who received treatment, had work, paid restitution and performed community service than among the other ISP clients. This was true for all three evaluated programmes. Adequate drug therapy was especially important because nearly half of the ISP clients were heavy drug users. Merely controlling drug addicts by repeated drug testing is insufficient to stop them using
drugs. The authors conclude that strict supervision, without substantial treatment has no effect on underlying criminal behaviour tendencies. Byrne and Kelly (1989) reach the same conclusion based on their evaluation of ISP in Massachusetts. Moreover, they present an explanation for these results. According to the authors ISP can bring about a decrease of recidivism through a combination of deterrence and rehabilitation. The threat of prison leads to greater willingness among clients to participate in treatment. In other words, deterrence, by way of intensive supervision has an indirect effect on recidivism, because it makes purposeful treatment possible. If the reduction of recidivism is a punishment objective, treatment is an essential requirement. In that respect the following areas are crucial: drug therapy, training conducive to meaningful employment, and resolution of family/ relation conflicts.

With regard to boot camps results are disappointing: comparisons among shock participants, shock drop-outs, probationers and parolees did not show any gains in terms of recidivism and no better results than for the other groups (MacKenzie, 1991; MacKenzie et al., 1992). The evaluators attribute these findings to the fact that there was hardly any ISP follow-up of boot camps, although this was envisaged. So all gains in attitude and mentality that were achieved by the programme inside the boot camp were very quickly lost when the young people returned to their very deprived, desolate and criminogenic neighbourhoods.

Some conclusions

Despite a number of methodological problems related to policy evaluation studies, the following statements are supported by research findings.

- Replacement of prison by alternative sanctions occurs in about half of the cases targeted by programmes set up with this objective.

- Although alternative sanctions are generally cheaper than prison, there are as yet no signs of real financial savings. This is due to the as yet limited impact of alternative programmes on the system and to the fact that empty prison space is immediately filled again.

- Differences in recidivism between programmes are essentially related to differences in the nature of the target populations.

- Differences in recidivism between experimental and control groups may be explained by a number of factors:
  - Intensive supervision on experimental groups increases the likelihood of higher rates of technical violations and new arrests than in the case of normal probation supervision; this does suggest
that the higher reconviction rates of ISP clients compared to probationers might be an artificial result (US General Accounting Office, 1990).

- Programme failure is strongly related to programme policy regarding breaches of the conditions. Strict policies lead to low success scores, implying high rates of return to prison; flexible policies lead to higher success scores.
- Deterrence through intense supervision and control, combined with treatment lead to a reduction of criminal behaviour.
- Research suggests that attention should be primarily focused on drug addicts, employment problems and family/relation conflicts.

Taking into consideration the optimistic objectives of the examined alternatives to custody as well as their sobering results in day-to-day reality, the question remains: should we continue to expand the existing alternatives to prison and even search for new ones? I, for one, would give an affirmative answer to this question and I will conclude this article by presenting some arguments for this position.

First, the sanctioning options in most of our countries are very limited and mainly restricted to prison, the fine and the conditional sentence. If one wants to strive for sanctions that are really 'deserved' and will better 'fit the crime', the system should be more flexible with more potential variations. From this perspective there is an obvious need for a greater choice of sanctions 'Between Prison and Probation' (Morris and Tonry, 1990), that is between 'everything' and almost 'nothing'. In other words, expanding the systems' scope would be in itself a worthwhile effort.

Second, per individual offender alternatives to custody are indeed cheaper than prison. If alternatives were to be imposed on a considerably larger scale than is now the case, the size of the prison population would be effectively reduced and, as a consequence, this would also lead to cost reductions.

Third, and perhaps the most important argument, alternatives provide a more appropriate means to achieve the different aims of punishment – retribution, deterrence, incapacitation, and rehabilitation – than imprisonment. The main objectives that are realized by prison are retribution and incapacitation. I don't know of any research findings indicating that prison deters or rehabilitates offenders. The best we can hope for, as far as imprisonment is concerned, is to limit the damage done. Alternatives can meet the objectives of retribution and deterrence, while at the same time offering more opportunities for rehabilitation.

Alternatives can be very demanding and intrusive. In some cases – particularly in ISPs – this has even led a number of offenders to prefer prison to alternative punishments. Although of course
incapacitation is better served by prison than by community sanctions, some alternatives, such as day centres, (electronic) home detention, and ISPs can intensify supervision and control to a degree that has nothing in common with traditional probation supervision. Finally, the available research has shown that supervision and treatment makes rehabilitation a realizable objective. Treatment directed at labour participation, addiction and family problems is significantly related to a reduction of reconvictions. In this respect supervision and control appear to be facilitating intermediate variables and are conditional in bringing about behavioural change.

The conviction that punishment and rehabilitation are indissolubly linked together is deeply embedded in our western value system. That is why we cannot be satisfied with the all too easy solution of imprisonment, and why we will continue to search for more meaningful and effective alternatives.

References

Bagdon, W.

Barton, W.H., J.A. Butts

Billingsley, B., R.G. Hann

Byrne, J.M.

Byrne, J.M., L. Kelly
Restructuring Probations as an Intermediate Sanction: an Evaluation of the Massachusetts Intensive Probation Supervision Programs. Report to the National Institute of Justice, Department of Justice Washington (DC), 1989

Byrne, J.M., A. Pattavina

Cesdip – Ministère de la Justice

Chan, J., G. Zdenkowski

Council of Europe
Recommendation on consistency in sentencing Strasbourg, European Committee on Crime Problems, 1992

Erwin, B.S., L.A. Bennett
Alternative sanctions: myth and reality

Jolin, A., B. Stipak
Drug treatment and electronic monitored home confinement: an evaluation of a community-based sentencing option

Kuhn, A.
*Punitivité, politique criminelle et surpeuplement carcéral*
Schweizerische kriminologische Untersuchungen
Bern, Verlag Paul Haupt, 1993

Landreville, P.
La surpopulation des prisons: quelques considérations à partir de la situation canadienne
*Déviance et Société*, vol. 12, no. 3, 1988

MacKenzie, D.L.
Boot Camp Prisons: components, evaluations and empirical issues
*Federal Probation*, vol. 54, no. 3, 1990, pp. 44-52

MacKenzie, D.L.
The parole performance of offenders released from shock incarceration (Boot Camp Prison): a survival time analysis
*Journal of Quantitative Criminology*, vol. 7, no. 3, 1991

MacKenzie, D.L., C. Souryal
Boot Camp Survey: rehabilitation, recidivism reduction, outrank punishment as main goals
*Corrections today*, October 1991

Characteristics associated with successful adjustment to supervision: a comparison of parolees, probationers, shock participants and shock dropouts
*Criminal Justice and Behavior*, vol. 19, no. 4, 1992, pp. 437-454

Mair, G.
Senior attendance centres and day centres: a comparison

Mair, G.
*Probation Day Centres*
London, HMSO, 1988

Home Office Research Study, no. 100

Mair, G., Cl. Nee
Day Centre Reconviction rates

Maxfield, M.G., T.L. Baumer
Pretrial Home Detention with electronic monitoring
*Evaluation Review*, vol. 16, no. 3, 1992, pp. 315-332

Morash, M., L. Rucker
A critical look at the idea of boot camp as correctional reform
*Crime and Delinquency*, vol. 36, no. 2, 1990, pp. 204-222

Morris, N., M. Tonry
*Between Prison and Probation – Intermediate Punishments in a Rational Sentencing System*

O’Leary, V., T.R. Clear
*Directions for Community Corrections in the 1990’s*
Washington (DC), National Institute of Corrections, US Department of Justice, 1984

Osler, M.W.
Shock incarceration: hard realities and real possibilities

Pearson, F.S.
Evaluation of New Jersey’s Intensive Supervision Program
*Crime and Delinquency*, vol. 34, no. 4, 1988, pp. 437-448

Pearson, F.S., A.G. Harper
Contingent intermediate sentences: New Jersey’s Intensive Supervision Program
*Crime and Delinquency*, vol. 36, no. 1, 1990, pp. 75-86

Pease, K.
Community service orders. In: M. Tonry, N. Morris (eds.), *Crime and Justice: an Annual Review of Research*
Chicago, University of Chicago Press, 1985, pp. 51-94

Pease K., S. Billingham, I. Earnshaw
*Community service assessed in 1976*
London, HMSO, 1977

Home Office Research Study, no. 39

Petersilia, J.
Evaluating alternative sanctions: the case of intensive supervision
Petersilia, J., S. Turner
An evaluation of Intensive Probation in California.  
Criminology, vol. 82, no. 3, 1992

Petersilia, J., S. Turner, E. Piper
Deschenes
Intensive supervision for drug offenders.  
London, Sage, 1992

Rook, M.K.
Tasmania’s Work Order Scheme: a reply to Varne  
Australian and New Zealand Journal of Criminology, vol. 11, no. 2, 1978, pp. 81-85

Schwitzgebel, R.K.
Issues in the use of an electronic rehabilitation system with chronic recidivists  

Skene, L.
An evaluation of a Victorian scheme for diversion of alcoholic and drug-dependent offenders  

Thorvaldson, S.A.
Crime and Redress: an Introduction  
Vancouver, Ministry of the Attorney General, 1982

Tonry, M.
Stated and latent functions of ISP  

Törnudd, P.
15 Years of decreasing prisoner rates in Finland. Statement prepared for the hearing of the Western Australian Study Group’s Official visit to examine Policies and Strategies to reduce the rate of imprisonment, Vienna, June 29, 1991

Turner, S., J. Petersilia
Focusing on high-risk parolees: an experiment to reduce commitments to the Texas Department of Corrections  

US General Accounting Office

Intermediate Sanctions – Their Impacts on Prison Crowding, Costs and Recidivism are still Unclear (Report to the chairman, select committee on narcotics abuse and control)  
House of representatives, September 1990

Vass, A.A.
Law Enforcement in community service: probation, defence and prosecution  

Von Hirsch, A.
Doing Justice: the Choice of Punishments  
New York, Hill and Wang, 1976

Von Hirsch, A.
Guiding principles for sentencing: the proposed Swedish law  

Wiebush, R.G.
Juvenile Intensive Supervision: the impact on felony offenders diverted from institutional placement  
Crime and Delinquency, vol. 39, no. 1, 1993, pp. 68-89
The Swedish sentencing law

Nils Jareborg

The Criminal Code of 1962

The present Swedish Criminal Code was preceded by the Penal Code of 1864. Intensive work on a new Penal Code began in the late 1930s, with a view to codifying and modernizing the criminal law. The work of one legislative committee resulted in a Draft Criminal Code dealing with crimes (1953). The work of another committee resulted in a Draft Protective Code dealing with sanctions (1956). Some of the proposals had already been enacted as law, but it took until 1962 before an overall codification could be adopted. This Criminal Code, Brottsbalken, was based on the two Draft Codes and came into force in 1965.

The Draft Protective Code signifies the peak of special-preventive influence. Even the word 'punishment' was to be abolished. This was too much for the politicians and the public to swallow, however, and in the 1962 Code imprisonment and fines were retained as punishments. The other general sanctions are called other sanctions for crime. These included indeterminate incarceration of dangerous recidivists, youth imprisonment, probation, conditional sentence and commitment to special care, but not suspended sentence. Confiscation and a number of other sanctions are technically not sanctions for crime, but so-called special consequences of crime.

Criminal policy development up to 1962 could, with some oversimplification, be described as a gradual recognition of special-prevention considerations. The first influential force was the so-called

1 Professor of Criminal Law and former Dean, Faculty of Law, Uppsala University, Box 512, S-751 20 Uppsala, Sweden.


3 There were also special forms of punishment of civil servants and military personnel, but these have now been abolished.
modern or sociological school, inspired by the ideas of Franz von Liszt. Later, the so-called positive or Italian school was more influential. After the Second World War, most of the inspiration came from the Social Defence Movement. Although Sweden was a forerunner of criminal policy, the basic ideas were continental.

Only one section in the Code\textsuperscript{4} was designed to guide sentencing: `In the choice of sanctions, the court, bearing in mind what is required to maintain general obedience to the law, shall have regard to the fact that the sanction shall serve to foster the sentenced offender’s rehabilitation in society.'

Thus, the Code appeared to embrace preventive aims, and it seemed that in each individual case the sentencer was expected to amalgamate general-prevention and special-prevention considerations – which, of course, is an impossible task. In reality, things were not that bad.

First, it should be emphasized that, according to Swedish law, sentencing has two different components. (a) Choice of sanction – selecting the appropriate type of sanction. (b) Measurement of punishment – meting out a term of imprisonment or a fine in the actual case. Measurement of punishment is conceptually excluded if another sanction for crime is to be imposed.

The Code’s sentencing provision concerned choice of sanction, not measurement of punishment. The struggle between different preventive aims was thus to take place only when considering the appropriate type of sanction. It was openly declared that when it came to measurement of punishment, the established ‘sentencing tradition’ – primarily based on judgments relating to the seriousness of the crime – was to be relied upon. In addition, the reference to the need of general prevention was in practice interpreted as a reference to the seriousness or the nature of the crime. Imprisonment was the choice if the crime was very serious or belonged to those offences where rehabilitative aims were generally judged to be inappropriate (military offences, drunken driving, illegal possession of weapons, assault on police officers, and so on).

It is important to recognize that the influence of special-prevention considerations in the development of Swedish criminal policy was restricted to special categories of offenders: young offenders, dangerous offenders, offenders in need of special care, first-time offenders, offenders judged possible to rehabilitate through medication and supervision. The quantitatively most important sanctions, the punishments imprisonment and fines, have always been

\textsuperscript{4} The now annulled BrB 1:7.
imposed according to a just deserts model.

By the late 1960s, 'treatment optimism' was beginning to be replaced by 'treatment pessimism'. There had been practically no public debate concerning the penal system adopted under the Code in 1962. From then on, however, penal matters began to be widely discussed by all sorts of intellectuals, most of them criticizing the so-called treatment ideology on the grounds that it resulted in more incarceration, stronger repression for no good reason. The debate took place across the borders of the Nordic countries. The first country to get an opportunity to legislate was Finland, where special-preventive considerations had had only a marginal influence. In 1975, indeterminate incarceration was in practice abolished, and in 1976, a chapter on sentencing was added to the Penal Code. (It should be added that in the end not much happened in Denmark and Norway.)

Preparations for a sentencing reform

In Sweden, the work on a system change began in the mid-1970s. In 1977, a working group set up by the National Council for Crime Prevention published a discussion report outlining 'a new penal system' (Brottsförebyggande rådet, 1977). The report did not contain any draft legislation but played a major role in the ensuing development. It advocated a decreased use of incarceration, a general lowering of the level of repression, abolition of indeterminate incarceration, and increased use of fines and other non-incarcerating sanctions. It emphasized the importance of the penal system being just, consistent, clear and honest.

Also in 1977, a legislative committee proposed that youth imprisonment be abolished. By the end of the decade, criticism on youth imprisonment and indeterminate incarceration had made these two flagships of the special-prevention era lose their seaworthiness, and they were abolished in 1980 and 1981, respectively. By then, the so-called Imprisonment Committee had begun its work on a more comprehensive sentencing reform, including a revision of the penalty scales for the crimes in the Criminal Code and the most important crimes outside the Code. In 1986, the Committee presented a three-volume study report and a Draft Bill concerning a sentencing reform (Huvudbetänkande av fängelsestraffkommittén, 1986). This proposal was approved in essence by the Government, and a Sentencing Reform Bill was delivered to Parliament (March 1988). The Bill was

5 Regeringens proposition 1987/88:120 om ändring i brottsbalken m.m. (straffmätning och påföljdsval m.m.).
adopted (June 1988), and the new sentencing law came into force on January 1, 1989.\(^6\)

The reform did not include revision of the penalty scales, and there is no reason to believe that such a revision will occur in the foreseeable future. Nor did it amount to a complete sentencing reform based on just deserts or proportionalist thinking. The laws concerning alternatives to imprisonment (conditional sentence and probation) are still guided by special-preventive considerations. Since 1992, however, there is a new legislative committee, the so-called Penal System Committee, working on completion of the task – unfortunately in a more repressive criminal policy climate.

**The new sentencing law**

The 1988 legislation involved major or minor amendments to several existing chapters of the Code but it mainly comprised two new chapters: chapter 29 on the measurement of punishment and the remission of sanctions, and chapter 30 on the choice of sanction. The text of these two chapters will be set out in full below.\(^7\)

The provisions concerning the particular sanctions are found elsewhere in the Code. Chapter 25 deals with fines, and chapter 26 with imprisonment. Chapter 27 concerns conditional sentence and chapter 28 probation. Both these sanctions are sanctions *sui generis*. The provisions on commitment for special care are found in chapter 31.

So-called penalty scales are attached to the provisions on the specific crimes in the Code or elsewhere, with a specific maximum and a specific minimum sentence. Occasionally the minimum has to be deduced from general rules on minimum sentences. In addition, many types of offences are divided into seriousness levels. For example, the punishment for theft is 14 days to 2 years imprisonment (BrB 8:1), the punishment for grand theft is 6 months to 6 years imprisonment (BrB 8:4), and the punishment for petty theft is 14 days to 6 months imprisonment or a fine (BrB 8:2).


\(^7\) I have used the translation referred to in note 6. In choice of words, word order, and style, it differs considerably from the 1990 translation referred to in note 2. The latter is undoubtedly more elegant but it suffers from a number of somewhat misleading phrases and a few manifest errors, as when the key term *straffvärde* (penal value) is translated as ‘culpability’.

The scope of the penalty scale is traditionally supposed to reflect the relative seriousness of the specific offence. This is another proportionalist feature of the previous law which facilitated the reform: special-prevention considerations were excluded rather than just-deserts considerations imported. On the other hand, the legislation is unique in its systematic development of the proportionalist theme.

Another feature of the Swedish legal life that should be mentioned is the enormous importance of the travaux préparatoires for legal interpretation. Both the Committee Report and the Bill contain detailed explanations concerning the intentions behind the legislation and how the text should be interpreted.

Chapter 29: On the Measurement of Punishment and Remission of Sanction

Section 1
The punishment shall be imposed within the statutory limits according to the penal value of the crime or crimes, and the interest of uniformity in sentencing shall be taken into consideration.

The penal value is determined with special regard to the harm, offence, or risk which the conduct involved, what the accused realized or should have realized about it, and the intentions and motives of the accused.

Section 2
Apart from circumstances specific to particular types of crime, the following circumstances, especially, shall be deemed to enhance the penal value:
1. whether the accused intended that the criminal conduct should have considerably worse consequences than it in fact had,
2. whether the accused has shown a special degree of indifference to the conduct's adverse consequences,
3. whether the accused made use of the victim's vulnerable position, or his other special difficulties in protecting himself,
4. whether the accused grossly abused his rank or position or grossly abused a special trust,
5. whether the accused induced another person to participate in the deed through force, deceit, or abuse of the latter's youthfulness, lack of understanding or dependent position, or
6. whether the criminal conduct was part of a criminal activity that was especially carefully planned, or that was executed on an especially large scale and in which the accused played an important role.
Section 3
Apart from what is elsewhere specifically prescribed, the following circumstances, especially, shall be deemed to diminish the penal value:
1. whether the crime was elicited by another’s grossly offensive behaviour,
2. whether the accused, because of mental abnormality or strong emotional inducement or other cause, had a reduced capacity to control his behaviour,
3. whether the accused’s conduct was connected with his manifest lack of development, experience, or capacity for judgment, or
4. whether strong human compassion led to the crime.
The court may sentence below the statutory minimum when the penal value obviously calls for it.

Section 4
Apart from the penal value, the court shall in measuring the punishment, to a reasonable extent take the accused’s previous criminality into account, but only if this has not been appropriately done in the choice of sanction or revocation of parole. In such cases, the extent of previous criminality and the time that has passed between the crimes shall be especially considered, as well as whether the previous and the new criminality is similar, or whether the criminality in both cases is especially serious.

Section 5
In determining the punishment, the court shall to a reasonable extent, apart from the penal value, consider:
1. whether the accused as a consequence of the crime has suffered serious bodily harm,
2. whether the accused according to his ability has tried to prevent, or repair, or mitigate the harmful consequences of the crime,
3. whether the accused voluntarily gave himself up,
4. whether the accused is, to his detriment, expelled from the country in consequence of the crime,
5. whether the accused as a consequence of the crime has experienced or is likely to experience discharge from employment or other disability or extraordinary difficulty in the performance of his work or trade,
6. whether a punishment imposed according to the crime’s penal value would affect the accused unreasonably severely, due to advanced age or bad health,
7. whether, considering the nature of the crime, an unusually long time has elapsed since the commission of the crime, or
8. whether there are other circumstances that call for a lesser punishment than the penal value indicates.

If, in such cases, special reasons so indicate, the punishment may be reduced below the statutory minimum.

Section 6
The sanction is to be remitted entirely when, with regard to circumstances of the kind mentioned in section 5, imposition of a sanction is manifestly unreasonable.

Section 7
If someone has committed a crime before the age of twenty-one, his youth shall be considered separately in the determination of the punishment, and the statutory minimum may be disregarded.

Life imprisonment is never to be imposed in such cases.

Chapter 30: On the Choice of Sanctions

Section 1
In choosing sanctions, imprisonment is considered as more severe than conditional sentence and probation.

Provisions on the use of commitment to special care are set out in chapter 31.

Section 2
Unless otherwise provided, no one is to receive more than one sanction for the same crime.

Section 3
Unless otherwise provided, someone convicted of more than one crime is to be given one sanction.

If there are special reasons, however, the court may combine a fine for some criminal conduct with another sanction for other conduct, or combine imprisonment for some conduct with conditional sentence or probation for other conduct.

Section 4
In choosing the sanction, the court shall especially pay heed to circumstances that suggest a less severe sanction than imprisonment. In so doing, the court shall consider circumstances referred to in chapter 29, section 5.

As a reason for imprisonment the court may consider, besides the penal value and the nature of the criminality, the accused's previous criminality.
Section 5
For a crime committed by someone before the age of 18, imprisonment may be imposed only if there are extraordinary reasons. For a crime committed by someone between the ages of 18 and 21, imprisonment may be imposed only if there are, with respect to the penal value of the crime or other grounds, special reasons.

Section 6
A person who has committed a crime under the influence of serious mental abnormality may not be sentenced to imprisonment. If in such a case the court finds that no other sanction should be imposed, the accused shall be free from sanction. [As amended, to be applied from 1992.]

Section 7
In choosing a sanction, the court shall consider, as a reason for conditional sentence, whether there is no special reason to fear that the accused will relapse in criminal conduct.

Section 8
Conditional sentence shall be combined with day fines, unless a fine would be unduly harsh, considering the other consequences of the crime, or there are other special reasons that militate against imposition of a fine.

Section 9
In choosing a sanction, the court shall consider, as a reason for probation, whether there is reason to suppose that such a sanction can contribute to his not committing crimes in the future.

As special reasons for probation the court may consider
1. whether a considerable improvement has occurred in the accused’s personal or social situation that bears upon his criminality,
2. whether the accused is being treated for abuse or other condition that bears upon his criminality, or
3. whether abuse of addictive substances or other special condition that calls for care or other treatment, to a considerable degree explains the criminal conduct and the accused has declared himself willing to undergo adequate treatment, in accordance with an individual plan, that can be arranged in connection with the execution of the sentence.

Section 10
In judging whether probation should be combined with day fines, the court shall consider whether this is called for with regard to the penal
value or nature of the criminal conduct, or the accused's previous criminality.

**Section 11**
Probation may be combined with imprisonment only if it is unavoidably called for, with regard to the penal value of the criminal conduct, or the accused's previous criminality.

**The concept of penal value**

Penal value is the basic concept used in the new law. It is obvious that penal value has to do with the seriousness of crimes. But even if there is a close connection between these concepts, they are not identical. The seriousness of a crime is normally analyzed as a function of the criminal conduct's harmfulness and the offender's culpability, manifested in the offence (Von Hirsch, 1986, ch. 6). This idea is captured in BrB 29:1 par. 2. One should, however, take note that the penal value is determined with special regard to the dimensions of harmfulness and culpability.

The whole of chapter 29 helps to define the technical term 'penal value'. Factors mentioned in 29:2 and 3 have to do with penal value. Factors mentioned in 29:4, 5 and 7 do not. It follows that not everything that arguably affects the culpability of the offender is a matter of penal value. Some think that a prior criminal record makes an offender more culpable. BrB 29:4 explicitly defines previous criminality as a factor irrelevant for the penal value. Some of the factors mentioned in 29:5 also have a flavour of culpability.

Apart from harmfulness and culpability, what else can there be that influences the penal value? The Imprisonment Committee has based its discussion on a review of arguments used during the last half century in all important cases of determining or amending penalty scales. Ten types of argument were identified, and their relevance was assessed in the following way.

1. Public perceptions or views concerning the seriousness of crimes. Of basic importance, but in practice normally unsuitable as a ground for penal value deliberations.
2. The social danger, adverse consequences, harmfulness, etcetera, of the conduct. Of first-rate importance.
3. The need for general prevention. Irrelevant.
4. The need for more powerful measures. See 2 and 3.
5. Comparisons with penalty levels in other countries. Relevant in cases of international criminality, such as drug offences, hijacking.
and terrorism.
6. Comparisons with similar crimes. Relevant.
7. Increased frequency or perniciousness of a type of crime. The frequency argument is irrelevant. The perniciousness argument might be relevant under 2 or 6.
8. The criminality is connected with other serious criminality. Irrelevant, unless it falls under 2.
9. A raised maximum will prolong the time for statutory limitation. Irrelevant.
10. A raised maximum will enable the use of coercive measures during the pre-trial investigation. Irrelevant.

At this stage, the Committee's discussion was primarily concerned with what one might call abstract penal value – the penal value of a type of crime, to be reflected in the penalty scale. But it was also directly relevant for the assessment of the concrete penal value, the penal value of an individual act or omission. In summary, the Committee's opinion seemed to be that the penal value should reflect the reprehensibility of the criminal conduct, which is mainly a function of the harmfulness of the conduct and the offender's culpability manifested in the conduct. But the Committee accepted a departure from strict proportionalist thinking: as far as internationally connected criminality is concerned, the penal value to some extent also depends on penalty levels in other countries.

The Committee's report was criticized by some authorities on the basis that the need for general prevention had not been sufficiently considered. The Minister of Justice found the criticism exaggerated, and dissociated herself from, for example, exemplary punishment. She saw, however, nothing wrong in considering general-prevention arguments in determining the penalty scales (the abstract penal value): increased frequency or perniciousness were factors of relevance in this context, and she stated that in 'certain cases there may be cause for a change in court practice for such reasons'. We thus have a statement of official policy in the preparatory works that sometimes the concrete penal value may be influenced by the need for general prevention. No example was given.

Unfortunately, these two additions to the idea of the penal value being determined by harmfulness and culpability have immense practical importance. Most noteworthy is that the severity of sentences for drug offences is clearly out of proportion to the seriousness of the crime; such a result is clearly attributable to these two factors. However, it must be conceded that this practice was firmly established before the sentencing reform.

An assessment of the penal value of a concrete crime is of importance not only for the measurement of punishment but also for
the choice of sanction. It is, however, impossible to go into details within the scope of this article.

The logical structure of the sentencing process is fairly complicated and quite different from the legislative structure presented above (see Jareborg, 1993, p. 103). Here, only two questions will be addressed.

**Previous criminality**

BrB 29:4 regulates the relevance of previous criminality for the measure of punishment. Previous criminality is understood as criminality that has resulted in a court sentence, a prosecutor's summary punishment by fine, or a prosecutor's decision to forego prosecution.

Previous criminality plays a major role in the choice of sanction. It may affect the choice between imprisonment and conditional sentence/probation (or commitment to care within the social services), between conditional sentence and probation, between probation with a fine and probation without a fine, and between probation with a fine and probation with imprisonment.

Repeated criminality may also result in revocation of parole. The parole period is, with few exceptions, one year (BrB 26:10). The most important provision in this connection is BrB 34:4 par. 2: `In judging whether parole should be revoked and in deciding on duration of reconfine ment on revocation, it shall be considered whether the previous criminality and the new criminality are similar, whether the criminality in both cases are serious, and whether the new criminality is more or less serious than the previous criminality. In addition, the time that has passed between the crimes shall be considered.'

Finally, previous criminality may influence (`to a reasonable extent') the severity of punishment if it has not been taken `appropriately' into account in the choice of sanction or revocation of parole. There may be nothing to revoke (the period of parole is fairly short) and/or the new crime may be so serious that imprisonment is the only option. The guidelines given in BrB 29:4 are similar to those just cited concerning revocation. A main difference is that 29:4 mentions 'especially' serious criminality, which indicates a penal value of at least one year.

It should be mentioned that the Committee proposed a provision making previous criminality irrelevant for the length of a prison sentence.
Imprisonment versus an alternative

If we disregard commitment for special care (of young persons, abusers or mentally ill persons), the alternatives to imprisonment are conditional sentence and probation. BrB 30:1 states that, in choosing sanctions, imprisonment is considered to be more severe than conditional sentence and probation. In relation to fines, however, imprisonment is not considered to be more severe than conditional sentence and probation. The rule in 30:1 has the function of laying a basis for a presumption against the use of incarceration.

(a) BrB 30:6 prohibits the use of imprisonment if the crime was committed under the influence of serious mental abnormality.

(b) BrB 30:4 par. 1 urges the court to pay special attention to circumstances that suggest a less severe sanction than imprisonment. In so doing, the court shall consider circumstances referred to in 29:5, i.e., so-called equity mitigation.

(c) BrB 30:4 par. 2 indicates where the presumption against imprisonment loses its power: as 'a reason for imprisonment the court may consider, besides the penal value and the nature of the criminality, the accused's previous criminality.'

The explanatory notes state as a guideline that a penal value of one year or more indicates that imprisonment should be used. The relation between this statement and the reference to 29:5 in 30:4 par. 1 remains somewhat obscure. At least in some cases where the penal value is one year or more, but where a measurement of punishment would lead to a considerably less severe punishment, the presumption against imprisonment would seem still to be in force because of 29:5-factors. A better solution would have been to connect the one-year guideline, not with the penal value, but with the result of measuring punishment. At present, there is a risk that 29:5-factors will be disregarded and imprisonment imposed in violation of legislative intent.

The reference to the nature of the crime makes it possible to choose imprisonment instead of conditional sentence/probation for general-preventive reasons.

Finally, repetition of criminality of intermediate gravity will eventually lead to imprisonment.

(d) For young offenders, the presumption against imprisonment is to a certain extent restored by BrB 30:5.

If, at the time of the crime, the offender belonged to the age group 18-20 years, there must be special reasons for imposing imprisonment. The provision mentions the penal value as one important factor, but also the nature of the crime and previous criminality are relevant considerations.
If the offender at the time of the crime belonged to the age group 15-17 years, the presumption against imprisonment is extremely strong. There must be extraordinary reasons, in practice a very high penal value. In this age group, less than 50 persons per year are sentenced to imprisonment, and they get huge deductions due to youth mitigation (BrB 29:7). The normal disposition is commitment to care within the social welfare services (BrB 31:1).

(e) There are more ways to escape imprisonment. BrB 30:9 par. 2 enumerates special reasons for probation. According to the explanatory notes, the enumeration is not exhaustive, and although it is not easy to deduce this from the text, this paragraph is, within limits, meant to rebut the presumption for imprisonment that BrB 30:4 par. 2 establishes. As far as the penal value is concerned, the practice of the courts suggests that the one-year guideline (mentioned in (c) above) is replaced by a two-year guideline.

(f) Are there still more possibilities to avoid imprisonment? Since the system plays with presumptions in different directions, there should logically remain a category of cases where BrB 30:4 par. 1, so to speak, gets the last word. As indicated above in (c), very strong equity reasons may rebut all presumptions for imprisonment. Such cases must, however, be infrequent if the alternative is a sentence of imprisonment for more than one year. Otherwise the system of argumentation is undermined.

The sentencing pattern

The population of Sweden is 8.7 million. The prison system provides places for approximately 5,000 persons, including 1,000 places for pre-trial detention. For some years now, it has been fully used.

The published official statistics reveal practically nothing regarding a sentencing reform impact on the sentencing pattern. The government consciously refrained from financing any follow-up research. My personal guess is that the reform has helped to counter-check the increased use of incarceration (see below) and that there has been a considerable 'hidden' redistribution of sanctions.

Over one million crimes are reported annually to the police. This figure does not include some minor traffic offences. Two thirds of reported crimes are not cleared. The number of convicted persons was 163,000 in 1988, and 167,000 in 1991. These figures include those who received a waiver of prosecution (which presupposes that a crime was committed), 19,300 in 1988, and 17,700 in 1991. On the other hand, these figures do not include summary police fines for traffic and smuggling offences which amounted to 195,000 in 1988, and
Table 1: Distribution of sentences, 1988 and 1991

<table>
<thead>
<tr>
<th></th>
<th>1988</th>
<th>1991</th>
</tr>
</thead>
<tbody>
<tr>
<td>prosecutorial fines</td>
<td>76,000</td>
<td>78,000</td>
</tr>
<tr>
<td>court fines</td>
<td>30,000</td>
<td>32,000</td>
</tr>
<tr>
<td>imprisonment</td>
<td>16,500</td>
<td>14,300</td>
</tr>
<tr>
<td>probation with imprisonment</td>
<td>900</td>
<td>600</td>
</tr>
<tr>
<td>probation with contract care</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>probation (other)</td>
<td>5,300</td>
<td>5,900</td>
</tr>
<tr>
<td>conditional sentence</td>
<td>10,300</td>
<td>13,500</td>
</tr>
<tr>
<td>commitment to special care</td>
<td>4,500</td>
<td>5,100</td>
</tr>
<tr>
<td>all</td>
<td>144,000</td>
<td>150,000</td>
</tr>
</tbody>
</table>

* Between 1988 and 1991, the number of imprisonment sentences for aggravated drunken driving decreased by 2,700. See note 8.

218,000 in 1991. Excluding these, the distribution of the sentences is shown in table 1.

Before July 1993, the average daily prison population was approximately 55 per 100,000 population, which is a comparatively low figure. On the other hand, the reception rate was approaching 200 per 100,000 population, which is a remarkably high figure.

The criminal policy of the present Government seems to aim at raising the average daily prison population by 20-25 percent. The methods envisaged are primarily: (1) making the parole rules more restrictive, (2) returning to short imprisonment as the major sanction for aggravated drunken driving, and (3) increasing the prison sentences for recidivists and some other types of offenders.

To date, one piece of legislation has been adopted and came into force on July 1, 1993. The parole rules have been made more restrictive for sentences in the range between two months and two years. This will mean an increase in the prison population of 10-12 percent. In addition, the courts are beginning to increase the use of imprisonment for aggravated drunken driving. And a war on drugs is...
Table 2: Distribution of sentences on the penal value level of imprisonment of up to one year, 1987 and 1991, in % (estimation)

<table>
<thead>
<tr>
<th></th>
<th>1987 (n=31,100)</th>
<th>1991 (n=32,400)</th>
</tr>
</thead>
<tbody>
<tr>
<td>imprisonment</td>
<td>49</td>
<td>41</td>
</tr>
<tr>
<td>probation</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>conditional sentence</td>
<td>33</td>
<td>41</td>
</tr>
</tbody>
</table>

Table 3: Distribution of sentences on the penal value level of imprisonment of up to one year excluding drunken driving and drug offences, 1987 and 1991, in % (estimation)

<table>
<thead>
<tr>
<th></th>
<th>1987 (n=21,300)</th>
<th>1991 (n=22,500)</th>
</tr>
</thead>
<tbody>
<tr>
<td>imprisonment</td>
<td>37</td>
<td>34</td>
</tr>
<tr>
<td>probation</td>
<td>19</td>
<td>18</td>
</tr>
<tr>
<td>conditional sentence</td>
<td>44</td>
<td>48</td>
</tr>
</tbody>
</table>

None of this will alter the fact that, by international standards, prison sentences in Sweden are short. Even in 1991, when imprisonment was comparatively rarely used for drunken driving, the median sentence was two months. Sentences of up to four months account for 68 percent, sentences of up to six months for 78 percent, sentences of up to one year for 90 percent, and sentences of up to two years for more than 95 percent of the number of those sentenced to imprisonment. Until the recent parole ‘reform’, all these were released according to the general rule: obligatory parole after serving half the sentence (but at least two months, and those sentenced to two months or less were, and still are, excluded from parole).

Let us finally look at the distribution between imprisonment, probation and conditional sentence on the penal value level of imprisonment of up to one year. It is here that we have the supposedly strong presumption against imprisonment. How strong is it? Table 2 gives a rough estimation. Table 3 shows the distribution obtained when disregarding drunken driving and drug offences by excluding the legislation outside the Criminal Code. Both tables show an increased use of conditional sentence. If this a result of the sentencing reform, it is not without significance (1 percent = 225

9 16 percent of prison sentences concern drug offences. But if we look at severe sentences, we get a different picture. More than 1 year and up to 2 years: 15 percent. More than 2 years and up to 4 years: 38 percent. More than 4 years: 54 percent. In 1991, more than 4 years was imposed in 121 cases of drug offences, 47 cases of murder and manslaughter, 6 cases of aggravated assault, 9 cases of rape, and 37 cases of property crimes.
Table 4: Distribution of sentences for property crimes, 1987 and 1991, in %
(estimated)

<table>
<thead>
<tr>
<th></th>
<th>1987 (n=15,100)</th>
<th>1991 (n=15,750)</th>
</tr>
</thead>
<tbody>
<tr>
<td>imprisonment*</td>
<td>34</td>
<td>33</td>
</tr>
<tr>
<td>probation</td>
<td>21</td>
<td>19</td>
</tr>
<tr>
<td>conditional sentence</td>
<td>45</td>
<td>48**</td>
</tr>
</tbody>
</table>

* Including probation combined with imprisonment (434 cases in 1987, 328 in 1991).
** An increase of 850.

persons). Unfortunately, the figures for 1992 will probably show 36 percent imprisonment.

The figures for property crimes generally (i.e. including sentences above the one-year penal value line) are especially interesting (see table 4).

As explained above, where the penal value is less than one year, the presumption against imprisonment is rebutted by reasons concerning previous criminality or the nature of the crime. The published statistics do not show what lies beneath the figures, but there is probably nothing much wrong with the use of previous criminality as a reason for imprisonment. The weak spot is 'the nature of the crime'. The Bill refers to drunken driving, illegal possession of weapons, illegal hunting, illegal residence in the country, assault, violence against officials, and tax fraud. But sexual offences, driving without a permit and drug offences have higher imprisonment rates than any of these. The substantial numbers come from assault and other violent conduct, drunken driving and drug offences.10

Conclusions

In a way, the new sentencing law is both revolutionary and leaves everything as it was. The proposed law could be accepted by Parliament because (1) it was not designed to bring about any significant change in the distribution of sanctions, and it was described as a codification of current practice, (2) the possibility to use severer sentences for recidivists has been retained, and (3) the possibility to use imprisonment on general-preventive grounds ('the nature of the crime') has been retained. Nevertheless, there is reason to believe that it has marginally helped to keep the level of repression down. Certainly, it is not responsible for increasing repression.

The great advantages of the reform lie elsewhere, however. We now have a number of fairly detailed legal provisions and a legal structure where we earlier had a black box. Legal argumentation regarding matters of sentencing suddenly became possible. It is now possible to detect and attack (unwarranted) disparity. Within a few years, the Supreme Court has delivered an impressive number of precedents, primarily concerning choice of sanction (not measurement of punishment). The courts have been forced to be more explicit in their reasoning, and the advocates have new defence weapons. For many individuals, and for the promotion of justice, the sentencing reform is of great value.

There is no reason to believe that the work of the Penal System Committee will lead to any dramatic changes in the present sentencing framework. The main task of the Committee is to propose new alternatives to imprisonment, electronic tagging being one seriously contemplated measure.

References

Ahlberg, J., L. Dolmén
Fängelsedomar 1975-1992
Stockholm, 1992
BRÅ-PM 1992:5

Brottsförebyggande rådet
Nytt straffsystem:
Stockholm, 1977
Rapport 1977:7

Dolmén, L. (ed.)
Crime Trends in Sweden 1988
Stockholm, 1990
BRÅ-report 1990:4

Huvudbetänkande av fängelsestraffkommittén
Påföljd för brott 1-3

Jareborg, N.
Uppsala, 1993

Statistiska centralbyrån
Rättssstatistisk årsbok 1988
Stockholm, 1988

Statistiska centralbyrån
Rättssstatistisk årsbok 1992
Stockholm, 1992

Von Hirsch, A.
Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals
Manchester, 1986

Von Hirsch, A.
Principles for choosing sanctions: Sweden’s proposed sentencing statute New England Journal on Criminal and Civil Confinement 13, 1987a, p. 171

Von Hirsch, A.

Von Hirsch, A., N. Jareborg
Sweden’s sentencing statute enacted Criminal Law Review, 1989, p. 275

11 Unfortunately, a couple of these judgements are less loyal to the spirit of the reform than one had reason to expect.
A few years ago, we started researching prison overcrowding in Belgium, trying to understand the phenomenon and the mechanisms behind it, and studying possible solutions. We soon found out that many Western European countries had experienced a similar evolution of their prison population: a general increase starting at the beginning of the eighties, linked to a more specific rise in the number of remand prisoners, long-term prisoners, foreign inmates and drug-related offences. Only a few exceptions could be found where the prison population had decreased over the same period: Finland, Germany (BRD, before reunification), Austria and Italy. That made it clear to us that explanations for prison overcrowding or increases in the size of the prison population should be sought for in broad, structural changes occurring in these western societies, but with attention being paid to particular national differences.

Mechanisms explaining changing prison populations

The most common explanation given by policymakers is very simple: criminality is rising, therefore the prison population is rising. The solution to prison overcrowding is equally simple: expand prison capacity.

An extensive review of the international literature on mechanisms explaining changing prison populations, both decreases and increases, showed that reality is much more complex. It is impossible to render here our analysis of the extensive and often contradictory literature (Beyens et al., 1993). But we have tried to summarize the results in figure 1.

The prison population is the result of a very complex interaction between various factors:
1. factors external to the criminal justice system, such as demographic and economic evolutions;
2. ‘criminality’, understanding that the scope and content of officially

---

1 Vrije Universiteit Brussel, Faculty of Law, Pleinlaan 2, 1050 Brussels, Belgium.
registered criminality is influenced both by societal changes and criminal policy changes;
3. attitudes, decisions, policies at the different levels of decision-making within the criminal justice system itself;
4. the political context of the period considered, and the way in which politicians interpret and react to often contradictory tendencies in public opinion.

The relation between criminality and prison population is certainly not automatic and direct. One can find crime rates increasing while rates of imprisonment decrease: the USA\(^2\) in the 1960s, the Netherlands from 1950 till the end of the 1970s, Germany and Austria in the 1980s. In the USA during the early 1980s, rates of imprisonment even showed a considerable increase following a decrease in criminality (Nagel, 1977; Rutherford, 1984; Zimring and

---

\(^{2}\) Although this paper discusses evolutions in Western Europe, we sometimes refer to the USA because part of the literature on mechanisms explaining changing prison populations is American. We acknowledge that one should not refer to the US as if it were an homogeneous entity, each state having its particular features, comparable to the differences between European countries. Going into these differences would however exceed the scope of this contribution. Interested readers can be referred to the analysis of the American situation by Zimring and Hawkins, 1991.
Hawkins, 1991); from 1980 to 1988, the 'reported index crimes' increased slightly (4 percent) while the prison population doubled (Austin et al., 1992).

The same is true for the external factors. Demography (natality and immigration) only partly explains the decrease in the German prison population (Feest, 1988; Graham, 1990), and certainly not the increase in the American prison population (Zimring and Hawkins, 1991). Economic recession increasing unemployment and income discrepancies have been found to affect the prison population in several countries (Box and Hale, 1986; Box, 1987), but not in Japan or the Netherlands (Rutherford, 1984; Fiselier, 1987; De Haan, 1990). One of the factors explaining these contradictory results is (criminal) policy: how the political system and the criminal justice system react to changes in society and in criminality. This becomes clear when we compare different European countries, who, despite similar evolutions in external factors, witness opposite trends in prison populations.

This paper will focus specifically on policy measures affecting the size of prison populations, and on sentencing in particular.

The influence of sentencing on prison population

The influence of sentencing on prison populations seems self-evident, as the decision to impose a prison sentence for a particular offence rests with the judges.

We should however remember that sentencing is only one of the decision levels in the criminal justice system. Initially, the scope of decision-making is primarily structured by legislation, which defines the offence and the choice of penalties available to the judge. But prosecution policy and the application of remand custody also influences sentencing. Systematic waivers of prosecution signify an important selection procedure being in operation regarding the cases brought before the courts, and in some countries (e.g. the Netherlands) judges tend to follow the prosecutor's request for a particular sentence quite strictly. Remand custody is an important aspect of prison overcrowding. The increase in its application or its duration directly affects the size of the prison population (e.g. Belgium). Moreover, it strongly determines sentencing, at least in some countries. In Belgium 95 percent of remand custodies are subsequently 'covered' by the sentencing judge, albeit through a partial custodial sentence which does not exceed the remand custody (Snacken, 1986; Peeters, 1988). It therefore also hampers the application of non-custodial sanctions. This re-introduction of short-term prison sentences through remand custody has also occurred.
in the Netherlands (Oomen, 1970), in Germany (Feest, 1988; Heinz, 1989; Graham, 1990) and in England (Vass, 1990). At a later stage, sentences may be affected by decisions concerning their execution, especially early release through parole or other individual or collective measures. Many countries have resorted to collective measures of early release in an attempt to curb prison overcrowding (e.g. Belgium, France, Portugal, USA, ...). This, however, raises questions of legal insecurity and inequality, and may prompt courts to compensate for the early releases by imposing longer prison terms.

Keeping this in mind, we can now examine the relation between sentencing and the prison population. We have to distinguish several factors in this relationship: the use of imprisonment, the length of the prison sentence, the policy regarding juveniles, the application of non-custodial sanctions and initiatives to curb disparity in sentencing.

**The use of imprisonment**

Although most Western European countries face an increase in their prison population, the proportion of prison sentences in global sentencing has decreased over the last decades. A few examples: in Germany, prison sentences decreased from 40 percent in 1945 to 6-7 percent in the seventies and eighties (Oberheim, 1985); in the Netherlands they decreased from 12.3 percent in 1975 to 7-8 percent in the eighties (Verhagen, 1989b). This trend reverses however when we look at particular offences, especially drug offences: in Germany, prison sentences for drug offences rose from 10.8 percent in 1971 to 31.5 percent in 1976 (Oberheim, 1985); in the Netherlands the proportion of prison sentences for drug offences is six times higher than the average (Verhagen, 1989c).

**The length of the prison sentence**

One of the most striking similarities between western countries is the often spectacular increase in the number of long-term prisoners during the eighties, even in countries which saw their general prison population decrease (e.g. Germany). Although in some countries a more restrictive release policy may have added to the effect (e.g. 'security periods'), an increase in the length of the prison sentences cannot be denied. Again, this is especially true for specific offences: violent offences and sexual offences (rape) (the Netherlands, England and Wales, France), and most notably drug offences (drug-trafficking in particular) (the Netherlands, England and Wales, France, Germany,
The policy regarding juveniles

The influence on the prison population exerted by changing policies towards juveniles will depend on the definition of 'juveniles' (age limit), the possibilities available to deprive them of their liberty and whether those deprived of their liberty are considered to be part of the total prison population.

In Germany and England and Wales, a changed policy towards juveniles has resulted in a decrease in the prison population. In England and Wales, the change was induced by legislation: the Criminal Justice Acts of 1982 and 1988 (especially the latter) (Home Office, 1992). In Germany, the change occurred independent of legislation, through changing attitudes from the judiciary (both prosecution and judges), who became actively involved in the establishment and running of non-custodial alternatives (Pfeiffer, 1988).

On the other hand, the actual tendency in many countries towards 'repenalization' of the juvenile justice system and the lowering of the age limit for penal responsibility may lead to an increase in the imprisonment of juveniles and thus to an expanding prison population.

The application of non-custodial sanctions

Attempts to reduce the use of imprisonment through the introduction of alternative non-custodial sanctions were established a long time ago. The most common alternatives are fines, suspended sentence, probation and community service. Research concerning their application and potential to effectively reduce prison populations is too extensive to report here. We would like to emphasize only a few points which are directly relevant in their relation to prison overcrowding. The most obvious point is that the existence of alternative sanctions has not impeded the recent rise in prison populations in Europe. That does not mean that in the past alternatives have not replaced imprisonment at all: the aforementioned decrease in the proportion of prison sentences in the global sentencing is certainly due to the existence of other sanctions. But they have not been able to counter the recent increase. How can we explain this?

1. We should remember that in most countries non-custodial sanctions were introduced to replace short-term or medium-term imprisonment, while the recent prison overcrowding is mostly due to the increase in
long-term sentences (and remand custody). Sentencing practice actually reinforces this restriction. In Germany, the penal reforms of 1969 and 1975 abolished prison sentences of less than one month and restricted the use of sentences of less than six months. Day-fines were to become the principal sentence for offences previously sanctioned with prison terms of up to six months, and community service was to replace the subsidiary imprisonment for fine-defaulters. In practice, day-fines have mainly replaced the lower range of sentences, those up to three months (especially for traffic offences), while the upper range of sentences (for more traditional offences such as theft and drugs) have remained or even become longer (Oberheim, 1985).

2. The introduction of alternatives by legislation does not necessarily and automatically imply their application. In Belgium, several studies have shown that non-custodial sanctions such as suspended sentence and probation are applied to only a small proportion of those offenders who qualify legally. The reasons are numerous and may be related to the structural context surrounding sentencing practice (waivers of prosecution, application of remand custody, workload, lack of information about the individual offender), or to the uncertain position of the alternative sanctions in the sentencing tariff, or to the personal attitudes and penal views of the sentencing judges. The lack of sufficient infrastructure for the execution (and control) of the non-custodial sanctions may also hamper their application (Eliaerts, 1988; Peeters, 1988; Rutherford, 1984).

3. Even if alternatives are applied, some of their side effects pervert the aim to reduce prison sentences and, on the contrary, lead to an increase in the prison population. Subsidiary imprisonment is often (sometimes automatically) imposed in case of recidivism or failure to comply with the alternative sanction. In England (Bottoms, 1981 and 1987) and in Switzerland (Kuhn, 1989 and 1993), judges have been found to impose longer terms of imprisonment when the sentence is suspended, thus leading to a longer stay in prison in the event of recidivism. A general, unescapable feature of the introduction of new alternatives seems to be the infamous ‘net-widening’ effect: suspended sentences, probation, community service only partially replace imprisonment (40-50 percent) and partially replace other, usually less restrictive, alternatives (Rutherford, 1984; Pease, 1985; Van Kalmthout and Tak, 1988 and 1992). This is also true for the more punitive alternatives, such as intensive probation or electronic monitoring, often introduced because they are thought to be more acceptable to the judiciary: in practice they at least replace less restrictive alternatives to some extent or are used in combination with them (Beyens et al., 1992; Zimring and Hawkins, 1991; Morris and Tonry, 1990). This means that judicial control not only widens, but
also deepens: conditions become stricter, enhancing the risks of failure and of a more repressive reaction.

4. Many countries now face the seemingly paradoxical situation that on the one hand, non-custodial alternatives are developed and encouraged, while on the other hand, the prison population increases and prison capacity is expanded. This seems to point to a growing bifurcation in sentencing: less 'serious' offences or offenders are 'granted' a non-custodial sanction, while those who do not – or no longer – deserve such a favour are dealt with by ever-stiffer prison sentences (King and Morgan, 1980).

Initiatives to curb disparity in sentencing

These initiatives are discussed elsewhere in this special issue. We limit ourselves to their effect on the size of the prison population.

1. Strengthening the transparency of the sentencing process. A Belgian law of 1987 obliges judges to explain the motives for their choice of sanction. Apart from improving the transparency of the decision and providing guidelines for the execution of the sentence, this new regulation was also expected to limit the use of imprisonment. The evolution of the prison population does not seem to corroborate this hope. In the USA, the improved transparency of the sentencing process through clarification seems to lead to longer prison sentences: judges tend to 'play safe' for fear of criticism from 'the public' (Zimring and Hawkins, 1991).

2. Limiting the type of information allowed to influence the judge in his decision-making. The English Criminal Justice Act of 1991 tries to reduce the application of prison sentences and to stimulate 'community sanctions'. Following 'just desert' considerations emphasizing the objective seriousness of the offence, the judge is no longer allowed to let his choice between those two types of sanctions be influenced by the criminal record of the offender. This innovation stands sharply in contrast to actual decision-making and has already led to vehement protest by the judiciary (Thomas, 1992). Its chances of curbing the existing practice and reducing reliance on prison sentences seem very small.

3. The elaboration of sentencing guidelines. Sentencing guidelines were first established in the United States in order to reduce disparity in sentencing. 'Grids', covering the gradations of seriousness of the offence and importance of the criminal record, result in a limited choice between minimum and maximum penalty. Sentences departing from these limits require specific motives. Advocated by the 'liberal' proponents of the 'just desert' theory, they were meant to replace indeterminate sentences and to lower the actual length of stay in
prison. Both the theory and the guidelines were however soon recovered by more repressive tendencies, the penalties in the grids increased constantly, the 'war on drugs' erased all limits, and the prison population soared (Von Hirsh, 1976 and 1993; Lensing, 1992).

How to cope with rising prison populations? Policies in Europe

We have now discussed those aspects of sentencing policy which have contributed to the increase in the number of prisoners in most Western European countries. How then should we cope with this evolution? To answer this question, we will examine the different policies in Europe, including the role of sentencing, and evaluate their results.

We can broadly distinguish three policies in response to rising prison populations: an expansionist policy, a reductionist policy and a 'stand still' policy.3

Expansionist policy

According to Rutherford (1984) expansionist systems are characterized by a constantly increasing prison population, serious prison overcrowding, expansion of prison capacity, extension and strengthening of closed capacity, an increase in prison personnel and an intensification of the bureaucratic structure.

Examples of this situation were plentiful during the eighties: the Netherlands, England and Wales, the USA, France, all resorted to an impressive prison building programme. The Netherlands is an especially striking example, because it used to have one of the lowest detention rates in Europe (28/100,000 inhabitants in 1983) (Prison Information Bulletin, 1983), due to the imposition of comparatively shorter terms of imprisonment. In 1985, a policy outline called 'Society and Criminality' (Samenleving en Criminaliteit) advocated important changes in criminal policy and led to a doubling of the prison capacity (from 3,800 cells in 1980 to 7,600 in 1990). Following much publicized media-events, reporting the release of remand prisoners suspected of serious crimes, due to a shortage of cells, a further increase was recently sanctioned. Total prison capacity

3 We will not discuss here the 'homeostatic' or 'stability of punishment' model, as elaborated by Blumstein a.o. (Blumstein and Cohen, 1973; Blumstein et al., 1977; Blumstein and Moitra, 1979; Blumstein et al., 1983), for it does not seem to form the basis of any of the actual policies. For a critical evaluation of this model, see Rauma (1981) and Berk et al. (1981) for the USA and Fiselier (1987) for the Netherlands.
is expected to reach more than 10,000 cells by the turn of the century. In the United Kingdom, at least 28 new prisons have been built since 1980, expanding prison capacity with 25,000 cells. In the USA additional capacity has been created for at least 200,000 inmates (Snacken, 1988). In France 13,000 new cells were built over a two year period (Beyens et al., 1992). These building programmes were often based on and legitimized by predictions, forecasting a continuous upward trend in prison populations.4

Are these increases due to changes in sentencing policy? As we have already stressed, sentencing is only one of the decision levels in the criminal justice system. The effect of a revised criminal policy on the prison population will be greatest if these changes occur at the different levels. An expansionist situation therefore arises when the use, or the length, of imprisonment increases at those distinct levels. This happened most clearly with the drug policy. Many western countries increased the maximum penalties in their legislation during the seventies: Germany (1972 and 1982), Switzerland (1975), Austria, France (1987), the Netherlands (1976) and Belgium (1975). To cite one example: Germany raised the maximum penalty for a drug offence from 3 years to 10 years in 1972, then to 15 years in 1982. The internationalization of the ‘war on drugs’, launched by the USA, has made police forces concentrate their efforts on drug criminality. A recent illustration was offered by Europol, which put the international repression of drug criminality as a priority on its programme in 1992 and established ‘Europol Drugs Unit’ (De Jong, 1994). We have already described how sentences have become stiffer for drug offences, especially drug-dealing and trafficking. And finally, several countries have made early release more difficult for this category of offence (e.g. Belgium, France), thus further increasing the duration of imprisonment. The cumulative effect of these measures puts a heavy burden on the prison populations, besides introducing other penitentiary problems (the presence of drugs and drug-dealing inside the prisons, the treatment of drug addicts, the effects on prison regimes, ...). To illustrate this point, one can cite Mr. Verhagen of the Dutch Ministry of Justice, who contends that the extensive prison building programme in the Netherlands is due entirely to the changed drug policy (Verhagen, 1989c).

During the eighties some countries also felt the effects of changing attitudes towards sexual offences and some violent offences, e.g. within the family. Legislative changes increasing the penalties have

4 The main criticism on the technique of predictions concerns the lack of reliable data and, more fundamentally, the omission of different policy options from the calculations.
followed a growing public awareness, often stimulated by active campaigns by interest groups, victims have been encouraged to report to the police, and the police has become more alert to this type of offence. Longer sentences and delayed releases again culminate in much longer stays in prison.

Has the expansion of prison capacity solved the prison overcrowding (or ‘lack of prison capacity’, as in the Netherlands)?

Clearly not: prison populations keep rising, filling up the newly built institutions, raising demands for more and more cells. The reason for this is simple: when we look at the chart of factors influencing changing prison populations, it is clear that expansion of the prison capacity cannot stem the flood of people into the prison system. It has been claimed that the mere expansion of the capacity even attracts more detentions, thus creating a never ending self-fulfilling prophecy. We want to add a nuance to this assertion. The mere existence of examples where prison capacity has been reduced, due to a shrinking number of inmates (the Netherlands in the 1970s), or where the prison population fell after a period of expanding prison capacity (Germany in the 1980s), proves that the principle of capacity-driven prison population is not absolute and automatic. The effect of the expansion of prison capacity must again be seen in the context of general criminal policy. In face of a global trend to resort to more (long-term) imprisonment, the expansion of prison capacity will enhance this trend.

Reductionist policy

Characteristic of a reductionist policy is a general scepticism among practitioners (prosecutors and judges) towards the effects of imprisonment, a reduction in the use and length of prison sentences, a profound intolerance of overcrowding in prisons, coupled with a refusal to expand prison capacity (Rutherford, 1984).

Having examined those countries which succeeded in reducing their prison population during the eighties, we distinguish two patterns: reductions following major changes in legislation and reductions

---

5 For a discussion of the differences between those two concepts (and policies), see Beyens and Snacken, 1992.

6 The basis for this assertion is a much cited (and criticized) American study by Abt Associates (Mullen et al., 1980), which compared changes in prison capacity and prison populations in the 50 states of the US, over the period 1955-1976. The authors concluded that each newly built cell was filled within two years. This finding led to the ‘National Moratorium on Prison Construction’ in the US (Zimring and Hawkins, 1991), and was generally used as an argument by opponents of prison expansion.
happening quite independent of legislation.

1. Reductions following *legislative* changes: Finland reduced its prison population by half through the decriminalization of public drunkenness in 1969, a social plague previously sanctioned by stiff prison penalties, and the lowering of the maximum penalties for theft (Lang, 1989; Lahti, 1993). Sentencing practice followed the trend and the prison population has remained low. Denmark likewise curbed a rising population through abolition of indeterminate sentences and the lowering of the maximum penalties for property offences in 1973 (Brydensholt, 1980). England reduced the number of juveniles in prison by restricting the use of imprisonment in the Criminal Justice Acts of 1982 and 1988 (Home Office, 1990). The most effective way to reduce prison populations hence seems to be to prohibit and limit the use of imprisonment through legislation. This means that the scope of choices for the sentencing judges is reduced instead of enlarged (cf. the already mentioned problems with the application of ‘alternative’ sanctions). The following example is all the more intriguing.

2. Reductions *independent* of legislative changes: Germany lowered its population through a change in prosecution policy, a decrease in the application and the duration of remand custody and a reduction of imprisonment for juveniles. These reductions occurred independent of legislative changes, and in the opinion of several authors were brought about by changing attitudes of practitioners in the criminal justice system: an increased scepticism towards the value and effects of imprisonment, and an active involvement of the judiciary in the increased use of non-custodial sanctions (Feest, 1988; Pfeiffer, 1988; Graham, 1990; Prowse et al., 1990). This change in attitude may however have been stimulated by demographical evolution which resulted in fewer juveniles being brought to court (Dunkel, 1987). These examples corroborate the earlier findings of Rutherford (1984), who stressed the importance of the practitioners’ attitudes, especially in respect of their scepticism towards imprisonment. They also show that reduction of the prison population is most effectively obtained by limiting the numbers admitted into the prison system (‘front door strategy’). Countries which tried to curb prison overcrowding by stimulating early releases through parole or collective ‘emergency’ measures (Austria, Belgium, France, USA) have been much less successful. As with expansion of prison capacity, the reason is that such releases do not stem the growing numbers being admitted into the prisons, and they may even have the adverse

7 He analyzed the reduction of the prison populations in England (1908-1938), Japan (1950-1975) and the Netherlands (1950-1975).
effect of leading prosecutors and judges to compensate for the earlier release by requesting/imposing longer prison terms, thus creating a full circle once again.

Stand still policy

Rutherford (1984) describes a 'stand still' policy as follows. Alternative sanctions are meant to reduce the use of imprisonment, judges are asked to apply alternatives more often and to limit the application and length of prison sentences, new prisons are built with the primary intention of replacing old ones, the power to grant early release is enlarged, there is no real limit on the size of the prison population and the use of imprisonment is not fundamentally questioned.

It is essentially a pragmatic policy, which we can see in several countries trying to cope with serious prison overcrowding: Belgium, France, England, ... There is often a discrepancy between penal rhetoric, which is 'reductionist' and considers imprisonment to be the 'ultimum remedium', and penal practice, which believes imprisonment is an adequate response to crime.

The already mentioned 'bifurcation' or 'two-track policy' seems to be a particular form of a 'stand still' policy: at the lower range, certain offences/offenders are dealt with by non-custodial sanctions, at the upper range stiff prison sentences are laid down by legislators, judges and release authorities. The power of sanctions to influence delinquency being grossly overestimated, recidivism of the first (non-custodial) category eventually also leads to imprisonment. A 'two-track policy' therefore tends to evolve into an expansionist policy.

Conclusion

Of the three policies considered, only the 'front door' reductionist policy seems able to offer a real solution to prison overcrowding or lack of prison capacity. We would also defend this policy on more fundamental and principled reasons: knowing how detrimental the effects of imprisonment are, not only to the prisoner and his family, but also to the victims of crime and society in general, its application should be limited as much as possible. But how can we achieve this goal and what would be the role of sentencing?

The countries cited as examples of a reductionist policy illustrate how policies vary over time: countries move from one policy to another and back again. And the chart that we elaborated on mechanisms explaining changing prison populations shows the
complexity of the interactions with external factors. We still believe however that active intervention on these interactions is possible, at different levels of responsibility. Politicians should be aware of their responsibility in elaborating an extensive and comprehensive criminal policy, without undue reliance on penal law and penalties. Measures should be taken in response to an increasing fear of crime felt by the public (or certain sections), without resorting automatically to repression. Several studies have indeed shown that crime is not the primary public concern in Europe, and that many people are still open to rehabilitative and restitutive sanctions (Van Dijk et al., 1991 and 1992). The media certainly also have a responsibility in offering a less sensational view of the reality of delinquency. The judiciary should maybe be made more responsible for the effects of its decisions: the allocation of a certain number of prison cells to each judge, to be used according to his own priorities, has been advocated (see Blumstein and Kadane, 1983; Blumstein, 1987). Imprisonment being the most expensive penalty, closer control being kept on the absolute necessity of imposing this sanction seems justified. Prison authorities could give wider publicity to the problems linked to prison overcrowding and imprisonment in general, both for the benefit of the general public and the judiciary. And researchers aware of these problems could try to influence any of these intervening bodies. We are busy trying ...

References

**Austin, J.**
Introduction
*Crime and Delinquency*, vol. 38, no. 3, 1992, pp. 283-284

**Austin, J., S. Cuvelier, A. McVey**
Projecting the future of corrections: the state of the art

**Barclay, G.C. (ed.)**
*A Digest of Information on the Criminal Justice System. Crime and Justice in England and Wales*
London, Home Office, Research and Statistics Department, 1991

**Barclay, G. (ed.)**
*Digest 2. Information on the Criminal Justice System in England and Wales*
London, Home Office, Research and Statistics Department, 1993

**Berk, R.A., D. Rauma et al.**

**Beyens, K., S. Snacken**
Belgian prison overcrowding or Dutch lack of prison capacity: what's in a name?
*Tijdschrift voor Criminologie*, vol 34, no. 3, 1992, pp. 210-217

**Beyens, K., S. Snacken, C. Eliaerts**
Privatisering van gevangenissen
Brussels, VUB Press, 1992

**Beyens, K., S. Snacken, C. Eliaerts**
Barstende muren; overbevolkte gevangenissen: omvang, oorzaken en mogelijke oplossingen
Antwerpen, Kluwer / Arnhem, Gouda Quint, 1993

**IRCS no. 26**

**Bishop, N, H. von Hofer**
Sentencing and prison overcrowding


Blumstein, A.

Blumstein, A., J. Cohen

Blumstein, A., J. Cohen, D. Nagin

Blumstein, A., S. Moitra

Blumstein, A., J.B. Kadane
An approach to the allocation of imprisonment resources Crime and Delinquency, vol. 29, no. 4, 1983, pp. 546-560

Blumstein, A., J. Cohen, W. Gooding

Bottoms, A.E.
The suspended sentence in England British Journal of Criminology, vol. 21, no. 1, 1981, pp. 1-26

Bottoms, A.E.

Box, S.
Recession, Crime and Punishment Hong Kong / London, Macmillan Education, 1987

Box, S., C. Hale

Brydensholt, H.H.
Crime policy in Denmark. How we managed to reduce the prison population Crime and Delinquency, no. 1, 1980, pp. 35-41

Christie, N.

De Haan, W.

De Jong, M.L.J.

Dunkel, F.
Die Herausforderung der geburtenschwachen Jahrgänge: Aspekte der Kosten-Analyse in der Kriminalpolitik Freiburg im Breisgau, Max Planck Institut für Ausländisches und Internationales Strafrecht, 1987

Dunkel, F.
Freiheitsentzug für Junge Rechtsbrecher: Situation und Reform von Jugendstrafe, Jugendarrest und Untersuchungshaft in der Bundesrepublik Deutschland und im Internationalen Vergleich Freiburg im Breisgau, Max Planck Institut für Ausländisches und Internationales Strafrecht, 1989

Eliaerts, C.

Faugeron, C.
France. In: J. Vagg (ed.) Prevention and
Punishment: Dangerousness, Long-term Prisoners and Life Imprisonment, an International Perspective
1994 (forthcoming)
Feest, J.,
Reducing the Prison Population. Lessons from the West German Experience
London, NACRO, 1988
Fiselier, J.P.S.
Arnhem, Gouda Quint, 1987
Graham, J.
Decarceration in the Federal Republic of Germany. How practitioners are succeeding where policy-makers have failed
British Journal of Criminology, vol 30, no. 2, 1990, pp. 150-170
Heinz, W.
The problems of imprisonment, including strategies that might be employed to minimise the use of custody. In: R. Hood (ed.), Crime and Criminal Policy in Europe
Home Office
The prison population in 1989
Home Office Statistical Bulletin
London, April 11, 1990
Home Office
The prison population in 1991
Home Office Statistical Bulletin, Issue 8/92
London, May 15, 1992
King, R.D., R. Morgan
The Future of the Prison System
Gower, Westmead, 1980
Kuhn, A.
Les effets pervers des remèdes au surpeuplement carcéral. Le cas de la Suisse
Revue Internationale de Criminologie et de Police Technique, no. 2, 1989, pp. 296-207
Kuhn, A.
Punitivité, politique criminelle et surpeuplement carcéral ou comment réduire la population carcérale
Bern/Stuttgart/Vienna, Verlag Paul Haupt, 1993
Schweizerische kriminologische Untersuchungen, Band 6
Lahti, R.
How to make the criminal justice system more efficient, just and human – the Finnish experience. Paper presented at the 11th International Congress on Criminology, Budapest, Hungary, August 22-27, 1993
Lang, K.J.
The Regulation-of Overpopulation – Challenges, Objectives and Achievements
Messina, European Meeting for Heads of Penitentiary Administrations, 1989
Lensing, J.A.W.
Richtlijnen voor de straftoemeting
Trema, no. 6, 1992, pp. 207-221
Morris, N., M. Tonry
Between Prison and Probation.
Intermediate Punishments in a Rational Sentencing System
Nagel, W.G.
On behalf of a moratorium on prison construction
Oberheim, R.
Gefängnisüberfüllung. Ursachen, Folgen und Lösungsmöglichkeiten in der Bundesrepublik Deutschland mit einem internationalen Vergleich
Bern/Frankfurt, P. Lang, 1985
Europäische Hochschulschriften, Rechtswissenschaft. Band 457
Oomen, C.
Voorlopige hechtenis en vrijheidsbenemende straffen. Een poenametrisch onderzoek bij enkele vermogensdelicten
Deventer, Kluwer, 1970
Pease, K.
Annual Review of Research, vol. 6
Chicago, University of Chicago Press, 1985

Peeters, E.
Een straftoemetingsonderzoek bij de correctionele rechter
Panopticon, 1988, pp. 38-62

Pfeiffer, C.
Jugendkriminalität und jugendstrafrechtliche Praxis. Eine vergleichende analyse zu entwicklungs tendenzen und regionalen unterschieden
Hannover, Kriminologisches Forschungsinstitut Niedersachsen e.V., 1988

Projectgroep Structuurplan
The Hague, Ministry of Justice, 1989

Prowse, R., H. Weber, C. Wilson

Rauma, D.
Crime and punishment reconsidered: some comments on Blumstein’s stability of punishment hypothesis

Rutherford
Prisons and the Process of Justice
London, Heinemann, 1984

Snacken, S.
De korte gevangenisstraf. Een onderzoek naar toepassing en effectiviteit
Antwerpen, Kluwer / Arnhem, Gouda Quint, 1986

IURCS, no. 13

Snacken, S.
Hoe meer zielen hoe meer vreugd? Over capaciteitsproblemen in de gevangenissen
Panopticon, no. 1, 1988, pp. 1-7

Thomas, D.A.
Criminal Justice Act 1991 (1) Custodial sentences

Van Dijk, J.J.M., P. Mayhew
The Hague, Ministry of Justice, Directorate for Crime Prevention, 1992

Van Dijk, J.J.M., P. Mayhew, M. Killias

Van Kalmthout, A., P. Tak
Sanctions-Systems in the Member-States of the Council of Europe

Verhagen, J.
Veranderingen in de gedetineerdenpopulatie in de afgelopen 10 jaar
Justitiële verkenningen, vol. 15, no. 2, 1989a, pp. 7-16

Verhagen, J.
Het ‘plaatje’. De ontwikkeling in de straftoemeting in de afgelopen jaren. In: W. de Haan, R. Verpalen (eds.), Bezeten van de bajes
Nijmegen, Papieren Tijger, 1989b, pp. 53-66

Verhagen, J.
De kwantitatieve betekenis van de Opiumwet voor de capaciteitsuitbreiding van het gevangenisseizoen. In: W. de Haan, R. Verpalen (eds.), Bezeten van de bajes

Von Hirsch, A.
Doing Justice: the Choice of Punishments
New York, Hill and Wang, 1976

Von Hirsch, A.
Sentencing in the USA: Minnesota and Oregon. Paper presented at the Colston International Sentencing Symposium, Bristol, April 5, 1993

Zimring, F.E., G. Hawkins
The Scale of Imprisonment
On December 20, 1993 the ‘European Documentation and Research Network on Cross-border Crime’ Foundation (EDRN), was established. The network, initiated by the Research and Documentation Centre of the Dutch Ministry of Justice, was founded in accordance with the requirements of the European Parliament and the Council of Ministers of Justice.

The aim of EDRN is:
- to initiate comparative empirical and judicial research into different forms of cross-border crime (EU fraud included) and the administration of criminal justice in this field;
- to establish and maintain an easily accessible documentation network in the field of cross-border crime;
- to transfer and translate knowledge to policymakers, practitioners and scientists in the member states.

Research topics 1994
The Board of Trustees of EDRN has determined four research topics for 1994. (An extension of the area of research will be considered for the future.) The Board invited competent research institutes from the participating member states, which meet the conditions set up by the European Commission, to develop research proposals on the following topics.

- Developments in the area of VAT fraud within the EU. Since January 1, 1993 the system of VAT controls at the internal border controls of the member states of the EU has been removed, and has been replaced by a system of more remote and more indirect control. The extensive VAT fraud networks associated with organized crime which have been observed in the Benelux during the last ten years may well spread to the whole EU. On the basis of the existing expertise and the VAT-matching system the development and extent of VAT crime patterns will be researched.

- Comparison of the administrative and penal handling of EU fraud. There is little harmony between the member states in handling cross-border organized EU fraud cases. The inconsistencies in approach in comparable fraud cases frustrate an adequate flow of information in cross-border fraud cases. The extent of this disparity in handling cross-border fraud cases between the member states of the EU is unknown, however. The extent to which the anti-fraud policy is hampered by this disparity and lack of insight is also
unknown. The research project aims to clarify and define the consequences of this lack of uniformity.

- Organized crime and the financial interests of the EU. Various reports on EU fraud point to the potential threat of the EU funds by organized crime. This threat to the financial interests of the EU is often considered to be a 'mafia' issue. However, this perspective would erroneously narrow the organized crime threat to only one type of organized crime. Analysis of case studies of organized business crime against the EU regulations shows that in every member state organized crime aims in various ways to cash in on the subsidies or to evade EU taxes. This criminal abuse is not limited to certain sections of the EU regulations: it may involve quota regulations, import duties or subsidies on agricultural goods as well as structural funds. On the basis of the analysis of large/organized EU fraud the project aims to achieve greater insight into this problem.

- Money-laundering: the effects of the EU regulations. The effects of relevant EU guidelines and the subsequent legislation in the EU countries on money-laundering practices are still unclear, though some effects have already been observed. The notification system of suspicious transactions in the UK appears to have resulted in a massive increase in the amount of British currency being offered to bureaus de change in the Netherlands and Belgium. With the spread of similar notification systems to other EU countries one may well witness considerable changes in the cash-flow systems between countries in Europe and beyond. A statistical analysis of the cross-border cash flow between several countries in Northwestern Europe may provide an insight into the effects of the European regulations on 'black money' dealings.

Financial aspects
EDRN will be financed by the Commission of the European Communities and - on the basis of co-financing - by the participating research institutes. For its first operational year (1994), the Commission will pay 75 percent of the total expenditure (Research and Documentation), up to a maximum of Ecu 375,000. In 1995 and in each subsequent year, the Commission will normally fund 50 percent of the total expenses of EDRN.

Organizational structure
EDRN is a non-profit foundation under Dutch law. The foundation has a Board of Trustees and a Scientific Board. The Board of Trustees is the governing body, which approves the research programme, activity plan and the financial budget. This Board consists of representatives from the institutes which participate in the EDRN research and documentation programme. A maximum of two trustees can be nominated for each member state. In order to ensure a link with the European Commission, the European Parliament and the European Associations of Jurists, a provision has
been made to enable them to nominate a representative to act as an observer with advisory power.

The Scientific Board consists of representatives from all the scientific institutes which participate in EDRN. This Board advises the Board of Trustees as to the fulfilment of its tasks and has a responsibility to disseminate and transfer knowledge.

The daily management is in the hands of the Bureau of the Foundation.

How does one become a participant?
One of the preconditions for participating, set by the European Commission, is that the interested research institutes are to be designated by their central governments. The names of the designated institutes must be sent to the European Commission (more specifically: the UCLAF) by way of the member state’s permanent EU representative. At the start of EDRN the Commission had received the designations of four member states. More information about this procedure can be obtained at the Bureau of EDRN (see below).

Information on the documentation network will be provided in the next section.

The Documentation Network
The European Documentation Network has formulated the following principal objective: to create an up-to-date database of socio-scientific and policy-based information on cross-border crime in its broadest sense. In this database the most relevant references will be provided with informative abstracts in at least English and French. It will be possible to perform searches within the database using key words in at least English, French and German.

The coordination point for the EDRN database is conveniently located at the documentation department of the RDC. The existing RDC documentation collects national and international socio-scientific and policy-based literature on the crime problem. The RDC-collection is comprised of books, journals and reports. Special effort is put into collecting ‘grey-literature’. The information that has been collected to date is in Dutch, English, French or German.

The EDRN database will also profit from the research projects. Usable information collected by the researchers will be entered into the database. Currently, the EDRN database contains:
- over 5,000 references on cross-border crime in its broadest sense. The collection is increasing every day. All references in the EDRN database contain a short abstract in the language of the original document;
- almost 200 references to articles from professional journals have been provided with informative abstracts in Dutch, English and French (approximately 250 words each). These abstracts are written by experts and translated by professionals. It is of the utmost importance that the translation is accurate. The informative abstracts should give the reader comprehensive information on the main issues of the article.
In each EU member state one professional documentation centre is to
be requested to become a focal point. According to the agreed guidelines, each designated focal point will, on a regular basis, deliver on-line bibliographical records covering its own country. The focal point will be able to send information, to perform searches, to make printouts and, if so desired, to take information from the EDRN database and feed it into its own database. The bibliographical records will be stored in a mainframe located at the Ministry of Justice in The Hague. The cost of participation will be kept to a minimum, but there are some expenses to be met. The technical equipment needed includes a modem for data transmission and a file card to communicate with the mainframe. The data transmission charges are the same as the telephone rate. Participants will be eligible to receive co-financing according to certain directives.

Participants will have special privileges. One of our aims is to give EDRN database participants the opportunity to conduct searches by using key words in their own language or in a language of their choice. For that reason key words have to be translated into at least English, French and German.

A distinction must be drawn between participants and users: any interested institution can have an on-line connection with the EDRN database and become a user. Users however do not supply data entries, and must subscribe to the EDRN service. Users are not eligible to receive co-financing.

Clients who wish to be informed about a special area of interest on a monthly basis can be accommodated. Bibliographies on various subjects can also be delivered on request. These services are (so far) free of charge, and have been provided up to now by the EDRN coordination point. Photocopies of articles have to be paid for by the clients and there is a certain limit to the amount the coordination point can provide. Of course in the future, each focal point will have its own users and its own service level.

If a client should wish, on the basis of the informative abstract, to have the original article translated, the EDRN coordination point can provide this service in cooperation with a translation bureau. The cost of this service, however, will be charged to the client.

For further information please contact the Euro-information officer (see addresses)

Example of an abstract of a Dutch article
Fijnaut, C.
De criminele politiek in de Europese Gemeenschap (Criminal policy in the European Community)

The author examines the role played by the European Community with regard to criminal policy in both communal and inter-governmental connections. There are no provisions in the EU Treaty regarding criminal prosecution for combating crime at a communal level. The EU has no criminal code of its own, and cannot enforce regulations with regard to EU legislation: this is left to the member states. There has been some discussion about the desirability of the EU having a supra-national authority and its own law of criminal procedure, but member states reject this idea. The EU law on competition is in fact communal and is regulated supra-nationally; however it has no capacity for criminal prosecution. An important development in combating EU fraud has been the establishment of the
UCLAF, which coordinates efforts to combat fraud. Increasingly, this service is charged with criminal policy. In the area of drugs legislation and weapons legislation, communal policy is emerging. In an intergovernmental connection criminal policy is conducted through cooperation at judicial and prosecutorial levels as well as at a police level within the framework of Trevi. These forms of cooperation have now been combined in the Treaty on the European Union. This treaty sets in motion a new development concerning police cooperation by establishing a European police service (Europol). The conclusion is that the EU plays an increasingly important role at the level of criminal policy and in the actual maintenance of law and order, at both communal and intergovernmental levels. Although the author does not condemn these developments he does show that they are accompanied by many problems.

The Board of Trustees

Prof. Nestor Courakis
University of Athens
Charetos 72, GR-106 75 Athena, Greece
Tel.: (30 1) 7210169; fax: (30 1) 8227912

Prof. J. Panousis
Democritos University of Thrace, 69100 Komotini
G. Lyra 78, Nea Kifissia 14561, Greece

Prof. Ernesto Savona
Università di Trento, la Facolta di Giurisprudenza
Via Rosmini 33, 38100 Trente, Italy
Tel.: (39 6) 44243162 (also fax).
Temporary: (1 202) 5149280; fax: (1 202) 3076394; home: (1 202) 3388583

Prof. Giovanni Grasso
Università di Catania, la Facolta di Giurisprudenza
Via Gallo, Catania, Italy
Tel.: (39 95) 506398 or 317544; home: (39 95) 931251; fax: (39 95) 321654

Prof. Henk G. van de Bunt
Vrije Universiteit van Amsterdam
De Boelelaan 1105, Amsterdam,
The Netherlands
Tel.: (31 70) 3706561;
fax: (31 70) 3707948

Dr. Ben J.S. Hoetjes
Rijksuniversiteit Leiden, Faculty of Public Administration
Wassenaarseeuw 52, Leiden,
The Netherlands
Tel.: (31 71) 273789; fax: (31 71) 273974

Prof. Ulrich Sieber
University of Würzburg, Institut für Strafrecht, Strafprozessrecht und strafrechtliche Hilfswissenschaften Domerschulstraße 16, Würzburg, Germany
Tel.: (49 931) 31303 or (49 931) 31391

Dr. Siegfried Reinke
European Commission, Secretariat General-UCLAF
De Wetstraat 200, Brussels, Belgium
Tel.: (32 2) 2952478; fax: (32 2) 2950853

Addresses

Bureau of EDRN
Ministry of Justice, RDC
Prof. dr. H.G. van de Bunt
Dr. P.C. van Duyne
P.O. Box 20301, 2500 EH The Hague,
The Netherlands
Tel.: (31 70) 3706561;
fax: (31 70) 3707948

Documentation network
Ministry of Justice, RDC
E.C. van den Heuvel,
P.O. Box 20301, 2500 EH The Hague,
The Netherlands
Tel.: (31 70) 3707612;
fax: (31 70) 3707948

Henk van de Bunt, RDC
Elly van den Heuvel, RDC
Changes in Russia – influences on crime

Criminological studies over the past few years have clearly shown that the nature of the quantitative and qualitative changes of crime, especially those crimes committed in the economic sphere, are determined by the changes that take place in the economy, politics and other sectors of social life.

As is well known, significant changes began to take place in Russia in 1985, but the impact of these changes was not felt until 1989. The more the situation changed the more difficult it was for the population. And if political changes hardly touch the population masses, economic changes which result in lower living standards are not easily accepted and inevitably there are corresponding criminal consequences. New legislative acts on property ownership and privatization have led to the development of new norms which differ from the acting legal norms. This refers primarily to the criminal law which is obsolete and does not meet present day requirements especially in the economic sphere. This has also contributed to peculiar and sometimes unexpected manifestations of crime in Russia.

The appearance of new structures in the economic sphere, changes in the nature of property ownership, and the absence of legal regulations governing the transfer of property have naturally generated concern and anxiety among certain sections of the population. This in turn has been a contributory factor to the increasing relationship between crimes against property and violence. This trend is especially evident in the conflicts relating to commerce with some mercenary motivations.

Such crimes first became apparent in 1992, and resulted in a dramatic increase in the number of serious violent crimes. Thus, for instance, the rate of intentional homicides per 100,000 population increased by 42 percent between 1991 and 1992. In 11 of the 77 regions of Russia the situation is stable, but many traditionally safe regions now have increasing crime rates.

Changes in crime were not homogeneous. They can be divided into three stages. In terms of development the present stage of society is characterized by both an increase in the number of registered crimes and their qualitative changes. Thus organized crime groups and corruption are penetrating all levels of administration and actually create parallel state structures, poor imitations of the former command system agencies. Dozens of enterprises accomplish illegal deals. Private enterprises are evolving into powerful structures with multimillion incomes as opposed to the state structures. The mostly deal with raw materials, but not with processing or extraction. It is purely commercial or mediatory business. Some private enterprises have achieved success due to flaws in legislation, others, taking risks, benefitted from inadequate law enforcement. Controlling bodies have proven to be helpless under such conditions.

If the first two stages (1985-1989)
were characterized by comparatively stabilized economic crime\(^1\), the third stage witnessed its sharp growth. Qualitative changes such as organization and technical equipment enabled inroads to be made into the legal economy. So crimes against property at this stage became extremely frequent. Their ratio grew from 39.9 percent of the total registered crime in 1986 to 60.5 percent in 1990. If we compare 1986 to 1988 we see an increase of 21.5 percent, followed by increases of 80.5 percent, 112.7 percent and 87.5 percent in 1989, 1990 and 1991 respectively.

1990 was characterized by a considerable growth in the number of thefts of state and public property when compared to thefts of private property. This was a new phenomenon, as theft of state and public property had been four times less frequent than theft of private property during the previous 10 to 15 years. In 1991 the number of thefts of private property increased by 25.5 percent compared to 1990, and the number of state and public property thefts increased over the same period by 51.2 percent.

Among the most frequent types of crime in the economic sphere against state and public property are misappropriations accomplished by means of embezzlement, fraud or abuse of official position. Such crimes are committed by people whose work involves dealing with valuable materials. Of late the number of such crimes has diminished, although the trend was previously upwards. This statistical phenomenon is distorting the real picture, and is the result of law enforcement practice. Besides, more than half of the law-abiding population is quite tolerant when it comes to acquiring property of this kind in an unlawful way.

Sociological research over the last few years shows a great increase in the incidence of bribery. During one year the sum of money used for bribes doubled: from about one billion roubles in 1989 to 2 billion roubles in 1990. Bribery accounted for 0.6 percent of the crime total in 1986, 0.2 percent in 1989 and 1990, and 0.1 percent in 1991. But 23 percent of the interviewed individuals (both law-abiding and convicted) said that more officials can be bribed now.

Another fact is difficult to explain: the crime statistics testify to a reduction in the number of petty misappropriations while market research testifies to a considerable growth in such crime. Sometimes these petty crimes are perceived as normal behaviour. Stock losses, of which there are many, are often the result of workers stealing goods from their workplaces.

Special mention must be given here to crimes such as abuse of power or official position and negligence. Although these petty crimes are much less numerous than, for instance, thefts (only half as many), the losses involved are more than double those caused by theft. Losses caused by negligence are particularly alarming.

There are reasons to suggest that law enforcement officers without proper professional skills often record crimes

\(^1\) In Russia, 'economic crime' is a very comprehensive term [ed.].
of power abuse as negligence, thus enabling criminals to maintain positions of authority and hence contribute further to the dismal economic crime figures.

The public's tolerance towards economic crime is growing. Our research shows that 34 percent of the law-abiding and 31.6 percent of convicts have maintained a positive attitude towards individuals misappropriating property, taking bribes and abusing their official positions. 22 percent of law-abiding citizens and 12 percent of convicts have become less tolerant. Only 38.5 percent of offenders admit to their actions being criminal, and an equal number of offenders believe that an administrative measure would be a just punishment for them. There is a tendency to wash away the border between law-abiding and criminal behaviour. In spite of a considerable increase in the crime rate the majority of the population does not consider crime to be a principal cause of social tension. Factors demanding more consideration include disintegration of the economy, unemployment, the rising cost of living, and anxiety about the future.

The number of robberies is growing rapidly. Robberies involving private property prevail. Armed robberies involving private property account for 94 to 95 percent of the total number of crimes.

Correlations between economic and violent crime have increased and become more evident over the last few years. Russia is becoming the crime centre for both Russians and ex-citizens of the USSR.

Some phenomena and developments in the economy and politics of the 1980s are reminiscent of the situation which existed in Russia in the 1920s and 1930s. Both periods are characterized by a search for optimal economic models and the introduction of a new economic policy.

Property crimes and crimes against the person dominated the crime structure of the 1920s. By the end of the 1920s the number of crimes against the person had slightly diminished and property crimes had increased.

From 1986 to 1992 crime developed along similar lines. Property and occupational crimes increased rapidly while the ratio of violent crimes slightly diminished.

Research findings confirm that great changes in the type, structure and dynamics of crime in Russia coincide with the periods of social, economic and political transformations and instability, which tend to suggest causal relationships between these phenomena. Therefore, positive and even more effective results in crime control (both violent and property) can be achieved only by introducing socio-economic measures. Measures taken by law enforcement agencies, although very important and necessary, are restricted in their impact as far as strategic criminological purposes are concerned.

Gennady V. Dashkov
Professor Director of Department of Comparative Law Studies, Research Institute of Strengthening Legality and the Legal Order, 2nd Zvenigorodskaya Street 15, 123022 Moscow, Russia
Foreign relations of the 'Polizei-Führungsakademie'

An attempt to improve international police cooperation

Cooperation between police forces is increasing, especially in Europe. Terms like 'Interpol', 'Schengen', 'Trevi' and 'Europol' signify important steps in this development. The last issue of the European Journal on Criminal Policy and Research (vol. 1, no. 4, Police cooperation and private security) was devoted to this development. In accordance with several authors in that issue I would like to emphasize that police forces still operate mainly under legal conditions imposed by the individual countries. In view of the complexity of these national legal conditions and the very different police structures it is unlikely that the situation will change in the near future. Therefore it is essential to find new ways of promoting international cooperation between police forces on the basis of these differences.

As a follow-up on the 'Police cooperation' issue I would like to stress the importance of police officers, especially commanding police officers, being adequately informed about the possibilities of international cooperation. The Polizei-Führungsakademie (German central Police Staff Academy) was one of the first institutions to pave the way and is now attempting to broaden the foundations on a permanent basis.

The Polizei-Führungsakademie (PFA) is the central German training and advanced training academy for staff officer ranks. Besides the training of future commanding officers the academy offers a series of supplementary training seminars throughout the year. These seminars are not only open to police officers from Germany but from the whole of Europe. At first, this was an attempt to import knowledge from outside Germany for German police officers, but it has since developed into a discussion forum for international policing problems. One important aspect of the courses is to acquaint officers from various countries with the police systems of their neighbouring countries. These police systems have developed over the centuries against a certain social and political background and police officers initially have to learn to accept that background. If the structure and the differences of other police systems have been understood the chances of understanding how police cooperation can develop are so much greater. The different structures, the different legal bases of police work still present a lot of difficulties. Police officers have to know about these problems in order to overcome them. Among other difficulties there is the language barrier. This is why the PFA, together with the Police Staff College Bramshill and the French centre for training in Clermont-Ferrand, also the Spanish police and the Irish Garda College, Templemore, have developed language study programmes. Under these language study programmes, officers with a basic knowledge of the language of the organizing country are given the chance to acquire some information about the police structures,
daily police life and – of course – the police terminology of that particular country.

Another attempt was the organization of police information courses in English, French and German to enable foreign officers to learn something about the structures of the police forces in Germany. Other countries like Ireland and the Netherlands have meanwhile followed with similar courses. In addition, a lot of visits are organized for foreign officers in Germany and for German officers abroad to acquire some knowledge about the structures of the neighbouring countries.

One further step in that field is the exchange of students from the different academies. There is a traditional exchange of students between the ENSP (École Nationale Supérieure de la Police), the French Gendarmerie, the Police Staff College at Bramshill, the Dutch Police Academy and other schools with the PFA. Within their ordinary training periods they exchange students to give them the opportunity to broaden their views about policing. All these efforts are regarded as steps to help executive police cooperation by means of supplementary training. That general line pursued by the PFA and other colleges in Europe has also been the guideline for the efforts and the cooperation of Trevi working group II. Within the Trevi cooperation the working group II has, among other things, the responsibility to initiate and present seminars in different fields.

Trevi II has developed a subgroup which consists of all the heads of police academies. This group has tried to coordinate various efforts in the different countries and furthermore has attempted to set up some aims for future seminars and for future work, especially for the benefit of staff officers from all EU countries. So, in the course of time, besides the bilateral and multilateral links between the different academies, there is also an effort under way to achieve EU-based multilateral cooperation in the field of training and supplementary training.

During the last meetings of that subgroup the plan was developed to do more supplementary training actually together. This idea was approved by the Trevi II working group and also by the senior officials group which supervises the activities of these working groups. One idea which will be implemented in 1994 is the gathering of all international seminars for police officers into one booklet. The PFA is charged, with the consent of the working group, to edit that programme for 1994. With the general programme which should be published at the beginning of 1994 there is the hope that a better overview of the various seminars being offered in the different fields of policing can be provided. The idea is that in the future there should be a coordinated approach, i.e. that before the programme is issued each country would have a preview at what was being offered by other countries, which in turn would lead to subjects being coordinated and subsequently presented by designated countries. The programmes should then eventually be prepared and compiled by the different academies working together to get both national and international aspects of the
work integrated into the draft programme. There is some hope that more cooperation and coordination will develop from that. At some future date there might be the chance to establish a kind of secretariat for the permanent coordination of these efforts. The main objective in the background is of course that following coordinated efforts for seminars not only a secretariat but hopefully also a kind of European police academy will be established. Considering the big differences in the training of officers, especially of staff officers, the initiative is thought to be especially profitable in the field of supplementary training. Supplementary training seems to be comparatively easy to organize on an international level since it normally involves no direct consequences for the officer's career (most other training is directly connected with the officer's personal career). Training as such is more closely linked to a strict legal background.

One problem with these activities is the fact that the Trevi cooperation is based on the EU countries. Of course, Western Europe does not only consist of the EU countries, so there should also be some cooperation with the Scandinavian countries or, for instance, with Austria and Switzerland. That is mostly achieved by bilateral links between the different partners in the EU with the aforementioned countries. In recent years there has been an increasing interest, especially from those countries in Western Europe which are also likely to join the EU, in further cooperation in the field of police training and supplementary training.

One other vast field of police cooperation has opened in Eastern Europe since 1990. With the political changes in the East and the changing structures of the police forces in the former communist countries there is a big demand for support to be provided by the West. From as early as the beginning of 1990 the PFA has met direct requests from the different countries in Eastern Europe for support in the field of training. The PFA has tried to respond to these demands by receiving a variety of delegations who were interested not only in the general structures of German police forces but also in detailed information about these structures. At the same time an invitation was issued to officers from Eastern Europe to take part in our national supplementary training programmes. In the meantime the Russians – to quote one example – have become the biggest national group of delegates at our seminars. However, other countries, like the Baltic states, the Czech Republic and the Slovakian Republic have also become partners in cooperation. One of the biggest efforts was made towards Hungary. Lecturers and specialists were sent to these countries to help them develop new training structures. The problem in the field of cooperation with the Eastern European countries is the lack of coordination between the various EU countries and also in a federal state like Germany between the different police forces of the federal states. A lot of efforts were made to improve coordination. These efforts have not yet completely succeeded. One interesting idea was developed between Austria
and Hungary. They run an eighteen week course particularly for CID officers, of the rank of inspector and above, to give an insight into the structures, methods and problems of countering crime in the Central European countries. Under the title of ‘Middle European Police Academy’ they organize such a course annually. Germany has now joined these efforts.

For the first time ever, the PFA has been invited to a conference, designed for the directors of the various police academies from Eastern Europe, that will take place in November this year. We hope that during this conference objectives and methods of mutual support can be developed for the countries of Eastern Europe.

It must be mentioned, however, that these efforts made on behalf of the Eastern countries are of course limited due to lack of funds and staff shortage. In the current economic recession, and on account of the difficulties Germany is still encountering as a consequence of its unification, it is very hard to do more for the Eastern countries.

Considering the sizes of the police forces in the Eastern countries, particularly in the CIS states, it seems that there should be more coordination among the Western states to avoid parallel activities and to fulfil the actual needs of the countries in question. One problem in that field is of course the definition of these needs by the countries themselves.

The items covered in this article about the activities of the German Police Staff Academy in the field of international cooperation between police academies can only present a snapshot view. We are interested in better cooperation between all the European states and we hope that we can make our modest contribution to the problems of countering crime by starting these activities in the field of training and especially supplementary training.

Wolfgang Hüseker
Polizei-Führungsakademie
Zum Roten Berge 18-24
4400 Münster-Hiltrup, Germany

Police co-operation in Europe: an investigation

The report is based on work undertaken by the ‘Police, Crime & Justice in Europe’ Research Team of the Centre for Study of Public Order (CSPO) between 1990 and 1993. It examines crime in the European Union, immigration and external borders and the major structures to facilitate police co-operation, including the Schengen Group, the Trevi Group, the Maastricht Treaty, the K4 Committee and the Council of Europe. The report consists of four parts. Each part concludes with a summary of findings, and with specific recommendations for improving and promoting police co-operation. As it is impossible to mention all the conclusions and proposals, only some of them are mentioned in this review.
Europe without frontiers: the policing issues

In part I the framework for analysis is given. The researchers look at three inter-related levels for police co-operation in Europe. On the macro level: constitutional and international legal agreements; harmonization of national laws and regulations. On the meso level: police (and other law enforcement) operational structures, practices, procedures and technology. On the micro level: the prevention and detection of particular offences and crime problems.

Police co-operation in Europe: the context

Part II examines the context for police co-operation in Europe. Chapter 2 looks at the ways in which the problems of crime in Europe after 1992 are being viewed and presented, considers the impact of open borders on European crime and on other areas of law enforcement co-operation. It is concluded that many of the more alarmist views are without foundation. However, crimes such as fraud are already a serious problem in Europe and in the future the situation may deteriorate even further.

The researchers propose that research on crime should move beyond terrorism and drug trafficking. In addition, new research should concentrate on acquisitive crimes related to free movement of people and also investigate crime related to the free movement of capital, especially fraud.

Chapter 3 outlines the law enforcement agencies in each of the twelve European Union countries and also briefly summarizes their judicial system. Organization and operation of each country's police force are described. There are around 1.3 million police officers and 105 separate police forces in the EU. The researchers conclude that in order to achieve serious and effective police co-operation in Europe, a detailed comparative study of existing police organizations and other law enforcement agencies must be undertaken.

Promoting police co-operation in Europe

Part III examines the structures and arrangements which exist for promoting police co-operation in Europe. The International Criminal Police Organisation (Interpol) remains at the heart of international co-operation in law enforcement and its role in Europe is of considerable importance. The Schengen and the Trevi Group are outlined. At the meso level, police co-operation consists of a myriad of different groups, structures and networks which usually involve police specialists from different countries. This complex patchwork is examined in chapter 5, which also explores some examples of police co-operation in various border regions. It is concluded that in some respects, there is a danger of an over-proliferation of unconnected European police associations and networks where similar activities are being undertaken simultaneously by different organizations.
European police co-operation: prospects and proposals
Part IV draws together the principle themes of the report and makes proposals for action and further research to improve police co-operation in Europe which is the key to a successful policing on a European-wide basis. The principle conclusion of the research study is that more knowledge and understanding is required in order to establish effective and appropriate structures and procedures for police co-operation within the European Union. Unless and until there is a firmer knowledge base and greater appreciation of the problems there is a real danger of proliferation, duplication and confusion as the countries of Europe continue to muddle through.

The report is an important guide for anyone interested in policing in the European Union. It is a comprehensive (over 350 pages) and up-to-date account of development and organization of new structures and arrangements for policing and law enforcement in the new Europe.

Benyon, J., L. Turnbull, A. Willis, R. Woodward, A. Beck
Police Co-operation in Europe: an Investigation
Leicester, Centre for Study of Public Order, 1993
£ 55.50 (within the EU)
£ 61 (outside the EU)

Elly van den Heuvel
Euro-information officer, RDC
The Research Institute on the problems of strengthening legality was established thirty years ago. It was not by chance that the Institute composed of more than 200 research fellows, was launched at the beginning of the 1960s under the name of the Institute for the study of the causes of crime and elaboration of preventive measures. It was the time when it became apparent that this country evidently lacked scholarly knowledge about crime, its causes and prevention.

In a comparatively short period of time fellows of the Institute have developed the science of criminology and translated into reality a great number of concrete ideas on ways of combating crime and the prevention of particular types of crimes. In this field they have undertaken several research projects.

Publications

The results and effects of the projects were published in several fundamental monographs. These publications include: Causation in Criminology (1966), Crime Problems (1968), Personality of the Offender (1975), Theoretical Foundations of Crime Prevention (1977), Criminology (1986, in two volumes). During its thirty year history the Institute's fellows have written about 100 monographs, 350 manuals and textbooks, a great number of compilations, surveys and research reports. Current information on the effects of research projects is regularly published by the Institute in its magazine 'Information on research on combating crime'. Annually there are four or five issues of this magazine published. In order to make it easier for foreign counterparts to acquaint themselves with the work of the Institute, a special digest on current activities, called 'Main Research Outcomes', is published in English. Leading scholars of the Institute, heads of departments and research groups give summaries of their most recent

1 Director of the Research Institute on the problems of strengthening legality and the legal order of the General Procuracy of the Russian Federation, 2nd Zvenigorodskaya Street 15, 123022 Moskow, Russia
work. This digest is mailed free of charge to the International Society for Criminology, the International Association of Penal Law, and to all other interested persons and organizations.

**Main research directions**

The Institute's attention is currently centred on:
- theory of legality and practice of the procurator's supervision;
- criminology and organization of the procurator's supervisory role in the fight against crime;
- problems of material and procedural law, of the procurator's participation in court trials and law-making;
- the use of computers in the procurator's, investigatory and research activities.

In researching these problems the Institute attempts to address the following issues:
- surveys of the law and order situation, law obidance in political, economic and social spheres;
- elaboration of proposals with regard to improving of the forms and methods of the procuratorial organs, formulation of recommendations and manuals on the procurator's supervision, crime investigation, participation of the procurator in court proceedings;
- elaboration of the theoretical framework of procuratorial participation in law-making, in initiatives aimed at improving various branches of law, such as state (constitutional) law, administrative law, criminal law, law of criminal procedure, penitentiary law, civil law and procedure, law on entrepreneurship, law on arbitration as well as laws on the procurator's supervision;
- studies of the causes of crime, of its particular types, character, structure, variations in its occurrence, forecasts of crime dynamics, elaboration of ideas on making the fight against crime and crime prevention more efficient;
- elaboration of psychological aspects of procurator's and investigator's jobs;
- creation of computerized information systems, for use in the procurator's office and the use of advanced technologies in scientific research;
- learning from law enforcement experiences of foreign countries.

In its attempts to address the tasks listed, the Institute is:
- translating academic recommendations into practical routine;
- rendering consultation services to practitioners;
- coordinating activities of other research centres and educational
institutions in Russia on the problems of the procurator's supervision, criminology, criminal procedure, court system, criminalistics, forensic psychology;
— arranging scientific conferences, symposia and seminars;
— assisting in international scientific contacts.

Organization of the activities

Research is the principal activity of the Institute. This work is organized on the basis of annual research plans. The basis for the plans is framed by the requests and needs of the Procurator-General of the Russian Federation Office, by the needs of law enforcement agencies, by the law and order situation, and by the dynamics of crime. Annual plans have to be approved by the Procurator-General. On particular occasions (for example in cooperation with foreign research centres) the Institute carries out research on the basis of agreements. Annual reports on the activities are submitted for consideration to the Scientific Council of the Institute and subsequently to the Procurator-General's Office.

Current activities

Among the priorities in research activities in 1993 the following are noteworthy: elaboration of the theoretical foundation for the methodic disposition of the procurator's supervision; examination of the peculiarities of supervision over uniform observance of the laws in economic fields; generalization of the experience of the procurator's supervision over due process of law with regard to civil rights in social spheres; analysis of the procurator's role in combating juvenile delinquency and youth crime. Great attention was paid to the studies of problems of environmental law and problems of juridical psychology.

Some of the issues included in the research plan for 1993 dealt with the elaboration of the general conceptual framework of the programmes for combating crime for 1994-1995. The Institute was busy with criminological expertise on drafts of laws and legislation. In connection with ongoing economic reforms particular attention was paid to the studies of illegal forms of entrepreneurship and to the elaboration of measures to prevent corruption.

In order to contribute to the due process of law at the stage of preliminary investigation, the Institute has elaborated methodic recommendations on the procurator's supervision over the securing of
the lawful interests and rights of the parties in criminal proceedings and over activities of investigators. Because of the negative dynamics of murder crimes it became evident that investigators were in need of manuals on murder investigation. Such a manual has been published entitled 'Investigation of murders'. Other publications were devoted to the criminological analysis of serious violent crimes in the Russian Federal Republic in 1993, to measures for preventing of violent crimes and to tendencies and regional peculiarities of drug abuse in Russia. There were several studies devoted to material and procedural law and to the participation of the procurator in court trials.

In 1993 the Institute participated in the drafting of the anti-corruption laws, the law on combating organized crime and the law on terrorism and banditry. Experts of the Institute prepared the drafts of the code of criminal procedure, the law on the protection of witnesses, victims and other participants of criminal proceedings and the law on family and juvenile courts.

Several studies carried out by the Institute were connected with the use of computers by procurators, investigators and researchers.

**Prospects**

Considerable attention in research plans for 1994-1995 is devoted to the problems dealing with the role of the procurator's office in the processes of establishing the state of law in their country. The plans provide for the elaboration of the main principles of management in the organs of the procuracy, for revealing peculiarities of law-making by the procuracy, and for determining the role of the procuracy in securing law and order. Some studies will be devoted to the protection of individual's rights.

An important role is given to tackling the problems of environmental law, its violations and prevention of environmental crime.

The Institute will continue to analyze the criminogenic situation in Russia. Principal attention will be paid to the causes for the increase in violent crimes, to the study of the new forms of malicious crimes in commercial structures and to the violations of the rights and freedom of individuals.

The Institute will proceed with the elaboration of the draft of the law on organized crime and money-laundering.

Bearing in mind that an increase in juvenile delinquency and youth crime has been forecast, the Institute will pay particular attention to these problems.

There are plans to study the efficiency of the legislation in force on
alcohol abuse and law enforcement in the field of drug abuse. Efforts of the experts will be focused on the problems associated with judicial reform in Russia. Studies devoted to the correlation of the judicial power, administration of justice and the procurator’s supervision will continue, as well as the analysis of the practical implementation of the laws governing the judicial system, and the concept of human rights in the administration of justice. Problems experienced by the victims of crime will also be included into the plans.

In the course of the XIth International Congress on Criminology the problem of criminality, and its specific characteristics in the countries of Eastern Europe and particularly in Russia, were mentioned as the leading issues for criminological research and studies. There are unique social and political processes going on in that part of the world and the way in which these affect criminality is also unique. There is a need for new and unorthodox systems of crime prevention.

Our Institute is open to suggestions for joint studies and is ready to take an active part in them.
Abstracts

**Brewer, J.D.**
Public images of the police in Northern Ireland  
*Policing and Society*, vol. 3, no. 3, 1993, pp. 163-176

This article explores the issue of public images of the police in Northern Ireland in order to extend the author's critique of the divided society model of policing. The author has argued elsewhere that the divided society model of policing is inadequate because of simplistic notions of the nature of conflict in divided societies, such that the model misrepresents the manner in which the police mediates conflict in this sort of society. The article continues this critique with respect to the specific issue of public images of the police in divided societies. It claims that as a result of its simplistic understanding of the nature of conflict in divided societies, the divided society model of policing glosses over the emergence of intra-communal divisions in how the police are perceived, and thus overlooks the development of cross-cutting beliefs about the police. The article draws on empirical data from the 1990 Social Attitude Survey in Northern Ireland to illustrate these themes.

**De Vries, S.**
Multi-ethnic work groups in the Dutch police: problems and potential  
*Policing and Society*, vol. 3, no. 3, 1993, pp. 177-188

An earlier version of this article was presented at a conference on 'Policing ethnic minorities and police training', European Centre for the Study of Policing, Open University, Milton Keynes, England, October 1991. Work groups with members from more than one ethnic background are a relatively new phenomenon in the police service in the Netherlands. American research indicates that minorities in multi-ethnic work groups often face special problems and as a result perform less well and are less satisfied than their majority colleagues. The present research examined whether similar problems arise in multi-ethnic groups in the Dutch police. According to the findings, minority officers do indeed face special problems, but the difficulties experienced do not appear to have a negative effect on officer performance or well-being. Minority officers perform as well as equally experienced majority colleagues and are as satisfied as majority officers. Nevertheless, minority officers are confronted with discrimination and seem to be less easily accepted when they join the force under the affirmative action program. Most respondents reported that they like working in multi-ethnic groups and that the presence of minority officers seems to have a positive effect on the quality of the police work.

**De Waard, J.**
The private security sector in fifteen European countries: size, rules and legislation  
*Security Journal*, vol. 4, no. 2, 1993, pp. 58-63

This article presents an inventory of the rules and legislation for the private security sector in fifteen European countries: United Kingdom, Norway, Portugal, Spain, Austria, Belgium, Denmark, France, the Netherlands, Greece, Finland, Germany, Switzerland, Sweden, Italy. Secondly the size of the private security sector is reported and commented upon. In most of the described
European countries there exists some form of legislation. However, legislative provisions for control and the powers of private security differ from country to country. The nature and background of these differences are explained. Data are presented on the absolute and relative number of private security personnel. Attention is given to the size, rank order, and the ratio of the police forces and the private security sector. Finally a comparison is made between the United States and the fifteen European countries on relative size and turnover of the private sector.

Duff, P.
The prosecutor fine and social control; the introduction of the fiscal fine to Scotland
The British Journal of Criminology, vol. 33, no. 4, 1993, pp. 481-503

The "dispersal of discipline thesis" (the argument that diversionary mechanisms are usually more intrusive than the measures they were designed to replace and often involve welfare agencies) is tested against the introduction to Scotland of the prosecutor fine, a diversionary mechanism used in several European jurisdictions. The prosecutor fine does not represent the therapeutic type of measure around which the 'dispersal of discipline thesis' is usually constructed. The growth of mundane monetary sanctions, including attempts at diversion through the use of fixed penalties and prosecutor fines, has largely been ignored. In Scotland, the introduction of the prosecutor fine has led to considerable 'net-widening' and the reasons for this are suggested. Nevertheless, rather than providing evidence of the 'dispersal of discipline', the prosecutor fine appears to represent a move towards a more administrative-bureaucratic style of criminal justice.

Howard, L., S. White
The national prison survey 1991
Prison Service Journal, no. 90, 1993, pp. 15-18

The National Prison Survey 1991, the first national survey of prisoners in England and Wales, sought to obtain information about the background characteristics of prisoners, learn about prison regimes as seen through the eyes of the prisoners themselves, and find some explanation for their criminality. This article presents some findings on a few of the topics covered by the survey: number of parents present during childhood, prevalence of placement in local authority care, hours per day that prisoners spent locked up, attitudes to prison education, desired improvements in the prison regime, relationships between prison officers and prisoners, relationships among prisoners, contact with the outside, distance travelled by visitors, convicted relatives, previous sentences and attitudes toward re-imprisonment.

Jarde, O. et al.
Mistreatment of the aged in the home environment in Northern France: a year survey (1990)

An inquiry into abuse among persons aged 65 years and over living in their own homes or in their children's homes who, for health reasons, required home nursing or hospitalization. A survey carried out in France in 1990 in two hospitals (in Amiens and Seclin) and 25 home nursing agencies (in the region of Lille) provides information on the extent, nature and circumstances of elder abuse and neglect in the domestic setting. The types of abuse and the characteristics of the victims and perpetrators in the 55 cases of elder abuse observed by these agencies are examined. The article also looks at penal and legal aspects of elder abuse in France.

Koch, B., T. Bennett
Community policing in Canada and Britain
Research Bulletin, no. 34, 1993, pp. 36-42

The process of change from traditional policing to community policing in Canada (1990-1992) is in many ways extraordinary. The change toward
community policing has been well-organized and wide-scale; backed by the major Canadian institutions; professionally marketed; and instigated without any obvious economic, political or social pressure to do so. The author reviews the literature on the definition, philosophy and organization of community policing and the evaluation of specific programs in Canada in order to determine whether there are any lessons to be learned for Britain. There is little evidence to suggest that Canada is in any substantial or important respect ahead of Britain in the development of community policing. Two important conclusions can be drawn. The first is that community policing programs can be implemented if managed effectively and with strong leadership. The second is that the kind of managerial and leadership qualities needed to achieve this are probably rare.

Lewis, O.

International hacking. Parts 1 and 2

Although simple curiosity and the challenge of illicit entry into computer systems are often sufficient motives themselves in hacking, there are clear links between part of the hacking world and crime. Many are unaware of the pervasiveness of hacking, its truly international nature and the focus and level of dialogue of those from many cultures and backgrounds who have an interest in the unauthorized exploitation of systems. Hacker communications can be used to monitor some of the criminal activity that is linked with hacking. Developing consensus on what constitutes acceptable behaviour is likely to provide a surer basis for both legislation and subsequent prosecutions than presently exists. Prevention requires an understanding that the growth in the number and complexity of information technology systems must be matched by the growth of security precautions.

Mednick, B.R. et al.

Patterns of family instability and crime: the association of timing of the family’s disruption with subsequent adolescent and young adult criminality

This study provides a longitudinal view of selected correlates of family disruption and suggests how they may contribute to adolescent and young adult criminal behaviour. Data from a sample of 410 males, aged 19 to 21 years, who took part in an 18-year follow-up study of a Danish Prospective Perinatal Cohort, were used. Paternal crime, descriptions of the families’ patterns of stability, and changes in socioeconomic status of the family experienced by the subjects were examined to determine their association with official records of adolescent and young adult crime. Analyses showed that divorce followed by a stable family constellation was not associated with increased risk of criminal behaviour, whereas divorce followed by additional changes in family constellations significantly increased the risk. Age at onset of criminal activity was not related to family stability patterns. Males experiencing continued family instability during adolescence were especially at risk. Downward changes in socioeconomic status and paternal crime both showed independent associations with children’s criminality.

Möbius, G.

Money laundering
International Criminal Police Review, vol. 48, no. 440, 1993, pp. 2-8

An overview of several ways money launderers use to manipulate assets, primarily cash assets derived from illegal activities, so as to make it look as if they were derived from legitimate sources and to avoid the reporting and/or storage of financial transactions that leave a paper or audit trail for the investigator. In conclusion, two cases from the files of Interpol involving the laundering of money from illicit traffic...
in drugs, investigated in France in recent years, are described.

Norris, C., N. Norris
Defining good policing: the instrumental and moral in approaches to good practice and competence
Policing and Society, vol. 3, no. 3, 1993, pp. 205-221
This article centres on the question as to what constitutes 'good policing'. Four approaches to defining good policing are identified: the objectives approach, the professional ethics approach, the generic competency approach, the interactionist approach. It is argued that these are differentiated by the extent to which they concentrate on either instrumental and technical dimensions of policing or the social political impact of its outcomes. Through a detailed examination of one incident of routine policing, the authors argue that any analysis which separates technical questions about means from moral questions about ends will remain partial. Finally, it is argued that the development of good policing is a personal achievement on the part of officers and can only be systematically developed if the organization creates the 'ethical space' to allow officers to critically reflect on practice.

Vagg, J.
Context and linkage; reflections on comparative research and 'internationalism' in criminology
The British Journal of Criminology, vol. 33, no. 4, 1993, pp. 541-554
International comparisons inevitably involve the collection of data from diverse social, economic, and political contexts, which ought to influence how those data are treated. At one level this can be seen as a matter of whether data report on comparable events. But one must also consider whether ostensibly similar bodies of data might report on rather dissimilar events once the context from which they were collected is taken into account. Research into any one kind of criminality might have to consider it alongside other, theoretically separate but empirically related, forms of crime. It is suggested that the agenda of comparative criminology tends, for very understandable reasons, to ignore problems which have little impact in any one jurisdiction but which are significant in international terms. These points suggest three broad directions in which criminology in general, and comparative criminology in particular, should be moving. Re-orientation could result in a more 'internationalist' criminology. First, criminologists need to look more closely at the factors which affect the specific forms of criminality observed in different regions. Secondly, criminologists need to conduct qualitative comparative research. Thirdly, while much research in criminology – both generally and in comparative work – deals with fairly well-defined criminal problems, programs and policies, and while it addresses questions such as the extent to which such policies can work, this latter question needs to be asked in a more fundamental fashion as well. Criminologists need to recover a broader social, economic, and political view of crime problems and policies if they are to address the topics of crime and crime policy in a realistic way.

Van Duyne, P.C.
Implication of cross-border crime risks in an open Europe
Despite the strengthening of international police cooperation, the crime-enterprise phenomenon continues to be studied and dealt with from a national point of view. The national approach is ineffective inasmuch as entrepreneurs, including crime-entrepreneurs, are market-oriented, think not in terms of national jurisdictions but in terms of flows of goods and money and the social networks of people they can trust. Another obstacle to effective analysis and control of crime-enterprises is the insistence in research and law enforcement on a distinction between 'serious' crime, particularly drug-
trafficking, and organized business/white-collar crime. Though most crime-entrepreneurs prefer to focus on a particular commodity, their general skills enable them to divert their trade to other commodities. Crime-enterprise operate in ever bigger geographic and economic regions and gradually evolve toward general trading consortia which operate in European crime regions. Euro-crime markets in which crime-entrepreneurs develop lasting patterns of cooperation and cross-border organizations and intertwine with the upper-world economy, already exist in the illicit drug market. Developments in commercial crime, toxic waste trafficking and EU fraud indicate a similar crime pattern. The author shows how crime-entrepreneurs penetrate into the upper-world economy in the Euro-crime regions, profiting from the free flow of capital and goods in Europe. Some of the crime opportunities have been created by the complex EU regulations which are meant to protect legitimate entrepreneurs in the member states. Developments in Eastern Europe, especially the liberalization of trade, have created new opportunities for large scale cross-border business crime communities. The member states are slow to use fact-finding and crime analysis as a basis for effective target-oriented policymaking. The corruption of the upper-world, the world of legitimate business and administration, poses the greatest risk to society at large.

Willemse, H.M., J. de Waard
Crime analysis and prevention: perspectives from experience in the Netherlands

Crime prevention projects commonly suffer from inadequate preparation, implementation and evaluation. Preparation, in particular, is all too often based on incidents and limited knowledge of effective measures. Drawing on experience in crime prevention in the Netherlands, the authors argue that crime prevention initiatives would be more effective if they were based on a good description of the crime problem and a more thorough analysis of the (most probable) causes of the problem, if they included a review of previous relevant research, and if the effects of crime prevention measures were scientifically evaluated. Important information sources are data available from the police and municipal authorities, victimization data, and the research literature, including the publications that are not formally published and distributed via the traditional channels of distribution. The authors demonstrate the usefulness of a literature review and analysis of preventive measures in developing a domestic burglary prevention strategy. In conclusion, they look at some reasons why the authorities concerned rarely use a systematic approach in setting up crime prevention projects and offer a few suggestions for improving the present situation.