PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO IMPRISONMENT ACROSS EUROPE

NON-CUSTODIAL SANCTIONS AND MEASURES IN THE MEMBER STATES OF THE EUROPEAN UNION

Poland

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Non-custodial sanctions and measures in Poland (national report)

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I.
LEGAL FRAMEWORK

1 – General framework of the national system of penal sanctions

- *What are the general features of the penal sanctions system?*

The Polish system of criminal sanctions mainly consists of penalties, which are the main means of criminal reaction to a crime. Polish criminal law has 5 types of penalties. They are exhaustively listed in Art. 32 of the Polish Penal Code[3] and include: 1) a fine; 2) restriction of liberty; 3) imprisonment; 4) 25 years imprisonment; 5) life imprisonment. Therefore, here we are dealing with 2 non-custodial penalties (fine and restriction of liberty) and 3 custodial (isolation) penalties (imprisonment, 25 years imprisonment and life imprisonment). The order of listing penalties in Art. 32 PPC is not accidental. They are listed from the mildest to the most severe, which – in accordance with the intention of the legislator – is to indicate to the court the priorities when choosing the type of penalty[4]. This means that the court should pursue the objectives of punishment with the mildest possible penalty that is provided for the given offense, and should only apply a more severe penalty when a lighter penalty does not achieve the objectives of the punishment. In this context, it is also important to expressly set out in the Polish Penal Code (Art. 58 § 1) the principle of the ultima ratio of the imprisonment and the priority of non-custodial means of criminal reaction. This rule applies to offenses punishable by imprisonment not exceeding 5 years, and consists of the fact that if it is possible to choose

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[3] Hereinafter also referred to as the PPC.
[4] *Nowe kodeksy karne – z 1997 r. z uzasadnieniami*, Warsaw 1997, p. 137.

the type of penalty, the court imposes imprisonment only if another penalty or penal measure cannot meet the objectives of the punishment.

The Polish system of criminal sanctions includes not only penalties, but also penal measures. In the past, they were called additional penalties, intended to emphasize that, as a rule, they were imposed alongside the main penalty as an additional (supplementary) criminal sanction. De lega lata penal measures are not only imposed alongside the penalty, but also as the only measure of criminal reaction to the offense (in such a case, the court refrains from imposing the penalty). It should be noted, however, that courts very rarely use the possibility of adjudication of penal measure as the only measure of criminal reaction to the offense[5]. Thus, in practice, penal measures most often appear alongside a penalty. The Polish Penal Code provides for a wide range of penal measures (Art. 39), which include: 1) deprivation of public rights (including, among others, loss of active and passive voting rights as to a public authority, professional or economic self-government body); 2) a ban on holding a specific position, performing a specific profession or conducting a specific business activity; 3) prohibition of activities related to the upbringing, treatment, education of minors or with care for them; 4) a ban on staying in specific environments or places, contacting specific people, approaching specific people or leaving a specific place of stay without the consent of the court; 5) a ban on entry to a mass event; 6) a ban on entry to gaming centers and participation in gambling; 7) an order to periodically leave the premises occupied jointly with the aggrieved party; 8) driving ban; 9) pecuniary performance; 10) making the judgment public. As you can see, none of these penal measures are of an isolation nature. Their intent lies in something other than depriving the perpetrator of liberty. In order to avoid possible doubts, it is worth noting that a penal measure in the form of a ban on leaving a specific place of stay without the consent of the court is not the same as house arrest, and does not constitute a disguised penalty of imprisonment. This criminal measure cannot be limited to a ban on leaving a house or flat[6].

Forfeiture and compensatory measures (including the obligation to redress damage or compensate for harm suffered and exemplary damages) are categories of measures of reaction to a crime separate from penalties and penal measures (Chapter Va PPC). Forfeiture and compensatory measures, by their nature, do not consist of deprivation of liberty.

In order to outline a complete picture of the measures applied under the Polish Penal Code, it is also necessary to indicate the existence of probation measures (Chapter VIII PPC)

[5] See, e.g., A. Błachnio-Parzych, *Samoistny środek karny jako instrument racjonalnej polityki karnej*, [in:] *Alternatywy pozbawienia wolności w polskiej polityce karnej*, eds. J. Jakubowska-Hara, J. Skupiński, Warsaw 2009, pp. 142 et seq.

[6] See, e.g., R.A. Stefański, [in:] *Kodeks karny. Komentarz*, ed. R.A. Stefański, Warsaw 2020, p. 412; W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Cracow 2014, p. 449.

and protective measures (Chapter X PPC). Probation measures include: conditional discontinuation of criminal proceedings, conditional suspension of the execution of the imprisonment sentence and conditional release from serving the rest of the imprisonment sentence. In turn, protective measures are applied to insane perpetrators to whom guilt cannot be attributed at the time of the act they committed, and perpetrators with significantly reduced sanity, as well as to perpetrators of certain crimes committed in connection with the disturbance of sexual preferences, perpetrators of certain crimes committed in connection with a personality disorder of such a nature or severity that there is at least a high probability of committing a prohibited act with the use of violence or the threat of its use, perpetrators of crimes committed in connection with alcohol addiction, narcotic drug addiction or other similarly acting substance (Art. 93c PPC). Protective measures include: electronic control of the place of stay, therapy, addiction therapy, a stay in a psychiatric institution, as well as specific orders and prohibitions (Art. 93a PPC). Of these, only a stay in a psychiatric institution is associated with deprivation of liberty.

- *What are the "reference sanctions"[7] (i. e., the ones prescribed in the legal provisions of criminal offences)?*

In this context, two situations have to be distinguished. First, when a given crime is punishable alternatively by imprisonment and non-custodial penalty. Secondly, when a given crime is only punishable by imprisonment.

In the first of these situations, as mentioned above, the principle of the ultima ratio of the imprisonment and the priority of non-custodial means of criminal reaction applies, which relates to offenses punishable by a imprisonment not exceeding 5 years. In the case of such offenses, if it is possible to choose the type of penalties, with the court imposing the penalty of imprisonment only if another penalty or penal measure cannot meet the objectives of the punishment (Art. 58 § 1 PPC). In this way, the imposition of non-custodial means of criminal reaction is promoted.

On the other hand, in a situation where a crime is only punishable by imprisonment, the Polish Penal Code provides for the institution of a so-called 'conversion penalty' (Art. 37a). It applies to offenses punishable only by a term of imprisonment not exceeding 8 years. If the penalty of imprisonment for such an offense would not be more severe than 1 year, then the

[7] "Reference sanction"/"sanction de référence" in the sense of Council of Europe Recommendations No. (92) 17 concerning consistency in sentencing (rule B 5 *c*) and No. (2000) 22 on improving the implementation of the European Rules on community sanctions and measures (Rule 2).

court may, instead of this penalty, impose a penalty of restriction of liberty not lower than 3 months or a fine not lower than 100 daily rates, if at the same time it applies a penal measure, compensatory measure or forfeiture (§ 1). However, this statutory solution does not apply to perpetrators who commit an offense acting in an organized group or association aimed at committing a crime or fiscal offense, and to perpetrators of terrorist offenses (§ 2). It should be emphasized that the application of Art. 37a § 1 PPC is optional, and this provision does not indicate the priority of imposing non-custodial penalties, but only allows for such a possibility.

- *What are the limits of the term of imprisonment? What is the maximum limit of imprisonment that allows replacement by a non-custodial sentence?*

Polish criminal law, as previously mentioned, has 3 types of custodial (isolation) penalties, i.e. imprisonment, 25 years imprisonment and life imprisonment. The first of these penalties, commonly referred to as a term imprisonment, is imposed within a range from 1 month to 15 years (Art. 37 PPC). However, if this penalty is extraordinarily aggravated, its upper limit increases to 20 years (Art. 38 § 2 PPC). A term imprisonment is imposed in months or years. However, in the sanctions provided for individual crimes, it is possible to narrow the limits of the penalty of imprisonment, which can take place in three ways. Firstly, the lower and upper limit of imprisonment for a crime is there determined, e.g. for the crime of rape under Art. 197 § 1 PPC there is a term of imprisonment from 2 to 12 years. Secondly, the upper limit of imprisonment for a crime is there determined, and the lower limit is determined by Art. 37 PPC (1 month), e.g. for the crime of misappropriating someone else's movable property under Art. 284 § 1 PPC there is a term of imprisonment of up to 3 years. Thirdly, the lower limit of imprisonment for a crime is there determined, and the upper limit is determined by Art. 37 PPC (15 years), e.g. for the crime of taking or keeping a hostage under Art. 252 § 1 PPC imprisonment for a period of not less than 3 years is provided.

The penalty of 25 years imprisonment is strictly defined and – in line with its name – is exactly 25 years. Life imprisonment is also strictly marked, but it is assumed to last until the end of the convict's life.

The previously presented Art. 37a PPC (the conversion penalty) shows that replacing imprisonment with a non-custodial penalty is possible when we are dealing with a crime

punishable only by an imprisonment not exceeding 8 years, and the intended imprisonment for such a crime would not be more severe than 1 year.

- *Does the law provide for the possibility of non-imposition of a sentence (waiver of punishment or diversion) in specific cases?*

Polish criminal law makes it possible to refrain from imposing a penalty on the perpetrator of a crime. The institution of withdrawal from imposing a penalty is of fundamental importance here. Pursuant to Art. 59 PPC, if the offense is punishable by a imprisonment not exceeding 3 years or a penalty of a less severe type, and the social harmfulness of the act is not significant, the court may refrain from imposing a penalty, if it also decides on a penal measure, forfeiture or compensatory measure, and the goals of the punishment will be thus satisfied. Moreover, the court may refrain from imposing a penalty in special cases provided for in the Act, including in particular when the perpetrator provides cooperation to the authorities established to prosecute crimes (Art. 61 § 1 PPC).

There is no conviction and, consequently, no punishment of the perpetrator of the crime in the event of the application of a probation measure in the form of a conditional discontinuation of criminal proceedings. The court may conditionally discontinue criminal proceedings, if the guilt and social harmfulness of the act are not significant, the circumstances of its commission do not raise any doubts, and the attitude of the perpetrator who has not yet been punished for an intentional crime, his/her personal characteristics and conditions and the way of life so far justify the assumption that despite the discontinuation of the proceedings, the perpetrator will respect the legal order, in particular that he/she will not commit a crime (Art. 66 § 1 PPC). The conditional discontinuation of criminal proceedings cannot, however, be applied to the perpetrator of an offense punishable by more than 5 years of imprisonment (Art. 66 § 2 PPC).

2 – Non-custodial sanctions

- *What types of non-custodial sanctions are available in the criminal justice system? If involving conditions such as supervision, community service, conditional discharge, electronic monitoring or treatment programmes etc. what is their minimum and maximum length? For monetary fines or sanctions are amounts stipulated, and minimum or maximum limits? (Please*

provide a breakdown of each sanction available with their minimum and maximum lengths or amounts)

As mentioned earlier, Polish criminal law has 2 non-custodial penalties, i.e. a fine and restriction of liberty. As a rule, a fine is imposed in the system of daily rates, which means that the court does not indicate a specific amount of money in its judgment, but specifies the number of daily rates and the amount of one daily rate. As a standard, unless the act provides otherwise, the lowest number of daily rates is 10, and the highest is 540 (Art. 33 § 1 PPC). The number of daily rates is determined on the basis of the sentencing directives to be discussed later. The amount of one daily rate may not be lower than PLN 10, and at the same time may not exceed PLN 2,000. The court determines the amount of the daily rate, taking into account the perpetrator's income, personal and family conditions, property relations and earning potential (Art. 33 § 3 PPC). The application of the above-mentioned system of daily fine rates means that the minimum fine is PLN 100 (10 daily rates x PLN 10) and the maximum fine is PLN 1,080,000 (540 daily rates x PLN 2,000). At the same time, it should be borne in mind that the Penal Code provides for provisions that modify the standard limits of a fine described above. For example, in the event of extraordinary aggravating of the penalty, the maximum number of daily rates of the fine is 810 (Art. 38 § 2 PPC).

The second non-custodial penalty, i.e. the penalty of restriction of liberty, consists of the obligation to perform unpaid, controlled work for social purposes (20 to 40 hours per month) or deducting from 10% to 25% of remuneration for work on a monthly basis for a social purpose indicated by the court (Art. 34 § 1a and Art. 35 § 1 PPC). The obligation and the deduction may be ordered jointly or separately (Art. 34 § 1b PPC). While serving a restriction of liberty, the convicted person may not change the place of permanent residence without the consent of the court and is obliged to provide explanations regarding the course of serving the sentence (Art. 34 § 2 PPC). Moreover, if the convicted person has been ordered to deduct remuneration for work, during the period for which the deduction was ordered, the convicted person may not terminate the employment relationship without the consent of the court (Art. 35 § 2 PPC). The standard limits of the penalty of restriction of liberty are from 1 month to 2 years (Art. 34 § 1 PPC).

In addition to non-custodial penalties, Polish criminal law also knows other means of criminal reaction to an offense that do not involve with deprivation of liberty. These include, in particular, the aforementioned penal measures and probation measures. As for the latter, it is worth paying special attention to the conditional suspension of the execution of the imprisonment sentence. It consists of the fact that the execution of the sentence of imprisonment

for a period not exceeding 1 year may be conditionally suspended by the court, which results in the perpetrator remaining at liberty. The ruling of this probation measure is possible if the perpetrator at the time of committing the crime has not yet been sentenced to imprisonment, and the probation measure itself is sufficient to achieve the objectives of the punishment, in particular to prevent the return to the offense (Art. 69 § 1 PPC). The conditional suspension of the execution of the imprisonment sentence takes place for the probation period, which is normally from 1 to 3 years, and in the case of a young adult offender and a perpetrator who committed a violent crime to the detriment of a person living together – from 2 to 5 years (Art. 70 PPC). This probation period may be combined with a decision against the perpetrator of a fine, a penal measure or other obligations, such as apologizing to the aggrieved party or refraining from abusing alcohol or other intoxicants. There is also the possibility, and in some cases even an obligation, to hand over the convict during the probation period to the supervision of a probation officer or a trustworthy person, association, institution or social organization, whose activities include care for upbringing, preventing demoralization or helping convicts (Art. 73 PPC). When the probation period is successful, the conviction is erased (Art. 76 PPC), which means that it is considered as non-existent.

- *Are non-custodial sentences imposed directly, or is a prison sentence necessarily imposed first, then replaced by a non-custodial sentence?*

Non-custodial penalties, i.e. a fine and restriction of liberty, are directly imposed in the judgment. A non-custodial penalty may be the only measure of criminal reaction to an offense provided for in the judgment.

The Polish Executive Penal Code[8] provides for the institution of substitutive penalties. They are adjudicated at the stage of executive proceedings, when the convict evades serving the originally imposed penalty of restriction of liberty (Art. 65 PEPC) or when the execution of the originally imposed fine is ineffective (Art. 45 and Art. 46 PEPC). In such cases, the penalty of restriction of liberty is replaced by imprisonment, and a fine is replaced by socially useful work or imprisonment. However, it is not possible to replace imprisonment with non-custodial penalties.

A specific situation in which a custodial penalty is imposed first, and then modified in a non-custodial direction, is the implementation of imprisonment in the electronic supervision system (Chapter VIIa PEPC). It consists of the fact that the crime is first punished with

[8] Hereinafter also referred to as the PEPC.

imprisonment, and then – at the stage of executive proceedings – the penitentiary court grants permission to serve this sentence outside the prison in the electronic supervision system. This form of serving a sentence of imprisonment is significantly different from traditional forms of its execution, because it comes down to control (using technical means) of the convict, who is obliged on certain days of the week and times to stay at a place indicated by the court. It should be emphasized that the convicted person does not have to stay in the place indicated by the court all the time. The court determines the time intervals during the day and on individual days of the week in which the convicted person has the right to leave their place of stay for a period not exceeding 12 hours a day. So, during this time, he/she may go to work, school or to the store, for example. The granting of a permit to serve a sentence of imprisonment in the electronic supervision system is subject to numerous conditions, among which it should be noted, first of all, the condition of adjudicating the sentenced person with a sentence of imprisonment not exceeding 1 year and 6 months and the condition that serving a sentence in the electronic supervision system is sufficient to achieve the goals of the punishment. The legal doctrine states that the above solution is paradoxical, which is due to the fact that the perpetrator is issued with an custodial penalty, which at the stage of its execution, in fact turns into a non-custodial penalty, which does not require a stay in a prison and allows the convict a wide range of freedom. Therefore, it is stated that we are dealing here with a penalty which at the stage of its imposition is a custodial penalty, and at the stage of its execution it has become a non-custodial penalty[9].

- What are the legal requirements for the imposition of each type of non-custodial sentence? Is the consent of the offender required?

For the imposition of a fine or a penalty of restriction of liberty, it is sufficient that such a penalty is listed in the threat of punishment provided for a given offense. So if, for example, Art. 192 § 1 PPC provides: "Whoever performs a treatment procedure without the patient's consent is liable to a fine, a penalty of restriction of liberty or imprisonment for up to 2 years", the court, pursuant to this provision, may impose a fine or a penalty of restriction of liberty.

Moreover, in cases specified in the Penal Code, a fine or a penalty of restriction of liberty may be imposed despite the fact that they are not listed in the threat of punishment provided for

[9] See A. Grześkowiak, [in:] *Kodeks karny. Komentarz*, eds. A. Grześkowiak, K. Wiak, Warsaw 2019, p. 355.

a given crime. In particular, this is the case with extraordinary leniency and within the framework of the so-called conversion penalty (Art. 37a PPC).

The problem of the perpetrator's consent appears in connection with the penalty of restriction of liberty, when it takes the form of an obligation to perform unpaid, controlled work for social purposes. The Penal Code does not make the admissibility of this penalty conditional on the consent of the convicted person, however, at the stage of executing this sentence, the convicted person may declare to the probation officer that he/she does not consent to work at which point the probation officer applies to the court for a substitutive penalty (Art. 57 § 2 PEPC). This solution was introduced to avoid the allegation of violation of international law's prohibition on compulsory labour. In case of a fine being imposed, the consent or refusal of the perpetrator is completely irrelevant.

- *Are there circumstances (of the offence and/or the offender) for which a non-custodial sentence cannot be imposed? For instance, foreign nationals, unemployed people, or people with no fixed abode (homeless)? Do prior convictions preclude the imposition of a non-custodial sentence?*

There are circumstances in the Polish criminal law system which constitute an obstacle to the imposition of a fine or restriction of liberty. Even if the penalty of restriction of liberty is listed in the threat of punishment provided for a given crime, it cannot be ordered in the form of an obligation to perform unpaid, controlled work for social purposes, if the accused's health condition or his/her properties and personal conditions justify the conviction that the accused cannot perform this obligation (Art. 58 § 2a PPC). Until 2015, there was also a ban on imposing a fine if the perpetrator's income, property relations or earning capacity justified the conviction that the perpetrator would not pay this fine and it could not be collected by way of execution (Art. 58 § 2 PPC). This ban was lifted by the legislator and is currently not in force.

The Penal Code also provides for situations in which the court is obligated to impose a penalty of imprisonment for the offense assigned to the perpetrator. This means the prohibition of imposing a non-custodial penalty, even if the offense assigned to the perpetrator is also punishable by a fine or restriction of liberty. This solution applies to: multiple repeat offenders (Art. 64 § 2 PPC); perpetrators who have made a permanent source of income from committing

crime; perpetrators committing crimes within an organized group or association aimed at committing a crime; perpetrators of terrorist offenses (Art. 65 § 1 PPC).

- *Are there also ancillary penalties (penalties imposed cumulatively with the main sentence)? How are they applied?*

In Polish criminal law, the function of an additional measure of criminal reaction is primarily performed by the aforementioned penal measures. There are many of them, and they are of differing natures with different premises.

Moreover, it is worth paying attention to the possibility of accumulating penalties. In Polish criminal law, the rule is to impose one of the 5 existing types of penalties on a perpetrator for a given crime. The exception to this rule is primarily provided for in Art. 33 § 2 PPC, which enables the court to impose a fine in addition to the imprisonment, if the perpetrator has committed an act in order to gain a financial gain or if he/she has obtained a financial advantage. Since 2015, it is also possible for a crime punishable by imprisonment to have a sentence of both imprisonment (up to 3 or 6 months) and restriction of liberty (up to 2 years). In such a situation, as a rule, the imprisonment is carried out first (Art. 37b PPC).

3 – Rationale for sentencing: determining the type and term of a non-custodial sentence

- *Is there a sentencing phase in the criminal procedure, autonomous from the guilt phase?*

In Polish criminal law, it is not possible to convict and impose a penalty without finding the perpetrator guilty. The principle that punishment is not possible without a guilty judgement (nulla poena sine culpa) is consistently followed.

- *What are the legal criteria that the court must consider in the choice of the penalty to be imposed and in the determination of its length? If specified, what is the role of the purposes of punishment (resocialisation/rehabilitation, general prevention, deterrence, incapacitation, retribution...) and of the degree of culpability in the determination of the sentence?*

The general sentencing directives, regulated in Art. 53 § 1 PPC, are of fundamental importance when the court decides on the type of penalty and its level. This provision stipulates that the court shall impose a penalty at its discretion, within the limits provided for by the act, ensuring that its severity does not exceed the degree of guilt, taking into account the degree of social harmfulness of the act and taking into account the preventive and educational goals to be

achieved in relation to the convicted person, as well as the needs in the field of shaping the legal awareness of society.

This provision clearly shows that the severity of the penalty imposed may not exceed the degree of the perpetrator's guilt (the limiting function of guilt). It is the most important sentencing directive, since no circumstances, including the objectives assigned to individual penalties or other sentencing directives, can justify the imposition of a punishment more severe than the degree of guilt. In other words, the degree of the perpetrator's guilt determines the strict limit of the severity of the penalty imposed.

Another sentencing directive refers to the degree of social harmfulness of the act. When deciding on the type of penalty and its level, the court should take into account how the severity of this sentence relates to the degree of social harmfulness of the committed crime. It must be clarified that – in accordance with the express provision of the Act (Art. 115 § 2 PPC) – when assessing the degree of social harmfulness of the crime, the court takes into account the type and nature of the infringed good, the extent of the damage caused or threatened, the manner and circumstances of the act, the importance of obligations violated by the perpetrator, as well as the form of the intention, the perpetrator's motivation, the type of precautionary rules breached, and the degree of their breach. In short, the court should strive to ensure that the severity of the penalty imposed is appropriate to the degree of social harmfulness of the committed crime.

The court's decision to choose the type of penalty and determine its level is also determined by the two purposes of imposing a penalty. First, the court has to take into account the preventive and educational goals that it aims to achieve in relation to the convict. Therefore, we are dealing with a special preventive goal (prevention and education in relation to the convict). Secondly, the court must take into account the needs in terms of shaping the legal awareness of society, which means a general preventive goal. It should be emphasized that the explicit indication in Art. 53 § 1 PPC on the needs in the field of shaping the legal awareness of society should be understood as a rejection of general prevention in a negative dimension. General prevention is seen here only as a positive impact on society, consisting of the appropriate shaping of its legal awareness. There is no room for a negative impact on society by deterring it.

- *What concrete circumstances of the case/of the offender should be considered by the court when applying those criteria? Are those circumstances listed exhaustively in the law? Can they be relevant in either a mitigating or aggravating sense? (For instance, do sentencers have guidelines or laws indicating mitigating circumstances such as poverty, childcare or care*

responsibilities, coercion, background of violence or trauma, mental health condition, etc. which influence the choice or length of sanction?)

The general sentencing directives (Art. 53 § 1 PPC) presented above are subject to some specification in Art. 53 § 2 PPC by indicating the circumstances of the committed crime and the circumstances related to the perpetrator. These circumstances are important for the determination by the court of a specific type of the penalty and its level, which must comply with the general sentencing directives. Pursuant to Art. 53 § 2 PPC, the court, when imposing a penalty, takes into account, in particular, the motivation and behaviour of the perpetrator, especially in the event of committing a crime to the detriment of a helpless person due to age or health condition, committing a crime together with a juvenile, the type and degree of violation of the perpetrator's duties, the type and magnitude of the negative consequences of the offense, the personal characteristics and conditions of the perpetrator, his/her way of life before committing the offense and behaviour after its commission, in particular, trying to redress the damage or compensate in some other form for the social sense of justice, as well as the behaviour of the victim. These circumstances are not listed exhaustively, but only by way of example. Indicated in art. 53 § 2 PPC circumstances are not qualified by the legislator as mitigating or aggravating in advance, and therefore it is assumed that each of these circumstances, depending on the specific situation, may – as a rule – affect the mitigation or aggravation of the penalty.

Additionally, pursuant to Art. 53 § 3 PPC, the court, when imposing a penalty, is also to take into account the positive results of mediation conducted between the aggrieved party and the perpetrator, or a settlement between them in the proceedings before the court or the prosecutor.

- Are non-custodial sentences imposed by the trial judge or afterwards by a judge responsible for the execution of sentences – or are both possible?

As a rule, penalties, including non-custodial penalties, are imposed by the trial judge. Only exceptionally, the penalty may be specified at the stage of the executive procedure, in particular with regard to imposing the already mentioned substitutive penalties.

- Does the judge have a duty to impose non-custodial sentences if the conditions are met? Are there cases of mandatory imposition of a non-custodial sentence? Does the judge have a duty to give reasons for the choice and the length of the sentence?

If only a non-custodial penalty (fine or restriction of liberty) is provided for a given offense, then the court imposes a non-custodial penalty. If, on the other hand, a given crime is punishable by a non-custodial penalty and a imprisonment not exceeding 5 years, the court imposes imprisonment only if another penalty or penal measure cannot meet the objectives of the penalty (Art. 58 § 1 PPC). Thus, when a non-custodial measure of criminal reaction can fulfil the objectives of the penalty, it is the court's duty to pronounce just this measure, without imprisonment.

The choice of the type of penalty and the determination of its level are justified by the court (the court is required to state the reasons for its choice), which, depending on the situation, may be oral or written.

- Are there "sentencing guidelines" in your jurisdiction? If so, which authority is responsible for issuing them, and what is their role in the imposition of non-custodial sentences? Are there any sentencing guidelines on specific groups of people or certain categories of offences?

There are no sentencing guidelines in the Polish legal system.

- Can there be an appeal specifically concerning the type and length of the sentence imposed? Who can appeal?

In Polish criminal proceedings, an appeal may be limited only to the decision on the penalty, which includes, inter alia, the choice by the court of the type of penalty and determination of its level. An appeal may be brought by a party to criminal proceedings, including the accused and the prosecutor, and other persons specified in the provisions of the Act.

4 – Implementation of non-custodial sanctions and consequences of non--compliance

- Is there judicial supervision of the implementation? Is there a specialized court/judge responsible for supervising the implementation?

The Polish legal system provides for judicial supervision over the implementation of non-custodial penalties. As for the fine, in line with the general rule resulting from Art. 3 § 1 PEPC, in the proceedings for its implementation, which includes, inter alia, supervising and

adjudicating on the execution of this penalty, the court which issued the judgment in the first instance has competence. On the other hand, supervision over the execution of the penalty of restriction of liberty and adjudication in matters relating to the execution of this penalty belongs to the district court in whose district the penalty is or will be performed (Art. 55 § 1 PEPC).

- *What happens if the sentenced person breaches the conditions attached to the sentence? Is recall to prison automatic or are there other options? Which authority is competent to decide?*

In the event of a fine being imposed on the convict, he/she is first called upon to pay it voluntarily, and if this does not happen, the fine is collected by way of compulsory execution (Art. 44 PEPC). However, if the compulsory execution of a fine not exceeding 120 daily rates turns out to be ineffective, or the circumstances of the case show that it would be ineffective, the court may, optionally, replace the fine with socially useful work (Art. 45 PEPC). However, in a situation where the convict declares that he/she does not consent to undertake socially useful work or evades performing it, or if the conversion of the fine into socially useful work is impossible or pointless, the court obligatorily imposes a substitutive penalty of imprisonment (Art. 46 PEPC).

When the convict has been sentenced to restriction of liberty, and the convicted person evades serving it, the court is obligated to adjudicate a substitutive penalty of imprisonment. If the convicted person evades additional obligations related to the penalty of restriction of liberty, the court may optionally order a substitutive penalty of imprisonment (Art. 65 PEPC).

The above-mentioned decisions on substitutive penalties are issued by the court, in accordance with the jurisdiction presented above.

Separately, attention should be paid to the situation in which a convict violates the conditions of the previously discussed probation measure in the form of a conditional suspension of the execution of the imprisonment sentence. In such a situation, the law provides extensive regulation under which the court must (obligatorily) or may (optionally) implement the execution of the imprisonment (Art. 75 PPC). The obligatory implementation of this penalty comes into force, for example, when during the probation period the convicted person committed a similar intentional crime, for which a sentence of imprisonment was imposed without conditional suspension of its execution. There is also a specific regulation, according to which, instead of implementing the penalty of imprisonment, it can be replaced with a penalty

of restriction of liberty in the form of an obligation to perform unpaid, controlled work for social purposes (Art. 75a PPC).

- *Can the length of the sentence be modified in the course of implementation? If so, under what circumstances?*

During the execution of the penalty of restriction of liberty, the court may, if there are educational reasons, reduce this penalty by reducing the number of hours of work performed for social purposes on a monthly basis or by reducing the amount of monthly deductions from remuneration for work. This reduction may not, however, violate the minimum limit provided for the penalty of restriction of liberty (Art. 61 § 2 PEPC). Moreover, it is possible to postpone the execution of the penalty of restriction of liberty (Art. 62 PEPC) and to grant a break in serving this sentence (Art. 63 PEPC). Finally, despite the failure to perform full-time work for social purposes or failure to make all deductions from the remuneration for work, the court may recognize performance of the penalty of restriction of liberty due to the goals of this penalty being achieved (Art. 64 § 1 PEPC). A similar solution is provided for in Art. 83 PPC, according to which a person sentenced to a restriction of liberty, who has served at least half of this sentence, may be released from the rest of the sentence by the court recognizing it as executed. The condition is that the convicted person complies with the legal order, as well as performing the obligations imposed on him/her, the imposed penal measures, compensatory measures and forfeiture.

Additionally, it is worth noting that the second of the non-custodial penalties, i.e. a fine, may be divided into installments by the court, when immediate execution of the fine would have excessively severe consequences for the convict or his/her family (Art. 49 PEPC). Moreover, if the convicted person, for reasons beyond his/her control, did not pay the fine, and the execution of this penalty in a different way turned out to be impossible or pointless, the court may, in particularly justified cases, remit the fine in part, and exceptionally also in full (Art. 51 PEPC).

5 – Early release

- *Are there forms of early release from prison (including parole or other forms of modifying or replacing imprisonment during its implementation)?*

Polish law provides for a probation measure in the form of conditional release from serving the rest of the imprisonment sentence. The essence of this measure consists of the fact

that after the sentenced person has served part of the imprisonment sentence, the remaining part of the sentence is resigned, which is for the probation period. As a consequence, the convict leaves prison prematurely, however, the option to revoke the conditional release remains, which would result in the convicted person returning to prison. However, if, during the probation period and within 6 months of its completion, the conditional release has not been revoked, the sentence is deemed to have been served at the time of release (Art. 82 § 1 PPC).

- What are the time frames (quantum of sentence served) for its application? What are the formal and substantial requirements for granting early release? Are there cases of mandatory conditional release?

Conditional release from serving the rest of the imprisonment sentence is optional. This measure may be applied only if the sentenced person's attitude, personal characteristics and conditions, the circumstances of the offense as well as his/her behaviour after committing the offense and during serving the sentence justify the conviction that the convicted person will comply with the imposed penal measure or protective measure, and comply with the legal order, in particular, will not commit an offense again (the material condition under Art. 77 § 1 PPC). Additionally, in order to apply the discussed probation measure, a formal condition relating to the convict serving a specific amount of the sentence of imprisonment must be met. As a rule, a convicted person may be conditionally released after serving at least half of sentence (Art. 78 § 1 PPC). There are, however, exceptions to this rule. Firstly, a repeat offender is eligible for conditional release after serving at least two-thirds of sentence (Art. 78 § 2 PPC). Second, a multiple repeat offender; a perpetrator who has made a permanent source of income from committing crime; the perpetrator of an offense within an organized group or association aimed at committing a crime; or a perpetrator of a terrorist offense may be conditionally released after serving a minimum of three-quarters of sentence (Art. 78 § 2 PPC). Third, a person sentenced to 25 years imprisonment may be conditionally released after serving at least 15 years sentence (Art. 78 § 3 PPC). Fourth, a person sentenced to life imprisonment may be conditionally released after serving at least 25 years of sentence (Art. 78 § 3 PPC). Importantly, however, when imposing a penalty on the perpetrator, the court may, in particularly justified cases, set stricter requirements for serving a specific amount of imprisonment (Art. 77 § 2 PPC).

One should also pay attention to an additional formal condition, which applies when the perpetrator has already benefited from a conditional release from serving the rest of the imprisonment sentence, when the release has subsequently been revoked. In this situation, they are not eligible for another conditional release until before serving, after re-imprisonment, at

least 1 year of imprisonment, and in the case of 25 years imprisonment or life imprisonment, before serving at least 5 years of the sentence (Art. 81 PPC).

- *Who is competent for granting release and for monitoring its implementation?*

Conditional release from serving the rest of the imprisonment sentence is ruled on by the penitentiary court (regional court) in the district where the convicted person resides (Art. 161 § 1 in conjunction with Art. 3 § 2 PEPC). On the other hand, in matters related to the execution of judgments on conditional release and in the case of the revocation of a conditional release, the competent court is the penitentiary court that granted the release, and if the dismissed person remains under supervision, the competent court is the penitentiary court in whose district supervision is exercised (Art. 163 § 1 PEPC).

- *What type of conditions can be imposed? What are the consequences of non-compliance with the conditions? Is recall to prison automatic or is there discretion? In the event of revocation, does the time spent on conditional release count as prison time?*

When conditional release from serving the rest of the imprisonment sentence is granted, then the time remaining to serve the entire sentence is the probation period, which, however – as a rule – may not be shorter than 2 years or longer than 5 years (Art. 80 § 1 PPC). In this respect, multiple repeat offenders; perpetrators who have made a permanent source of income from committing crime; perpetrators committing a crime within an organized group or association aimed at committing a crime; and perpetrators of a terrorist offense, are treated in a special way. In their case, the probation period cannot be shorter than 3 years (Art. 80 § 2 PPC). In the event of conditional release from the penalty of 25 years imprisonment or life imprisonment, the probation period is 10 years (Art. 80 § 3 PPC).

The penitentiary court may, during the probation period, place a conditionally released person under the supervision of a probation officer, a trustworthy person, association, organization or institution whose activities include care for upbringing, preventing demoralization or helping convicts. In addition, the penitentiary court may impose the following obligations on the conditionally released: a requirement to inform the court or probation officer about the progress of the probation period; apologise to the aggrieved party; perform obligations incumbent on the convicted person to provide for the maintenance of another person; work, study or prepare for a profession; refrain from abusing alcohol or other intoxicants; undergo addiction therapy; undergo therapy, in particular psychotherapy or psychoeducation; participate

in corrective and educational interactions; refrain from staying in specific environments or places; refrain from contacting the victim or other persons or approaching the victim or other persons; leave the premises shared with the aggrieved party; or other appropriate conduct during the probation period which may prevent a re-offense. Additionally, if the damage caused by the crime for which the convict is serving the sentence has not been repaired, the penitentiary court may order compensation for the damage in whole or in part (Art. 159 § 1 PEPC).

Supervision during the probation period is, in principle, optional, however, there are categories of convicts who must be obligatorily supervised. They are those who were: convicted of specific crimes against sexual freedom and decency, committed in connection with disorders of sexual preferences; young adult offenders of an intentional crime; repeat offenders; perpetrators who have made a permanent source of income from committing crime; perpetrators committing a crime within an organized group or association aimed at committing a crime; perpetrators of a terrorist offense; sentenced to life imprisonment (Art. 159 § 1 PEPC).

If the conditionally released individual, subject to probationary obligations, has not been placed under supervision, he/she is obliged to: immediately, and at the latest within 7 days of release from prison, report to the probation officer of the district court in whose district he/she will has permanent residence; report to the probation officer within the time limits specified and provide explanations as to the course of the probation period; not change his/her place of permanent residence without the consent of the court; and to perform the obligations imposed on him/her (Art. 159 § 2 PEPC).

It is worth noting that during the probation period, the penitentiary court may modify this period (but only within the limits referred to earlier). It may also, during the probation period, place the convicted person under supervision or release from supervision, as well as establish, extend or change the previously presented obligations, and even release the offender from performing these obligations (except for the obligation to repair damage) (Art. 163 § 2 PEPC).

The Polish Executive Penal Code provides for obligatory and optional revocation of a conditional release from serving the rest of the imprisonment sentence. The penitentiary court is obliged to revoked a conditional release if, during the probation period, the dismissed has committed an intentional crime for which a penalty of imprisonment was sentenced without conditional suspension of its execution (Art.160 § 1 PEPC), and also, if the dismissed, having been convicted for a crime committed with the use of violence or an unlawful threat against the closest person or another minor living together with the perpetrator, grossly violates the legal order during the probation period, again using violence or an unlawful threat against the closest person or another minor living together with the perpetrator (Art. 160 § 2 PEPC).

In addition, the penitentiary court may optionally revoke the conditional release if during the probation period the dismissed person grossly violates the legal order, in particular, by committing another crime or being ordered to fulfil a penalty other than those indicated above, or if he/she evade supervision (performance of imposed obligations or imposed penal measures, forfeiture or compensatory measures) (Art. 160 § 3 PEPC). However, if these events occur after the sentenced person has been provided with a written reminder by the probation officer, then the penitentiary court is obligated to revoke the conditional release, unless there are special reasons against doing this (Art. 160 § 4 PEPC).

It is important to note that, in the event of the revocation of a conditional release, the period spent at liberty is not counted towards the penalty (Art. 160 § 8 PEPC).

6 – Sanctions or measures applicable to vulnerable persons and minority groups

- Are there non-custodial sanctions – or specific programmes as part of a non-custodial sanction – specifically designed for particularly vulnerable persons (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, ethnic minorities, Roma, Indigenous peoples, LGBTIQ+ or other)? Or different requirements for giving a non-custodial alternative to those categories? Is there a preference for non-custodial sanctions regarding vulnerable groups and/or minorities?

In Polish law, there are no non-custodial means of criminal reaction specifically for vulnerable persons. In principle, there are also no regulations that would require special treatment of such persons in connection with the imposition or execution of non-custodial means of criminal reaction. Only certain specific regulations relating to young adult offenders (perpetrators who were under 21 at the time of committing the crime, and under 24 years of age at the time of the ruling in the first instance) and juveniles can be noted. With regard to the latter, it should be clarified that in Poland, criminal liability may, as a rule, only be borne by the person who committed a crime after the age of 17. A person under this age, called a juvenile, may, however, exceptionally incur criminal liability when committing a serious criminal act after the age of 15, where the circumstances of the case and the degree of development of the perpetrator, his/her properties and personal conditions justify prosecution (Art. 10 § 1 and 2 PPC).

The penalty imposed on a juvenile may not exceed two-thirds of the upper limit of the threat of punishment for the offense, and the court may apply extraordinary leniency (Art. 10 § 3 PPC). Also, the status of a young adult offender is the basis for extraordinary leniency (Art. 60 § 1 PPC). One should also pay attention to certain differences applied to young adult

offenders in probation measure in the form of a conditional suspension of the execution of the imprisonment sentence. First of all, in the case of suspension of the execution of this sentence against a young adult offender, the probation period is from 2 to 5 years (Art. 70 § 2 PPC), while the standard period is from 1 to 3 years (Art. 70 § 1 PPC). Secondly, the supervision of a probation officer or other entity, which is optional as standard (Art. 73 § 1 PPC), is obligatory in the case of a young adult offender of an intentional crime (Art. 73 § 2 PPC).

In addition, in relation to a perpetrator who committed the offense after reaching the age of 17, but before the age of 18, the court uses educational, therapeutic or corrective measures provided for juveniles instead of penalty, if the circumstances of the case and the degree of development of the perpetrator, his/her properties and personal conditions support this (Art. 10 § 4 PPC). Additionally, a perpetrator, who at the time of committing the offense was under 18 years of age, cannot be sentenced to life imprisonment (Art. 54 § 2 PPC).

- *Can you identify any legal barriers to vulnerable persons or minority groups accessing non-custodial sanctions?*

There are no legal barriers in Polish law that would clearly prevent or make it difficult for vulnerable persons to access non-custodial means of criminal reaction. To some extent, an indirect barrier may only be Art. 58 § 2a PPC, which excludes the sentence of restriction of liberty in the form of the obligation to perform unpaid, controlled work for social purposes, in a situation where the health condition of the accused or his/her properties and personal conditions justify the conviction that the accused will not perform this obligation. In practice, it is possible to imagine situations in which the indicated provision would prevent the imposition against disabled people or the elderly of a penalty of restriction of liberty in the form of the obligation to perform unpaid, controlled work for social purposes.

- *Are there specific forms of early release for those vulnerable groups and/or minorities?*

In Polish law, there are no specific forms dedicated to vulnerable groups and/or minorities of conditional release from serving the rest of the imprisonment sentence.

II.
NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE

1 – How non-custodial sanctions and measures work in practice

- How significant is the use of alternative sanctions in practice? What are the most and least used sentences?

The importance of non-custodial penalties in the practice of the Polish justice system has been systematically increasing in recent years. Before the criminal law reform of 2015, the dominant means of criminal reaction in the criminal policy of the courts was conditional suspension of the execution of the imprisonment sentence[10], and non-custodial penalties in the form of a fine and restriction of liberty played a lesser role at that time. The situation of irrational abuse of the institution of conditional suspension of the execution of the imprisonment sentence has been noticed by the legislator, who has been prompted to take fundamental legislative steps aimed at carrying out a profound reform made to change this situation[11]. The effect of the aforementioned reform, which mainly boiled down to limiting the possibility of conditional suspension of the execution of the imprisonment sentence, was changes in the structure of convictions. After the introduction of the 2015 amendments, non-custodial penalties (a fine, restriction of liberty) and conditional suspension of the execution of the imprisonment sentence constitute an important element in the penal policy of the courts in Poland. All the aforementioned means of criminal reaction taken together in 2018 accounted for more than 4/5 of all convictions, while imprisonment (without conditional suspension of execution) was imposed against only one in five convicts[12].

With regard to the self-contained fine, it should be pointed out that an analysis of case law between 1999 and 2006 shows that this penalty was applied on average to one in five offenders[13]. The share of fine in the structure of convictions in the years 2007-2011 was similar. The analysis of courts' decisions shows that in the period in question, the aforementioned penalty was also applied on average to every fifth offender[14].

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[10] See, e.g., J. Skupiński, *Warunkowe zawieszenie wykonania kary pozbawienia wolności*, [in:] *Alternatywy pozbawienia wolności w polskiej polityce karnej*, eds. J. Jakubowska-Hara, J. Skupiński, Warsaw 2009, p. 38.

[11] See, e.g., J. Skupiński, [in:] *Kary i inne środki reakcji prawnokarnej. System prawa karnego*, Vol. 6, ed. M. Melezini, Warsaw 2016, p. 1140.

[12] *Statystyka sądowa. Prawomocne osądzenia osób dorosłych za lata 2014-2018*, Warsaw 2020, pp. 21-23.

[13] In the years 1999-2006, the share of fine in the structure of convictions was even greater when taking into account not only the number of self-contained fine, but also the number of such penalties imposed alongside imprisonment. In this respect, it was pointed out that in the period 1999-2006, nearly half of the convicted persons met this kind of penal reaction. See J. Jakubowska-Hara, *Kara grzywny jako alternatywa pozbawienia wolności*, [in:] *Alternatywy pozbawienia wolności w polskiej polityce karnej*, eds. J. Jakubowska-Hara, J. Skupiński, Warsaw 2009, pp. 77-80.

[14] See J. Jakubowska-Hara, *Grzywna orzekana przy warunkowym zawieszeniu wykonania kary pozbawienia wolności*, [in:] *Problemy wymiaru sprawiedliwości karnej. Księga jubileuszowa profesora Jana Skupińskie*go, eds. A. Błachnio-Parzych, J. Jakubowska-Hara, J. Kosonoga, H. Kuczyńska, Warsaw 2013, pp. 63-64.

Since 2013, the share of adjudicated self-contained fines in the structure of convictions has been steadily increasing, which has been very positively assessed in the literature[15]. In 2017, among a total of 241,436 convicts, more than 84,000 persons were imposed a self-contained fine, which accounted for 35% of all penalties imposed. On the other hand, in 2018, among a total of 275,768 convicts, more than 90,000 people were imposed a self-contained fine, which represented in percentage 32.81% of all penalties imposed[16]. The quoted data means that the mentioned penalty was imposed in 2018 on every third offender[17]. In addition to the number of adjudicated self-contained fines, their amount has also increased, determined by multiplying the adjudicated number of daily rates by the amount of the established daily rate. While the self-contained fine was adjudicated most frequently in 2015-2017 in the amount between 801 and 1,000 PLN, in 2018 the most frequently adjudicated fine was the one between 2,001 and 5,000 PLN[18].

A similar tendency can be observed in the case of the penalty of restriction of liberty. In this respect, it should be pointed out that in the years 1999-2006, the aforementioned penalty was imposed on average on every 7th-8th convict[19]. Since 2016, the share of the penalty of restriction of liberty in the structure of convictions has increased. In 2017, among a total of 241,436 convicted persons, a penalty of restriction of liberty was imposed against more than 53,000 persons, which accounted for 22.3% of all penalties imposed. On the other hand, in 2018, among a total of 275,768 convicts, over 78,000 persons were given the aforementioned penalty of restriction of liberty, which accounted for 28.35% of all penalties imposed[20]. The quoted data mean that a penalty of restriction of liberty was imposed on average on every third-fourth offender. Apart from the number of imposed restriction of liberty penalties, their amount has also increased. While in the years 2014-2015 the penalty of restriction of liberty was most often imposed for the period of 4-6 months, in the years 2016-2018 it was imposed for the period of 7-12 months[21].

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[15] See T. Szymanowski, *Znaczenie kary pozbawienia wolności w polityce karnej Polski współcześnie i w nadchodzących latach*, Przegląd Więziennictwa Polskiego 2018, No. 100, p. 123.
[16] *Statystyka sądowa…*, p. 21.
[17] According to information received from the Department of Strategy and European Funds of the Ministry of Justice, data on fines imposed in 2019-2020 will be available at the end of this year after the resulting statistical tables are generated from the National Criminal Register database.
[18] *Statystyka sądowa…*, pp. 22, 27.
[19] See J. Jakubowska-Hara, *Wstęp*, [in:] *Alternatywy pozbawienia wolności w polskiej polityce karnej*, eds. J. Jakubowska-Hara, J. Skupiński, Warsaw 2009, p. 13; R. Giętkowski, *Kara ograniczenia wolności*, Warsaw 2007, pp. 25-27.
[20] *Statystyka sądowa…*, p. 21. According to information received from the Department of Strategy and European Funds of the Ministry of Justice, data on penalty of restriction of liberty imposed in 2019-2020 will be available at the end of this year after the resulting statistical tables are generated from the National Criminal Register database.
[21] *Statystyka sądowa…*, pp. 22, 24.

In addition, it should be pointed out that each year between 2016 and 2018 more than 3,000 offenders were given a penalty of restriction of liberty in addition to imprisonment as a result of the institution introduced in 2015, provided for in Art. 37b PPC[22].

As it has already been mentioned, apart from non-custodial penalties, thus fine and restriction of liberty, Polish criminal law knows also other means of criminal reaction to a crime, which do not involve deprivation of liberty. The probation measure, conditional suspension of the execution of the imprisonment sentence, plays a fundamental role here. In the years 1999-2006, conditional suspension of the execution of the imprisonment sentence was imposed on average on every 2 convicts[23]. Since 2016, the share of the mentioned means of criminal reaction in the structure of convictions has decreased. In 2017, among the total of 241,436 convicted persons, conditional suspension of the execution of the imprisonment sentence was imposed against more than 54,000 persons, which accounted for 22% of all imposed penalties. A further decrease in the application of the conditional suspension of the execution of the imprisonment sentence was recorded in 2018, when out of a total of 275,768 convicted persons, more than 54,000 persons were imposed the aforementioned means of criminal reaction, which accounted for 19% of all penalties imposed[24].

- If possible, please provide statistical data on the use of these sentences. If available, provide information also on their application to vulnerable and/or minority groups (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, minorities, Roma, indigenous peoples, LGBTIQ+ or other).

In Poland in 2014, the number of convicted persons amounted to 295,353 persons, of whom 163,534 persons were sentenced to conditional suspension of the execution of the imprisonment sentence, 63,078 persons were sentenced to a self-contained fine and 33,009 persons were sentenced to a restriction of liberty. The total number of persons sentenced decreased again in 2015 and amounted to 260,034 persons, among whom 133,076 persons were sentenced to conditional suspension of the execution of the imprisonment sentence, 61,461 persons were sentenced to a self-contained fine and 31,096 persons were sentenced to penalty of restriction of liberty. In 2016, the courts sentenced a total of 289,512 persons, including 81,673 to conditional suspension of the execution of the imprisonment sentence, 98,776 to a

[22] *Statystyka sądowa…*, pp. 21, 25.
[23] See J. Skupiński, *Warunkowe…*, pp. 38-40.
[24] *Statystyka sądowa…*, pp. 21-23. According to information received from the Department of Strategy and European Funds of the Ministry of Justice, data on conditional suspension of the execution of the imprisonment sentence imposed in 2019-2020 will be available at the end of this year after the resulting statistical tables are generated from the National Criminal Register database.

self-imposed fine and 61,720 to penalty of restriction of liberty. In 2017, the courts sentenced a total of 241,436 persons, including 54,819 to conditional suspension of the execution of the imprisonment sentence, 84,721 to a self-contained fine and 53,854 to penalty of restriction of liberty. And finally, in 2018, a total of 275,768 offenders were sentenced, including 54,302 to conditional suspension of the execution of the imprisonment sentence, 90,491 to a self-contained fine and 78,172 to penalty of restriction of liberty[25].

No official information is available on the use of non-custodial penalties against vulnerable and/or minority groups.

- If there is no disaggregated data on application of non-custodial sanctions for specific groups, are there other non-official sources or information available? (Please provide these)

There are not available non-official sources or information on the use of non-custodial penalties for specific groups.

- If possible, please provide data on the application of early release (e.g., quantum of sentence served until release; percentage of releases from prison in the form of parole; percentage of recalls to prison). If available, provide specific information on the application of early release vulnerable groups and/or minorities disaggregated by category.

In the practice of the Polish justice system in the years 1993-2020, the scope of application of the institution of conditional release from serving the rest of the imprisonment sentence has been decreasing. A comparison of available data for the years 1993, 2007, 2015-2020 supports such a conclusion. In the years 1993-2007, the number of decisions on conditional release from serving the rest of the imprisonment sentence was at a similar level. In 1993, decisions on conditional release from serving the rest of the imprisonment sentence with regard to persons incarcerated were issued in 23,796 cases, while in 2007, the said decisions were issued with regard to 23,673 convicts[26]. However, the number of decisions on conditional release from serving the rest of the imprisonment sentence in 2015-2020 was different[27]. In 2015, the courts issued 16,548 decisions on conditional release from serving the rest of the

[25] *Statystyka sądowa…*, p. 21. According to information received from the Department of Strategy and European Funds of the Ministry of Justice, data on penalties imposed in 2019-2020 will be available at the end of this year after the resulting statistical tables are generated from the National Criminal Register database.
[26] See H. Kuczyńska, *Kształt i praktyka stosowania warunkowego przedterminowego zwolnienia jako czynnik wpływający na liczebność populacji więziennej*, [in:] *Alternatywy pozbawienia wolności w polskiej polityce karnej*, eds. J. Jakubowska-Hara, J. Skupiński, Warsaw 2009, pp. 194, 195.
[27] In the analysed scope, statistical data for the period 2015-2020 were made available by the Department of Strategy and European Funds of the Ministry of Justice.

imprisonment sentence, in 2016 12,679 such decisions, in 2017 11,044 such decisions, in 2018 10,183 such decisions, in 2019 8,546 such decisions, and in 2020 6,987 such decisions. Thus, there was a significant decrease in the number of conditional release from serving the rest of the imprisonment sentence decisions between 2015 and 2020.

Similarly, the number of applications for conditional release from serving the rest of the imprisonment sentence has decreased between 1993 and 2020. Such motions may be filed by a convict, director of a penal institution, prosecutor, probation officer. In the years 1993-2007, in the practice of the Polish justice system, the absolute number of applications for conditional release from serving the rest of the imprisonment sentence increased. While in 1993, 32,196 applications were filed in this respect, in 2007, 58,739 applications were already filed[28]. On the other hand, between 2015 and 2020, the number of the said applications gradually decreased[29]. While in 2015, 42,085 applications were filed, in 2019 only 28,729 applications were filed, and in 2020 – 26,500 applications.

Bearing in mind the above data concerning the number of applications for application of conditional release from serving the rest of the imprisonment sentence, it should be pointed out in addition that in the years 1993-2020 the percentage of positively examined applications decreased (1993 – 73%, 2007 – 40.3%[30], 2019 – 29.7%, 2020 – 26.3%[31]).

In the years 1993-2007, the structure of conditional release from serving the rest of the imprisonment sentence in terms of the person towards whom the analyzed institution was applied did not undergo significant changes. In this respect, it should be pointed out that in the years 1993-1996 conditional release from serving the rest of the imprisonment sentence was most often granted to persons with no previous criminal record, mainly juveniles. In those years, the smallest percentage of granting conditional release from serving the rest of the imprisonment sentence concerned convicts with previous criminal records. In the years 2006-2007 conditional release from serving the rest of the imprisonment sentence was most often granted to persons with no previous criminal record, and the least to persons with previous criminal records[32].

In order to supplement the above remarks related to the application of the institution of conditional release from serving the rest of the imprisonment sentence, it is necessary to point to data concerning revocation of application of this institution. Motions for the revocation of

[28] See H. Kuczyńska, *Kształt*..., p. 195.
[29] In the analysed scope, statistical data for the period 2015-2020 were made available by the Department of Strategy and European Funds of the Ministry of Justice.
[30] See H. Kuczyńska, *Kształt*..., pp. 206-207.
[31] In the analysed scope, statistical data for the period 2015-2020 were made available by the Department of Strategy and European Funds of the Ministry of Justice.
[32] See H. Kuczyńska, *Kształt*..., pp. 206, 208.

conditional release from serving the rest of the imprisonment sentence may be submitted by the prosecutor and the probation officer. In 2015, the courts issued 5,896 decisions on revoking conditional release from serving the rest of the imprisonment sentence, in 2016 4,900 such decisions, in 2017 4,225 such decisions, in 2018 – 3,254, in 2019 – 2,949, and in 2020 only 2,124[33].

- *Can you identify or is there any discussion on potential or actual bias on the part of sentencing authorities in adjudicating cases for vulnerable persons or minority groups which affects their access to non-custodial sanctions?*

We are not aware of any potential or actual bias on the part of the judiciary towards vulnerable persons or minority groups that could be relevant to their access to non-custodial means of criminal reaction. Our observation of the practice of the Polish justice system indicates that no such prejudice exists.

- *Do probation officers or relevant agencies provide pre-sentencing reports (or the equivalent) to the judiciary? Do these reports actively promote non-custodial sanctions for vulnerable groups and/or minorities?*

At the stage of pre-trial proceedings (conducted by non-judicial bodies, mainly the Police and the Public Prosecutor's Office) and court proceedings, the bodies conducting them may or must obtain community interviews prepared by a probation officer (Art. 214 of the Polish Code of Criminal Procedure). The said interview includes data on the characteristics and personal conditions of the accused person and his/her way of life to date. The use of such evidence in the course of criminal proceedings may be relevant to the type of penalty imposed on the offender. However, in these documents, the probation officer does not recommend any type of penalty to be applied to the offender, leaving this matter to the discretion of the court.

2 – Supervision of the implementation of non-custodial sanctions/measures

- *What type of body or bodies are in charge of monitoring the implementation and what is their organisational structure? E.g. probation agencies. If possible, please provide information on when the agency was established and the average caseloads.*

[33] In the analysed scope, statistical data for the period 2015-2020 were made available by the Department of Strategy and European Funds of the Ministry of Justice.

The execution of a fine, as has already been mentioned in this study, belongs to judicial authorities, therefore there are no other specialised bodies involved in the supervision of the execution of this penalty. The situation is different in the case of the penalty of restriction of liberty. In this respect, it should be pointed out that the activities connected with organising and controlling the execution of the penalty of restriction of liberty and the obligations imposed on the convict serving that penalty are performed by a court professional probation officer (Art. 55 § 2 PEPC).

The professional probation officer performs his/her duties within one probation team functioning at the district court. In 2015, there were 3,113 curatorial posts provided for within the adult probation service[34]. At present, the workload standard of a professional probation officer is up to 120 cases in total, including up to 50 cases other than supervision[35], thus consisting, inter alia, in organising and controlling the execution of a restriction of liberty penalty.

- Please provide disaggregated data, or information as available, on the representation among the staff (including leadership) of the probation or relevant agency in terms of gender, ethnicity, nationality, and representation of vulnerable or minority groups.

There is no information available on the numerical share among professional probation officers, including management, of persons according to their gender, nationality, or the share of persons belonging to vulnerable or minority groups.

- Is there an individualised approach, with a rehabilitative purpose, providing activities aimed at addressing needs or root causes of offending and at promoting reintegration, or is it mere control/monitoring?

The activities of the court in connection with the execution of the fine are aimed solely at controlling the execution of the fine, which does not take into account an individualised approach aimed at the rehabilitation of the offender or taking into account his/her needs or the reasons for his/her criminality.

[34] See A. Brudnoch, B. Grabowska-Moroz, *Status zawodowych kuratorów sądowych w polskim wymiarze sprawiedliwości*, Helsińska Fundacja Praw Człowieka. Analizy i rekomendacje 2016, No. 3, p. 11.
[35] See annex to the Regulation of the Minister of Justice of 9 June 2003 (Journal of Laws No. 116, item 1100). It seems that the indicated number of 120 cases refers to the current workload of a professional probation officer and not to the workload per time unit of a month or a year.

The situation is slightly different in the case of executing a penalty of restriction of liberty. In this respect, in Art. 53 § 1 PEPC, the legislator has indicated that the purpose of carrying out this penalty is to arouse in the convicted person the will to shape his/her socially desired attitudes, in particular the sense of responsibility and the need to respect the order of law. Therefore, the indication by a professional probation officer of the type, place and date of commencement of the execution of the penalty of restriction of liberty takes place after hearing the convicted person[36]. In the remaining scope, the activities of the probation officer connected with the supervision of the execution of the penalty of restriction of liberty are of a typically controlling nature. Therefore, if necessary, the probation officer controls the way in which the convicted person executes the penalty of restriction of liberty by visiting the place of work, as well as checks the correctness of the fulfilment of the obligations imposed on the convicted person, analyses the information and documents sent monthly by persons appointed to organise the work of the convicted persons and to control its course, in particular concerning the number of hours worked by the convicted person and his/her behaviour while working. The probation officer summons the convict, also by telephone, to make explanations concerning the course of serving the penalty of restriction of liberty, and in the case of improper performance of work by the convict he/she conducts disciplinary talks with him/her and gives him/her appropriate instructions[37].

- Is the community (NGOs, volunteers, private companies…) involved in the implementation of non-custodial sanctions? Please provide details.

While the local community is not involved in the execution of a fine, a different situation occurs in the case of the execution of a penalty of restriction of liberty. In this respect, it should be pointed out that the involvement of the local community in the execution of this penalty is connected with the determination of the places of its execution. A professional probation officer when indicating to a convicted offender the place of execution of a penalty of restriction of liberty may direct him to execute it in an institution or organisation representing the local community and in educational and upbringing establishments, youth education centres, youth sociotherapy centres, medical entities, organisational units of social assistance, foundations, associations and other institutions or organisations of public utility providing charitable assistance (Art. 56 § 3 PEPC).

[36] See § 25(4) of the Regulation of the Minister of Justice of 13 June 2016 on the manner and mode of performance of activities by court curators in criminal executive cases (Journal of Laws, item 969).
[37] See § 27 of the above Regulation of the Minister of Justice of 13 June 2016.

In this respect, the obligations of the mentioned establishments designated as the place where the convicted person performs the penalty of restriction of liberty have been specified in detail in a separate legal act[38]. The entity designated as the place of performing work is obliged to receive the convict sentenced by the probation officer to perform work, instruct him/her on the obligation of conscientious work and the necessity of observing the order and discipline established at the place of work. When assigning work, the age of the convicted person, his/her state of health and, as far as possible, his/her qualifications shall be taken into account.

In the scope of participation of the local community in execution of the penalty of restriction of liberty, one should also point to the operation, in selected towns in Poland, of restorative justice centres, operating on the basis of agreements concluded, on the one hand, with common courts, and, on the other hand, with local organisations participating in accepting convicted persons for execution of the penalty of restriction of liberty. In this case, the referral of the convicted person to the institution where he/she is to serve the penalty of restriction of liberty takes place on the basis of a voluntary diagnostic interview. The aim is to identify the appropriate type and place of work and to offer appropriate support to prevent the convicted person from reoffending and to achieve the objectives of the penalty imposed[39]. An example of good practice in this area is the Wrocław Integration Centre, which has been operating since 2009 and includes the task "Wrocław Centre for Restorative Justice"[40].

Every year, within the framework of community works ordered by the courts, the persons in charge work over 60,000 hours doing cleaning, maintenance, repair, small repair and construction works. The work of these persons brings measurable benefits not only to the wards of the cooperating institutions, but also to the entire local community, which corresponds to the assumptions of the philosophy of problem-solving courts[41].

[38] See Regulation of the Minister of Justice of 1 June 2010 on the entities where the penalty of restriction of liberty and socially useful work is exercised (Journal of Laws No. 98, item 634).

[39] See K. Łapińska, M. Mańczuk, *Działania centrum sprawiedliwości naprawczej na etapie postępowania wykonawczego*, [in:] *Współpraca organizacji społecznej z wymiarem sprawiedliwości*, eds. C. Kulesza, D. Kużelewski, B. Pilitowski, Białystok 2015, p. 154.

[40] Similar centres operated in Białystok and Toruń. See more information in this regard at https://courtwatch.pl/projekty/projekty-zrealizowane/centra-sprawiedliwosci-naprawczej/.

[41] See P. Gensikowski, *Analiza możliwości implementacji wybranych procedur stosowanych w Midtown Community Court oraz Red Hook Community Justice Center w Nowym Jorku w warunkach polskiego prawa karnego*, [in:] *Współpraca organizacji społecznej z wymiarem sprawiedliwości*, eds. C. Kulesza, D. Kużelewski, B. Pilitowski, Białystok 2015, pp. 45 et seq.

- Is there application of technology to the implementation or supervision (e.g., electronic monitoring, probation "check-in" kiosks)?

Entities involved in the organisation and monitoring of the execution of fine and penalty of restriction of liberty by convicted persons do not use technological measures such as electronic monitoring.

3 - Effectiveness of non-custodial sanctions in achieving the purposes of punishment and reducing the use of imprisonment

- Are there any data available to assess the effectiveness of non-custodial sentences/measures (in the reintegration of the offender, in avoiding recidivism)? Is there any type of sanction/measure, or good practice in its implementation, that can be highlighted as particularly successful?

The literature points to various yardsticks for evaluating the effectiveness of the penalty imposed and then executed, e.g. recidivism, change in the convict's behaviour with regard to his or her family, the pursuit of employment or education, freedom from addictions, ability to organise leisure time[42]. However, we should support the view that, among the above-mentioned measures, the most important one, because it is the most precise and verifiable, is the one based on the convicted person's recidivism[43]. The data established on the basis of this measure will be presented below. Here it is only worth stressing that the available research shows that non-custodial penalties are much more effective than custodial penalties.

- Are there any adaptations or specific measures taken with the implementation of non-custodial sanctions to vulnerable persons or minority groups? Are there any sanctions or measures that have proven particularly effective in reducing offending among certain categories of more vulnerable persons or minority groups?

There are no specific measures taken in connection with the execution of non-custodial penalties imposed on vulnerable persons or minority groups. There are no data to show that

[42] See, e.g., T. Szymanowski, *Recydywa w Polsce. Zagadnienia prawa karnego, kryminologii i polityki karnej*, Warsaw 2010, p. 240.
[43] See T. Szymanowski, *Recydywa…*, p. 240.

particular means of criminal reaction are particularly effective against vulnerable persons or minority groups.

- Are there any data comparing the reoffending rate (for the same or different categories of offences) in the case of imprisonment vs. the case of non-custodial sentences?

A study conducted in 2004, and supplemented in 2008, on a group of 3,044 convicts to determine the extent of their recidivism, found that within 3 years of release from prison recidivism was 58.2% overall[44]. On the basis of the same study, it was found that there are varying degrees of recidivism depending on the type of crime committed. For homicide and the offence of grievous bodily harm, recidivism was lowest. On the other hand, the highest recidivism after imprisonment, within 3 years after release from prison, is recorded for offenders who were convicted of a crime against property or for financial gain, where the recidivism exceeded 60%[45].

In comparison with the above data concerning imprisonment, it should be pointed out that in the case of this punishment, the recidivism rate found is much higher than in the case of non-custodial means of criminal reaction[46]. Studies conducted in 2008 on conditional suspension of the execution of the imprisonment sentence show that recidivism was 33%, if the convicted person was placed under probation supervision during the probation period and 22%, if the convicted person was not placed under probation supervision during the probation period[47].

At a lower level than in the case of imprisonment, the recidivism rate is also in the case of a penalty of restriction of liberty. The research published in 1996 showed that during the five-year period 23.3% of the respondents committed crimes again[48]. A similar recidivism rate in the case of a penalty of restriction of liberty also results from research conducted in 2010. The said research indicated that during the catamnesis period of 5 years after the execution of the restriction of liberty, 25.15% of the respondents re-offended[49].

At a lower level than in the case of imprisonment, the recidivism rate is also in the case of a fine. In this respect, the research conducted in 2008 shows that within 5 years after the

[44] See T. Szymanowski, *Recydywa…*, p. 242.
[45] See T. Szymanowski, *Recydywa…*, pp. 258-259.
[46] See T. Szymanowski, *Recydywa…*, p. 282.
[47] See T. Szymanowski, *Recydywa…*, pp. 281-282.
[48] See K. Maksymowicz, *Powrotność do przestępstwa po wykonaniu kary ograniczenia wolności*, Wroclaw 1996 (quoted after L. Tyszkiewicz, *Skuteczność środków penalnych w nowszych polskich badaniach*, Przegląd Więziennictwa Polskiego 2015, No. 85, p. 35).
[49] See A. Ornowska, *Kara ograniczenia wolności*, Warsaw 2013, pp. 88-89.

execution of this penalty the recidivism rate was 28%[50]. In the case of this penalty, the highest rates of recidivism were observed in offences against property (36%) and driving under the influence of alcohol (almost 30%)[51].

The above data allow us to conclude that the effectiveness of non-custodial means of criminal reaction (fine, penalty of restriction of liberty, conditional suspension of the execution of the imprisonment sentence) measured by the recidivism rate is higher than the effectiveness of imprisonment. In Poland, the low effectiveness of imprisonment is commonly perceived.

- Is there data available to assess whether the application of alternative sentences results in a real decrease in the use of imprisonment (rather than causing a net-widening phenomenon)?

It follows from the above comments that after the introduction of the 2015 amendments, non-custodial means of criminal reaction, comprising a fine, restriction of liberty and conditional suspension of the execution of the imprisonment sentence, constitute an important element in the penal policy of the courts in Poland. Nevertheless the imposition of non-custodial means of criminal reaction by Polish courts does not always result in an actual reduction of the deprivation of liberty of the convicted persons. When assessing whether the imposition of non-custodial means of criminal reaction does indeed ultimately result in the deprivation of liberty of the convicted persons, account should be taken of the number of substitutive custodial penalties imposed in exchange for non-custodial penalties.

In this regard, it should be pointed out that the research carried out shows that between 2003 and 2012, the number of penalties of substitutive imprisonment for an unexecuted fine remains at a similar level. In 2003, the courts issued 19,730 decisions ordering the execution of a substitutive imprisonment penalty for a fine[52]. Juxtaposing these data with the number of adjudicated self-contained fines in 2003, which amounted to 93,274[53], it should be assumed that for approximately 21% of the imposed fines, substitutive imprisonment penalty was ordered. In 2006, the courts issued 18,893 decisions ordering the execution of a substitutive imprisonment penalty for a fine[54]. Juxtaposing these data with the number of self-contained fines pronounced in 2006, which amounted to 88,407, it should be stated that in the case of

[50] See T. Szymanowski, *Recydywa…*, pp. 281-282.
[51] See T. Szymanowski, *Recydywa…*, p. 289.
[52] See T. Szymanowski, *Skazania na bezwzględne kary pozbawienia wolności jako następstwo nieefektywnej polityki karnej*, Państwo i Prawo 2014, No. 4, p. 88.
[53] *Prawomocnie skazani dorośli z oskarżenia publicznego według rodzaju orzeczonej kary, w tym skazani recydywiści w latach 1999-2018 – czyn główny*, Wydział Statystycznej Informacji Zarządczej, Departament Strategii i Funduszy Europejskich Ministerstwa Sprawiedliwości (accessed: www.isws.ms.gov.pl).
[54] See J. Jakubowska-Hara, *Kara…*, p. 90.

21.4% of pronounced fines, substitutive imprisonment penalty was ordered[55]. Analysis of decisions issued in 2007 leads to similar conclusions. According to available data, in 2007 courts issued 17,604 decisions ordering execution of substitutive imprisonment penalty for a fine[56]. It should be recalled that in 2007, 82,988 persons were sentenced to a self-contained fine[57]. This means that the rate of failure to enforce fines was thus again around 21%. Analysis of the decisions issued in 2012 leads to similar conclusions. The available data shows that in 2012, the courts issued 18,258 decisions in which they ordered the execution of a substitutive imprisonment penalty for an unexecuted fine[58]. Juxtaposing this data with the number of persons sentenced in 2012 to a self-contained fine (91,296[59]), it should be assumed that the failure rate in imposing fines was 19.99%.

The research conducted in the area of execution of the penalty of restriction of liberty shows that in the years 2003-2012 there was a very high increase in imposing substitutive imprisonment penalties[60]. In 2003, courts issued 1,842 decisions in which they ordered the execution of a substitutive imprisonment penalty for a restriction of liberty[61], which, taking into account the total number of adjudicated restriction of liberty amounting to 52,763[62], accounted for 3.4% of adjudicated penalties of that kind. In 2012, courts issued 13,650 decisions in which they ordered the execution of a substitutive imprisonment penalty for a penalty of restriction of liberty[63]. In the same year 2012 the courts imposed in total 50,730 restriction of liberty[64]. Comparing these data it should be pointed out that the failure rate in executing a restriction of liberty amounted to 26.9%, so it was many times higher than in 2003.

The research conducted in the scope of conditional suspension of the execution of the imprisonment sentence shows that in the years from 2003 to 2012 there was a very high increase in the number of implement the execution of the imprisonment. In 2003, the courts issued 21,727 decisions on ordering the execution of the imprisonment, while in 2012, the courts already issued 54,498 such decisions, which means that the increase of decisions in this respect amounted to 150%[65].

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[55] See J. Jakubowska-Hara, *Kara…*, p. 90.
[56] See T. Szymanowski, *Recydywa…*, p. 276.
[57] *Prawomocnie…*
[58] See T. Szymanowski, *Skazania…*, p. 88.
[59] *Prawomocnie…*
[60] See T. Szymanowski, *Skazania…*, pp. 87-88; A. Nawój-Śleszyński, *Skazani odbywający zastępczą karę pozbawienia wolności i ukarani w populacji więziennej (z problematyki redukcji populacji więziennej)*, Przegląd Więziennictwa Polskiego 2013, No. 78, pp. 53 et seq.
[61] See T. Szymanowski, *Skazania…*, p. 88.
[62] *Prawomocnie…*
[63] See T. Szymanowski, *Skazania…*, p. 88.
[64] *Prawomocnie…*
[65] See T. Szymanowski, *Skazania…*, pp. 87-88.

The above data allow us to conclude that in a certain number of cases substitutive custodial penalties are imposed in place of non-custodial penalties. Nevertheless, non-custodial penalties result in a real reduction in deprivation of liberty because, even despite substitutive penalties, they significantly reduce prison isolation. When all non-custodial means of criminal reaction are considered together (fine, penalty of restriction of liberty and conditional suspension of the execution of the imprisonment sentence) and substitutive custodial penalties are deducted, these non-custodial means of criminal reaction still represent a serious alternative to imprisonment.

- *In your opinion, what are the main barriers to a wider use of alternatives to imprisonment, or the main failures in their implementation?*

Among the main factors limiting the greater share of non-custodial penalties in the structure of convictions, one should mention the lack of proper awareness of judges, on the one hand, as to the advantages of non-custodial means of criminal reaction and, on the other hand, as to the disadvantages of imprisonment, in particular as regards the rate of recidivism. Furthermore, among the reasons for failures in the area of execution of the penalty of restriction of liberty by convicts, one should point to insufficient participation, at this stage, of centres of restorative justice, operating on the basis of agreements concluded, on the one hand, with common courts and, on the other hand, with local organisations participating in the reception of convicts for the purpose of execution of the penalty of restriction of liberty by them.

III.
IMPACT OF THE COVID-19 PANDEMIC ON THE IMPOSITION AND IMPLEMENTATION OF NON-CUSTODIAL SANCTIONS AND MEASURES

1. Non-custodial sentences or measures aimed at reducing the prison population as a means of preventing the spread of the virus within prison facilities

- *What sanctions or measures (including pardons, postponement of the execution of the sentence, replacement of imprisonment by a non-custodial alternative, early release, etc.) were designed to allow for the release of people from prison during the pandemic? Have new non-custodial sanctions/measures been created for this purpose?*

In connection with the COVID-19 pandemic, the Polish legislator did not introduce any new non-custodial means of criminal reaction. In connection with the COVID-19 pandemic, the Polish legislator also did not introduce any new measures aimed at releasing convicts serving custodial penalties from prison, limiting itself to introducing changes in the scope of existing measures. In this respect, it should first be pointed out that a new basis for granting a break in the execution of a imprisonment has been introduced. Pursuant to Art. 14c § 1 of the Act of 31 March 2020 on amending the Act on special solutions connected with preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts[66], in the period of an epidemic emergency or a state of epidemics declared due to COVID-19, the penitentiary court may grant the convicted person a break in the execution of imprisonment. The possibility introduced by the legislator does not refer to convicted persons for an intentional offence punishable by imprisonment for a term exceeding 3 years, convicted persons for an unintentional offence punishable by imprisonment for a term exceeding 3 years, or convicted persons sentenced under conditions of recidivism or making a regular source of income from committing offences. Secondly, in connection with the COVID-19 pandemic, the legislator extended the possibility of serving imprisonment outside prison by changing the formulation of the formal premise of the said institution. Pursuant to Art. 43la § 1 point 1 PEPC in the wording as amended by the aforementioned Act of 31 March 2020, the penitentiary court may grant a convict permission to serve the imprisonment under the electronic supervision system, inter alia, when the convict has been sentenced to a term of imprisonment not exceeding 1 year and 6 months. Prior to the amendment, this option was available to those sentenced to up to 1 year imprisonment.

- *Were there specific measures applicable to vulnerable groups and/or minorities (e.g. were there certain categories of people specifically targeted as part of these efforts, or categories explicitly excluded)? If so, which groups?*

The above-described changes aimed at releasing convicts from prison in connection with pandemic COVID-19 applied generally to all persons. Thus, no specific measures applying only to vulnerable groups and/or minorities were introduced in connection with pandemic COVID-19.

[66] Journal of Laws, item 568.

- How effective have the alternatives been in achieving a reduction in recidivism? (Did the released persons commit new crimes? What was the reaction of the community to the measures?)

There is no official or unofficial data available on whether, during the period of the COVID-19 pandemic, convicts who benefited from a break in their sentence, or convicts serving a imprisonment under the electronic supervision system, committed new crimes after leaving prison. Thus, there is no data to assess whether the measures introduced by the legislator have been effective in reducing recidivism.

- If conditions of a non-custodial sanction (for instance, community service, or completion of a substance use programme) were impacted by the COVID-19 pandemic, what happened to the sanction? Was the time extended for the sentence to be completed, or was it shortened?

The COVID-19 pandemic undoubtedly made it more difficult to carry out non-custodial means of criminal reaction. For example, as a result of the pandemic, the workplace where the convicted person was to serve his or her penalty of restriction of liberty could be closed. In such a case, the place of serving that penalty was changed to another workplace, and in an extreme situation, the court could suspend executive proceedings. The possibility of occurrence of the abovementioned situations was taken into account by the legislator by introducing statutory solutions suspending the running of the statute of limitations for execution of the penalty[67].

2. Impact of the pandemic on non-custodial sanctions/measures

- What was the impact of the restrictive measures aimed at the prevention of the spread of the virus (lockdowns, social distancing rules, teleworking and other restrictions) on the use and implementation of non-custodial sentences/measures?

The measures taken to contain the spread of the virus did not affect the imposition of non-custodial penalties. In fact, there were no cases of courts refraining from imposing a fine or a penalty of restriction of liberty on the grounds that they could not be enforced.

[67] By the Act of 20 April 2021 (Journal of Laws, item 1023), a regulation was introduced to the Act of 2 March 2020 on specific arrangements to prevent, counter and combat COVID-19, other communicable diseases and emergencies caused by them (Journal of Laws, item 1842), according to which, during the duration of an epidemic emergency or a state of epidemics, declared due to COVID-19, and in the period of 6 months after their revocation, the statute of limitations for the execution of punishment in cases of crimes and fiscal offences does not run (Art. 15zzr § 1), and the period referred to in § 1 is counted from 14 March 2020 – in the case of an epidemic emergency, and from 20 March 2020 – in the case of an epidemic state (Art. 15zzr § 2).

On the other hand, the measures taken to limit the spread of the virus had an impact on the implementation of non-custodial penalties. In the case of a fine, these measures had the effect of suspending executive proceedings, or spreading the fine into instalments, or remitting the fine. Remission of a fine could take place in a situation when a convicted person, for reasons beyond his or her control (e.g. due to losing his or her job as a result of the COVID-19 pandemic), did not pay the fine, and its enforcement by other means proved to be impossible or inexpedient.

In the case of the penalty of restriction of liberty, the above-mentioned measures resulted in the suspension of the executive proceedings due to the impossibility of the convicted person to serve the penalty in a specific place of work indicated by the probation officer. For example, such a situation could occur when, due to the COVID-19 pandemic, the workplace where the convict was to serve the penalty of restriction of liberty was closed.

In addition, in some courts, despite the absence of a formal suspension of executive proceedings, there was no supervision of the execution of the penalty of restriction of liberty or supervision accompanying the conditional suspension of the execution of the imprisonment sentence by probation officers. Such situations occurred at the beginning of the COVID-19 pandemic period as a result of court presidents issuing orders to restrict the performance of official tasks by probation officers in view of the threat of the spread of the COVID-19 virus. The subject of these orders was, inter alia, the suspension of the execution of cases in executive proceedings, in the area of controlling the penalty of restriction of liberty or controlling the execution of supervision accompanying the conditional suspension of the execution of the imprisonment sentence[68]. Later on, these orders were amended or repealed, as a result of which probation officers regained the possibility to supervise the execution of a penalty of restriction of liberty or the supervision accompanying a conditional suspension of the execution of the imprisonment sentence.

- Have there been obstacles to the imposition or implementation of sanctions/measures which involve physical presence in certain places (such as community service) or face--to-face contact with probation services? Were adaptations or suspensions put into place?

As a result of the COVID-19 pandemic, impediments to the execution of the penalty of restriction of liberty in the form of performing unpaid, controlled work for social purposes have

[68] See, e.g., orders of the president of the court: https://bip.suwalki.sr.gov.pl/sr_suwalki/i/A-022-13)20.pdf; https://skierniewice.sr.gov.pl/download/11-2020-ograniczenie-pracy-kuratorow-1584447967.pdf; http://www.przysucha.sr.gov.pl/m/koronawirusem-sars-cov-2-ograniczenia-wykonywania-zadan-sluzbowych przez-kuratorow,new,mg,1.html,269; https://tychy.sr.gov.pl/wazne-koronawirus,new,mg,1.html,444.

been reported. The COVID-19 pandemic resulted, inter alia, in the possibility for employers to direct their employees to perform work outside the workplace, in remote form, e.g. at home via computer. The performance of labour duties in a remote form in some workplaces prevented convicted persons from serving their penalty of restriction of liberty in them. In such a situation, the probation officer changed the convict's place of serving the penalty. In extreme cases, if the probation officer was not in a position to indicate to the convicted person a different place of serving the penalty of restriction of liberty, in the described situation, the executive proceedings with regard to the said penalty was suspended.

- Was there a more significant impact on particularly vulnerable groups and/or minorities (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, ethnic minorities, Roma, Indigenous peoples, LGBTIQ+ or other)?

There is no data to suggest that the COVID-19 pandemic had a greater impact on the implementation of non-custodial penalties against vulnerable groups and/or minorities.

- Were support programmes suspended, adapted or impacted due to the COVID-19 for people serving non-custodial sanctions (e.g. substance use, behavioural change or other support programmes)? Please comment on the impact.

The COVID-19 pandemic also undoubtedly had an impact on the implementation of support programmes, such as therapy or corrective-educational interventions, imposed with a penalty of restriction of liberty or the conditional suspension of the execution of the imprisonment sentence. As a result of the pandemic, there were temporary closures of facilities where these programmes were carried out.

- What was the impact on probation staff? (impact of lockdown, teleworking and social distancing rules on their work and their well-being; stress factors, exposure to risk of infection, reconciliation with personal life) Did they have an increased workload due to an increased number of people on probation? Were they considered frontline workers? Did they have access to personal protective equipment, tests, vaccination? Was there also an impact on the availability of volunteers and civil society (e.g. for providing community work)?

The COVID-19 pandemic undoubtedly had an impact on the work of probation officers organising and supervising the execution of the penalty of restriction of liberty. As mentioned

earlier at the beginning of the COVID-19 pandemic, court presidents issued orders restricting the performance of probation officers. At a later stage these persons were instructed to carry out their work remotely, limiting their presence at the court premises to selected days only. There is no data indicating that, due to the COVID-19 pandemic, the scope of their work responsibilities has increased. In the era of the COVID-19 pandemic, the activities of probation officers outside the court building were limited due to the desire to minimize the risk of their potential contact with a person infected with the virus. At the court premises, probation officers were allowed to use personal protective equipment, e.g. masks, disinfectants.

- *What solutions were found to mitigate the negative impacts of the pandemic on the implementation of non-custodial sanctions?*

In the legislation and practice of the Polish justice system, no specific solutions were introduced to limit the negative impact of the COVID-19 pandemic on the execution of non-custodial penalties. In this respect, efforts were made to apply the already existing legal solutions accordingly.

3. Impact of the pandemic on the future of non-custodial sanctions

- *Is it foreseeable that some of the solutions created in the context of the pandemic will become permanent? Please give examples.*

It is to be anticipated that the extension the possibility of serving imprisonment outside prison under electronic supervision system, introduced in connection with the COVID-19 pandemic, will also be maintained after the pandemic has ended. It should be recalled in this case that the legislator extended the possibility of serving imprisonment outside prison by changing the formulation of the formal premise of the said institution. Pursuant to Art. 43la § 1 point 1 PEPC in the wording as amended by the aforementioned Act of 31 March 2020, the penitentiary court may grant a convict permission to serve the imprisonment under the electronic supervision system, when the convict has been sentenced to a term of imprisonment not exceeding 1 year and 6 months. Prior to the amendment, this option was available to those sentenced to up to 1 year imprisonment.

By contrast, the future of statutory provisions suspending the statute of limitations for non-custodial penalties should be assessed differently. It should be recalled that by the Act of 20 April 2021, a regulation was introduced to the Act of 2 March 2020 on specific arrangements to prevent, counter and combat COVID-19, other communicable diseases and emergencies

caused by them, according to which, during the duration of an epidemic emergency or a state of epidemics, declared due to COVID-19, and in the period of 6 months after their revocation, the statute of limitations for the execution of punishment in cases of crimes and fiscal offences does not run (Art. 15zzr § 1), and the period referred to in § 1 is counted from 14 March 2020 – in the case of an epidemic emergency, and from 20 March 2020 – in the case of an epidemic state (Art. 15zzr § 2). However, the end of the pandemic will result in the non-application of these regulations.

- *What lessons for the future can be learned from the experience of the pandemic?*

Since, in the practice of the Polish justice system, no specific solutions have been introduced to limit the negative impact of the COVID-19 pandemic on the execution of non-custodial penalties, it is also impossible to indicate what experiences related to this pandemic may be relevant for the execution of these penalties in the future.

IV.
PROSPECTS FOR THE FUTURE OF ALTERNATIVES TO IMPRISONMENT

1 – Are there innovative initiatives in your country regarding alternatives to deprivation of liberty, ongoing or in preparation?

- *Please indicate existing pilot projects or legislative reforms in progress, particularly those that target or have an impact on vulnerable groups or minorities.*

Currently, public authorities in Poland are neither implementing nor preparing innovative initiatives relating to alternatives to imprisonment. In particular, there are no legislative works aimed at extending the possibility of applying non-custodial means of criminal

reaction. Rather, there is a tendency to tighten criminal liability, which is not conducive to strengthening the importance of alternatives to imprisonment.

2 – In your opinion, what are the prospects for the development of sanctions or measures in a way that promotes an effective reduction in the use of imprisonment?

- *In your view, what is working best and worst in the current sanctions system?*

The biggest problem in Poland is that despite the existence of numerous legal instruments that allow for the extensive use of non-custodial means of criminal reaction, we are still dealing with a very high prison population rate per 100,000 inhabitants[69]. Statistical studies show that despite the increasing use of non-custodial penalties by courts, imprisonment is still the primary means of responding to a crime[70]. This makes it clear that there is a discrepancy between the statutory rules of punishment and the practice of criminal justice. It seems that one of the reasons for this is the insufficient appreciation by judges advantages of a non-custodial means of criminal reaction and their insufficient awareness of disadvantages of imprisonment.

In recent years, the increasing penal populism has posed a serious threat to the correct shape of the system of means of criminal reaction in Poland. It consists in the fact that politicians influencing law-making try to gain popularity and support in the society by taking steps to tighten the criminal law in response to media reports about outrageous crimes. They claim that in this way they ensure the safety of society and prevent crime. This results in hasty and ill-considered as well as fragmentary changes in the area of penal sanctions, disrupting the coherence of the system of means of criminal reaction. These changes, always aimed at tightening the criminal law, by their very nature promote imprisonment and reject non-custodial means of criminal reaction. There is a lingering belief among the less educated part of society that perpetrators of crimes should be imprisoned, and that politicians are willing to use this to raise political capital.

- *What changes could contribute to its improvement? Are alternatives to imprisonment conceivable for the most serious crimes?*

First, we must strive to ensure that the practice of criminal justice is in line with statutory punishment rules, which would translate into a wider use of non-custodial means of criminal

[69] The latest data in this regard is contained in the report by M.F. Aebi, M.M. Tiago, Council of Europe Annual Penal Statistics – SPACE I 2020.

[70] See, e.g., M. Melezini, *Realizacja zasady traktowania kary pozbawienia wolności jako ultima ratio na płaszczyźnie stosowania prawa karnego*, Ius Novum 2019, No. 2, pp. 51 et seq.

reaction and a reduction in the number of people detained in prisons. Emphasis should be placed on educating judges on alternatives to imprisonment, in particular making them aware of the advantages of non-custodial means of criminal reaction and the disadvantages of imprisonment.

One should also strive to counteract the phenomenon of penal populism. It is not an easy task, but educating the public about the advantages of non-custodial means of criminal reaction and the disadvantages of imprisonment will make members of society less vulnerable to penal populism used by politicians. People should be aware that the tightening of criminal law and the widespread use of imprisonment is not the optimal way to prevent and fight crime.

In Poland, non-custodial penalties are seen as a means of responding to minor and medium crimes, and in these offenses, non-custodial penalties should play an important role. By contrast, such penalties are not usually seen as optimal for serious crimes. Imprisonment is seen as the primary means of responding to such crimes. However, it cannot be ruled out that in certain situations, when the perpetrator commits a serious crime, a non-custodial penalty will be the appropriate penalty, especially if it is combined with an additional judgment of penal measures. However, it will certainly not apply to the most serious crimes, such as homicide.

- *What could be the role of new technologies in the future of alternatives to imprisonment?*

The role of new technologies extremely is important in creating conditions for the wider use of non-custodial means of criminal reaction and the consequent reduction of the prison population. In the Polish context, the best proof of this is the introduction of the possibility of serving a sentence of imprisonment through the electronic supervision system, which has already been mentioned. Thanks to technical measures allowing for the control of the convict (e.g. transmitters worn on the leg or hand of the convicted person, which indicate their current place of stay), it has become possible for a convicted person to serve a sentence of imprisonment not in a prison, but under essentially free conditions. Of course, there are accusations that this is a paradox, but thanks to this, unlike in prison the convict's social ties are not broken, and he/she can still, for example, carry out professional work or lead a relatively normal family life. In this way, the risks associated with penitentiary isolation, which may even lead the convicted person to return to criminal activity, are avoided.

Currently, electronic supervision system is also used in relation to penal measures. A ban on approaching specific people may be controlled in the electronic supervision system (Art. 41a § 1 and 2 PPC), and a ban on entry to a mass event may be combined with the obligation of the convict to stay in a designated place during certain mass events, which may be controlled in the electronic supervision system (Art. 41b § 3 PPC). Moreover, Polish criminal law knows

a protective measure in the form of electronic control of the place of stay (Art. 93a § 1 point 1 PPC).

On the de lege ferenda level, other possibilities of using electronic supervision system are also noticed, including the use of this system as a part of penalty of restriction of liberty and probation measures[71]. If these postulates were implemented by the legislator, then electronic supervision system would become an extremely important instrument of penal policy in Poland, supporting the wider use of non-custodial means of criminal reaction and reducing penitentiary isolation.

[71] See, e.g., I. Zgoliński, *Dozór elektroniczny jako instrument polityki karnej. Wybrane uwagi na kanwie nowelizacji Kodeksu karnego i Kodeksu karnego wykonawczego*, Studia Prawnicze KUL 2015, No. 4, pp. 94-95.