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Polish penal policy – Twenty Years after Enactment of the Criminal Code Act of 6 June 1997**1

1. INTRODUCTION

The focus of this study concentrates on a review of statistical picture of the Polish penal policy existing under the regime of the 1997 Criminal Code twenty years from its implementation. For purposes of this paper, the review encompasses statistical data for the period 1999–2018 concerning the number of confirmed offences and the number of adults validly sentenced (for the main offence). The figures have been taken from registers of police and court statistics. In addition, for purposes of the analysis, the Author refers to and assesses the most important amendments of the Criminal Code which, in Author's opinion, have had a considerable impact both on the structure and dynamics of crime in Poland and on the structure of sentences imposed by courts in the concerned period. The Author draws attention to revealed discrepancies between the postulated (at the moment of enacting the new criminal code) model of the penal policy and the actual implementation of the assumptions. In particular, the discrepancies result in the disturbed structure of all penalties adjudicated in Poland, which has become predominated by suspended sentences, usually imposed without supervision of the offender and without any probation obligations imposed upon the offender.

2. PREFATORY REMARKS

On 6 June 2017, 20 years passed from enactment of the Polish Criminal Code being now in force. The purpose of the 1997 Act was to reform penal policy² in

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¹ Statistical data used herein have been derived from the statistical statement titled “Prawomocne skazani dorośli z oskarżenia publicznego według rodzajów przestępstw i wymiaru kary – czyn główny w latach 2008–2018” published on Informator Statystyczny Wymiaru Sprawiedliwości at: <https://www.isws.ms.gov.pl/baza-statystyczna/opracowania-wieloletnie/download,2853,40.html> [accessed on: 6 February 2020]; statistical data concerning the previous period (from 1999) have been prepared and made available by the Ministry of Justice at the author's request.

² In accordance with *Encyklopedia PWN*, penal policy is defined as a science subsidiary to criminal law, focused on analysis of actions taken by the state, local communities and society with the purpose of

order to mitigate several negative phenomena which became commonplace under the regime of the 1969 Criminal Code. At that time, criminal (including penal) policy was based on polarization of penal liability, in accordance with which concept severe penalties were imposed for serious crimes of significant social harm and, on the other hand, another kind of, mainly non-custodial, penalties and measures were offered for minor offences³. This assumption, however, was only partially reflected in courts' practice because, as it turned out, repressive penal policy was applied also to those who committed minor (or medium) offences, which was possible due to a number of solutions adopted according to the 1969 Criminal Code, including but not limited to those applicable to liability for acts of hooliganism or imposing more severe penalties in case of acts committed⁴. It is emphasized in literature that penal policy governed by the 1969 Criminal Code was characterized by a significant level of punitiveness, which was manifested, among others, in striving for long prison sentences, excessive use of cumulative fines, and a very high incarceration rate⁵. On the other hand, Mirosława Melezini indicates that, '[t]he justice system became oriented towards high repressiveness as a consequence of a trend to impose harsh penalties, promoted top-down', which was expressed among others in directives passed by selected institutions of justice (e.g. the Ministry of Justice)⁶.

Even though that repressive nature of criminal policy had been gradually mitigated since 1989⁷, the need for a comprehensive reform of criminal law and criminal policy implemented on its basis became more and more apparent. There were no

preventing and combating crime', see the entry 'Polityka kryminalna', *Encyklopedia PWN* [on-line; accessed on: 6 February 2020], available at: <https://encyklopedia.pwn.pl/haslo/polityka-kryminalna;3927913.html>; in scientific terms, criminal policy is a discipline defining appropriate methods of combating crime, which involves a wide range of aspects being in the field of its interest (punishing, classifying features of a prohibited act the commitment of which leads to criminal liability, detection and elimination of criminal factors); see: S. Pławski, *Prawo penitencjarne*, Warszawa 1968, p. 23, literature divides the policy into criminal policy, penal policy, and penitentiary policy, with a clear indication that the terms are not synonymous; Andrzej Marek pointed that criminal policy means 'rall activities taken by the country and the society with the purpose to prevent and combat crime', while penal policy, including combating crime through sentencing penalties and criminal law measures, is a segment of criminal policy; see: A. Marek, *Prawo karne*, Warszawa 2009, p. 37; from the criminological point of view, criminal policy is a dynamic process composed of several elements and for this reason debates on criminal policy cannot be reduced to one specific simplified formula – Heike Jung, *Criminal Justice – A European Perspective*, "Criminal Law Review" 1993/04, pp. 238–239, quoted after: A. Rutherford, *Transforming Criminal Policy: Spheres of Influence in the USA, The Netherlands and England and Wales During the 1980s*, Winchester 1996, p. 12.

³ M. Melezini, *System kar i innych środków reakcji prawnokarnej w Kodeksie karnym z 1969 r.* [in:] *Kary i inne środki reakcji prawnokarnej. System Prawa Karnego*, Vol. 6, M. Melezini (ed.), 2nd ed., Warszawa 2016, p. 43.

⁴ M. Melezini, *System...* [in:] *Kary...*, p. 43.

⁵ M. Melezini, *Punitiveność wymiaru sprawiedliwości karnej w Polsce w XX wieku*, Białystok 2003, p. 555.

⁶ M. Melezini, *Punitiveność...*, p. 556.

⁷ M. Melezini, *Punitiveność...*, p. 560; at this point it should be noted that Krzysztof Krajewski made an interesting observation: in his opinion, in said period, the punitiveness of penal policy was not reduced as a consequence of normative changes but as a consequence of changes in the method of adjudication as such and application of penalties by judges, which was possible among others due to independent and sovereign judiciary and enforced autonomy of prosecutors. For more, see: K. Krajewski, *Nowa kodyfikacja karna a polityka karna w Polsce w latach 1990–2005*, „Czasopismo Prawa Karnego i Nauk Penalnych” 2008/1, p. 8 and the literature referred to therein.

doubts that a normative system based on a modern axiology had to be enacted. This belief was formulated even in the justification for the governmental draft of a new criminal code, which underlined that criminal law should be an instrument for protecting main values of the democratic system in a country based on rule of law and that it could not be a political tool used by those who held power at a given time⁸.

Following the principle *ultima ratio* of criminal law, the 1997 Criminal Code introduced a diversified system of responses to offenders, offering penalties, penal measures, probation measures, and security (preventive) measures. The catalogue of penalties under Article 32 opens with the sanction perceived to be the least onerous (fine) and closes with life imprisonment. The latter, as the heaviest penalty, was given the role as ‘securing the society against the most dangerous criminals’ in place of the death penalty, which was abandoned because ‘the sanction cannot be reconciled with the principle of human dignity and contemporary system of values’ and ‘is not able to effectively deter from committing crimes’⁹. The Code also adopted the principle of *ultima ratio* of imprisonment without conditional suspension of its execution (Article 58 (1) of the Criminal Code in its original wording) and the principle of *ultima ratio* of short-term imprisonment (Article 59 of the Criminal Code in its original wording), the argument being among others that ‘freedom is one the most precious goods of a human being ... [and] its value must be estimated as exceptionally high in a democratic country based on the rule of law’¹⁰. The role of the main response to minor offences was assigned to fines; it was indicated that, following the solutions existing in numerous normative systems of other countries, fines should become the basic form of response to minor to medium offenders¹¹. At the same time, the day-fine system was introduced (in place of the previous quota system), based on the argument that this solution had been tried and tested in legal systems of other European countries¹². As M. Melezini rightly noted, certainly ‘not without significance was the negative assessment of the traditional model of adjudicating fines and of the attempts at eliminating the defects of previous regulations’¹³.

For assessing the criminal policy in the light of the existing Criminal Code, amendments to this legal instrument having been made throughout the period of nearly twenty years are also important. This issue sparks vigorous debates among theoreticians and practitioners of criminal law. It is underlined in literature that

⁸ I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy karne z 1997 r. z uzasadnieniami*, Warszawa 1998, p. 116.

⁹ I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy...*, p. 137.

¹⁰ I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy...*, pp. 141–142.

¹¹ I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy...*, p. 137; fines are used as the main form of response to offenders in numerous European countries; European Sourcebook of Crime and Criminal Justice Statistics show that fines are very often applied in such countries as Denmark (in 2010 – 83.9%), Finland (in 2010 – 87.9%), Germany (in 2010 – 70%), Portugal (in 2010 – 67.5%), and in the United Kingdom (in 2010: England and Wales – 65.3%, Northern Ireland – 63%); for more see: M.F. Aebi and others, *European Sourcebook of Crime and Criminal Justice Statistics 2014*, 5th ed., Helsinki 2014, p. 196 [online; accessed on: 6 February 2020], available at: http://www.heuni.fi/material/attachments/heuni/reports/qrMWoCVTF/HEUNI_report_80_European_Sourcebook.pdf.

¹² I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy...*, p. 137.

¹³ M. Melezini [in:] *System...*, p. 117.

many from among several dozen amendments were made ‘at random’ and their introduction affected the consistency of existing regulations. Amendments were often made without any thorough criminal policy justification for their implementation. Some of them had to be later ruled on by the Constitutional Tribunal¹⁴. This relatively disturbing legislative activity is well summarized by Andrzej Sakowicz, who stated in one of his works published in 2011 that: ‘If we treat the Sejm (Parliament) as a production plant and apply certain economic criteria to it, we can undoubtedly say that we have a perfect situation. In the meantime, such comparison is not possible. The Sejm is not a plant and the law is not a thing or an object, even though it is often used instrumentally to solve different problems of the state, whenever there are any legal measures available or whenever it is necessary to improve the functioning of law enforcement authorities or judicial authorities’¹⁵.

3. CONFIRMED CRIMINALITY IN POLAND IN 1999–2018 (BASED ON POLICE STATISTICAL DATA)

A statistical presentation of the penal policy implemented according to the 1997 Criminal Code should be preceded by a brief analysis of status and structure of criminality in Poland, since these figures are important from the point of view of the number of adults convicted by final judgments, the structure of penalties adjudicated in Poland, and the prison population.

The statistical data presented in the table 1 seem to suggest several conclusions. First of all, as rightly noted by Andrzej Siemaszko, ‘the last decade of the 20th century and four first years of the new millennium were characterized by systematic growth in the crime rate. The magic number of 1 million of confirmed crimes was reached in 1998. The overall figure continued to rapidly grow in the following years and the new record: 1.4 million was reached in 2002’¹⁶. The trend of decrease in the number of confirmed offences began in 2005¹⁷ and, save for minor fluctuations (e.g. in 2009), continued until 2016. In 2017 and 2018, the number of confirmed crimes grew slightly. It should be noted, however, that legislative activity in the field of implementing depenalization and neo-criminological solutions has become a significant factor having an impact on the number of confirmed crimes recorded by the police.

¹⁴ See e.g.: A. Sakowicz, *Kilka uwag na temat nowelizacji Kodeksu karnego przez Sejm VI kadencji*, paper presented during the conference titled ‘Polityczność przestępstwa. Prawo karne jako instrument marketingu politycznego’ held in Warszawa on 12 May 2011, pp. 33 et seq. [online; accessed on: 6 February 2020], available at: [http://orka.sejm.gov.pl/WydBAS.nsf/0/242E3A65AD5B256FC12578E-100424BFF/\\$file/politycznosc_przestepstwa.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/242E3A65AD5B256FC12578E-100424BFF/$file/politycznosc_przestepstwa.pdf); M. Filar, *Rola mediów w kreowaniu zagrożeń i sprzyjaniu populizmowi* [in:] Z. Sienkiewicz, R. Kokot (eds.), *Populizm penalny i jego przejawy w Polsce*, Wrocław 2009, pp. 53 et seq.; K. Buczkowski, *Stan przestępczości w Polsce od roku 1918 do współczesności* [in:] K. Buczkowski, B. Czarnecka-Działuk, W. Klaus, A. Kossowska, I. Rzeplińska, P. Wiktorska, D. Woźniakowska-Fajst, D. Wójcik, *Spoleczno-polityczne konteksty współczesnej przestępczości w Polsce*, Warszawa 2013, pp. 58, 64–65.

¹⁵ A. Sakowicz, *Kilka uwag...*, p. 33.

¹⁶ A. Siemaszko, *Podsumowanie. Przestępczość i polityka kryminalna w III Rzeczypospolitej: osiemnaście burzliwych lat* [in:] *Atlas przestępczości w Polsce 4*, A. Siemaszko, B. Gruszczyńska, M. Marczewski, Warszawa 2009, p. 313.

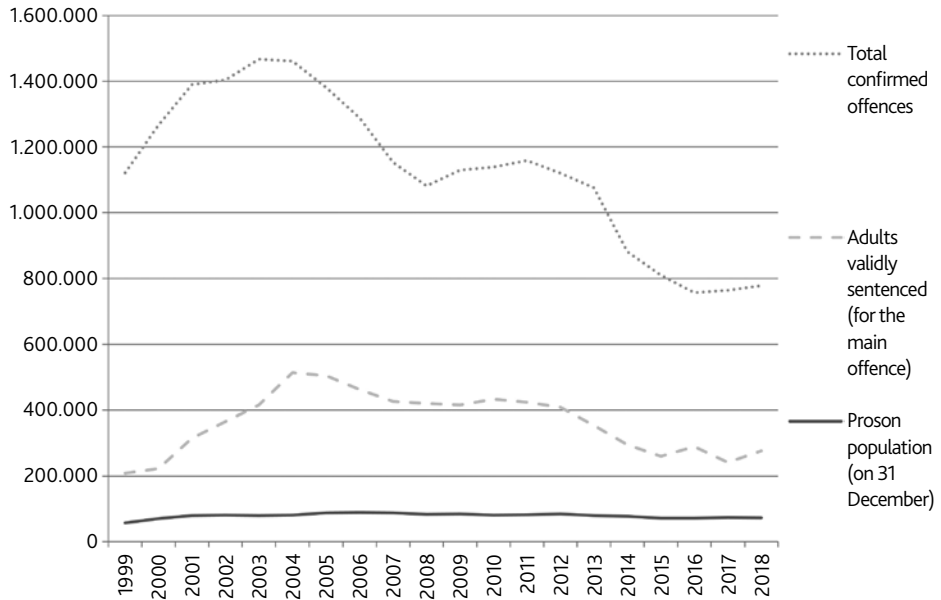
¹⁷ A. Siemaszko, *Podsumowanie. Przestępczość...*, p. 313.

Year	Total confirmed offences ¹⁹	Adults validly sentenced (for the main offence)	Prison population (on 31 December)
1999	1,121,545	207,607	56,765
2000	1,266,910	222,815	70,544
2001	1,390,089	315,013	79,634
2002	1,404,229	365,326	80,467
2003	1,466,643	415,933	79,281
2004	1,461,217	513,410	80,368
2005	1,379,962	504,281	87,776
2006	1,287,918	462,937	88,647
2007	1,152,993	426,377	87,776
2008	1,082,057	420,729	83,152
2009	1,129,577	415,272	84,003
2010	1,138,523	432,891	80,728
2011	1,159,554	423,464	81,382
2012	1,119,803	408,107	84,156
2013	1,075,358	353,208	78,994
2014	881,400	295,353	77,371
2015	809,929	260,034	70,836
2016	757,374	289,512	71,528
2017	764,530	241,436	73,822
2018	778,127	275,768	72,204

Source: own study.

¹⁸ Data presented in the table have been derived from the following sources: offences ascertained in 1999–2012: the Police statistical report titled „Przestępstwa ogółem według jednostek podziału administracyjnego kraju – przestępstwa stwierdzone, przestępstwa wykryte, % wykrycia” available at: <http://statystyka.policja.pl/download/20/184797/przestepstwa-ogolem.pdf>; offences ascertained in 2013–2018: Rocznik Statystyczny Rzeczypospolitej Polskiej 2015, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/10/1/publ_oz_rocznik_statystyczny_rp.pdf; Rocznik Statystyczny Rzeczypospolitej Polskiej 2016, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/16/1/rocznik_statystyczny_rzeczypospolitej_polskiej_2016.pdf; Rocznik Statystyczny Rzeczypospolitej Polskiej 2017, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/17/1/rocznik_statystyczny_rzeczypospolitej_polskiej_2017.pdf; Rocznik Statystyczny Rzeczypospolitej Polskiej 2018, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/18/1/rocznik_statystyczny_rzeczypospolitej_polskiej_2018_.pdf; number of adults validly sentenced (for the main offence) – statistical data presented in footnote 1; status of prison population: in 2001–2018 – Annual statistics published by the Prison Service, reports for individual years are available at: <http://www.sw.gov.pl/strona/statystyka-roczna> (2001–2018); in 1999–2000: statistical data published in Mały Rocznik Statystyczny 2000 and in Mały Rocznik Statystyczny 2001; yearbooks available at: http://stat.gov.pl/cps/rde/xbcr/gus/maly_rocznik_statystyczny_2000.zip and http://stat.gov.pl/cps/rde/xbcr/gus/maly_rocznik_statystyczny_2001.zip.

¹⁹ Given the changes in registration of data, it is worth noting that, from 1999 to 2012 the figures concerning proceedings were not broken down by proceedings instituted for BSW KGP (Internal Affairs Bureau of the Police Headquarters) and those instituted for CBS KGP (Central Bureau of Investigation of the Police Headquarters) – the numbers were allocated to garrisons in which individual organizational units operated. On the other hand, in 2013–2016 crimes confirmed in

Chart 1Confirmed offences, adults validly sentenced, and prison population in 1999–2018²⁰

Source: own study.

Therefore, to assess the growth in the number of confirmed crimes in 2001–2005, by no means can we disregard the fact that the growth must have been materially linked to amendments to the Criminal Code which were made in 2000²¹; since the amendments introduced a new type of prohibited act into Article 178a of the Criminal Code, i.e. operating a vehicle while under the influence of alcohol or other intoxicants²². It is worth noting that already in the first year in which the amendment was in force (2001), the number of confirmed offences rose statistically significantly

preparatory proceedings conducted by BSW KGP and CBŚP (previously: CBŚ KGP) used to be assigned to relevant units of the administrative division of Poland at the voivodship level – see more on the Police website [online; accessed on: 6 February 2020], available at: <http://statystyka.policja.pl/st/przestepstwa-ogolem/121940,Przestepstwa-ogolem.html>. It should be also emphasized that, as a consequence of changes in gathering data (the previous system TEMIDA was replaced by the new system KSIP), only information concerning crimes confirmed in proceedings conducted by the Police has been published since 2013 (therefore, figures published by the Police do not contain data concerning crimes confirmed in proceedings conducted by prosecutor's office). Given the foregoing, data concerning crimes confirmed since 2013 are based on information presented in different editions of *Rocznik Statystyczny Rzeczypospolitej Polskiej* as available on the website of Główny Urząd Statystyczny – Statistics Poland, which takes into consideration crimes confirmed both by the Police and by prosecutors. Publication references are detailed in footnote 16. As regards the method of registering data, it is worth mentioning that rules for registering acts committed by minors were modified in 2013, for more see: B. Gruszczyńska, *Rozdział I. Przestępstwa stwierdzone* [in:] *Atlas przestępczości w Polsce 5*, A. Siemaszko, B. Gruszczyńska, M. Marczewski, Warszawa 2015, p. 10.

²⁰ Own study based on statistical data described in footnotes 18 and 19.

²¹ See: Act of 14 April 2000 Amending the Criminal Code Act (Journal of Laws No. 48, item 548).

²² J. Błachut, *Wpływ wprowadzenia art. 178a k.k. na obraz zjawiska przestępczości i prawnokarnej reakcji na nią* [in:] *Nauki penalne wobec problemów współczesnej przestępczości. Księga jubileuszowa z okazji 70. rocznicy urodzin Profesora Andrzeja Gaberle*, K. Krajewski (ed.), Warszawa 2007, p. 390.

(by 9.8%), with the number of confirmed offences defined in Article 178a of the Criminal Code reaching 120,162, which figure represented 8.6% of the overall number of offences confirmed in the concerned year. It should be noted that the share of the prohibited acts defined in Article 178a of the Code in the overall number of (confirmed) offences kept systematically growing also in the following years (by 10.3% in 2002; 10.9% in 2004; 12.9% in 2005)²³. Janina Błachut is right to find that if we eliminate the act defined in Article 178a of the Code from the overall number of confirmed offences, the rate of offences confirmed in Poland since 2000 remained relatively constant or even dropped (by 8%) since 2005 (as compared to 2004)²⁴.

Similarly, the reasons for change in the number of confirmed offences included the amendment to the Act of 29 April 1997 on Counteracting Drug Addiction²⁵ made in 2000²⁶, and as well as the legislative decision to introduce a new legal act in order to regulate the matter (Act of 29 July 2005 on Counteracting Drug Addiction, Journal of Laws of 2005, No. 179, item 1485, as amended)²⁷. According to Konrad Buczkowski, the changes statistically significantly increased the number of confirmed offence of breaking the regulations laid down in the Act (from 7,915 in 1997 to 35,169 in 2003). K. Buczkowski underlines that a comparison of the numbers of crimes under the Act on Counteracting Drug Addiction confirmed in 2003 and in 2010 leads to interesting observations: it turns out that 74,535 acts were recorded in 2010, which reflects an increase by over 100% on the 2003 figure²⁸.

It is also worth noting that normative solutions that may increase the number of confirmed offences do not need to apply to the features of a prohibited act or introduce a new type of offence, which usually is identified with widening the scope of criminalization. Decisions which modify the mode of prosecuting a prohibited act or which develop a range of entities authorized to submit the motion for prosecution (in case of offences that can be prosecuted in this manner) are also important. The latter took place e.g. in 2007 when the legislator, using the solutions enacted in the Act of 7 September 2007 on Assistance to the Persons Entitled to Alimony²⁹ widened the group of entities authorized to submit a motion for prosecuting the act defined in Article 209 of the Criminal Code. As Paweł Ostaszewski points out, the growth in the number of offences under Article 209 of the Criminal Code in 2009 (from 11,133 in 2008 to 18,718 in 2009, i.e. by 68%) could have been a consequence of said amendment³⁰. It is also worth mentioning

²³ J. Błachut, *Wpływ wprowadzenia...*, pp. 390, 394.

²⁴ J. Błachut, *Wpływ wprowadzenia...*, p. 391.

²⁵ Act of 29 April 1997 on Counteracting Drug Addiction (Journal of Laws of 2005, No. 75, item 468, as amended).

²⁶ Act of 26 October 2000 Amending the Act on Counteracting Drug Addiction (Journal of Laws of 2000, No. 103, item 1097).

²⁷ K. Buczkowski, *Stan przestępczości...*, p. 64.

²⁸ K. Buczkowski, *Stan przestępczości...*, p. 64.

²⁹ Act of 7 September 2007 on Assistance to the Persons Entitled to Alimony (Journal of Laws of 2007, No. 192, item 1378, as amended).

³⁰ P. Ostaszewski, *The statistical picture of the offence of evading the alimony or maintenance obligation (Article 209 of the Criminal Code)*, a paper prepared by the Institute of Justice on Ombudsman's request of 7 March 2019 for providing information concerning preliminary analysis of efficiency of changes implemented to the regulations in 2018 [online; accessed on: 6 February 2020], available at: <https://www.rpo.gov.pl/pl/content/kary-za-nieplacenie-alimentow-dane-statystyczne>.

that the change ‘left a mark’ on the overall number of confirmed offences which, as stated above, grew in 2009.

Another important decision which had an impact on the number of confirmed offences in the said period concerned enactment on 27 September 2013 of the Act Amending the Act on Criminal Procedure Code and Certain Other Acts³¹, whereby the second paragraph of Article 178a of the Criminal Code was repealed and the offence defined thereunder was reclassified as a petty offence (through including paragraph 1a in Article 87 of the Code of Petty Offences in order to impose a penalty for operating a vehicle other than a motor vehicle while under the influence of alcohol or other intoxicants on a public road, in an accommodation area or in a traffic area)³². Based on the solutions offered in the Act of 27 September 2013, the method of setting the value of a stolen or misappropriated property was also changed so that it became possible to determine whether an act could be deemed a crime or a petty offence; as a consequence, a large part of acts previously classified as crimes were reclassified as petty offences³³.

What undoubtedly draws attention in the statistical picture of confirmed offences is the growth of the commented figure recorded in 2017–2018, as mentioned. However, also in this case we should note the normative changes that could have led to the increase. One of them is extremely important: it relates to enactment on 23 March 2017 of the Act Amending the Criminal Code Act and the Act on Assistance to the Persons Entitled to Alimony³⁴. This legal act to a large extent modified the wording of Article 209 of the Criminal Code (the offence of evading alimony or maintenance obligations). Indeed, literature emphasizes that the change was radical or even revolutionary, in particular given the significant redefinition of attributes of the offences characterized in Article 209 of the Code³⁵. Adrian Duda and Dorota Sokołowska point out that, ‘upon enactment of the commented amendments, Article 209 of the Code was stratified and the criminalization of failure to pay alimony or maintenance was shifted into the “outskirts” (“foreground”) of threat to legal interest.’³⁶ It seems that one should speak of the range of criminalization being broadened³⁷, which was caused among others by introducing a new objective criterion

³¹ The Act of 27 September 2013 Amending the Act on Criminal Procedure Code and Certain Other Acts (Journal of Laws of 2013, item 1247).

³² B. Gruszczyńska, *Rozdział I...*, p. 11.

³³ B. Gruszczyńska, *Rozdział I...*, p. 11; see also: Article 2 (4) – (7) of the Act of 27 September 2013 Amending the Act on Criminal Procedure Code and Certain Other Acts (Journal of Laws of 2013, item 1247).

³⁴ The Act of 23 March 2017 Amending the Criminal Code Act and the Act on Assistance to the Persons Entitled to Alimony (Journal of Laws of 2017, item 952).

³⁵ J. Jodłowski, *Komentarz do art. 209 k.k.* [in:] *Kodeks karny. Część szczegółowa. Tom II. Część I. Komentarz do art. 117–211 a*, W. Wróbel, A. Zoll (eds.), Warszawa 2017 [online; accessed on: 6 February 2020], available at: sip.lex.pl.

³⁶ A. Duda, D. Sokołowska, *Nowe granice kryminalizacji przestępstwa niealimentacji oraz mechanizmy redukcji karania według znowelizowanego brzmienia art. 209 k.k.*, „Czasopismo Prawa Karnego i Nauk Penalnych” 2017/4, p. 28.

³⁷ Such conclusion seems justified even though literature points out that re-writing attributes of the offence under Article 209 of the Criminal Code made certain types of behaviour excluded from the scope of criminalization, see: M. Borodziuk, *Zakres kryminalizacji przestępstwa niealimentacji pod nowelizacji z 2017 r.*, „Prokuratura i Prawo” 2018/4, pp. 34–35; A. Duda, D. Sokołowska, *Nowe granice...*, pp. 30–31.

being the amount of outstanding payments in place of the ‘persistent non-payment’ criterion, by modifying the nature of the offence (basic type: formal offence), and by adding a new aggravated offence (Article 209 (2) of the Criminal Code)³⁸.

The commented amendment became effective on 31 May 2017. Importantly, the number of confirmed offences defined in Article 209 of the Criminal Code increased in 2018 (as compared to 2017) by 317% and reached 70,412 (for comparison: 16,885 in 2017 and 9,398 in 2016)³⁹. As we can see, the commented amendment might have had an impact on the increased overall number of offences confirmed in 2017–2018.

It is worth noting that, in addition to legislator’s activity in the field of introducing solutions aimed at increasing or reducing the scope of penalization, there also other factors which influence the number of confirmed offences. The reduced crime rate recorded in 2005 (and in following years) should be considered in light of three variables: demographic transformation, emigration, and greater efficiency of police operations⁴⁰. As regards the first factor, the age is a significant category. A. Siemaszko underlines that, ‘from the beginning of the 21st century, as persons born in years with low childbirth rates were coming of age, we observed a decline in the group of special criminal risk; that group includes people aged 16–24 (...) who are responsible for as many as 1/4 of all offences’⁴¹. The other variable, i.e. emigration, is also partially linked to age; since it appears that many people who chose to leave Poland were those who, given their age, would be classified as the special risk group⁴². The last factor, i.e. improved efficiency of police operations, is in a way (at least partially) a consequence of the two previous variables. Since, as it can be easily seen, the reduced population from the criminal risk group generates less criminal events and therefore reduces the number of cases to be handled by enforcement authorities (the police), the police can work with greater reliability and care⁴³. Obviously, the drop of the crime rate as such cannot be deemed an element which automatically improves police operations. It is clear that each year brings new forms of criminal behaviours, whose detection is often difficult and time-consuming.

Moreover, the structure of confirmed offences has changed over the recent years. In the first place, the number of offences against property dropped noticeably: in 2000 they represented nearly 3/4 of all offences committed in Poland, while in 2018 they represented less than half of all confirmed offences. What draws a particular attention is the growing number of offences committed under the Act on Counteracting Drug Addiction and in the number of offences against family and custody – although we should remember that the aforementioned legislative changes had an impact on these figures. A special role in changing the structure of offences in 2018 was played by normative solutions relating to Article 209 of the Criminal Code, discussed above.

³⁸ M. Borodziuk, *Zakres kryminalizacji...*, pp. 40–45.

³⁹ Statistical data concerning the number of confirmed offences under Article 209 of the Criminal Code, provided by the Police Headquarters upon request of the Institute of Justice (as a part of the report described in footnote 30).

⁴⁰ A. Siemaszko, *Podsumowanie. Przestępczość...* [in:] *Atlas przestępczości w Polsce 4...*, p. 319.

⁴¹ A. Siemaszko, *Podsumowanie. Przestępczość...*, p. 319.

⁴² A. Siemaszko, *Podsumowanie. Przestępczość...*, p. 319.

⁴³ A. Siemaszko, *Podsumowanie. Przestępczość...*, p. 320.

Type of offence	2000		2005		2009		2015		2018	
	cases	%	cases	%	cases	%	cases	%	cases	%
Offences against public safety and safety in transport (without Art. 178a CC)	23,317	1.8%	20,289	1.5%	17,712	1.6%	19,147	2.4%	22,245	2.9%
Operating a (motor) vehicle while under the influence of alcohol or intoxicant – Art. 178a CC	0	0.0%	178,571	12.9%	151,762	13.4%	64,487	8.0%	51,583	6.6%
Offences against life and health	35,424	2.8%	31,736	2.3%	31,708	2.8%	18,593	2.3%	19,357	2.5%
Offences against freedom, freedom of conscience and religion	40,025	3.2%	41,092	3.0%	37,523	3.3%	24,346	3.0%	26,392	3.4%
Offences against sexual freedom and morality	4,469	0.4%	4,798	0.3%	5,851	0.5%	3,824	0.5%	7,239	0.9%
Offences against family and guardianship	53,709	4.2%	34,636	2.5%	39,766	3.5%	28,062	3.5%	86,147	11.1%
Offences against the reliability of documents	70,591	5.6%	71,501	5.2%	48,227	4.3%	45,766	5.7%	53,364	6.9%
Offences against property	925,433	73.0%	81,1971	58.8%	591,261	52.3%	441,117	54.5%	349,765	44.9%
Offences against Counteracting Drug Addiction Law of 29 July 2005	19,649	1.6%	67,560	4.9%	68,288	6.0%	46,819	5.8%	51,185	6.6%
Other offences	9,4293	7.4%	117,808	8.5%	137,479	12.2%	117,768	14.5%	110,850	14.2%
Total	1,266,910	100.0%	1,379,962	100.0%	1,129,577	100.0%	809,929	100.0%	778,127	100.0%

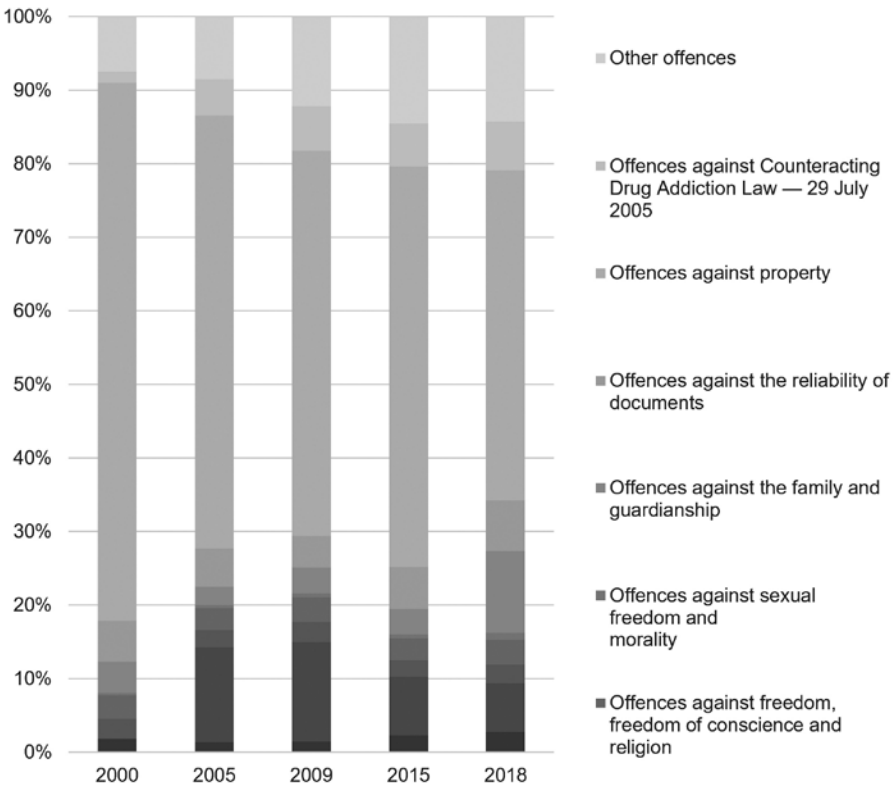
Source: Author's calculations based of Rocznik Statystyczny Rzeczpospolitej Polskiej.

⁴⁴ Author's calculations based on statistical data concerning the number of confirmed offences published in Rocznik Statystyczny Rzeczpospolitej Polskiej 2011, available at: https://stat.gov.pl/cps/rde/xbcr/gus/rs_rocznik_statystyczny_rp_2011.pdf and Rocznik Statystyczny Rzeczpospolitej Polskiej 2018, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/18/1/rocznik_statystyczny_rzeczpospolitej_polskiej_2018_.pdf [accessed on: 6 February 2020].

The prohibited act classified under Article 178a of the Criminal Code (operating a motor vehicle while under the influence of alcohol) has a special place in the structure of all offences committed in Poland, although we have recently observed a downward trend also for this offence (we should bear in mind, however, the aforementioned legislative changes implemented in 2013). An important place in the structure of offences in Poland is occupied by crimes against reliability of documents. It is worth noting that, comparing to the situation in early 1990s, the share of this group in the overall number of offences has significantly grown – from 0.7% in 1990⁴⁵ to 6.9% in 2018.

Chart 2

Structure of (confirmed) offences in Poland in selected years⁴⁶



Source: own study.

4. ADULTS VALIDLY SENTENCED IN POLAND IN 1999–2018 (BASED ON COURT STATISTICAL DATA)

Changes in the structure of offences are important also because they have an impact on the diversification of individual penalties in the structure of all penalties

⁴⁵ Statistical data for 1990 derived from: A. Siemaszko, B. Gruszczyńska, M. Marczewski, *Atlas przestępczości w Polsce 4*, p. 18.

⁴⁶ Own study based on statistical data described in footnote 44.

adjudicated in Poland. As mentioned above, the 1997 Criminal Code was enacted with an intent to considerably increase the share of non-custodial penalties in all penalties, with particular consideration given to fines as the main penalty for perpetrators of minor (and sometimes medium) offences. A review of the structure of penalties adjudicated in Poland draws attention to significant changes noted after 2015. Taking into consideration the period 1999–2015 only, we could venture a statement that the assumption of authors of the 1997 Criminal Code regarding the increased share of fines and other non-custodial penalties (restriction of freedom) in the structure of penalties was not accomplished. Luckily, a review of statistical data concerning adults validly sentenced, in particular for the last three years (2016, 2017, 2018) leads to more optimistic findings.

Table 3
Adults validly sentenced to the penalty of fine (for the main offence) compared to the total number of sentences for offenders in 1999–2018⁴⁷

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Adults validly sentenced (total)	207,607	222,815	315,013	365,326	415,933	513,410	504,281	462,937	426,377	420,729
Adults validly sentenced to fine (incl. sentences conditionally suspended until 1 July 2015)	38,209	33,699	64,475	75,698	93,274	111,491	100,968	88,407	82,988	89,011
%	18.4%	15.10%	20.5%	20.72%	22.4%	21.7%	20.0%	19.1%	19.5%	21.2%

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Adults validly sentenced (total)	415,272	432,891	423,464	408,107	353,208	295,353	260,034	289,512	241,436	275,768
Adults validly sentenced to fine (incl. sentences conditionally suspended until 1 July 2015)	88,236	92,329	93,571	91,296	76,759	63,078	61,461	98,776	84,721	90,491
%	21.2%	21.3%	22.1%	22.4%	21.7%	21.4%	23.6%	34.0%	35.10%	32.80%

Source: own study.

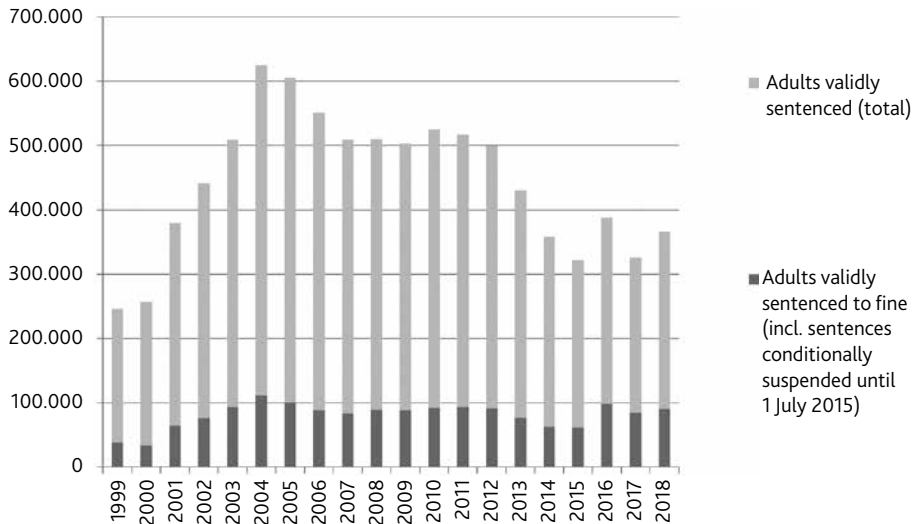
Fines as the sole penalty until 2015 (including that year) represented less than 1/4 of all penalties adjudicated in Poland. A statistically significant growth in the share of fines in the structure of all penalties was not recorded until 2016; the growth was possibly a consequence of repeal of Article 58 (2) of the Criminal Code ('No fine shall be imposed when the income of the offender, his/her situation or

⁴⁷ Based on statistical data described in footnote 1.

potential to earn provide reasonable grounds for the supposition that the offender would not pay the fine and that enforcing the same by execution would not be possible.’). Certainly, the change was not crucial. As Jarosław Majewski rightly notes the probable reasons for the low share of fines in the structure of all penalties adjudicated should be seen first and foremost in ‘habits formed under the regime of the 1969 Criminal Code, including routine application of the penalty of deprivation of freedom with conditional suspension of its execution [for minor or medium offences]; the habits have become so ingrained and have grown so strongly into the way of thinking about the penalty that they have shaped a channel for themselves also under regime of the current code’⁴⁸. Similarly, the relatively liberal definition of prerequisites for conditional suspension of the execution of the penalty of imprisonment (in particular in the context of the broad scope of its application) and the relatively superficial examination, in the course of proceeding, of the financial situation of the offender against whom the fine was considered, might have had an impact on the low share of fines in the structure of all penalties adjudicated⁴⁹.

Chart 3

Adults validly sentenced to the penalty of fine (for the main offence) compared to sentences for all offenders in 1999–2018⁵⁰



Source: own study.

The growing share of fines in the structure of adjudicated penalties since 2016 (2016 – 34%, 2017 – 35.1%, 2018 – 32.8%) gives grounds for a certain optimism. Probably, this is a consequence of the solutions introduced into the Criminal Code

⁴⁸ J. Majewski, *Kodeks karny. Komentarz do zmian 2015*, Warszawa 2015 [online; accessed on: 6 February 2020], available at: sip.lex.pl.

⁴⁹ J. Majewski, *Kodeks karny...*

⁵⁰ Own study based on statistical data described in footnote 1.

by the Act of 20 February 2015⁵¹, such as the solutions referred to in Article 37a and Article 58 (1) of the Criminal Code. With the first solution, it is possible to adjudicate a non-custodial penalty (a fine or restriction of freedom through imposing an obligation to perform work or through making deductions from salaries) in a situation when ‘law provides for the penalty of imprisonment not exceeding 8 years’ for a given prohibited act⁵². The other solution⁵³, being a directive as to the penalty, underlines ‘priority of a fine and restriction of freedom both over the penalty of absolute imprisonment and over a suspended prison sentence’⁵⁴. The stricter conditions for applying the suspended sentences introduced by said amendment are also significant.

A review of adjudicated fines, taking into account the type of act for which the penalty has been imposed, leads to interesting conclusions. It appears that over 50% of all offenders who were given such penalty in 2008–2017 had committed one of two types of offences: against safety in traffic (with the highest number of acts defined in Article 178a of the Criminal Code) and against property. In 2018, these groups of offenders represented nearly half of all offenders sentenced to a fine. Persons sentenced to a fine for the aforementioned offences represented: in 2008 – 65.1%; in 2009 – 67.5%; in 2010 – 66.7%; in 2011 – 69%; in 2012 – 68.5%; in 2013 – 63.3%; in 2014 – 54.7%; in 2015 – 52.6%; in 2016 – 54.6%; in 2017 – 52.3%; and in 2018 – 49.5% of all fined offenders respectively⁵⁵.

As regards fines for offences against safety in traffic, the penalty was and is imposed mainly on offenders who committed the act described in Article 178a of the Criminal Code. In selected years, the convictions represented almost 100% of all fines adjudicated for offences against safety in traffic (in 2008 – 96.7%; in 2009 – 97.1%; in 2010 – 97.2%; in 2011 – 97.7%; in 2012 – 97.9%; in 2013 – 97.4%; in 2014 – 96.4%). A decreasing trend was only noted in 2015, when the offenders sentenced to a fine for operating a motor vehicle while under the influence of alcohol represented 90.9% of all offenders who were given this penalty for offences against safety in traffic. Another drop (to 74.5%) was noted in 2016. In the last two years being examined, the share of fines in the structure of all penalties adjudicated against offenders who committed under Article 178a of the Criminal Code rose again: offenders sentenced to a fine for the act in question represented 76.2% in 2017 and 78.3% in 2018 of all persons sentenced for offences against safety in traffic. At this point, however, it should be remembered that there was a drop in the number of all offences in the whole territory of Poland, including both types of offences that are important in terms of imposing fines, i.e. offences against property and against safety in traffic (including the prohibited act classified under Article 178a of the Criminal Code). Interestingly, significant changes in the

⁵¹ The Act of 20 February 2015 Amending the Criminal Code Act and Certain Other Acts (Journal of Laws of 2015, item 396).

⁵² See: Article 37a of the Criminal Code in the original wording.

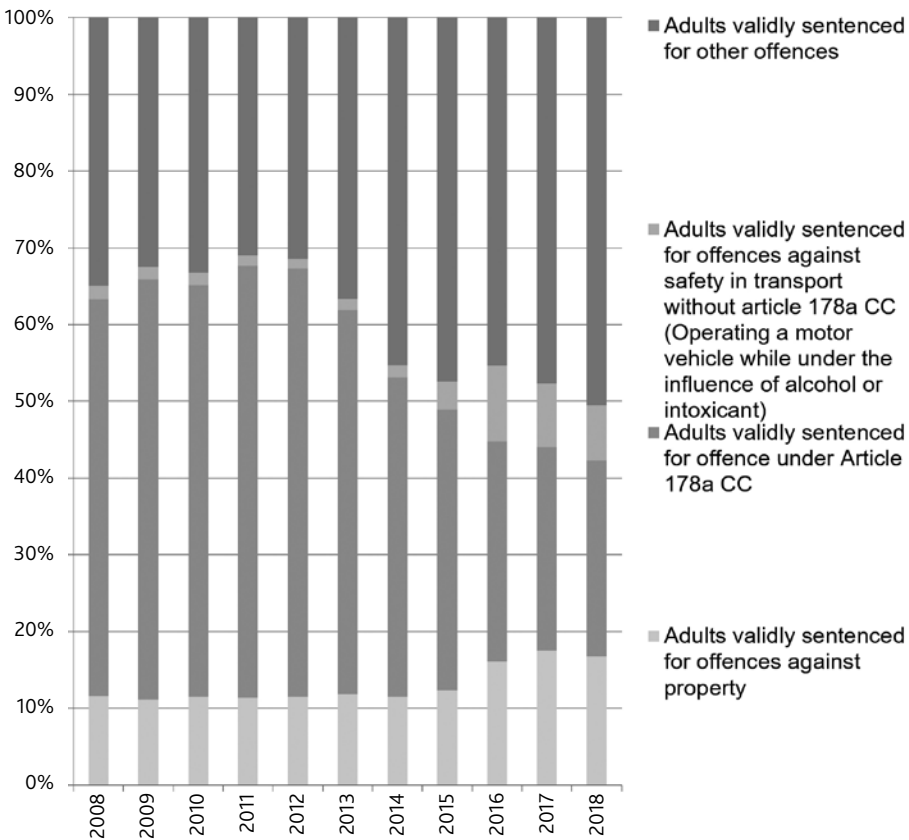
⁵³ Pursuant to Article 58 (1) of the Criminal Code: ‘If a statute provides for various types of penalties for a crime and a crime is subject to the penalty of deprivation of liberty not exceeding 5 years, the court shall impose the penalty of deprivation of liberty only if no other penalty or penal measure can meet the aims of the punishment’.

⁵⁴ M. Melezini, *System...* [in:] *Kary...*, p. 121.

⁵⁵ Author’s calculations based on statistical data described in footnote 1.

structure of offences against safety in traffic have occurred recently; it turns out that although the total number of crimes from this category has dropped, the drop is attributed mainly to the act classified under Article 178a of the Code. As compared to 2010, 2015, 2017, and 2018, confirmed offences under Article 178a of the Code amounted to 142,144, 64,487, 55,273, and 51,583 respectively. In the meantime, the remaining offences against safety in traffic in said years amounted to 15,488, 19,147, 23,526, and 22,245 respectively. We obviously are seeing a ‘shift’ in the structure of offences against safety in traffic, due to which the other types of prohibited acts from the group are becoming more ‘visible’. This may lead to changes to the structure of convictions of perpetrators of offences against safety in traffic.

Chart 4
Convictions to fines in 2008–2018 – according to the type of offences⁵⁶



Source: own study.

In the context of analysing the structure of penalties adjudicated in Poland, particular attention should be paid to assessment of the share taken by the penalty of restriction of freedom.

⁵⁶ Own study based on statistical data described in footnote 1.

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Adults validly sentenced (total)	207,607	222,815	315,013	365,326	415,933	513,410	504,281	462,937	426,377	420,729
Adults validly sentenced to restriction of freedom (incl. convictions conditionally suspended until 1 July 2015)	15,648	14,796	28,507	39,156	52,763	71,887	67,254	57,918	47,091	40,643
%	7.50%	6.60%	9.0%	10.7%	12.7%	14.0%	13.3%	12.5%	11.0%	9.7%

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Adults validly sentenced (total)	415,272	432,891	423,464	408,107	353,208	295,353	260,034	289,512	241,436	275,768
Adults validly sentenced to restriction of freedom (incl. convictions conditionally suspended until 1 July 2015)	43,524	49,692	49,611	50,730	41,287	33,009	31,096	61,720	53,854	78,172
%	10.5%	11.5%	11.7%	12.4%	11.7%	11.2%	12.0%	21.30%	22.30%	28.30%

Source: own study.

The authors of the Criminal Code in force intended to make the penalty of restriction of freedom support the implementation of reasonable penal policy through being a non-custodial alternative to a fine that is applied in certain situations, e.g. in particular when an offender for certain reasons is unable to pay the fine or if it is pointless to impose a financial penalty upon him/her, and at the same time applying a short-term penalty to isolate the offender from the society is unjustified⁵⁸. In the meantime, the share of the penalty of restriction of freedom in all penalties adjudicated in Poland (for the main offence) in 1999–2015 ranged from a few percent (6.6% as the lowest value reported in 2000) to over ten percent (14% as the highest value seen in 2004). Such a low share of the penalty in question in the structure of all penalties adjudicated in Poland has become a subject matter of many analyses and papers⁵⁹. Their authors agree that reason for the low adjudication rate as regards the penalty of restriction of freedom should be seen in

⁵⁷ Based on statistical data described in footnote 1.

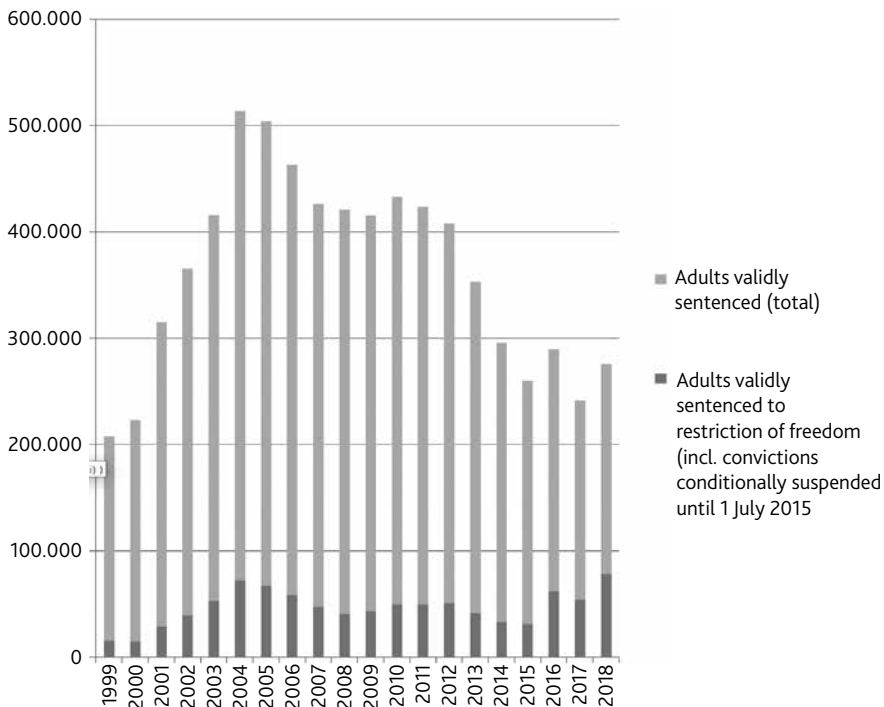
⁵⁸ I. Fredrich-Michalska, B. Stachurska-Marcińczak (eds.), *Nowe kodeksy...*, pp. 139–140.

⁵⁹ See e.g.: T. Szymanowski, *Kuratorzy sądowi i zadania przez nich wykonywane po dokonanej reformie*, „Archiwum Kryminologii” 2003–2004, Vol. XXVII; A. Ornowska, *Kara ograniczenia wolności*, Warszawa 2013.

problems in organizing its execution through providing community service⁶⁰, which formed an obligatory element of each sentence to that penalty until 30 June 2015. It seems however that the significant growth in the share of the penalty of restriction of freedom in the structure of all penalties adjudicated in 2016–2018 (21.3% in 2016; 22.3% in 2017; 28.3% in 2018) was not a consequence of the legislator's decision to change the nature of the obligation to perform supervised unpaid community work from mandatory to optional. It is worth noting that the main form of the penalty of restriction of freedom in 2016, 2017, and 2018 continued to be unpaid community work⁶¹. This shows that most judges, even given the option to abandon this form of penalty (and chose deduction from salary for work instead), rejected this solution.

Chart 5

Adults validly sentenced to the penalty of restriction of freedom (for the main offence) compared to the total number of convicted offenders in 1999–2018⁶²



Source: own study.

⁶⁰ M. Melezini, *Polityka karna sądów powszechnych w okresie obowiązywania nowej kodyfikacji karnej*, [in:] *Pozbawienie wolności – funkcje i koszty. Księga jubileuszowa Profesora Teodora Szymanowskiego*, A. Rzepliński, I. Rzeplińska, M. Nielaczna, P. Wiktorska (eds.), Warszawa 2013, p. 347.

⁶¹ In accordance with statistical data published by the Ministry of Justice described in footnote 1, in 2016 the obligation to perform unpaid work for a specified purpose was imposed on 63 939 convicted persons (for the main offence); in 2017 – on 56 566 convicted persons; and in 2018 – on 80 541 convicted persons. It must be noted however that, on 1 July 2015, the legislator admitted an option to impose obligations jointly (or even sequentially); as a consequence, it is possible e.g. to impose the obligation to perform supervised unpaid work for specified goals on a convicted person within a specified period of time, and then the obligation may be replaced e.g. by deductions from his wage or salary for work.

⁶² Own study based on statistical data described in footnote 1.

It seems that the growing share of the penalty of restriction of freedom in the structure of all penalties adjudicated in Poland was a consequence of the new solutions having been in force since 1 July 2015 ‘encouraging’ judges to apply non-custodial penalties (as described in the paragraph concerning the share of fines imposed as the only penalty in the structure of all penalties adjudicated in Poland). Possibly, a significant factor was the aforementioned stricter conditions for applying suspended sentences, which made judges ‘escape’ to another form of non-custodial solutions in relation to offenders who no longer met the conditions for suspended sentences (among others due to an offence committed during the probation period) and, in the opinion of the judge, did not deserve to be sentenced a penalty that would isolate them from the society.

An analysis of statistical data showing the share of defined-term imprisonment (i.e. from 1 month to 15 years) in the structure of all adjudicated penalties leads to very interesting observations, in particular in context of last three years covered by the analysis. As mentioned earlier, in the 1997 Criminal Code the legislator expressed the principle of *ultima ratio* of imprisonment without conditional suspension (Article 58 (1) of the Criminal Code in the original wording) and the principle of *ultima ratio* of short-term imprisonment (Article 59 of the Criminal Code in the original wording). The adoption of these principles reflected a strong aspiration to remodel the structure of penalties that emerged under the 1969 Criminal Code, which was characterized by, among others, excessive application of the penalty of imprisonment. The share of the penalty of defined-term imprisonment in the structure of all penalties adjudicated in 1999–2018, i.e. under the norms laid down in the new Criminal Code, is illustrated by the statistical data contained in Table 5 and in the following chart.

Table 5 Adults validly sentenced to imprisonment from 1 month to 15 years (for the main offence) compared to the total number of convicted offenders in 1999–2018 ⁶³										
Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Adults validly sentenced (total)	207,607	222,815	315,013	365,326	415,933	513,410	504,281	462,937	426,377	420,729
Adults validly sentenced to imprisonment (from 1 month to 15 years)	153,533	174,184	221,762	250,275	269,643	327,331	334,378	315,074	294,826	289,269
Incl. suspended prison sentences	127,437	143,497	184,819	214,485	233,055	278,338	291,409	272,653	257,141	250,774
Incl. suspended prison sentences (%)	83.0%	82.4%	83.3%	85.7%	86.4%	85.0%	87.1%	86.5%	87.2%	86.7%
Percentage of suspended prison sentences in all convictions	61.4%	64.4%	59.0%	59.0%	56.0%	54.0%	58.0%	59.0%	60.0%	60.0%

⁶³ Author’s calculations based on statistical data described in footnote 1.

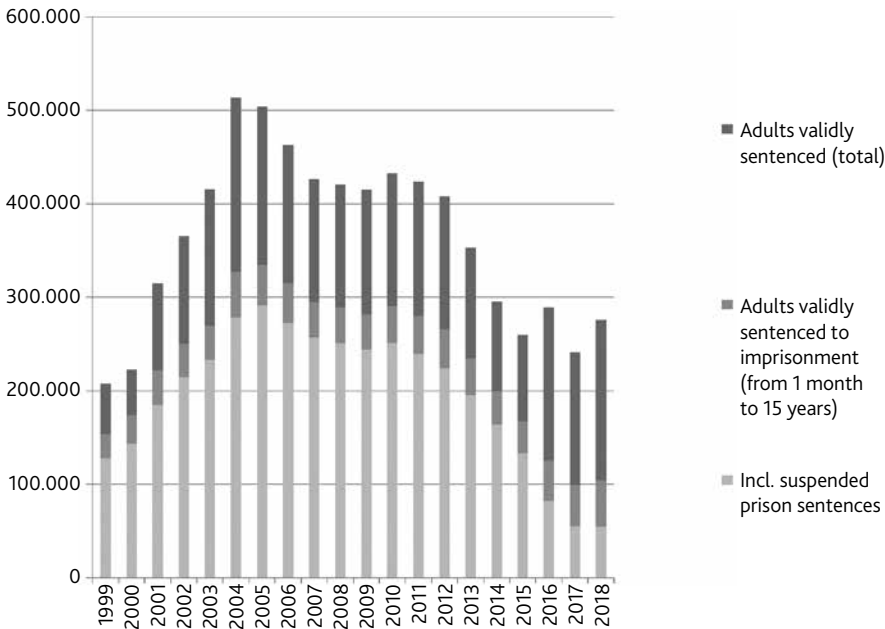
Table 5
Adults validly sentenced to imprisonment from 1 month to 15 years (for the main offence) compared to the total number of convicted offenders in 1999–2018⁶⁴

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Adults validly sentenced (total)	415,272	432,891	423,464	408,107	353,208	295,353	260,034	289,512	241,436	275,768
Adults validly sentenced to imprisonment (from 1 month to 15 years)	281,887	290,669	280,023	265,876	235,032	199,167	167,028	125,368	99,346	103,814
Incl. suspended prison sentences	243,974	251,087	239,076	224,185	195,348	163,534	133,076	81,673	54,819	54,302
Incl. suspended prison sentences (%)	86.6%	86.4%	85.4%	84.3%	83.1%	82.1%	79.7%	65.0%	55.20%	52.30%
Percentage of suspended prison sentences in all convictions	59.0%	58.0%	56.0%	55.0%	55.0%	55.0%	51.0%	28.0%	22.70%	19.70%

Source: own study.

Chart 6

Adults validly sentenced to imprisonment from 1 month to 15 years (for the main offence) compared to the total number of convicted offenders in 1999–2018⁶⁵



Source: own study.

⁶⁴ Author’s calculations based on statistical data described in footnote 1.

⁶⁵ Own study based on statistical data described in footnote 1.

It can be stated, based on an analysis of the statistical data presented in Table 5, that – considering all the penalties adjudicated in Poland (for the main offence) – the predominant form of response to a prohibited act in 1999–2015 was a conditionally suspended prison sentence. In said period, this form of sanction represented over half (or even 60% in some years) of all convictions. Reasons for the situation have already been broadly commented in the literature⁶⁶; therefore, I am not going to discuss them at this point in detail. However, it is worth mentioning that there is the problem with repeated suspended sentences. As per the statistical data published by the Ministry of Justice, a typical practice of the Polish courts until 2015 was giving the same offenders twice or thrice conditionally suspended prison sentences. It was not uncommon for offenders to be sentenced this way eight times and more, the record being over 20 suspended sentences⁶⁷. Moreover, in 1999–2015 the predominant form was a suspended sentence without supervision of the offender and without any probation obligations imposed upon the offender⁶⁸. In addition, the conditional suspension of execution of penalty was, in point of fact, the main sanction applied to offenders in the so-called consensual mode, being ‘a kind of non- substantive-penal-law form of penal-law response, provided only for ... [this kind of] mode’, thus losing the features of a probation measure⁶⁹. Similarly, the high rate of orders to serve an originally suspended penalty, which in some years exceeded even 20%, became a problem⁷⁰. All these elements had an impact on the particular structure of penalties awarded in Poland, in which the penalty of imprisonment with conditional suspension played a leading role for over a dozen years.

In the context of the above conclusions, particular attention should be paid to the significant, or even revolutionary, drop in the percentage share of the

⁶⁶ See: A. Nawój-Śleszyński, *Rola środków penalnych związanych z poddaniem sprawcy próbie w kształtowaniu rozmiarów populacji więziennej*, „Probacja” 2014/2, pp. 19 et seq., and the literature quoted by the Author.

⁶⁷ Statistical data presented in the justification for the Bill Amending the Criminal Code Act and Certain Other Acts Together With Draft Implementing Acts – the Sejm paper No. 2393 [online; accessed on: 7 February 2020]; the bill together with the justification are available at: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/39FD209B7AC6C45AC1257CDE0042D631/%24File/2393%20cz%201.pdf>, p. 3; see also: T. Darkowski, *Warunkowe zawieszenie wykonania kary – próba oceny potencjalnego wpływu nowelizacji na politykę karną* [in:] *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, A. Adamski, M. Berent, M. Leciak (eds.), Warszawa 2016, p. 52.

⁶⁸ See: K. Witkowska-Rozpara, *Warunkowe zawieszenie wykonania kary – uwagi na tle obowiązującej regulacji, praktyki orzeczniczej sądów polskich oraz nowelizacji Kodeksu karnego (z mocą obowiązującą od 1.07.2015 r.)*, „Probacja” 2015/2, pp. 19–21; K. Witkowska-Rozpara, *Idea wolności kontrolowanej skazanego na karę z warunkowym zawieszeniem jej wykonania. Uwagi na tle nowelizacji kodeksu karnego z dnia 20 lutego 2015 r.* [in:] *Warunkowe zawieszenie...*, pp. 133–135, 142–143.

⁶⁹ R. Zawlocki, *Reforma karmy pozbawienia wolności z warunkowym zawieszeniem jej wykonania z perspektywy Komisji Kodyfikacyjnej Prawa Karnego* [in:] *Warunkowe zawieszenie...*, pp. 24–26.

⁷⁰ See: A. Nawój-Śleszyński, *Rola środków...*, pp. 18 et seq.; see also: Statistical data presented in the justification of the Bill Amending the Criminal Code Act and Certain Other Acts Together With Draft Implementing Acts – the Sejm paper No. 2393 [online; accessed on: 7 February 2020]; the bill together with the justification are available at: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/39FD209B7AC6C45AC1257CDE0042D631/%24File/2393%20cz%201.pdf>, pp. 127–128.

conditionally suspended prison sentences in the structure of all penalties adjudicated in Poland, which has been noted since 2016. Although back in 2015, the number of suspended prison sentences represented 51% of the overall number of convictions, in 2016, 2017, and 2018 the figure was 28%, 22.7%, and only 19.7% respectively. The drop is undoubtedly statistically significant and seems to be a consequence of the aforementioned reform of the prerequisites for applying the conditional suspension of the execution of the penalty, in particular modification of Article 69 of the Criminal Code, although the simultaneous change of the rule defined in Article 58 (1) of the Criminal Code on 1 July 2015 certainly contributed to the drop as well. The first of the amendments reworded the prerequisites defined in Article 69 (1) of the Criminal Code ('A court may conditionally suspend the execution of the penalty of deprivation of freedom of up to one year if the perpetrator, while committing a crime, was not convicted to the penalty of deprivation of freedom [author's emphasis] and it is regarded as sufficient to meet the aims of the punishment with regard to the perpetrator, and particularly to prevent him/her from relapsing into crime.') and therefore significantly reduced the range of options where the measure could be applied. In accordance with the preliminary Ministry of Justice estimates, 'the negative prerequisite will apply to ca. 20% of existing population of persons with suspended prison sentences'⁷¹. Considering the aforementioned statistical data for the period 2016–2018, we could even venture a statement that modification of the prerequisites for applying said measure significantly reduced the share of the penalty of suspend prison sentence, although such drop could have been also a consequence of other amendments to the Code, i.e. the solution included in Article 37a and the directive presented in Article 58 (1) of the Criminal Code, both of which have been already discussed⁷².

The significant reduction of the share of conditionally suspension prison sentences in the structure of all penalties adjudicated in Poland 'forced' shifts in the area in question. As mentioned earlier, over the last three years analysed in this paper, the percentage of non-custodial penalties, i.e. fines and the penalty of restriction of freedom, significantly grew (in aggregate, the share of both penalties in the structure of all penalties adjudicated in Poland represented 55.3% in 2016, 57.4% in 2017, and 61.1% in 2018). In addition, one more effect should be noted. Recently, we have observed gradual growth in the share of the penalty of absolute imprisonment in the structure of all the penalties. The trend is reflected by the data presented in Table 6. While the share did not exceed 10% in the period 2002–2011 and it ranged from 10% to 12% in 2012–2014, it has been significantly growing since 2015: it reached 13.1% in 2015, 15.1% in 2016, 18.4% in 2017, and 18% in 2018. It seems that a significant role in this respect is played by the changes relating to the conditional suspension of the execution of a penalty, in particular restriction of applicability of this solution to penalties of up to one year.

⁷¹ T. Darkowski, *Warunkowe zawieszenie...*, p. 58.

⁷² T. Darkowski, *Warunkowe zawieszenie...*, p. 58.

Table 6
Adults validly sentenced to absolute imprisonment (for the main offence) compared to the total number of convicted offenders in 1999–2018⁷³
AI – Absolute Imprisonment

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Adults validly sentenced	207,607	222,815	315,013	365,326	415,933	513,410	504,281	462,937	426,377	420,729
Adults validly sentenced to imprisonment (from 1 month to 15 years)	153,533	174,184	221,762	250,275	269,643	327,331	334,378	315,074	294,826	289,269
Incl. AI	26,096	30,687	36,943	35,790	36,588	48,993	42,969	42,421	37,685	38,495
Incl. AI (%)	17.0%	17.6%	16.7%	14.3%	13.6%	15.0%	12.9%	13.5%	12.8%	13.3%
Percentage share of convictions to AI in all convictions	12.6%	13.8%	11.7%	9.8%	8.8%	9.5%	8.5%	9.2%	8.8%	9.1%

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Adults validly sentenced	415,272	432,891	423,464	408,107	353,208	295,353	260,034	289,512	241,436	275,768
Adults validly sentenced to imprisonment (from 1 month to 15 years)	281,887	290,669	280,023	265,876	235,032	199,167	167,028	125,368	99,346	103,814
Incl. AI	37,913	39,582	40,947	41,691	39,684	35,633	33,952	43,695	44,527	49,512
Incl. AI (in percentage)	13.4%	13.6%	14.6%	15.7%	16.9%	17.9%	20.3%	34.9%	44.8%	47.7%
Percentage share of convictions to AI in all convictions	9.1%	9.1%	9.7%	10.2%	11.2%	12.1%	13.1%	15.1%	18.4%	18.0%

Source: own study.

Finally, the share of extremely long-term penalties in the structure of all penalties adjudicated in Poland under the regime of the 1997 Criminal Code is noteworthy.

The statistical data presented in Table 7 show that the percentage of extremely long-term penalties in the structure of all penalties in Poland is marginal. Obviously, the situation is a consequence of the fact that, the vast majority of penalties of 25 years imprisonment and life imprisonment penalties were given to murderers (killers) while the share of (confirmed) murders in the structure of all confirmed crimes is marginal, too. These penalties were given to offenders who committed other crimes only in some years and in individual cases. For instance in 2008, the perpetrator of rape (Article 197 (1) of the Criminal Code) was sentenced to life imprisonment, while in 2010 and 2012 perpetrators of aggravated robbery were

⁷³ Author's calculations based on statistical data described in footnote 1.

Year	Adults validly sentenced	25 years imprisonment	Life imprisonment
1999	207,607	67	8
2001	222,815	49	12
2001	315,013	113	20
2002	365,326	89	19
2003	415,933	92	18
2004	513,410	109	27
2005	504,281	133	34
2006	462,937	98	30
2007	426,377	70	9
2008	420,729	109	11
2009	415,272	93	24
2010	432,891	97	27
2011	423,464	102	26
2012	408,107	100	24
2013	353,208	77	25
2014	295,353	66	23
2015	260,034	64	6
2016	289,512	68	20
2017	241,436	50	12
2018	275,768	41	24

Source: own study.

sentenced to 25 years imprisonment (Article 280 (2) of the Criminal Code)⁷⁵. In 2013–2018, all sentences of 25 years imprisonment or life imprisonment were given in cases of murder⁷⁶. As we can see, the application of extremely long-term sentences seems to respect the standards that have been developing in court decisions for several decades already, in accordance with which standards the penalties in question – given their largely eliminating nature – should be adjudicated only as the last resort, i.e. when no other sanction can attain the objectives of the penalty and the remaining prerequisites such as, among others, the high level of demoralization

⁷⁴ Based on statistical data described in footnote 1.

⁷⁵ Author's calculations based on statistical data described in footnote 1.

⁷⁶ In 2016, 25 years imprisonment sentences were given 68 times, of which 48 times for the offence under Article 148 (1) of the Criminal Code and 20 – for the offence under Article 148 (2) or (3) CC; in 2007, 25 years imprisonment sentences were given 40 times, of which 36 times for the offence under Article 148 (1) CC and 4 – for the offence under Article 148 (2) CC; in 2018, 25 years imprisonment sentences were given 41 times, of which 28 times for the offence under Article 148 (1) CC and 13 – for the offence under Article 148 (2) CC. As regards life imprisonment: in 2016, life sentence was given 20 times, of which 10 times for the offence under Article 148 (1) CC and 10 – for the offence under Article 148 (2) or (3) CC; in 2017, life sentence was given 12 times, of which 3 times for the offence under Article 148 (1) CC and 9 – for the offence under Article 148 (2) or (3) CC; in 2018, life sentence was given 24 times, of which 9 times for the offence under Article 148 § 1 CC and 15 – for the offence under Article 148 (2) or (3) CC (author's calculations based on statistical data described in note 1).

and guilt of the offender, lack of mitigating circumstances, and significant social harm of the offence, suggest applying an extremely long-term penalty⁷⁷.

5. CONCLUSIONS

In summary, this brief overview (due to very strict publication frameworks) of the statistical picture of the Polish penal policy allows to form several conclusions.

Firstly, the enactment of the new Criminal Code in 1997 was intended to open a new chapter of the Polish penal policy that would be based on the modern axiology and democratic standards. However, in spite of the conditions guaranteed by the legislator, the Polish penal policy has very slowly evaluated toward the direction set by the authors of the 1997 Criminal Code for several subsequent years following the date on which the legal act became effective. The postulated growth in the share of non-custodial penalties in the structure of all penalties adjudicated in Poland has turned out to be very difficult to attain. The low rate of awarding non-isolation penalties, in particular fines, have been impacted by, among others, adjudicating habits which developed at times when the previous code was in force.

Secondly, the Polish penal policy in 1999–2015 was characterized by excessive judicial application of conditionally suspended prison sentences, which was the reason for the radical growth in the share of this penalty in all adjudicated penalties, which at its peak was over 60%. Repeated suspended sentences for the same persons as well as application of conditional suspension mainly in the basic form, i.e. without supervision or/and imposing any obligation upon the offender, became a serious problem. Similarly, conditional suspension of penalties was excessively applied in the so-called consensual mode, which in practice eliminated any elements on whose basis it could be determined whether the conditional suspension could be classified as a measure subjecting a perpetrator to probation or not.

And finally, it seems that the reform of the Criminal Code carried out in 2015, in particular as regards modification of the prerequisites for applying conditional suspension of prison sentences and aforementioned solutions broadening the options for applying non-isolation penalties, was important from the point of view of the penal policy implemented in Poland. The new structure of penalties analysed here seems to be a result of that reform. Undoubtedly, it is not a coincidence that a significant change in the field in question occurred in 2016, i.e. in the first full year in which the new regulations were in force. It is hard to ignore the increase in the share of fines in the penalties structure from 20% to nearly 1/3, but the growth in the share of the penalty of restriction of freedom from a few/more than ten percent to almost 30% is indeed impressive. Obviously, the appreciation of the penalty of restriction of freedom and its expansion in the structure of penalties adjudicated in Poland is most welcome, but there is a question that will be answered in the following years: How will the penalty be enforced? There is no doubt that the drop in the percentage share of the penalty of conditionally suspended imprisonment in

⁷⁷ See: e.g.: judgment of the Court of Appeal in Warsaw dated 7 December 2015, II AKa 333/15, LEX No. 1992934; judgment of the Court of Appeal in Lublin dated 7 March 2017, II AKa 14/17, LEX No. 2279552.

all penalties adjudicated in Poland, which seems revolutionary, is also a noteworthy phenomenon. However, there are some questions that must be asked: How will the penalty be applied in practice in a longer timeframe? In particular, what ‘substance’ will it be given in practice? Will the probation obligation be imposed upon offenders? The legislative amendments eliminated the option to adjudicate conditional suspension without imposing any probative obligation upon the offender⁷⁸, but, in accordance with data made available by the Ministry of Justice⁷⁹, there were significant changes in the structure of adjudicated probation obligations in the first full year in which the new regulations were in force. In 1999–2015, courts mainly imposed the obligation to redress the damage (50% in some years); least often the obligation to notify the court or probation officer of the course of the probation period, to apologize to the victim, and to commence paid work, education or vocational preparation. On the other hand, 2016 saw rapid growth in the share of the least popular obligation, i.e. obligation to notify the court or probation officer of the course of the probation period, in the structure of all obligations imposed – from 1–3% in 1999–2015 to as much as 23% in 2016. Similarly, the share of the obligation to apologize to the victim significantly increased: from 3% in 2014 and before to 5% in 2015, followed by 10% in 2016. Both obligations are obviously easy to discharge. Therefore, it is worthwhile to observe how court decisions in the commented period will develop in practice. Will the amended regulations consolidate the probative nature of the conditional suspension of the prison sentence in practice or not? Undoubtedly, attention should be paid to another trend which has been recently observed. As mentioned above, the growing share of the penalty of absolute imprisonment in the structure of all penalties adjudicated in Poland has become visible. The growth may be partially linked to reduced options for applying suspended prison sentences, which excluded some offenders from its application and, on the other hand, the term of sentence that can be suspended has been reduced. It is worth to follow the trend of applying isolation penalties in the following years, in particular given that the current wording of the Criminal Code relies on the principle of *ultima ratio* of imprisonment, as referred to in Article 58 (1) of the Code.

Abstract

Katarzyna Witkowska-Rozpara, *Polish penal policy – Twenty Years after Enactment of the Criminal Code Act of 6 June 1997*

On 6 June 2017, 20 years passed from enactment of the Polish Criminal Code which is now in force. The purpose of the 1997 Code was to reform penal policy in order to mitigate several adverse phenomena which spread under the regime of the 1969 Criminal Code. This article is an analysis of the statistical picture of the Polish penal policy, based mainly on statistical data concerning adults convicted (for the main offence) and confirmed offences in 1999–2018. The author presents and evaluates the structure of penalties adjudicated in Poland taking into consideration the intent of the authors of the 1997 Criminal Code

⁷⁸ The principle does not apply in case the court awards a penal measure; in this case, the obligation is imposed optionally – see: Article 72 (1) of the Criminal Code.

⁷⁹ Data made available by the Ministry of Justice on author’s request.

to noticeably increase the share of non-custodial penalties in the number of all penalties, with particular consideration given to fines as the main form of response to perpetrators of minor (and sometimes medium) offences and the penalty of restriction of freedom – as an element supporting the implementation of a reasonable penal policy as a non-custodial alternative to a fine in certain situations.

Keywords: *penal policy, Criminal Code, validly convicted adults, confirmed offence, structure of adjudicated penalties, fine, penalty of restriction of freedom*

Streszczenie

**Katarzyna Witkowska-Rozpara, Polityka karna w Polsce
– 20 lat po uchwaleniu ustawy z 6.06.1997 r. – Kodeks karny**

Dnia 6.06.2017 r. minęło 20 lat od uchwalenia obowiązującego w Polsce Kodeksu karnego. Przyjęta w czerwcu 1997 r. ustawa zakładała reformę polityki kryminalnej, ukierunkowaną na zniwelowanie wielu negatywnych zjawisk, które rozpowszechniły się pod rządami Kodeksu karnego z 1969 r. Niniejszy artykuł zawiera analizę statystycznego obrazu polskiej polityki karnej, bazującego przede wszystkim na danych statystycznych dotyczących prawomocnie skazanych osób dorosłych (czyn główny) oraz przestępstw stwierdzonych w latach 1999–2018. Autorka prezentuje i ocenia strukturę orzekanych w Polsce kar, biorąc pod uwagę postulat wyrażony przez twórców Kodeksu karnego z 1997 r. dotyczący zwiększenia udziału kar nieizolacyjnych w strukturze ogółem orzekanych w Polsce kar, ze szczególnym uwzględnieniem roli kary grzywny jako podstawowej formy reakcji wobec sprawców drobnych (a czasami i średnich) przestępstw oraz kary ograniczenia wolności jako elementu wspomagającego realizację racjonalnej polityki karnej stanowiącego wolnościową alternatywę wobec kary grzywny stosowaną w określonych sytuacjach.

Słowa kluczowe: *polityka karna, Kodeks karny, prawomocnie skazani dorośli, przestępstwa stwierdzone, struktura orzekanych kar, grzywna, kara ograniczenia wolności*

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