

Analysis of judicial decisions and views on the application of custodial sentences

How are the judges imposing a penalty? What they take into account deciding, that someone shall go to prison? How they count, how many years of imprisonment are appropriate for the offender? What are they expecting after the execution of the custodial sentence? All these questions I would like to answer in the framework of my research project.

When we are talking about the punishment of criminal offenders, we are usually thinking about imprisonment. It is the harshest penalty provided by Polish law. In Poland for several years it has been observed a significant decrease in the share of custodial sentences in the general structure of penalties. Statistics show that out of 275,768 convicts in 2018, 38% were given a custodial sentence. The imprisonment penalty was, and still is the frequently applied type of sanction in Poland (certainly more frequently imposed than in other Western European countries). In the media and public discourse, it is mainly the advocates of severe punishment who take the floor, postulating that high penalties, especially imprisonment, are the only remedy for crime. Hence, changes related to an increase in criminal responsibility are implemented by increasing the threat of punishment and above all by imprisonment or a broader scope of its application.

The aim of the research project is to reconstruct the "mechanism for imposing a custodial sentence" by judges in Poland and to define the role of judges in the criminal justice system. In order to determine how the decision-making process actually takes place and how judges' personal preferences are related to the specific measure of custodial sentences, an analysis will be made of the normative level regulating the principles and directives of judicial sentencing and empirical analysis of the decisions to impose a custodial sentence, their justifications, and judges' opinions on punishment, custodial sentences, and their duration.

Previous researches on imposing the penalties were limited to only one or at most two research techniques. Therefore, I decided to use four different methods of social research: a legal-dogmatic analysis, statistical analysis on data from the Ministry of Justice and criminal courts, and narratives collected during in-depth interviews with judges.

I would like to analyze the legislation regulating the imposing of the penalties (in particular custody sentence) and I will analyze the statistical data on imposing the penalties by Polish judges. Moreover, I planned to analyze criminal case files - justifications of judgments - convictions handed down in 2019 in cases for offences under article 156 § 1 point 2 (causing grievous bodily harm other than deprivation of sight, hearing, speech, or the ability to procreate), 158 § 1 (participation in a fight or assault), 278 § 1 (theft) and 286 § 1 (fraud) of the Penal Code. I will examine 300 sentencing justifications selected by amount, taking into account the proportions between custodial sentences with and without probation. I would like also to get to know the opinions of judges on punishing, imprisonment, and the imposing in particular cases. Therefore, I will conduct 40 in-depth interviews with them.

Recent studies were limited to one or at least two research methods. The innovative character of the research presented is also hidden in the research method adopted. Obtaining the narratives of the judges themselves and deepening their statements through in-depth individual interviews has not yet been a technique frequently used in research on custodial sentences in Poland. The research is also undertaken at a socio-politically relevant time. The ongoing transformation of the position of judges since 2016 and the political pressure exerted on the representatives of this profession (e.g. the conduct of massive disciplinary proceedings against judges) make the subject matter covered by the rather broad scope of judicial discretion a field for analyses concerning interference in judicial power in Poland and changes in the sense of judicial independence. It is worth noting that this problem does not only affect Poland, and is one of the features of penal populism, e.g. various kinds of pressure on judges are also exerted in the USA.

The findings of my analysis will be published as articles in international and national journals. They will be also presented during international and national scientific conferences.