

# **Criminal Policy in Poland** in the light of recent political changes

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**Source:** <https://clil.pedagog.uw.edu.pl/dr-agnieszka-otwinowska-kasztelanic-2/finland1/>

# **Overview of criminal policy in Poland**

- **Polish Criminal policy in comparison with other European Countries**
- **Criminal Policy in the Polish People's Republic**
- **Democratic Turnover of 1989 and the liberalization tendencies in the 1990s**
- **Rapid growth of crime**
- **Penal populism of 2000s**
- **Amendments of the Criminal Code – Hyperactivity of the Polish Parliament**
- **Recent developments**
- **Planned Amendment of the Criminal Code**

# Polish Criminal policy in comparison with other European Countries

	Number (1 000)												Index (2007 = 100)				
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	
Belgium	1 012.8	1 007.8	1 013.7	999.4	1 022.8	1 034.4	1 043.6	1 067.3	1 072.0	1 111.0	1 073.8	101	103	104	107	104	
Bulgaria	146.9	143.9	142.1	137.8	136.4	134.7	126.7	138.1	147.0	128.6	120.6	94	103	109	95	90	
Czech Republic	372.3	357.7	351.6	344.1	336.4	357.4	343.8	332.8	313.4	317.2	304.5	96	93	88	89	85	
Denmark	491.5	486.2	474.4	432.7	425.1	445.3	477.0	491.8	471.1	466.8	440.8	107	110	106	105	99	
Germany	6 507.4	6 572.1	6 633.2	6 391.7	6 304.2	6 284.7	6 114.1	6 054.3	5 933.3	5 990.7	5 997.0	97	96	94	95	95	
Estonia <sup>(1)</sup>	53.3	53.6	53.0	52.9	51.8	50.4	51.0	48.4	48.3	42.6	40.8	101	96	96	85	81	
Ireland	106.4	103.5	99.2	102.2	103.2	.	.	.	.	.	.	.	.	.	.	.	
Greece <sup>(2)</sup>	441.1	441.8	405.6	456.0	463.8	423.4	417.4	386.9	334.0	194.0	194.1	99	91	79	46	46	
Spain <sup>(3)</sup>	2 183.5	2 144.2	2 141.3	2 230.9	2 267.1	2 309.9	2 396.9	2 339.2	2 297.5	2 285.5	2 268.9	104	101	99	99	98	
France	4 113.9	3 974.7	3 825.4	3 775.8	3 725.6	3 589.3	3 558.3	3 521.3	.	.	.	99	98	.	.	.	
Croatia	77.9	80.4	85.4	79.9	81.0	75.9	74.6	73.5	73.3	75.6	72.2	98	97	97	100	95	
Italy <sup>(4)</sup>	2 231.6	2 456.9	2 417.7	2 579.1	2 771.5	2 933.1	2 709.9	2 629.8	2 621.0	2 763.0	2 818.8	92	90	89	94	96	
Cyprus	4.8	7.3	7.6	7.2	7.9	7.6	7.3	7.1	8.4	8.5	8.0	97	94	111	112	106	
Latvia <sup>(5)</sup>	49.3	51.8	62.2	51.4	62.3	55.6	57.5	56.7	51.1	51.6	49.9	103	102	92	93	90	
Lithuania	72.6	79.1	84.1	82.1	75.5	68.0	72.0	76.3	70.6	72.1	75.3	106	112	104	106	111	
Luxembourg	26.0	26.2	26.9	25.3	25.9	28.3	28.2	32.4	30.5	35.7	37.6	100	115	108	126	133	
Hungary	420.8	413.3	418.8	436.5	425.9	426.9	408.4	394.0	447.2	451.4	472.2	96	92	105	106	111	
Malta	17.0	17.7	18.4	18.6	16.5	15.0	13.8	12.0	13.3	14.2	15.6	92	80	89	95	104	
Netherlands <sup>(6)</sup>	1 401.9	1 369.3	1 319.5	1 348.3	1 311.8	1 303.8	1 277.8	1 254.5	1 194.0	1 194.1	1 139.7	98	96	92	92	87	
Austria	591.6	643.3	643.6	605.3	589.5	594.2	572.7	591.6	535.7	540.0	548.0	96	100	90	91	92	
Poland	1 404.2	1 466.6	1 461.2	1 380.0	1 287.9	1 153.0	1 082.1	1 129.6	1 151.2	1 159.6	1 119.8	94	98	100	101	97	
Portugal	391.6	417.4	416.4	392.7	399.6	398.6	430.5	426.0	422.6	413.7	403.2	108	107	106	104	101	
Romania	312.2	276.8	231.6	208.2	232.7	281.5	289.3	299.9	292.7	258.9	308.5	103	107	104	92	110	
Slovenia	77.2	76.6	86.6	84.4	90.4	88.2	81.9	87.5	89.5	88.7	91.4	93	99	101	101	104	
Slovakia	107.4	111.9	131.2	123.6	115.2	110.8	104.8	104.9	95.3	92.9	90.4	95	95	86	84	82	
Finland <sup>(7)</sup>	435.0	443.5	445.5	432.3	416.1	435.8	440.7	441.4	431.6	458.3	425.4	101	101	99	105	98	
Sweden	1 234.8	1 255.4	1 248.7	1 241.8	1 225.0	1 306.3	1 377.9	1 405.6	1 370.4	1 416.3	1 402.6	105	108	105	108	107	
<b>United Kingdom:</b>																	
England and Wales	5 975.0	6 013.8	5 637.5	5 555.2	5 427.6	4 952.3	4 702.7	4 338.3	4 150.9	4 023.3	3 731.3	95	88	84	81	75	
Scotland <sup>(8)</sup>	427.0	407.0	438.1	417.8	419.3	385.5	377.4	338.1	323.2	314.2	273.1	98	88	84	81	71	
Northern Ireland	142.5	128.0	118.1	123.2	121.1	108.5	110.1	109.1	105.0	103.4	100.4	101	101	97	95	93	
Iceland <sup>(9)</sup>	19.9	17.5	16.6	12.0	13.5	13.0	14.6	16.0	14.9	12.6	11.7	112	122	114	97	90	
Liechtenstein	1.0	1.1	1.0	1.1	1.2	1.1	1.1	1.2	1.0	1.1	1.1	103	113	97	99	106	
Norway	319.5	303.8	287.8	275.7	277.0	271.7	264.2	277.1	270.7	264.2	273.5	97	102	100	97	101	
Switzerland <sup>(10)</sup>	356.8	379.3	389.4	352.7	335.2	326.2	323.2	676.3	656.9	693.0	750.4	99	207	201	212	230	
Montenegro	8.9	8.6	8.2	9.6	9.6	9.3	8.3	8.1	7.0	6.1	5.8	89	88	76	66	63	
FYR of Macedonia	18.3	22.5	22.7	22.6	22.0	26.2	28.3	27.3	28.5	29.5	29.9	108	104	109	113	114	
Serbia	95.6	90.4	99.9	102.1	99.2	104.9	106.0	102.4	101.1	99.5	96.1	101	98	96	95	92	
Turkey <sup>(11)</sup>	438.7	472.2	507.5	667.8	975.1	970.6	1 012.3	1 288.1	1 521.7	1 652.8	1 904.5	104	133	157	170	196	
Albania	.	.	.	.	.	.	58.1	.	.	.	.	.	.	.	.	.	
Kosovo	.	.	.	.	.	.	36.2	33.1	36.8	64.8	65.2	.	.	.	.	.	

<sup>(1)</sup> 2006: break in series.

<sup>(2)</sup> 2011: break in series.

<sup>(3)</sup> 2005 and 2008: break in series.

<sup>(4)</sup> 2004: break in series.

<sup>(5)</sup> 2004, 2005 and 2006: break in series.

<sup>(6)</sup> 2005: break in series.

<sup>(7)</sup> 2009: break in series.

<sup>(8)</sup> 2005 and 2010: break in series.

<sup>(9)</sup> 2005 and 2006: break in series.

Source: Eurostat (online data code: crim\_gen)

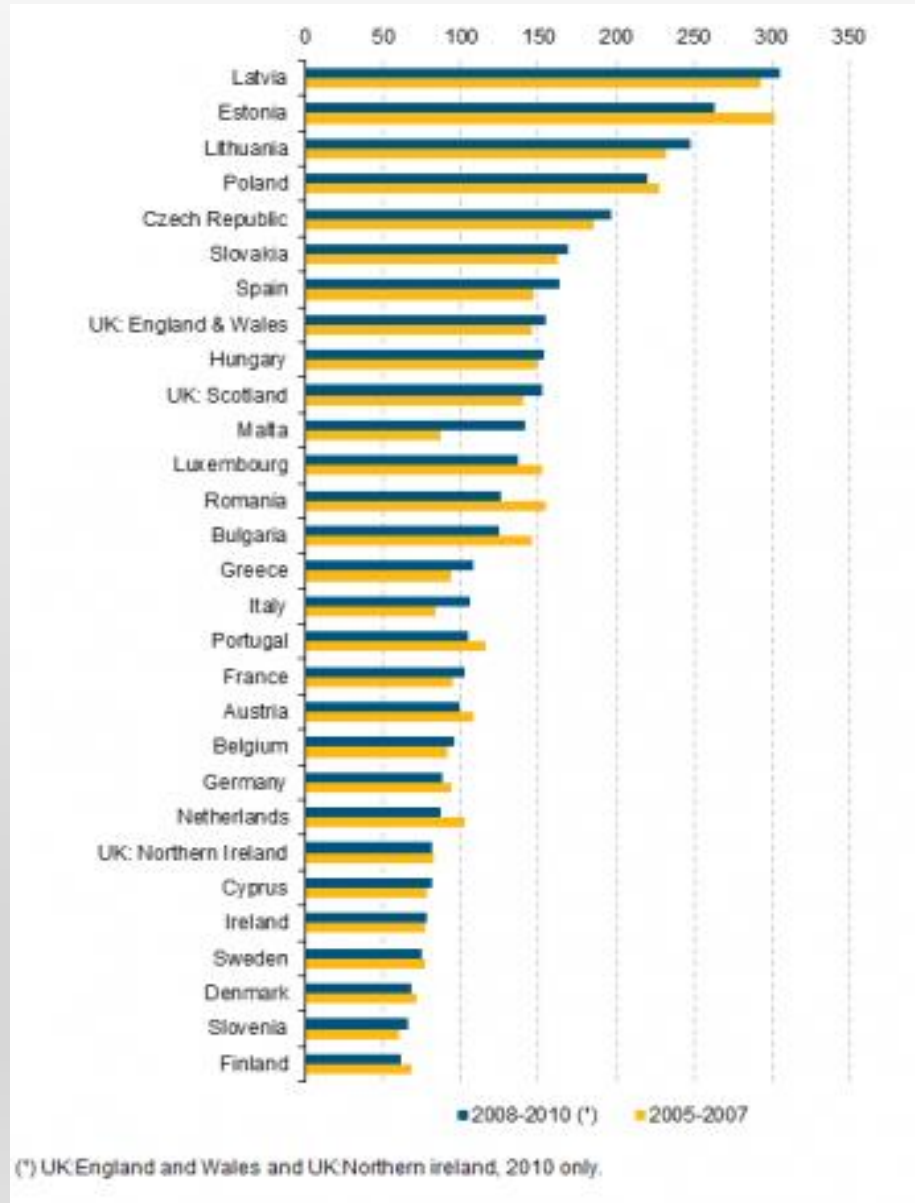
# Crimes recorded by the police between 2004-2014

	Crime Recorded by the Police between 2004-2014
2004	<b>1 461 217</b>
2005	1 379 962
2006	1 287 918
2007	1 152 993
2008	1 082 057
2009	1 129 577
2010	1 138 523
2011	1 159 554
2012	1 119 803
2013	1 063 703
2014	<b>873 245</b>

Source: <http://statystyka.policja.pl/st/ogolne-statystyki/47682>, Raport o stanie bezpieczeństwa w Polsce w 2014 roku

# Prison population, average per year, 2007-09 and 2010-12

(per 100 000 inhabitants)



# Criminal Policy in the Polish People's Republic

- Punitive ideology of communist authorities
- Criminal Code of 1969 reflected principles and ideas of the Soviet penal law
- The priority was to protect the economic interests of the State and the ruling elite
- Imprisonment up to 15 years/limitation of freedom/fine/death Penalty
- Enormouse scale of imprisonment
- Limitation on judicial independence

# Democratic Turnover of 1989 and the liberalization tendencies in the 1990s

- Democratic Turnover of 1989
  - The transition from a centrally planned to a market economy
  - The development of a new democratic European society
  - The aspiration to join the European Union
    - > **A fundamental change of the criminal law and the criminal policy was required**
- Early 1990s - The priority was to reduce the punitive character of the post-communist criminal justice system and to rationalize the communist criminal code of 1969
- At first minor change in the legislation **BUT** under the new circumstances shift in the sentencing policies



# Criminal Code of 1997

**Art. 3.** Penalties and other measures provided for in the Code are applied with consideration for the **principles of humanitarianism**, especially with the respect for human dignity.

**Art. 53. § 1.** The court imposes the punishment according to its own discretion, within the limits prescribed by a statute, **observing that its onerousness does not exceed the degree of fault**, taking into account the degree of social harmfulness of the act and **taking into consideration preventive and educational aims it is to achieve with regard to the sentenced person**, as well as the need to develop legal awareness of the society.

§ 2. While imposing a penalty, the court takes into account especially the perpetrator's motivation and manner of conduct, commission of the crime in complicity with a minor, the type and degree of the violation of the perpetrator's duties, the type and the extent of negative consequences of the crime, the characteristics and personal conditions of the perpetrator, the perpetrator's way of life prior to the commission of the crime and his behaviour after the commission of the crime, especially his efforts to redress the damage or to satisfy public sense of justice in any other form, as well as the harmed party's conduct.

§ 3. While imposing a penalty, the court also takes into consideration **the positive results of the mediation** between the harmed party and the perpetrator or the settlement they have reached during the proceedings held before a court or a public prosecutor.

# Article 32 of Polish Criminal Code

The penalties are:

- 1) fine,
- 2) limitation of liberty
- 3) deprivation of liberty,
- 4) deprivation of liberty for 25 years,
- 5) deprivation of liberty for life.

**Art. 58. § 1. 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 imposes the penalty of deprivation of liberty only if no other penalty or penal measure can meet the aims of the punishment.**

(Source of the translation: Lex Omega)

# **Punitive populism of the 2000s**

- Rapid growth of crime ? - "Big bang" in the 1990s – the number of recorded crime grew by 61% in one year (Krajewski, 2004)
- Punitive attitudes in the society – in 1995, 35 percent of the respondents felt insecure in the streets after dark (Krajewski, 2004)

## **ideas of "liberalization" VS. the growing fear of crime**

- PUNITIVE POPULISM – since 1997 crime control became a subject of political debate (Chlebowicz, 2009)

# Law in book vs. Law in action

- Failure of the Criminal Code of 1997 (?)
- Punitiveness of Polish criminal justice (?)
  - Shorter sentences up to two years and suspended convictions prevail
  - Fines and limitation of the liberty (community service) neglected
  - The high imprisonment rate as a result of overuse of suspended convictions and lacking or insufficient supervision

**Complicated alternative sanctions to imprisonment and insufficient monitoring of the offenders (Krajewski, 2016)**

# The structure of the sanctions imposed by the courts in Poland

Year	Imprisonment (absolute)	Imprisonment (suspended sentence)	Limitation of freedom	Fine
2005	42,969	291,409	67,254	100,968
2010	39,582	251,087	49,692	92,329
2011	40,947	239,076	49,611	93,571
2012	41,691	224,185	50,730	91,296
2013	39,684	195,348	41,287	76,759
2014	35,633	163,532	33,009	63,078

Source: Mały Rocznik Statystyczny, 2013-2016

# Imprisonment - Suspended Sentence

**Art. 69. § 1.** The court may **conditionally suspend the enforcement** of the imposed penalty of deprivation of liberty not exceeding one year if the perpetrator has not been sentenced to the penalty of deprivation of liberty while committing a crime and it is sufficient to meet the aims of the punishment with regard to the perpetrator, especially to prevent his relapse to crime.

- From 1 to 3 years
- **The supervision of a probation officer – FAKULTATIV**

**Art. 75. § 1.** The court orders the enforcement of the penalty if the sentenced person has committed a similar intentional crime during the test period, for which he has been sentenced to the penalty of deprivation of liberty without the conditional suspension of its enforcement by a final and valid ruling.

# Amendments of the Criminal Code – Hyperactivity of the Polish Parliament

- 78 amendments since the enactment of the Criminal Code
- Amendments of the sanction system e.g.:
  - increased fines - the maximal amount of daily rates from 360 to 540
  - the maximal limitation of the liberty was prolonged from 12 months to 2 years
  - the scope of penal measures has been extended: e.g. prohibition from entering a mass event, prohibition from entering gambling facilities and engaging in gambling games
  - „hooligan nature of the act” as a special sentencing rule
- Increased penalties for specific offences e.g. crimes against sexual freedom
- New type of crimes
- 24 hours courts

# Amendments of the Criminal Code - 2015



→ POPULARIZATION OF NONCUSTODIAL SANCTIONS e.g.:

**Art. 37a.** A fine or the penalty of limitation of liberty provided for in art. 34 § 1a sections 1, 2 or 4 **may be imposed instead of the penalty of deprivation of liberty** if a statute provides for the penalty of deprivation of liberty not exceeding 8 years as the upper limit of a statutory penalty.

(Source of the translation: Lex Omega)



# Punitive populism now

- Crime rate 
- The feeling of being threatened by the criminality 
- **BUT** – Public safety, criminality and crime control – still an important issue in the public debate

# The Law and Justice Party and crime control

- Founded in 2001
- Governing Party 2005-2007, and again from 2015
- punitive campaign against crime
- law and order rethoric: three strikes and you're out' and 'zero tolerance', 'mass imprisonment'
- PUNISHMENT SHOULD BE JUST AND PROPORTIONATED TO THE DEGREE OF CUPABILITY

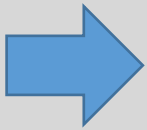
# Planned Amendement of the Criminal Code

-> **Goal:** rationalization of the criminal liability by limiting the possibility to reduce the criminal sanctions or/and widening the possibility to increase the sanctions

- Amendement of the sanction system:
  - Maximum imprisonment to 30 years
  - Discretionary life imprisonment with no right to parole
  - Short term imprisonment up to 7 days
  - Increased penalties for recidivism
  - Aggrevated prerequisites of the alternative sanctions
  - Changed sentencing guidelines
- Increased penalties for specific offences e.g.:
  - crimes against life and health
  - crimes against sexual freedom and decency (the crime of rape)
  - overdue child support payments

# Paradox of Polish economic and social changes

- Shock-Therapy of Balcerowicz:
  - Economic growth
  - Poland as „green island” in the European Union
  
  - High unemployment rate
  - Social stratification (Poland A and Poland B)
  
- Lacking interest in the politics



The Law and Justice Party promised to increase social spending (500 PLN per child, reversing the increase in the retirement age, the hourly minimum wage to 12 PLN etc.)

# Sources:

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