

Have community sanctions and measures widened the net of the European criminal justice systems?

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Abstract

Analysing the evolution of imprisonment and community sanctions in Europe from 1990 to 2010 this article tests whether community sanctions have been used as alternatives to imprisonment or as supplementary sanctions. The results show that both the number of persons serving community sanctions and the number of inmates have continuously increased in almost all European countries during the period studied. A comparison with the evolution of crime rates shows that the latter cannot explain such trends and suggests that, instead of being alternatives to imprisonment, community sanctions have contributed to widening the net of the European criminal justice systems. The analyses also show a wide diversity in the use of community sanctions across Europe where, in 2010, the ratio between inmates and persons serving community sanctions varied from 2:1 to 1:3. In a comparative perspective, Finland, Norway and Switzerland seem to have found a reasonable balance between the use of imprisonment and community sanctions.

Keywords

community sanctions and measures, Europe, imprisonment, net-widening, probation

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Introduction

The development of community sanctions and measures (CSM) was originally saluted as a positive step to reduce prison populations and improve reintegration of offenders by keeping them in the community. According to this view, the growth of CSM – particularly significant in Europe since the 1990s – should have led to a decrease in the number of prisoners. However, CSM can also be used as additional sanctions instead of alternatives to imprisonment, contributing thus to widen the net of the criminal justice system. The goal of this article is to test which of these opposite views is corroborated by the available data on prison and probation in Europe.

Theoretical framework

The net-widening metaphor was coined by Stanley Cohen in 1979, when he affirmed that:

the major results of the new movements towards ‘community’ and ‘diversion’ have been to increase rather than decrease the *amount* of intervention directed at many groups of deviants in the system and, probably, to increase rather than decrease the total *number* who get into the system in the first place. In other words: ‘alternatives’ become not alternatives at all but new programs which supplement the existing system or else expand it by attracting new populations. I will refer to these two overlapping possibilities as ‘thinning the mesh’ and ‘widening the net’ respectively. (Cohen, 1979: 347, emphases in original)

Rapidly, the expression *net-widening* became part of the scientific jargon, and it started to be used widely and sometimes ambiguously. It only took a few years for McMahon (1990) to denounce the vagaries in the use of that concept. Later on, a clarification was introduced by Tonry and Lynch (1996), who distinguished the risk of net-widening related to *front-end* programmes (i.e. intermediate sanction programmes designed to avoid sending an offender to prison) and *back-end* programmes (i.e. those concerning offenders released early or diverted to the programme by corrections officials after serving a part of their sentence in prison).

This article follows the conceptualization of net-widening provided by John Muncie who defines it as ‘the processes whereby attempts to prevent crime and develop community-based corrections act to expand the criminal justice system and draw more subjects into its remit’ (Muncie, 2001: 262). Considering that persons diverted to community corrections after having stayed in prison (i.e. those sent to back-end programmes) are already inside the net, this study does not deal with them but focuses on *front-end net-widening*. Consequently, offenders conditionally released (the equivalent of *parole* in the United States), offenders serving sanctions under the regime of semi-liberty and *probationers* placed in custody for any other reason¹ are not included in our analyses, even if they are usually placed under the supervision of probation agencies.

Indeed, the concept of probation – which, according to Farrall (2002: 71) is seldom defined in studies of probation – is conceptualized in different ways across countries. In the United States, '[p]robation is a court-ordered period of correctional supervision in the community, generally as an alternative to incarceration. In some cases, probation can be a combined sentence of incarceration followed by a period of community supervision' (Maruschak and Parks, 2012: 2). The Council of Europe (CoE, 2010: 2) considers that probation:

relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

This article follows the large definition of the Council of Europe, which is intended to include the wide diversity of sanctions and measures that may lead a person to be placed under the responsibility of probation agencies in different European countries.

Prior research

According to the review of the literature conducted by Padgett et al. (2006) that we summarize here, already in 1977, Blomberg, followed by Klein in 1979, documented the existence of a soon-to-be called net-widening effect linked to the first juvenile diversion programmes in the United States. Similar results were soon reached by other studies covering the same topic (Austin and Krisberg, 1981; Lemert, 1981), but also by research assessing the *get tough* crime control strategies developed in the 1980s (Blomberg and Waldo, 1987; Hylton, 1982). Later studies pointed out the ongoing increases in US and Canadian prison populations in spite of the implementation of CSM (Blomberg et al., 1993; Mainprize, 1992; Petersilia and Turner, 1990). Outside the time-frame of the review of Padgett et al. (2006), and often with an enlarged definition of the concept of net-widening, a few studies have been focusing on the potential or alleged net-widening effect of some criminal policies or project implementations. As examples, we can quote Harris et al. (2010) on the assessment of a sex offender classification system in the United States, and Beckett and Herbert (2010) on the extension of social control related to the re-introduction of banishment in Seattle in the 1990s. More recently, in a comprehensive analysis of trends in probation and incarceration in the United States from 1980 to 2010, Phelps (2013) concludes that, on average, expanding probation rates have led to slightly greater incarceration rates; but that there is wide variation across US states, in such a way that probation has been acting both as an alternative to incarceration and as a net-widener, depending on the period of time and on the state studied.

In Europe, our review of research – limited to articles published or quoted in texts in English, French and Spanish – suggests that few empirical studies on the

net-widening effect have been published. In particular, evidence that the use of community service led to a net-widening effect was found in the Netherlands (Spaans, 1998), Switzerland (Killias et al., 2000) and, to a lesser extent, in Norway (Lappi-Seppälä, 2012); while it does not seem to have had such an effect in Denmark, Finland, Iceland and Sweden (Lappi-Seppälä, 2012). In parallel, authors studying probation through the prism of its rehabilitation potential have insisted on the major role it could play as an alternative to custody, especially for young offenders (see, for example, Raynor, 1988). In that context, to avoid net-widening, Raynor and Robinson (2009: 103) suggest taking advantage of the relative autonomy of local courts to collaborate with them so as to ensure that offenders selected for probation are only those genuinely at risk of receiving custodial sentences (Raynor and Robinson, 2009: 103). In sum, although seldom empirically tested, the concept of net-widening is often mentioned in theoretical articles published in Europe, sometimes taking for granted its existence (Haverkamp et al., 2004; Sanders, 1988) and even hypothesizing on its causes (McIvor et al., 2010), but sometimes also questioning its credibility (Garland, 1996).

Methodology

The main hypothesis of this article is that CSM are used as alternatives to imprisonment. This hypothesis has usually been tested from a longitudinal perspective; however, the availability of data from several countries allows also an indirect test from a cross-sectional standpoint. Using a longitudinal perspective, the hypothesis would be corroborated if, in the different European countries studied, an increase in the use of CSM was correlated with a decrease in the use of prison. Adopting a cross-sectional comparative perspective, it would be corroborated if countries with a high rate of persons serving CSM showed low prison population rates. If that was the case, one could conjecture that CSM are at least partially responsible of the low prison population rate.

In this article, the cross-sectional test will refer to the year 2010 and it will be based on a comparison of the prison population rate with the rate of persons serving CSM within each country and across countries. The longitudinal test will be based on a comparison of the evolution of prison population rates and rates of persons serving CSM from 1990–1991 to 2010. This comparison will also allow testing the opposite hypothesis, which states that community sanctions are used as supplementary sanctions, thus widening the net of the criminal justice system. That hypothesis would be corroborated if both rates increased at the same time. As the evolution of crime could also explain changes in the use of custodial and non-custodial sanctions, trends in the use of imprisonment and CSM will also be confronted to the crime trends shown by different crime measures.

Data on prison populations from 1991 to 2010 are taken from the *Council of Europe Annual Penal Statistics: SPACE I*. Data on CSM for the years 1990, 1992 and 1994 come from Part II of the same source, while for the years 1997, 2001,

2007, 2009 and 2010 they are taken from the *Council of Europe Annual Penal Statistics on Persons Serving Non-Custodial Sanctions and Measures: SPACE II* (CoE, 2015). The number of member states of the Council of Europe doubled since the beginning of the 1990s, reaching 47 in 2010. This evolution has an influence on the number of countries that can be included in each of our analyses. Additionally, some countries do not answer systematically the SPACE questionnaires, others provide only partial data, and countries with less than one million inhabitants (Andorra, Cyprus, Iceland, Luxembourg, Malta and Monaco) have been excluded from this study since they may experience substantial changes in their rates from one year to another that are only due to the inclusion or exclusion of a few offenders. Thus, the cross-sectional analysis for the year 2010 (Figure 2) covers the 29 countries presented in Table 1;² while in the case of the longitudinal analysis (Figure 1), data for 1991 were not available for seven of these countries (Armenia, Azerbaijan, Croatia, Georgia, Latvia, Moldova and Serbia).³

SPACE II follows the definition of CSM provided by the Council of Europe’s Recommendation (2010)1, which refers to them as:

sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment. (CoE, 2010: 2)

Thus, the CSM included in this article cover those applied before the sentence (electronic monitoring, home arrest, conditional suspension of the criminal proceedings, deferral –postponement of the pronouncement of a sentence – and victim–offender mediation) and those imposed through a sentence (fully and partially suspended sentences with probation, conditional pardon/discharge with probation, community service, electronic monitoring, home arrest/curfew orders,

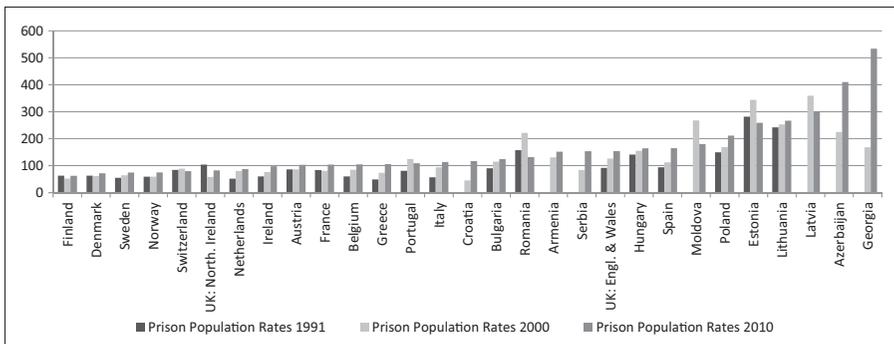


Figure 1. Prison population rates in 1991, 2000 and 2010.

Table 1. Countries included in the analyses, classified geopolitically

Central Europe	Eastern Europe	North-Western Europe	Southern Europe
Bulgaria	Armenia	Austria	Greece
Croatia	Azerbaijan	Belgium	Italy
Estonia	Georgia	Denmark	Portugal
Hungary	Moldova	England and Wales	Spain
Latvia		Finland	
Lithuania		France	
Poland		Ireland	
Romania		Netherlands	
Serbia		Northern Ireland	
		Norway	
		Sweden	
		Switzerland	

Note: This geopolitical classification is inspired by the one proposed by Smit et al. (2008), with the difference that they include the Balkan countries in Southern Europe and the Baltic countries in Eastern Europe, while we follow a more geographical criterion and include them in Central Europe.

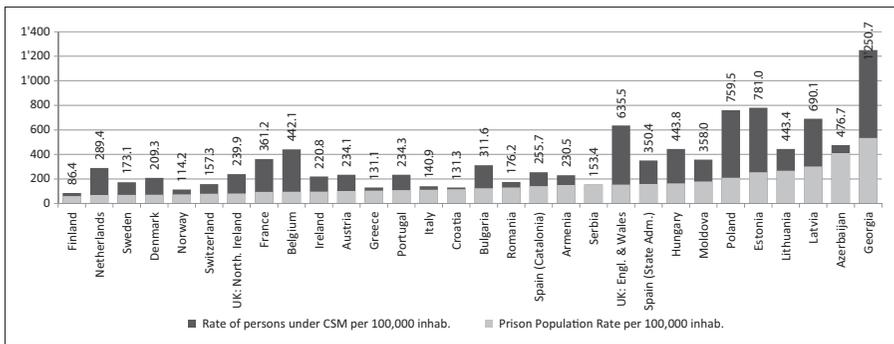


Figure 2. Total prison and probation population rates per 100,000 inhabitants in 2010.

treatment and mixed orders). In the case of some Central and Eastern European countries (such as Azerbaijan, Armenia and Moldova), CSM also include the *deprivation of the right to hold certain offices*, which corresponds roughly to the Western European concept of *ban from holding office*. As a rule, persons serving all these sanctions and measures are placed under the supervision of probation agencies.

The total number of persons per 100,000 inhabitants placed under the supervision or care of probation agencies – or an equivalent institution in countries that do not have such agencies– is called hereafter the *probation population rate*. Differences

between the probation population rate shown in this article and the overall rate published in the SPACE II reports are explained by the adjustments mentioned before (see the original data in Table 2).⁴

In our analyses, the probation population rate is compared to the *prison population rate*, which corresponds to the number of prisoners per 100,000 inhabitants. The concept of *prison population* may seem quite obvious from a theoretical point of view, but is polysemous in practice. Generally, it refers to the persons held in the facilities designed for the detention of pre-trial and sentenced offenders. However, the categories of persons deprived of freedom included in the total prison population vary from country to country. For example, some countries exclude juveniles from the total number of their inmates (Greece, Italy, Netherlands, Poland, Spain, Sweden and England and Wales)⁵ and others include persons held in police stations, institutions for mentally-ill offenders or institutions for administrative detention, which are not considered as penal facilities in most countries (e.g. Azerbaijan and Cyprus count people held in police stations; while Greece and Switzerland count persons held in administrative detention centres). In this article we have adjusted the figures of Finland, France and the Netherlands which include persons under electronic surveillance as inmates and also, in the case of France and the Netherlands, as persons under probation. Thus, persons under electronic monitoring were deducted from the total prison population in the three countries, and added to the probation population in the case of Finland.

Indeed, the particularities of each national criminal justice system and the way in which their criminal statistics are produced remain, as it is well known, a major obstacle for cross-national comparisons in general (Aebi, 2010, with references) as well as for those based on SPACE data for prison populations (Dünkel and Snacken, 2005; Dünkel et al., 2010; Snacken, 2011; Tournier, 1999) and for probation populations (Van Kalmthout and Durnescu, 2008). As a consequence, the results of this study must be interpreted cautiously.

The evolution of community sanctions and measures in Europe

There is a general consensus on the fact that, in recent decades, the number of offenders under CSM in Europe has rapidly increased.⁶ However, empirical data on the number of CSM executed in each country during the 1990s and early 2000s are not easily available.

In that context, the growing importance of CSM and probation agencies in Europe can be measured indirectly through the Recommendations of the Committee of Ministers of the Council of Europe adopted since the beginning of the 1990s that refer to them. These Recommendations are not legally binding, but they reflect matters in which the Committee has agreed on a common policy for all member states (CoE, 1949). Hence, in 1992, taking into account 'the considerable development which has occurred in member states in the use of sanctions and measures whose enforcement takes place in the community', the Council of

Table 2. Prison and probation figures for the year 2010 (original and adjusted data)

Country	Prisoners (including pre-trial detainees)				Persons under CSM				Ratio of probationers per 100 prisoners (adjusted)	
	Original (SPACE I)		Adjusted		Original (SPACE II)		Adjusted			
	Total	Rate	Total	Rate	Total	Rate	Total	Rate		
Armenia	4 918	151.3	4 918	151.3	2965	91.2	2 572	79.2	393	52
Austria	8 597	102.6	8 597	102.6	14546	173.7	11 009	131.4	3 537	128
Azerbaijan	36 891	410.0	36 891	410.0	6791	75.5	6 003	66.7	645	16
Belgium	11 382	105.0	10 413	96.1	40149	370.4	37 509	346.0	100	360
Bulgaria	9 379	124.0	9 379	124.0	14538	192.2	14 187	187.6	351	151
Croatia	5 165	116.7	5 165	116.7	644	14.6	644	14.6		12
Denmark	3 944	71.3	3 944	71.3	9357	169.1	7 638	138.0	1 670	194
Estonia	3 470	258.9	3 420	255.2	7568	564.7	7 047	525.8	521	206
Finland	3 316	62.0	3 205	59.9	2550	47.7	1 416	26.5	1 245	44
France	66 925	103.5	61 142	94.5	181489	280.6	172 465	266.7	1 677	282
Georgia	23 684	533.9	23 684	533.9	31986	721.0	31 800	716.8	186	134
Greece	11 934	105.6	11 934	105.6	7114	62.9	2 891	25.6	4 223	24
Hungary	16 459	164.4	16 459	164.4	31070	310.3	27 985	279.4	3 085	170
Ireland	4 352	97.4	4 352	97.4	5660	126.7	5 514	123.4		146
Italy	68 345	113.3	68 345	113.3	35800	59.3	16 697	27.7	886	24
Latvia	6 778	301.5	6 778	301.5	10491	466.6	8 739	388.7	1 227	129
Lithuania	8 887	267.0	8 887	267.0	7260	218.1	5 875	176.5	1 385	66

(continued)

Table 2. Continued

Country	Prisoners (including pre-trial detainees)				Persons under CSM				Ratio of probationers per 100 prisoners (adjusted)		
	Original (SPACE I)		Adjusted		Original (SPACE II)		Adjusted				
	Total	Rate	Total	Rate	Total	Rate	Total	Rate			
Moldova	6 415	180.0	6 415	180.0	7261	203.7	6 343	178.0	918	99	
Netherlands	11 737	70.8	11 444	69.0	37857	228.4	36 528	220.4	315	1 014	319
Norway	3 636	74.8	3 636	74.8	2322	47.8	1 910	39.3	394	18	53
Poland	80 728	211.5	80 305	210.4	249688	654.2	209 590	549.1	43 724	123	261
Portugal	11 613	109.2	11 613	109.2	15949	149.9	13 308	125.1	2 611	30	115
Romania	28 191	131.4	28 191	131.4	9628	44.9	9 628	44.9			34
Serbia	11 197	153.2	11 197	153.2	10	0.1	10	0.1	0	0	0
Spain (State Adm.)	65 098	164.8	62 814	159.0	89932	227.6	75 627	191.4	6 357	7 948	120
Spain (Catalonia)	10 761	143.2	10 705	142.5	11 190	149.0	8 501	113.2	1 843	846	79
Sweden	7 147	77.2	6 546	70.1	14150	152.9	9 626	104.0	4 524		147
Switzerland	6 181	79.4	6 181	79.4	7613	97.8	6 068	77.9	1 545		98
UK: Engl. & Wales	85 002	153.9	85 002	153.9	169882	307.5	266 077	481.7	37 229		313
UK: North. Ireland	1 475	82.0	1 475	82.0	4158	231.1	2 841	157.9	398	919	193

Source: Original data retrieved from the Council of Europe SPACE reports (Aebi and Delgrande, 2012).

Note: The adjusted figures (presented in italics) reflect the adjustments explained in the Methodology section.

Europe (CoE, 1992) introduced the European Rules on Community Sanctions and Measures. The increased use of CSM was indeed related to the growth of European prison populations, as can be seen on the Recommendation on prison overcrowding and prison population inflation adopted in 1999, which enumerates a series of community sanctions and measures that can be used as alternatives to imprisonment and help reducing prison populations (CoE, 1999). One year later, a Recommendation on improving the implementation of the European rules on community sanctions and measures of 1992 was adopted (CoE, 2000). Ten years later, the development of probation agencies charged with the supervision of the persons serving CSM led to establishing clear guidelines for them through the Council of Europe Probation Rules (CoE, 2010).

The SPACE series represent the only source of comparable statistics that can provide empirical data on the evolution of CSM in Europe during that period, although they are inevitably affected by the geopolitical changes endured by the continent since 1989 and its consequences on legislation and criminal justice systems, by the year in which each country became a member of the Council of Europe, as well as by some revisions and improvements of the SPACE questionnaire that is used to collect the data.⁷ The data available do not allow a year-by-year analysis of the evolution of every CSM in every country, but corroborate their general growth. For example, in the 1990s, few countries provided data on the use of CSM, partly because some of these sanctions did not exist and partly because, in the countries in which they existed, statistics were not available yet. If we use electronic monitoring as an example, in 2001 only two countries provided data on persons serving a sentence under that regime – usually combined with home arrest – while by 2007 there were eight countries providing such data and, by 2010, there were already 17.

The case of community service is paradigmatic. The data available show sudden increases in its use in Western European countries, which are systematically related to changes of the legislation. Thus, in Austria it was introduced in 2000 (Koss, 2008) and, 10 years later, the annual number of persons starting to serve such a sanction was higher than 3700. In Belgium, it became an autonomous sentence in 2002 (McIvor et al., 2010), leading to an increase from 882 persons serving community service in 1997 to 10,530 in 2010. Sweden introduced in 1999 a new conditional prison sentence with community service order as a condition (Kristoffersen, 2010), which means that, since then, community service can be imposed together with probation as well as together with a conditional prison sentence (Lindholm and Bishop, 2008). As a consequence, the overall annual number of persons serving community service increased from 2000 to around 4000 (Lappi-Seppälä, 2008), reaching 5460 in 2009. In Denmark, community service represented 10 per cent of the suspended sentences in the 1990s (Storgaard, 2001) but, after the extension of its use for cases of drunk driving in 2000, the number of persons sentenced to community service was multiplied by four within two years (Lappi-Seppälä, 2008) and by 2010 there were 3888 persons starting to serve it, compared to 679 in 1997. The same is true for Norway, where community

service and conditional sentences with supervision were replaced in 2002 by a new alternative called *Samfunnsstraff*, which is sometimes translated as *community punishment* (Lappi-Seppälä, 2008), others as *community sanction* (Aebi et al., 2011: 42) and others as *community sentence* (Kristoffersen, 2010) and implies that community service can be supplemented with requirements such as the obligation to participate in a programme or mediation. At the same time, the scope of application of this measure was expanded to include persons sentenced for drunk driving, leading to an increase from roughly 500 cases to approximately 2500 (Lappi-Seppälä, 2008), reaching 2647 in 2010 after peaking at 2930 in 2007. In Spain, the extension of the use of community service to different sorts of road offences in November 2007 led to a sudden increase in their use. In Catalonia, the figures rose from 2463 in 2007 to 7191 in 2009 and 8475 in 2010; while in the Spanish State Administration they reached 191,231 in 2010. However the lack of suitable workplaces created a critical situation – for example, 80 per cent of the sentences imposed in 2008 could not be executed – which was only solved with a new modification of the law that in 2010 gave the courts the opportunity to choose between a fine and community service for such offences (Vidales-Rodríguez, 2011). Switzerland shows a particular trend as the use of community service in that country increased constantly – from 1097 persons in 1994 to 5354 in 2007 – until a modification of the Criminal Code in 2007 – which changed the status of community service from a way of enforcing a prison sentence to a sanction in its own right – led to a decrease in its use (OFS, 2011) that diminished to 1809 in 2010.

Central and Eastern European countries followed a different trend that shows a decrease in the use of community service in the 1990s followed by an important increase in the 2000s. In order to explain that trend, one must take into account the different forms of punishment through work that existed during the Soviet Period. In particular, the *Legislation of the Foundation of Criminal Law in the U.S.S.R., 1959* – which inspired the criminal codes of the countries under the sphere of influence of the USSR – introduced the *correctional labours* or, literally, *correctional works* (*ispravitel'nye raboty*), which implied that the offender remained in the community and could continue working, but a percentage of his/her salary was confiscated (Durmanov, 1959–1960, 1960–1961). Thus, in their analysis of the tasks of Probation Services in Hungary, Kerezsi et al. (2008: 420) point out that ‘the responsibilities of adult probation officers were extended to implement corrective-educational work punishment from 1979, and then its substitute, community service from 1993’. In Poland, the ‘[u]se of community service dropped significantly after 1989, mainly due to various problems with the organization of the execution of such sentences. Only in recent years have courts started to impose this sanction a little bit more often (in about 15% of all convictions), which marks a significant progress’ (Krajewski, 2010: 263) and seems related to the introduction of a new Criminal Code in 1997 (Wiegand, 2002). In Lithuania,

Until 1994, the penalty of correctional works was quite frequently applied (21% in 1991, 10% in 1993, 7% in 1994), which later, even though foreseen by the law, was not

applied because of the type of forced work and difficulties arising from its application under the conditions of market economy (the convicted person had to work in his or her workplace and from his or her wages from 5 to 20 percent were deducted, therefore the aforementioned punishment was similar to a fine, not to a hard labor). (Cepas and Sakalauskas, 2010: 205)

Finally, in Hungary, there was also a sudden second increase in the number of persons serving community service that rose from 6928 in 2009 to 21,681 in 2010. This change is explained by a modification introduced in 2009 in the system of sanctions foreseen in the Criminal Code that increased the alternatives to imprisonment and provided more power to the courts while sentencing. For example, for a criminal offence sanctioned with up to three years of imprisonment, the court can now impose community work, fine, suspension of licence, suspension of driving privileges or expulsion instead of imprisonment (Miklós Lévy, 18 July 2012, personal communication).

In sum, since 1990, the number of persons serving CSM has constantly increased throughout Europe, in such a way that, by 2010, 17 out of the 29 countries included in this study, had more probationers than prisoners (see Table 2). As CSM were primarily introduced to reduce prison populations, the next section studies the evolution of these populations during the same period.

The evolution of prison populations in Europe

In order to maximize the available data and increase the readability of the presentation, Figure 1 shows prison population rates at three points in time: 1991, 2000 and 2010. Countries are sorted according to their prison population rate in 2010. Data for the three years are available for 22 countries, while data for 2000 to 2010 are available for 29 countries. For example, Portugal shows an increase of 34.5 per cent of its prison population rate from 1991 to 2010, but a decrease of 12.6 per cent from 2000 to 2010. Thus, the Portuguese prison population per 100,000 inhabitants in 2010 is three times higher than the one of 1990, but it is lower than the one of 2000.

All in all, it can be seen that, from 1991 to 2010, 17 out of 22 countries increased their prison population rate; while the same is true for 23 out of 29 countries from 2000 to 2010. This means that almost all European countries experienced an upward trend in their prison populations during the 20 years under study. The exceptions are Estonia, Romania and Switzerland that show a downward trend for both periods; while Latvia, Moldova and Portugal registered a decrease from 2000 to 2010. Northern Ireland shows a lower prison population rate in 2010 than in 1991 – which is explained by the peace process that took place in the country – coupled with an increase since 2000.

In general, Central and Eastern European countries inherited relatively high prison populations at the time of the breakup of the Soviet Union, and only a few are currently stabilizing or reducing them. On the other hand, Southern and North-Western European countries started the 1990s with relatively low prison

populations and experienced an increase of them, correlated mainly with an increase of the average length of detention and an increase in the percentage of foreign prisoners (Delgrande and Aebi, 2009a, 2009b; Melossi, 2003; Snacken et al., 1995).⁸

As an intermediate conclusion, it can be said that both the use of CSM and the use of imprisonment have increased in Europe in the 1990s and 2000s. If all other factors had remained constant during that period (i.e. *ceteris paribus*), this result would falsify the main hypothesis of this article and corroborate the existence of a net-widening effect. In that context, a key question is whether crime rates have remained constant or not. Even if research has shown that the evolution of imprisonment rates is not directly correlated to the evolution of crime rates (Aebi and Kuhn, 2000, with references), one cannot deny that ‘there is generally *some* relationship, however mediated and indirect’ (Garland, 2013: 487, emphasis in original). As a consequence, crime trends will be discussed in the next section.

Crime trends in Europe

The evolution of crime in Western Europe from 1990 to the second half of the 2000s has been the object of several studies based on offences and offenders known to the police, conviction statistics, mortality statistics and victimization surveys (see Van Dijk et al., 2012). According to them, when Western European countries are combined in a single cluster, the different crime measures show a general increase in offences at the beginning of the 1990s – which is the continuation of a rise in crime that started in the 1960s – followed by two opposite trends. On the one hand, property offences and homicide started decreasing by the mid-1990s; on the other hand, drug-related offences and the rest of violent offences pursued their upward trend and only seemed to stabilize by the second half of the 2000s.⁹ The overall crime rate shows a downward trend because it is heavily influenced by property offences, which represent the vast majority of recorded crimes (Aebi and Linde, 2012, 2014; Aebi et al., 2015). In Central and Eastern Europe the evolution is similar, but the decrease in property crime started only in the 2000s while assault and rape stabilized by the mid-2000s (Gruszczyńska and Heiskanen, 2011; Šelih and Završnik, 2012).

This means that, in Europe, prison population rates and probation population rates increased despite the fact that the overall crime rate was falling. There is no empirical evidence suggesting that this use of custodial and non-custodial sanctions had a deterrence effect that could explain the downward trend in crime. Researchers tend to agree on the fact that the decrease of property offences is related to the proliferation of security technology, including improvements in household protection and the presence of private security officers (Knepper, 2012; Van Dijk, 2008; Van Dijk et al., 2012). Hence, crime and punishment have been moving in opposite directions.

It is true that persons convicted for violent offences and drug trafficking typically receive longer sentences than those convicted for property crimes. However, they

usually represent less than half of the total prison population. Their proportion in that total has increased during the period under study, and such increase corroborates that there is *some* relationship between trends in imprisonment and crime trends (Aebi et al., 2015). Nonetheless, the magnitude of that increase is smaller than the one shown by the general prison population. In sum, the increase in the number of persons convicted for non-lethal violence and drug-related offences cannot be the only explanation of the increase in prison and probation population rates.

Prison and probation population rates in Europe in 2010

After having observed a net-widening effect from a longitudinal perspective covering the 1990s and 2000s, this section will analyse the situation in 2010. As mentioned in the Methodology section, the goal is to check if the countries with the highest probation population rates are the ones that have the lowest prison population rates. Figure 2 shows the total prison and probation population rates by country in 2010, including a distinction between the proportions that each of these categories adds to the total. Countries are sorted according to their prison population rate. For example, Finland had a total rate of 86 persons per 100,000 inhabitants, of which 69 per cent were in prison and 31 per cent under the supervision of probation agencies, while Georgia had a rate of 1251 persons, and the percentages of 43 per cent and 57 per cent respectively. In Table 2 we also provide the ratio of probationers per 100 prisoners, which corresponds to 44 in Finland and 134 in Georgia.

It can be seen that seven out of the 10 countries with the highest probation population rates are also among the 10 countries with the highest prison population rates (England and Wales, Estonia, Georgia, Hungary, Latvia, Poland and the State Administration of Spain), Belgium and France are close to the median North-Western/Southern European custodial rate – which corresponds to 96 prisoners per 100,000 inhabitants – and only the Netherlands shows the second lowest prison population rate. Once more, the hypothesis that CSM are used as alternatives to imprisonment must be rejected. Moreover, when the longitudinal dimension is reintroduced, it can be seen that only Latvia and Estonia registered a decrease of their prison population from 1990 to 2010 (Figure 1). Belgium, France and the Netherlands did not register such a decrease even if by 2010 they have reached a ratio of roughly three probationers per prisoner.

On the other extreme of the scale, among the 10 countries with the lowest probation population rates, there are three (Finland, Norway, Switzerland) that are also among the 10 countries with the lowest prison population rates. The situation in these countries suggests that a moderate use of CSM can help keeping the prison population rate low. Switzerland even registered a decrease of its prison population rate from 1990 to 2010.

Undoubtedly, all these rates are partially explained by the levels of crime, but it seems also obvious that we are facing two completely different ways of dealing with offenders.¹⁰ While the seven countries with the highest prison and probation population rates (England and Wales, Estonia, Georgia, Hungary, Latvia, Poland and

the State Administration of Spain) seem to prioritize the control exerted over offenders by keeping them inside the criminal justice system – either in prison or through CSM – the three countries with the lowest rates (Finland, Norway and Switzerland) seem to prioritize socialization in the community.

Discussion and conclusion

The data analysed in this article show that the number of persons serving CSM has rapidly increased in Europe during the 1990s and 2000s. Prison populations have also increased during the same period. Crime trends cannot explain such trends. As a consequence, it is possible to conclude that the increased use of community sanctions and measures did not lead to a decrease of prison populations across Europe. This result falsifies the hypothesis suggesting that CSM are being used as alternatives to imprisonment. Quite the contrary, the parallel growth of probation and prison population rates corroborates the opposite hypothesis. In sum, instead of being alternatives to imprisonment, community sanctions and measures have contributed to widening the net of the European criminal justice systems. The situation in Europe is thus similar to the one described 20 years ago in the United States and Canada by Blomberg et al. (1993), Mainprize (1992) and Petersilia and Turner (1990); and quite recently by Phelps (2013) who states that, from 1980 to 2010, both the number of prisoners and the number of probationers have increased in the United States, regardless of trends in crime.

The net-widening effect of CSM becomes tangible when one adds the number of inmates and the number of probationers in each country. The sum represents the number of persons that should be in prison if CSM had not existed, and it is expressed in rates per 100,000 inhabitants in Figure 2.¹¹ However, a ranking of North-Western European prison populations led by England and Wales with a rate of 635 prisoners per inhabitants – a rate only comparable to the ones of Russia and the United States of America – followed by Belgium with 442, France with 361 and the Netherlands with 289 does not seem plausible. How many prisons should have been built in order to hold all these persons?

These results suggest that CSM have become one of the instruments of an increasingly punitive approach to crime control. To explain this punitive turn, several authors have proposed concepts such as *populist punitiveness* (Bottoms, 1995) *penal populism* (Roberts et al., 2002), *the culture of control* (Garland, 2001), *new public managerialism* (Stenson and Edwards, 2004), *governing through crime* (Simon, 2007), *punishing the poor* (Wacquant, 2009) or *the exclusive society* (Young, 1999). However, with a few noteworthy exceptions – the most quoted being the works of Cavadino and Dignan (2006) and Nelken (2010) – these explanations are based on the situation in the USA and in England and Wales. Garland (2014: 58, emphases in the original) himself points out that his

own dissatisfaction with *The Culture of Control* and the associated claims about increasing punitiveness is not that they were overly pessimistic, as Lucia Zedner

(2002) charged, or overly generalized, as Michael Tonry has repeatedly suggested (e.g. Tonry, 2007). It is that they were primarily *historical* and focused on change over time in two countries: the US and the UK. They were not *comparative*, nor did they seek to explain variation across cases.

Our results, on the contrary, are based on a comparative approach. In that context, a comparison of prison and probation populations in 2010 reveals a wide diversity in the extent of the use of CSM across Europe. Some countries have more than three probationers for each prisoner, while others have more than two prisoners for each probationer. At the same time, most of the countries with the highest number of probationers also have the highest number of prisoners.

Indeed, when analysing the distribution of prison and probation populations at a given moment, it is difficult, even from a theoretical point of view, to decide which should be a reasonable balance between the number of persons sent to prison and the number of persons serving community sanctions and measures. The introduction of a longitudinal dimension provides a guide in the sense that each increase in the number of persons serving CSM should be reflected in a decrease of the number of persons sent to prison. In that perspective, the data suggest that the most worrying situation is the one of countries that, after registering increases in the number of persons serving custodial and non-custodial sanctions and measures during the 1990s and 2000s, reached high overall rates of prison and probation populations in 2010, coupled with a high ratio of probationers per prisoner.

At the same time, it is difficult to affirm which countries are using CSM in a reasonable way. Switzerland constitutes a good example because it shows a low number of prisoners, a low number of persons serving CSM, and a decrease of its prison population. The Nordic countries, whose criminal policies are frequently considered as reasonably balanced (Pratt, 2008; Tonry and Lappi-Seppälä, 2011), show low prison population rates but a wide variation in the use of CSM. Norway and Finland seldom use such sanctions, while Sweden and especially Denmark use them quite often. Thus, the homogeneous image revealed by the analysis of their prison populations hides a manifest heterogeneity in the use of alternatives (Lappi-Seppälä, 2008). A fruitful direction for future research seems to be the comparison of countries from the different groups identified in this study.

All in all, the result of 20 years of community sanctions and measures in Europe is a huge number of persons serving such sentences, but no visible effect on prison population rates. Community sanctions and measures are not a panacea for reducing imprisonment. Indeed, they do not at all guarantee a decrease of the prison population.

Notes

1. In Italy, this category corresponds to persons under observation while in prison as well as those imprisoned under security measures for dangerous offenders. In Denmark, it corresponds to persons placed under alternative forms of institutional

- supervision. In Norway, it refers to persons placed under home detention during the final stage of their prison sentences. In Portugal, it corresponds to persons placed under home arrest before conditional release. Finally, in Northern Ireland, it includes persons under custody probation orders and persons who received determinate custodial sentences.
2. In the case of Sweden, data on community sanctions and measures refer to the year 2009 instead of 2010.
 3. Data for Armenia refer to the period 2001–2010. Data for Azerbaijan, Georgia and Serbia refer to the period 2002–2010.
 4. Offenders conditionally released, offenders serving sanctions under the regime of semi-liberty and probationers placed in custody for any other reason are not included in the adjusted probation population (see the explanations in the Theoretical Framework section). In the case of England and Wales, offenders placed under court-ordered treatment, community service, and home arrest with electronic monitoring – which have been excluded by the country – are included in it. Figures for Latvia – which uses files instead of persons as the counting unit for probation statistics – were adjusted according to the comments provided by the country in the SPACE II reports.
 5. In the case of CSM, minors are excluded from the data of England and Wales, France, Hungary, Italy, Netherlands, Serbia, Spain and Switzerland.
 6. See, for example, the collection of essays gathered by McNeill and Beyens (2013) and by Ruggiero and Ryan (2013).
 7. According to the SPACE reports, the counting unit in SPACE II until 2001 was the CSM *ordered* by a court; but an analysis of the answers to the 2001 survey revealed that not only few countries were able to provide data – mostly because the questionnaire was being sent to Prison Services, but asked for data from conviction statistics – but also that the figures provided were not strictly comparable. As a consequence, the questionnaire was modified and, since 2007, the counting unit became the *person* serving (*stock*) or having started to serve (*flow*) a CSM; moreover, the 2010 questionnaire clearly stated that it referred to '[p]ersons under the supervision or care of probation agencies' (Aebi et al., 2012: 15). These changes – which helped increase the number of replies from the countries – imply that any longitudinal analysis of the evolution of CSM based on SPACE data will lead to an *under-estimation* of the increase in their use. The reason is that, in practice, the number of sanctions imposed is systematically higher than the number of persons serving such sanctions, not only because a person may receive more than one sanction but also because not all sanctions are executed.
 8. The growth of the average length of detention has been put in relation with the rise of *penal populism* (Roberts et al., 2002) combined with an increase of police recorded drug offences and non-lethal violent offences that lead to long sentences (Aebi et al., 2015), and it could also be related to the increased use of CSM for minor offences.
 9. When countries are studied individually, there are only a few exceptions to these trends. For example, in England and Wales, violent offences have been decreasing since the mid-1990s (Van Dijk et al., 2012).

10. Quite often, comparisons of prison population rates and their relationship with punitiveness tend to forget that crime levels are not necessarily the same across countries (Nelken, 2009).
11. In order to reach the total 'correctional population' (Garland, 2013: 478) one should still add the offenders excluded from our analyses because they were placed in back-end programmes (see Table 2).

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