

BUILDING PROBATION CAPACITY: WHAT WORKS?

Annex F4 – Country Case study

POLAND

Stephen Pitts

Leo Tigges

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BUILDING PROBATION SERVICE CAPACITY: WHAT WORKS?

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This country study is an annex to the report "Building Probation Capacity, What Works: Learning from the European Experience of Probation Service Development in the 21st Century."

Any opinions, findings, conclusions, or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of interviewees, of individuals that gave advice or feedback on drafts, or of the institutions that are mentioned in the materials. Any errors are the fault of the authors.

The field studies were carried out before the main report was written. The data - with some exceptions- were updated as far as possible up to and including 2022. Recent developments may shed new light on the described situation.

We are immensely grateful to everyone who has helped to make this study possible.

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Contents

Introduction	4
Executive Summary	4
The model	4
Context	4
Probation development and capacity building	6
Future possibilities	7
Section 1. Facts and Figures	9
Prison Rate and Population	9
Section 2. The current situation (Domains and Enablers)	13
The Four “Domains” of Probation	13
The Four “Enablers” of Probation	20
Section 3. Characteristics of Capacity Building in Poland	30
APPENDICES	33
Appendix 1 - Historical Development of Probation in Poland	33
Appendix 2 - Sources of Information	36
Appendix 3 - Summary European Commission’s Progress and/or Monitoring Reports EC regarding Accession Poland	40

Introduction

This country case study summarises the development of the Probation Service in Poland from 2001 until the present situation. It describes processes of capacity building including examples of good practice and concludes with brief observations on the current state of play in relation to the service.

In comparison with other country reports the number of interviews we had is less numerous and diverse. The literature available in English is not sufficient to compensate for the lack of oral information. Therefore, although as many sources were used as possible (oral, and written reports), the results need to be seen as slightly more impressionistic than those of other country reports.

The study begins (Section 1) with some facts and figures. Then (Section 2) tabulates information regarding the current state of play in the probation “domains” and in respect of probation “enablers”. Section 3 offers observations on the development of and present state of probation in Poland.

Appendices provide further detail, on the historical development of probation and capacity building, and on sources of information.

Executive Summary

The model

The capacity building model has been helpful in understanding the process of probation service development, including the domains in which the service works, and the service’s enablers. The model has also helped to explore the identification of possibilities and threats to the further development of probation in Poland.

Context

The prison population rate and the probation population rate belong to the highest groups in Europe. Penal populism is mentioned by academics as one of the underlying causes, but also the fact that a lot of offenders who are sentenced to a suspended prison sentence or community service later end up in the prison if their sentence is breached. The high rate of imprisonment is, in the literature, partly explained as being a consequence of the abuse of the

suspended prison sentence.¹ In most cases the court does not impose probation supervision and, if imposed, the probation service does not have the capacity (in terms of number of staff, methods and tools), to address the risks and needs of the offender. In the case of the imposition of a community sentence, around 27% are breached, leading to substitutive imprisonment.

Several (legal) measures were recently taken by the government to address the problems associated with the suspended prison sentence. (The possibility to sentence an offender to a suspended prison sentence was limited to only once in a "criminal career". Also, the maximum period of suspended prison sentence was brought down from 2 to 1 year, and the probation period was limited in principle from 5 to 3 years.) Measures were also taken to organise and execute community service in a more efficient and less costly way; the same has been done for electronic monitoring as an alternative to a prison sentence. Nowadays the number of suspended prison sentences is much lower.

The abuse of the suspended prison sentence, and later the expansion of community service, led to an excessive probation officer caseload. As a result, professional execution of risk assessment, and good interventions, were difficult to achieve. The quality of pre-sentence reports is by several respondents also seen as limited, mainly because of the absence of scientific tools and the fact that probation officers only in exceptional cases offer clear advice about the suitability of sentencing options.

The probation service is part of the organisation of the courts; there is no nation-wide management structure. Legislative initiatives and staff aspects (salary structure, number of probation officers, the infrastructure for training, including external administrative oversight) are responsibilities of the Ministry of Justice. In practice, there are differences in the functioning of individual regions, although we have not been able to assess the extent of the variation. In comparison with other countries in our study, it is difficult to get a clear picture of the functioning of the probation organisation, as integrated nationwide and local information is lacking.

The probation service is comparatively large, consisting of 47 regions, 560 probation units, around 3000 professional probation officers and around 7000 volunteer/community probation workers. The number of offenders in prison or under supervision is in comparison with European norms, very high (even higher than Russia). The largest part of probation work consists of the implementation of community service, followed by the implementation of suspended sentences (with and without the supervision of a probation officer).

¹ "...the abuse of the institution of conditional suspension of imprisonment in the criminal policy was characteristic of almost all post- communist countries and was a reminiscence of the criminal policy pursued by the authorities of a totalitarian state, in which the suspension, linked to the possibility of its revocation at any time, was a convenient tool of control and blackmail against one's own citizens." (Mycka & Kozłowski, 2017)

The technical part of Electronic Monitoring is organised outside the probation service; control and social rehabilitation interactions are performed by probation officers, including writing breach reports. There is no, or only very limited, involvement of the probation service in the preparation of conditional release (the probation service does not produce advisory reports with respect to conditional release; probation officers collect information via environmental interviews). However, supervision over conditionally release persons is one of the basic tasks of probation officers. The case load of probation officers is high. In addition, they are responsible for training and the management of social/voluntary probation officers.

Probation development and capacity building

As no substantial capacity building projects have taken place in Poland, we cannot draw many conclusions on what worked well or badly in capacity building. We limit ourselves to the following conclusions.

Probation for adults was developed within Poland without visible signs of foreign influence. Poland was not involved when the creation of alternatives to imprisonment became an important development in Western countries in the 1950s and 1960s. During the accession process probation was not high on the agenda as reflected by the yearly country reports that were produced by the European Commission. However, we are aware that during the accession period, changes to the penal procedure code were prepared, with more primacy to alternative sanctions and including involving the participation of non-governmental organizations. The fundamental link, responsible for organizing the enforcement of alternative sanctions, was the probation officer, who was granted the status of an executive proceeding body for this purpose. These changes were also the basis for the establishment of the Act on Probation Officers (2001) - the first law regulating the profession's systems.

Nonetheless, not all the proposals developed by teams of scientific experts have been implemented, especially concerning founding a dedicated structure in the ministry responsible for coordinating the probation service. As a result, it appears that probation has not fully developed its potential, including as an organisation that could potentially

alleviate prison problems (overcrowding, alternatives to custodial sanctions). During the accession period topics other than alternative sanctions and probation appeared to have had higher priority (for instance quality of, and trust in, courts and police). Further, in comparison with other countries probation already existed at the time of accession to the EU and the need was apparently not felt at that time to invest in the ongoing development of probation. The absence of central management seems not to have helped to stimulate development of the probation system.

The Polish Probation Service does not participate in the international cooperation network, the CEP (it does have membership of CEP). Until recently Poland did not send in statistical information on probation in the framework of the SPACEII statistic project (and regarding 2020 Poland was not able to fill in the whole questionnaire).

Despite the strengthening of the systemic position of the Polish probation officer in 2001, no conditions were created for the implementation of tools in the area of risk assessment and work methodology, which were being developed in parallel in Europe. As a result, despite the valuable bottom-up initiatives of probation officers from individual districts, a control and reporting approach dominates in the work of the probation system. Although probation officers state that they are using casework methods, there are no coherent tools for the evaluation of this work. In the years 2007 - 2015, a heavy supervision overload made it very difficult to individualize supervision work. The conditions for implementing more engaging working methods are now better. It seems that the enthusiasm of probation officers to submit to methodological training is high, which is confirmed by the experience with the implementation of the project "Popularization of the use of non-custodial penalties and probation measures in the criminal justice system" (Norway Grant). Interagency meetings with satisfactory participation were organized in the framework of the project and appear to have had an impact on sentencing practice, leading to more judicial confidence in sanctions as fines, and in community service.

Moreover, awareness is now in place among judges that in case of relatively high-risk offenders the option of sentence to prison for a short period is preferable than to convict the offender several times to suspended prison sentences, without a favourable probation prognostic, with the consequence that sentences are often commuted to long prison sentences.

It appears that, among practitioners, enthusiasm to participate in international projects is high. The absence of capacity building projects might be a reason, according to our interpretation, that the impact of the probation service on the justice system seems to be limited. This limited impact might however also be attributed to the absence of a centrally led management of the probation service. One of the lessons learned might be that building up of an effective probation service at least requires a committed, stimulating and enabling leadership on national level and a structure of accountability within the Ministry of Justice.

Future possibilities

There seems to be ample opportunities to further develop probation: to decrease the number of prisoners by increasing alternatives to detention. A number of steps could help to achieve this: increasing the number of pre-sentence reports (and basing them on a proper assessment system) and by including advice to the courts how the case might be settled; targeting more

serious offenders when using non-custodial options; improving the implementation of community service by better selecting the offenders for which this sanction might work and tightening work processes (for example swift and unequivocal reaction in case of breachers), and expanding the involvement of the probation service in preparing conditional release - cooperation with the prison service leaves much room for intensification.

The probation service will need to modernize probation methodology, making use of the international scientifically grounded knowledge. Probation workers we met were motivated to play their part in professionalizing their organisation. But these changes require a on the one hand a stronger, enduring, and committed central leadership to manage the transformation process and to develop a strong probation identity; on the other hand, participation in the European community of probation would also stimulate probation development. On the ground there are promising developments, for instance in Wroclaw where a slowly emerging trend to restorative orientation to community sanctions can be discerned. At the same time, there are strong indications that the present political climate is not conducive to improving the system of alternative sanctions with a greater focus on rehabilitation. Furthermore, attention must continue to be paid to the knowledge and attitude of judges towards alternative sanctions and the probation system.

Section 1. Facts and Figures

Prison Rate and Population

Indicator	1973	1990	2002	2021
Prison population total (including pre-trial detainees /remand prisoners)	121,838	45,000	80,467	71,297
Prison population rate (per 100,000 of national population)	364	120	211	188
Pre-trial detainees / remand prisoners (percentage of prison population)	-	-	-	22 ²

General data (SPACEII, 2020):

Country Population on 1.1.2020:37 976 687

Total number of persons under the supervision of probation: 244 199

Probation Population Rate: 643 (European mean: 218); comparatively high

Caseload: 24,7 (European mean: 47); relatively low; however, this is based on the total number of staff, including the "social professional probation workers". If the calculation is made based on the professional probation workers only, then the caseload is 84. (Information from Grzegorz Mista³)

Reports:

- Number of presentence reports in 2019: 21 270; ratio 2,2 per staff member, comparatively low (European mean is 7); however, leaving the social probation officers out of the calculation (in around 8% of the

² In 2015, the number of people temporarily arrested was 4,162. In 2020, this number doubled and amounted to 8692. Source: <https://www.prawo.pl/prawnicy-sady/tymczasowe-aresztowania-w-polsce-liczba-wciaz-rosnie,507498.html>

³ The professional probation officers perform key tasks in the supervision conducted by social probation officers (summon court and conduct educational interviews, consult the actions of social probation officers, apply for qualification to a risk group, correct and approve monthly documentation, charge sums for costs incurred by social probation officers, submit applications. Social probation officers do not perform any tasks at all in most types of cases in the offices of professional probation officers (penalty of restriction of liberty, electronic supervision, conditional suspension of the execution of a sentence without supervision, precautionary measures).

activities in this domain is made with the participation of social probation officers), then the professional probation officers conducted 6,7 activities in this domain (information from Grzegorz Mista).

- Number of advisory reports with respect to conditional release in 2019: no data.
- Other reports in 2019: 197 075; ratio: 19.9 per staff member; European mean: 4.4.

Supervision:

- Total number of persons under the supervision of probation agencies: 244 199 (Stock 31-1-2020)
- Total number of persons placed on Probation during 2010: unknown (Flow); however, based on information from Grzegorz Mista, in recent years, about 300,000 cases annually are due to be carried out by the Polish probation service. A similar number of cases is completed.
- Forms of supervision before the sentence: 3988. This is Deferral, defined by the Council of Europe as postponement of the pronouncement of a sentence during a certain period, in order to appreciate the evolution of the behaviour of the offenders during that time. This forms 1.6% of the total number of offenders placed under probation in Poland in 2019.

Forms of supervision after the sentence:

Total	Stock 240 211
Mixed sanctions or measures	NAP ⁴
Fully suspended custodial sentence with probation	50538
Partially suspended custodial sentence with probation	NAP
Conditional pardon or conditional discharge (with probation)	NAP ⁵
Community Service	12052
Electronic Monitoring	5117
Home arrest (curfew orders)	NAP
Semi-liberty	NAP
Treatment	NAP
Conditional release	16903
Others	47126

Of which:

- Supervision of probation duties not covered by Fully suspended conditional sentence with probation: 37197
- Preparedness of inmate to conditions after release: 1140
- Execution of some penal measures not covered by Fully suspended custodial sentence with probation: 8789

⁴ In 2018, 3,212 mixed penalties were imposed in Poland (i.e., imprisonment + community service) (information from Grzegorz Mista)

⁵ At the end of 2019, probation officers conducted 16,989 supervisions over people who were conditionally released early (information from Grzegorz Mista).

In contrast to the other countries that participated in the SPACE II Data collection, the Flow numbers of Poland are not known.

Probation Rate and Population

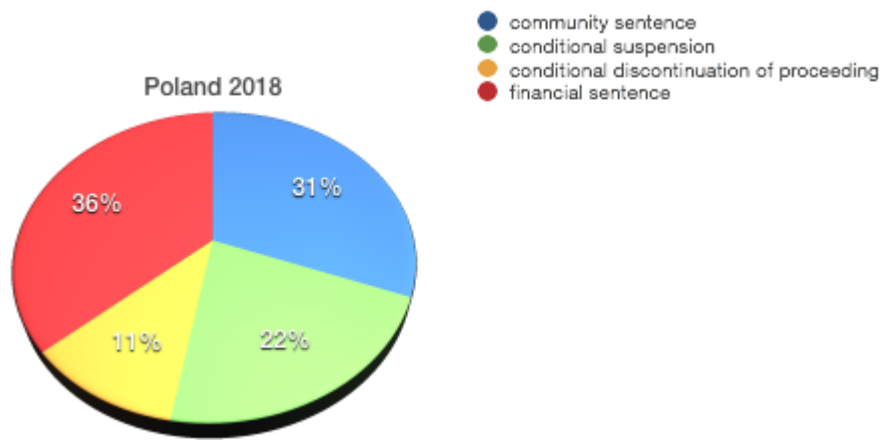
Poland ranks among the second highest in Europe, in terms of offenders under prison and probation in 2019, namely 838. The highest is Turkey (984). The imprisonment rate and the probation rate (number of people under prison or probation per 100.000 inhabitants) were in 2019 643 and 195, respectively (Aebi et al, 2021). Poland is currently an undisputed leader in terms of the number of people exposed to services probation officers per 100,000 inhabitants among all European countries; Polish probation officers are record-holders in the execution of sentences of restriction of liberty (Mista, 2019).

Burdziej comments: *"Poland has ranked among EU countries with the highest incarceration rate. This has been especially puzzling given that levels of registered crime have generally been lower than the EU average and kept decreasing. Among the reasons for this paradox, ineffective probation and unsustainable sentencing policy were important. In 2009, 1% of the Polish population were under probation - such high levels of supervision persist until the present day."* (Burdziej, 2018). This phenomenon is called by MacNeill (2019) "mass supervision".

In 2017, apart from ca. 74,000 people serving prisons sentences, for several years another ca. 70,000 convicts used to wait outside for a chance to serve time. The fact that so many people with pending prison sentences used to walk freely had a devastating effect on citizens' sense of justice, and criminals' motivation to change their ways. (Burdziej, 2018). Many of offenders waiting for the execution of the prison sentence, moved to the UK, which in consequence contributed to the large number of European Arrest Warrants being issued after them.

Since 2005 till 2014 prison sentences remained the same while alternatives sentences dropped significantly (50000-30000) (Firouzi Tabar, 2016). Since 2015 the decline has been slowing down, what has changed though is the structure of alternative sanctions and measures. While the number of community sentences increases, there is a drop in the number of suspended prison sentences (information from Mista and Matzac).

Main alternative sanctions in Poland 2018 (Mista; based on Court statistics - sentencing of adults between 2014 - 2018. Polish Ministry of Justice, 2020.)



Section 2. The current situation (Domains and Enablers)

The Four "Domains" of Probation

Domain 1 - Pre-Trial and Pre-Sentence

- Pre-sentence Reports
- Pre-sentence provisions art 214 Code of Criminal Procedure⁶
- Legal provision that judges (80%) and public prosecutors (20%) can request reports but this in practice is pre-dominantly done in case an offender under probation re-offends and often in drug addiction cases.
- Numbers on reports in 2018: interviews ordered in preparatory and court proceedings (Article 214 of CCP) conducted by probation

⁶ Art. 214. [Environmental interview, conditions for drawing up, bodies, content]
§ 1. If necessary, and in particular when it is necessary to establish data as to the personal characteristics and conditions and the way of life of the accused to date, the court, and in the preparatory proceedings, the prosecutor orders in relation to the accused conducting an environmental interview by a probation officer or other entity entitled under separate provisions, and in particularly justified cases by the Police.
§ 2. Conducting an environmental interview is obligatory:
1) in cases of crimes.
2) in relation to the accused, who at the time of the act is under the age of 21, if he was accused of having committed a willful offense against life.
§ 3. The environmental interview may not be carried out in relation to the accused, who has no permanent residence in the country.
§ 4. The result of the environmental interview should include in particular:
1) name and surname of the interviewer;
2) name and surname of the accused;
3) a brief description of the life of the accused to date and detailed information about the accused's environment, including the family, school or work environment, and more information about his financial status and sources of income;
4) information about the state of health of the accused, as well as about abuse by him alcohol, drugs, drugs or psychotropic substances;
5) the interviewer's own observations and conclusions, especially regarding personal characteristics and conditions and the way of life so far the accused.
§ 5. Data on persons who provided information as part of the environmental interview, the interviewer discloses only at the request of the court, and in the proceedings preparatory - the prosecutor.
§ 6. Persons who provided information as part of the environmental interview may be, if necessary, heard as witnesses.
§ 7. The police are obliged to provide the interviewer with assistance performing tasks related to environmental intelligence in order to ensure it safety.
§ 8. It shall apply to the person appointed to conduct the environmental interview respectively the provisions on the exclusion of a judge. The court decides about it, and in the proceedings preparatory stage - the prosecutor.
§ 9. The Minister of Justice, in consultation with the minister competent for matters internal, will determine, by regulation, the regulations of activities in the field conducting an environmental interview and a model questionnaire for this interview, having taken into account the need to ensure the collection of comprehensive data about the accused.

officers for adults: 19253 (Report MS-S40r on probation service for 2018 prepared by Polish Ministry of Justice, table 3), that is 6% of all the cases dealt with by the criminal courts. SPACE 2020 reported 21279 of these reports over the year 2019. (The percentage seems to be in 2022 on around 10%, according to private communication.)

- No recommendations are made by the probation officers on the sanction options, observations by the probation officer can be described. (Daniluk & Gensikowski, 2021)
- Lack of in-depth diagnosis: Defendants often received suspended sentences even in the absence of a positive criminological prognosis. Ends up with in most cases again in new probation sanctions, because of lack of cells.
- The verdict takes place without professional pre-trial diagnostics of the accused. Provided by the legislator in Art. 214 of the CCP, in practice, environmental intelligence does not provide the judge with information allowing for a deep and completely accurate criminological forecast. *"Equipping the probation service with a modern tool for personal diagnosis and criminological forecasting is a sine qua non condition for its further development and for improving the accuracy of criminal judgments."* (Mycka & Kozłowski, 2013)
- The alternative to pre-trial detention is police supervision (See: Helsinki Foundation, p.35-38, 2019). (Probation supervision cannot be imposed as in the Polish legal/criminal justice system, probation supervision is not possible at the stage of pre-court proceedings). *"Over the years 2003-2015 the number of people in pre-trial detention decreased significantly (more than fourfold), which should be seen as the success of efforts to make pre-trial detention a preventive measure of a preventive nature"*. (Mycka & Kozłowski, 2017)
- EM is not used as an alternative to pre-trial detention.

Domain 2 - Community Sentence

- *Conditional discontinuation* of proceedings is a conditional sanction⁷;

⁷ Art. 66.

§ 1. The court may conditionally discontinue the criminal proceedings if the perpetrator's fault and social harmfulness of the act are not substantial, the circumstances of the committed crime are indubitable, and due to the demeanour of the perpetrator, who has not been previously sentenced for an intentional crime, his characteristics, personal conditions and previous way of life, it is reasonable to expect that, in spite of the discontinuance of the proceedings, he will respect the legal order, especially by not committing a crime.

§ 2. The conditional discontinuance of the criminal proceedings does not apply to the perpetrator of a crime subject to the penalty of deprivation of liberty exceeding 5 years.

- There is no conviction and, consequently, no punishment of the perpetrator of the crime in the event of the application of a probation measure in the form of a conditional discontinuation of criminal proceedings. The court may conditionally discontinue criminal proceedings, if the guilt and social harmfulness of the act are not significant, the circumstances of its commission do not raise any doubts, and the attitude of the perpetrator who has not yet been punished for an intentional crime, his/her personal characteristics and conditions and the way of life so far justify the assumption that despite the discontinuation of the proceedings, the perpetrator will respect the legal order, in particular that he/she will not commit a crime (Art. 66 § 1 PPC). The conditional discontinuation of criminal proceedings cannot, however, be applied to the perpetrator of an offense punishable by more than 5 years of imprisonment (Art. 66 § 2 PPC). (Daniluk & Gensikowski, 2021)
- Probationary period up from 1-3 years; conditions may be imposed; probation supervises and informs the court on any infringement.
- *Suspended/conditional sanction* (conditional suspension of the execution of the imprisonment sentence)⁸;

Art. 67.

§ 1. The criminal proceedings are conditionally discontinued for a test period that lasts from one year to 3 years and runs from the moment the ruling becomes final and valid.

§ 2. While conditionally discontinuing the criminal proceedings, the court may place the perpetrator during the test period under the supervision of a probation officer or a trustworthy person, association, institution, or social organisation responsible for education, preventing demoralisation and providing assistance to sentenced persons.

§ 3. While conditionally discontinuing the criminal proceedings, the court imposes the obligation to redress the full damage inflicted by a crime, or to redress part of it, and if possible also the obligation to compensate for the suffered harm, or imposes punitive damages instead of these obligations; the court may impose on the perpetrator the obligations provided for in art. 72 § 1 sections 1-3, 5-6b, 7a or 7b, and may also impose the pecuniary payment provided for in art. 39 section 7 or the prohibition from operating vehicles provided for in art. 39 section 3 for up to 2 years. The provisions of art. 72 § 1a and 1b apply accordingly.

§ 4. The provision of art. 74 applies accordingly.

⁸ Current version of Art. 69 of CC (Source: LEX).

§ 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.

§ 2. While suspending the enforcement of a penalty, the court primarily takes into consideration the perpetrator's demeanour, his characteristics, personal conditions, previous way of life and behaviour after committing the crime.

§ 3. (repealed).

§ 4. The court may conditionally suspend the enforcement of the penalty of deprivation of liberty imposed on the perpetrator of a misdemeanour of a hooligan character, or on the perpetrator of a crime provided for in art. 178 § 4, only in exceptional situations.

Art. 70.

§ 1. The suspension of the enforcement of a penalty is imposed for a test period lasting from one year to 3 years and running from the moment the ruling becomes final and valid.

§ 2. In case of the conditional suspension of the enforcement of a penalty imposed on a juvenile or the perpetrator who has committed a crime involving the use of force against a person sharing the same residence, the test period lasts from 2 to 5 years.

- Court may conditionally suspend up to 1 (was 2) years the execution of a penalty of deprivation/ imprisonment for a crime punishable up to a 5 years; the probation period can last from 1-3 (was 5) years for adult offenders, and in extraordinary cases from 2 to 5 (when it relates to young offenders, domestic violence). This is the most frequently imposed alternative to imprisonment (Krajewski, 2016); *"supervision by a probation officer is ordered in only a third of cases and therefore bears little resemblance to probation in other Western countries"*. *"Judges prefer to use suspended sentences, especially unsupervised ones, because they are the simplest to implement. They require no implementation at all."* (Krajewski, 2016).
- If conditions are imposed probation officers are charged with supervision and reporting about infringement of the terms of suspension. The possibility of support by probation officers is in practice limited. Offenders can access therapies, aggression replacement trainings, employment activation trainings and involving the offenders in motivational dialogue; probation officers assist them in this process. But the number of trainings is limited, and the probation officers are overburdened with other tasks, red tape, and the execution of community sentences (private communication).
- This sanction formed 22% of all penalties imposed in 2017, in 2018 19% (more than 54.000 persons) (Daniluk & Gensikowski, 2021)
- The number of suspended prison sentences was in 2007 276,000 and in 2021 47,400. The number of supervisions was, in the same years, 306,600 respectively 42,700. In around 10% of the suspended prison sentences the court orders probation supervision (private communication).
- *Community Service*⁹: is an alternative sanction for not less than one month and not more than 2 years (CC Art. 34 § 1); the sentenced person is obliged to perform work for 20 to 40 hours a month (CC Art. 35 § 1) the court can subject the convict to supervision of probation officer; the maximum of hrs is 960 (very high in comparison with other European countries; no information available on the extent into which this maximum is applied, but according to oral information, penalties are rather imposed on the lower or middle limits of their amounts; e.g. 6-12 months).
- The activities of the probation officer are of a typically controlling nature (visiting the place of work, controlling time sheets etc.)
- Contrasting views on *Community service*: 1. CS is viewed with suspicion - both by offenders and by wider society (Burdziej, 2018). 2.

⁹ The official term is Sentence for limitation of liberty.

CS has a long tradition in Poland, and is widely supported by its citizens (Matzac, 2017).

- Government has popularized this sanction. A major change to the composition of probation work occurred in 2015 when there was a significant increase in managing and supervising community orders (mainly community sentence) (by 35.9%, from 2014 to 2016). This was due to the 2015 legislative change that intended to revive the popularity of community orders amongst Polish judges. Over the past few years there has been a significant rise in the use of community orders in Poland (in 2016: 61.720; in 2018: 78.172, which is 28% of all the penalties imposed; also the length of this sentence has increased (*"While in the years 2014-2015 the penalty of restriction of liberty was most often imposed for the period of 4-6 months, in the years 2016-2018 it was imposed for the period of 7-12 months."*) (Daniluk & Gensikowski, 2021). This sanction is believed to have become an alternative to short term imprisonment (and fine). This has resulted in an overall reduction in the incarceration rate in Poland (Matzac, 2020).
- The failure rate of this sanction is quite high: in the years 2003-2012 there was a very high increase in imposing substitutive imprisonment penalties (in 2012 27%) (Daniluk & Gensikowski, 2021).
- Regarding the background of this high failure rate, the following are suggested: insufficient information about the offender on for instance health condition before the sanction is imposed or (lack of) motivation to commit to this sanction; the offender is not always present at the court session; difficulty for the offender to maintain commitment in case of longer sentences, especially above 6 months; higher number of hours to be worked in one month can lead to loss of employment; performing less work than prescribed in a month cannot be compensated by more hours in the following months; the absence of swift and clear reaction on the part of the probation and court in cases when the offender does not comply with the instructions (See for instance: Janus-Dębska, 2021; Stasiak, 2016).
- The use of Community Service has become less costly and easier to organise and execute, also following a change in the Art. 53-66 of the Executive Penal Code (private communication).
- For a long time, judges hesitated to impose community service because of the high unemployment rate (around 20%) and consequently it was hard to find suitable workplaces for a high number of offenders (private communication).
- Electronic Monitoring (EM)
- Is a form of serving a custodial sentence of a term up to 18 months.
- The convicted person's behaviour can be continuously assessed by probation officer and can result in remanding the convicted person to "ordinary" prison by a penitentiary judge. The probation officer remains in contact with the offender, especially regarding problems

by the offender in fulfilling duties, finding solutions, and writing reports in case of breaches and incidents.

- Introduced in 2009; as of April 2017, 4,666 people have been monitored; the Government intends to increase these numbers. Poland nowadays has the highest rate in Europe in use of electronic monitoring per 100 000 inhabitants (7200 persons serve their sentences with electronic monitoring). The application of EM as an alternative to prison sentences has become less costly and more efficient, also following an adaptation of the Art. 43a-43z of the Executive Penal Code (private communication).
- EM is used as a standalone punishment as an alternative to deprivation of liberty/ imprisonment. No probation support of offenders.
- Legally EM is an execution of prison sentence, but offenders and probation staff see EM as an alternative. Probation officers are entitled to submit applications for the execution of the sentence by the convicted person in the electronic supervision system and for the revocation of the consent to the execution of the sentence in this same system. In 2019, the courts considered 1,157 such applications; 868 of them were accepted/ considered positively (private communication, based on "Court statistics - sentencing of adults between 2014 - 2018. Polish Ministry of Justice, 2020."). EM can take 24 months. Inmates serving a sentence in EM often work, pay off debts, pay alimony, integrate with the family.
- Most of the tasks in the framework of EM are performed by probation officers. The prison service is responsible for the technical side. Control and social rehabilitation interactions are performed by probation officers, the number of these tasks is growing and increasingly influencing the overall workload of probation officers.
- Non-custodial sentences in general
- On 1 July 2015 a new criminal code: Judges' ability to impose suspended prison sentences was significantly limited and the new regulations encouraged them to impose community service sentences; imposition of fines was facilitated.
- In 2016 there was a remarkable decrease in suspended prison sentences and remarkable increase of community service. The number of suspended prison sentences was in 2007 276,000 and in 2021 47,400. Consequently, the number of supervisions by the probation service was significantly reduced (306,600 in 2007 and 42,700 in 2021) (private communication, based on "Court statistics - sentencing of adults between 2014 - 2018. Polish Ministry of Justice, 2020.").
- In only 32% of cases additional obligations to suspended sentences (such as pursuing a therapy) are imposed; probation officers, during enforcement proceedings, submit applications for the imposition of such obligations. In 2019, the courts considered 1,910 such

applications, of which 1,613 were considered positively. Courts very rarely use restraining orders or mandated therapy.

- Suspended prison sentences have been widely demonstrated as an ineffective sanction, de facto granting many offenders complete impunity (according to Burdziej, 2018); in the years 2003 to 2012 however, there was a very high increase in the number of cases in which substitutive imprisonment penalties were imposed (2003: 21,727; 2012: 54,498) (Daniluk & Gensikowski, 2021)
- Basic risk categorization (not risk and need assessment on scientific grounds) was implemented during the past years (3 risk groups, lower group provided by volunteers (art. 169b, Executive Penal Code).
- The efficiency of probation sanctions and measures comparing to other European countries seems to be high. Efficiency measured as rate of reoffending within 5 years period (2015-2019) was:
- 31,2 % in supervisions by probation service in suspended prison sentence; 32,7 % in community service; 32,6 % in electronic monitoring as alternative to prison penalty; 36,1 % in parole (Mycka & Kozłowski, 2017)

Domain 3 - Custodial Pre-Release

- *Conditional release*¹⁰ in most cases after 2/3 of sentence. Decision by penitentiary court in the executive phase of criminal proceedings. There must be a positive prognosis.
- The subject can be placed under probation. In that case the probation officer supervises the offender and informs the court on any infringements.
- Probation is in 99% of the cases asked to write a report to the penitentiary court. The format that is prescribed is the same as the format for pre-sentence reports (environmental interview on behalf of the director of a penitentiary institution or a penitentiary court). It does not contain an advice about conditional release, although the format allows for making additional remarks. The information from the probation officer is included in the opinion of the prison, which is attached to the request of the convict or the director of the prison for conditional early release.
- Probation is seldom involved in preparation for release (procedure described in art. 164 and 165 of the Executive Penal Code). Annually, 4,500 cases (about 1.5% of all cases) are sent to the probation service.

Domain 4 - Post-Release

- Regional councils aid the resettlement of ex-prisoners
- Probation officers work with almost all paroled persons.

The Four “Enablers” of Probation

Legislation and Leadership

- *“In recent years, the increasing penal populism has posed a serious threat to the correct shape of the system of means*

The Organisation

- Infrastructure: probation is not centrally managed. There are 47 regions and around 560 probation teams under the

¹⁰ Art. 77.

§ 1. The court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the remainder of the penalty, but only if it is reasonable to expect, due to this person's demeanour, characteristics, personal conditions, the circumstances of the commission of the crime and the behaviour after committing the crime and while serving the penalty, that after the release this person will comply with the imposed penal measure or protective measure and will respect the legal order, especially by not committing a crime.

§ 2. In exceptional situations, while imposing the penalty provided for in art. 32 sections 3-5, the may impose more severe restrictions than those provided for in art. 78 for the conditional release of the sentenced person.

Art. 78.

§ 1. The sentenced person may be conditionally released after serving at least half of the penalty.

§ 2. The sentenced person referred to in art. 64 § 1 may be conditionally released after serving two-thirds of the penalty, whereas the sentenced person referred to in art. 64 § 2 may be released after serving three-quarters of the penalty.

§ 3. The person sentenced to the penalty of deprivation of liberty for 25 years may be conditionally released after serving 15 years of the penalty and the person sentenced to the penalty of deprivation of liberty for life after serving 25 years of the penalty.

Art. 79.

§ 1. The provisions of art. 78 § 1 and 2 apply accordingly to the sum of two or more penalties of deprivation of liberty that are not eligible for aggregation and need to be served consecutively by the sentenced person; art. 78 § 2 applies if at least one of the crimes has been committed under the conditions provided for in art. 64.

§ 2. Notwithstanding the conditions provided for in art. 78 § 1 and 2, the sentenced person may be conditionally released after serving 15 years of the penalty of deprivation of liberty.

§ 3. The provision of art. 78 § 3 applies accordingly if at least one of the penalties that are not eligible for aggregation and need to be served consecutively by the sentenced person is the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

Art. 80.

§ 1. In case of conditional release, the remainder of the penalty becomes a test period, which may last no less than 2 years and no more than 5 years.

§ 2. In case of the sentenced person referred to in art. 64 § 2, the test period may not last less than 3 years.

§ 3. In case of the person sentenced to the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life, the test period lasts 10 years.

of criminal reaction in Poland. It consists in the fact that politicians influencing law-making try to gain popularity and support in the society by taking steps to tighten the criminal law in response to media reports about crimes. This results in hasty and ill-considered as well as fragmentary changes in the area of penal sanctions..... These changes, always aimed at tightening the criminal law, by their very nature promote imprisonment and reject non-custodial means of criminal reaction." (Daniluk & Gensikowski, 2021)

- *"Despite the increasing use of non-custodial penalties by courts, imprisonment is still the primary means of responding to a crime. It seems that one of the reasons is the insufficient appreciation by judges of the advantages of a non-custodial means of criminal reaction and their insufficient awareness of disadvantages of imprisonment." (Daniluk & Gensikowski, 2021)*
- *Between 2012 and 2016 legislative work has been taken to counteract the "abuse of suspended prison":*
 - *Limit the possibility to sentence the offender to suspended sentence once in his criminal career.*
 - *Limit the maximum period of suspended prison from 2 to 1 year and limit the maximum period of suspension from 5 to 3 years.*

leadership of the presidents of the courts. Underdevelopment of probation service (Krajewski, 2007), among others because of absence of nationwide management and dominance of local orientation.

The 46 regional heads meet with the Ministry of Justice no more than once a year and is mainly about briefings on statistics and audit conclusions, not on strategy. This hybrid management structure is criticised by the Supreme Audit Office (2019). The probation organisation consists of a family probation service (focussed on family matters, the protection of children of dysfunctional parents and juvenile delinquency), and a probation service for adults (in tasks comparable to European probation services).

- *According to Burdziej (2018) the caseload is (too) high: 120-150, 84 for only adult probation workers according to Mista (2019) (See also Polish Helsinki Foundations, 2016). The workload standard of a professional probation officer is up to 120 cases in total, including up to 50 cases other than supervision (controlling the execution of the sentence of deprivation) (Daniluk & Gensikowski) Next to the professional probation workers (3065), volunteer/ community probation officers (9529) are active (Stasiorowski, 2018). Their involvement is sharply decreasing. A review of the available Polish research suggests that this branch of the*

<ul style="list-style-type: none"> • Probation is developed in 3 domains: pre-trial, community sanctions, post-release. The bulk of the work is in the domain of community sanctions (supervision). • No real central management of probation, management is responsibility of courts. The central management is limited to administrative oversight and responding to citizens' complaints. <i>".....in the model adopted in Poland, the probation service is organisationally located in common courts, however, the presidents of regional courts and the Minister of Justice, despite being responsible for the enforcement of court judgments, are deprived of any real influence on the management of probation and probation officers.....There are also no clear rules of service subordination, which is modeled on administrative supervision over common courts, limited by judicial independence. However, the supervision of probation officers, as a service responsible for the enforcement of judgments, obviously cannot be limited to administrative matters, but must take into account working methods, the way of performing duties and evaluating the efficiency of work."</i> (Mycka & Kozłowski, 2016) • Probation is seen as soft, by government and courts. 	<p>system is not sufficiently prepared, motivated and trained to work with offenders (Matzac, 2020).The professional probation workers are accountable for the work of volunteer/community probation workers. They spend considerable time in coaching and managing them.</p> <ul style="list-style-type: none"> • Nearness to courts is an asset (informal contacts, assistance with assessment of the offenders) but there are varying views on the impact on court's decisions. Some express the view that the impact it is limited, others have a more positive view. • Absence of regular meetings between chief probation officers and public prosecutors, although geographical differences seem to be great. There are regular meetings with judges, mainly because family probation offices are an auxiliary body of family courts. • The nationwide and regional Probation Officers' Association are not strong in the sense that they function as a compensating force against lack of nation-wide management). There are at least 8 associations and foundations of probation officers. Most often they are regional organizations. These associations initiate valuable projects. They organize conferences, trainings, invite trainers from abroad, organize study visits and cultural projects aimed at their supervisees and their families. They also run websites
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<ul style="list-style-type: none"> • Nearly no international ties with probation institutions outside Poland (e.g., not member CEP) • Nation-wide adopted protocols about content of work and processes are not numerous. 	<p>informing about new developments in the regions. Most of their activities are based on volunteering and synergy with local communities. To a large extent, they fill the gap resulting from the lack of structures and tools in managing this public service. In this respect, the situation of probation officers is very different from the prison service, where the state finances the running of a magazine and other information channels (private communication).</p> <ul style="list-style-type: none"> • Dissatisfaction was expressed with the salaries of probation officers; the salary of a new recruit is around € 765 per month; the highest salary of a professional probation worker is € 1010 per month. Managers earn € 20-40 per month more than their staff. This is seen by probation workers as not being respected by society. • New staff are, during the first year, prepared for their work under the supervision of a professional probation officer. There is no uniform training curriculum. Some regions organise theoretical courses conducted by experts (experienced probation officers, judges, academics) about assessment, motivational interviewing, aggression replacement training etc. • Staff trainings organized by the National School are mainly focused on the interpretation of legal provisions and the implementation of procedures; there are no workshops
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	<p>focused on the practice and methodology of probation work. Once a year, 100 probation officers can follow a - highly appreciated- postgraduate course that is organised by universities.</p> <ul style="list-style-type: none">• A unified set of criteria for qualifications of new probation officers is lacking as well as standardized methods of work. (See also Audit report, 2018) It was advised to create a central training system for probation officers (The Polish Helsinki Foundation, 2016)• The number of clerical staff is too small, probation officers are overloaded with much paperwork (bureaucracy) (The Polish Helsinki Foundation, 2016); The offices are too small for good working conditions and probation officers are also working on their own personal computers (with risk on breaches of data protection) (Audit report, 2018). Occupational stress is reported by the Central Institute for Labour Protection: high job demands, regarding the amount and pace of work, the emotional demands associated with dealing with difficult problems of other people, hiding one's own emotions, and refraining from expressing your own opinion.¹¹
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¹¹ Source: content/uploads/2022/01/RAPORT_KURATORZY_poprawka_02_01_2022-1.pdf

Partnerships	Practice
<ul style="list-style-type: none"> Interagency work within and without the justice system is limited; however, in a recent project under the Norway Grants a series of interagency meetings were held around the country involving judges, prosecutors, probation staff and other stakeholders. This led to a decrease of the imposition of suspended prison sentences in favour of an increase of immediate prison sentences, fines and community work. (Institut für Berufliche Bildung, 2019) Judges' trust was rebuilt in fines and community service as a better alternative to prison sentence. Judges were informed that in some cases a direct prison sentence for a short period for relatively high-risk offenders is better than 	<ul style="list-style-type: none"> A format is prescribed on the content of reports sent to the court or the penitentiary court before a convicted person is sentenced or before the decision on conditional release is taken. An anamnesis is not based on a diagnostic risk- and need assessment; but based on a diagnosis of the social and family environment of the offender¹². A format is prescribed on the content of reports in the framework of each type of probation supervision (conditional discontinuation of criminal proceeding, suspended prison, and conditional release)¹³. The format that is prescribed for starting, evaluating, and closing a supervision process is more elaborate.¹⁴ It is filled in

¹² Sprawozdanie z wywiadu środowiskowego (commonly called wywiad środowiskowy). It contains the following categories:

I. Personal data of the accused:

1. Name and surname
2. Parents' names
3. Date and place of birth
4. Marital status
5. Education
6. Profession (learned, performed)

7. Professional work (works, part-time work, no works)

II. Characteristics of the family environment of the accused, taking into account his behavior and living conditions of families.

III. Characteristics of the accused's school environment, taking into account learning outcomes and possible educational difficulties (applies to the accused aged school or learner)

IV. Characteristics of the accused's professional environment, taking into account his attitude to work.

V. Characteristics of the health of the accused, taking into account information known in his environment concerning his health, and in particular mental illness, alcohol addiction or narcotic drugs (degree of limitation of the ability to work, disability).

VI. The author's own observations and conclusions interview

¹³ Sprawozdanie z wywiadu środowiskowego

¹⁴ Wywiad środowiskowy. This format is more elaborate, not so much in the categories mentioned (although attitudes is a separate category), but in the more extensive guidance under the categories.

<p>imposing suspended prison sentence several times with no expectation of success in probation with the consequence that he will later be send to prison for a long time (mail from Mycka, 2022).</p> <ul style="list-style-type: none"> • The partnership with local communities is strong in the sense that they organise the community work placements. At the beginning of the XXI century, there was an overwhelming surplus of community service orders compared to the number of institutions providing community service placements, which was amplified by the belief that unpaid work performed by convicted offenders was of no value and the management of it was too expensive. The situation was exacerbated by the understaffed and strained local probation service. In Wroclaw a local government unit, and a non-profit charity, would be responsible for the execution of community orders, or more precisely, for providing community service placements. Consequently, the partner institutions, as the next level of the cascade model after the probation officers, were tasked with expanding the network of placement providers. This solution has turned out to be successful, and the efficient and well-received functioning of the Wrocław "cascade" system led, in 2016, to the launch of the Wrocław Centre for Restorative Justice. The rehabilitative orientation of this 	<p>at least at the start of the supervision and the end (and normally every 6 months).</p> <ul style="list-style-type: none"> • Not research-informed • Too high caseload leads to absence of (intensive) supervision, so no real change process. Tendency to impose longer probation periods, rather than short prison sentences. Long periods of suspension, combined with addictions (or other systematic problems) underpinning the behaviour of many offenders, resulted in many offenders violating the conditions of probation, ending up with a long prison sentence for breaking the conditions of probation supervision and for originally a small offence. • Many suspended sanctions end with conversion to prison sentence (50%) • Wójcik (2015) indicates that the concept of rehabilitation, in the full sense of the word, has never fully materialised in Polish probation practice. The essence of the current probation tasks, (which predominantly comprise interviews for court-appointed reports, supervision, and the execution of community orders) is that the main role of Polish probation officers is to execute court orders rather than to enhance the rehabilitation of offenders. The early evaluation research on the nature of probation supervision in Poland further suggested that officers would lean more towards the control rather than the rehabilitation
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<p>cascade model lies in the additional support that is offered by the partner institutions. Although both institutions offer (or can refer to) individual therapies, in-kind/material assistance, employment, legal or debt advice the rehabilitate potential is particularly accentuated in the Centre for Restorative Justice (Matzac, 2020). (See also Daniluk & Gensikowski, 2021)</p> <ul style="list-style-type: none"> • Prisons: ties are weak, the Prison Service and the probation officers are separate forces. There are few opportunities to cooperate. They are legally required to cooperate in the period 6 months prior to the expected parole or end of sentence to prepare the sentenced person for life after the release, especially to establish contact with the probation officer. (Prison Observatory), but probation officers cannot visit the prisoners. • Cross institutional cooperation between the various actors in the justice system (police, prosecution, courts, and probation service) is rare and inefficient; information flow often precludes effective use of problem-solving measures. However, under a recent project (Norway Grants) intensive and fruitful interagency meetings were organised (Institut für Berufliche Bildung, 2019). • NGOs: The court may entrust supervision over the person under probation to a trusted 	<p>model of probation. Unlike in other countries where probation has been organised through various initiatives of local communities, social services, or charities, and has remained independent of the court system, Wójcik (2015) maintains that the development and nature of the Polish probation service has always aimed at assisting and serving the court system first. (Retrieved from Matzac, 2020)</p> <ul style="list-style-type: none"> • Wójcik (2015) asks the critical question whether the traditional case management model of probation (assuming personal, relatively frequent contacts) can be maintained in the current environment with too few professional probation officers with too many responsibilities. Instead, probation might have to focus on those offenders who require intensive supervision. For those offenders who do not require those measures, probation officer supervision should not be ordered but rather specific obligations (to be monitored directly to the court or ad hoc by the probation officer). • Shortcomings in the juvenile branch of the probation service: no real diagnosis takes place (just description of socioeconomical situation, lack of standardized tools for risk diagnosis); outdated methods based on persuasion/repression and control; no rehabilitative work; lack of qualification for special cases: addictions and mental health; monitoring and supervision of
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person or NGO; Cooperation between the non-government institutions and the justice system is rare.

- Regional councils aiding the resettlement of ex-prisoners; these multi-disciplinary bodies were first established in 2005 and now cover all but two of Poland's regions. They include representatives from local government, the justice ministry, prisons, probation, prosecution, courts, and the police, among others. Non-governmental organisations are also involved in regional resettlement councils but only to a limited extent and, where they are, the councils' activities tend to be more effective. The councils' main functions are to provide resettlement help to those released from prison and to promote and assist in the implementation of alternative measures entailing restrictions of liberty or requirements such as community work. (Heard, 2016)
- Information is missing how these provisions (entrust supervision to private persons or NGO's; Regional Resettlement Councils) function.
- The society seems not to appreciate the work of probation officers as their knowledge about the functioning of the probation service is limited. The perception is mainly based on a negative view on the work in the family branch. In contrast to the prison service that brings out a monthly Newsletter

probation officers' work is not organised; no evaluation research into outcomes (Kwadrans, 2019).

- In interviews the commitment and perseverance of probation workers is mentioned to assist the offenders to change their lives.

(Forum) there is not a professional external communication channel (so not films, brochures, or social campaigns). Some probation officers run an information portal about the probation service

(<http://www.kurator.info>) and (<http://kurator.webd.pl>). The public get information on probation from the media, mainly when an incident has occurred.

- The image of the probation service is negatively influenced by incidents in the family probation service (conflicts about children, issues of parental alienation).
- The relationship between the probation service and universities is limited. A large part of academic articles is written by pedagogists; there are no evaluation studies.

Section 3. Characteristics of Capacity Building in Poland

In the other country reports a section is written about the characteristics of capacity building in the country under review, using the following structure:

- Why build Probation?
- Who was involved?
- What has been developed within the Probation “Domains”?
- How has the probation function been “enabled”?
- Summary of capacity building including the international dimension

However, no substantial probation-specific capacity building projects have taken place in Poland. The only project that we have limited knowledge of is a sub-project as part of a project to improve the correctional services system in Poland in compliance with relevant international human rights instruments (2013-2016).

The title of the subproject was *“Popularization of the enforcement of non-isolative penalties and probation in the penitentiary system”*. The project was implemented by the Department for the Execution of Judgements and Probation in the Ministry of Justice; financial support for the project came from the Norway Grants: EUR 2,507,857; the objective of the project was to popularize the use of alternative penalties to imprisonment, as well as to indicate the benefits of the proper use of probation measures at all stages of criminal proceedings. Training sessions were organised, dedicated for judges, prosecutors, professional probation officers as well as Police and Prison Service officers, including local government bodies involved in the execution of the penalty of restriction of liberty (Community Service).

The training sessions aimed to increase the participants’ awareness and capacities in terms of possibilities and advantages of applying non-custodial and probation measures, as well as exchange of experience with the Norwegian partner of the project, Akershus Probation Office. More than 5500 persons were trained in 63 training sessions. The training groups were mixed (probation officers, prosecutors, and judges). The sessions lasted 3 days and consisted of lectures, discussions, and workshops. Lecturers and leaders of workshops were

academics, judges, prosecutors, and probation officers. The participation seemed to be high and seems to have had an impact on sentencing practice.¹⁵

The project organized four study visits to Norway, attended by a total of over 80 people - representatives of the project's target groups. Moreover, representatives of the Norwegian probation service took part in two study visits to Warsaw.

As no substantial capacity building projects have taken place, we cannot draw many conclusions on what worked well or badly in capacity building. We limit ourselves to the following conclusions.

Probation for adults was developed within Poland without visible significant signs of foreign influence. During the accession process probation was not on the agenda - including as an organisation that could possibly alleviate prison problems (overcrowding, alternative for custodial sanctions). Other topics appeared to have had higher priority (for instance quality of, and trust in, courts and police). In comparison with other countries probation already existed at the time of accession and the need was apparently not felt to invest in the further development of probation.

The absence of central management seems not to have helped to stimulate the development of probation system. The Polish Probation Service does not participate in international cooperation (membership of CEP, collection of data via the Council of Europe/SPACEII was only started in 2020). The Norway Grants Project carried out during the last decade seemed to have met with a high participation in interagency meetings. It looks like that among practitioners the enthusiasm to participate in projects is great.

The absence of capacity building projects might be a reason that, according to our interpretation, the impact of the probation service on the justice system seems to be very limited. This limited impact might however also be attributed to the absence of a centrally led management of the probation service. One of the lessons learned might be that building up of an effective probation service at least requires a committed, stimulating and enabling leadership on national level and a structure of accountability within the Ministry of Justice.

There seems to be ample opportunities to further develop the probation role, for example by decreasing the number of prisoners and increasing alternatives to detention. This could be achieved by increasing the number of

¹⁵ "Imprisonment is not always the best remedial measure: 5,743 persons improved their competences with the help of trainings for persons dealing with imposing and enforcing non-custodial sentences, which is reflected in the number of certificates obtained." Page 55, National Focal Point, Ministry of Economic Development, Warsaw, March 2017, Strategic Report on the implementation of the Financial Mechanism of the European Economic Area and the Norwegian Financial Mechanism 2009-2014 in Poland in 2016

pre-sentence reports, targeting more serious offenders when using non-custodial options, and expanding the involvement of the probation service in preparing and advising about conditional release. Development will also need to include work to modernize probation methodology, making use of the international scientifically grounded knowledge.

Development also requires a stronger central leadership to manage the transformation process. On the ground there are promising developments, for instance in Wroclaw where a slowly emerging trend to restorative orientation to community sanctions can be discerned.

APPENDICES

Appendix 1 - Historical Development of Probation in Poland

The history of the Polish probation system began in 1919, when by decree juvenile courts were established. So-called caseworkers were appointed by the judge; their responsibilities consisted of gathering information on juveniles upon a request from the judge, providing care for juveniles remaining under parental supervision and supervising juveniles whose sentences were suspended.

In 1935 the professional model of probation services was abandoned and replaced with a community-based one. The function of juvenile probation officer became honorary and could only be held by persons with appropriate qualifications. Probation officers were appointed by the president of an appeal court, whereas the Minister of Justice was responsible for determining the number of juvenile probation officers at each appeal court.

In 1959 professional juvenile probation officers were appointed apart from community juvenile probation officers. They were entrusted, on the request of the juvenile court judge, to make all efforts to prevent further deprivation of the juvenile while placed under probation in the framework of a sentence of a criminal court. In 1978 family courts were established. Since that moment probation officers were organisationally attached to these courts and provided services upon their requests.

The institution of adult probation officer evolved differently than described above. The probation officer for adults was regulated in the 1932 Penal Code. However, in 1957 the Act on conditional release of persons serving imprisonment sentences was adopted. The Minister of Justice regulated the institution of probation officers for offenders on conditional release. In 1961 the Minister of Justice defined the responsibilities of adult probation officers. One of them was to make all efforts to ensure that offenders under supervision or probation comply with the rules of social intercourse, not to return to criminal activities and properly to fulfil their obligations. Probation officers were obliged to provide advice and instructions to the offenders and, to a reasonable extent, help them in solving difficult life issues. These duties were fulfilled only by community probation officers, as at that time the function of professional adult probation officer did not exist.

In 1965 the task of protective probation for offenders who received conditionally suspended sentences was added to the duties of the probation service. A novelty was furthermore the introduction of the professional probation officer, appointed by the courts. Professional probation officers, apart

from fulfilling the same duties as community probation officers, were also obliged to organise and supervise the work of community probation officers, control their activities, and provide them help and guidance, as well as to collaborate with relevant authorities, administration services and social organisations.

In 1986 the institution of a probation service was regulated. Probation officers who exercised their duties in penal and penitentiary departments were adult probation officers, whereas those who exercised their duties in family and juvenile departments were family probation officers.¹⁶ *"The probation officer for adults is bound by the criminal law procedure, while the family probation officer is subject to the civil law procedure."* (Bartosz, 2019)

In 2001 parliament adopted for the first time in the history an act on probation officers that comprehensively regulated the rules of functioning of the probation service. It placed probation officers within the court structures, regulated the rules of remuneration, organised the rights and obligations of probation officers, established a two-instance disciplinary court for probation officers, appointed the National Council of Probation Officers subordinate to the Minister of Justice and entitled to put forward legislative initiatives, maintained the professional- community model of probation service, defined the duties of probation officers in a specific order: *"Probation officers fulfil specific educational, rehabilitative, diagnostic, preventive and control duties defined in the law and associated with enforcing the court's sentences."* The Act was prepared by teams of scientists, however, not all the proposals developed by teams of scientists (Prof. Bałandynowicz, Dr. Sawicka) have been implemented, especially around founding a dedicated structure in the ministry responsible for coordinating the probation service.

Although the early discussions on the nature and functioning of Polish Probation for juveniles (in 1920s) were influenced by examples from the UK, U.S., Belgium, and France (Probation in Europe Poland, 1927; Zinkiewicz, 2004;), no evidence of, or participation from other countries in developing probation could be found.

The history of the probation service needs to be placed against the background of the changes in society and changes in the Penal Code and the Penal Procedure Code.

During the period that Poland was part of the Soviet bloc, there were high rates of custody and community disposals were rare. After the collapse of communism, a re-emergence of pluralist politics in 1989 could be seen. Poland

¹⁶ The preceding part of this appendix is mainly based on Barbara Wilamowska, Probation in Europe: Poland; Edited by A.M. van Kalmthout and I. Dumescu (2008)

inherited in 1989 approximately 58,000 prisoners. Prison conditions were substandard and poor, overcrowding was high, with a low ratio prisoners/staff; labour was the dominant aspect of the prison regime.

In 1990 Paweł Moczydłowski (former lecturer) was appointed as Director General in 1990. He was a critic of prison conditions, and his appointment marked the start of prison reform. The sentencing policy was relaxed, and the use of conditional early release (parole) became more common. Conditions in the prisons improved. The Director General stepped down in 1994.

With the transformation of the political and economic situation in the 1990s, there was a rapid increase in recorded crime between 1989 and the mid - 1990s. Subsequently the prisoner population increased between 1990 and 1995 but since then the population has been falling (although the imprisonment rate is still one of the highest in Europe). This decrease is not the result of further amnesties but following changes to the Penal Code and the Penal Procedure Code.

These amendments together allowed for:

- lighter sentences for recidivists
- a right to conditional early release for recidivists after having served three quarters of their sentence
- removal of the principle of detention on remand because the alleged crime was of 'grievous public character' (however a very high number of people on remand can still be observed: 22 per 100.000 inhabitants; see also Court Watch Foundation, 2019, page 13)
- the removal of the prosecutor's power to detain on remand, ensuring that this measure could be taken only by the court.
- Further amendments in 1998 were:
- reassertion of the superiority of non-custodial measures over custodial sentences (but the impact became more visible after 2015)
- the reduction of minimum sentences for certain offences.

Conservative traditions remained strong:

- No search for alternatives for prison sanctions, since 1945 (country isolated from Western world)
- A deeply conservative attachment to deprivation of liberty as the main sanction
- The traditional suspended sentence remained the main alternative to imprisonment, although deprived of a well-developed probation system, even though the *Probation Officers Act* was implemented on 27 July 2001. (The Act should have been the turning point for the probation

system, in terms of standing, professionalisation, salary and career perspectives).

Other significant developments:

- Electronic Monitoring came into effect in 2009.
- Liquidation of overcrowding was an aim of new legislation in 2013 and 2015; push for new penal philosophy and educational efforts (European Court of Justice; more use of parole) (Prison Observatory)
- Popularising alternative non-custodial penalties – the fine and restriction of liberty/community service while reducing the number of suspended sentences (2015) (Prison Observatory).

It is worth adding that after 21 years of the law on probation officers, the Ministry of Justice has prepared major changes. The draft is at the stage of parliamentary work and was due to be adopted in 2022.

Changes concern the specification of the principles of supervision over probation officers, limitation of professional self-government, strengthening the role and competences of the Minister of Justice and presidents of courts at all levels, changing the method and procedure of appointing district probation officers, introducing the term of office of heads of probation teams of the court service. Another change concerns standardization of the training procedures for probation trainees. Changes also apply to disciplinary proceedings. In the process of public consultations, the trade union of probation officers and research centers submitted many comments to the draft, most of which were not taken over by the ministry. Probation officers fear that the changes will worsen the already difficult working conditions.

Poland became member of the European Community in 2004. The progress and monitoring reports of the European Commission in the accession period from 1998-2004, in comparison to other countries we study during the process of membership (Latvia and Romania), do not report anything about probation and/or alternative sanctions. The topic "Prisons" is also not dealt with extensively. The topics (trust in the) "judiciary and police" are however given substantial attention; apparently these issues were more dominant than the prison situation and/or community alternatives.

Poland was member of CEP from 2007 till 2012. Poland did not, until 2020, participate in the Council of Europe Probation Statistics (SPACEII).

Appendix 2 - Sources of Information

During a short study visit *interviews* took place with probation officers, an NGO, the manager of the Electronic Monitoring Centre, and Academics; no interviews could be realised with specialists within the central Ministry of Justice, nor with judges and public prosecutors. However, in a later phase many comments on

drafts of this country report were received from Krzysztof Mycka, Grzegorz Mista, and dr. Anna Matczac. We are grateful for their feedback.

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Appendix 3 - Summary European Commission's Progress and/or Monitoring Reports EC regarding Accession Poland

Summary

In contrast to progress reports regarding other countries in our study, in the case of Poland the topic of probation or alternative sanctions is not once mentioned. The themes that return in every report are the prisons (poor buildings, overcrowding, mistreatment, poor salary prison guards), the judiciary (enormous backlogs, length of proceedings, lack of training, corruption, lack of trust of public, not meeting the challenges on illegal migration, drugs trafficking and money laundering, organised crime) and the police (police brutality, degrading treatment, low salary, high number of vacancies, lack of trust of the public).

There are also concerns about the lack of cooperation between the police forces among themselves and within the judicial chain between public prosecutors and judiciary.

Regular Report 1998

No mention is made of probation or alternative sanctions. There is one passage about imprisonment and several passages about professionalization of the judiciary, on problems around the police and the need to fight corruption.

"A new penal code and code of penal conform to European Convention on Human Rights standards entered into force on 1 September 1998. The new code replaces capital punishment with life or 25-year imprisonment. Several other significant changes are made which serve to reduce the age limit for prosecution of minors on serious offences (to 15), to reduce the minimum period for detention (to one month), to reduce the maximum punishment threshold for certain serious offences and to increase penalties for serious

crimes. The code also introduces new categories of criminal offences (e.g., computer and environmental crime) and new procedures (mediation, settlement, trials in the absence of the accused). The penal code reform is timely and conforms to the principles of nulla poena sine lege, lex retro non agit, and nullum crimen sine lege, but continues to be subject to a lively political debate. Further efforts are required to improve the status of judges, prosecutors, and officials. In particular, the level of enforcement of judicial decisions and the length of judicial proceedings, particularly in commercial matters, require significant further efforts."(page 6)

"An important debate has developed regarding 1997 'lustration' or vetting act which requires that those holding or seeking elected posts and senior government judicial, or public media positions would submit declarations as to whether they were agents for the security police from 1944 to 1990."(page 10)

"In 1998 policing staffing levels increased to 199,894, whilst crime clear-up rates reached 54% in 1997. Further efforts are required to improve professionalism in the police forces and to improve coordination under the new State administration structures. Some progress has been achieved in the fight against organized crime with the establishment of a special police unit staffed by 1,200 police officers. An internal control mechanism has been set up within the police headquarters with a view to combating corruption and developing ethical standards" (page 35)

Regular report 1999

No mention is made of alternative sanctions or probation; priority is given to the prison sector, the judiciary, and the police:

Prison

"Prison conditions, although rapidly approaching minimum international standards, are still generally poor. Many facilities are old, overcrowded and in disrepair. According to a recent report by the National Penitentiary Authority, the prison system is in desperate need of additional funding. The Ombudsman for Human Rights complained about the safety of prisoners, noting that inmates are often the victims of violence from other prisoners. The Ombudsman also suggested that the prison population be reduced." (page 17)

Judiciary

Although some progress has been recorded in the training of judges, significant further efforts are expected to improve the status of judges, prosecutors, and officials. In particular, the level of enforcement of judicial decisions and the length of judicial proceedings, particularly in commercial matters, require significant further improvements. (page 15)

To illustrate the progress made, during 1999 Poland has continued to increase the number of judges, up to 8,013. Public prosecutors were already increased by over 500 up to 5,538 in 1998.....The average length of civil/commercial as well as criminal cases has dramatically increased since 1989 and is only slowly showing signs of improvement.....There is no national training scheme for judges and prosecutors which is generally taken care of by courts and tribunals. Training therefore is both sporadic and lacks uniformity. (page 61)

Police

.....the first step to properly co-ordinate the operational workings of the services themselves in particular the Customs, Border Guard and Police which still exhibit tendencies to be mutually competitive. (page 50)

The already severe structural problems have tended to worsen over the past year with

continued high staff turnover and a net decrease in police officers registered in 1998.

Salaries remain poor. The police find it difficult to attract qualified applicants. There is a need to improve working conditions in this sector in particular as regards the salary structure. In addition, financial and technical resources must be improved. (page 52)

In 1998, there were around 100,000 police officers and about 17,000 civilians working in the Polish police. Following the territorial reforms of 1999 up to 800 police officers are being re-deployed in the 16 newly established Voivod. The average salary of a police officer is €427. The staffing situation is rather critical with overall numbers dropping steadily over the past years. It is characterised by high turnover and low wages coupled to inefficient recruitment, training, promotion, and deployment policies. Corruption in the Police force, whilst widespread, is essentially currently confined to the lower ranks. (page 74)

Justice Chain

Appropriate staff training in the field of intellectual property rights legislation and enforcement for courts, public prosecutors, police, border guard and customs services will have to remain the main focus of activities to significantly improve the level of protection offered the public services involved. (page 62)

Progress Report 2000

No mention is made of probation or alternative sanction. Concerns are regarding the prisons, judiciary, and police.

Prisons

Basic rights continue to be respected and some significant developments have been registered since the 1999 Report, notably regarding the death penalty, the aliens act, and the privacy act. In contrast there are some areas, notably the libel law and prison conditions, which give cause for concern.....

Conditions in Polish prisons continue to be poor. Overcrowding is a serious problem: in mid-2000 the prison population of 70,000 was 110% of the notional maximum capacity of the system. In large urban prisons this figure is often exceeded. Violence and mistreatment appear to be a real problem. A report by the European Committee for the Prevention of Torture has pointed out cases of serious mistreatment in Polish prisons. (pages 19/20)

Judiciary

“Since the last report overall efficiency in terms of court delays and effective treatment of judicial cases has increased although the backlog persists. In this context, there is a glaring gap between Warsaw, where the situation is still very critical in terms of overburdening of judges and long delays, and the rest of the country....(page 17).

Corruption among the judiciary has been mentioned in some reports. The very long wait for routine court decisions in commercial matters, including in terms of contract enforcement constitutes an incentive for bribery and corruption. The backlog and the costs of legal action appear to deter many citizens from using the justice system at all. Coupled to the existence of cases of corruption, this contributes to the generally negative perception of justice in Poland by the average citizen who is complaining increasingly about the low level of efficiency of the judicial system to the public Ombudsman. (page 17)

The training system for judges based around 36 centres lasts 2 full years and is generally considered to be very costly compared to a would-be centralised system of initial and continued training. (page 18)

Police

What is still crucially lacking is a central, integrated strategy at national level, as was indicated in the 1999 regular report. Any such strategy must be inextricably linked to a sufficiently resourced administrative reform in the individual law enforcement agencies (Border Guard, Police, Customs) as well as in the field of Justice. (page 18)

External observers can point to several cases of recent police brutality. However, while these are both unfortunate and too frequent, degrading treatment and violence from officers are neither systematic nor systemic. (page 20)

In the field of police co-operation and fight against organised crime, over the period the need to combat organised crime and economic crime has been widely recognised as a priority in Poland. (page 20)

.....the report recommends improving police salaries particularly by rewarding the acquisition of skills. The government accepted these recommendations and acted in July to increase police salaries by an average of 20%.....the police have now merged the organised crime and narcotics departments to provide for a strong single centralised structure to fight against organised crime with 1 600 staff from the outset. (page 73)

About Drug Combating with combating Organised: *".....The most important problem is associated with the lack of internal and inter-ministerial co-ordination between the different actors dealing with drugs at the level of demand reduction, supply reduction and policy development; among the different actors are the Police, the Public Prosecutor's office and the Customs Inspectorate for the repression, the Ministry of Health, the Ministry of Finance for prevention and the PM's office for policy development.....In the field of police co-operation and fight against organised crime, the challenges are even greater and although some progress is being made, the scale needs to be stepped up considerably. Funding has been erratic in the past and needs to be increasedA very positive sign is that more emphasis is being placed on contacts with the public and making police stations buildings less sinister to emphasise the "service" aspects. In a public opinion survey of September 1999 (CBOS), about half of those persons asked considered that the police worked well."* (page 76)

Progress Report 2001

No mention is made about probation and/or alternative sanctions.

Prisons

"Conditions in Polish prisons have, if anything, deteriorated over the last year, with an increase in the number of prisoners and a 14% reduction in budgetary resources compared to 2000. The Ombudsman warned in his annual report for 2000 of the possibility of violent disturbances if the situation did not improve." (page 22)

Police

"Sustained effort will be required to step up the fight against corruption both by the police and the border guard service." (page 21)

"Over the last year there have been increasing concerns raised about degrading treatment by the Police and abuses of the power of custody." (page 22)

Judiciary

"Efforts are being undertaken to improve the efficiency of the judiciary, these will likewise need to be pursued with vigour." (page 37)

Justice Chain

"Alignment in some areas remains limited and considerable improvement is required in law enforcement bodies dealing with the fight against organised crime, in particular the police services." (page 37)

Regular Report 2002

No mention is made about probation and/or alternative sanctions and prisons. Concerns were expressed about the progress in the field of the judiciary, police, and the cooperation in the justice chain.

Judiciary

"Poland has continued to make progress in reforming the judiciary and in reducing the most pressing bottlenecks. The pace of reform needs to be accelerated and issues relating to judicial immunity further addressed." (page 20)

"Over the last year the on-going reform of the judiciary has continued and steady progress has been registered. The introduction of a new layer of courts and, the acceleration of procedures, as well as the computerisation of the judiciary and the prosecutor's office, have improved efficiency. However, efforts are still needed to improve the efficiency of the judiciary, in particular in view of accession, and enhance public access to justice, which remains limited. Concerns persist regarding perceptions of corruption among the judiciary. The existing penal immunity of judges makes it difficult to determine the real level of corruption within the judiciary." (page 24)

"Poland has made further progress in reforming the judiciary and in creating conditions to allow for a reduction in the most pressing bottlenecks. Efforts should now focus on ensuring that the progress to date delivers the desired result in terms of improved efficacy of the judiciary. Issues relating to judicial immunity are being addressed and should be followed up. Similar priority needs to be given to the training of judges..." (page 139)

Police

"Elsewhere further efforts are required to step up the fight against corruption both by the police and the border guard service, which remain important areas of concern. (27)

"There remain concerns over degrading treatment by the police.....In 2001, 844 criminal proceedings against police officers were initiated, 300 were closed, and in 77 cases the judgement was against the police officer. Concerns have been expressed by human rights organisations that sentencing in such cases is rather lenient and that the existing mechanisms for redress are insufficient." (page 28)

"Efforts have been made to improve the situation regarding law enforcement bodies dealing with the fight against organised crime, in particular the police services. These need to be intensified." (page 47)

"The staffing situation in the police remains difficult." (page 116)

"In the area of police co-operation and combating organised crime, efforts are still required to ensure that Poland has an accountable, reliable, and fully co-ordinated police organisation by accession. Special attention needs to continue to be dedicated to the cooperation and co-ordination between the police and the prosecuting and judicial bodies, including for cases of a cross-border nature." (page 120)

Justice Chain

"Further efforts are required to strengthen law enforcement capacity, especially as regards border controls and combating piracy and counterfeiting. Particular attention should be paid to the effectiveness of the administrative and judicial bodies involved in enforcement, such as the customs services, the police, and the judiciary, in particular by improving co-ordination among them. Targeted training for both copyright officials and enforcement officials, including judges and prosecutors, should continue." (page 62)

"In order to complete preparations for membership, Poland's efforts now need to focus on ensuring full alignment with the acquis along the lines set out above, intensifying measures to combat piracy and counterfeiting, strengthening border controls and, more broadly, further improving co-ordination between enforcement bodies (customs, police, judiciary)." (page 62)

"There have been initial steps taken to improve the internal co-operation within the police, with other law enforcement agencies and with the judiciary. Further steps are required in particular to strengthen the fight against organised crime and eliminate overlapping investigations." (page 152)

Comprehensive Monitoring Report on Preparations for Membership

No mention is made about probation and/or alternative sanctions and prisons. Poland has made progress in the field of the judiciary, police, and chain cooperation.

Judiciary

"Despite steady progress, efforts are still needed to improve the efficiency and transparency of the judiciary, to enhance the reliability of the quality of judgements. The access of the public to the judicial system remains limited, especially access to general information on procedures, legal aid, and the state of play of an individual's own pending case. In general, the level of public trust in the efficiency and fairness of the judicial system remains low and the perception of corruption by the public is high." (14)

"Training, in particular of judges and prosecutors, (needs to) be intensified. Further efforts are needed especially to cope with the high level of piracy in software and music and video products. Better co-ordination among enforcement bodies (in particular customs, police, and judiciary) needs to be pursued." (page 26)

"On issues such as border control, illegal migration, drugs trafficking and money laundering, organised crime, police and judicial co-operation, data protection and the mutual recognition of court judgements, acceding countries need to be equipped to meet adequate standards of administrative capacity. The establishment of an independent, reliable, and efficient judiciary and police organisation are also of paramount importance." (52/53)

"As regards overall administrative and judicial capacity, sufficient conditions are in place for the implementation of the acquis by the Polish public administration and judiciary, but there is room for further improvements." (page 62)

Police

"Cooperation between the relevant services, namely the border guard, the police, and the customs, continues to improve.... However, the risk analysis capacity of the border police needs to be further strengthened." (page 53)

"In the area of police co-operation and combating organised crime,Poland still needs to ratify the Council of Europe Cyber Crime Convention. Efforts are still required to ensure that Poland has an accountable, reliable, and fully co-ordinated police organisation by accession. The staffing situation remains difficult, and continuous attention is needed as regards the co-operation and co-ordination between the police and the prosecuting and judicial bodies. Training and information sharing in the field of combating economic and organised crime (in particular smuggling of cigarettes and drugs) needs to be considerably improved and sufficient financial means allocated to implement all the envisaged measures. International co-operation is well established and is supported by sufficient co-operation agreements, in particular the conclusion of an agreement with Europol." (page 54)