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REVIEW OF COUNTRY REPORTS (Poland, Croatia, Bosnia and Herzegovina, Norway, India and Canada)

*Asst. Prof. Dr. Selman DURSUN**

This presentation is based on the same outline followed by the submitted country reports on penal law sanctions. Here, however, only the issues specified under eight headings are compared and evaluated. A more detailed discussion of these issues can be found in the relevant country reports.

Penal Law Reform within the last 20 years

Poland	Penal Code of 1997
Croatia	- Penal Code of 1997 - New Penal Code 2011 (entered into force in 2013) Comparison: Mini reform regarding sanctions, especially security measures
Bosnia & H	- Penal Code of 1992 - Penal Code of 1998 Comparison: Abolition of death penalty
Norway	- Penal Code of 1902 - Penal Code of 2005 (will enter into force on 1st October 2015) Comparison: * No paradigm shift, structural & linguistic changes, pedagogical form * Decriminalization of some acts & introducing some new crimes * Abolition of the distinction between felonies and misdemeanors
India	Penal Code of 1860

* Istanbul University Faculty of Law, Department of Penal and Penal Procedural Law.

Canada	Penal Code of 1985 (based on PC of 1892)
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Review: Referring to the table, we see that Croatia, Bosnia and Herzegovina and Norway have recently made penal law reforms. The content of these reforms are summarized in the table. It should be noted here that the reform of 2005 in Norway was put into force 10 years later (in this year, 2015) for practical reasons. A similar debate took place during the Turkish Penal Law reform of 2004-2005, but the reforms came into force one year later.

II. Death Penalty

Poland	<ul style="list-style-type: none"> - Repealed by Penal Code of 1997 - Ratified Protocol No. 13 in 2013 - %75 support for death penalty
Croatia	<ul style="list-style-type: none"> - No death penalty - No info on repeal process
Bosnia & H	Repealed by Penal Code of 1998 (except during war time or in imminent danger)
Norway	<ul style="list-style-type: none"> - Repealed by Penal Code of 1902 during peacetime - Repealed from Military Penal Code in 1979 - Ratified Protocol No. 13 in 2005
India	<ul style="list-style-type: none"> - Penal Code of 1860 includes death penalty for certain crimes - Possibility of conversion to lifetime imprisonment
Canada	<ul style="list-style-type: none"> - The last execution in 1962 - Moratorium in 1967 - Repealed in 1967 (ordinary crimes) & in 1998 (military crimes) - In 2005 Second Optional Protocol of ICCPR

Review: We see that death penalty has been abolished in all these countries except India and Bosnia and Herzegovina with the limitation of the war time and imminent danger. It should be noted that there are significant limitations on the death penalty in India, and that the competent authority may convert this penalty into lifetime imprisonment. On the other hand, the country reports of Poland and Canada point to the debate over the return of the death penalty.

III. Punishment restricting freedom (Imprisonment)

Poland	<ul style="list-style-type: none"> - Lifetime imprisonment (Parole: 25 years) - Fixed-term imprisonment: * 25 years (Parole: 15 years) * 1 month to 15 years * 1 day to 30 day (detention) (Parole: 1/2, Recidivism, 2/3, 3/4) - Court may refuse/restrict parole
Croatia	<ul style="list-style-type: none"> - Long-term imprisonment (21-40 years, aggregation: 50 years) - Imprisonment (3 months-20 years) - Parole: 1/2 (at least 3 months) and consent of convict
Bosnia & H	<ul style="list-style-type: none"> - Long-term imprisonment (21-45 years, Parole: 3/5) - Imprisonment (30 days-20 years, Parole: 1/2)
Norway	<ul style="list-style-type: none"> - Lifetime imprisonment repealed in 1981 (except Military Penal Code during wartime) - Preventive Detention (15/21/30 years, unlimited extension for 5 years, in reality lifetime imprisonment) Parole: 10/14/20 years - Fixed-term imprisonment: 14 days-21/30 years (Parole: 2/3, minimum: 60 days)
India	<ul style="list-style-type: none"> - Lifetime imprisonment - Possibility of conversion to imprisonment up to 14 years - Fixed term imprisonment: Simple and rigorous (with performance of hard labour)
Canada	<ul style="list-style-type: none"> - Lifetime imprisonment (as maximum penalty or mandatory penalty, Parole: 7 or 25 years) - Fixed term imprisonment: in practice, up to 20 years (Parole: 1/3 or 7 years, for some crimes 1/2 or 10 years)

Review: As can be seen from the table, lifetime imprisonment is present in Poland, India and Canada. Instead of this penalty, however, long-term imprisonment is foreseen in Croatia and Bosnia, and preventive detention is foreseen in Norway.

It is necessary to state that after serving 25 years, the conditional release / parole for lifetime imprisonment is possible in Poland and Canada, but the courts have the authority to extend the term and aggravate the conditions. In India, the competent authority is able to convert lifetime imprisonment into imprisonment for up to 14 years.

In fixed-term imprisonment, it is noteworthy that the prison term to be executed for conditional release is usually one half (1/2), but it is two-third (2/3) in Norway like in Turkey and one-third (1/3) in Canada.

IV. Fine system

Poland	<ul style="list-style-type: none"> - Day-fine (daily rate/unite fine) system: 10-540 days, exceptional 810/4500 days (10 PLN-2.000 PLN) - Default of payment: Imprisonment (2 day fine = 1 day imprisonment)
Croatia	<ul style="list-style-type: none"> - Day-fine system: 30-360 days, for economic crimes 500 days (20 Kuna-10.000 Kuna) - Default of payment: Forcibly collection > Community service > Imprisonment (1 day fine = 1 day imprisonment, community service max. 1 year)
Bosnia & H	<ul style="list-style-type: none"> - Day-fine system: 5-360 days, for economic crimes 1500 days (1/60-1/3 average net salary of employees) - Fixed amount: If the relevant data is not available (500 KM - 100.000 KM, economic crimes 1 million KM) - Default of payment: Daily rates imprisonment (fixed amount: 50 KM = 1 day, max. 1 year)
Norway	<ul style="list-style-type: none"> - Classical fine system (there is no general limitation, consideration of the nature of crime and the economic conditions of the offender) - Fixed fines for traffic misdemeanors - Default of payment: 1-120 days imprisonment
India	<ul style="list-style-type: none"> - Classical fine system (there is no general limitation, regulated for each crime) - Default of payment: Imprisonment (1/4 of imprisonment)
Canada	<ul style="list-style-type: none"> - Classical fine system (for individuals max. 5,000 \$, for corporation unlimited) - Considering ability to pay or discharge with work program - Default of payment: Imprisonment (imprisonment term, if there is no imprisonment max. 5 year/6months)

Review: With the exception of Norway, India and Canada, the day-fine system is the basic fine system in all the countries examined, and the number of days increase for the economic crimes. It is noteworthy that, unlike Poland and Croatia, where the fixed upper and lower limits are foreseen, in Bosnia, the salary of employee is taken as a criterion for the determination of the amount of the fine. It is interesting that the amount of fines in Norway is determined according to the economic situation of the offender without a general limitation.

In all countries, the conversion of fine to imprisonment for default of payment is foreseen, but in Croatia, first forcibly collecting, if not collectible, community service with the consent of the convicted, and if s/he does not give consent or does not serve, the conversion to imprisonment is regulated.

V. Alternatives for minimizing possible adversities of punishment

Poland	<ul style="list-style-type: none"> - Penalty of limitation of liberty as alternative to imprisonment (up to 8 years) or fine for 1 month to 2 years - Conditional discontinuance of criminal proceedings (up to 5 years imprisonment, test period: 1-2 years) - Suspension of execution of imprisonment (1 years)
Croatia	<ul style="list-style-type: none"> - Special serving procedure (at home) of imprisonment up to 1 year - Conversion of short-term (6 months) imprisonment to fine or community service - Conditional sentence (1 year imprisonment or fine) - Partial conditional sentence (3 years and fine): 6 months-1/2 of imprisonment or 1/5-1/2 of fine must be served (parole in advance)
Bosnia & H	<ul style="list-style-type: none"> - Conversion of short-term imprisonment (1 year) to fine or house arrest with electronic supervision or community service - Suspended sentence (2 years imprisonment or fine)
Norway	<ul style="list-style-type: none"> - Suspended sanction for 2 years - Mediation for imposing youth punishment instead imprisonment
India	<ul style="list-style-type: none"> - Probation: For minor crimes - Commuting death penalty > lifetime imprisonment > rigorous imprisonment > simple imprisonment - Mediation for petty crimes - Plea bargaining: Crimes with punishment of max. 7 years and not applying to crimes against women, child under age of 14 and socio-economic conditions of country
Canada	<ul style="list-style-type: none"> - Special serving procedure (e.g. weekend) of imprisonment up to 90 days - Suspend the sentence (if the law does not prescribe a minimum punishment) + max. 3 years probation Mediation, several restorative justice models for less serious crimes

Review: The suspension institution is present in all the countries examined here. It is remarkable that in Croatia, the partial execution of the sentence and the postponement of the rest of the sentence (actually early conditional release) is regulated under the name of partial conditional suspension.

Also, in Poland, sanctions, which are the alternatives for imprisonment and fines in many countries, have been envisaged as a separate punishment. Besides the suspension, the conditional discontinuance of criminal proceedings in prison sentences of up to 5 years is very similar to the institution of delaying the pronouncement of the sentence in Turkish law.

In India, the plea bargaining system is remarkable for its 7-years imprisonment limit and for not being admitted to certain crimes.

VI. Some interesting examples of other penal law sanctions

Poland	<ul style="list-style-type: none"> - Several prohibitions (especially related sexual crimes) - Publication of sentence
Croatia	<ul style="list-style-type: none"> - Mandatory psychosocial treatment for violence crimes together with imprisonment & fine (max. 2 years) - Several prohibitions, especially prohibition from accessing the internet
Bosnia & H	<ul style="list-style-type: none"> - Judicial warning for minor crimes - Mandatory psychosocial treatment for violent crimes
Norway	<ul style="list-style-type: none"> - Several prohibitions to prevent committing crime or disturbing another person's peace
Canada	<ul style="list-style-type: none"> - Several prohibition orders, e.g. DNA orders, sex offender registration order, prohibiting from owning etc. an animal

Review: Under this title, the various prohibitions as penalty or security measures are notable. Administrative measures for domestic violence in Turkish law are regulated here as judicial sanctions.

In this context, the mandatory psychosocial treatment sanction for violent crimes in Croatia and Bosnia, the prohibition of accessing internet in Croatia, and the orders for giving DNA sample and for sex offender registration, the prohibition on being an animal owner in terms of actions against animals in Canada are remarkable.

VII. Age of penal responsibility

Poland	<ul style="list-style-type: none"> 0-15 (no) 15-17 (yes)
Croatia	<ul style="list-style-type: none"> 0-14 (children-no) 14-18 (juveniles) 18-21 (young adults) (educational measures, juvenile imprisonment, security measures)
Bosnia & H	<ul style="list-style-type: none"> 0-14 (children-no) 14-16 (younger juveniles) 16-18 (older juveniles) 18-21 (young adults) (Warning measures, educational recommendations, educational measures, juvenile prison, security measures)

Norway	0-15 (no) 15-18 (yes, youth punishment)
India	0-7 (no) 7-12 (according to maturity) 12-18 (yes)
Canada	0-12 (no) 12-18 (extrajudicial measures)

Review: If the penal responsibility age is ranked from the lowest to the highest, it can be seen that the age of penal responsibility is 8 in India, 12 in Canada, 14 in Croatia and Bosnia, 15 in Poland and Norway.

On the other hand, it is noteworthy that in Poland, the age of ordinary penal responsibility is 17 years, and in Croatia and Bosnia, 18-21 age group is also classified as young adults.

VIII. Penal responsibility of legal entities

Poland	Yes - Fine and prohibitions
Croatia	Yes - Fine (5.000 KN - 8 million KN) - Repeal of legal person - Security measures (prohibition, confiscation etc.)
Bosnia & H	Yes - Fine (5.000 KM - 5 million KM) - Confiscation - Dissolution of legal person
Norway	Yes - Fine and prohibitions
India	Yes - Fine
Canada	Yes - Fine (unlimited or 100.000 \$ for summary conviction) and probation order

Review: Penal liability of legal persons is accepted in all the countries examined here. As a sanction, fine comes to the forefront; apart from this, some bans (Poland and Norway) and dissolution of legal personality (Croatia and Bosnia) are noteworthy. In Canada, besides the imposition of unlimited fines, the probation order for the legal person is outstanding.