

# ALTERNATIVES TO PRISON IN EUROPE

## Poland

*Artur Pietryka, Adam Ploszka*

European Prison Observatory. Alternatives to detention



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Artur Pietryka, Adam Ploszka

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**Associazione Antigone Onlus**

Legal residence: Via della Dogana Vecchia, 5 – 00186 Roma

Tel. +39 064511304

segreteria@associazioneantigone.it

[www.associazioneantigone.it](http://www.associazioneantigone.it)

**European Prison Observatory**

Project staff: William Aloskofis, Mónica Aranda Ocaña, Roberta Bartolozzi, Federica Brioschi, Marie Crétenot, António Pedro Dores, Omid Firouzi Tabar, Patrizio Gonnella, Catherine Heard, Anhelita Kamenska, Dimitris Koros, Nikolaos Koulouris, Kristīne Laganovska, Barbara Liaras, Ricardo Loureiro, Cécile Marcel, Susanna Marietti, Athanassia Mavromati, Will McMahon, Helen Mills, Michele Miravalle, Mauro Palma, Grazia Parisi, Artur Pietryka, Adam Ploszka, Nuno Pontes, Jose Ignacio Rivera Beiras, Daniela Ronco, Alessio Scandurra, Sofia Spyrea, Giovanni Torrente, Jean-Luc Untereiner, Francesca Vianello, Sofia Vidali, Esme Waterfield.

[www.prisonobservatory.org](http://www.prisonobservatory.org)



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## THE EUROPEAN PRISON OBSERVATORY

The European Prison Observatory is a project coordinated by the Italian Ngo Antigone, and developed with financial support from the Criminal Justice Programme of the European Union. The partner organizations are:

Università degli Studi di Padova - Italy

Observatoire international des prisons - section française - France

Special Account of Democritus University of Thrace Department of Social Administration (EL DUTH) - Greece

Latvian Centre for Human Rights - Latvia

Helsinki Foundation for Human Rights - Poland

ISCTE - Instituto Universitário de Lisboa - Portugal

Observatory of the Penal System and Human Rights - Universidad de Barcelona - Spain

Centre for Crime and Justice Studies – United Kingdom

The European Prison Observatory studies, through quantitative and qualitative analysis, the condition of the national prison systems and the related systems of alternatives to detention, comparing these conditions to the international norms and standards relevant for the protections of detainees' fundamental rights.

The European Prison Observatory highlights to European experts and practitioners 'good practices' existing in the different countries, both for prison management and for the protection of prisoners' fundamental rights.

Finally it promotes the adoption of the CPT standards and of the other international legal instruments on detention as a fundamental reference for the activities of the available national monitoring bodies.

[www.prisonobservatory.org](http://www.prisonobservatory.org)

## ALTERNATIVES TO DETENTION IN EUROPE

Various international recommendations on community sanctions and measures promote the use of alternatives to imprisonment in order to reduce recidivism and the prison population. At the same time, legislators, academics and public administration members within the EU know that imprisonment is not the only way to balance security needs and social justice, and every Member State has implemented alternatives to imprisonment systems, with their own rules, organisational set-up and procedures.

The “European Observatory on Alternatives to Imprisonment” project aims to create a functional network of partner countries, in order to reduce the disharmony and gaps among the systems.

The main goal of the project is to provide, in a comparative way, a comprehensive picture of alternatives to detention in force within each partner country. These pictures would enable us to identify those alternative measures to detention that have led to:

- a decrease in detention rates
- the application of rehabilitative programs

To do so, starting from historical analysis, the project's objective is to compare the legal framework of the systems, their goals, the contents of the measures and their impact on the penitentiary system as a whole.



## PART ONE. GENERAL DATA

### Total number of people detained and serving an alternative measure between 2000 – 2014

Year	Prison population	Pre-trial detention prisoners	Convicts subject to electronic monitoring	Paroled convicts
2000	70544	22032	-	14276
2001	79634	22730	-	15105
2002	80467	20896	-	18142
2003	79281	18240	-	19370
2004	80368	15055	-	21317
2005	82955	14405	-	23253
2006	88647	14189	-	21821
2007	87776	13324	-	22681
2008	83152	9913	-	23966
2009	84003	9660	No data available	22726
2010	80728	9033	No data available	26238
2011	81382	8540	1992	24328
2012	84156	7588	4881	21803
2013	83898	6781	4923	19828
2014	78987	6687	4756	16183

Year	Offenders sentenced to pay a fine	Offenders who got a suspended sentence to pay a fine	Offenders sentenced to restriction of liberty	Offenders who got a suspended restriction of liberty sentence	Offenders who got a suspended prison sentence
2000	No data available	No data available	No data available	No data available	No data available
2001	64475	2564	28507	1696	184 819
2002	75698	3405	39156	2308	214 485
2003	93274	3951	52763	3426	233 055
2004	111491	4207	71887	3966	278 338
2005	100968	3551	67254	2848	291 409
2006	88407	2435	57918	2241	272 653
2007	82988	1632	47091	1556	257 141
2008	89011	1656	40643	1304	250 774
2009	88326	1637	43524	1201	243 974
2010	92329	1660	49693	1332	251 087
2011	93571	1580	49611	1211	239 076
2012	91296	1771	50730	1272	224 185
2013	76579	1557	41287	1093	195 348
2014	62761	964	32763	881	162 938

There are no data regarding the number of persons who were subject to measures that are alternatives to detention in the above mentioned statistical period. The data that are available to the public have been presented below.

## Imprisonment and alternatives to custody: an overview

### Political climate regarding prison numbers since 2000

Politicians notice the problem of overcrowding in the correctional facilities in Poland. There is no comprehensive strategy that would lead to the optimum size of the prison population. The actions that had been taken in that regard to date are rather dispersed. They include new technical solutions, such as the ability to serve the prison time and the penal measure of prohibition from entering a mass event in the Electronic Monitoring System. Legislative changes are another element of those actions. Liquidation of overcrowding in correctional facilities was a priority while enacting the amended Polish Criminal Procedure Code of 27 September 2013<sup>1</sup>, and the amended Polish Criminal Code of 20 February 2015 which are to enter into force as of 1 July 2015.<sup>2</sup> The second statute in particular is to bring about changes in the philosophy of punishment. There are also educational efforts to propagate the judicial decisions of the European Court of Human Rights<sup>3</sup> as well as efforts to encourage courts to use non-custodial measures, such as parole.

### Reforms to alternatives to detention since 2000

The Act on Serving Prison Sentence Outside Custodial System in the Electronic Monitoring System of 7 September 2007 has been in effect since 1 September 2009.<sup>4</sup> The provisions of that statute have been in effect within the entire country since 1 January 2012. Under this solution, the sentenced persons may serve a prison time up to 1 year as well as the penal measure of prohibition from entering a mass event with devices that monitor their conduct. The provisions of the above mentioned amendment of 27 September 2013, which amended, among other things, the Polish Criminal Procedure Code, came into force on 9 November 2013. In consequence of those provisions, the qualification of several less serious offences was changed to misdemeanors subject to detention for up to 30 days, restriction of liberty or a fine (e.g. riding a bicycle while under the influence of alcohol, stealing an item worth under ¼ of the minimum national wage – around 110 euros in 2015). The above mentioned amendment of 20 February 2015 which amended a number of statutes, including the Polish Criminal Code and the Polish Criminal Enforcement Code, will enter into force on 1 July 2015. This amendment is to popularise alternative non-custodial penalties – the fine and restriction of liberty while reducing the number of suspended sentences; it is also to introduce new opportunities for using the Electronic Monitoring System.

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<sup>1</sup> Polish Criminal Procedure Code's and Certain Other Acts' Amendment Act of 27 September 2013 (Journal of Laws of 2013, item 1247).

<sup>2</sup> Polish Criminal Code's and Certain Other Acts' Amendment Act of 20 February 2015 (Journal of Laws of 2015, item 396).

<sup>3</sup> Cf. the statement of Wojciech Węgrzyn, Under-secretary of State at the Ministry of Justice made in 2012 when he presented the actions taken by the Minister of Justice to implement the ECHR judgements.

<http://programy.hfhr.pl/orzeczenia/dzialalnosc-ministra-sprawiedliwosci-w-zakresie-wykonywania-orzeczen-etpcz/>.

<sup>4</sup>Journal of Laws of 2010 No. 142, item 960, consolidated text

### **Total prison population (daily rate) between 2000 – 2014**

Between 2000 and 2014, the prison population remained rather flat at around 80,000 convicts, with a peak in 2006 and 2007. Detailed figures have been presented in the table below.<sup>5</sup>

Year	Prison population
2000	70544
2001	79634
2002	80467
2003	79281
2004	80368
2005	82955
2006	88647
2007	87776
2008	83152
2009	84003
2010	80728
2011	81382
2012	84156
2013	83898
2014	78987

### **Prison population rate per 100,000 population (based on the daily rate prison population 2000 – 2014)**

Incarceration rate between 2000 and 2012 was 210 people on average, as shown in the table below<sup>6</sup>.

Year	The prison population rate per 100,000 population
2000	182.5
2001	206.1
2002	208.4
2003	207.6
2004	210.5
2005	217.4
2006	232.5
2007	230.3
2008	218.0
2009	220.1
2010	209.5
2011	211.2
2012	218.4
2013	No data available
2014	No data available

<sup>5</sup> *Prisons in figures. Penitentiary statistics for 1989 to 2004. Prisons in figures. Penitentiary statistics for 2005 to 2012*, and annual statistics of the Prison Service for 2013 and 2014, available at: <http://www.bip.sw.gov.pl/Strony/Statystyka.aspx>.

<sup>6</sup> *Prisons in figures. Penitentiary statistics for 1989 to 2004. Prisons in figures. Penitentiary statistics for 2005 to 2012*, and annual statistics of the Prison Service for 2013 and 2014, available at: <http://www.bip.sw.gov.pl/Strony/Statystyka.aspx>.

### **Number of pre-trial detainees<sup>7</sup> and as a percentage of the prison population (based on the daily rate prison population 2000 – 2014)**

The number of people in pre-trial detention in Poland has been systematically decreasing over the period analysed, from 22,032 in 2000 to 6,687 in 2014. The trend is illustrated in the table below<sup>8</sup>:

Year	Pre-trial detainees	Percentage of the prison population	Rate per 100 000 population
2000	22032	28%	No data available
2001	22730	28%	No data available
2002	20896	26%	No data available
2003	18240	23%	No data available
2004	15055	19%	No data available
2005	14405	17%	No data available
2006	14189	16%	No data available
2007	13324	14%	No data available
2008	9913	12%	No data available
2009	9660	11%	No data available
2010	9033	11%	No data available
2011	8540	10%	No data available
2012	7588	9%	No data available
2013	6781	8%	No data available
2014	6687	8%	No data available

### **Number and proportion of the total prison population (based on the daily rate prison population 2000 – 2014) by length of sentence (e.g. less than 6 months; 6 months to less than 12 months; 12 months to less than four years; 4 years plus; other)**

The number and the share of persons serving prison time kept growing between 2000 and 2014. The number of long-term prison sentences (3 to 5 years) went down, while the number of short-term sentences (12 months to 3 years) went up.

Year	Total	Under 6 months	6 to 12 months	12 months to 3 years	3 to 5 years
2000	46700	1494 (3.2%)	7725 (16.5%)	21860 (46.8%)	7402 (15.85 %)
2001	54978	1582 (2.9%)	8586 (15.6 %)	26568 (48.3%)	9135 (16.6%)
2002	57830	1833 (3.2%)	8665 (15%)	26870 (46.5%)	10492 (18.1%)
2003	59080	2213 (3.7%)	8704 (14.7%)	26851 (45.4%)	10921 (18.5%)
2004	62651	3078 (4.9%)	9683 (15.5%)	28627 (45.7%)	10285 (16.4%)
2005	66180	3722 (5.6%)	10400 (15.7%)	30818 (46.6%)	10271 (15.5%)
2006	70630	4605 (6.5%)	12 290 (17.4%)	32277 (45.7%)	10234 (14.5%)
2007	72714	5945 (8.2%)	13311 (18.3%)	32239 (44.3%)	9 966 (13.7%)
2008	70359	5410 (7.7%)	13639 (19.4%)	31313 (44.5%)	9 028 (12.8%)
2009	70814	5683 (8%)	14923 (21.1%)	30997 (43.8%)	8 652 (12.2%)
2010	68325	5298 (7.8%)	14353 (21%)	30460 (44.6%)	8 197 (12%)
2011	69260	5365 (7.8%)	14711 (21.2%)	30808 (44.5%)	8197 (11.8%)
2012	71836	6033 (8.4%)	15102 (21%)	32403 (45.1%)	8 717 (12.1%)
2013	68686	5126 (7.5%)	14170 (20.6%)	31428 (45.8)	8 499 (12.4%)
2014	66970	5080 (7.6%)	14001 (20.9%)	30033 (44.9%)	8 360 (12.5%)

<sup>7</sup> In this grid, the term "pre-trial" refers to those awaiting for the first instance.

<sup>8</sup> *Prisons in figures. Penitentiary statistics for 1989 to 2004. Prisons in figures. Penitentiary statistics for 2005 to 2012, and annual statistics of the Prison Service for 2013 and 2014, available at: <http://www.bip.sw.gov.pl/Strony/Statystyka.aspx>.*

## Probation practices

### Do alternatives to detention develop skills and social inclusion of the offenders?

It depends. The system of alternatives to detention is focused on controlling the conduct of the suspect/ the defendant so as to prevent, in the non-custodial setting, the hindering of the proceedings that are being run. The alternative penalties are to enable social rehabilitation of the sentenced persons; the measures imposed as part of implementing the penalty are aimed at educating them.

### Are alternative measures free of stigmatizing features?

That issue is regulated in the applicable regulations. Pursuant to Article 3 of the Polish Criminal Code, penalties and other measures provided for in the Polish Criminal Code are applied with consideration for the principles of humanitarianism, especially with the respect for human dignity. A similar regulation is provided for in Article 4 section 1 of the Polish Criminal Enforcement Code which states that penalties, penal measures, protective measures and preventive measures are applied in a humanitarian manner with the respect for human dignity. That provision prohibits the use of torture or inhuman or degrading treatment or punishment of the sentenced person. Serving a sentence in electronic monitoring may be stigmatized. The convicted person has the obligation to wear a bracelet and submit to checks, whether applied to the requirements of serving the sentence.

### Are probation programmes individualised?

Supervision is supposed to be individualised. The legal regulations in force order judges to impose and apply alternative measure in accordance with the proportionality principle, that is adequately to the circumstances of the offence and the characteristics of the perpetrator. Preventive measures should be applied as an alternative to pre-trial detention in such respect. Polish regulations prefer non-custodial sentences to the custodial ones. The alternatives to custodial sentences (conditional discontinuation of the proceedings, alternative penalties and penal measures) are imposed upon considering the characteristics and personal circumstances of the perpetrators, their life before committing the crime and their behaviour after the crime was committed, and in particular the efforts to remedy the damage or compensate the social sense of justice, as well as the behaviour of the aggrieved party. That is why judges do not sentence offenders to pay a fine if they are convinced that the offenders will not pay the fine and it will be impossible to collect the amount by way of enforcement proceedings. Restriction of liberty involving work is not imposed if the defendant's health or his/ her characteristics and personal circumstances make it reasonable to assume that he or she will not fulfil that obligation. Certain obligations may be imposed on the perpetrator as an element of sanctions in the case of implementing conditional discontinuation of proceedings, restriction of liberty, parole, as well as when serving prison time in the Electronic Monitoring System; the obligations should match the circumstances of the case and the characteristics of the perpetrator.

### **Is the progress of the offender evaluated in the course of the measure's implementation?**

When the obligations are imposed on the perpetrator as part of preventive measures that are alternative to pre-trial detention – restriction of liberty, parole, penal measures and serving prison time in the Electronic Monitoring System, the perpetrator's actual performance of those obligations is subject to an evaluation. The obligations may be modified, enlarged or revoked, depending on the perpetrator's conduct, among other things. Failure to fulfil the penal measures or obligations imposed on the perpetrator, or breaching the legal order is taken into account, and may result in a modification of a given measure that is an alternative to imprisonment; for example, it may be changed to a custodial measure.

### **Is the plan of work reviewed according to this evaluation?**

In the case of measures that involve the obligation to work, the courts only determine the number of hours of controlled community service which can range from 20 to 40 hours per month. A professional court-appointed probation officer calls the sentenced person within 7 days as of the delivery of the court verdict, advises him/ her of his/ her rights and duties and the consequences of evading punishment; upon hearing the sentenced person, the professional probation officer also determines the type, place and the commencement date of the work, and communicates that to the competent municipal authority and the entity for which the work is to be performed. The community service plan may be modified under special circumstances so long as the scope of the community service remains as determined by the court.

### **Are there possibilities to change its content in the process of implementation?**

The preventive measures as an alternative to pre-trial detention may also be modified provided there are no longer any reasons for applying a given measure. The alternative forms of punishment provided for in the sentence may also be changed to a substitutive punishment, e.g. imprisonment. Finally, it is possible to modify the obligations stated when sentencing the offender to restriction of liberty, conditional discontinuation of proceedings, issuing suspended sentence or serving time in the Electronic Monitoring System.

### **Is a final evaluation carried out at the end of the supervision period?**

The issue is regulated in the Regulation of the Minister of Justice<sup>9</sup>, notably Section 25.3 which states that the report on the completion of supervision of an offender in a criminal case by the probation officer should state the course of the supervision, with special focus on the implementation of the community service plan with the sentenced person, the evaluation of obligations performance and the offender's attitude during the period of probation. The report on completion of the supervision process under criminal law does not need to be prepared if the supervision ended differently other than upon the expiry of the period of probation. Section 25.4 of the Regulation states that the report on completion of the supervision process under criminal law is not made when proceedings started at the probation officer's request were subject to conditional discontinuation, when it was ordered that a suspended sentence of deprivation of

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<sup>9</sup>The Regulation of the Minister of Justice of 26 February 2013 on the manner of performing the duties and rights by probation officers in criminal enforcement cases (Journal of Laws of 2013, item 335).

liberty should be implemented, or when a parole was revoked; furthermore, the report is not prepared in cases where the court discharged the sentenced person from supervision at the request of the probation officer.

### **Do workers in alternatives to detention have the same rights and safeguards as other workers?**

Community service is performed by persons sentenced to restriction of liberty. Community service is free and subject to control. The obligations of the entity for which community service is to be provided towards the person sentenced to restriction of liberty involving community service are regulated in the Regulation of the Minister of Justice<sup>10</sup>. The Regulation states that the entity that organises the community service is required to admit the sentenced person sent by the professional court-appointed probation officer to work, advise him or her of the duty to work conscientiously, and the need to observe the order and discipline as agreed on in the work place. The age of the sentenced person, his/ her health and qualifications, if any, are taken into account when assigning the work. Work that is prohibited to adolescents must not be assigned to the sentenced persons who are under 18 when taking up the work; women may not be employed to perform work that is particularly arduous or harmful to their health. The entity is also required to advise the sentenced person of regulations concerning work health and safety as adequate for the type of work, provide the sentenced person with safe and healthy working conditions, personal protective equipment, as well as working clothes and footwear, if required for a given job. A sentenced person who is not employed must not work longer than 8 hours per day. The working time may be prolonged to 12 hours at the request of the sentenced person; where the sentenced person is employed, the work must not collide with the work performed as part of the employment relationship.

### **Supervision model adopted in alternative measures (e.g. control-oriented, assistance-oriented...)**

The enforcement of preventive measures that are an alternative to pre-trial detention is supervised by the court and the prosecutor with the latter supervising the pre-trial proceedings. The enforcement of the alternative forms of punishment is supervised by the court and controlled by the professional court-appointed probation officer, provided his or her oversight has been envisaged. If the custodial sentence is suspended, the supervision may be exercised by another entity, such as a social organisation. In the case of alternative forms applied when implementing the punishment, those are supervised by the court and controlled by the professional court-appointed probation officer, provided his or her oversight has been envisaged. Where the custodial sentence is implemented in the Electronic Monitoring System, the supervision is exercised by the penitentiary court, and the process is controlled by the professional court-appointed probation officer, the entity operating the monitoring centre (Electronic Monitoring Bureau) and the authorised monitoring entity. They are purely of control.

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<sup>10</sup> Regulation of 1 June 2010 on entities for which restriction of liberty and community service is performed (Journal of Laws of 2010, No. 98, item 634).

### **Does the probation system offer aftercare services?**

The post-penitentiary support is regulated in the Polish Criminal Enforcement Code and in the Regulation of the Ministry of Justice<sup>11</sup>. Pursuant to those regulations, the Prime Minister appoints the Chief Council for Social Resettlement and Support of the Sentenced Persons, which coordinates the cooperation between the national authorities and representatives of the society in crime prevention and implementation of sentences, as well as provides support during social resettlement, and performs social control and evaluation of the penitentiary policy. Under Polish legal system, there is also the Fund for Victim and Post-Penitentiary Support. In 2014, the assets accumulated in the Fund totalled around PLN 15.8 million (or, around EUR 3.95 million<sup>12</sup>). The funds from the Fund are used, among other things, for providing post-penitentiary support to persons who are imprisoned, released from the correctional facilities and detention centres, as well as members of their families; the support is provided by the professional court-appointed probation officers and the Prison Service. The support is focused on the sentenced persons in correctional facilities as well as the suspects/ the defendants who are in pre-trial detention and who may leave the correctional facilities.

### **Do foreigners have any limits to serve alternatives to detention? Are there specific provisions for them?**

The legal regulations in force do not introduce any differences in the use of alternative forms of detention for the foreign nationals and Polish citizens.

### **Are there any gender specific programmes?**

The legal regulations in force do not introduce any differences in the use of alternative forms of detention for men and women.

### **Are the victims of crime involved in the alternatives to detention programmes? If yes, which is their role in these programmes?**

As a rule, the victim is not involved in the implementation of forms of punishment that are an alternative to imprisonment, except when the alternative measure requires the victim's involvement (for example, remedying the damage, apologies from the perpetrator) or when it provides for special protection for the victim from the perpetrator (approach injunction). The victim is a party to the enforcement proceedings concerning the forms of punishment or penal measures. The victim has the right, among other things, to take part in the court hearings; the victim is also notified of certain aspects of the alternative measures' enforcement (e.g. released from the correctional facility on parole).

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<sup>11</sup> The Regulation of the Minister of Justice of 6 February 2014 on the Victim and Post-Penitentiary Support Fund (Journal of Laws of 2014, item 189).

<sup>12</sup> The details on the use of the funds from the Fund for Victim and Post-Penitentiary Support in the post-penitentiary part, in 2014 are available at: <http://bip.ms.gov.pl/pl/dzialalnosc/fundusz-pomocy-pokrzywdzonym-oraz-pomocy-postpenitencjarnej/pomoc-postpenitencjarna/>.

### **Do probation services offer, directly or indirectly, support council or information to families of offenders?**

Pursuant to Article 41 Section 1 of the Polish Criminal Enforcement Code, the sentenced persons and their families should be provided with the requisite assistance, especially material support, medical assistance, help when looking for a job or a house, as well as legal advice, in order to facilitate social resettlement, and in particular to prevent relapse into crime. The assistance and support should be provided by the competent government - and local government authorities, court-appointed probation officers, and other entities. Pursuant to Section 8.1 of the Regulation of the Minister of Justice, the probation officers are required to establish contact with the family and the acquaintances of the sentenced person as part of their supervision duties in criminal cases. Furthermore, in keeping with Section 24.1 of the Regulation of the Minister of Justice, professional probation officers should analyse information regarding circumstances that justify taking efforts in order to provide the sentenced person or his/ her family with material support or other support. As part of activities aimed at preparing the sentenced person to the transition from the life in the correctional facility to real life, the professional probation officer prepares the family and the social environment of the sentenced person for his/ her return, and co-organises post-penitentiary support by recognising the needs of the sentenced person and his/ her family, and by shaping their skills so that the sentenced person is able to solve any life difficulties on his/ her own.

### **Are there specific restorative justice programmes?**

The Civic Council for Alternative Dispute Resolution at the Ministry of Justice has been operating since 2008. The Council is responsible for promoting ADR mechanisms for resolving conflicts due to committing an offence; the ADR mechanisms are also promoted among judges and prosecutors.

### **Does the probation service give a systematic feedback about the effectiveness of the alternatives to prison to the general public? How is the information shared?**

No such actions are taken by the probation officers. The Probation Officers and Family Guardians Act does not require the National Probation Officers Board to submit annual reports on the activity of the probation service. The general public receives such information very rarely, for example during the sessions of the Sejm Committee for Justice and Human Rights which deals with that very topic. The most recent session of the Committee was held on 27 November 2014.<sup>13</sup> The reports in that respect are prepared by the Ministry of Justice<sup>14</sup>.

### **Are there systematic research projects concerning the alternatives to imprisonment and, if so, who carries them out?**

The projects of that type are being run. For example, the research project on "Alternatives to detention in the Polish criminal justice system" run by the members of the academic staff of the Criminal Law Faculty of the Legal Studies Institute at the Polish Academy of Sciences. Furthermore,

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<sup>13</sup> The transcript of the meeting is available at: <http://www.sejm.gov.pl/sejm7.nsf/biuletyn.xsp?sknrn=SPC-213>.

<sup>14</sup> The reports are available at: <http://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/>.

the Ministry of Justice conducts a project called “Promoting probative measures as an alternative to imprisonment”.

### **Probation total budget in 2014 and historical series since 2000**

There is no separate budget in the Budget Act for a given budget year to be used for the implementation of programmes relating to the enforcement of measures that are an alternative to detention.

## **Procedural guarantees**

### **Do probation agencies respect the human rights of offenders without discrimination (sexual, religious, racial, political, etc.)? Do they keep in regard offenders’ dignity, health, safety and well-being in their interventions?**

Yes. Pursuant to Article 3 of the Polish Criminal Code, penalties and other measures provided for in the Criminal Code are applied with consideration for the principles of humanitarianism, especially with the respect for human dignity. A similar regulation is provided for in Article 4 section 1 of the Polish Criminal Enforcement Code which states that penalties, penal measures, protective measures and preventive measures are applied in a humanitarian manner with the respect for human dignity. That provision prohibits the use of torture or inhuman or degrading treatment or punishment of the convict. A similar provision is contained in the Code of Ethics of Probation Officers enacted by the National Council of Probation Officers. Article 2 of that Code reads that a probation officer should fulfil his/ her duties with the respect for human rights and dignity, recognising him/ her as a person and observing the principles of equal treatment. There is no information regarding discrimination of persons subject to alternative measures based on sex, religion, race or political beliefs.

### **Does the probation agencies always seek the offenders cooperation and collect their informed consent?**

The manner of performing the duties and rights by probation officers in criminal enforcement cases is set out in the Regulation of the Minister of Justice issued pursuant to the Probation Officers Act<sup>15</sup> and the Regulation of the Minister of Justice<sup>16</sup>. The probation officer is required to hear the person sentenced to restriction of liberty and community service (Sections 28 and 34 of the Regulation). When implementing that Regulation, it was the legislator’s intention to make the probation officers as much available to offenders as possible. This is evidenced, among other things, by the offender’s duty to meet with the probation officer within 7 days as of the beginning of the supervision. The offender is also instructed the rights and obligations associated with the penalty of restriction of liberty, as well as parole.

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<sup>15</sup>The Regulation of the Minister of Justice of 26 February 2013 on the manner of performing the duties and rights by probation officers in criminal enforcement cases (Journal of Laws of 2013, item 335).

<sup>16</sup> Probation Officers and Family Guardians Act of 27 July 2001 (Journal of Laws of 2014, item 795, consolidated text).

**If probation agencies carry out interventions before the establishment of the offender's guilt, do they require the offender's informed consent? Are their interventions without prejudice to the presumption of innocence?**

Yes. The regulations concerning presumption of innocence which exist under Polish law (Article 42 section 3 of the Constitution of the Republic of Poland and Article 5 of the Criminal Procedure Code) protect that guarantee and extend it until the sentence becomes final and binding. This principle applies to persons subjected alternative to detention, as well as sentenced by the court of first instance.

**Are the task and responsibility of the probation agencies and their relations with the public authorities and other bodies defined by any national law?**

Yes. They are regulated both at the level of statutes and at the level of regulations. Those include in particular: the Polish Criminal Enforcement Code, the Polish Criminal Code, the Probation Officers Act, as well as the Courts Act<sup>17</sup>, and also the Regulation of the Minister of Justice<sup>18</sup>.

**How is the offenders' privacy guaranteed? How is the data protection of case records guaranteed to the offenders?**

The right to privacy of each person is protected under Article 47 of the Constitution of the Republic of Poland. However, the verdict may be announced to the public as a penal measure that the court may provide for in the sentence. Pursuant to Article 13 section 2 of the Press Act<sup>19</sup> neither the personal details nor the image of persons against whom pre-trial proceedings or court proceedings are pending may be disclosed in the press. Article 13 section 3 of that statute reads that the court or the prosecutor may give permission to the disclosure of the personal details and the image of those persons for a valid social interest. Under the Personal Data Protection Act<sup>20</sup>, the data concerning sentences, verdicts regarding punishment and penalty notices, as well as other verdicts issued as part of court proceedings are sensitive, and may not be processed as a matter of principle. However, the statute sets out certain extraordinary situations when processing of such data is permitted. As regards access to the court files, pursuant to Article 156 section 1 of the Polish Criminal Procedure Code, the parties are given access to the court files and the ability to make copies thereof. Upon consent of the court president, the files may also be disclosed to entities other than the ones explicitly stated in the regulation. As regards the pre-trial proceedings, the authority that runs the proceedings decides on permission to give access to the files.

**Are there accessible, impartial and effective complaint procedures regarding probation practice?**

As a rule, there are two routes to question the manner in which the penalty was implemented: the "internal" route (within the penitentiary system) and the "external" route (outside the

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<sup>17</sup> Courts Act of 27 July 2001 (Journal of Laws of 2015, item 133, consolidated text).

<sup>18</sup>The Regulation of the Minister of Justice of 26 February 2013 on the manner of performing the duties and rights by probation officers in criminal enforcement cases (Journal of Laws of 2013, item 335).

<sup>19</sup> Press Act of 26 January 1984 (Journal of Laws of 1984, No. 5, item 24 as amended).

<sup>20</sup>Personal Data Protection Act of 29 August 1997 (Journal of Laws of 2014, item 1182, consolidated text).

penitentiary system). As part of the first route, the sentenced person may file motions, complaints and requests to the authorities that implement the verdict, pursuant to Article 6 of the Polish Criminal Enforcement Code. When filing the motion, complaint or request, the sentenced person is required to substantiate the demands sufficiently enough for the authority to review them, especially by enclosing the relevant documents. If the motion, complaint or request rely on the same facts, contain words or phrases that are generally considered as vulgar or offensive or criminal slang, or do not substantiate the demands sufficiently enough for the authority to review it, the competent authority may disregard the motion, complaint or request. In addition, the sentenced person may question the manner in which the penalty is carried out, notably the sentenced person may file a complaint with the Ombudsman. Furthermore, under the Probation Officers and Family Guardians Act, the regional probation officers review complaints and motions regarding the activities of the probation officers in their respective regions.

### **Are the probation agencies subjected to regular government inspection and/or independent bodies monitoring?**

The probation authorities are supervised by the Ministry of Justice. In particular, the Minister of Justice has the power to determine, by way of a regulation, the detailed manner in which the probation officers are to perform their rights and duties, while accounting for the need to enforce the court decisions in a swift manner, and to guarantee the rights and duties of their wards. The Minister also sets out the workload standards for the professional probation officers, while taking into account the individual workload of the probation officers relating to the supervision of offenders in criminal cases, supervision of wards in family cases, as well as other activities to ensure fast and correct enforcement of the court verdicts. The Minister is also the appeal authority in the case of personnel decisions (e.g. when a probation officer is recalled or when his/her employment relationship is terminated). Works are under way to amend the Probation Officers and Family Guardians Act; under the amended statute, the Minister of Justice supervision over the probation officers would be defined in a clear and specific manner.<sup>21</sup> Certain aspects of the probation officers' work are also subject to sporadic controls by the Supreme Audit Office<sup>22</sup>.

## Staff

### **Organisation of probation staff**

In accordance with Article 2 of the Probation Officers and Family Guardians Act, there are professional court-appointed probation officers and social court-appointed probation officers. A probation officer is a public officer. In accordance with Article 35 of the Probation Officers and Family Guardians Act, professional court-appointed probation officers form the probation service

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<sup>21</sup>The draft law on probation officers and family guardians is available at:

<http://legislacja.rcl.gov.pl/docs//1/197541/197542/197543/dokument97744.pdf>

<sup>22</sup> The Supreme Audit Office's (NIK) report on "Wdrożenie i eksploatacja systemu dozoru elektronicznego oraz realizacja zadań przez sądowych kuratorów zawodowych w procesie wykonywania kary pozbawienia wolności w tym systemie" ("Implementation and operation of the electronic monitoring system, as well as execution of tasks by professional court-appointed probation officers in the process of implementing prison sentences in the electronic monitoring system") available at: <https://www.nik.gov.pl/aktualnosci/bezpieczenstwo/nik-o-systemie-dozoru-elektronicznego.html>.

of the court within the jurisdiction of the regional court. The activities of the probation officers are supervised by the regional probation officer, except for those areas that are supervised by the court or by the president of the court. As regards the district courts, there are probation officer teams headed by managers. Professional probation officers form probation officer self-government and regional associations of probation officers.

### **Number of probation officers in 2014, and historical series since 2000**

Year	Professional probation officers	Social probation officers
2000	3531	No data available
2001	3647	No data available
2002	3604	24938
2003	3691	26005
2004	4048	27671
2005	4138	29792
2006	4688	29921
2007	5023	30239
2008	5196	30450
2009	5168	30454
2010	5183	30943
2011	5203	31325
2012	5203	31285
2013	5045	No data available
2014	5209	No data available

### **Number of cases followed by each probation agent**

The workload standards for professional probation officers are set out in the Regulation of the Minister of Justice<sup>23</sup>. The table below shows the workload for professional probation officers.

Case type	Case number
Own supervision in criminal cases	from 20 to 35
Entrusted supervision in criminal cases	from 30 to 60
Other cases	up to 50
Total:	up to 120, including 50 own ones

### **Recruitment procedures**

Probation Officers and Family Guardians Act sets out the requirements for persons willing to work as probation officers. Pursuant to Article 5 of that statute, in order to become a professional probation officer, the person needs to be a Polish national, enjoy full civil and civic rights, have impeccable moral standards, be healthy and fit to fulfil the duties of a professional probation officer, have a university degree in educational and psychological sciences, sociology or law; the

<sup>23</sup> The Regulation of the Minister of Justice of 9 June 2003 on the workload standards for professional probation officers (Journal of Laws of 2003, no. 116, item 1100).

person also needs to complete a probation officer training and pass an exam. Social probation officers are exempt from the requirement to have a university degree, complete a probation officer training and pass the exam; however, they need to meet the other requirements. Pursuant to Article 4, a professional probation officer is appointed, recalled, transferred to another court or another team of probation officers, or suspended by the president of the regional court at the request of the regional probation officer. Pursuant to Article 84, the social probation officer is suspended and recalled by the president of the district court at the request of the team manager.

### **Initial qualification required and ongoing training**

The probation officer training takes one year. During the probation officer training, the trainees are to learn the practical organisation and the functioning of the court, juvenile centres, custody and care centres, treatment and therapy centres, as well as the correctional facilities; they are also to learn, in theory and in practice, about the responsibilities of the probation officers; the training is aimed at improving the trainees' knowledge of the methodology of the probation officer's work and at checking their suitability for the profession. There is no requirement of lifelong learning for the probation officers.

### **Relationship between the probation service and the prison service**

In the Polish legal system, the Prison Service and the probation officers are separate forces that perform different tasks. There are few opportunities for the two forces to cooperate. For example, they cooperate before the sentenced person is released on parole or before the inmate is released on the expiration of their term of sentence. Pursuant to Article 164 of the Polish Criminal Enforcement Code, the period up to 6 months prior to the expected parole or end of sentence is required, if necessary, to prepare the sentenced person for life after the release, especially in order to establish contact with the probation officer.

### **Relationship between the probation service and the judiciary**

Pursuant to Article 1 of the Probation Officers and Family Guardians Act, the probation officers perform tasks relating to education and social rehabilitation, diagnosis, prevention and control, as part of implementing the court verdicts. The probation officers are an auxiliary force of the courts.

### **Relationship between the probation service and the general social services**

The probation officers cooperate with the entities that provide social aid. Pursuant to Article 13 of the Social Aid Act<sup>24</sup>, persons sentenced to imprisonment are not eligible to receive social benefits. The foregoing does not apply to persons who serve their time in the Electronic Monitoring System; as regards persons in pre-trial detention, their right to social benefits is suspended. Persons sentenced to non-custodial alternatives are permitted to take advantage of social aid. The cooperation between the probation officers and the entities that provide social aid comes down to exchange of information regarding their wards. Pursuant to Article 9 of the Probation Officers and Family Guardians Act, when exercising their professional duties, the professional probation

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<sup>24</sup>The Social Aid Act of 12 March 2004 (Journal of Laws of 2004, No. 64, item 593 as am).

officers have the right to demand assistance of the Police, as well as other authorities or institutions at the national level, local government units, associations and social organisations within the scope of their responsibilities, as well as private individuals in order to perform their professional activities. Pursuant to Article 11 section 3, the probation officers are required to cooperate with the relevant local government and social organisations that deal with care, education, social rehabilitation, treatment and provision of social aid in an open environment.

### **Is the number and the remuneration of probation officers adequate to their tasks?**

Whether the number of probation officers is adequate to the scope of their responsibilities is a subject of dispute in Poland. On the one hand, the increase in the number of probation officers is disproportionate to the increase in the number of sentenced persons.<sup>25</sup> On the other hand, the number seems too small if one considers the number of non-isolation measures applied in Poland. At the same time, the workload standards set out by the Minister of Justice in the Regulation<sup>26</sup> are assessed as too high in criminal cases in order to achieve any effects in terms of social rehabilitation. The pay is regulated in the Regulation of the Council of Ministers<sup>27</sup>. The base pay of a professional probation officer is a multiple of the base amount in the public sector as set out in the regulations concerning pays in the national public sector. The current amount is PLN 1,135.40 (around EUR 280). The multiples for the individual positions within the probation officer taskforce are as follows:

	Base amount multiple
Specialist probation officer	2.3
Senior professional probation officer	2.0
Professional probation officer	1.7
Probation officer trainee	0.9

In accordance with the budget of the Ministry of Justice, the total amount spent on the salaries of the professional probation officers was PLN 388,056,000 (around EUR 97 million)<sup>28</sup> in 2014.

### **Is the expertise and experience of probation agencies used in developing crime reduction strategies?**

There are no detailed analyses in that respect.

<sup>25</sup> Ł. Kwadrans, *90 lat kurateli sądowej w Polsce. Historia – teraźniejszość – przyszłość* (Sejm of the Republic of Poland, 11 December 2009) [in:] *Probacja* no. 3-4/2010, available at:

[http://ms.gov.pl/Data/Files/\\_public/probacja/2010/nr3-4/7kwadrans.pdf](http://ms.gov.pl/Data/Files/_public/probacja/2010/nr3-4/7kwadrans.pdf)

<sup>26</sup> The Regulation of the Minister of Justice of 9 June 2003 on the workload standards for professional probation officers (Journal of Laws of 2003, no. 116, item 1100).

<sup>27</sup> The Regulation of the Council of Ministers of 23 December 2002 on the remuneration of professional probation officers and probation officer trainees (Journal of Laws of 2002, no. 239, item 2037).

<sup>28</sup> Ministry of Justice 2014 budget available at:

<http://bip.ms.gov.pl/pl/dzialalnosc/budzet/download,2692,0.html>.

## PART TWO. SPECIFIC PROGRAMMES

### Alternatives to pre-trial detention

#### Alternative measures to pre-trial detention from the legal point of view

The following measures are applied as an alternative to pre-trial detention:

- 1) money bail
- 2) communal bail
- 3) personal guarantee
- 4) Police supervision or superior's supervision in the case of soldiers
- 5) the order to leave the premises the defendant occupied together with the aggrieved party;
- 6) the prohibition on leaving the country, including the prohibition on leaving the country together with the seizure of passport or any other document that authorises its holder to cross the border, or the order not to issue a passport or any other document that authorises its holder to cross the border
- 7) suspension or professional disqualification
- 8) the order to refrain from engaging in a specified activity
- 9) the order to refrain from driving a specified type of vehicles

#### Judicial authority responsible for the establishment of the measures

During the pre-trial proceedings the prosecutor may apply preventive measure as an alternative to pre-trial detention; the court may apply such measures during the court proceedings. The application of those measures is supervised by the court; during the pre-trial proceedings, the application of those measures is also supervised by the prosecutor.

#### Alternative measures in detail

There are no data regarding the costs generated by the actual application of those measures.

##### **Money bail**

It is regulated in the provisions of Article 257 section 2, Articles 266 - 270 and Article 283 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. When it is applied, the suspect/ defendant or any other person (e.g. a close one) deposits funds (in the Polish or foreign currencies) or securities (Polish or foreign) with the court deposit, or establishes a pledge on a personal property or a mortgage on a real property. The amount, type and conditions of money bail are set out by the court or by the prosecutor, upon taking account of the economic situation of the suspect/ the defendant or the person who provides money bail, the level of the damage inflicted and the nature of the offence. The number of money bails imposed by the courts and prosecution service has been systematically decreasing since 2009. The number of money bails imposed by the courts in 2014 was 35% lower than in

2009, and the number of money bails imposed by the prosecution service in the same period was 37% lower; the details are presented in the table below:<sup>29</sup>

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later became indicted
2005	2832	No data available	No data available
2006	6887	No data available	No data available
2007	9508	No data available	No data available
2008	9583	No data available	No data available
2009	10005	16047	13281
2010	9912	13940	12236
2011	9377	14358	11614
2012	7422	12414	10404
2013	6563	10880	8624
2014	6508	10031	7905

The purpose of the measure is to provide security in the event the suspect or the defendant absconds, goes into hiding or otherwise hinders the proceedings. In the event the suspect/ the defendant absconds or goes into hiding, the subject of the bail is subject to forfeiture in all cases. Forfeiture is optional when the suspect/ defendant otherwise hinders the criminal proceedings. The suspect/ the defendant must be advised of the possibility of forfeiture or enforced recovery of the funds. Once the money bail expires, the subject of the bail is returned to the defendant/ the suspect or the person who posted the bail, and the bail amount is released. If the money bail is posted by a person other than the suspect/ the defendant, the person is responsible for ensuring that the measure is applied in the correct manner. The person is advised that the suspect/ the defendant must appear upon demand of the prosecution service or the court. The person is also informed of all circumstances that are of importance for the application of money bail. The person is advised of the possibility of forfeiture or enforced recovery of the funds, and of the duration of the money bail. In accordance with Article 257 Section 2 of the Polish Criminal Procedure Code, when imposing pre-trial detention, the court may direct that the person will be released from pre-trial detention once money bail has been posted. In practice, money bail is frequently applied instead of pre-trial detention. Money bail does not involve any isolation of the suspect/ the defendant; therefore, there is no interference with his/ her ability to work, his/ her well-being, his/ her family and social ties, life goals or life chances.

### Communal bail

This measure is regulated in Article 271 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. This measure involves a statement that the suspect/ the defendant will appear at each and every call of the prosecutor or of the court, and will not unlawfully hinder the proceedings. The communal bail may be posted by the employer of the suspect/ the defendant, the management of the school, university or school complex in which the suspect/ the defendant studies; the complex in which the suspect/ the defendant works or studies; the social organisation of which the suspect/ the defendant is a member; in the case of soldiers, communal bail may be posted by the soldier team of which the suspect/ the defendant is

<sup>29</sup> Source: A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

a member. The court or the prosecutor accepts the communal bail at the petition of the above mentioned entities. The data available show that that measure is applied very rarely by courts or prosecution service, as evidenced by the table below:<sup>30</sup>

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later became indicted
2005	205	No data available	No data available
2006	17	No data available	No data available
2007	87	No data available	No data available
2008	8	No data available	No data available
2009	9	7	7
2010	7	8	6
2011	8	5	8
2012	33	8	13
2013	20	3	5
2014	7	0	0

The purpose of the measure is to prevent the suspect or the defendant from hindering the proceedings, and to ensure that the suspect or the defendant appear at each call. The communal bail is posted on the initiative of the entity that wishes to post it. In the petition for posting a communal bail, it is necessary to designate the person who will make the promise and who will assume the duties arising from the bail (the bailer). The person is advised of his/ her duties and informed of the charge against the suspect/ the defendant. The person is required to notify the court or the prosecutor immediately of any actions of the suspect/ the defendant he or she is aware of that are aimed at evading the duty to appear when called, or at hindering the proceedings. If the suspect/ the defendant fails to appear at the call of the prosecutor or of the court, or if the suspect/ the defendant otherwise unlawfully hinders the proceedings, the court or the prosecutor will notify the bailer. In the event the bailer fails to meet his or her duties, the prosecutor or the court may notify the direct superior of the bailer and the social organisation of which the suspect/ the defendant is a member, as well as the statutory superior authority of the social organisation that provides the bail. Before such a notice is sent, the bailer is called to present clarifications. In the event the bailer fails to fulfil his/ her duties, he or she may be punished with a fine of up to PLN 10,000 (around EUR 2,500). In view of the visible decline of this preventive measure, it is hard to discuss its impact on the frequency of applying pre-trial detention. This measure does not involve any isolation of the defendant. Depending on the entity that provides communal bail, the functioning of that measure can affect the ability to work, pursue a course of study, activity in a social organisation or family relations of the suspect/ the defendant.

### Personal guarantee

It is regulated in Article 272 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. This measure involves a statement made by a trustworthy person that the suspect/ the defendant will appear at each and every call, and will not hinder the proceedings. A trustworthy person is any person who complies with the public order and who is an

<sup>30</sup> Source: A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

authority figure for the suspect/ the defendant or the general public. The guarantor must warrant that the defendant will refrain from any unlawful actions that hinder the proceedings. The data available show that that measure is not applied very often by courts or prosecution service. Over the last 5 years, except for 2012, there has been a steady decrease in the frequency of that measure, as evidenced by the table below<sup>31</sup>:

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later became indicted
2005	42	No data available	No data available
2006	33	No data available	No data available
2007	32	No data available	No data available
2008	35	No data available	No data available
2009	74	100	79
2010	69	79	81
2011	71	74	62
2012	82	86	64
2013	46	46	44
2014	22	32	33

The purpose of the measure is to provide a security in the event the suspect or the defendant hinders the proceedings by influencing his/ her behaviour so as to ensure that the suspect or the defendant appears at each call of the court or of the prosecutor. The suspect/ the defendant has the duty to comply with the requirements imposed on him/ her that may be set out in a similar manner as in the case of Police supervision (see below). Since this measure is rarely applied, it does not have any significant impact on the frequency of pre-trial detention. There is also hardly any impact on the suspect's/ the defendant's work, physical and mental well-being, his/ her family and social ties, life goals or life chances.

#### **Police supervision or superior's supervision**

This measure is regulated in Article 275 of the Polish Criminal Procedure Code. It may be used on its own or together with other preventive measures. The person on whom the supervision was imposed is required to comply with the restrictions imposed. Those restrictions can include prohibition from leaving the place of residence, the requirement to report to the supervising authority on specified days, notifying the supervising authority of the intended trip and the return date, the prohibition from making contact with the aggrieved party or other persons, the prohibition from frequenting specified kinds of places, as well as other restrictions of the suspect/ the defendant's freedom, as required to exercise the supervision. There may be several obligations under one supervision. As of 1 July 2015, it will be possible to impose an approach injunction as part of the supervision. The number of criminal cases subject to supervision has been decreasing since 2011. The number of criminal cases subject to supervision imposed by the courts in 2014 was around 14% lower than in 2010, and the number of criminal cases subject to

<sup>31</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

supervision imposed by the prosecution service in the same period was nearly 9% lower; the details are presented in the table below:<sup>32</sup>

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later indicted
2005	7433	No data available	No data available
2006	13656	No data available	No data available
2007	18356	No data available	No data available
2008	16480	No data available	No data available
2009	16509	34920	27894
2010	18089	33028	27266
2011	17852	34918	27373
2012	15750	32190	25664
2013	14513	30294	22792
2014	15769	31858	23740

The purpose of the measure is to provide security in the event the suspect or the defendant hinders the proceedings. The measure is to control the behaviour of the suspect/ the defendant so as to ensure that the suspect or the defendant appears at each call of the court or of the prosecutor. The person subject to supervision is required to appear at the designated organisational unit of the Police and produce an identity document, perform orders that document the course of the supervision, and provide information as required to determine whether or not the person complies with the requirements imposed by the court or by the prosecutor. The person subject to supervision is also required to appear whenever called in order to present explanations. Supervision is the most frequently applied preventive measure as an alternative to pre-trial detention. Pursuant to Article 275 Section 3 of the Polish Criminal Procedure Code, supervision may be applied instead of pre-trial detention, provided that the suspect/ the defendant will leave the premises occupied together with the aggrieved party and specify the place of residence. It is impossible to determine the impact of this measure on the suspect's/ the defendant's work, physical and mental well-being, his/ her family and social ties, life goals or life chances.

#### **The order to leave the premises occupied together with the aggrieved party**

This measure is regulated in Article 275a of the Polish Criminal Procedure Code. It is applied by the court or the prosecutor at the motion of the Police or ex officio. It may be used on its own or together with other preventive measures. In this case, the person suspected/ defendant of an offence involving violent acts to the detriment of another person who lives with the suspect/ the defendant in the same premises is ordered to leave those premises if there is a compelling reason to believe that the suspect/ the defendant will commit such an offence towards that person again, especially if the suspect/ the defendant threatened to do so. The measure is applied for a period up to 3 months. At the motion of the prosecutor, the court may extend the application of that measure for additional periods which shall not be longer than 3 months. At the petition of the defendant, the verdict can specify a place of stay in facilities that provide accommodation; however, the place cannot be in facilities addressed to victims of domestic violence. As of 1 July

<sup>32</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

2015, it will be possible to apply the measure to all types of premises, not only residential ones. The data available show that the measure has been applied more and more frequently since 2012. The number of cases in which that measure was applied was nearly 100% higher in 2014 than in 2012, as evidenced by the table below<sup>33</sup>.

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later indicted
2010	No data available	0	0
2011	No data available	0	0
2012	No data available	1241	851
2013	No data available	1500	998
2014	No data available	2359	1535

The purpose of the measure is to provide security in the event the suspect/ defendant hinders the proceedings. The purpose of the measure is to influence the behaviour of the suspect/ the defendant by isolating him/ her from the aggrieved party. It is impossible to determine how the application of that measure affects the frequency of applying pre-trial detention. The measure has a material impact on the family and social relations of the suspect/ the defendant. It is impossible to determine the impact of this measure on the suspect's/ the defendant's ability to work, his/ her physical and mental well-being, his/ her life goals or life chances.

### Suspension or professional disqualification

It is regulated in Article 276 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. The purpose of that measure is to prevent hindering of the proceedings. It is imposed when the suspect/ the defendant committed an offence relating to his/ her occupation or profession, and there is a compelling reason to believe that the suspect/ defendant could repeat the offence if he or she continued to perform the profession. The data available show that that measure is sometimes applied in practice; however, it has been on decline since 2009, as evidenced by the table below:<sup>34</sup>

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later indicted
2005	72	No data available	No data available
2006	108	No data available	No data available
2007	136	No data available	No data available
2008	158	No data available	No data available
2009	178	330	225
2010	136	254	225
2011	128	165	173
2012	86	222	140
2013	100	216	120
2014	59	226	128

<sup>33</sup>Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2010 and 2014.

<sup>34</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

The purpose of the measure is to provide security in the event the suspect/ the defendant hinders the proceedings, and most of all to prevent the defendant from the ability to repeat the offence due to performing his/ her official duties or due to performing a specified profession. Since this preventive measure is rarely applied, it does not have any significant impact on the frequency of applying pre-trial detention. By its nature, the measure has an impact on the suspect's/ the defendant's ability to perform his/ her work. It is hard to evaluate how it affects the physical and mental well-being of the suspect/ the defendant, his/ her life goals or life chances.

#### **The order to refrain from engaging in a specified business or activity**

It is regulated in Article 276 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. It is imposed when the defendant committed an offence relating to performing a specified activity other than his/ her professional activity. Since 2009, there has been a visible decline in the number of cases in which that measure had been applied by the courts and by the prosecution service. The number of cases in which that measure was applied by the courts and prosecution service was three times lower in 2014 than in 2009, as evidenced by the table below<sup>35</sup>.

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later indicted
2005	36	No data available	No data available
2006	94	No data available	No data available
2007	118	No data available	No data available
2008	104	No data available	No data available
2009	121	482	320
2010	98	484	383
2011	107	319	218
2012	124	258	195
2013	72	88	34
2014	36	100	60

The purpose of the measure is to prevent the suspect/ the defendant from repeating the offence due to the ability to continue the performance of a specified business or activity. Since this preventive measure is rarely applied, it does not have any significant impact on the frequency of applying pre-trial detention. By its nature, the measure has an impact on the suspect's/ the defendant's ability to perform his/ her work. It is hard to determine how it affects the physical and mental well-being of the suspect/ the defendant, his/ her life goals or life chances.

#### **The order to refrain from operating a specified type of vehicles**

It is regulated in Article 276 of the Polish Criminal Procedure Code. This measure may be used on its own or together with other preventive measures. It is most usually imposed on drunk drivers. The order to refrain from operating a specified type of vehicles is not the same as temporary withdrawal of the driver's licence. The courts apply that measure much more frequently than the

<sup>35</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

prosecution service. The frequency of that measure has decreased over the last two years since 2012, as evidenced by the table below<sup>36</sup>.

Year	Courts	Prosecution service	Number of alternative measures applied by the prosecution service towards persons who later indicted
2005	1043	No data available	No data available
2006	1618	No data available	No data available
2007	1471	No data available	No data available
2008	1520	No data available	No data available
2009	1723	222	213
2010	1995	188	180
2011	1638	111	105
2012	2438	97	100
2013	1381	41	46
2014	1389	81	65

The purpose of the measure is to provide security in the event the defendant/ the suspect commits an offence relating to driving. Since this preventive measure is rarely applied, it does not have any significant impact on the frequency of applying pre-trial detention. It is hard to evaluate how it may affect the work, the physical and mental wellbeing of the suspect/ the defendant, his/ her life goals or life chances.

### Prohibition from leaving the country

It is regulated in Article 277 of the Polish Criminal Procedure Code. It may be used on its own or in addition to other preventive measures. It is imposed when there are reasonable grounds to believe that the suspect/ the accused will abscond. It may be combined with the seizure of passport or any other document that authorises its holder to cross the border, or the order not to issue such a document. Until such an obligation has been imposed, the document may be seized only for 7 days. The table below shows that the prosecution service applies that measure much more frequently than the courts.<sup>37</sup>

<sup>36</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

<sup>37</sup>A study of the Statistical Management Information Section at the Ministry of Justice on preventive measures imposed by the district courts and regional courts between 2005 and 2014; Reports of the Prosecutor General on the annual activity of the prosecutor's office between 2009 and 2014.

Year	Number of cases in which the court imposed prohibition from leaving the country/ including cases of prohibition from leaving the country together with the seizure of passport or any other document	Number of cases in which the prosecution service imposed prohibition from leaving the country, including the prohibition from leaving the country together with /the seizure of passport or any other document / or the order not to issue a passport or any other document	Number of cases in which the prosecution service imposed prohibition from leaving the country on persons who later became indicted, including the prohibition from leaving the country together with /the seizure of passport or any other document / or the order not to issue a passport or any other document
2005	2131 / 1127	No data available	No data available
2006	3847 / 1961	No data available	No data available
2007	5814 / 2590	No data available	No data available
2008	5060 / 1918	No data available	No data available
2009	4934 / 1659	8924 / 2360 / No data available	6437 / 1649 / No data available
2010	4931/ 1525	8362 / 1930 / 0	6546 / 1489 / 0
2011	5018 / 1500	8508 / 1832 / 2026	6279 / 1270 / 1458
2012	4059 / 1005	7885 / 1580 / 1953	5829 / 1066 / 1440
2013	4069 / 1078	7889 / 1474 / 2001	5380 / 940 / 1368
2014	4355 / 1264	7769 / 1332 / 2059	5264 / 794 / 1361

The purpose of the measure is to prevent the suspect/ the defendant from leaving the country. It is impossible to determine how the application of that measure affects the frequency of applying pre-trial detention. It is hard to evaluate how it may affect the work, the physical and mental wellbeing of the suspect/ the defendant, his/ her life goals or life chances.

## **Total number of people in pre-trial detention in 2014 and the historical series since 2000**

See beginning on Part one.

## **Total number of people serving a pre-trial alternative to detention in 2014 and historical series since 2000**

There are no data regarding the number of persons to whom preventive measures were applied as an alternative to pre-trial detention during the period. There are, however, data regarding the number of alternative measures applied by the courts between 2005 and 2014, and by the prosecution service between 2009 and 2014. The number of alternative measures is not the same as the number of persons to whom preventive measures were applied as an alternative to pre-trial detention; it is because several preventive measures may be applied to a suspect/the defendant at the same time. There are also statistics regarding the number of persons to whom preventive measures were applied and in the case of whom bills of indictment were later filed with the court. The figures are presented in the section discussing each measure.

## **Annual flow and the daily rate for the period 2000 to 2014, of: people serving the measure, foreigners, male/female, revocations distinguishing among non respect of conditions / re-offending / other**

There are no statistics regarding the number of foreigners, men and women subject to those measures, or the number of cases in which the conditions were violated/ modified.

## **Alternatives sanctions<sup>38</sup>**

### **Alternative sanctions from the legal point of view**

- 1) Conditional discontinuation of proceedings
- 2) Fine
- 3) Restriction of liberty
- 4) Conditionally suspended fine, conditionally suspended restriction of liberty, and conditionally suspended imprisonment
- 5) Penal measures regulated in Article 39 of the Polish Criminal Code:
  1. deprivation of public rights
  2. prohibition from engaging in a specified occupation, profession or business
  3. prohibition from engaging in a business relating to nurturing, treating, educating minors or taking care of them
  4. obligation to refrain from associating with specific social groups or frequenting specified kinds of places, prohibition from making contact with specified individuals, prohibition from approaching specified individuals, prohibition from leaving a specific place of stay without the court's consent

<sup>38</sup> Those established by the judge as main sanction during the trial

5. prohibition from entering a mass event
6. prohibition from entering gambling facilities and engaging in gambling games
7. order to leave the premises occupied together with the aggrieved party
8. prohibition from operating vehicles
9. forfeiture
10. obligation to redress the damage or to compensate for the suffered harm
11. punitive damages
12. pecuniary payment
13. publication of the sentence.

The amended Polish Criminal Code which will come into force as of 1 July 2015 will add the approach injunction to the catalogue of penal measures, while removing: forfeiture, the obligation to redress the damage or to compensate for the harm suffered, and the punitive damages.

### **Judicial authority responsible for the establishment of the measures**

Conditional discontinuation of proceedings, penal measures, alternative penalties, as well as the penalty of deprivation of liberty are imposed by way of a court verdict.

### **Alternative measures in detail**

#### **Conditional discontinuation of proceedings**

It is regulated in Articles 66 to 68 of the Polish Criminal Code. 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 discontinuation of the proceedings, he will respect the legal order, especially by not committing a crime. The conditional discontinuation of the proceedings does not apply to the perpetrator of a crime subject to the statutory penalty exceeding 3 years of deprivation of liberty. The conditional discontinuation of the proceedings may be applied to the perpetrator of a crime subject to the statutory penalty of up to 5 years of deprivation of liberty, if the aggrieved party and the perpetrator have reconciled, the damage has been redressed or if the aggrieved party and the perpetrator have agreed on the manner of redressing the damage. The criminal proceedings are conditionally discontinued for a probation period that lasts from one year to two years and runs from the moment the verdict becomes final and binding. While conditionally discontinuing the criminal proceedings, the court may place the perpetrator during the probation period under the supervision of a probation officer or a trustworthy person, an association, institution or social organisation responsible for education, preventing antisocial and delinquent behaviour, and providing assistance to sentenced persons. While conditionally discontinuing the criminal proceedings, the court may impose certain obligations and penal measures on the perpetrator. The court resumes the criminal proceedings if the perpetrator has committed an intentional crime during the probation period for which he has been convicted by a final and binding verdict. The court may resume the criminal proceedings if the perpetrator has flagrantly violated the legal order during the probation period, if the perpetrator evades supervision, carrying out the imposed obligation or the imposed penal measure, or fails to fulfil the settlement with the aggrieved party. The court resumes the criminal proceedings if the circumstances provided for in the foregoing

sentence have occurred after the perpetrator had been given a written warning by a professional court-appointed probation officer, unless there are exceptional reasons not to do so. The court may resume the criminal proceedings if the perpetrator has flagrantly violated the legal order, especially by committing a crime, after the verdict conditionally discontinuing the proceedings had been passed, but before it has become final and binding. The conditionally discontinued criminal proceedings may not be resumed after the lapse of 6 months from the moment of the completion of the probation period. The number of conditionally discontinued proceedings has decreased over the last two years.

Year	Number of persons in case of whom the proceedings were conditionally discontinued
2001	32793
2002	38484
2003	37848
2004	29126
2005	27382
2006	23044
2007	20915
2008	22587
2009	21384
2010	25485
2011	28278
2012	30732
2013	29710
2014	25979

There are no comprehensive data regarding the number of foreigners, as well the number of men and women on whom conditional discontinuation of proceedings was imposed, or information on resuming proceedings that were conditionally discontinued. The court and the supervising authority are responsible for ensuring that the proceedings have been conditionally discontinued in the proper manner. It is impossible to determine the costs generated by the actual application of that measure. It is impossible to determine the impact of that measure on the sentenced person's work, physical and mental well-being, his/ her family and social ties, life goals or life chances.

As of 1 July 2015, it will be possible to discontinue proceedings on a conditional basis in the case of offences that carry a prison term up to 5 years. Furthermore, it will be possible to apply a probation period of 3 years.

### **Fine**

A fine may be imposed on itself, or in addition to imprisonment or restriction of liberty, also when the enforcement of those penalties is suspended, when the perpetrator committed the offence with the intent to obtain a financial advantage or when the perpetrator actually obtained a financial advantage. A fine is imposed in daily rates by indicating a number of daily rates and the value of one daily rate. As a rule, the lowest number of daily rates is 10 and the highest is 540, or 810 under extraordinarily harsh circumstances. While suspending the enforcement of a penalty of deprivation of liberty, the court may impose a fine in the amount of up to 270 daily rates if its imposition is not possible on any other basis. While suspending the enforcement of a penalty of restriction of liberty, the court may impose a fine in the amount of up to 135 daily rates. While determining the value of the daily rate, the court takes into consideration the perpetrator's

income, personal and family conditions, financial situation and income perspectives. The daily rate must not be lower than PLN 10 (around EUR 2.5) and higher than PLN 2,000 (or, around EUR 490). A fine is not imposed if it is reasonable to expect that the perpetrator will not pay the fine due to his/ her income, financial situation and income perspectives, and it will be impossible to enforce the payment in collection proceedings. The frequency with which fines were imposed between 2001 and 2014 varied. Over the last two years, both the number of persons sentenced to pay a fine, and the number of fines imposed in addition to imprisonment went down, as evidenced by the table below<sup>39</sup>:

Year	Number of offenders sentenced to pay a fine	Number of offenders sentenced to pay a fine in addition to imprisonment	Number of offenders sentenced to pay a fine in addition to a suspended prison sentence
2000	No data available	No data available	No data available
2001	64475	81439	No data available
2002	75698	86143	No data available
2003	93274	89186	No data available
2004	111491	111155	No data available
2005	100968	119300	No data available
2006	88407	120031	No data available
2007	82988	128420	No data available
2008	89011	128242	124080
2009	88326	123467	119705
2010	92329	124593	120477
2011	93571	116475	112662
2012	91296	109382	105409
2013	76579	90770	87364
2014	62761	75194	72311

There are no comprehensive data regarding the number of foreigners, or the number of men and women who served the punishment, nor information on changing the fine to restriction of liberty or an alternative penalty of deprivation of liberty. The enforcement of the fine is primarily meant to remedy the damage but also to educate the offender. If the enforcement of the fines proved or would prove ineffective, the court will order the implementation of the substitutive penalty of deprivation of liberty if the sentenced person states that he or she does not agree to take up community service imposed instead of the fine or evades to perform community service, or when converting the fine to community service is impossible or unreasonable. The court is responsible for enforcing the fine. It is impossible to determine the costs generated by the actual application of that penalty. It is impossible to determine the impact of the fine on the sentenced person's work, physical and mental well-being, his/ her family and social ties, life goals or life chances. As regards the recidivism rate<sup>40</sup>, the number of sentences to pay a fine under Article 64 Section 1 of

<sup>39</sup> The Statistics and Management Information Section at the Ministry of Justice – Adults sentenced by a final and binding sentence by type of repeat crime and by sentence term, between 2004 and 2012 – the principal offence, and Final and binding sentences and conditional discontinuation with respect to adults between 2001 and 2014.

<sup>40</sup> There are two types of relapse into crime in the Polish legal system. Pursuant to Article 64 Section 1 of the Polish Criminal Code, if a perpetrator, who had been sentenced to a penalty of deprivation of liberty for an intentional crime, commits an intentional crime similar to the one for which he had been sentenced previously within the period of 5 years since serving at least 6 months of the penalty, the court may impose a penalty exceeding by half the upper limit of a statutory penalty provided for a crime attributed to the perpetrator. Pursuant to Article 64 Section 2 of the Polish Criminal Code, if the perpetrator, who has been

the Polish Criminal Code has been growing since 2009. As regards the recidivism rate under Article 64 Section 2 of the Polish Criminal Code, the cases were isolated as evidenced by the table below<sup>41</sup>.

Year	Number of sentences to pay a fine under Article 64 Section 1 of the Polish Criminal Code	Number of sentences to pay a fine under Article 64 Section 2 of the Polish Criminal Code
2004	93	2
2005	62	3
2006	54	5
2007	68	2
2008	0	0
2009	96	1
2010	131	5
2011	143	2
2012	178	0
2013	No data available	No data available
2014	No data available	No data available

### Restriction of liberty

The penalty of restriction of liberty lasts at least one month and 12 months at a maximum; under extraordinarily harsh conditions, the penalty of restriction of liberty can last 18 months. When serving that penalty, the sentenced person must not change his/ her place of permanent stay or the place of controlled community service without consent of the court; the person is required to provide explanations regarding the course of the penalty served, and is required to perform free controlled community service totalling 20 to 40 hours per month. When the person is employed, the court may impose a deduction of 10% to 25% of that person's monthly pay for a good cause instead of community service. During that time, the sentenced person must not terminate the employment relationship without the court's consent. While imposing the penalty of restriction of liberty, the court may impose the obligations provided for in Article 72 of the Criminal Code on the sentenced person (for more details see item 4). Restriction of liberty involving community service is not imposed if the sentenced person's health or his/ her characteristics and personal circumstances make it reasonable to assume that he or she will not fulfil that duty. The table below<sup>42</sup> shows that the number of penalties involving restriction of liberty has been decreasing over the last few years; if such a penalty is imposed, it usually involves community service.

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previously sentenced under Section 1 and who has in total served at least one year of the penalty of deprivation of liberty, commits an intentional crime against life or health, rape, robbery, larceny by breaking-in or other crime against property involving the use of force or the threat of its use again within the period of 5 years since fully or partially serving the last penalty, the court will impose a penalty of deprivation of liberty that exceeds the lowest statutory penalty provided for the crime attributed to the perpetrator, and may impose a penalty exceeding by half the upper limit of the statutory penalty.

<sup>41</sup>The Statistics and Management Information Section at the Ministry of Justice – Final and binding sentences and conditional discontinuation with respect to adults between 2001 and 2014.

<sup>42</sup> The Statistics and Management Information Section at the Ministry of Justice – Adults sentenced by a final and binding sentence by type of repeat crime and by sentence term, between 2004 and 2012 – the principal offence, and Final and binding sentences and conditional discontinuation with respect to adults between 2001 and 2014.

Year	Number of offenders sentenced to deprivation of liberty	Community service	Deduction from pay for work
2000	No data available	No data available	No data available
2001	28507	28048	459
2002	39156	38710	446
2003	52763	52190	573
2004	71887	71283	604
2005	67254	66557	697
2006	57918	57376	542
2007	47091	46481	610
2008	40643	39878	765
2009	43524	43002	522
2010	49693	49249	443
2011	49611	49251	360
2012	50730	50438	292
2013	41287	41080	207
2014	32763	32587	176

There are no comprehensive data regarding the number of foreigners, or the number of men and women who serve the penalty of restriction of liberty, nor information on changing that penalty to a substitutive penalty of deprivation of liberty. It is impossible to determine the costs generated by the actual application of that penalty. The enforcement of the penalty is supervised by the court, the professional court-appointed probation officer and the entity for which the community service is being provided. It is impossible to determine the impact of the penalty on the sentenced person's work, his/ her physical and mental wellbeing, his/ her family and social ties, life goals or life chances. As regards the recidivism rate, the number of sentences to restriction of liberty under Article 64 Section 1 of the Criminal Code has been growing since 2009. As regards the recidivism rate under Article 64 Section 2 of the Criminal Code, the cases were isolated as evidenced by the table below.<sup>43</sup>

Year	Article 64 Section 1 of the Criminal Code	Article 64 Section 2 of the Criminal Code
2004	233	2
2005	219	2
2006	181	6
2007	103	3
2008	0	0
2009	222	1
2010	345	5
2011	412	8
2012	520	7
2013	No data available	No data available
2014	No data available	No data available

<sup>43</sup> The Statistics and Management Information Section at the Ministry of Justice – Adults sentenced by a final and binding sentence by type of repeat crime and by sentence term, between 2004 and 2012 – the principal offence.

The penalty of restriction of liberty will change materially, as of 1 July 2015. It will be possible to impose it for up to 2 years. The penalty will involve: the obligation to perform free controlled community service, the obligation to remain in the permanent place of stay or at any other designated place, with the use of the electronic monitoring system, the obligations referred to in Article 72 Section 1 items 4 to 7a of the Polish Criminal Code<sup>44</sup>, and deduction of 10% to 25% of the monthly pay for work for a good cause specified by the court. It will also be possible to impose on the perpetrator a penal measure in the form of a pecuniary payment and the obligation to apologise to the aggrieved party, and to carry out the incumbent obligation to provide maintenance for another person. The obligation controlled with the use of the Electronic Monitoring System cannot be longer than 12 months and 70 hours per week and 12 hours per day.

### **Fine, restriction of liberty, and conditionally suspended prison sentence**

Pursuant to Article 69 of the Polish Criminal Code, the court may conditionally suspend the enforcement of the imposed penalty of a fine, restriction of liberty and deprivation of liberty not exceeding 2 years, if it is sufficient to achieve the purposes of the punishment with regard to the perpetrator, especially to prevent his/ her relapse to crime. Pursuant to Section 2 of Article 69, while suspending the enforcement of a penalty, the court shall primarily consider the perpetrator's conduct, his/ her characteristics, personal conditions, previous way of life and behaviour after committing the crime. Suspension of penalty is not applied to a repeat offender as specified in Article 64 Section 2 of the Polish Criminal Code. The penalty is suspended for a probation period which shall run from the moment the verdict becomes final and binding, and last from 1 year to 3 years in case of a fine or of a penalty of restriction of liberty, from 2 to 5 years in case of the conditional suspension of the enforcement of a penalty of deprivation of liberty, 3 to 5 years in case of the suspension of the enforcement of a penalty of deprivation of liberty imposed on a juvenile or the perpetrator referred to in Article 64 Section 2 of the Polish Criminal Code.

That provision is modified in the amended Polish Criminal Code which will come into force as of 1 July 2015. Under the amended Article 69 of the Polish Criminal Code, the court will be able to conditionally suspend the enforcement of the imposed penalty restriction of liberty not exceeding one year if the perpetrator is not sentenced to prison when committing the offence, and if it is sufficient to achieve the purposes of the punishment with regard to the perpetrator, especially to prevent his/ her relapse to crime. The penalty will be suspended for a probation period running from the moment the verdict becomes final and binding, and will last from 1 year to 3 years. In case of suspension of the enforcement of a penalty imposed on a juvenile or the perpetrator who committed an offence involving violence to the detriment of a person who lives with him/ her, the probation period will last from 2 to 5 years.

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<sup>44</sup> Under that provision, the following obligations may be imposed: perform remunerated work, pursue a course of study or vocational training, refrain from excessive use of alcohol or any use of a narcotic drug, undergo treatment, especially treatment for addiction or rehabilitation treatment, or therapeutic activities, undergo addiction therapy, undergo a therapy, including in particular psychotherapy or psychological education, take part in correctional and educational activities, refrain from associating with specified social groups or frequenting specified kinds of places, prohibition from making contact with the aggrieved party or other individuals in a specified manner, or prohibition from approaching the aggrieved party or specified individuals.

Years	Number of offenders who received a suspended sentence to pay a fine	Number of offenders who received a suspended sentence of restriction of freedom	Number of offenders who received a suspended prison sentence
2000	No data available	No data available	No data available
2001	2564	1696	184819
2002	3405	2308	214485
2003	3951	3426	233055
2004	4207	3966	278338
2005	3551	2848	291409
2006	2435	2241	272653
2007	1632	1556	257141
2008	1656	1304	250774
2009	1637	1201	243974
2010	1660	1332	251087
2011	1580	1211	239076
2012	1771	1272	224185
2013	1557	1093	195348
2014	964	881	162938

Pursuant to Article 72 of the Polish Criminal Code, while suspending the enforcement of a penalty, the court may impose on the sentenced person the obligation to:

- 1) inform the court or the probation officer about the progress of the probation period,
- 2) apologise to the aggrieved party,
- 3) carry out the incumbent obligation to provide maintenance for another person,
- 4) perform remunerated work, pursue a course of study or vocational training,
- 5) refrain from excessive use of alcohol or any use of a narcotic drug,
- 6) undergo treatment, especially treatment for addiction or rehabilitation treatment, or therapeutic activities,
- 7) take part in correctional and educational activities,
- 8) refrain from associating with specified social groups or frequenting specified kinds of places,
- 9) refrain from making contact with the aggrieved person or other persons in a specified manner, or from approaching the aggrieved person or other persons,
- 10) order to leave the premises occupied together with the aggrieved party,
- 11) behave in another appropriate manner during the probation period if such behaviour may prevent relapse into crime,
- 12) obligation to remedy the damage in whole or in part or to make a pecuniary payment.

The court determines the duration and the manner of performing those obligations upon hearing the sentenced person; in addition, consent of the sentenced person is required before such person is submitted to undergo treatment. The number of court verdicts imposing such obligations is presented in the table below.

Year	Verdicts with obligations imposed on the offender
2010	86253
2011	81278
2012	72093
2013	71650
2014	61805

The data concerning the application of obligations under Article 72 of the Polish Criminal Code have been gathered since 2010. The data are not divided by the number of persons; they only show the number of cases in which such measures were imposed. They do not include other special breakdowns regarding the characteristics of persons with regard to which such measures are imposed, including in particular the sex or the nationality<sup>45</sup>. The analysis of the above table shows that the number of verdicts with obligations imposed on the offender has been systematically going down. Presented below are tables concerning each obligation and specifying the number of verdicts imposing such an obligation<sup>46</sup>.

The court supervises the enforcement of the penal measures. It is impossible to determine the costs generated by the actual application of those penal measures. It is also impossible to determine the impact of enforcing the penal measures on the sentenced person's work, physical and mental well-being, his/ her family and social ties, life goals or life chances.

**1) The obligation to inform the court or the probation officer about the progress of the probation period**

Year	Verdicts with obligations imposed on the offender
2010	13891
2011	13377
2012	11337
2013	11309
2014	9,440

**2) The obligation for the sentenced person to apologise to the aggrieved party**

Year	Verdicts with obligations imposed on the offender
2010	10
2011	4
2012	13
2013	8
2014	2

**3) The obligation to carry out the incumbent obligation to provide maintenance for another person**

Year	Verdicts with obligations imposed on the offender
2010	2394
2011	2769
2012	2363
2013	2355
2014	1693

<sup>45</sup>The data were obtained from the Ministry of Justice as part of access to public information.

<sup>46</sup>The data were obtained from the Ministry of Justice as part of access to public information.

**4) The obligation for the sentenced person to perform remunerated work, pursue a course of study or vocational training**

Year	Verdicts with obligations imposed on the offender
2010	23061
2011	21597
2012	19789
2013	19286
2014	16,363

**5) The offender's duty to refrain from excessive use of alcohol or from any use of a narcotic drug**

Year	Verdicts with obligations imposed on the offender
2010	18367
2011	17853
2012	15783
2013	15950
2014	13196

**6) Obligation to undergo treatment, especially treatment for addiction or rehabilitation treatment, or therapeutic activities**

Year	Verdicts with obligations imposed on the offender
2010	3317
2011	3378
2012	3926
2013	2805
2014	14196

**7) Obligation to take part in correctional and educational activities**

Year	Verdicts with obligations imposed on the offender
2010	-
2011	24
2012	64
2013	157
2014	124

**8) Obligation to refrain from associating with specified social groups or frequenting specified kinds of places**

Year	Verdicts with obligations imposed on the offender
2010	11880
2011	10426
2012	8397
2013	7691
2014	6427

**9) Obligation to refrain from making contact with the aggrieved party or other persons in a specified manner, or from approaching the aggrieved party or other persons**

Year	Verdicts with obligations imposed on the offender
2010	238
2011	79
2012	39
2013	72
2014	127

**10) Obligation to leave the premises occupied by the offender together with the aggrieved party**

Year	Verdicts with obligations imposed on the offender
2010	14
2011	25
2012	1
2013	-
2014	1

**11) Obligation to behave in another appropriate manner during the probation period if such behaviour may prevent relapse into crime**

Year	Verdicts with obligations imposed on the offender
2010	8747
2011	7668
2012	9253
2013	10344
2014	10926

**12) Obligation to remedy the damage in whole or in part, or to make a pecuniary payment**

Year	Verdicts with obligations imposed on the offender
2010	-
2011	47
2012	61
2013	191
2014	296

While suspending the enforcement of a penalty of deprivation of liberty, the court may place the sentenced person during the probation period under the supervision of a probation officer or a trustworthy person, association, institution or social organisation responsible for education, preventing antisocial and delinquent behaviour and providing assistance to sentenced persons. The supervision is mandatory with regard to a young adult who has committed an intentional crime, to the repeat offender referred to in Article 64 Section 2 of the Polish Criminal Code and with regard to a perpetrator of a crime committed in relation to an aberration of sexual preferences. The court may impose, enlarge or modify certain obligations during the probation

period with regard to a person sentenced to a penalty of deprivation of liberty with the conditional suspension of its enforcement, or to discharge such person from carrying out the imposed obligations, or place the sentenced person under supervision or discharge him/ her from supervision. If the sentenced person has been placed under supervision or is to carry out obligations during the probation period, the motion to specify the time and manner of carrying out the imposed obligations may also be submitted by a professional, court-appointed probation officer and by a trustworthy person or a representative of the association, institution or social organisation.

The court orders the enforcement of the penalty if the sentenced person has committed a similar intentional crime during the probation period, for which he has been sentenced to a penalty of deprivation of liberty by a final and binding verdict. The court orders the enforcement of the penalty if the person sentenced for a crime involving the use of force or unlawful threat towards an immediate family member or a minor sharing the same residence has flagrantly violated the legal order during the probation period, by again using force or unlawful threat towards an immediate family member or a minor sharing the same residence. The court may order the enforcement of the penalty if the sentenced person has flagrantly violated the legal order during the probation period, especially by committing another crime, or by evading payment of a fine, supervision, carrying out the imposed obligations or the imposed penal measures. The enforcement of the penalty is mandatory if the situation referred to in the foregoing sentence has taken place after the sentenced person had been given a written warning by a professional, court-appointed probation officer, unless there are exceptional reasons not to do so. The court may order the enforcement of the penalty if the sentenced person has flagrantly violated the legal order, especially by committing a crime, after the sentence had been passed but before it has become final and binding. The enforcement of the penalty may not be ordered after the lapse of 6 months from the moment of the completion of the probation period. If the sentenced person has been placed under supervision or is to carry out obligations during the probation period, the motion to order the enforcement of the penalty may be also submitted by a professional, court-appointed probation officer or by a trustworthy person or a representative of the association, institution or social organisation.

### **Penal measures**

The purpose of the penal measures is to impose an additional burden on the perpetrator apart from the principal penalty. However, the measures are also an alternative to a custodial sentence, as they may be imposed on their own.

The data regarding the application of penal measures have been collated by the Ministry of Justice only since 2011. The data refer to both penal measures imposed as an alternative to a custodial sentence, and also in addition to the principal custodian sentence<sup>47</sup>. It is difficult to determine any visible trend on the basis of those data since the period they cover is too short. The data are not divided by the number of persons; they only show the number of cases in which such measures were imposed. There are no details regarding the sex and the nationality of the perpetrators on whom they were imposed. The enforcement of the penal measures is supervised by the court and controlled by the probation officer. Their application does not generate any considerable costs.

The amended Polish Criminal Code which will come into force as of 1 July 2015 will remove the following penal measures from the list: forfeiture, the obligation to redress the damage or to compensate for the suffered harm, and the punitive damages.

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<sup>47</sup>The data were obtained from the Ministry of Justice as part of access to public information.

Year	2012	2013	2014
Number of measures imposed	189 260	190 787	160 152

### 1) Deprivation of public rights

Pursuant to Article 40 of the Polish Criminal Code, deprivation of public rights consists in the loss of the right to elect and of the right to be elected with regard to the public authority offices, professional or economic self-government authorities, the loss of right to participate in the administration of justice and to perform a function in public and local and professional self-government authorities and institutions, as well as the loss of held military rank and reversion to the rank of private. The deprivation of public rights also includes the loss of medals, decorations and honorary titles and the loss of capacity to acquire them during the period of the deprivation of rights. The court may impose that measure only while sentencing to a penalty of deprivation of liberty for a period of no less than 3 years for the commission of a crime driven by motivation deserving special condemnation. It is imposed for a period from 1 to 10 years. The measure is effective from the moment the verdict becomes final and binding; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence.

Year	2012	2013	2014
Number of measures imposed	946	1,648	3,498

### 2) Prohibition from engaging in a specified occupation, profession or business

Pursuant to Article 41 Section 1 of the Polish Criminal Code, the court may impose the prohibition from engaging in a specified occupation or profession if, during the commission of a crime, the perpetrator has abused his/ her position or profession, or has shown that his/ her further occupation of such position or practising such profession poses a threat to material legally protected interests. The court may impose the prohibition from engaging in a specified business while sentencing for a crime committed in relation to operating such business activity if its further operation poses a threat to substantive, legally protected interests. It is imposed for a period from 1 to 10 years. The measure is effective from the moment the verdict becomes final and binding; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence.

Year	2012	2013	2014
Number of measures imposed	284	242	421

### 3) Prohibition from engaging in a business relating to nurturing, treating, educating minors or taking care of them

Pursuant to Article 41 Section 1a of the Criminal Code, the court may impose the prohibition for life from engaging in all or specified occupations, professions or businesses relating to nurturing, treating, educating minors or taking care of them, while sentencing to a penalty of deprivation of liberty for a crime against sexual liberty or decency committed against a minor. This measure is always applied if the perpetrator is sentenced again for the same offence. It is imposed for a period from 1 to 15 years. The measure is effective from the moment the verdict becomes final

and binding; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence. The amended Polish Criminal Code which will come into force as of 1 July 2015 will make it possible to apply that measure for a specified period of time or for life.

Year	2012	2013	2014
Number of measures imposed	23	25	25

**4) Obligation to refrain from associating with specific social groups or frequenting specified kinds of places, prohibition from making contact with specified individuals, prohibition from approaching specified individuals, prohibition from leaving a specified place of stay without the court's consent**

Pursuant to Article 41a of the Polish Criminal Code, the court may impose the obligation to refrain from associating with specific social groups or frequenting specified kinds of places, the prohibition from making contact with specified individuals, the prohibition from approaching specified individuals, the prohibition from leaving a specified place of stay without the court's consent, or the order to leave the premises occupied together with the aggrieved party, while sentencing for a crime against sexual liberty or decency committed against a minor or for another crime against liberty, or while sentencing for an intentional crime involving the use of force, including the use of force towards an immediate family member. The obligation or prohibition may be linked with the obligation to report to the Police or any other designated authority within specified periods of time. While imposing the prohibition from approaching specified individuals, the court specifies the distance to the protected individuals that the sentenced person is obliged to maintain. The measure is always applied when sentencing to a penalty of deprivation of liberty without suspension for a crime against sexual liberty or decency committed against a minor. It is imposed for a period from 1 to 15 years or for life. The measure is effective from the moment the verdict becomes final and binding; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence.

The amended Polish Criminal Code which will come into force as of 1 July 2015 makes it more explicit that when ordering the sentenced person to leave, on a temporary basis, the premises occupied together with the aggrieved party, the court also specifies the deadline for performance of that order. The obligation can also be implemented under the Electronic Monitoring System.

The Ministry of Justice maintains statistics regarding the penal measures listed in Article 41a of the Criminal Code. The table below shows the frequency with which courts impose the obligation to refrain from associating with specific social groups or frequenting specified kinds of places, prohibition from making contact with specified individuals, prohibition from approaching specified individuals, prohibition from leaving a specified place of stay without the court's consent.

Year	2012	2013	2014
Number of measures imposed	510	894	1287

There are separate statistics regarding the penal measure involving the order to leave the premises occupied together with the aggrieved party; the details are shown in the table below.

Year	2012	2013	2014
Number of measures imposed	163	284	478

### 5) Prohibition from entering a mass event

Pursuant to Article 41b of the Polish Criminal Code, the court may impose the prohibition from entering a mass event if a crime has been committed in relation to such event and the perpetrator's participation in the mass events poses a threat to the legally protected interests. The court imposes the prohibition from entering a mass event in the cases listed in the Mass Events Safety Act of 20 March 2009.<sup>48</sup> The list of the cases is as follows: 1) bringing in or bearing firearms, pyrotechnic products, etc. at a mass event, 2) unlawful entry to a mass event, a sports competition area, violation of bodily integrity of the event safety personnel and finally throwing dangerous items. The measure is always imposed in the event of repeat offenders. The prohibition from entering a mass event includes all mass events taking place within the territory of the Republic of Poland and the football games taking place outside of the territory of the Republic of Poland if they involve the Polish national football team or a Polish sports club. When imposing a penal measure, the court may require that the sentenced person remains at a specified place of permanent residence during certain mass events which the sentenced person is prohibited to attend; the fulfilment of the obligation will be controlled with the Electronic Monitoring System. Upon completing the measure, the person may be also obliged to appear at an organisational unit of the Police or at a specific place during specified mass events which the sentenced person is prohibited to attend. The obligation is imposed for a period from 2 to 6 years; however, when the obligation is enforced in the Electronic Monitoring System, it is imposed for a period from 6 to 12 months. The application of that measure does not really generate any costs, except when it is enforced in the Electronic Monitoring System; in that case 1 month of applying that measure is around PLN 564 (around EUR 140).

Year	2012	2013	2014
Number of measures imposed	375	281	331

### 6) Prohibition from entering gambling facilities and engaging in gambling games

Pursuant to Article 41c of the Polish Criminal Code, the court may impose prohibition from entering gambling facilities and engaging in gambling games. The prohibition does not, however, include participation in promotional lotteries. The court may impose the prohibition from entering gambling facilities and engaging in gambling games while sentencing for a crime committed in relation to organising of or participating in gambling games. It is imposed for a period from 1 to 10 years. The measure is effective from the moment the verdict becomes final and binding; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence.

Year	2012	2013	2014
Number	2	3	48

<sup>48</sup> Mass Events Safety Act of 20 March 2009 (Journal of Laws of 2013, item 611, consolidated text).

**7) Prohibition from operating vehicles**

Year	2012	2013	2014
Number of measures imposed	83557	81016	56421

Pursuant to Article 42 Section 1 of the Polish Criminal Code, the court may impose the prohibition from operating vehicles of a specified kind while sentencing a person participating in traffic for a crime against safety of traffic, especially if the circumstances of the committed crime show that operation of vehicles by this person poses a threat to the safety of traffic. The court will always impose the prohibition from operating all vehicles or vehicles of a specific kind if the perpetrator has committed the crime while being intoxicated or under the influence of a narcotic drug, or has fled from the scene of the incident provided for in Article 173 (bringing about a catastrophe in land, water or air traffic threatening life and health of multiple persons or property of great extent), Article 174 (bringing about an immediate danger of the catastrophe in land, water or air traffic) or Article 177 Section 3 (bringing about unintentionally an accident in which an immediate family member suffered bodily harm). The court imposes the prohibition from operating all vehicles for life if the perpetrator was intoxicated or under the influence of a narcotic drug or has fled from the scene of the incident when committing the crime referred to in Article 173 which resulted in death or a grievous bodily harm of another human, or when committing the crime referred to in Article 177 Section 2 (bringing about unintentionally an accident resulting in death or a grievous bodily harm of another human), or in Article 355 Section 2 (an unintentional accident caused by a soldier operating an armed motor vehicle which resulted in death or a grievous bodily harm of another human), unless it is an exceptional situation due to special circumstances. The court imposes the prohibition from operating all motor vehicles for life if the person operating the motor vehicle was sentenced again under circumstances set out above. The measure is imposed for a period from 1 year to 10 years; however, the period during which it should apply does not run while the person is serving prison time, even if the person was sentenced to prison for another offence. The court imposes an obligation on the sentenced person to return a document serving as a licence to operate a vehicle; the period for which the prohibition has been imposed does not run until the obligation has been fulfilled.

**8) Forfeiture**

In accordance with Article 44 of the Polish Criminal Code, the court imposes forfeiture of items that have derived directly from a crime. The court may (and sometimes has to) impose forfeiture of items that were used for committing a crime or were meant for that purpose. Pursuant to Article 45 of the Polish Criminal Code, if the perpetrator has gained a material benefit from committing a crime, even indirectly, that is not subject to forfeiture as an item derived directly from a crime, the court imposes forfeiture of such benefit or of its equivalent-in-value. Forfeiture is not imposed in full or in part if the item, benefit or its equivalent-in-value is to be returned to the aggrieved party or another entity.

Year	2012	2013	2014
Number	18661	20700	21470

**9) Obligation to redress the damage or to compensate for the harm suffered**

Pursuant to Article 46 of the Polish Criminal Code, while sentencing, the court may impose, and upon the motion of the aggrieved party or another person the court is obliged to impose, the

obligation to redress the full damage inflicted by a crime, or to redress part of it, or to compensate for the harm suffered. Rather than imposing such an obligation, the court may impose punitive damages for the benefit of the aggrieved party.

Year	2012	2013	2014
Number of measures imposed	23579	28336	31457

### 10) Punitive damages

Punitive damages, or the need to pay a specified amount to the aggrieved party, is imposed as a form of compensation; however, it can be also used for a good cause; punitive damages used for such a purpose are to perform educational and repressive functions. Pursuant to Article 47 of the Polish Criminal Code, while sentencing the perpetrator for an intentional crime against life or health, or for another intentional crime occasioning death of a human, grievous bodily harm, disturbance of functioning of a bodily organ or health disorder, and also while sentencing the perpetrator for a crime provided for in the Criminal Code in: Article 173 (bringing about a catastrophe in land, water or air traffic threatening life and health of multiple persons or property of great extent), Article 174 (bringing about an immediate danger of a catastrophe in land, water or air traffic), Article 177 (bringing about unintentionally an accident resulting in death), or Article 355 Section 2 (an unintentional accident caused by a soldier operating an armed motor vehicle which resulted in death or a grievous bodily harm of another human), the court may impose punitive damages for the Fund for Victim and Post-Penitentiary Support if the perpetrator was intoxicated or under the influence of a narcotic drug, or has fled from the scene of the incident. The punitive damages are imposed up to the amount of PLN 100,000 (around EUR 25,000).

Year	2012	2013	2014
Number of measures imposed	6902	7936	8278

### 11) Pecuniary payment

Pursuant to Article 49 of the Polish Criminal Code, while refraining from imposing a sentence, the court may, among other things, order the defendant to make a payment to the Fund for Victim and Post-Penitentiary Support. The court may impose a pecuniary payment for the Fund for Victim and Post-Penitentiary Support when sentencing an offender for the offence referred to in Article 178a (operating a motor vehicle while being intoxicated or under the influence of a narcotic drug), Article 179 (permitting the operation in traffic of a motor vehicle or other vehicle being in a condition immediately threatening the safety by an intoxicated person, a person under the influence of a narcotic drug or by a person not having the required licence) or Article 180 (performing duties directly related to securing the safety of motor traffic). The payment may not be higher than PLN 60,000 (around EUR 15,000).

Year	2012	2013	2014
Number of measures imposed	43 857	41 027	31 463

### 12) Publication of the sentence

Pursuant to Article 50 of the Polish Criminal Code, the court may order the publication of the sentence in a particular manner if it is expedient, especially due to the social impact of the sentence, unless it infringes the aggrieved party's interests.

Year	2012	2013	2014
Number of measures imposed	10 401	8 213	4 975

The recidivism rates in cases where penal measures are imposed on their own are insignificant.

Year	Number of repeat offenders
2000	No data available
2001	No data available
2002	No data available
2003	No data available
2004	1
2005	0
2006	0
2007	3
2008	0
2009	1
2010	1
2011	1
2012	0
2013	No data available
2014	No data available

**Indicate the total number of people (flow and daily rate) serving alternative sanctions in 2014, the historical series since 2000 and the rate per 100,000 population for this period.**

There are no data available in that regard; the data that are being published have been presented below.

**Total number of people (daily rate) in prison serving a final sentence in 2014, historical series since 2000 and rate per 100,000 population for this period**

See beginning of Part one.

## Alternatives during execution<sup>49</sup>

### **Alternatives during execution from the legal point of view**

The following penalties are alternatives to the custodial sentence in the Polish legal system at the stage of the sentence implementation:

1. Serving prison time in the Electronic Monitoring System
2. Parole and release from restriction of liberty

<sup>49</sup> Those established during the execution of the sentence as forms of early release from prison.

## Judicial authority responsible for the establishment of the measures

The measures in both cases are imposed by penitentiary courts.

## Alternative measures in detail

### **Custodial sentence served in the Electronic Monitoring System**

A custodial sentence up to one year or an substitutive sentence (instead of restriction of liberty or a fine) that was not imposed on a repeat offender under Article 64 Section 2 of the Criminal Code may be served in the Electronic Monitoring System. Consent to execute the penalty is given by the regional court (penitentiary court) at the petition of the sentenced person or his/ her defence lawyer, prosecutor, professional court-appointed probation officer or the head of the correctional facility. The court may give consent if: it is sufficient to achieve the purposes of the punishment, the sentenced person has a place of permanent residence, the persons who are full of age and who live together with the sentenced person gave written consent to the penalty being executed at their place of residence, and there are no obstacles of technical or organisational or residential nature on the part of the sentenced person. While serving the penalty, the sentenced person is required, among other things, to: stay at a place designated by the court at the designated time, provide explanations regarding the course of the penalty and performance of obligations imposed on him/ her, and in particular to be in contact with the professional court-appointed probation officer and to wear the transmitting device. Permissions may be given for the sentenced person to leave the place of stay for 7 days. As of 2015, 10000 convicts may serve their time in the system at the same time. The data available show that between 2012 and 2014 there were nearly 5,000 convicts serving their time in the Electronic Monitoring System; the system capacity during those years was 7,500.<sup>50</sup>

	Number of petitions	Number of granted petitions	Number of monitoring devices installed	Total number of persons	Number of approach injunctions	Number of cases where the court imposed the obligation to refrain from appearing in specified locations
2011	12862	3577	3524	1992	0	13
2012	31521	10438	10280	4881	1	43
2013	34371	13289	13153	4923	0	6
2014	30970	11820	11299	4756	2	0

The data show that until the end of March 2015 men represented 93% of all persons serving their time. There are no data regarding foreigners who serve their time in that system. There are no figures regarding violations of obligations relating to the penalty or withdrawn permissions to serve the penalty. During the public debates it is being stated that there were few such cases.<sup>51</sup>

<sup>50</sup> Source: The statistics concerning the Electronic Monitoring System are available at: [www.dozorelektroniczny.gov.pl](http://www.dozorelektroniczny.gov.pl).

<sup>51</sup> In the statement of reasons to the deputies' draft law amending the Act on Serving Prison Sentence Outside Custodial System in the Electronic Monitoring System (Sejm paper no. 179) it was stated that during the two years of operating the system a total population of 3,212 convicts served their penalty in the Electronic Monitoring System, and only 225 of them violated materially the terms of the penalty set out

The purpose of the obligations imposed on the sentenced person is to educate him/ her and prevent relapse into crime or fiscal crime. While the sentenced person is serving his/ her time, the court may impose new obligations, enlarge or modify the existing ones or discharge the sentenced person from performing the obligations designated in Article 72 of the Polish Criminal Code (see above), as well as modify the type of technical measures applied. The organisational and control-related activities are performed by the professional court-appointed probation officer, the entity operating the monitoring centre (Electronic Monitoring Bureau) and the authorised monitoring entity selected by way of public procurement procedure. The entities execute the orders of the penitentiary courts. The court supervises the lawful and proper implementation of the penalty. The professional court-appointed probation officer is to assist the sentenced person during social resettlement and control the way the sentenced person fulfils the obligations and instructions imposed on him/ her. The professional court-appointed probation officer may file motions regarding the imposition, enlargement or modification of obligations, or the discharge from the performance of those obligations, as well as motions for revoking the permission to serve the time in that system. The professional court-appointed probation officer provides the court with monthly updates regarding the conduct of the sentenced person, including in particular his/ her performance of the obligations imposed on him/ her and observance of the legal order. The professional court-appointed probation officer immediately notifies the court of any breach by the sentenced person of the legal order or of the obligation imposed on the sentenced person. The professional court-appointed probation officer notifies the penitentiary judge of any irregularities in the functioning of the authorised monitoring entity. The Electronic Monitoring Bureau supervises the system in content-related terms and in technical terms. The authorised monitoring authority performs a number of technical and organisational activities relating to the system operation.

The court revokes its permission if the sentenced person violated legal order while serving his/ her time, and in particular if the sentenced person committed an offence or a fiscal offence, is evading the performance of the obligations imposed on him/ her or the penal measure imposed on him/ her, or when the break in the execution of the penalty in the Electronic Monitoring System was called off for reasons other than those for which the break was granted, the sentenced person was put in a correctional facility while serving the penalty due to the application of a pre-trial detention or implementation of penalty in another case. The court can revoke the permission if the sentenced person who was taking advantage of the permission to leave his/ her place of residence fails to return to the specified place at the specified time. One sentenced person serving prison penalty in the Electronic Monitoring System costs PLN 331 per month (around EUR 80).

The measure is applied so that the sentenced person is able to work. In view of the obligations being imposed, the application of that measure has an impact on the physical and mental well-being and the family relations. The primary obligation imposed on the sentenced person is to stay at the place of permanent residence or at any other designated place at the designated time. The court specifies the intervals of time during which the sentenced person has the right to leave his/ her place of permanent residence or any other designated place for a period up to 12 hours per day, especially in order to: work, participate in religious practices, care for a minor, disabled person or an ill person, study and self-study, make own artistic creations, use cultural, educational and sport facilities or activities, communicate with certain persons, keep contact with family and other close persons, use medical services or take part in a therapy, or make the necessary

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in the decision of the penitentiary court, and consequently had their permission to serve the penalty in EMS revoked and were sent to serve their penalty in absolute confinement; 30 of those convicts materially damaged the monitoring devices. Available at: <http://sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=179>.

purchases. The professional court-appointed probation officer can also change the intervals of time during the day and during the individual weekdays.

As of 1 July 2015, there will be material changes regarding the use of the Electronic Monitoring System. It will be possible to use the system for the penalty of restriction of liberty, penal measures involving the prohibition from associating with specific social groups or frequenting specified kinds of places, prohibition from making contact with specified individuals, prohibition from approaching specified individuals, prohibition from leaving a specified place of stay without the court's consent, as well as the order to leave, on a temporary basis, the premises occupied together with aggrieved party, prohibition from entering a mass event, and protective measures. It will be also possible to use the system for penalty deprivation of liberty up to one year sentenced before 1 July 2015.

### **Parole and restriction of liberty**

Pursuant to Article 77 of the Polish Criminal Code, the court may conditionally release a person sentenced to a penalty of deprivation of liberty from serving the remainder of the penalty, but only if it is reasonable to expect that this person will respect the legal order after the release, especially by not committing a crime, due to this person's conduct, characteristics, personal conditions, the circumstances of the committed crime and the behaviour after committing the crime and while serving the penalty. In exceptional situations, the court imposing a penalty of deprivation of liberty may impose more severe restrictions for the conditional release of the sentenced person. Pursuant to Article 78 of the Polish Criminal Code, the sentenced person may be conditionally released after serving at least half of the penalty; person sentenced for repeated offence under Article 64 Section 1 of the Polish Criminal Code may be conditionally released after serving 2/3 of the penalty, and person sentenced under Article 64 Section 2 of the Polish Criminal Code may be conditionally released after 3/4 of the penalty. A person who was sentenced to 25 years of imprisonment may be paroled after 15 years, and a person convicted to life in prison may be paroled after 25 years.

Pursuant to Article 83 of the Polish Criminal Code, the court may discharge a sentenced person from the remainder of the penalty of limitation of liberty, deeming it completed, if the sentenced person has served at least half of the imposed penalty, has respected the legal order, has conscientiously performed the imposed work, and has also carried out the imposed obligations and the imposed penal measures.

The data available show that the number of paroled convicts kept growing in the initial period (2000 to 2004), then (between 2005 and 2011) it was more or less flat, only to decrease in the most recent period of the research (2012 to 2014)<sup>52</sup>.

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<sup>52</sup> H. Kuczyńska, *Kształt i praktyka stosowania warunkowego przedterminowego zwolnienia jako czynnik wpływający na liczebność populacji więziennej* [in:] J. Jakubowska-Hara, J. Skupiński (eds.) *Alternatywy pozbawienia wolności w polskiej polityce karnej*, Warszawa 2009, pp. 170-225.

Year	Total number of paroled convicts
2000	14276
2001	15105
2002	18142
2003	19370
2004	21317
2005	23253
2006	21821
2007	22681
2008	23966
2009	22726
2010	26238
2011	24328
2012	21803
2013	19 828
2014	16 183

**Total number of people serving alternatives during execution in 2014, historical series since 2000**

Year	Number of sentenced persons subject to the Electronic Monitoring System	Number of paroled convicts
2000	-	14276
2001	-	15105
2002	-	18142
2003	-	19370
2004	-	21317
2005	-	23253
2006	-	21821
2007	-	22681
2008	-	23966
2009	-	22726
2010	-	26238
2011	1992	24328
2012	4881	21803
2013	4923	19828
2014	4756	16183