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Judicial Punishment Decisions Referring to Offences with Identical Statutory Punishments in the Light of Statistical Data

Sędziowski wymiar kary za przestępstwa zagrożone identycznymi sankcjami w świetle danych statystycznych

SUMMARY

The article is devoted to the analysis of court punishment practice in the case of offences which have the same statutory punishment. Three groups of such offences are selected: offences punished with imprisonment from 2 to 12 years (group I), offences punished with imprisonment from 3 months to 5 years (group II) and offences punished with imprisonment from 1 month to 3 years (group III). Most of the analysed offences belonged to the group of offences against freedom (including sexual freedom) and the other chosen offences were against other socially cherished values were those quite popular in practice (therefore, the statistical data in their cases are quite representative). The analysed year was 2016. The starting hypothesis was that offences which have identical punishments in the Criminal Code (which means that the lawmaker perceives them as socially harmful in a similar way) will not be treated in such a similar way in practice and in all groups there would be offences which would be punished with visibly more severe and lighter punishments. Detailed analysis of statistical data referring to punishments imposed for the discussed offences confirmed the initial hypothesis, showing also the already known fact that courts tend to impose punishments which are closer to the minimum than to the maximum provided by the lawmaker.

Keywords: statutory punishment; judicial punishment

In 1936, a paper, still relevant and interesting today, was published on the relationship between the statutory punishment range and punishments actually imposed by courts (or, as the authors wrote, judges), written by M.L. Kulesza and

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J.W. Śliwowski[1]. This was one of the first empirical Polish studies on the practical application of criminal law by courts. As early as at that time, the authors recorded a number of important regularities relating to the judicial imposition of punishment, such as a clear tendency to impose punishments closer to their lower statutory limit[2]. With some exceptions, this trend turned out to be of a lasting character, also under subsequent criminal codes[3].

As often pointed out in the literature, the statutory punishment level "is based on the alleged social harmfulness of acts directed against a protected legal interest" and, thus, reflects "the average social harmfulness of a given type of crime"[4]. On the other hand, the judicial imposition of punishment is individualised and should be performed on a case-by-case basis[5]. This study is not intended to reconstruct the judicial decision-making process regarding the type and severity of the punishment, since it is an extremely complex process[6], and the final severity of punishment in

[1] See M.L. Kulesza, J.W. Śliwowski, *Ustawowy a sędziowski wymiar kary*, Warszawa 1936. The crucial theses proposed in the study by M.L. Kulesza and J.W. Śliwowski were also supported in a paper entitled *Ustawowy a sędziowski wymiar kary (Referat sprawozdawczy)* by W. Wróblewski (Warszawa 1936).

[2] See M.L. Kulesza, J.W. Śliwowski, *op. cit.*, p. 119.

[3] For a more detailed view on the general severity of sentences of deprivation of liberty in Poland of the 20th century in various historical periods, see M. Melezini, *Punitywność wymiaru sprawiedliwości karnej w Polsce w XX wieku*, Białystok 2003, pp. 306–308, 337, 371–378, 410–419, 451–454, 533–538. The clear inclination towards sentencing to deprivation of liberty at a level closer to the lower limit of the statutory range of punishment is typical of the contemporary case law, often combined with the use of the option of suspended sentence. For more on the topic, see J. Czabański, *Sędziowski wymiar kary pozbawienia wolności*, „Prawo w Działaniu" 2008, nr 3, pp. 9–38.

[4] T. Bojarski, *Polskie prawo karne. Zarys części ogólnej*, Warszawa 2008, p. 280. See also W. Świda, *Prawo karne*, Warszawa 1982, p. 212 (as stressed by this author: „[…] the statutory range of punishment expresses the society's negative assessment of the act committed […]").

[5] The issue of amount of punishment actually imposed by courts has been addressed many times in the literature, both theoretically and practically, but from a slightly different perspective. For example, see J. Giezek, *Okoliczności wpływające na sędziowski wymiar kary*, Wrocław 1989; T. Kaczmarek, *Sędziowski wymiar kary w Polskiej Rzeczypospolitej Ludowej w świetle badań ankietowych*, Wrocław–Warszawa–Kraków–Gdańsk 1972; V. Konarska-Wrzosek, *Dyrektywy wyboru kary w polskim ustawodawstwie karnym*, Toruń 2002; Z. Ćwiąkalski, *O niektórych pojęciach związanych z wymiarem kary*, „Nowe Prawo" 1989, nr 4, pp. 40–58; W. Wolter, *Z problematyki wymiaru kary (średni wymiar kary)*, „Państwo i Prawo" 1958, z. 7, pp. 3–25.

[6] The literature on the judicial decision-making process seems to be particularly abundant in some of the English speaking countries, where various determinants for judicial decision are subject to research, including religious beliefs of judges (for more details on this topic, see G. Maroń, *Integralność religijna sędziego oraz argumentacja religijna w amerykańskim procesie orzeczniczym*, Rzeszów 2018; see also K.V. Lipez, *Is There a Place for Religion in Judicial Decision-Making?*, "Touro Law Review" 2014, Vol. 31, pp. 133–148). For the decision-making process at the level of the U.S. Supreme Court, see e.g. D. Rohde, H.J. Spaeth, *Supreme Court Decision Making*, San Francisco 1976; J.A. Segal, H.J. Spaeth, *The Supreme Court and the Attitudinal Model*, New York 1993; T.E. George, L. Epstein, *On the Nature of Supreme Court Decision Making*, "American Political

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practice often results not only from the judge's assessment of the case in view of the sentencing directives, but *de facto* may also stem from the decisions and agreements of an earlier stage of the criminal trial, if the conviction takes place as part of the procedure of voluntary submission to liability (i.e. where the application referred to in Article 335 or Article 338a of the Code of Criminal Procedure is submitted). Moreover, as demonstrated by studies recently conducted, in Poland, as well as in other countries, there are quite significant discrepancies as regards the average level of punishments actually imposed for individual offences in different judicial districts[7].

Therefore, despite the existence of many factors that determine the final decision about the individual punishment actually imposed, one could expect, at least theoretically, that at the level of many such individual cases there is a certain congruence between the legislature's assessments expressed in the definition of the statutory limits of the punishment range and those of the courts. In other words, for criminal offences punishable by identical punishments, i.e. offences whose social harmfulness taken in abstract terms has been considered by the legislature to be the same, it may be argued that the distribution of punishments actually imposed by courts for different criminal offences punishable by the same punishments would

Science Review" 1992, Vol. 86(2), DOI: https://doi.org/10.2307/1964223, pp. 323–337; R.A. Brisbin Jr., *Slaying the Dragon: Segal, Spaeth and the Function of Law in Supreme Court Decision Making*, "American Journal of Political Science" 1996, Vol. 40(4), DOI: https://doi.org/10.2307/2111739, pp. 1004–1017; G. Schubert, *The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology*, New York 1974; M.W. Giles, B. Blackstone, R.L. Vining Jr., *The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making*, "Journal of Politics" 2008, Vol. 70(2), DOI: https://doi.org/10.1017/S0022381608080316, pp. 293–306; P.M. Collins Jr., *The Consistency of Judicial Choice*, "Journal of Politics" 2008, Vol. 70(3), DOI: https://doi.org/10.1017/S002238160808081X, pp. 861–873. As regards the factors affecting judicial decisions and the very process of sentencing, see also T. Gray, *An Empirical Assessment of Massachusetts Supreme Judicial Court Decision-Making on Criminal Law from 1995 to 2014*, "Western New England Law Review" 2016, Vol. 38, pp. 285–304; J.P. Kastellec, *The Statistical Analysis of Judicial Decisions and Legal Rules with Classification Trees*, "Journal of Empirical Legal Studies" 2010, Vol. 7(2), DOI: https://doi.org/10.1111/j.1740-1461.2010.01176.x, pp. 202–230; G.A. Schubert, *The Study of Judicial Decision-Making as an Aspect of Political Behavior*, "American Political Science Review" 1958, Vol. 52(4), DOI: https://doi.org/10.2307/1951981, pp. 1007–1025; Ch. Zorn, J. Barnes Bowie, *Ideological Influences on Decision Making in the Federal Judicial Hierarchy: An Empirical Assessment*, "Journal of Politics" 2010, Vol. 72(4), DOI: https://doi.org/10.1017/S0022381610000630, pp. 1212–1221. In the U.S., a great attention is also paid to analysing the decision-making processes in sentencing capital punishment. For example, see C.A. Traut, C.F. Emmert, *Expanding the Integrated Model of Judicial Decision Making: The California Justices and Capital Punishment*, "Journal of Politics" 1998, Vol. 60(4), DOI: https://doi.org/10.2307/2647736, pp. 1166–1180; M.G. Hall, P. Brace, *The Vicissitudes of Death be Decrees: Forces Influencing Capital Punishment Decision Making in State Supreme Courts*, "Social Science Quarterly" 1994, Vol. 75(1), pp. 136–151.

[7] Consult the research on this issue: B. Gruszczyńska, M. Marczewski, P. Ostaszewski, *Spójność karania. Obraz statystyczny stosowania sankcji karnych w poszczególnych okręgach sądowych*, „Prawo w Działaniu" 2014, nr 19.

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be quite similar and this could be especially expected with regard to those offences which are relatively frequent in judicial practice, in whose case the possible atypical circumstances of individual cases have the least impact possible on the overall statistical picture of the punishments being imposed.

The foregoing assumption needs to be verified, and the resulting findings will make it possible to answer the question whether the judicial imposition of punishment reflects the legislature's assessment of the hypothetical level of social harmfulness of individual offences punishable with the same punishments. Such studies carried out in the inter-war period clearly showed that there was no such congruence between statutory and judicial assessments at the time[8], so it will supposedly not occur now[9]. Nevertheless, it is worthwhile to carry out a similar analysis now, for instance because of the significant expansion of the possibilities of responding to individual crimes under the applicable criminal code. While earlier criminal codes used to a large extent the punishment of deprivation of liberty (named so in the Criminal Code of 1969, while the Criminal Code of 1932 referred to it as imprisonment and detention), the current Criminal Code (hereinafter: CC) more often provides for alternative sanctions, and the solutions set out in Articles 37a and 37b CC allow for further substantial modification of the criminal response as compared to the punishment for a given act as specified in the provision describing the offence. This diversity also means that simple comparisons are not always possible. For the purposes of the analysis, three groups of crimes punishable with various sanctions were identified. Each of these groups contains crimes against freedom in the broad sense (i.e. offences under Chapter XXIII or XXV) and selected offences (chosen for the sake of verification) from a completely different group, often characterised by a high number of convictions.

Therefore, the analysis covered final and valid convictions in 2016 for the following three groups of offences:

a) group I – offences punishable with the punishment of deprivation of liberty from 2 to 12 years, described in Article 197 § 1 CC (basic type of rape), Article 200 § 1 CC (performing sexual activities with a minor under 15 years of age), Article 202 § 3 CC (production and other types of behaviour

[8] See M.L. Kulesza, J.W. Śliwowski, *op. cit.*, e.g. pp. 96–100, 107–108.

[9] It should be noted that while the analysis of the structure of penalties for different types of offences at both national and international level is carried out fairly often, virtually no one has attempted, since the pre-war studies, to compare the actual severity of penalties imposed on offences punishable by identical sanctions. For the general structure of penalties as such and penalties imposed for selected types of crimes, see in particular *European Sourcebook of Crime and Criminal Justice Statistics*, Helsinki 2014, http://wp.unil.ch/europeansourcebook/data-base/5th-edition [access: 10.10.2019]. For the structure of penalties imposed in Poland and other countries for selected types of crimes, see in particular B. Gruszczyńska, M. Marczewski, P. Ostaszewski, A. Więcek-Durańska, *Struktura kar orzekanych w Polsce i w innych państwach Unii Europejskiej*, Warszawa 2015.

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related to the so-called hard pornography), Article 280 § 1 CC (robbery in the basic type) and Article 156 § 3 CC (intentionally inflicting severe bodily injury resulting in the victim's death – for the latter, the current punishment is higher, but during the period under study it was between 2 and 12 years),

b) group II – offences punishable with the punishment of deprivation of liberty from 3 months to 5 years, described in Article 189 § 1 CC (unlawful deprivation of liberty, in the basic type), Article 191 § 2 CC (unlawful forced debt collection), Article 191a § 1 CC (recording the image of a naked person), Article 204 § 1 CC (inciting another person to prostitution and facilitating another person's prostitution), Article 204 § 2 CC (procuring), Article 207 § 1 CC (maltreatment of a dependent person or family member), Article 270 § 1 CC (document forgery), Article 278 § 1 CC (basic type of theft), Article 288 § 1 CC (destruction/damage to someone else's property),

c) group III – offences punishable with the punishment of deprivation of liberty up to 3 years, described in Article 190a § 1 CC (stalking), Article 190a § 2 CC (use of someone else's image), Article 191 § 1 CC (forcing to a particular behaviour), Article 200 § 3 CC (presentation of pornographic content to a minor), Article 200 § 4 CC (presentation of performance of a sexual activity to a minor), Article 177 § 1 CC (traffic accident causing medium bodily injury), Article 284 § 1 CC (misappropriation of someone else's movable property)[10].

The first issue to be analysed is the structure of punishments imposed for offences in all the groups under study. It comprises the punishments of: solely-imposed fine, restriction of liberty, mixed punishment and the punishment of deprivation of liberty. The issue of a fine imposed along with the punishment of deprivation of liberty has been ignored, as it is sometimes imposed under Article 33 § 2 CC and then it indeed increases the level of severity of the imposed sanction, and sometimes under Article 71 § 1 CC and then its function is definitely different, and the available statistical data do not allow to recognize the rationale for imposing this punishment along with deprivation of liberty. In the group of offences covered by the study, there were no cases of application of solely-imposed punitive measures. The general structure of punishments is presented in Table 1, while Table 2 presents the relation of the custodial deprivation of liberty to conditional suspension of deprivation of liberty.

[10] The data analysed below are derived from the statistics of convictions available on the website of the Ministry of Justice: Informator Statystyczny Wymiaru Sprawiedliwości, *Skazania prawomocne – dorośli – z oskarżenia publicznego – wg rodzajów przestępstw i wymiaru kary*, https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie [access: 20.01.2019].

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Table 1. Structure of convictions in 2016 for selected offences – absolute numbers and percentage relations

Offence	Convictions, total	%	Fines, total	%	Restriction of liberty, total	%	Mixed punishment	%	Deprivation of liberty, total	%
Group I (punishable with 2 to 12 years of deprivation of liberty)										
197 § 1	400	100	1	0.25	1	0.25	22	5.50	376	94.00
200 § 1	604	100	8	1.32	21	3.48	39	6.46	536	88.74
202 § 3	60	100	1	1.67	1	1.67	9	15.00	49	81.67
280 § 1	3,947	100	40	1.01	182	4.61	478	12.11	3,247	82.27
156 § 3	69	100	0	0.00	0	0.00	0	0.00	69	100.00
Group II (punishable with deprivation of liberty from 3 months to 5 years)										
189 § 1	159	100	30	18.87	20	12.58	3	1.89	106	66.67
191 § 2	535	100	127	23.74	103	19.25	10	1.87	295	55.14
191a § 1	86	100	36	41.86	20	23.26	0	0.00	30	34.88
204 § 1	41	100	4	9.76	2	4.88	3	7.32	32	78.05
204 § 2	100	100	12	12.00	2	2.00	1	1.00	85	85.00
207 § 1	10,837	100	357	3.29	1,702	15.71	186	1.72	8,583	79.20
270 § 1	6,625	100	4,192	63.28	606	9.15	18	0.27	1,809	27.31
278 § 1	25,022	100	4,440	17.74	9,363	37.42	384	1.53	10,835	43.30
288 § 1	6,547	100	1,841	28.12	2,514	38.40	48	0.73	2,144	32.75
Group III (punishable with deprivation of liberty up to 3 years)										
190a § 1	1,086	100	322	29.65	231	21.27	12	1.10	521	47.97
190a § 2	77	100	38	49.35	23	29.87	0	0.00	16	20.78
191 § 1	435	100	116	26.67	97	22.30	6	1.38	216	49.66
200 § 3	24	100	2	8.33	4	16.67	0	0.00	18	75.00
200 § 4	25	100	5	20.00	4	16.00	0	0.00	16	64.00
177 § 1	4,236	100	2,046	48.30	319	7.53	5	0.12	1,866	44.05
284 § 1	762	100	282	37.01	171	22.44	4	0.52	305	40.03

Source: Author's own study.

Table 2. General structure of the punishment of deprivation of liberty imposed for offences punishable by deprivation of liberty from 2 to 12 years – absolute numbers and percentage relations

Offence	Deprivation of liberty, total	%	Deprivation of liberty, custodial sentence	%	Deprivation of liberty, conditional suspension	%
Group I (punishable with 2 to 12 years of deprivation of liberty)						
197 § 1	376	100	249	66.22	127	33.78
200 § 1	536	100	206	38.43	330	61.57
202 § 3	49	100	15	30.61	34	69.39
280 § 1	3,247	100	2,180	67.14	1,067	32.86
156 § 3	69	100	67	97.10	2	2.90
Group II (punishable with deprivation of liberty from 3 months to 5 years)						
189 § 1	106	100	34	32.08	72	67.92
191 § 2	295	100	98	33.22	197	66.78
191a § 1	30	100	4	13.33	26	86.67
204 § 1	32	100	2	6.25	30	93.75

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Offence	Deprivation of liberty, total	%	Deprivation of liberty, custodial sentence	%	Deprivation of liberty, conditional suspension	%
204 § 2	85	100	21	24.71	64	75.29
207 § 1	8,583	100	2,050	23.88	6,533	76.12
270 § 1	1,809	100	256	14.15	1,553	85.85
278 § 1	10,835	100	5,745	53.02	5,090	46.98
288 § 1	2,144	100	784	36.57	1,360	63.43
Group III (punishable with deprivation of liberty up to 3 years)						
190a § 1	521	100	125	23.99	396	76.01
190a § 2	16	100	1	6.25	15	93.75
191 § 1	216	100	72	33.33	144	66.67
200 § 3	18	100	3	16.67	15	83.33
200 § 4	16	100	4	25.00	12	75.00
177 § 1	1,866	100	100	5.36	1,766	94.64
284 § 1	305	100	67	21.97	238	78.03

Source: Author's own study.

For offences from group I, the most serious ones, worth noting are slight divergences in the administration of individual types of punishment. Figure 1 presents this in a very clear way.

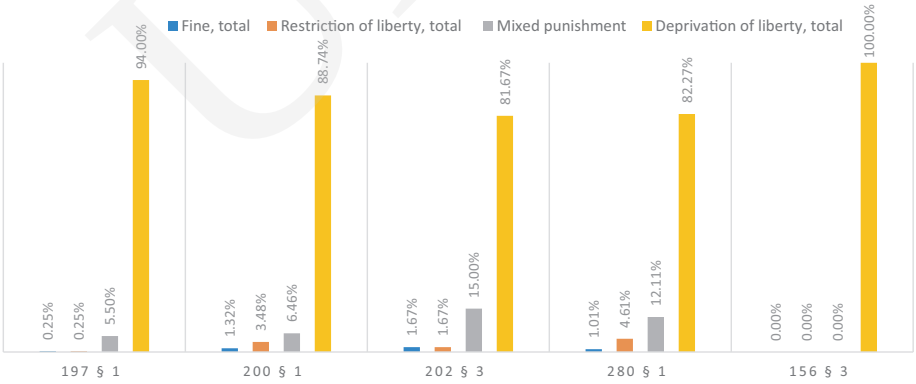

Figure 1. Structure of punishments imposed for selected offences punishable by deprivation of liberty from 2 to 12 years – percentage relations

Source: Author's own study.

It must be stressed that, as could be expected due to the actual statutory range of punishment, the punishment structure in all cases in this group is strongly dominated by the punishment of deprivation of liberty. Moreover, the group is the only one in which courts have the least margin to flexibly shape the punishment by choosing its type, since in the case of that group of offences, imposing other punishments than deprivation of liberty is possible only in the event of e.g. exceptional circumstances

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allowing for extraordinary mitigation of punishment. Furthermore, offences in this group are subject to Article 37b CC, allowing for practical mitigation of the sentence of deprivation of liberty by imposing the so-called mixed punishment. During the period under analysis, courts did not make use of this possibility for offences under Article 156 § 3 CC at all, and quite rarely in the case of offences under Article 197 § 1 and Article 200 § 1 CC (several percent each) and relatively most often for offences defined in Article 202 § 3 CC (approx. 15%) and Article 280 § 1 CC (approx. 12%). It is noteworthy that for the act falling under Article 156 § 3 CC only deprivation of liberty used to be imposed, which could indicate that this offence, in the opinion of the courts, is in practice regarded as the "most serious one" in the group under study. At the same time, this is the only act in this group where there is an element of unintentionality, while all other offences are purely intentional. The assumption that the fact of causing death of a person (even unintentionally) entails a stricter assessment of such events is clearly confirmed if one looks at the structure of the imposed punishment of deprivation of liberty itself, in terms of whether it was a conditionally suspended or custodial sentence. This is presented in Table 2 with absolute numbers and percentage relations. Figure 2 presents the percentage relations.

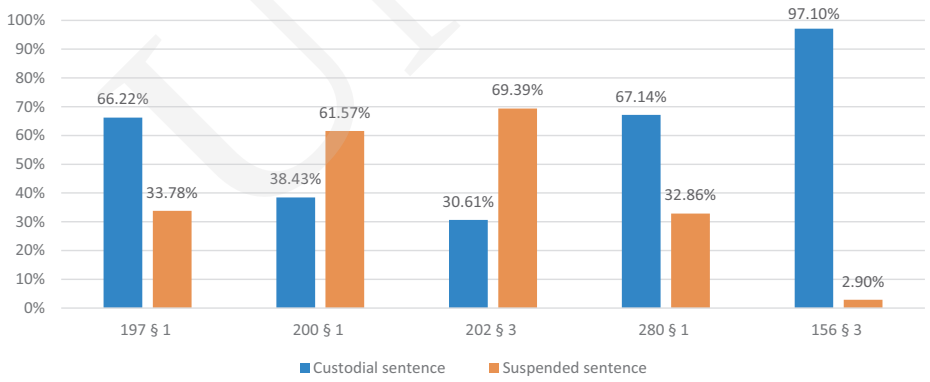

Figure 2. General structure of the punishment of deprivation of liberty imposed for offences punishable by deprivation of liberty from 2 to 12 years – percentage relations

Source: Author's own study.

The relationships between custodial sentences and conditionally suspended sentences are quite interesting. It should be borne in mind that the high number of suspended sentences in 2016 undoubtedly is related to the fact that many of the offences covered by these sentences were committed before 1 July 2015, i.e. before the entry into force of the amendment of 20 February 2015[11], as a result of which

[11] See Act of 20 February 2015 on the amendment to the Criminal Code and certain other acts (Journal of Laws 2015, item 396).

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the possibility of issuing suspended sentences has been limited to the punishment of less than 1 year. Thus, in the case of these perpetrators it was still possible to conditionally suspend the sentence of deprivation of liberty not exceeding 2 years, the then lower limit of the statutory range of punishment for all the offences analysed.

Significant differences in the relationship between custodial and suspended sentences for the offences analysed need to be noted. If this can be treated as a clue about the generalised judicial assessment of the social harmfulness of such acts, it can be claimed that courts consider the offence under Article 156 § 3 CC, where only two perpetrators (less than 3%) were sentenced to imprisonment with conditional suspension of its execution, to be the "most serious" in this group, as it could already be concluded from the general structure of punishments. Rape and robbery are at a similar level: custodial sentences in both cases constituted 66% and 67% respectively, but it is worth noting that in the case of robbery there is also a privileged type provided for in Article 283 CC, so robberies falling under Article 280 § 1 CC do not include "lighter" cases of this offence, while the Polish law does not provide for a privileged type of rape (an act under Article 197 § 2 CC, characterised by a different *actus reus*, is not such a type), and thus all cases of causing a victim to engage in sexual intercourse by prohibited means fall under Article 197 § 1 CC. However, both offences have aggravated types, which makes it possible to claim that in this respect they are similar: the analysed data do not refer to the most serious cases of these offences. As a result of the above, one may state with some reservation that perpetrators of rape are treated relatively more severely, since no statutory "lighter" cases of this crime escape the assessment under Article 197 § 1 CC as it is in the case of robbery. On the other hand, courts treat more leniently the perpetrators of offences described in Article 200 § 1 CC and Article 202 § 3 CC. In these cases, the proportion is reversed: almost 62% of offenders guilty of committing sexual activities with minors under 15 years of age were sentenced to conditionally suspended deprivation of liberty. For activities related to the so-called hard pornography, the conditional suspension of the sentence concerned almost 70% of convictions.

Based on available statistical data, it is difficult to make a firm assessment of the above results. Such frequent application of conditionally suspended sentences towards perpetrators of the misdemeanour under Article 200 § 1 CC may be particularly surprising, but explaining such an inclination would require detailed studies based on case files. One can only cautiously point to at least two quite probable causes of such a situation. First of all, due to the specific nature of this crime, it is probably committed relatively often by people with significantly limited sanity, and this must be reflected in the general level of severity of the punishments imposed. Secondly, the punishment ranging from 2 to 12 years of deprivation of liberty is to be imposed not only for sexual intercourse with a minor under 15 years of age (which is the most serious form of forbidden conduct covered by this provision), but also for committing

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another sexual act on such a minor or causing such a person to submit to such acts or to perform them, and thus it is possible to have individual cases with different intensity of the harm inflicted on the victim[12]. Both of these reasons may also apply to some extent to the act under Article 202 § 3 CC, although in this case the rather lenient treatment of perpetrators who produce, record or import, store, possess, disseminate or present pornographic content with the participation of a minor or pornographic content related to the presentation of violence or the use of an animal may also result from a different assessment of the generalised social harmfulness of such acts by courts as compared with the assessment by the legislature[13].

It is also worth examining the detailed structure of custodial deprivation of liberty sentences in this group of offences; in this case, one can assess the differences in the actual severity of the custodial sentences. Tables 3a and 3b present detailed figures and percentages related to custodial deprivation of liberty sentences. Figure 3 presents the same data in a graphic way.

Table 3a. Detailed structure of custodial sentences imposed for selected offences punishable by deprivation of liberty from 2 to 12 years – absolute numbers and percentage relations

Offence	Custodial sentences, total	1 month	%	2 months	%	3 months	%	4 to 5 months	%	6 months	%	7 to 11 months	%	1 year	%
197 § 1	249	0	0	0	0.00	1	0.40	0	0.00	0	0.00	0	0.00	4	1.61
200 § 1	206	0	0	0	0.00	0	0.00	1	0.49	4	1.94	0	0.00	3	1.46
202 § 3	15	0	0	0	0.00	0	0.00	0	0.00	0	0.00	1	6.67	1	6.67
280 § 1	2,180	0	0	1	0.05	4	0.18	20	0.92	39	1.79	43	1.97	83	3.81
156 § 3	67	0	0	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	1	1.49

Source: Author's own study.

[12] These suppositions seem to be confirmed by empirical research conducted with regard to the offence under Article 200 § 1 CC. Moreover, the authors of this research pointed to cases of more lenient approach where the victim and the perpetrator were of similar age, but the victim was under 15 while the perpetrator was 17 and they were dating regularly. For more on this topic, see M. Mozgawa, M. Budyn-Kulik, *Prawnokarne aspekty pedofilii. Analiza dogmatyczna i wyniki badań empirycznych*, „Czasopismo Prawa Karnego i Nauk Penalnych" 2006, z. 2, pp. 65–73.

[13] Also in this case, the data for 2016 are in line with the general trend of convictions for the analysed offence, found as a result of earlier case file research. See in more detail M. Mozgawa, P. Kozłowska-Kalisz, *Pornografia dziecięca w świetle badań empirycznych (aspekty prawnokarne)*, [in:] *Pornografia*, red. M. Mozgawa, Warszawa 2011, pp. 168–187.

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Table 3b. Detailed structure of custodial sentences imposed for selected offences punishable by deprivation of liberty from 2 to 12 years – absolute numbers and percentage relations

Offence	Over 1 year to less than 2 years	%	2 years	%	Over 2 years to less than 3 years	%	3 years	%	Over 3 years to 5 years	%	Over 5 years to 8 years	%	Over 8 years to 10 years	%	Over 10 years to 15 years	%
197 § 1	3	1.20	69	27.71	60	24.10	22	8.84	66	26.51	19	7.63	3	1.20	2	0.80
200 § 1	3	1.46	62	30.10	46	22.33	29	14.08	46	22.33	10	4.85	1	0.49	1	0.49
202 § 3	0	0.00	7	46.67	4	26.67	0	0.00	1	6.67	1	6.67	0	0.00	0	0.00
280 § 1	55	2.52	627	28.76	604	27.71	337	15.46	325	14.91	36	1.65	6	0.28	0	0.00
156 § 3	0	0.00	2	2.99	5	7.46	5	7.46	24	35.82	22	32.84	5	7.46	3	4.48

Source: Author's own study.

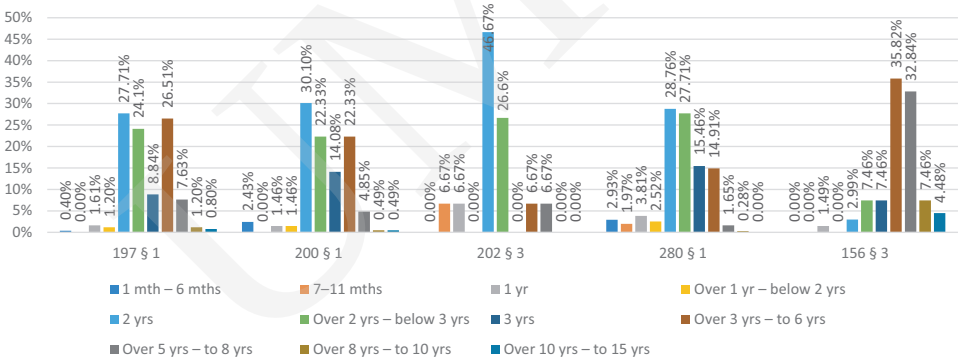

Figure 3. Detailed structure of custodial sentences imposed for selected offences punishable by deprivation of liberty from 2 to 12 years – percentage relations

Source: Author's own study.

The analysis of the data presented above validates the thesis presented earlier herein that courts are most severe in the case of intentional causing of serious bodily injury, resulting in the unintentional death of a person. For this offence, not only was the custodial sentence of deprivation of liberty the absolute dominant type of response, but also the punishments imposed were by far the most severe: over 76% of the sentences were within the range of 3 to 8 years, and even more severe punishments accounted for nearly 12% of all the sentences of deprivation of liberty, while for other offences in the group under study sentences of deprivation of liberty over 8 years were rare: this option was not used at all in the case of convictions for the offence under Article 202 § 3 CC and only absolutely sporadically in the case of other offences (2% of convictions for rape, 1% in the case of an act under Article 200 § 1 CC and only 0.28% for robbery). The above data seem to indicate that the

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latest change in the sanction for committing an offence under Article 156 § 3 CC is somewhat justified by the tendency visible in the examined material to treat this offence as "more serious" than other offences previously punishable with identical punishments, although it is also worth noting that, at the same time, the lower limit of the statutory range of punishment for this act was significantly increased up to 5 years, and this means depriving the courts of the ability to respond more flexibly to particular cases within the frame of the statutory sanction. In the analysed structure of convictions, less than 5% of perpetrators were sentenced to up to 2 years of imprisonment (which included only one offender sentenced to a punishment below the then-current lower limit, which accounted for 1.5% of all convictions) – these data may indicate that the lower limit was actually perceived in practice as too lenient, but the sentences of over 2 years and up to 5 years of deprivation of liberty (and thus up to the new lower limit of the statutory punishment for this crime) accounted for almost 48% in the structure of custodial sentences, which means that the courts recognized them as the right response in individual cases.

As for other offences, the punishment below the lower limit of the statutory punishment range was most often imposed for acts under Article 202 § 3 CC (over 13%) and for robbery (over 11%). Again, the previously indicated inclination towards a quite lenient approach to offences under Article 202 § 3 CC as compared to other acts from the discussed group, are confirmed: nearly 47% of custodial sentences for this act are convictions for 2 years, i.e. the lowest statutory punishment.

The observed trends are also confirmed by the comparison of the arithmetic mean[14] of custodial sentences for each of the offences under analysis: for Article 197 § 1 CC it is 38.7 months, for the offence under Article 200 § 1 CC – 35.3 months, for the offences under Article 202 § 3 CC – 29 months, for the act under Article 280 § 1 CC – 30.8 months, and for the act under Article 156 § 3 CC – as many as 62.8 months.

In the second group of offences under study, i.e. those punishable with deprivation of liberty from 3 months to 5 years, there were 5 offences against freedom in its broad sense and, as a sort of control sample, 4 other acts with a high number of convictions. For offences in that group, it must be stressed that, in fact, the punishment imposed for them is not limited to the punishment of deprivation of liberty set out in the sanction part of the provision, since pursuant to Article 37a CC the court may also impose on the offenders the punishment of restriction of liberty or a fine, and pursuant to Article 37b CC a mixed punishment (i.e. a combination of short-term deprivation of liberty and restriction of liberty) may be imposed. The

[14] Regretfully, the statistical data do not provide an accurate length of sentence, hence in calculating the arithmetic mean for particular ranges of sentences, the average punishment for a given range was adopted (e.g. for the range from 7 to 11 months, the punishment length adopted for calculation is 9 months).

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structure of the punishments for these offences, taking into account accurate figures and percentages, is presented in Table 1 and Figure 4.

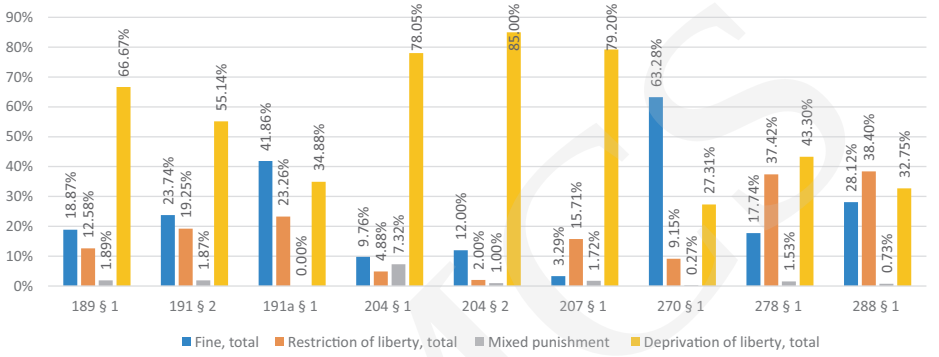

Figure 4. Structure of punishments imposed for selected offences punishable by deprivation of liberty from 3 months to 5 years – percentage relations

Source: Author's own study.

In the case of the group analysed, significant differences in the structure of the punishments for particular offences are noticeable, e.g. fine was regarded by the courts as an appropriate response to the perpetrator's act for as many as 63% of the perpetrators of document forgery under Article 270 § 1 CC and only for 3% of the perpetrators of maltreatment. In the latter case, it can be assumed that failure to apply that punishment results from the specific nature of that offence – where the perpetrator maltreats a person closest to him, the imposition of a fine could *de facto* affect the needs of the family and therefore to entail a perceived sanction on the victims of that offence. It can also be assumed that many perpetrators of this offence do not have assets that could make such a decision reasonable. However, in the case of acts under Article 204 § 1 or Article 204 § 2 CC describing the offences of inciting another person to prostitution, facilitating another person's prostitution and procuring (respectively 10% and 12% of solely-imposed fines), it is difficult to assume that the reason for the apparent courts' restraint in imposing this punishment is the poor financial standing of the perpetrators. In the case of those offences, deprivation of liberty is dominant – it was imposed on 78% of the perpetrators of the offence under Article 204 § 1 CC and on 85% of the perpetrators of the offences under Article 204 § 2 CC. Equally often, the courts imposed deprivation of liberty on the perpetrators of maltreatment (79% of the punishments imposed), while the least often that type of punishment was applied to three categories of perpetrators, namely those convicted of recording the image of a naked person – Article 191a § 1 CC (35%), convicted of document forgery – Article 270 § 1 CC (27%), and convicted of destroying/damaging someone else's movable property – Article 288

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§ 1 CC (nearly 33%). Such a structure of punishments would indicate that, despite the identical punishment range prescribed for the acts in question, the courts in practice see some of them as generally more or less socially harmful, and this is reflected in the type of punishments actually imposed. Considering e.g. forgery as a criminal offence which is not as serious as, for example, maltreatment is even more evident when we note that the legislature has provided for in Article 270 § 2a CC a case of lesser gravity of that offence and, therefore, conviction figures in judicial statistics for an act under Article 270 § 1 CC do not refer to cases of document forgery assessed as less socially harmful by their nature.

The general relationship between custodial and suspended sentence of deprivation of liberty in the discussed group of offences is also quite interesting. It should be borne in mind that in this group, due to the statutory punishment range, the possibility of conditionally suspended sentences is much greater than in the group of serious misdemeanours analysed above. These data are presented in Table 2 and in a more illustrative way in Figure 5.

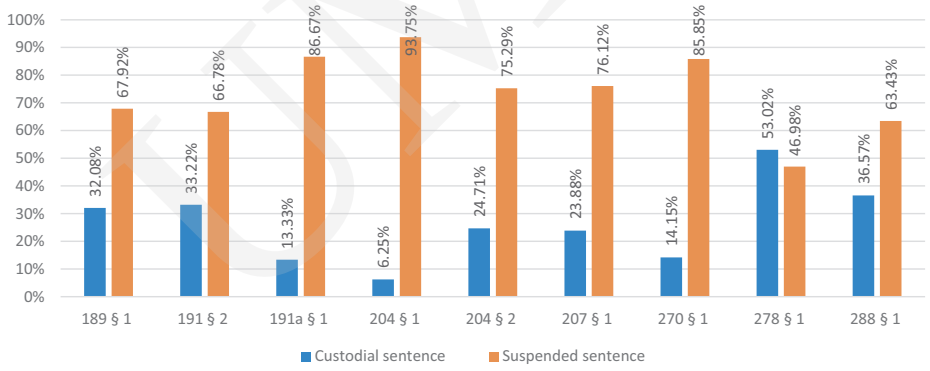

Figure 5. General structure of the punishment of deprivation of liberty imposed for offences punishable by deprivation of liberty from 3 months to 5 years – percentage relations

Source: Author's own study.

For all the offences in the analysed group, conditional suspension of deprivation of liberty is prevailing. Interestingly, the custodial sentence was most often imposed in this group on perpetrators of theft (53.02%). This punishment also constituted over one-thirds of convictions for crimes under Article 191 § 2 CC (33.22%) and under Article 288 § 1 CC (36.57%), and almost one-thirds of cases under Article 189 § 1 CC (32.08%). In total, if one compares these data with the general structure of all punishments, it turns out that the custodial deprivation of liberty concerned almost 23% of persons convicted for theft under Article 278 § 1 CC (it can be assumed that in the case of this offence the percentage of recidivists is quite high, which would translate into the highest frequency of custodial sen-

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tences). Moreover, the discussed punishment was quite often imposed for the act under Article 204 § 2 CC (procuring), while in the case of inciting another person to prostitution and facilitating another person's prostitution, custodial deprivation of liberty was applied to only less than 5% of perpetrators. Thus, it can be said that while the general tendency to choose the type of punishment indicated that the former offence is perceived as quite "grave" in this group – and it seems that the choice of this particular punishment proves this – such an assessment is subject to certain modifications already at the stage of making a decision by the court as to whether to use the possibility of conditional suspension of the imposed punishment. Therefore, in practice, offences perceived as "the most serious" in the discussed group should include theft, unlawful deprivation of liberty, procuring (over 20% of convictions were those with custodial deprivation of liberty), unlawful enforced debt collection and maltreatment (over 18% of custodial sentences). Thus, it is confirmed that the approach to perpetrators of document forgery is quite lenient: in this case, the lowest percentage of custodial sentences in the analysed group is observed (less than 4%). Details of the percentage relation of the custodial sentence to the conditionally suspended deprivation of liberty in the general structure of the imposed punishments are presented in Table 4.

Table 4. Relation of the custodial sentences to the conditionally suspended deprivation of liberty in the structure of sentences imposed for offences punishable with deprivation of liberty from 3 months to 5 years – absolute numbers and percentage relations

Offence	Convictions, total	Deprivation of liberty, custodial (absolute numbers)	%	Deprivation of liberty, conditionally suspended (absolute numbers)	%
189 § 1	159	34	21.38	72	45.28
191 § 2	535	98	18.32	197	36.82
191a § 1	86	4	4.65	26	30.23
204 § 1	41	2	4.88	30	73.17
204 § 2	100	21	21.00	64	64.00
207 § 1	10,837	2,050	18.92	6,533	60.28
270 § 1	6,625	256	3.86	1,553	23.44
278 § 1	25,022	5,745	22.96	5,090	20.34
288 § 1	6,547	784	11.97	1,360	20.77

Source: Author's own study.

Interesting conclusions may also be drawn from a detailed analysis of custodial sentences in this group of offences. General data on this subject are presented in Tables 5a and 5b and Figures 6a and 6b.

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Table 5a. Detailed structure of custodial deprivation of liberty imposed for selected offences punishable by deprivation of liberty from 3 months to 5 years – absolute numbers and percentage relations

Offence	Custodial sentences, total	1 month	%	2 months	%	3 months	%	4 to 5 months	%	6 months	%	7 to 11 months	%
189 § 1	34	0	0.00	0	0.00	0	0.00	3	8.82	2	5.88	7	20.59
191 § 2	98	0	0.00	0	0.00	1	1.02	6	6.12	23	23.47	21	21.43
191a § 1	4	0	0.00	0	0.00	0	0.00	1	25.00	1	25.00	1	25.00
204 § 1	2	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	1	50.00
204 § 2	21	0	0.00	0	0.00	0	0.00	2	9.52	0	0.00	4	19.05
207 § 1	2,050	0	0.00	0	0.00	74	3.61	237	11.56	382	18.63	597	29.12
270 § 1	256	0	0.00	0	0.00	67	26.17	70	27.34	53	20.70	34	13.28
278 § 1	5,745	13	0.23	24	0.42	595	10.36	1,167	20.31	1,415	24.63	1,451	25.26
288 § 1	784	2	0.26	2	0.26	91	11.61	207	26.40	199	25.38	165	21.05

Source: Author's own study.

Table 5b. Detailed structure of custodial deprivation of liberty imposed for selected offences punishable by deprivation of liberty from 3 months to 5 years – absolute numbers and percentage relations

Offence	1 year	%	Over 1 year to less than 2 years	%	2 years	%	Over 2 years to less than 3 years	%	3 years	%	Over 3 years to 5 years	%	Over 5 years to 8 years	%
189 § 1	12	35.29	7	20.59	3	8.82	0	0.00	0	0.00	0	0.00	0	0.00
191 § 2	21	21.43	12	12.24	5	5.10	4	4.08	1	1.02	4	4.08	0	0.00
191a § 1	1	25.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
204 § 1	1	50.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
204 § 2	5	23.81	6	28.57	2	9.52	1	4.76	1	4.76	0	0.00	0	0.00
207 § 1	411	20.05	239	11.66	60	2.93	25	1.22	18	0.88	6	0.29	1	0.05
270 § 1	20	7.81	7	2.73	2	0.78	1	0.39	0	0.00	2	0.78	0	0.00
278 § 1	633	11.02	315	5.48	87	1.51	29	0.50	9	0.16	5	0.09	2	0.03
288 § 1	56	7.14	43	5.48	12	1.53	4	0.51	2	0.26	1	0.13	0	0.00

Source: Author's own study.

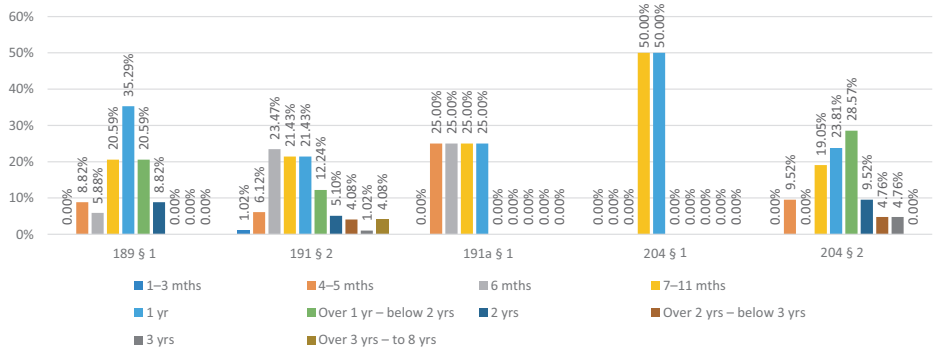

Figure 6a. Detailed structure of custodial sentences imposed for selected offences punishable by deprivation of liberty from 2 months to 5 years – percentage relations

Source: Author's own study.

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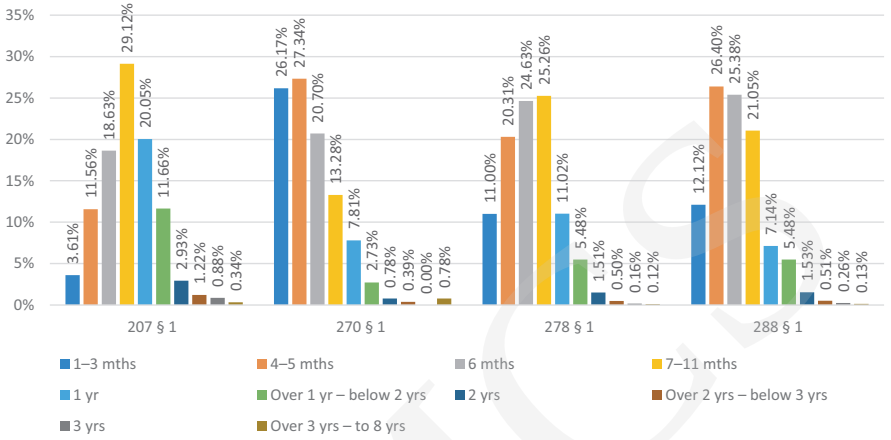

Figure 6b. Detailed structure of custodial sentences imposed for selected offences punishable by deprivation of liberty from 2 months to 5 years – percentage relations

Source: Author's own study.

As seen from the above data, whenever courts decide to impose the custodial sentence, the most severe possible punishments were being imposed relatively rarely, and only in three cases the punishments were imposed above the statutory upper limit (this concerned theft and maltreatment). What is interesting, punishments that are closer to the upper limit of the statutory punishment range or exceeding that limit were most often imposed for unlawful forced debt collection under Article 191 § 2 CC (over 4%), for document forgery (0.78%) and for maltreatment (0.29%). On the other hand, the most lenient punishments, of up to 6 months of deprivation of liberty, were predominant in the case of document forgery (74.21%), damage to someone else's property (63.91%) and theft (55.95%).

Also in this case, it is worth comparing the calculated weighted arithmetic means of the custodial sentences imposed for the offences under analysis. So, for the act under Article 189 § 1 CC it was 12.7 months, for the act under Article 191 § 2 CC –13.2 months, for the act under Article 191a § 1 CC – 7.9 months, for the act under Article 204 § 1 CC – 10.5 months, for the act under Article 204 § 2 CC – 15.6 months, for the act under Article 207 § 1 CC – 10.4 months, for the act under Article 270 § 1 CC – as little as 6.6 months, for the act under Article 278 § 1 CC – 7.9 months, and for the act under Article 288 § 1 CC – also 7.9 months.

The third group of offences subject to analysis are crimes punishable by imprisonment of up to 3 years. It would seem that due to a much lenient statutory punishment range, in this group other punishments than imprisonment will be chosen more often than in the second group, but the analysis of the structure of punishments indicates that the punishment of deprivation of liberty also plays a significant role in this group. These relationships are presented in detail in Figure 7.

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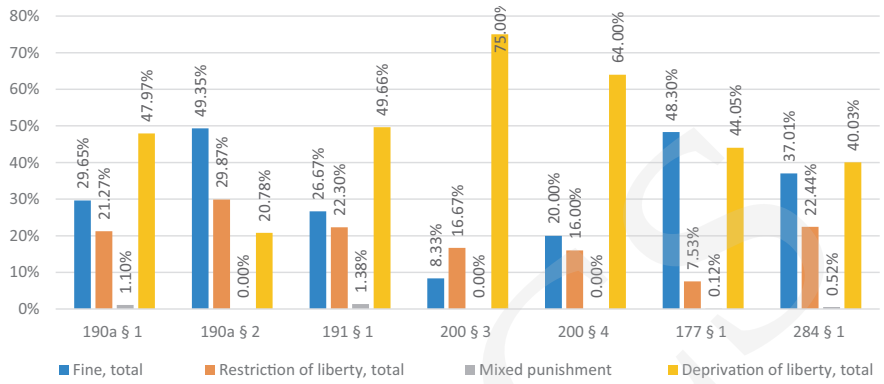

Figure 7. Structure of punishments imposed for selected offences punishable by deprivation of liberty of up to 3 years – percentage relations

Source: Author's own study.

Only for the act under Article 190a § 2 CC, the punishment of deprivation of liberty accounted for slightly more than 20% of all sentences, while in other cases its share in the structure of punishments was much greater, from 40.03% in the case of misappropriation under Article 284 § 1 CC to as much as 75% in the case of an act under Article 200 § 3 CC (making pornographic content available to a minor). Pornography-related offences belonging to this group clearly were assessed more severely by courts, also in the case of an act under Article 200 § 4 CC (presentation of performance of a sexual activity to a minor) deprivation of liberty was in practice a prevailing criminal-law response (64% of sentences). On the other hand, if one looks at the relationship between the custodial and conditionally suspended sentences, their mutual relationship in the analysed group does not differ significantly from the relations characteristic for group II offences which are subject to clearly stricter sanctions. This is shown in Table 2 and more graphically in Figure 8.

The custodial sentence was most often imposed for the offence of forcing to a particular behaviour pursuant to Article 191 § 1 CC (33.33%), it constituted one-fourth of the punishments for the offence under Article 200 § 4 CC, while its role was marginal in the sentencing for the offence under Article 190a § 2 CC (so it can be concluded that the courts consider misappropriation of someone else's identity as clearly less socially harmful than other acts in this group), as well as in the case of the only unintentional crime in this group, i.e. traffic accident under Article 177 § 1 CC. On the other hand, if one examines the position of the custodial and conditionally suspended sentences in the overall structure of punishments, it turns out that the highest percentage of custodial sentences is to be observed in the case of crimes against sexual freedom and decency under Article 200 § 3 CC and Article 200 § 4 CC (12.5% and 16% respectively) and in the case of the offence of forcing another person to a specific behaviour under Article 191 § 1 CC (16.55%).

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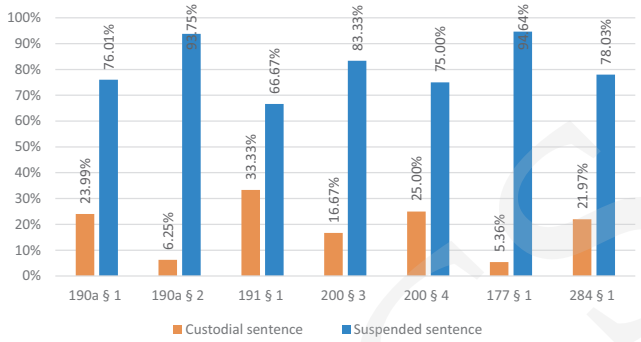

Figure 8. General structure of the punishment of deprivation of liberty imposed for offences punishable by deprivation of liberty of up to 3 years – percentage relations

Source: Author's own study.

More than one-tenth of convictions (11.51%) for the offence of stalking was also constituted by the custodial deprivation of liberty, while in all other cases the percentage did not exceed 10, and in the case of the act under Article 190a § 2 it was only 1.3% (so convictions for this act were even more lenient than those for causing an accident, in whose case custodial sentences constituted 2.36% of all convictions). Therefore, only taking into account the custodial and conditionally suspended sentences in the structure of punishments makes it possible to conclude that the offences in the discussed group met with a clearly more lenient response than those from group II. Table 6 presents these relations in detail.

Table 6. Relation of custodial sentences to conditionally suspended sentences in the structure of punishments for offences punishable with deprivation of liberty of up to 3 years – absolute numbers and percentage relationships

Offence	Convictions, total	Deprivation of liberty, custodial (absolute numbers)	%	Deprivation of liberty, conditionally suspended (absolute numbers)	%
190a § 1	1,086	125	11.51	396	36.46
190a § 2	77	1	1.30	15	19.48
191 § 1	435	72	16.55	144	33.10
200 § 3	24	3	12.50	15	62.50
200 § 4	25	4	16.00	12	48.00
177 § 1	4,236	100	2.36	1,766	41.69
284 § 1	762	67	8.79	238	31.23

Source: Author's own study.

It is also worth examining the detailed structure of the custodial sentences for the group of offences in question to determine the actual severity of the imposed sanction. These data are presented in detail in Tables 7a and 7b, and the relationships between individual sentence types are presented in a illustrative way in Figure 9 (the

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chart does not include convictions for the act under Article 190a § 2 CC, because only one perpetrator was subject to the custodial sentence).

Table 7a. Detailed structure of custodial deprivation of liberty imposed for selected offences punishable by deprivation of liberty of up to 3 years – absolute numbers and percentage relations

Offence	Custodial sentences, total	1 month	%	2 months	%	3 months	%	4 to 5 months	%	6 months	%	7 to 11 months	%
190a § 1	125	0	0	3	2.40	16	12.80	38	30.40	24	19.20	28	22.40
190a § 2	1	0	0	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
191 § 1	72	0	0	1	1.39	9	12.50	17	23.61	19	26.39	13	18.06
200 § 3	3	0	0	0	0.00	0	0.00	0	0.00	0	0.00	1	33.33
200 § 4	4	0	0	0	0.00	0	0.00	0	0.00	0	0.00	1	25.00
177 § 1	100	0	0	3	3.00	4	4.00	10	10.00	10	10.00	23	23.00
284 § 1	67	0	0	5	7.46	12	17.91	8	11.94	19	28.36	12	17.91

Source: Author's own study.

Table 7b. Detailed structure of custodial deprivation of liberty imposed for selected offences punishable by deprivation of liberty of up to 3 years – absolute numbers and percentage relations

Offence	1 year	%	Over 1 year to less than 2 years	%	2 years	%	Over 2 years to less than 3 years	%	3 years	%	Over 3 years to 5 years	%	Over 5 years to 8 years	%
190a § 1	9	7.20	5	4.00	1	0.80	1	0.80	0	0	0	0.00	0	0.00
190a § 2	0	0.00	0	0.00	0	0.00	0	0.00	0	0	0	0.00	0	0.00
191 § 1	7	9.72	5	6.94	1	1.39	0	0.00	0	0	0	0.00	0	0.00
200 § 3	1	33.33	1	33.33	0	0.00	0	0.00	0	0	0	0.00	0	0.00
200 § 4	1	25.00	1	25.00	1	25.00	0	0.00	0	0	0	0.00	0	0.00
177 § 1	22	22.00	18	18.00	6	6.00	2	2.00	1	1	1	1.00	0	0.00
284 § 1	5	7.46	2	2.99	0	0.00	1	1.49	0	0	2	2.99	1	1.49

Source: Author's own study.

According to the above-shown data, the custodial sentences for acts in this group were characterised by considerable leniency. For most offences in this group, more than 60% of the sentences did not exceed 6 months of deprivation of liberty – punishments within those limits were imposed for offences under Article 190a § 1 CC (64.8%), Article 191 § 1 CC (63.89%) and Article 284 § 1 CC (65.67%), also the only custodial sentence imposed for the act under Article 190a § 2 CC fit in this range. Such low punishments were not imposed at all for offences under Article

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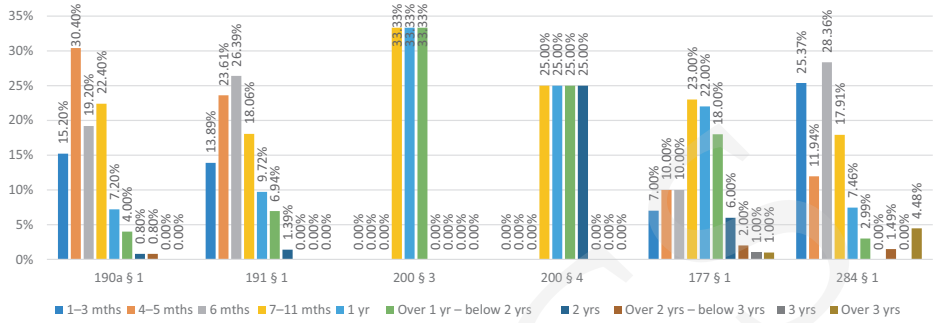

Figure 9. Detailed structure of custodial deprivation of liberty imposed for selected offences punishable by deprivation of liberty of up to 3 years – percentage relations

Source: Author's own study.

200 § 3 and 4 CC (the perpetrators of these offences were sentenced to the most severe punishments in this group) and quite rarely for causing an accident under Article 177 § 1 CC (27%). The fact of only sporadic sentencing to more severe punishments is also noteworthy: punishments of more than 2 years of imprisonment were imposed only for the offence of stalking (0.8%), traffic accident[15] (2%) and misappropriation (4.48%).

Also in this case, the general trends are reflected by the calculation of the arithmetic weighted mean of the custodial sentences imposed for the misdemeanours analysed. Therefore, for the act under Article 190a § 1 CC the average punishment was 7 months, for the act under Article 190a § 2 CC – 4.5 months, for the act under Article 191 § 1 CC – 7.4 months, for the act under Article 200 § 3 CC – 13 months, for the act under Article 200 § 4 CC – 15.7 months, for the act under Article 177 § 1 CC – 12 months, and for the act under Article 284 § 1 CC – 9 months.

It seems that one may derive from the analysis of the above data some cautious conclusions. First, the detailed examination of the structure of the punishments imposed for offences in all the groups under analysis confirms the presumption proposed at the outset that the assessment of those acts by courts in practice will show clear discrepancies with their assessment by the legislature. Acts punishable by identical sanctions are not treated similarly in practice, and especially where the number of such convictions is higher, it is possible to talk about the occurrence of certain clear trends in the case-law. In the group of offences punishable by a punishment of deprivation of liberty for 2 to 12 years, such a discrepancy between the

[15] In the case of this offence, it is rather astonishing that one of the sentences was above the statutory range of punishment. Based on available data, it is difficult to conclude whether it was due to an error in placing the case of conviction under Article 178 CC in the statistics under Article 177 CC or the court indeed wrongly imposed too high punishment.

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generalised assessment by the legislature and the judicial assessment is particularly well reflected in the case of the act under Article 156 § 3 CC, which in practice is punished far more severely than other acts in this group. This probably stems from the fact that it is an offence aggravated by its result (the death of the victim), and thus the courts perceive this act as more "serious" than the others in the same group. In the other two groups, the assessment of particular types of offences by the courts seems to be mirrored by two elements: the choice of the type of punishment – the clear predominance of the punishment of deprivation of liberty as such may seemingly be read as considering individual cases as more serious than others, while the actual severity of punishments results from applying a custodial sentence. The analysis of the latter clearly points to the degree of the actual severity of the punishments imposed, including, in general, the existence of significant discrepancies resulting from the courts' perception of the gravity of particular offences. Undoubtedly, these issues deserve further in-depth research, but the results already obtained make it possible to conclude that within the existing statutory punishment ranges, the courts have their own "weights" attached to individual acts, which are much more diverse than it could be deduced from the sanctions devised by the legislature itself. In other words: while from the perspective of the criminal statute, e.g. the basic type of rape, the basic type of robbery and causing serious bodily injury constitute (or rather constituted, before the increase in the sanctions for the latter act) acts of generalised equal social harmfulness, the courts attribute to them a slightly different gravity, which is clearly reflected in the general statistics relating to the imposition of punishment for these offences.

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STRESZCZENIE

Artykuł zawiera analizę danych statystycznych odnoszących się do wymiaru kary za przestępstwa zagrożone takimi samymi sankcjami. Wybrano trzy grupy takich przestępstw: przestępstwa zagrożone karą od 2 do 12 lat pozbawienia wolności (grupa I), przestępstwa zagrożone karą pozbawienia wolności od 3 miesięcy do 5 lat (grupa II) oraz przestępstwa zagrożone karą pozbawienia wolności od miesiąca do 3 lat (grupa III). Większość przestępstw należała do grupy czynów przeciwko wolności (w tym wolności seksualnej), a pozostałe wybrane przestępstwa przeciwko innym dobrom chronionym należały do tych najczęściej występujących w praktyce (dane statystyczne w ich przypadku były zatem wysoce reprezentatywne). Analizie poddano dane za rok 2016. Założenie wyjściowe było takie, że przestępstwa zagrożone identycznymi sankcjami w Kodeksie karnym (co oznacza, że ustawodawca przypisuje im taką samą hipotetyczną społeczną szkodliwość) nie są traktowane w zbliżony sposób w praktyce oraz że we wszystkich badanych grupach wystąpią przestępstwa karane wyraźnie łagodniej i wyraźniej surowiej. Szczegółowa analiza zebranych danych statystycznych potwierdziła tę hipotezę, jak również znany już od dawna fakt, że generalnie sądy mają tendencję do orzekania kar bliżej ich dolnego ustawowego zagrożenia.

Słowa kluczowe: ustawowy wymiar kary; sędziowski wymiar kary

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