

Criminal Justice in the Nordic Region: Alternatives to Imprisonment

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Abstract— The Nordic region is found to have a particular different approach when it comes to their criminal justice system, in particular with their punishment model. The Nordic criminal justice system of the region plays an important role in effective handling of offenders from prosecution to the sentencing patterns for individual offenders. This paper will look in to the punishment model available for each of the countries in the Nordic region as alternatives to the punishment of imprisonment. The findings of this paper will show the Nordic approach in handling criminals in terms of alternative forms of punishments other than imprisonment. Even though the evidence of this paper is based on the Nordic region, the findings of this paper will be beneficial for countries looking to reform their criminal justice systems to more humane, particularly in the scope of alternative punishments instead of imprisonment as a general form of punishment.

Keywords— Penal Law, Alternative Punishments, Imprisonment, Nordic, Human Rights.

I. INTRODUCTION

The Nordic region is referred to the north most European countries which consists of 5 countries. Namely Norway, Sweden, Denmark, Finland and Iceland; out of which, apart from Denmark, Finland and Sweden the other two countries are not part of the European Union (Nordic Council of Ministers, 2018). The Nordic countries are interconnected through the Nordic Council, where parliamentarians from all the member countries work together as an interparliamentary union; allowing the region to have a somewhat an integrated decision making body for the whole region. The mandate of the council includes defense, cultural and legal aspects of the member states (Thomas, 1996).

II. CRIMINAL JUSTICE SYSTEM

The Nordic regions' criminal justice system is handled by constitutionally independent judiciary and a prosecution service, both yielding constitutional authority and flexibility in their mandates. The judicial system is based on a three-tier system with the Supreme Court as the apex court of appeal. The courts are immune from political or other external influences and functions independently (Lappi-Seppala, 2011) separate from the government administration. Appointees for judgeship and prosecutors are selected from career civil servants instead of relying on political appointments (Lappi-Seppala, 2011), effectively reducing the influences on the judiciary from political populist views.

The judges also yield the complete and absolute authority in deciding a punishment for a particular offense instead of having the prosecution seeking a particular punishment (Lappi-Seppala, 2011). In other terms, the prosecution is not expected to request the punishment for any offense brought to the court.

The prosecution service in the Nordic region differs from country to country. In Norway and Denmark, the prosecution services are within the police despite being run separately and from an independent department within the force. However in Sweden and Finland the prosecution is considered entirely independent from the police service (Lappi-Seppala, 2011). The prosecution has the authority either to charge individuals for offenses or to decide on not bringing any criminal charges in spite of having enough credible evidence. The prosecution is also allowed to impose fines as a punishment, without having to recourse to courts (Lappi-Seppala, 2011).

In particular types of cases such as, when a minor is involved in a crime, or when the prosecutor feels if the cost and circumstances of prosecuting an offender outweighs the purpose and importance of a particular case, the Danish law allows the prosecution to waive charging an individual despite having evidence. In such cases, the prosecutor metes out a conditional punishment for the offender such as, but not limited to, mandating rehabilitative treatment for addiction or taking up rehabilitation etc. (Danish Administration of Justice Act, Section 722-723). This feature is also seen in the Norway where the prosecutor is allowed not to proceed with prosecution for a probationary duration of 2 years or not exceeding the extent of the duration of a possible punishment if the offender was tried in court. The Norwegian model also allows the prosecution to set any number of conditions in deciding a waiver of prosecution (The Criminal Procedure Act, 1981 No. 25 Norway, Section 69). It has to be noted that in some types of crimes, if the prosecution decides not to bring charges, then the victim is allowed to press charges against the offender (Lappi-Seppala, 2011).

Despite the civil nature of compensation for the victim, the criminal cases are conducted in a dual process in a parallel setting where the compensatory element for the victim and the penal punishment for offender are handled in liaison in criminal case verdicts. The compensation verdict is however, not considered as a criminal punishment (Lappi-Seppala, 2011). This form of conduct in criminal cases is considered as a mean of mitigation when the courts to consider a punishment for the offender (Lappi-Seppala, 2011).

II. FINDINGS AND DISCUSSION

The Nordic region is seen to have adopted a principle form of punishment on a utilitarian basis as opposed to the widely adopted method of retributory punishment for most criminal offenses. Retributory punishments were more reserved and applicable in most of the Nordic penal systems for crimes of violent nature (Jacobsen, 2015). This pattern of inclination away from retributory punishments can be very vividly seen from the penal codes of Norway and Finland. Where the drafters of the Finnish Penal code in 1972 had a refined view that it was vital to have a rational penal system by favouring on the issue of prevention of crime rather than prioritising a punishment for crimes. The Finnish penal experience lead to the notion that when dealing with individual criminal cases, considerations such as social, crime control impact were to be assessed and accounted. Thus leading to a more lenient punishment method as well as getting the benefit of reduction in overall crime in Finland. The benefits of this method by far exceeded the expectations from an individual level to that of the society as a whole (Chamberlain, 2017). The 'Nordic Model' was further inferred in the Norwegian Criminal Code 2005, where the drafters highlighted on the significance of prioritising deterrence at its core value. The adoption of 'Harm Principle' which is about individualising punishment based on the offence that lead to the harm inflicted; prevented the social onset of criminalising an action of an individual just because the society felt-so, rather the criminality of an action should solely be derived from the merits and circumstances surrounding the action and should only be justifiable with compelling reasons, there would not be any form of penal action (Jacobsen, 2015).

A. SUSPENDED AND CONDITIONAL SENTANCES

Suspended and Conditional Sentences are given to offenders who are given an imprisonment sentence. All 5 penal systems of the Nordic region has provisions for suspended sentences and conditional. For instance in Denmark, suspended sentence are given to offenders who the court finds it unnecessary to impose a sentence

of imprisonment (The Criminal Code, Denmark, Chapter 7 Article 56(1)) as long as the individual agrees to adhere to conditions set by the court. The maximum duration of the suspended sentence in Denmark is for a period of 5 years (The Criminal Code, Denmark, Chapter 7 Article 56(3)). Should the court decides that an offender is to serve both a prison sentence as well as a suspended sentence under certain set conditions, then in this instance the Danish Criminal Code imposes a limit on the term of the prison sentence, which is not to exceed 6 months (The Criminal Code, Denmark, Chapter 7 Article 58(1)). The conditions of the suspended sentence could range from having to take up psychiatric treatment, rehabilitative treatments, restriction of movement to particular places, restriction or limitations on consumption of alcohol, taking up education or work etc. The Norwegian method of suspended sentences are also quite the same as in Denmark as it also does not allow a maximum limit of the sentence to exceed 5 years in special cases (The Penal Code of Norway, Chapter 6, Section 34). However, the normal standard maximum duration in Norway is for 2 years. The other salient difference in the Norway regarding this punishment is that the condition that it requires the individual to agree to not to reoffend during the term of the suspended sentence. In Norway, the offender is allowed to contest the terms of the conditional sentence and give his say prior to the judge issuing the verdict (The Penal Code of Norway, Chapter 6 Section 34).

In Finland a suspended sentence is part of a conditional prison sentence, where the maximum duration is 3 years and the minimum duration for such a sentence is 1 year (The Criminal Code, Finland [520/2001], Section 3[1]). The case is a little different in Sweden where suspended sentences are issued for offenses where the punishment of a fine is considered inadequate (The Swedish Penal Code [1988:942], Chapter 27 Section 1). In Sweden a suspended sentence can only be imposed on the offender if they consent to adhere the conditions of the sentence (The Swedish Penal Code [1988:942], Chapter 27 Section 2[a]). In Sweden the Prosecutor has the mandate to impose additional conditions, or give warnings, or proceed with further action if the offender fails to comply with such a sentence.

According to the General Penal Code of Iceland, conditional sentences are considered for cases that are not deemed to be tried in the public interest (The General Penal Code of Iceland, Chapter VI Article 56). Such as in the event that the prosecution finds that imprisonment for that particular case will not produce results that a conditional sentence otherwise would bring (The

General Penal Code of Iceland, Chapter VI Article 56) in a better manner. The maximum duration for a suspended sentence is set to 5 years and the minimum limit is not to be less than 1 year (The General Penal Code of Iceland, Chapter VI Article 57). The other notable thing from the Penal Code of Iceland regarding the suspended sentence is that it sets the condition on how a suspended sentence will be levied; giving 2 main possibilities, by which issuing a suspended sentence in lieu of the original punishment for that offense by either delaying the original punishment verdict or by delaying the execution of the original punishment (The General Penal Code of Iceland, Chapter VI Article 57). Thus, in the instance where the offender violates the conditions of the suspended sentence then the prosecution has the right to request the court to consider proceedings by reopening the case or by implementing the initial punishment.

B. COMMUNITY SERVICE

Community Service sentences are a form of alternative punishment where the offender is allowed to work in public and avoid observing a potential imprisonment sentence. All countries in the Nordic region has adopted community sentences in one form or another, with some differences. In Denmark, the community service is considered as a condition to a suspended sentence rather than an objective punishment.

As a result should the offender fails to perform the condition of community service, they may have to face immediate imprisonment (The Criminal Code, Denmark, Chapter 8 Article 66). A maximum duration of 240 hours is allowed for unpaid community service condition with a minimum of 30 hours (The Criminal Code, Denmark, Chapter 8 Article 62,63). Just like Denmark the maximum duration for a community service in Finland is also 240 hours of unpaid work however, the minimum is 14 hours which has to be performed under supervision (Agency, 2018). In Finland any sentence of just imprisonment with a duration not exceeding 8 months is required to be a community service sentence.

The only barring factor for the conversion of the imprisonment sentence to a community service punishment is that in the instance where the offender refuses to the conditions of community service or if the offender is incapable of performing community service work (The Criminal Code, Finland [401/2015], Section 11(1,2)). Also in Finland primacy is given to community service punishment over other types of punishments, when it comes to offenses committed by individuals below the age of 21 (The Criminal Code, Finland [401/2015], Section 11(3)).

In Sweden the community service is also considered as a conditional punishment where it is usually meted along with day fines, probation or different forms of imprisonment. Unless the offender refuses to perform the community service this punishment can be levied as a condition in accordance with the Swedish penal code (The Swedish Penal Code [1998:604], Chapter 27 Section 2a). In Sweden the maximum duration is 240 hours of unpaid work and the minimum is 40 hours (The Swedish Penal Code [1998:604], Chapter 27 Section 2a). The Icelandic approach is different as the community service is not explicitly mentioned as a punishment in its penal code, however the punishment is levied for unconditional imprisonment sentences that are not longer than 9 months, by the Prison and Probation Administration. It has to be noted that in Iceland, the punishment of community service may be rendered upon a person who is unable to pay fines that exceed ISK 60,000 (Kristoffersen, 2013).

Unlike most countries in the Nordic, Norway considers community service as an alternative punishment that can be given instead of a punishment of imprisonment which is not more than 1 year or instead of a non-custodial punishment. However, it has to be noted that the Norwegian courts are expected to attach a punishment of imprisonment should the individual defaults the conditions of the community service (The Penal Code of Norway, Chapter 8. Section 50). The community service punishment is also expected to have other conditions such as restrictions of movement, taking rehabilitation or other forms of treatment etc. The maximum duration for community service in Norway is set at 420 hours and a minimum set at 30 hours (The Penal Code of Norway, Chapter 8. Section 50[a,b]).

C. FINES

The most common type of punishment meted in the Nordic region are Fines (Lappi-Seppala, 2011). Fines are preferred and are given particular importance over any other form of punishment in the criminal justice system of this region. In Norway the punishment of fines are considered as a general punishment and is allowed to be given independently or along with any other conditional form of punishment (The Penal Code of Norway, Chapter 9. Section 53). Before issuing a punishment of a fine, the Norwegian courts will pronounce an imprisonment punishment in the event of the offender not paying the fine. The duration of imprisonment sentence will not be longer than 120 days (The Penal Code of Norway, Chapter 9. Section 55). The Norwegian law allows the punishment of fines to be imposed as suspended sentences with a probationary period of around 2 years (The Penal Code of Norway,

Chapter 9. Section 53); in the instance of having the offender agree to certain set conditions by the court such as not reoffending during the duration of the condition term. However, in Finland the punishment of fines are more pronounced as in the value is calculated as per the offenders daily wage. This is set by the law to maintain proportionality among offenders from different backgrounds and social status. It is usually set at 1/60th (The Criminal Code, Finland [808/2007], Section 2(2)) of the individuals average monthly income. The Finnish Criminal Code puts a limit on the maximum amount of day-fines to 120 days and the minimum at 1 day (The Criminal Code, Finland [550/1990], Section 2a(1)). Just like Norway the punishment of fines are issued along with a imprisonment sentence should the offender defaults in payment. Also it has to be noted that in Finland, a type of fine called ‘summary fines’ are imposed. Summary fines are a fixed amount and is considered as a less severe punishment than day-fines as defaulting this type of fines would not lead to imprisonment (The Criminal Code, Finland [550/1990], Section 8(2)).

The punishment of fines in Sweden is slightly different from that of other Nordic countries, as there are 3 types of fines allowed under the Swedish Penal system. These are day-fines, summary fines and standardised fines. The Standardised fines are considered on the circumstances of that particular case. There is no maximum limit for a standardised fine, however a minimum amount is set a SKR100 (The Swedish Penal Code, Chapter 25, Section 8). Just like in Finland, the day-fines are calculated based on the financial status of the individual. There is a limit affixed to the maximum and minimum amount of day fines set to SKR1000 at maximum and SKR30 at minimum (The Swedish Penal Code, Chapter 25, Section 2). The other type of fines known as summary fines in Sweden are calculated at a maximum of SKR2000 and a minimum of SKR100 (The Swedish Penal Code, Chapter 25, Section 3). In Sweden if a person who is sentenced to pay a fine is found to be in default, then the court is allowed to issue an imprisonment sentence not exceeding 3 months and not below 14 days (The Swedish Penal Code, Chapter 25, Section 8).

Fines are either independent punishments or can be considered as a supplementary punishment under Danish law (The Criminal Code, Denmark, Chapter 6 Section 33), as it is normally issued along with another type of punishment. The calculation method for day-fines in Denmark is the same as in Finland and Sweden as individual circumstances are considered prior to issuing of an amount to fine. The courts also issue an

alternative punishment when meting the punishment of a fine, by usually pronouncing an imprisonment sentence in the event of default payment. The imprisonment sentence is generally calculated at 1 defaulted fine is to 1 day of imprisonment. Unless under a special circumstance where the punishment of imprisonment for the default of a fine payment would not exceed 60 days under Danish law (The Criminal Code, Denmark, Chapter 6 Section 54). The minimum duration is set to 2 days of imprisonment. The punishment of fines is more or less the same under the General Penal Code of Iceland, as fines are considered as punishments issued along with an imprisonment sentence issued for defaulted payment (The General Penal Code of Iceland, Chapter V Article 49). The imprisonment term given for a default fine payment is set for a maximum of 1 year and a minimum duration of 2 days (The General Penal Code of Iceland, Chapter V Article 54).

D. IMPRISONMENT AS A GENERAL FORM OF PUNISHMENT

Imprisonment is seen as a method of punishment that allows for putting an effective stop to the offender from further reoffending by incapacitating the individual (Cavadino M, 2006). However, when considering the individual penal codes of all the countries of the region, it cannot be said that the punishment of imprisonment is just given as a form of a punishment which isolates the offender from rest of the society. The prisons in the Nordic region are known to play a major role in reforming the offender through rehabilitation and other forms of beneficial opportunities such as vocational training, education and healthcare. After a 40-year study on the prison system in the Nordic region, Jousten mentions that the society of the region values freedom more, as a result money is considered a means of determining punishment. This is the result why we are seeing the decrease in imprisonment punishments and the increment in fines imposed (Jousten, 1991).

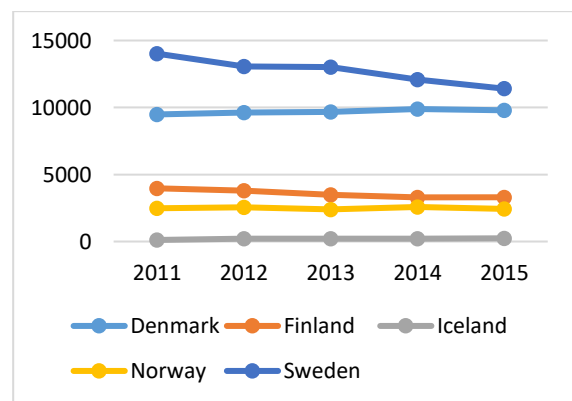


Figure 1: Offenders on Probation
Source: adapted from (Kristoffersen, 2016)

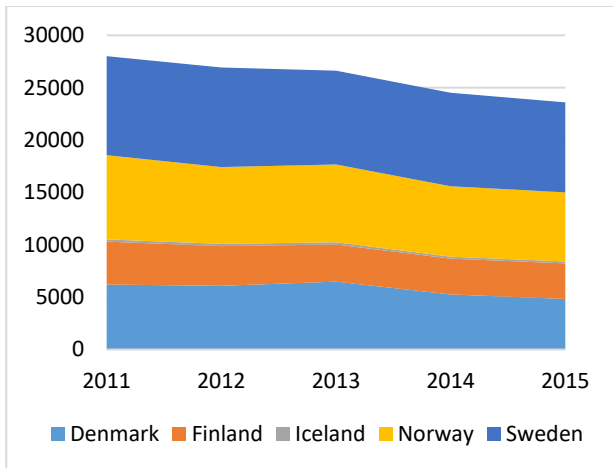


Figure 2: Admission of New Prisoners
Source: adapted from (Kristoffersen, 2016)

It is true that imprisonment as a punishment is still present in every criminal justice system of the Nordic region. However, It is evident from the above data that those individuals sentenced for imprisonment is on average around 50% less than those who are under probationary punishments in the Nordic region.

Despite all the criminal justice systems in the Nordic having imprisonment as a form of legal punishment with different durations ranging from a maximum of 21 years for life in and 15 years in Denmark, Sweden and Finland for life sentences. However, There are a lot of safety mechanisms instilled in the penal systems which disapproves imposition of the punishment of imprisonment if there is even the slightest possible alternative which would fit the crime. This can be vividly seen especially from the Swedish Criminal Code where the courts are urged to consider a less severe punishment other than imprisonment should there be any mitigating circumstances surrounding the case (Swedish Penal Code, Chapter 30, Section 4), or the individual who committed the crime, based on the effect on his livelihood, his education, employment etc (Swedish Penal Code, Chapter 29, Section 5). The Finnish Criminal Code goes even further by not pronouncing a punishment of imprisonment at a 'prison'; but rather just a punishment of imprisonment (The Criminal Code, Finland [613/1974], Section 3(1)). This allows the authorities to house convicts in rehabilitation or other progressive institutions based on the convict's situation.

CONCLUSION

When it comes to the preservation of basic human rights and dignity in terms of criminal punishments, it is evident that the Nordic region is championing in this field. Despite different countries in the region having different forms of punishments, there is a mutually

agreed principle adopted universally in the region which admonishes the imposition of imprisonment as a general form of punishment. The preference for the application of alternative forms of punishment allows the offenders to stay part of the society in a dignified manner whilst carrying out the terms of their sentences. The Nordic region has preferred freedom and liberty over confinement and isolation. These have chosen monetary forms of punishments over imprisonment as a form of general punishment. Thus proving to be one of the most successful and models of lenient yet effective method of penal policy enforced in today's world.

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