

3 CONVICTION STATISTICS

3.A GENERAL COMMENTS

3.A.1 Introduction

1. The tables in this chapter concern persons who have been convicted, i.e. found guilty, according to law, of having committed a criminal offence. Information is presented on the type of offence (1990-1996); the sex, age, and nationality of the offender (1995); the type of sanctions imposed as well as the duration of unsuspended custodial sentences (1995). Twenty-seven countries submitted data on sanctions/measures and 32 on convicted persons. Some countries (e.g. Netherlands) have recently changed their method of data collection causing difficulties with the completion of statistical series; others (e.g. Ireland) have not yet set up such a collection system. An obvious problem in this chapter is related to the major differences in criminal procedures of those countries surveyed. Therefore, although attempts have been made to compare data on sanctions/measures imposed, for some countries this has proved impossible.

3.A.2 Offence definitions

2. It is important to remember in comparisons with police statistics that offence definitions used in this chapter are not always identical to those referred to for crimes recorded by the police. Offence definitions adopted by the various police systems present some uniformity. However, definitions used for recorded sanctions/measures - based on the judicial system of each country and entirely dependent on the offence definition provided in national penal statutes can vary substantially. For this reason, the breakdown of data in this chapter does not follow those for earlier chapters. Thus "burglary", "car theft" and "serious drug trafficking" were not separately identified for many countries but were merely included in the general categories "theft" or "drugs offences". A few countries reported differences between the definitions of offences used by the courts in the conviction statistics and those used by police in the recorded crime statistics. This affected several countries, for example, "robbery" where street robberies (i.e. muggings) was included in the theft category in the Portuguese, Swiss and Danish statistics. Greece, also reported that "theft of a motor vehicle" only included those thefts where there was an intention to use the vehicle (whereas if the intention was to keep the vehicle, the offence was recorded as "theft").

3.A.3 Definition of convictions

3. In the preparation of the questionnaire the group attempted to provide definitions for "convictions" of offenders and subsequent "disposals" compatible between most criminal justice systems. The need for such advice was created by the fact that a) offenders in certain jurisdictions are not always convicted by a court and b) sanctions/measures may be imposed

by another authority (Police or Prosecutor). Therefore the suggested definition of “persons convicted” included sanctions/measures imposed by a prosecutor based on an admission of guilt by the defendant (e.g. Strafbefehl in Germany). However, this definition did not include cases where a) a prosecutor imposed sanctions/measures not based on the admission of guilt by the defendant, b) persons cautioned by police and c) where other State authorities imposed a sanction/measure. The high number of offenders (mainly juveniles) who admit their guilt but were subsequently cautioned by the police in England & Wales were therefore excluded. Some countries (e.g. Austria) found that they were not able to supply data on convictions from the prosecutor.

3.A.4 Minimum age of conviction

4. Information collected on convictions and sanctions/measures imposed will be affected by the minimum age at which a conviction can be imposed. For the 33 supplying this information 12 had a minimum age of 14 years, 9 countries between 15 and 17 while 3 countries the age was below 10 years. However although this age will be important many countries (e.g. Scotland) have systems for dealing with minors which exist in parallel to a court system, diverting most minors from the formal criminal justice system.

3.A.5 Validation checks

5. Once the term “convictions” had been defined, it was expected that the number of convictions should be equal to the number of persons on whom sanction/measures had been imposed, either by the courts only or by both courts and prosecutors. Data checks were carried out in order to ensure that, for the information included in the relevant tables, each offender would be counted only once for each offence, even if several sanctions/measures were imposed with respect to that particular offence. Despite the efforts of the group, data for certain countries still showed significant differences between the number of convictions and sanctions/measures; although these may be partly explained by the different counting units used for convictions and sanctions/measures these discrepancies were not fully explained. Countries where these differences were over 10% were excluded from the comparative tables.

6. Initial data checks also showed differences in several countries between the number of persons sentenced to a custodial sentence and the information received on the sentence lengths of such sentences. This reflected three points: a) the inclusion of suspended sentences within the sentence length tables, b) differences in the statistical collection system used and c) variations following appeal in the sentence imposed whose length was taken into consideration. Again, differences of up to 10% were accepted but the data was excluded for those countries where the variation was larger.

3.A.6 Exclusion of tables

7. In line with the general rule adopted that tables would not be included where information was only available on less than ten countries, the number of tables included in this chapter was reduced. Only 4 countries could provide data on “bicycle theft”, 5 on “domestic burglary” and 8 on “serious drug trafficking” convictions. Even fewer countries were in a position to provide relevant sanctions/measures data on such offences. Although these tables

were excluded from our analysis, such offences were still included in sub-totals, for example, domestic burglary in “theft” and serious drug trafficking in “drug trafficking”.

3.A.7 Methodology

8. This section focuses on the information provided by countries in the process of clarifying the meaning of data included in statistical tables. Therefore, it should be read in conjunction with the tables following this section.

a) Statistical rules

9. All countries (except Turkey and Latvia) applied some form of written rules to regulate the method used to collect data on both convictions and sanctions/measures. This included some form of “principal offence rule” so that an offender convicted of more than one offence at the same time will only be counted once in the statistics. While most countries count the most serious offence, from their comments and descriptions it was not clear for many countries whether they determined the seriousness of the offence based upon a) the nature of the offence or b) the punishment imposed. If more than one perpetrator participated in the commission of an offence, then each perpetrator was counted separately in all countries.

10. There were two different procedures identified with respect to the point at which statistics on court decisions were recorded. Eleven countries replied that information related to the position before the convicted person made an appeal on either the verdict or the sentence. For the remaining 21 information was collected only after any such appeal was completed (Table 3.C.1.1). Variations in the point at which data was collected may have affected the value of indicators in the relevant tables.

11. When an offender is convicted for more than one offence in a year, the majority of countries indicated that each conviction would be counted separately. However, Albania, Moldova, Poland and Slovenia indicated that such convictions would only be counted once in their statistics (Table 3.C.1.1). Assuming that the question has been correctly answered, this suggests that there will be a lower conviction rate in such countries since the same person cannot be counted more than once each year.

12. Political changes that took place in the early 1990's in eastern Europe have led to revisions or enactment of new Criminal/Penal Codes or Codes of Procedure. Hence, no meaningful trends can be identified for such countries over the period 1990-96. Moreover, Germany reported that data for 1990-94 covered the former West Germany and West Berlin, while 1995 figures covered the former West Germany and the whole of Berlin. For certain other countries (e.g. Belgium in 1993 and Sweden in 1995) changes were reported in the methods of producing criminal statistics.

b) Provision of data on sanctions/measures

13. Many countries had difficulties in providing detailed information on the sanctions/measures given for a particular offence. This resulted from data being collected from three different statistical recording sources (i.e. prosecution, courts and authorities recording non-custodial sanctions). Thus while in some countries (e.g. Bulgaria, Ireland, Italy, Luxembourg, Malta, Netherlands, Spain) data was available for particular sanctions (i.e. fines or non-custodial or unsuspended sanctions/measures) there was no possibility of calculating the total number of sanctions/measures which had been imposed. In Bulgaria, for example,

although figures were available for individual sanctions (unsuspended and suspended) it was not possible to calculate the total number of sanctions. For Italy information was only provided for unsuspended custody. In Germany, totals did not correspond to the sum of the individual sanctions probably due to the imposition of multiple sanctions.

14. It is possible to classify sanctions/measures in all countries into four categories: fines, non-custodial sentences, suspended custodial sentences and unsuspended custodial sentences. However, the actual form of each type of disposal, and consequently the components of each category differ substantially from country to country. Few countries have the same non-custodial options e.g. community service was available in only 18 countries. Only 8 countries replied that all options (i.e. community service orders, probation orders, non-custodial measures according to juvenile law and suspending proceedings under certain conditions after conviction) were possible (Albania, England & Wales, Lithuania, Moldova, Northern Ireland, Scotland, Slovenia and Spain). In Switzerland short custodial sentences are executed as community sanctions (Table 3.C.1.1).

15. Suspended custodial sentences normally included some form of supervised release both for adults and juveniles but excluded partially suspended custodial sentences, which are normally included under unsuspended custodial sentences. Northern Ireland and Romania included no form of supervised release and Greece imposed supervised release for juveniles only. Latvia and Turkey indicated that they had no form of either suspended or partially suspended custodial sentence. Unsuspended custodial sentence takes on different meanings from country to country. Five countries (Belgium, Finland, Norway, Scotland and Switzerland) excluded juvenile custody and 11 excluded treatment in a custodial psychiatric or detoxification treatment. Only a small number of countries were in a position to report the average length of unsuspended sentence. For many countries sentence lengths could not be divided up into the time periods required by the questionnaire. For this reason sentence length categories in the tables were much broader than for the questionnaire.

3.A.8 Commentary on data collected

16. The tables included show a detailed breakdown of convictions and sanctions/measures imposed between 1990 and 1996. A full analysis of the data would require more detailed research in each country. The commentary below looks at four offences (Homicide (completed), Rape, Total thefts and Total drugs) drawing on the definitional differences as well as comparison with the trends in the number of recorded offences. These offences were chosen in order to enable as many countries to be included with definitions relatively similar. Completed homicides were selected over total homicides since the closeness between these two numbers for some countries suggest differences in definitions not apparent in the information collected. Unlike police statistics level comparisons between countries are possible and important as they measure differences at a common point in the criminal justice process.

3.A.9 Homicides (excluding attempts) (Tables 3.B.1.2, 3.B.2, 3.B.3.2, 3.B.4.2)

Convictions

17. For the period 1990-96 information was available for convictions for homicides completed (i.e. excluding attempts) in 19 countries. Over this period the rate per head of

population for completed homicide convictions rose in all countries except Austria, Croatia, Cyprus, Finland, Ireland and Portugal. Increases of more than 70% were recorded in Estonia, Scotland and Russia. Comparisons with recorded crime statistics show no clear relationship between the trends in convictions and recorded offences. In Bulgaria recorded completed homicides rose by 95% between 1990 and 1996 while convictions for completed homicides rose by 40%. In Northern Ireland an 8% increase in convictions occurred at a time in which recorded crime fell by 53%. The reasons include the following:

- Variations in clear-up rates;
- Variations in patterns of homicide;
- The number of convictions per offence;
- Cases being only initially recorded in court statistics not in police statistics;
- Delays in cases coming to court.

18. In absolute terms the highest number of convictions for completed homicides in 1996 were recorded in Russia (12 per 100000) and Estonia (9). The lowest rates in Austria (0.4) and Ireland (0.1). For most countries under 6% of convictions for completed homicides in 1995 were for minors (aged under 18) although this rose in Hungary (8%), Ireland (10%) and Scotland (11%). Such differences could not be explained simply by the minimum age of conviction. Although in most countries few convictions in 1995 were for women, the exceptions were Austria (11%), Denmark (17%) and Hungary (20%).

Sanctions/Measures imposed

19. Information on the sanctions/measures imposed for completed homicides was only available for 13 countries. Imprisonment was imposed for over 90% of convictions in all countries in 1995 except England & Wales where 14% received a non-custodial sentence. The figure for England & Wales reflects convictions for manslaughter due to diminished responsibility where a restriction order would be imposed under the Mental Health Act. In Portugal 8% of convictions were suspended. Such suspended custodial sentences may be incidents of domestic violence where the offender has acted in self-defence without complete justification. For those countries who provided data only Russia imposed the death penalty (140 offenders or 0.8% of all sanctions imposed). The length of imprisonment imposed varied. For some countries life sentences are mandatory (United Kingdom) for murder although not for manslaughter or infanticide. For countries with no or few life sentences the average length imposed for determinate sentences was just over 13 years in Romania, 12 years in Portugal, 10 years Bulgaria, 9 years Switzerland and Hungary. At the end of 1995 the death penalty was still in existence and recorded as being imposed for homicide in 4 countries (Albania, Latvia, Lithuania and Russia).

3.A.10 Rape (Tables 3.B.1.4, 3.B.2, 3.B.3.4, 3.B.4.4)

Convictions

20. Most countries were able to supply information for convictions for rape although not for every year. 27 countries provided data for 1990 and 1996 on rape convictions per head of population, showing rises in 9 countries over this period and falls in 15. Poland showed the highest increase followed by Estonia. In contrast sharp falls occurred in Croatia, Northern Ireland, Norway and Portugal. Although the relationship with recorded rapes is not exact trends were similar, for example in Estonia.

21. In absolute the highest rates for rape convictions per head of population in 1996 were in Turkey (8 per 100000), Russia (6), Lithuania (5), and Estonia (3) with the lowest rates in Ireland (0.2) and Croatia (0.4). However almost all countries statistics on rape will be affected by the extent to which the victim report these offences to the police. As expected countries showed a low proportion of women convicted for this offence in 1995 (the exception was Northern Ireland 8%), however many countries indicated that up to one fifth of convictions were on minors. In Estonia, Germany and Sweden about 30% of those convicted are aliens and in Switzerland about one half.

Sanctions and measures

22. Although imprisonment is the main sanction for this offence in all countries, several countries also use suspended custodial sentences and non-custodial sanctions. In 1995 about 30% of those convicted received suspended custodial sentences in the Austria, Czech Republic, “the former Yugoslav Republic of Macedonia”, Finland, Germany, Moldova, Poland, Slovenia and Switzerland. The average sentence length was about 5 years in most countries although in some countries life sentences may be given (e.g. England & Wales) or other indeterminate sentences. Lower average sentence lengths were found in Norway and Sweden (3 years).

3.A.11 Total thefts (Tables 3.B.1.7, 3.B.2, 3.B.3.7, 3.B.4.7)

Convictions

23. Although countries vary widely in the definition for component parts of total theft (e.g. theft of a motor vehicle, burglary) the definition of total theft is more uniform. However the exclusion of small value thefts by 8 countries and receiving/handling stolen goods by 12 may affect comparisons particularly in the types of sanctions/measures imposed.

24. For some eastern European countries the increase in the number of convictions per head of population for total thefts may reflect a parallel increase in recorded thefts. Excluding these countries from any comparisons indicates a drop in convictions over the period 1990-96 for the majority of other countries. The main exception was a sharp rise in Portugal.

25. In absolute terms the highest rates in 1996 for theft convictions were found in Denmark (600 per 100000 population) and Finland (630 in 1995) followed by Scotland (420), Russia (325) and Sweden (310). Rates below 50 were recorded in Albania, Greece (in 1995) and Poland. Information on the definition of offences does not clearly indicate a reason for this wide variation and further research is clearly needed to look into these differences. In Austria, Denmark, Sweden and Germany one quarter or more of convictions in 1995 were women, and over 20% were minors in Croatia, Estonia, Greece, Hungary, Ireland, Slovenia, Switzerland, “the former Yugoslav Republic of Macedonia” and England & Wales. One half or over of convictions were for aliens in Estonia and Switzerland.

Sanctions and measures

26. There was a wide variation in the types of sanctions/measures imposed with 60% of those convicted sentenced to unsuspended custody in Albania and Greece. In contrast many other countries theft convictions mainly resulted in a fine, for example Austria (60%), Denmark (73%), Finland (87%) and Germany (60%). For the majority sentences imposed were normally short (less than 6 months). The main exception was Portugal with only 15% under 12 months and some eastern European countries (for example, Moldova 7%, Latvia and

Lithuania 8%). In France 2 offenders were sentenced to life for theft, 1 in England & Wales and 2 in Lithuania, mainly for burglary offences.

3.A.12 Drugs offences (total) (Tables 3.B.1.10, 3.B.2, 3.B.3.10, 3.B.4.10)

Convictions

28 Due to differences in enforcement policy there are wide variations between countries in the type of offences for which drug convictions are given. For some countries drug convictions will mainly mean drug trafficking whereas in others simple drugs possession will be included. The information collected shows changes over time in the extent to which drugs offences are criminalised and in the extent to which drugs have extended into the eastern European countries in the 1990's. Hungary, Poland and Russia have all seen sharp rises in drug convictions (about 500% from 1990 to 1995) although similar rises were also measured in Northern Ireland. Denmark and Slovenia were virtually unchanged over this period (although Slovenia rose sharply in 1996).

29. In absolute terms the highest levels of convictions for drugs offences were recorded in Denmark (160 per 100000 population) and Scotland (120). Rates of fewer than 10 were recorded in most eastern European countries. For other countries the lowest levels were recorded in Turkey (6), Spain (20 in 1995) and Cyprus (13 in 1995). Although in most countries about 10% and under were minors, slightly higher figures were recorded in the Czech Republic (15%) and Estonia (13%). In most countries fewer than 15% were women, the main exceptions was Poland (50%).

Sanctions and measures

30. The variation in the types of offences included within this category is reflected in differences in the severity of sentences imposed. In "the former Yugoslav Republic of Macedonia" 96% of those convicted for drug offences were sentenced to imprisonment while in Poland it was 5%. There were wide spread differences between countries in the sanctions/measures imposed, with the fine the most frequently used sentence in some countries, non-custodial sentences in others and suspended sentences in others. In addition there was often a high use of imprisonment as mentioned above. It is clear that although such statistics provide an interesting comparison of the offences included and the countries view on their severity they cannot themselves provide the only basis of comparison. Similarly wide variations in the sentence lengths for custodial sanctions given with Greece recording 11 life sentences to Norway where 67% of sentences were less than 6 months and Denmark (70%).