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CONDITIONAL SENTENCING AS AN ALTERNATIVE TO IMPRISONMENT

CENTRE FOR PUBLIC POLICY PROVIDUS

UDK 343.8
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This study has been prepared as part of the Centre for Public Policy PROVIDUS Public Policy Fellowship Program, which is financed by the Soros Foundation – Latvia, the Open Society Institute Justice Initiative Program (*JI*), and the Local Government and Public Service Reform Initiative (*LGI*).

The author takes full responsibility for accuracy of the data.
The study is available in Latvian and English on the Internet: www.politika.lv or www.policy.lv

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ISBN 9984–751–25–2

EXECUTIVE SUMMARY

One common characteristic of societies in transition is an increase in crime. It seems that the freedom to choose one's economic career and political leaders is accompanied by the freedom to make bad choices about one's personal behavior. Thirty-nine thousand crimes were reported in Latvia in 1995, but this figure rose to 44,000 in 1999 and to 49,000 in 2002, an increase of 26% over 1995. On the other hand, the criminal investigative functions have been professionalized, and the proportion of solved crimes has increased from 35% in 1995 to 45% in 2002. In 2002, over 22,000 crimes were solved and brought to trial, representing an increase of 61% over 1995.

The problem is that the increase in police professionalism has not been matched by an increase in the capacity to manage those convicted of crimes. No prisons have been built in the last ten years. In fact, the number of persons actually sent to prison in 2002 declined from the number in 1993. In essence: the number of crimes has increased. The proportion of crimes solved has increased. But the number of persons sent to prison has decreased. What has happened to those convicted of crimes who do not go to prison? This study will answer that question and discuss the implications.

Because of the shortage of prison places, the tendency in Latvia has been to give convicted criminals conditional sentences. The number of conditional sentences increased from 4,192 in 1993 to 6,780 in 2002, an increase of 62%. The problem in Latvia is that conditional sentencing is associated with renewed criminal behavior. The number of crimes committed by persons with criminal records increased from 8,000 in 1998 to 9,600 in 2002, about 19%. The number of persons on probation who have committed new crimes increased from 344 in 1994 to 1,353 in 2001, an increase of about 300%. More importantly, the types of crimes that are committed include violence to both people and property. In spite of this, the number of criminals on probation who have had their conditional sentences revoked actually declined from 43 in 1999 to 39 in 2002. The public expects to be safe from crime, and quite rightly expects that convicted criminals will not be allowed to commit new crimes. Clearly there is something wrong with the system of conditional sentencing in Latvia. But what can be done to improve it at an affordable cost?

This study reviews the rationales for conditional sentencing and the views on conditional sentencing of judges and police. It analyzes the laws and regulations on conditional sentencing in Latvia and in other countries; it explores the data on conditional sentencing and the various benefits and drawbacks of conditional sentencing.

It was found that:

- conditional sentences are frequently not seen as a form of punishment, but as an acquittal;
- supervision of persons serving conditional sentences is not effective;
- jurists have different ways to interpret the legal basis for the application of conditional sentences.

The study makes four recommendations:

- amend legislation that covers conditional sentencing so that there is a common understanding of its purposes and conditions;
- formulate guidelines on conditional sentencing;
- reform the mechanism for supervision of probationers, anticipating not only control of offenders, but also their rehabilitation;
- increase the discretionary powers of the court to individualize conditional sentences, allowing courts to impose conditions which are not necessarily set out in the Criminal Law, but which can have a correctional effect on the offender.

The study concludes that if these four recommendations are followed the increase in crime can be effectively managed without raising the risk to the public and without requiring significant new resources to expand the prison system over its current capacity.

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Abbreviations

AOC – Administrative Offenses Code
CC – Criminal Code
CL – Criminal Law
CPC – Criminal Procedures Code
IC – Information Center
PIECJ – Police Inspectorate for the Execution of Court Judgments
RSFSR – Russian Soviet Federative Socialist Republic
UN – United Nations

Example of a court judgment which, in the opinion of the author, is incorrect or questionable.

Example of a court judgment which, in the opinion of the author, fully complies with the principles of conditional sentencing.

INTRODUCTION

Since the earliest of times, "crime" and "punishment" have been inseparable concepts. Disregard for the rules accepted by a society or outright violation of these rules have always been followed by public condemnation and restrictions on the rights of the offender. In the old days, society used punishment to discipline an offender, to take revenge for the damage incurred, to intimidate both the offender and others.

Today, when applying criminal justice the state seeks not only to punish the individual, but also to prevent further criminal offences and help the offender to return to a normal and law-abiding life within the community. Today, criminal punishment is not so much the **result** of a criminal offence as the **means** by which the state attempts to change the attitude of the offender towards social values and prevent further offences.

Modern societies are not interested in applying severe criminal punishment – **the only consideration is the effect of the punishment**. More important than the type of punishment chosen by the court is the way in which execution of the sentence is organized and its effect on the future behavior of the offender. As before, the court can still place restrictions on the freedom of the criminal. However, isolation of the offender does not guarantee that, having served the sentence, this person will not commit further criminal offenses. Understanding that imprisonment is not a panacea that will help to significantly reduce crime rates, all countries, including Latvia, are trying to find other instruments for fighting and preventing crime.

One possible way of solving the problem is to apply punishment that does not involve imprisonment, for example, community service or payment of fines.[1] A certain part of society does not support this approach, feeling that alternative forms of punishment are

[1] European Council Recommendation No. R (96) 8 invites Member States, among them Latvia, to implement a coherent and rational criminal policy and to encourage the application of alternative forms of punishment to imprisonment. See: Europe in Time of Change: Crime Policy and Criminal Law. Recommendation No. R (96) 8 and explanatory memorandum and report on responses to developments in the volume and structure of crime in Europe in a time of change, p. 18.

too mild and actually absolve the offender from responsibility. Nevertheless, the formula "Prison is the Most Appropriate Place for Every Offender" is not only outdated, it is not in the public interest either. From a public safety point of view, more important than restricting the basic rights of an offender as much as possible is making sure that, after serving the sentence, the individual does not commit further crimes. Frequently, it would be wiser to do this by means of alternative forms of punishment. Criminal justice must seek the proper balance between the rights of the offender, the rights of the victim, public safety concerns and the prevention of crime.[2]

The pluses and minuses of imprisonment

+	—
▪ **isolation of a criminal restricts opportunities for committing further offenses;**	▪ **the high cost of prison maintenance;**
▪ **deters others from committing offenses.**	▪ **deterioration of the financial situation and welfare of the offender's family;**
	▪ **offender's loss of social contacts;**
	▪ **criminal experience gained in contacts with other prisoners;**
	▪ **the high cost of an offender's rehabilitation.**

With the application of an alternative form of punishment, the criminal offence receives a negative verdict from the state, the offender is subjected to certain restrictions and is required to fulfil certain conditions. At the same time, the offender remains in the accustomed environment and is not imprisoned together with others who have violated the law. An individual who has been sentenced to an alternative form of punishment can maintain his job and social contacts, and the government is not required to spend money on providing for the individual.

Nevertheless, when applying alternative forms of punishment it is important to make sure that:

- the individual understands that he or she has received criminal punishment;
- the individual has a great desire to avoid repeated punishment;
- other members of society understand that the offender has received the appropriate criminal punishment.

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[2] The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) are aimed at achieving this goal (adopted at the 68th plenary meeting, December 14, 1990). See Article 1.4.

This means that our criminal justice system must resolve a fairly complicated problem – **while humanizing the criminal punishment system, it must also ensure effective prevention of crime**.

One of the legal mechanisms for resolving the problem is the application of conditional sentences. These give the offender a choice: to observe the requirements of the law, fulfil the conditions imposed by the court and legally avoid imprisonment or, if the offender is unable to fulfil the conditions imposed by the court, to serve the sentence. In this way, by giving an offender a conditional sentence the state can:

- ensure a correctional effect with a minimum of resources, i.e., by not applying severe criminal sanctions;
- develop the offender's sense of responsibility by leaving it up to the offender to determine whether the sentence will have to be served or not.

A conditional sentence is a sentence that does not take effect on the condition that the offender does not commit a new crime, does not violate public order and fulfils the conditions imposed by the court during a period of probation.

In fact, it means that a person has been found guilty of committing a crime, but is not required to serve the sentence pronounced by the court. Unfortunately, this is often understood to mean that a conditional sentence is not real punishment, and that the offender is freed from liability for the crime that he or she has committed. Conditional sentences often create confusion and lead to the assumption that in Latvia it is possible to commit criminal offenses for which, even in cases where the identity of the offender has been established and guilt proved, the court will abstain from punishment by pronouncing a conditional sentence.

It is clear that not everyone can be expected to understand the legal nuances of conditional sentences. This is not possible and it is not necessary. However, public misconceptions about the principle of conditional sentences raise the level of legal nihilism and increase distrust of courts and other law enforcement institutions.

Without being sufficiently informed about the concept behind conditional sentences, a law-abiding citizen, upon learning about a conditional sentence, will often see this as a sign of corruption and as a reason for renewed disillusionment in our legal system.

Others see this as a green light for violation of the law, because a conditional sentence is not something to be feared.

Education of the public about conditional sentences is extremely important and could raise the level of legal culture in a society. However, it is much more important to make

sure that this form of punishment really does become an effective crime-fighting instrument. Each person, even one who has violated the law, is a member of society, has lived and will continue to live among other people. The Criminal Law allows the isolation of an individual from society; but after a certain length of time, the offender will return to society. If the punishment that has been endured has not changed the offender's attitude to the offense, there is a fairly great chance that this person will eventually commit further crimes.

Reforming an offender is in the interests of society. It is important not only for humane reasons, but also for purely pragmatic ones – the former offender continues to live among other people, and any one of these people can become a victim of this person's next unlawful activity.

There are approximately 10,000 people with conditional sentences living among us, communicating with other people. We shop in the same stores, we use the same public transportation, we walk the same streets. One in every 200 people in Latvia over the age of 14 has received a conditional sentence. It is clear that Latvia's population has the right to demand that the state not only give persons who have violated the law conditional sentences, but that it also supervise such people, help them and make sure that their behavior is corrected.

Our criminal justice system does not see conditional sentences as an independent measure of punishment, but as an alternative to punishment. Despite this, we must admit that conditional sentences have all the earmarks of criminal punishment:

- they are imposed on persons who have committed a crime;
- they are applied with the intention of reforming a person and preventing further violations of the law by such person (special prevention);
- they have repressive character – an offender's behavior is subject to various restrictions;
- during the period of probation, the offender is considered as having a criminal record;
- they are applied in order to influence the behavior of other persons and to demonstrate that those who commit criminal offenses are punished (general prevention).

A conditional sentence is the **mildest form of criminal punishment** since it replaces a more severe conviction – imprisonment, community service or payment of a fine – demanding from the offender the observation of public order and abstinence from repeated offences.

A conditional sentence is a demonstration of **trust in the offender**, an expression of the hope that, even without having to actually serve the sentence, the offender will reconsider what he has done and will not commit new crimes.

A conditional sentence is an **alternative to imprisonment**, which applies the principle of economy to criminal sanctions.

However, despite the progressive character of conditional sentences, practice shows that at present it is not a panacea for crime prevention because:

- the offender, the victim and the public often do not consider a conditional sentence to be punishment;
- the public often has a reserved or even negative attitude to conditional sentences;
- persons who receive conditional sentences often commit new crimes during and following the probation period;
- there is no effective control and supervision of probationers;
- there is no agreement among law enforcement officials on how to interpret the provisions of law that lay down the rules for conditional sentences;
- not all provisions of law are sufficiently precise, and this encourages different approaches to the application of conditional sentences;
- conditional sentences are not being developed as an institution of law, although there are opportunities for improvement.

I. CRIME IN LATVIA

In the past five years, from 1998 to 2002, a total of 231,253 criminal offenses were registered in Latvia. In 2000, the number of registered crimes surpassed 50,000. In 2001, the number was 51,082; in 2002, 49,329.[3]

Each year, more than 10,000 persons are convicted in Latvia. In a ten-year period, from 1993 to 2002, a total of 118,951 persons were found guilty of committing criminal offenses.

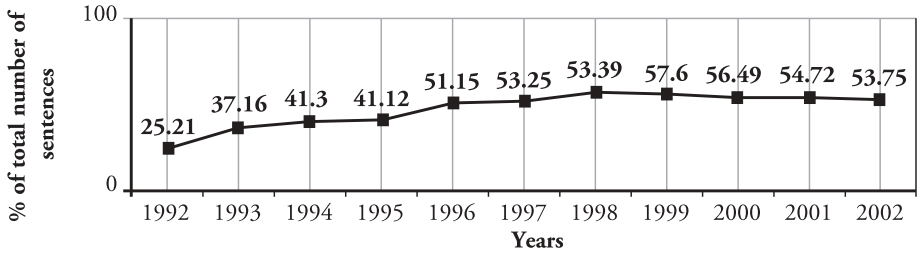
Table 1. Crimes in Latvia in 1995–2002

Year	1995	1996	1997	1998	1999	2000	2001	2002
Registered crimes	39,141	38,205	36,865	36,674	43,969	50,199	51,082	49,329
Solved crimes	13,810	16,872	18,940	20,766	20,666	21,541	23,225	22,328
% of total number of crimes	35.3	44.2	51.4	56.6	47.0	42.9	45.5	45.3

Although our society associates criminal punishment primarily with prison sentences, in the ten-year period from 1993 to 2002, only 31,196 persons or 26.23% of those convicted were actually sent to prison. The remainder received sentences that do not involve serving time in prison. 60,055 persons or 50.49% of those convicted received conditional sentences. In 1992, 25.21% received conditional sentences, but in 2002 the numbers had risen to 53.57% of all those who were convicted for criminal offenses. In the last seven years, more than half of those convicted in Latvia have received conditional sentences.

[3] Data provided by the Ministry of the Interior's Information Center. http://www.ic.iem.gov.lv/statistika/12.php (last accessed on April 2, 2003).

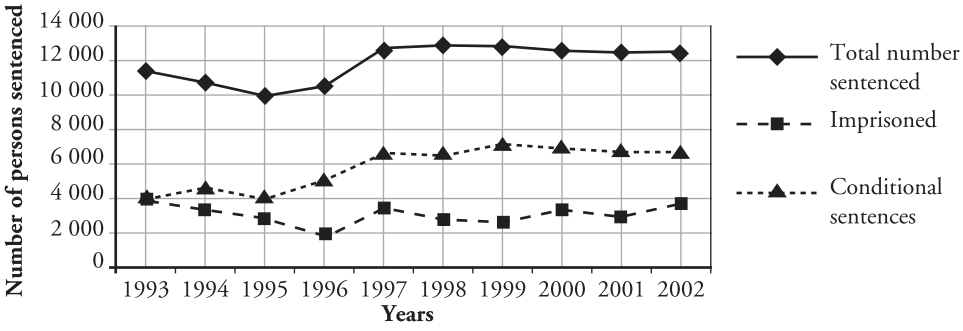
Figure 1. Conditional sentences in 1992–2002



In 2002, Latvian courts gave 6,780 offenders conditional sentences. Of these offenders, 1,117 were juveniles.

Table 2. Number of persons sentenced in 1993–2002[4]

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total number of persons sentenced	11,280	10,877	9,797	10,428	12,772	12,952	12,862	12,689	12,679	12,615
Imprisoned	4,162	3,225	2,839	2,195	3,238	2,930	2,865	3,305	2,886	3,551
% of total number sentenced	36.9	29.65	28.99	21.05	25.35	22.61	22.27	26.05	22.76	28.15
Conditionally sentenced	4,192	4,490	4,029	5,334	6,801	6,915	7,408	7,168	6,938	6,780
% of total number sentenced	37.16	41.3	41.12	51.15	53.25	53.39	57.6	56.49	54.72	53.75



[4] Data provided by the Ministry of Justice.

Criminal recidivism in Latvia

Although criminal punishment is the means by which the state seeks to reform the criminal offender, it is no secret that punishment will not guarantee rehabilitation of the offender or prevent further offenses. The figures on recidivism indicate that measures taken to influence the behavior of criminals are not always effective. Despite being tried and convicted, there is always a certain percentage of offenders who will not be deterred from committing further criminal offenses.

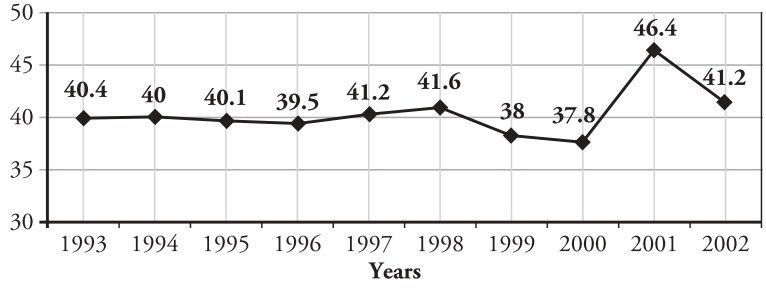
According to the Ministry of the Interior's Information Center, in 2000, criminal charges were brought against 1,673 persons who already had a criminal record. In 2001, the number was 1,814.

Table 3. Persons with criminal records who have committed further crimes[5]

Year	1994	1995	1996	1997	1998	1999	2000	2001
Number of persons	1,297	1,308	1,661	1,842	1,903	1,721	1,673	1,814

Data obtained from Ministry of Interior Newsletter No. 1 on crime in Latvia and achievements of Ministry of the Interior institutions in the years 1993–2002 indicate that a fairly large number of those charged with violating the law have been previously convicted for criminal offenses.[6]

Figure 2. Percentages of offenders with criminal records



[5] Data provided the Ministry of the Interior's Information Center.

[6] Ministry of the Interior Newsletter No. 1 on crime in Latvia and achievements of Ministry of the Interior institutions in the years 1993–2002, p. 131.

The Ministry of the Interior's Information Center also has data on the number of criminal offenses committed by persons with criminal records. This number is several times higher than the number of persons with previous convictions. The explanation is that one person is often charged with committing several offenses.

Table 4. Crimes committed by persons with criminal records[7]

Year	1998	1999	2000	2001	2002
Total number of crimes committed by persons with criminal records	8,094	6,163	6,636	8,387	9,643

However, according to the Ministry of Justice, in the year 2001, 3,560 convicted offenders (28.08%) had criminal records. In 2000, the number was 3,524 (27.77%).

Table 5. Recidivism in Latvia in 1995–2002[8]

Year	1995	1996	1997	1998	1999	2000	2001	2002
Total number of persons convicted	9,797	10,428	12,772	12,952	12,862	12,689	12,679	12,615
Persons with a criminal record	No data available	2,272	3,037	2,962	3,122	3,524	3,560	3,552
% of total number convicted	No data available	21.79	23.78	22.87	24.27	27.77	28.08	28.16

A comparison of the information provided by the Ministry of the Interior and the Ministry of Justice on recidivism in the five-year period from 1997 to 2000 reveals huge discrepancies. During this period, criminal charges were brought against **8,953** persons with criminal records, but **16,205** persons who had repeatedly committed criminal offenses were sentenced.

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7 Data provided by the Ministry of the Interior. http://www.ic.iem.gov.lv (last accessed on December 11, 2002); Newsletter on crime in Latvia in 2001. Riga (2001); Newsletter No. 1 on crime in Latvia and achievements of Ministry of the Interior institutions in 2003. Riga (2003).

8 Data provided by the Ministry of Justice.

Keeping in mind that:

- the Ministry of Justice keeps data on persons who have been convicted, but the Ministry of the Interior, on persons whose cases have gone to trial following pre-trial investigation;
- pre-trial investigation is often completed long before the court's judgment enters into effect, and not all persons who are charged with committing an offense are also sentenced,

it is clear that there will be discrepancies between the Ministry of the Interior's figures and those of the Ministry of Justice. However, it is difficult to explain why the number of persons who have been repeatedly convicted is almost twice as high as the number of persons against whom charges have been brought.

Statistics on recidivism among probationers

There are no statistics in Latvia on persons who have once received conditional sentences and have later again committed criminal offenses.

Pursuant to Section 63, Paragraph 3, Clause 1 of the Criminal Law, a person who has not committed any further offenses during the probation period does not have a criminal record. This means that if such person again violates the Criminal Law, the person is considered to be a first offender. In other words, the court must ignore the fact that a previous crime has been committed (although it can be taken into consideration when assessing the personality of the offender). From a criminal justice point of view, once the probation period has expired, the fact that a person has once received a conditional sentence does not affect the qualification and assessment of a new crime. For this reason, there are no statistics on previous conditional sentences of offenders, which makes it extremely difficult to analyze the efficiency of conditional sentencing.

Judges and police officials say that, as far as they can tell, the rate of recidivism is fairly high. The judges who were questioned claimed that the rate of recidivism among probationers was very high, some even put it at 80–90%. Others feel that this estimate is too high.

The Ministry of the Interior keeps statistics on conditionally sentenced offenders who are charged with new crimes during their probation period. Such information is compiled by the ministry's Information Center.

Table 6. Probationers who have committed further crimes[9]

Year	1994	1995	1996	1997	1998	1999	2000	2001
Number of offenders	344	334	435	451	438	897	1,175	1,353

The Police Inspectorate for the Execution of Court Judgements (PIECJ), on the other hand, has data of the number of probationers deleted from PIECJ records after having committed further offenses and being sent to prison.

Table 7. PIECJ records on probationers who have committed further crimes[10]

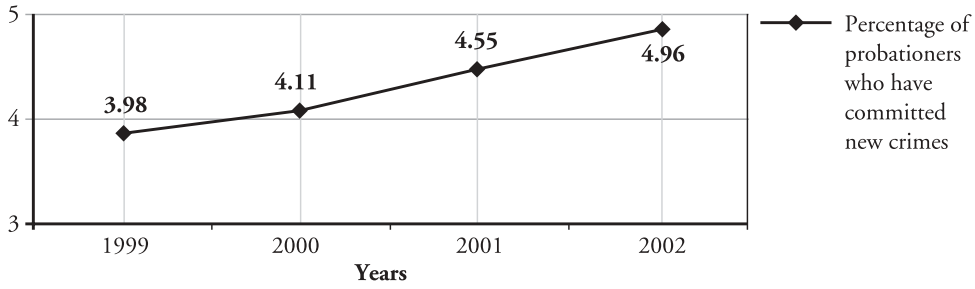
Year	1999	2000	2001	2002
1. Probationers registered with PIECJ at the start of the year	12,512	11,373	10,085	9,052
2. Registered during the year	7,457	8,956	6,842	6,579
3. Number of probationers in one year (row 3 = row 1+ row 2)	19,969	20,329	16,927	15,631
4. Deleted from PIECJ records during the year	8,596	10,244	7,964	7,481
4.1 incl. probationers sentenced for new criminal offenses	368	397	358	377
5. Probationers charged with new criminal offenses	427	438	413	398
6. Number of persons deleted from PIECJ records after being sentenced for or charged with new criminal offenses	795	835	771	775
7. % of total number of persons registered	3.98	4.11	4.55	4.96

It is clear that there will be a discrepancy between these figures inasmuch as the Ministry of the Interior's Information Center has information about persons who have not yet been sentenced, but PIECJ is no longer responsible for keeping track of persons whose conditional sentence has been revoked and who are serving their sentence in prison.

[9] Data provided by the Ministry of the Interior's Information Center.

[10] Data provided by PIECJ.

Figure 3. Recidivism among probationers



II. CONDITIONAL SENTENCING IN LATVIA IN THE 20th CENTURY

Penal Law (1933–1940, 1941–1944)

The Penal Law that was adopted in 1933 stipulated that if an offender was sentenced to imprisonment, custodial arrest, payment of a fine or committal to a correctional institution, but there were reasonable grounds to expect that even if not ordered to serve the sentence the offender would behave faultlessly, the court could suspend the sentence.[11]

Like the current law, the Penal Law demanded that the decision to conditionally suspend a sentence be taken before the judgement of the court entered into effect. In addition to the power of the Latvian President to pardon criminals, case law in the First Republic also anticipated the power of the President to discharge offenders under the conditions set out in the law.

In accordance with Section 22 of the Penal Law, conditional sentences could not be applied to offenders sentenced to imprisonment if such offenders had previously received a prison sentence or a heavier sentence and if less than five years had elapsed between the end of the prison sentence and the new crime, or less than ten years between the heavier sentence and the crime.

The court was required to explain in its judgement the circumstances that had prompted it to give the offender a conditional sentence and the reasons for imposing certain conditions.

The Penal Law did not actually use the term "period of probation," but the lawmakers anticipated this, calling it "the period of suspended punishment." Section 23 of the Penal Law stipulated that the sentence and the subsequent divestment of rights anticipated by the law could be conditionally suspended for a period of five years for offenders sentenced to a prison term and three years for offenders with a lighter

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[11] Penal Law, p. 12.

sentence. During this time, the court could place the offender under special supervision and impose special conditions.

The court was required to consider revoking suspension of the sentence and ordering the offender to serve the sentence if it was discovered that during the period in question the offender had:

- committed a further serious crime or a crime for which the offender had not yet been convicted, either before or after the conditional sentence was imposed;
- been previously convicted, and the period of time set out in Section 22, Clause 4 had not yet elapsed between the first offense and the offense for which the offender was given a conditionally suspended sentence;
- demonstrated willful misconduct, endangered personal or public safety and public order;
- failed to comply with the court's supervision order or to fulfil the conditions imposed by the court.

While the court had not revoked its decision to suspend the sentence, the offender was not considered to have been convicted and was not subjected to the divestment of rights anticipated by the law. But the offender was considered to be absolutely discharged and the sentence extinguished only after the end of the specified period, unless it was discovered that the offender had committed another serious crime before or after receiving the conditional sentence.

RSFSR 1926 Criminal Code (1940–1941; 1944–1961)

The rules for conditional sentencing were set out in Chapter VI of the Criminal Code (CC). These allowed the court to conditionally impose a prison or community service sentence. The law did not specify the maximum term of punishment to which a conditional sentence could be applied.

When making a judgement about imposing a conditional sentence, the court was required to set a period of probation, which could be no less than one year and no more than 10 years. The sentence did not have to be served unless the offender committed another, no less serious crime during the period of probation.

Annotations to Section 53 of the RSFSR Criminal Code anticipated that confiscation of money or property, which was added to the prison or community service sentence as an additional punitive measure, was generally to be carried out regardless of whether

or not the sentence was conditional. CC Section 53 stipulated that a conditional sentence precluded divestment of rights.[12]

Criminal Code of Latvia (1961–1999)

The Criminal Code (CC) of Latvia that was in force from 1961 to 1999 provided for both conditional sentences (CC Section 42) and suspended sentences (CC Section 43[1]). An analogue system existed in all republics of the USSR.[13]

The court could choose to impose a conditional sentence only in cases where the offender was sentenced to a term of imprisonment. Before imposing a conditional sentence, the court was required to:

- consider the circumstances in the case;
- assess the personality of the offender;
- be convinced that imprisoning the offender would serve no purpose.

The court could impose a conditional sentence that would not send the offender to prison and demand that the offender:

- abstain from committing further crimes;
- justify the trust placed in the offender with exemplary behavior and honest work.

When imposing a conditional sentence, the court could set a probation period of one to five years. Together with a conditional prison sentence, the court could impose additional punitive measures, with the exception of deportation, banishment and confiscation of property.

After considering the circumstances in the case, the personality of the offender, and eventual applications from public organizations or colleagues at the offender's place of employment asking the court to impose a conditional sentence, the court could place the offender under the supervision and guidance of these public organizations or colleagues. In cases where no such request had been received, the court could charge a consenting team of colleagues or an individual with supervision and guidance of the offender during the period of probation.

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[12] RSFSR Criminal Code. Riga (1940), p. 21.

[13] Курс уголовного права. Общая часть. Учение о наказании. Под редакцией. Н. Кузнецовой, p. 210.

The Criminal Code did not anticipate the possibility of imposing additional conditions on the offender, except in cases where the crime had been committed under the influence of alcohol, narcotics or psychotropic drugs. In such cases, the court could ask the offender to agree to take part in a treatment program for alcoholism, drug or substance abuse.

If the offender demonstrated by good behavior that he had reformed, after no less than half of the probation period the court could, after receiving a request from the public organization or colleagues charged with the supervision of the offender, shorten the probation period or cancel the remainder.

If, during the probation period, the offender

- failed to fulfil the conditions set by the court without a legitimate reason;
- systematically committed violations of public order for which administrative sanctions or correctional measures were applied;
- failed to justify the trust placed in him by the public organization or the colleagues;
- broke his promise to demonstrate by exemplary behavior and honest work that he had reformed;
- abandoned his place of work in an attempt to escape correctional measures, the court could revoke the conditional sentence and order the offender to serve the original sentence. If the offender committed a further crime during the period of probation, the court was required to impose a combined sentence for multiple convictions.

Suspended sentences were very similar to conditional sentences. The main difference lay only in the status of the offender following the period of probation (suspension of the sentence). In the case of conditional sentences, the end of the probation period automatically meant that the offender had fulfilled the conditions set by the court and was not required to serve the original sentence. In the case of suspended sentences, however, the court had to decide whether the sentence would be executed or the offender discharged. More precisely, the rules for conditional sentences were fairly categorical: "If there are no further offenses during the period of probation, the sentence will not be executed." A suspended sentence, on the other hand, implied: "If there are no further offenses during the specified period, the court will consider the possibility of not having the sentence executed."

The Criminal Code allowed suspension of a sentence only for first offenders and only if the sentence did not exceed three years. Before suspending a sentence, the court had to consider the nature of the crime, the threat to public safety, the personality of the offender and other circumstances in the case, as well as the chances that the offender could be reformed without being isolated from society. The court could suspend the

sentence for a period of one to two years. The Criminal Code listed the categories of crimes for which the court was not allowed to suspend a sentence (murder, war crimes, rape, etc.).

When suspending a sentence, the court could ask the offender to fulfil the following conditions:

- compensate for damages, within a specified period;
- find a job or attend school;
- not move to another location without the approval of the police;
- report a change of job or school to the police;
- report regularly to the police.

The list of conditions was not particularly exhaustive, and the court was allowed to impose conditions provided for in other laws and regulations, which could have a correctional effect on the offender. With consent of the offender's place of employment or individual colleagues, the court could also place the offender under their supervision and guidance.

If an offender with a suspended sentence failed to fulfil the conditions set by the court or committed violations of public order or job discipline that resulted in administrative sanctions or disciplinary measures, the court could, upon the request of the competent authority or the offender's place of employment, revoke suspension of the sentence and order the offender to serve the prison term to which he had initially been sentenced. If the offender committed a further crime while the sentence was suspended, the court added the previous sentence to the new one.

Criminal Law

The Latvian Criminal Code became invalid on April 1, 1999. The new Criminal Law (CL) does not provide for suspension of a sentence, but the procedure for the application of conditional sentences has not principally changed.

Unlike the Criminal Code, the Criminal Law allows conditional sentences not only when the offender has been sentenced to time in prison, but also to community service or payment of a fine. The court can order the offender to fulfil the conditions listed in Section 55, Paragraph 6 of the Criminal Law. The court may set a probation period of no more than three years. The principles and the application of conditional sentences are examined in the following parts of the study.

III. PRINCIPLES AND APPLICATION OF CONDITIONAL SENTENCES

Conditional sentences are an independent institution of criminal law. The principles of conditional sentences are explained in the Criminal Law, the Criminal Procedures Code, and in the instructions issued by the Ministry of the Interior.

In accordance with the traditions of Latvia's criminal law, conditional sentences are not seen as an independent form of punishment, but rather as an alternative to punishment. Although a person who has received a conditional sentence is required to fulfil certain conditions, the law does not classify these as criminal sanctions, but as general obligations.

The term "conditional sentence" is not quite accurate because, when making its judgement, the court finds the offender guilty with no conditions whatsoever. The word "conditional" refers to the execution of the sentence, which does not take place as long as the offender fulfils the conditions set out in the court's judgement and in regulatory enactments. In reality, a conditional sentence frees a convicted offender from having to serve the sentence under certain conditions. If these conditions are not fulfilled or violated, the sentence must be served. Legal systems in other countries use different words to describe this institution of law: suspended sentence, conditional sentence, probation. It is quite accurately described in the Belarus Criminal Code – conviction with conditional non-execution of the sentence (Осуждение с условным неприменением наказания).[14]

Conditional sentences are frequently associated only with the result – an offender found guilty of committing a criminal offense is not required to serve the sentence imposed by the court. However, the law not only anticipates the consequences of a conditional sentence, it also regulates the procedure. The scheme is as follows:

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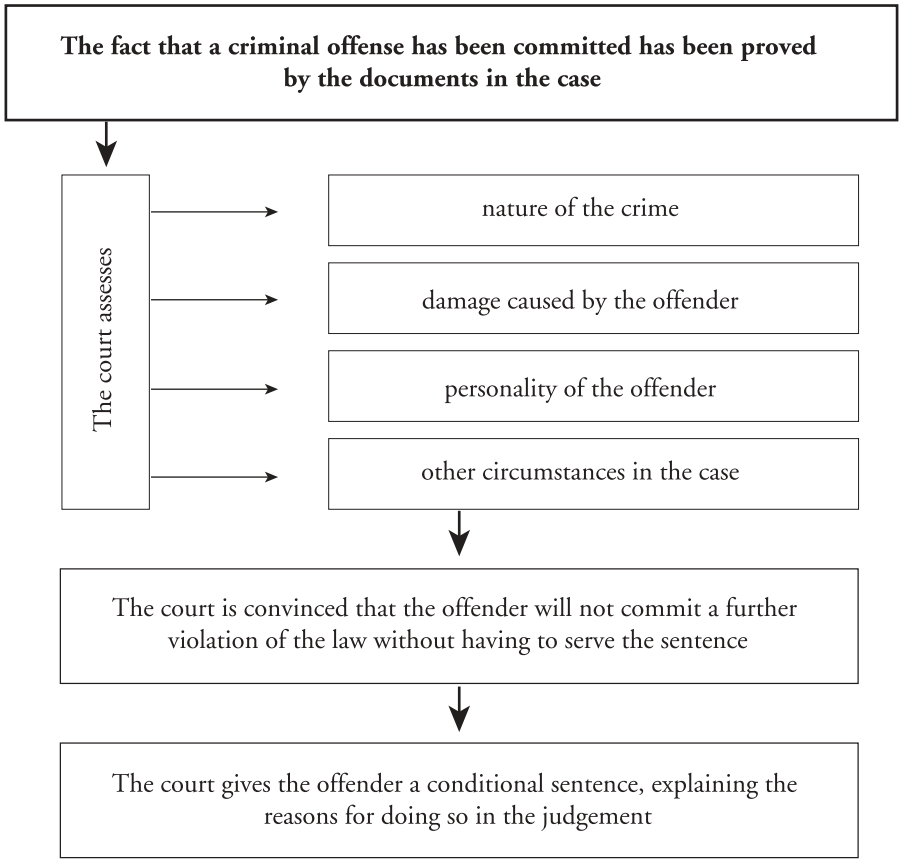
[14] See: Уголовный кодекс Республики Белорусь, p. 78.

Figure 4. Steps to reaching a decision in favor of a conditional sentence



Factors to be considered when sentencing conditionally

Although the law requires the court to explain in its judgement why it has chosen to apply a conditional sentence, the law does not actually restrict the freedom of the court in regard to the application of conditional sentences. What is asked of the court is that its decision to impose a conditional sentence be justified and appropriate in the given circumstances. However, these requirements are not sufficiently specific to make it possible to say that a decision has been incorrect. Latvia's Criminal Law allows conditional sentencing regardless of:

- the type of crime;

- the number of crimes;
- the existence of a criminal record.

All the law says is that these and other circumstances must be considered, but it does not prescribe what the court must do to establish these circumstances. This means that the decision to apply or not to apply a conditional sentence is left completely to the discretion of the court and to its assessment of the situation in each individual case.

United Nations Resolution No. 45/110 states that selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence, the personality and background of the offender, the purposes of sentencing, and the rights of the victims.[15]

To establish current views on interpretation of the relevant provisions, Latvia's judges were asked to name the main factors that affect their decision on whether or not to apply a conditional sentence. Answers were received from 88 judges in Latvia.

It is clear that each criminal case and each criminal has individual characteristics that affect the decision of the judge. It is no coincidence that several judges spoke of the need to assess the circumstances of a case in all aspects, with consideration for the requirements of CL Section 55, Paragraph 1.

However, in general terms, judges feel that it is important to analyze:

- the nature of the crime;
- the circumstances of the case;
- the personality of the offender;
- the behavior of the offender following the criminal offense;
- the views of the victims on the option of a conditional sentence;
- socio-political factors that are not directly connected with the crime.

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[15] UN Resolution No. 45/110 on Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), adopted at the 68th plenary meeting, December 14, 1990.

Table 8. Factors judges feel should be considered before giving a conditional sentence

	Nature of the criminal offense
✓	Nature of the offense[16]
✓	No great damage has been done, no serious consequences
✓	The threat to public safety is comparatively small
✓	The offense has circumstantial character, there is no reason to believe that further offenses will follow
✓	The offense has resulted from negligence
✓	There are mitigating circumstances
✓	No violence was involved
✓	The episodes constituting the offense are not many in number
✓	The repeated thefts are small-scale
	Personality of the offender
✓	Personality of the offender[17]
✓	The person is a first offender
✓	The offender is a juvenile
✓	The offender has been characterized positively
✓	The health of the offender
✓	Familiar circumstances, number of dependents
✓	The offender has a job
✓	The offender has no criminal record
✓	The lifestyle of the offender
✓	The offender does not pose a threat to public safety
✓	The financial status of the offender
✓	The offender is able to compensate for damages
	Behavior of the offender following the crime
✓	The offender has compensated for, repaired the damage
✓	The offender has admitted his guilt and regrets what he has done
✓	The offender has cooperated with investigators

[16] When referring to nature of the crime, respondents did not provide any details.

[17] When referring to personality of the offender, respondents did not provide any details.

	Legal aspects
✓	The only other alternative is imprisonment
✓	The proportionality of the punishment to the crime
✓	The sanctions anticipated by the law are severe, but no serious harm has actually been done in the concrete case
	Other circumstances
✓	There is hope (and reason to believe) that the offender will reform his ways without serving the sentence and will not commit any further crimes
✓	The views of the victims (attitude toward the crime)
✓	Unsatisfactory prison conditions
✓	Request of the victims to abstain from severe punishment
✓	Personality degeneration in prison conditions, criminalization

The judges widely supported the view that repeated conditional sentencing should be allowed in cases where the criminal offense committed during the probation period has resulted from negligence. The author feels that the idea should be supported and the possibility provided for in the Criminal Law.

In individual cases, the reason for applying a conditional sentence is the measure of punishment stipulated by the Criminal Law. In order to avoid sending an offender to prison, the court sees no alternative other than a conditional sentence. By choosing to impose relatively light punishment and giving an offender a conditional sentence for a serious or even very serious crime, the judge often tries to compensate for the inadequacies of the lawmakers. If the Criminal Law is not very precise and the measure of punishment anticipated by the law exceedingly harsh and not proportional to the harm done or the threat to public safety, giving a conditional sentence is one way of trying to ensure that crime and punishment remain in proportion. This problem has become particularly acute since amendments were made to Section 49 of the Criminal Law, narrowing the court's possibilities of choosing punishment milder than the punishment stipulated in this provision of the law.

For example, persons convicted of gang robbery (CL Section 176, Paragraph 2) must be sentenced to a prison term of no less than six years; persons found guilty of illegally carrying ammunition or a gas spray can across the border must be sentenced to a prison term of eight to fifteen years (CL Section 190, Paragraph 3). Pursuant to CL Section 49, the court, after taking into account various extenuating circumstances and the personality of the offender, can impose a sentence that is milder than the minimum sentence anticipated by the law for a specific crime or choose a different, milder form

of punishment. However, the provisions of CL Section 49 cannot be applied and imprisonment replaced with an alternative form of punishment if the crime has been committed in aggravating circumstances or committed by a person with a criminal record. In such cases, the only other legal option open to the court is a conditional sentence, which is then applied in order to avoid exceedingly severe punishment for a crime.

Since May 23, 2002, reducing the measure of punishment or giving a milder sentence is no longer possible if the court has found a person guilty of a serious or very serious crime.[18] This increases the number of cases for which a conditional sentence is the only alternative to imprisonment.

As long as the Special Part of the Criminal Law has not been amended and crimes that pose a relatively small threat to public safety are qualified as serious and very serious crimes, it is not expedient to restrict the right of courts to impose conditional sentences on persons who have committed such crimes. However, it would be worthwhile to recommend that judges generally abstain from giving conditional sentences for serious or very serious crimes and to offenders with criminal records.[19] Such recommendations could be set forth in guidelines on conditional sentencing.

Since it is impossible to list all factors that could justify a conditional sentence, it would be helpful to at least define the circumstances that should make judges particularly wary about giving conditional sentences. Without categorically forbidding conditional sentences in such circumstances, the law should, nevertheless, demand that courts provide convincing arguments for why they have chosen to apply a conditional sentence. Such circumstances would have to be:

- commission of a serious or very serious crime;
- special recidivism, i.e., commission of a criminal offense following a conviction for a similar offense;

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[18] Except in the case of juveniles, women and first offenders.

[19] The Swiss Criminal Code, for example, forbids conditional sentencing if, in the previous five years, the offender has been sentenced to a prison term of more than three months for another crime. The Belarus Criminal Code also stipulates that conditional sentences can be given only to first offenders sentenced to a prison term of no more than five years. The Criminal Code of the People's Republic of China forbids conditional sentences for persons with a criminal record. The Belgian Criminal Code anticipates that a sentence can be suspended if the offender has previously not been sentenced to more than 12 months in prison. See the Swiss CC, Section 41; the Belarus CC, Section 78; China's CC, Section 74. See also: "Community Sanctions and Measures in Belgium." In: Albrecht, Hans-Jörg and A. M. van Kalmthout. Community Sanctions and Measures in Europe and North America. Freiburg (2000), pp. 43–77.

- deliberate violation of the law if the offender has previously received a conditional sentence for other crimes.
- commission of numerous crimes (manifold crimes).

A conditional sentence must be a realistic alternative to the original sentence if the person is a first offender or is being tried for a less serious crime: **a deliberate violation of the law**, for which the law anticipates a maximum sentence of five years in prison, or **violation of the law through negligence** regardless of the measure of punishment anticipated by the Criminal Law. Of course, even in such cases, conditional sentences should not be applied automatically. The court must be convinced that, even if not required to serve a prison sentence, the offender will not commit further offenses.

There is no reason to object to conditional sentencing in accordance with the provisions of the Criminal Law covering liability for serious or very serious crimes if a person has not actually committed the crime in question, but has been an accessory to the crime. Similarly, conditional sentences can be widely applied in cases where a person has been found guilty of premeditating a crime.

Sentences that may be imposed conditionally

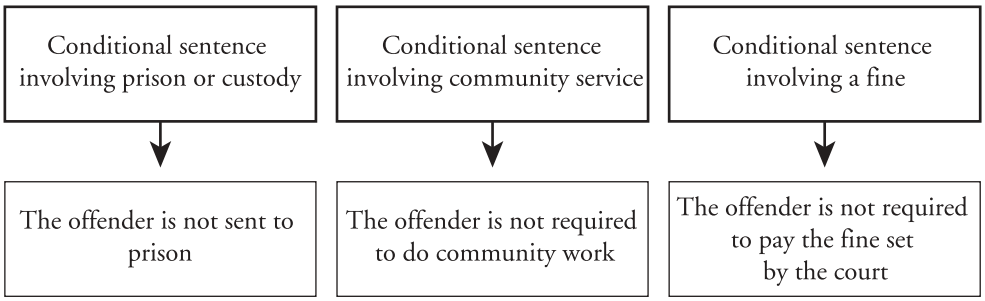
Pursuant to CL Section 55, Paragraph 1, conditional sentences are allowed in cases where the offender has been sentenced to:

- imprisonment,
- custodial arrest,
- community service,
- payment of a fine.

Until March 1, 2007, custodial arrest will not be applied in Latvia as a form of criminal punishment,[20] so that currently conditional sentences can be considered only in cases involving imprisonment, community service or fines.

[20] Except in the case of military persons convicted for the crimes covered in CL Chapter XXV.

Figure 5. Legal consequences of conditional sentences



Of 105 judges who were questioned, 93 said that they had given conditional sentences in 2001. All of the judges said that they had at some time given conditional prison sentences; 17 (18.3%) said that they had given conditional community service sentences; 32 (34.4%), conditional fines.

Data on registered probationers show a different picture. The majority of the offenders, 97.98%, have received prison sentences; 0.29% have been sentenced to community service; and 1.73% have been fined.

Table 9. Sentences of registered probationers (February 1, 2002)[21]

	Total number	Persons conditionally sentenced to imprisonment	Persons conditionally sentenced to community service	Persons conditionally sentenced to a fine
Number of probationers	8,926	8,746	26	154
%	100	97.98	0.29	1.73

In 2002, Latvian courts imposed 6,780 conditional sentences. 6,678 offenders were sentenced to time in prison, 80 were fined, and 22 sentenced to community service.

[21] Data provided by PIECJ.

Table 10. Conditional sentences imposed in 2002

	Total number	Persons conditionally sentenced to imprisonment	Persons conditionally sentenced to community service	Persons conditionally sentenced to a fine
Number of conditionally sentenced offenders	6,780	6,678	22	80
%	100	98.5	0.32	1.18

Conditional sentences are often perceived and applied as an alternative to actual restrictions on personal freedom. Fines and community service, however, do not involve imprisonment, so that these sentences are usually executed.

However, since circumstances can greatly differ from case to case, it would serve no practical purpose to change the current system and allow conditional sentencing only in the case of prison sentences. If the court finds that there are good reasons why a fine should not be paid or a community service sentence should not actually be served, it would not be logical to deny the court the option of giving a conditional sentence. This can be the case when a person has committed a misdemeanor for which the law does not anticipate a prison sentence, but only a fine or community service, and the court finds that, given the circumstances, there is no reason for making the offender actually serve the sentence since there are good chances that he will reform without doing so.

Probation period

A conditional sentence is not an absolute discharge. The offender is released, but only on the condition of good behavior during a period of probation. The court can set the length of the probation period from six months to three years. Neither the Criminal Law nor legislation that is based on the Criminal Law define the criteria for setting the length of the probation period and leave this to the discretion of the judge.

Since the law does not say whether the probation period can be shorter than the prison term, the judges who were surveyed were asked to express their views on the length of the probation period. 94 judges expressed their views on the period of probation for offenders conditionally sentenced to time in prison and on the ideal proportional relationship between the lengths of the probation period and the prison term.

An analysis of the answers led to the conclusion that the majority of judges (53.19%) feel that the current law allows courts to decide on the length of the probation period at their own discretion and places no legal restrictions on their choice. 25.53% of the judges feel that the Criminal Law does not allow a probation period that is longer than the prison term to which the offender has been sentenced, but 29.79% feel that the Criminal does not allow a probation period that is shorter than the prison term. The answers of the judges to the question about the best proportional relationship between the lengths of the probation period and the prison term were greatly divergent, with no one dominating view.

Table 11. Judges' views on the proportional relationship between lengths of the probation period and the prison term (%)

	Current situation (interpretation of the current Criminal Law)	**Best alternative (should be incorporated into the law)**
Probation period may be either shorter, longer or of the same length as the prison term	53.2	30.2
Probation period must be the same length as the prison term	8.5	24
Probation period may not be longer than the prison term	17	15.6
Probation period may not be shorter than the prison term	21.3	30.2

Even though the probation period is not the same as the prison term, the two are still directly related, and it is not good if the court sets a probation period that is shorter than the prison term to which an offender has been sentenced. This kind of practice comprises a contradiction. On the one hand, the court, having considered all of the circumstances in a case, concludes that the offender should be isolated from society for a certain length of time. On the other hand, it says that, if the offender is not sent to prison, the period of probation can be shorter than the prison term to which the offender has been sentenced. In this way, the court not only frees the offender from actually having to serve the sentence, it also shortens the time during which the behavior of the offender is supervised and subjected to certain restrictions.

For example, if an offender has been sentenced to three years in prison, with a probation period of two years, this must be interpreted as follows: after consideration of all of the circumstances in the case, the court finds that the offender should be sent to

prison for three years; but should he commit no further offenses in the next two years, there is no reason to place any further restrictions on his freedom.

It would be understandable if the prison term were replaced by a probation period that is longer or at least just as long as the prison term. This would mean that, at the same time as it imposes a milder form of punishment, the court extends the period during which the behavior of the offender is under supervision. A positive example in this context is German criminal law.[22] This country's Penal Code allows conditional sentences for a period of up to two years with a probation period that is not shorter than two or longer than five years. It is absolutely logical that **when easing the terms of a sentence the court must compensate this by increasing the period during which the behavior of the offender is placed under special supervision**. If the court has found the behavior of a person to be dangerous and has sentenced this person to, for example, five years in prison, it is not right to replace this with a three-year probation period.

At a public court hearing on March 22, 2001, the Daugavpils Court heard the case against J. Š., who was charged in accordance with CC Section 139, Paragraph 4, CL Section 233, Paragraph 3 and Section 175, Paragraph 2.
The court found that J. Š.:

- had been in possession of, had carried and sold a firearm and ammunition without the required license;
- had committed a theft by entering a storage facility;
- had repeatedly, in an organized group and pursuant to prior agreement, committed thefts of movable property belonging to another.

The court ruled:

- to find J. Š. guilty in accordance with CC Section 139, Paragraph 4 and, pursuant to CC Section 41, sentence him to a prison term of one year, without confiscation of property;
- to find J. Š. guilty in accordance with CL Section 175, Paragraph 2 and sentence him to a prison term of six months, without confiscation of property;
- to find J. Š. guilty in accordance with CL Section 233, Paragraph 3 and sentence him to a prison term of one year, without deprivation of the right to carry out certain entrepreneurial activities;

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[22] German Penal Code, Sections 56–58. http://www.bmj.bund.de/images/10927.pdf (last accessed on April 2, 2003).

- pursuant to CL Section 50, which prescribes aggregation of criminal offenses, to partially total the sentences and pronounce a final sentence of two years in prison, without confiscation of property or deprivation of the right to carry out certain entrepreneurial activities;
- to imposed the sentence conditionally, with a probation period of one year and six months, pursuant to CL Section 55.

Material from case file No. K12-297/01 1190035400

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In the current situation, it would not be right to curb the power of the court to set a probation period that is shorter than the actual prison term. The reason for this is the inadequacy of our criminal sanctions system. For example, when sentencing two persons for robbing a third person of his property, the minimum sentence that the court may impose is a six-year prison sentence. This also applies to cases where no bodily harm has been done, even to cases where there has only been a threat of violence. If the offenders have no criminal record, CL Section 49 allows the court to impose milder punishment. However, if an offender has previously been convicted for some other criminal offense that has been committed deliberately or through negligence (for example, small-scale theft, poaching, or defamation), the court may not impose a sentence that is milder than that prescribed by the law. The only way of not sending the offender to prison for six years is by giving him a conditional sentence with a three-year period of probation.[23]

Application of conditional sentences by category of crime

While setting out the rules for conditional sentencing, the Criminal Law does not have any requirements as to the categories of crimes to which conditional sentences may be applied. The law says that, when considering the option of giving a conditional sentence, the court must also consider the nature of the crime and the damage that has been done. What this actually means is that the court can sentence any offender

[23] On March 26, 2003, the Daugavpils Court sentenced M. and S. who had robbed J. of his cellular phone, worth 30 lats. At the time of the crime, M. had held on to J.'s left hand, while S. had pulled the phone from the victim's pocket. Since M. had a previous conviction, there were no legal grounds for giving a milder sentence than that prescribed by CL Section 176, Paragraph 2. Since a six-year prison sentence was not in proportion with the harm that had been done and the threat to public safety posed by the offender, the court imposed a conditional six-year prison sentence, with a three-year probation period (case file K12-No. 1180081702).

conditionally, regardless of the nature of the crime that he has committed. The number of criminal offenses can also not be an impediment to the application of a conditional sentence. It is clear, however, that before it gives a person who has committed a serious or very serious crime or repeatedly violated the Criminal Law a conditional sentence, the court must very carefully consider the circumstances in the case, and in its judgement it must reveal the reasons for not ordering the offender to serve the sentence.

Although courts give conditional sentences for a variety of criminal offenses (including murder and rape), the majority of offenders who receive conditional sentences have committed offenses against property (theft, robbery, fraud, misappropriation, etc.).

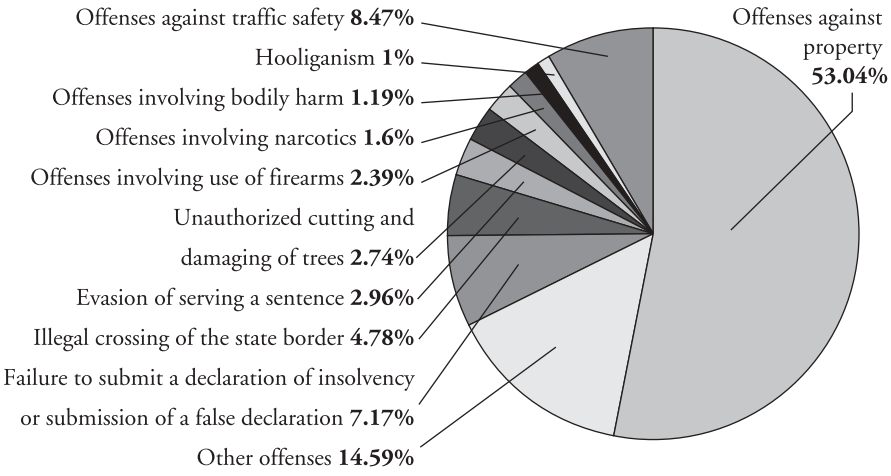
Of the total number of persons who have received conditional sentences, 53.04% have been found guilty of offenses against property.

The second largest group (14.59%) are offenders who have committed traffic safety offenses resulting in injury or death, or who have repeatedly been found guilty of drunken driving within a period of 12 months.

Hooliganism is the offense for which 7.17% received conditional sentences, and 4.78% were found guilty of inflicting bodily harm or otherwise violating the bodily integrity of other persons.

Figure 7 shows the distribution by category of crime of the offenders who received conditional sentences in 2002.

Figure 6. Distribution of offenders given conditional sentences in 2002, by category of offense (% of total number of offenders given conditional sentences)



During the course of the study, information was obtained on the frequency of conditional sentences as opposed to imprisonment. The following table lists the offenses for which the offenders received conditional sentences and compares these numbers with the numbers of persons actually sent to prison.

Table 12. Offenses for which the offenders received conditional sentences in 2002 (excerpt)

Type of criminal offense	Total number sentenced	Number of offenders conditionally sentenced	% of total number sentenced for this crime	Number of offenders sent to prison	% of total number sentenced for this crime
Giving or accepting bribes	19	17	89.47	1	5.26
Violation of traffic safety or motor vehicle regulations resulting in injury or death of the victim	689	554	80.41	38	5.52
Hooliganism	643	486	75.58	94	14.62
Contraband	22	12	54.55	8	36.36
Robbery	849	348	40.99	500	58.89
Unauthorized production, purchase, possession, transportation or shipment of narcotic and psychotropic substances	553	197	35.62	344	62.21
Rape and forcible sexual assault	81	24	29.63	57	70.37
Murder	47	3	6.38	43	91.49

Although conditional sentences are also given for serious and even very serious crimes (for example, murder committed in particularly aggravating circumstances, CL Section 118; rape, CL Section 159; or robbery, CL Section 176), it is not possible to say how justified these conditional sentences have been on the basis of statistics alone. According to the Criminal Law, legal action must be taken not only against persons

[24] See Appendix No. 4.

who have committed a criminal offense, but also against those who have organized, acted as accessories to or instigated a criminal offense. Such persons are charged in accordance with the same provisions of law as the actual offenders. Legal action is also taken against persons who have not succeeded in carrying out their criminal intentions, but who have made preparations or the attempt to commit a serious or very serious crime. This makes possible cases where a person is tried in accordance with a provision of the Criminal Law that covers a serious or very serious crime, although the offender has not posed a sufficiently great danger to warrant a sentence of imprisonment.

IV. CONDITIONS IMPOSED ON PROBATIONERS

When a court decides to replace the punishment prescribed in the judgement with a conditional sentence, it may impose a number of conditions that the probationer must fulfil during the period of probation. There are two categories of conditions: compulsory conditions, which are required for all conditional sentences, and optional conditions, which are left to the discretion of the judge. A probationer can be required to fulfil a number of conditions at the same time.

Compulsory conditions:

- abstention from further criminal offenses;
- observance of public order;
- commission of no more than one administrative offense;
- reporting for consultations with PIECJ when required.

Optional conditions:

- additional penalties imposed by the court;
- compensation for the damage caused, within a specified period of time;
- no change of home address without approval of the institution charged with supervising the behavior of the probationer;
- regular reporting to a specified institution;
- avoidance of specified places;
- presence at home at specified times;
- therapy for alcoholism, drug or substance dependency (if the crime has been committed as the result of alcohol, drug or substance abuse, and the offender consents to treatment).

When sentencing a juvenile conditionally, the court may not only set the conditions that are prescribed in CL Section 55, it may also apply additional compulsory measures of a correctional nature: order a juvenile offender who has reached the age of 15 to compensate for losses inflicted, provided that the juvenile has earnings and the losses do not exceed one minimum monthly wage; order a juvenile offender who has reached the age of 15 to repair the damage that has been caused; place a juvenile in the charge of parents or guardians or other persons, institutions or organizations. When the Law on the Application of Compulsory Correctional Measures to Children comes into force on January 1, 2004,[25] this list of additional measures will be expanded.

Abstention from further criminal offenses

A person can be sentenced conditionally if there is reason to believe that this person will commit no further crimes. Of course, when deciding to give a conditional sentence, the court cannot know whether or not the offender will commit further crimes, but there must be legitimate grounds to consider that the offender will reform without actually having to serve the sentence. Section 22, Paragraph 2 of the Criminal Law also clearly states that, when imposing a conditional sentence, the court rules not to have the sentence executed unless the offender commits further offenses during a period of probation. There is no unanimous support among either judges or other legal professionals for this provision of the law.

For an analysis of views on conditional sentencing, in February 2002, judges who try criminal cases were asked to express their thoughts on the problem. In answer to the question: "Have you had cases where probationers committed further criminal offenses and again received conditional sentences?" **65** respondents gave negative answers, but **35** answered positively. What is more, these judges did not consider such practice to be unlawful or even wrong.

To the question about whether or not the Criminal Law should be amended to include the possibility of giving conditional sentences to probationers who have committed further offenses, the judges gave the following answers:

- yes – 39;
- no – 62.

Several of the respondents who supported repeated conditional sentencing for an offense committed during the probation period noted that this would be acceptable if the second offense were committed through negligence.

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[25] Law on the Application of Compulsory Correctional Measures to Children, adopted on October 31, 2002. *Latvijas Vēstnesis*, November 19, 2002.

Criminal laws in almost all other countries demand that a conditional sentence be revoked if the offender commits a further criminal offense during the probation period. However, these requirements are not categorical – a conditional sentence must not necessarily be revoked if the new offense has been committed through negligence and the court feels that it is not necessary to make the offender serve the original sentence.[26] For example, Section 56f of the German Penal Code says that the original sentence must be served if a further criminal offense has been committed during the probation period. However, the court may, after taking into consideration the circumstances in the case, decide against having the sentence served and instead ask the offender to fulfil additional conditions, or it may extend the probation period.[27]

Observance of public order

Observance of public order in the broadest sense is the behavior of an individual in compliance with the requirements set out in laws and regulations. It basically means that a person does not do what the law does not allow. In the case of probationers, the law prescribes a much narrower interpretation of the requirement to observe public order: the offender must abstain from the activities described in Chapter XIII of the Administrative Offenses Code (administrative offenses that threaten public order) and Chapter XX of the Criminal Law (criminal offenses against general safety and public order).

Since a probationer may be ordered to serve the original sentence if he commits a criminal offense or more than one administrative offense or fails to fulfil the conditions set by the court, this requirement of the law is more or less facultative because only such violations of public order that entail administrative or criminal liability can have legal consequences.

Abstention from administrative offenses

Pursuant to CL Section 55, Paragraph 9, in cases where a probationer repeatedly commits administrative offenses for which administrative sanctions are imposed, the court, following a request submitted by the police, may order the offender to serve the original sentence or extend the probation period by one year.

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[26] See Sections 73 and 74 of Estonia's Penal Law and Section 64 of Kazakhstan's Criminal Code.

[27] German Penal Code. Unofficial translation. http://www.bmj.bund.de/images/10927.pdf (last accessed on April 2, 2003).

In 2001, according to PIECJ data, there were 309 cases where probationers had committed two or more violations of public order, for which they received administrative sanctions.

Since the rules for cases where an offender has committed administrative offenses while on probation have optional character, and judges may apply but do not have to apply sanctions, the study examined the attitudes of judges to this situation.

First, the judges were asked to indicate the number of administrative offenses following which a conditional sentence must be revoked and the offender ordered to serve the original sentence. Answers were received from 96 respondents. The majority (53.13%) interpret the requirements of the law literally and feel that the court must reconsider the fate of the offender if he has committed two administrative offenses during the period of probation. 30.21% feel that the offender must be ordered to serve the original sentence if administrative sanctions have been imposed no less than three times.

PIECJ officials also expressed their views on the issue. Of the 21 who were interviewed, six (28.57%) support the procedure laid down by the law and feel that the court must consider revoking the conditional sentence if a probationer has committed two administrative offenses. However, nine PIECJ officials (42.86% of the respondents) feel that the probationer must be ordered to serve the original sentence after committing three offenses. Four PIECJ officials feel that the conditional sentence must be revoked if a probationer has committed four or more administrative offenses.

Table 13. Views of judges and PIECJ officials on the number of administrative offenses permissible during the period of probation

Number of administrative offenses	Number of judges who expressed this view	% of the total number of judges interviewed	Number of PIECJ officials who expressed this view	% of the total number of PIECJ officials interviewed
1	5	5.2		
2	51	53.13	6	28.57
3	29	30.21	9	42.86
4 and more	2	2.08	4	19.05
Not the number is important, but nature and circumstances of the offense	9	9.38	1	4.77

In view of the way that CL Section 55, Paragraph 9 is worded, 9.4% of the judges feel that courts should be empowered to assess the nature of the offense and, after considering the circumstances in the case, to decide independently whether or not the probationer should be ordered to serve the sentence.

On the other hand, 5.2% of the judges say that they can imagine situations where a conditional sentence should be revoked after only one administrative offense if the offense is a demonstration of the offender's attitude toward the conditional sentence imposed by the court.

Just as many judges feel that an offender who has received a conditional sentence can be ordered to serve the original sentence if several administrative offenses have been committed within a period of twelve months and the offender has been warned that he could be ordered to serve the sentence.

In view of the requirements of the Criminal Law regarding violations of public order, it is clear that an offender who has been sentenced conditionally can be ordered to serve the sentence if he has committed administrative offenses that threaten public order. However there is no agreement on the legal consequences of other administrative offenses.

- CL Section 55, Paragraph 2 says that the court shall decide that a sentence shall not be executed if public order is not violated during the period of probation (*reference to violation of public order*).
- CL Section 55, Paragraph 9 says that a sentence may be executed if the offender has committed two or more administrative offenses (*no reference to violation of public order – the nature of the administrative offenses is of no consequence*).
- Clause 3.6 of the Instructions on the Execution of Conditional Sentences and Additional Penalties Involving the Restriction of Rights[28] says that in cases where a probationer has committed an administrative offense PIECJ must officially warn the offender of the possible consequences (*no reference to violation of public order – the nature of the administrative offense is of no consequence*).
- Clause 5.2 of the Instructions on the Execution of Conditional Sentences and Additional Penalties Involving the Restriction of Rights says that in cases where a probationer has violated public order no less than two times within a period of 12 months, for which he has duly received administrative sanctions, PIECJ must submit an application to the court (*reference to violation of public order*).

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[28] Approved with Order No. 697/1999, issued by the Chief of the State Police.

- Clause 17 of the Supreme Court's Ruling on Application of the Criminal Law to Conditional or Suspended Sentences says that courts must strictly observe the rules on revoking suspended sentences if the probationer has committed no less than two violations of public order and if, for each of these, administrative sanctions have duly been imposed (*reference to violation of public order*).

In answer to the question about types of administrative offenses, 39 of the judges said that the type of offense was unimportant, but 47 respondents felt that the only offenses that should be considered are those that threaten public order. Twenty of the judges gave more detailed answers on this issue (see table).

Table 14. Judges' views on types of administrative offenses that should or should not be considered in connection with conditional sentences

✓	Violations of traffic regulations, except those connected with driving under the influence of alcohol or drugs, need not be considered.
✓	Driving under the influence of alcohol or drugs must be considered.
✓	Administrative offenses that are similar to the criminal offense for which the offender has received a conditional sentence must be considered.
✓	Only offenses to which administrative custody can be applied must be considered.
✓	Only serious administrative offenses must be considered.
✓	Offenses connected with the use of drugs or alcohol must be considered.
✓	There is no reason to consider the violation covered by Administrative Offenses Code (AOC) Section 171: being found on the street under the influence of alcohol.
✓	Deliberate administrative offenses must be considered.
✓	Only administrative offenses which entail a fine of no less than two minimum monthly wages must be considered.
✓	The attempt to commit petty theft must be treated in the same way as an administrative offense.
✓	Offenses committed while under the influence of alcohol must be considered.

PIECJ officials, on the other hand, had these views on the issue: 3 respondents (14.3%) feel that the type of administrative offense is of no consequence; 15 respondents (71.4%) feel that violations of public order must be considered; 4 respondents (19.1%) find that a conditional sentence may be revoked if the offender has committed administrative offenses that threaten public order, and just as many feel that administrative

offenses involving violation of transportation, traffic and communications regulations must be considered.

In the author's opinion, it would not be right to revoke a conditional sentence after any two administrative offenses whatsoever. Otherwise, a conditional sentence would have to be revoked if a probationer crossed a street twice at a red light or violated rules on the use of safety belts. It would also not be right to link the possibility of revoking a conditional sentence only and alone to the violation of public order.

It is not possible for legislation to list all administrative offenses following which the police must inform the court about the behavior of the probationer. It would, therefore, be best to name the categories of the relevant administrative offenses and leave it to the police and the courts to decide whether other administrative offenses should also be taken as grounds for revoking a conditional sentence and ordering the offender to serve the original sentence.

Guidelines on conditional sentencing should indicate that conditional sentences may be revoked if the probationer has committed administrative offenses that:

- threaten public order (no matter which parts of the Administrative Offenses Code cover the offense);
- are similar to the offenses for which the offender has received a conditional sentence (for example, if a person who has been convicted of contraband violates administrative regulations on contraband (AOC Section 196); if a person who been conditionally sentenced for arbitrary conduct violates administrative regulations on arbitrary conduct (AOC Section 176); if a person who has been sentenced for causing a traffic accident commits a traffic violation, etc.);
- are connected with the use of drugs or alcohol, for example, driving under the influence of alcohol or narcotic substances;
- can entail administrative custody.

In view of the fact that criminal liability has not been anticipated for persons who have attempted to commit a misdemeanor, administrative liability should be made to apply in such cases. An attempt to commit a misdemeanor during the probation period should be a sufficient reason to consider revoking a conditional sentence or extending the period of probation.

Reporting for consultations with PIECJ when required

This condition is compulsory because Latvia's Criminal Law does not anticipate conditional sentencing without a supervision order. Each person who receives a conditional sentence is registered with the Police Inspectorate for the Execution of Court Judgements (PIECJ). Once registered, the offender is asked to show up for consultations with a PIECJ official.

According to PIECJ officials, probationers do not always show up voluntarily and on time. One of the PIECJ officials who was interviewed suggested that administrative liability should be considered for probationers who try to avoid these meetings.

The obligation to attend consultations with the police is not directly defined in the law. Courts, too, when pronouncing the sentence, do not always inform the offender of the obligation to report to the police. This is why some probationers ignore the invitations of PIECJ officials, and others feel that it is not necessary to show up since they are convinced that the court has acquitted them.

Consultations are necessary to help probationers understand their legal status, to explain to them the principles of the conditions set by the court and the possible consequences of failing to fulfil these conditions. During these consultations, the probationer is also warned about the possible consequences of violation of public order or commission of further crimes. PIECJ officials prepare reports on these meetings and attach them to the probationer's case file.

Of the PIECJ officials who were interviewed, 66% pointed out that at the first meeting most probationers do not understand the principles and consequences of a conditional sentence. A fairly large number of probationers do not see a conditional sentence as form of criminal punishment, but rather as an acquittal. For this reason, meetings with PIECJ officials should not just be a formal exercise. If, after talking with the police official, the probationer does not have a better understanding of the implications of a conditional sentence or does not realize how strictly he must fulfil the conditions set by the court, there is a much greater likelihood that this person will continue to violate the law.

Unfortunately, given the current caseload of PIECJ officials, there is often not enough time for serious consultations with each of the registered probationers, and the meetings frequently serve no other purpose than keeping the file on the offender up to date. If a probationer repeatedly fails to report to the police, the PIECJ official must issue orders to have him brought in.

If the whereabouts of the probationer are not known and the probationer cannot be located within a period of 10 days, the PIECJ official must write a report on the failure of the probationer to fulfil the conditions set by the court, and after approval from the chief of the agency, a search warrant is issued.

Table 15. Probationers who avoid reporting to PIECJ[29]

Year	1999	2000	2001	2002
Number of probationers who avoided reporting to PIECJ	102	87	109	96

When the probationer is located, the reasons for his disappearance are established. Depending on what these are, the PIECJ official either sends the court a report on the probationer's attempt to avoid fulfilling the conditions of the sentence or, if the probationer has not acted with malicious intent, registers the probationer with PIECJ.

Additional penalties

Section 55, Paragraph 5 of the Criminal Law says that when a court gives a conditional sentence, it can also impose additional penalties. The attitude of the judges to such penalties is generally positive: 82 of the judges who were questioned (83.67%) said that they impose additional penalties when giving conditional sentences, but 16 (16.33%) said that they do not.

Data provided by PIECJ also suggests that additional penalties are relatively actively imposed. Of the 8,926 probationers who were registered with PIECJ on February 1, 2002, 2,134 (23.91%) had received additional penalties.

The Criminal Law provides for five types of additional penalties – fines, confiscation of property, deportation from the Republic of Latvia, restriction of rights and police control – which can be imposed together with conditional sentences. There is no disagreement among jurists about either restriction of rights, confiscation of property, deportation, or fines. Different opinions have been voiced about police control for this group of offenders.

[29] PIECJ data.

Table 16. Additional penalties imposed together with conditional sentences (judges' answers to the questionnaire)

Additional penalties imposed together with conditional sentences	Number of judges (%) who impose this penalty[30]
Restriction of rights	91.46
Confiscation of property	15.85
Police control	10.97
Deportation from the Republic of Latvia	4.87
Payment of a fine	3.65

It is important to note that in the case of conditional sentences, although the sentence itself must not actually be executed, the additional penalty must. Unfortunately, there are cases where the court imposes not only the sentence, but also the additional penalty conditionally.

At a public court hearing on March 20, 2000, the Riga Zemgale District Court heard criminal case No. 15200075399 against J. J., who was charged in accordance with CL Section 262 (repeated driving under the influence of alcohol within a period of 12 months).

J. J. had previously been sentenced in 1990, in accordance with CC Section 85, Paragraph 4, Section 139, Paragraph 4, and Section 188 to a prison term of six years. In 1995, J. J. was released on parole. J. J.'s criminal record was not extinguished.

The court ruled:

- to find J. J. guilty as charged and sentence him, in accordance with CL Section 262, to a prison term of one year and to confiscation of the driver's license for a period of one year;
- to impose the sentence and the additional penalty conditionally, with a probation period of one year.

Material from case file No. 1-187/4-2000

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[30] Questionnaire results.

Fines are not extremely popular as additional penalties, and this is mainly due to social factors: 53.04% of the probationers registered in 2001 were unemployed and the majority would not have had the money to pay a fine.

Deportation from the Republic of Latvia of probationers is also not particularly logical. CL Section 43 says that this form of punishment can only be applied to foreigners and only after the sentence has been served, but in the case of conditional sentences, the sentence is not served if the offender fulfils the conditions set by the court and does not commit any further offenses. In other words, deportation from the country can only be executed if the court decides that the sentence must be served.

Recently, a number of Latvian courts have chosen **police control** as an additional penalty when giving conditional sentences. This practice is not supported by PIECJ or the public prosecutor's office, who feel that prescribing police control in such cases goes against the law. CL Section 45 says that an offender can be placed under police control only after having served a prison sentence. In other words, if police control is applied in the case of a conditional sentence, this penalty will only be implemented if the probationer fails to fulfil the conditions of the sentence or commits further offenses and is sent to prison.

At a public court hearing on February 8, 2001, the Sigulda Court heard the case against J. V., who was charged in accordance with CL Section 176, Paragraph 1 (robbery).

J. V., who was born in 1976, has an elementary school education, is unmarried, unemployed, previously convicted in 1996 in accordance with CC Section 139, Paragraph 4 and Section 146, Paragraph 1, and in 1997 in accordance with CC Section 139, Paragraph 4, and sentenced to a prison term of three years and six months, released on December 30, 1999 after having served the sentence.

On March 17, 2000, around 9.30 p.m., J. V., being under the influence of alcohol, assaulted I. P. with the intention of robbery. Kicking the right leg of the victim above the knee, J. V. knocked her down, then tore from I. P.'s hands a handbag, which, together with the contents, was valued at 123 lats.

The court ruled:

- to find J. V. guilty as charged and sentence him to two years in prison without confiscation of property and with police supervision for a period of three years. In accordance with CL Section 55, J. V. was to be conditionally discharged, with a probation period of three years;
- to require J. V. to report once a week to the police and to not move to a different location without the consent of the police;
- to give J. V. three months time, until May 8, 2001, in which to pay I. P. the sum of 90 lats as compensation for losses incurred.

Material from case file No. K33-63-01

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Since police control may not be carried out during the probation period, the wisdom of imposing this penalty on an offender who has been given a conditional sentence is questionable. This additional penalty cannot be applied to reinforce supervision of the probationer, but it is also not particularly logical to apply it in order to have greater control over the behavior of an offender after his release from prison. Since a court may only sentence an offender conditionally if it is convinced that said offender will not commit further offenses, it must assume that the sentence will not actually be served.

There is no reason to prohibit courts from applying this additional penalty together with conditional sentences, but it should be kept in mind that this measure cannot help to rehabilitate the offender, nor can it contribute to improving supervision.

In their views on the expediency of applying police control to probationers, judges are split into two almost equally large groups. Forty-five judges, or 45.92% of the respondents, have a positive attitude towards applying police control to offenders who have received conditional sentences. Fifty-three judges, or 54.08% of the respondents, have a negative attitude. In order to prevent different court practices, this issue should be explained in guidelines for conditional sentencing.

Confiscation of property can only be applied to offenders who have received conditional sentences in cases where this penalty has been anticipated in a concrete provision of the Special Part of the Criminal Law. This additional penalty can be rather effective if it is applied partially and only such property is confiscated which has promoted or facilitated commission of the crime.

Table 17. Judges' views on future application of additional penalties together with conditional sentences

Additional penalty	Number of judges who feel that application of this penalty together with conditional sentences is expedient[31]
Restriction of rights	91
Police control	50
Confiscation of property	39
Deportation from the Republic of Latvia	26
Payment of a fine	26

[31] A total of 99 judges answered this question.

Restriction of rights is the most widely applied additional penalty. It is also one that makes it possible to effectively influence the behavior of the probationer. When giving an offender a conditional sentence and desisting from imprisonment, it is important to restrict the offender's freedom of action in specific areas. For example, a driver found guilty of drunken driving should lose the right to drive a motor vehicle; a physician found guilty of professional negligence should lose the right to practice; a dishonest salesperson, the right to work in the retail business.

Compensation for damages, within a specified period of time

A person who has committed a criminal offense must compensate for the damage that has been caused, regardless of the type of sentence imposed by the court. If a person has suffered personal loss, damage or injury as a result of the offense, such person can file a civil suit, which the court can adjudicate together with the criminal case.

Unfortunately, the mechanism for collecting money is not ideal in this country, and winning a civil suit does not guarantee that the victim will actually receive compensation for damages or that this will happen within a reasonable length of time. Quite frequently, a long time can pass before the victim receives compensation, and there are cases where no compensation is paid, although the offender has the financial means to fulfil this condition.

If the offender has been sentenced to imprisonment, community service or payment of a fine, he often does not have a serious incentive to try and find the money to compensate for damages. The situation is different if the offender has received a conditional sentence. In this case, compensation for damages is not a general obligation, it is a condition that must be fulfilled to avoid serving the sentence. If the offender is ordered to compensate for the damage within a specified period of time, he is stimulated to fulfil this condition, and the victim has greater chances of receiving compensation by the specified deadline.

Of the judges who were questioned, 78.5% said that they impose additional conditions on the offenders whom they sentence conditionally. Of the PIECJ officials who were questioned, 90.5% have had to deal with probationers on whom the court has imposed this condition.

85.7% of the judges feel that it would be wise to continue imposing this condition.

14.3% of the PIECJ officials find that this condition serves its purpose, but 19.1% find that there is not always any point to applying this condition. PIECJ officials who are

skeptical refer to the fairly high rate of unemployment and the level of poverty among those who have been convicted. It is clear that if a person has no income even the court cannot make him compensate for or repair any damages that have been caused.

The problem could partly be solved if judges and PIECJ officials applied a different interpretation of compensation. The obligation to compensate for damages within a specified period of time can be taken to mean not only that the offender must pay compensation to the victim, but also that the offender must undertake certain activities for the benefit of the victim.

As at February 1, 2002, 649 persons who had received conditional sentences, or 7.27% of the total number of registered probationers, had been ordered to compensate for damages. This fairly small percentage can be explained by the fact that:

- not all offenses entail material damage;
- some offenders compensate for damages before the case comes to court;
- this condition must be fulfilled within a certain period of time – it can be done before a probationer is deleted from the register.

When ordering a probationer to compensate for damages, it is important to specify the period of time within which this condition must be fulfilled, and also to explain the consequences of failing to fulfil the condition.

Courts must also keep in mind that there is no reason to revoke the condition if the offender is unemployed. In such cases, the time allowed for compensation can be extended. Unfortunately, our Criminal Law only provides for the possibility of revoking conditions, but does not allow supervisory institutions and courts to change the conditions of a sentence.

No change of home address without approval of the institution charged with supervising the offender

When the court sets this condition, it restricts a probationer's freedom of movement. Although this does not rule out the possibility of moving to another city, the probationer must coordinate this with the PIECJ inspector and get his approval.

If the court has set such a condition, the PIECJ official must inform the local government's residents' registration department of this in written form.

On February 1, 2002, 390 probationers who had been ordered by the court not to change their home address without approval of the police were registered with PIECJ. This is 4.37% of the total number of registered probationers.

Of the judges who were questioned, 51.9% said that this was one of the additional conditions that that they impose on offenders whom they sentence conditionally. 31.7% of the judges said that this condition should be applied to probationers in the future as well.

Of the PIECJ officials, 17 (80.1%) said that they had had probationers who had been required to fulfil this condition, but three police officials (14.3%) said that they had never been confronted with the practical aspects of seeing to it that this condition is fulfilled.

When assessing how effective this condition might be, two PIECJ officials noted that it was very effective. Just as many other PIECJ officials felt that there was no point to it.

Similar conditions for probationers are applied in the criminal laws of Austria, Spain and several other countries.[32] Estonia has an interesting situation. Here, courts cannot apply this condition to offenders who have been conditionally sentenced, but have not been placed under the supervision of the probation service; however, the condition is compulsory if the offender has been placed under supervision.[33]

Among our jurists, there are also some who feel that the requirement about not moving to a new address should be made compulsory for conditional sentences. One PIECJ official, for example, underlined that it would be expedient to apply this condition to all probationers because many offenders do not have a permanent place of residence, they are not registered at a certain address or do not actually live at the address where they are registered. As a result, a certain percentage of offenders who have received conditional sentences simply "disappear" after the court's judgement is pronounced. The police must then put out a search warrant, but finding an offender does not guarantee that he will not "disappear" again.

Admittedly, this is a serious problem, but the author does not feel that a total ban on moving to a new address without the consent of the authorities would be right. It is possible that courts should apply this condition more frequently. However, it is also

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[32] See the Austrian Criminal Code, Section 52 and the Spanish Criminal Code, Section 83.

[33] Estonian Penal Code (consolidated text, October 2002), § 73 and 74.

necessary to take into consideration the cases where there is no necessity for this. This is why the law empowers courts to evaluate each individual case and decide on whether or not it is expedient to set this condition.

Regular reporting to a specified institution

The court judgement can include the requirement that the offender must regularly report to a specified police department. On February 1, 2002, there were 851 probationers registered with PIECJ, whom the court had ordered to report to the police. This was 9.53% of all registered probationers.

The laws in Germany, Ukraine, Canada and several other countries provide for the possibility of imposing similar requirements on persons who have been conditionally sentenced.[34]

Ordering a probationer to report to the police has a disciplinary effect, but the importance of this requirement should not be overestimated, since the offender is not supervised in his accustomed environment, but at a police precinct.

The law does not specify how frequently a probationer must report to the supervisory institution. This is left to the court to decide in each individual case. Usually, a court will order a probationer to report to the police once a week, or once or twice a month. But there is nothing that prevents the court from deciding that this should be done more or less frequently. Some judges do not specify in their judgements how often a probationer must report to PIECJ. In such cases, this is decided by the officials at the supervisory institution.

58.2% of the judges who impose additional requirements when giving conditional sentences impose this condition as well. 67.6% of the judges feel that application of this condition to probationers should be continued.

Avoidance of specified places

When the court sets this condition, it lists in its judgement the places that the offender must avoid.

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[34] See the German Penal Code, Section 56c, the Canadian Criminal Code, Section 732.1 (2), and the Ukrainian Criminal Code, Section 75.

44.3% of the judges who were questioned and who impose additional requirements when giving conditional sentences said that they impose this condition. However, statistics show that probationers are very rarely ordered to avoid specific places. Of the 8,926 probationers who were registered with PIECJ on February 1, 2002, only 57 (0.64%) had been ordered to fulfil this condition. This means that the importance of this condition for the social rehabilitation of offenders has not yet been fully appreciated by courts in Latvia.

Of course, this condition should not be a purely formal measure. The court must be well informed not only about the circumstances of the offense, but also about the social environment of the offender, about the factors that can have a negative effect on the offender. In the future, courts will receive such information from officials at the probation service, who will be required to prepare special assessment reports.[35] Unfortunately, the probation service has not yet been established, so that courts, when deciding on the type and measure of punishment to impose on an offender, must rely on the documents in the case.

The author thinks that in the future courts will more actively order probationers to avoid specific places. Depending on the type of criminal offense that has been committed, the circumstances in the case, and the personality of the offender, it could be wise to demand that a probationer refrain from frequenting:

- mass events (discotheques, concerts, spots events, etc);
- night clubs;
- Internet clubs;
- casinos and game parlors;
- restaurants, cafes and other places that sell alcoholic beverages;
- places where the offender has previously committed crimes, for example, markets, train stations, bus stations, different areas of the city, the beach, etc.

It is positive that, although this condition is not frequently imposed, the majority of the judges feel that it should be.

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[35] According to the Draft Law on the National Probation Service, an assessment report is information characterizing a person, provided by an institution not being an interested party in the criminal proceedings, and submitted by an official of the National Probation Service.

Presence at home at specified times

This condition does, to a certain extent, restrict a person's freedom of movement. The court judgment must indicate when the offender must be found at home.

41.8% of the judges who impose additional conditions together with conditional sentences said that they take advantage of the possibility anticipated by the law to order probationers to find themselves at home at certain times. On February 1, 2002, there were 136 probationers registered with PIECJ, who had been ordered to be at home at a specified times. This is 1.52% of the total number of probationers.

In view of the nature of this condition, it should be applied more frequently. By ordering an offender to be at home at certain times, it is possible to limit the effect of factors that have had a negative influence and encouraged the offender to engage in criminal activities.

Usually, the offender is ordered to be at home at night. However, the circumstances in a case and the personality of the offender can lead the court to demand that the offender be at home at other times as well.

It is positive that 46.7% of the judges who were questioned feel that this condition should be imposed together with conditional sentences in the future as well. It is important that courts precisely define the period of time when a probationer must be found at home. Unfortunately, court judgements are not always sufficiently explicit about this.

On May 22, 2000, the Riga Regional Court sentenced A. G. for repeated purchase and possession of illegal psychotropic and particularly dangerous narcotic substances for the purpose of sale. A. G. was given a conditional sentence, with the condition that he not move to a new address without the consent of the police and that he be found at home after 12.00 p.m.

The judgement did not indicate until what time A. G. must be found at home.

Material from case file No. 1814009599

Therapy for alcoholism, drug or substance dependency (if the crime has been committed as the result of alcohol, drug or substance abuse, and the offender consents to treatment)

In view of the fact that one of the main reasons for violations of the Criminal Law is the excessive use of alcohol or abuse of narcotic and toxic substances, the court may impose a conditional sentence provided that the offender agrees to treatment.

Sections 61 and 64 of the Law on Medicine stipulate that in Latvia persons suffering from alcoholism or substance dependency may be treated at special rehabilitation centers only with their consent. When giving a person who has committed a crime under the influence of alcohol, drugs or toxic substances a conditional sentence, the court may make it a condition that the offender agree to treatment for alcoholism or drug dependency at a social or psychological rehabilitation institution. A person may not be forced to undergo treatment. However, if a person expresses the desire to undergo treatment or at least agrees to treatment, the court can attach this condition to the sentence.[36]

Although the law makes treatment for alcoholism or drug dependency a condition, this cannot be considered a coercive measure. An offender who has received a conditional sentence can discontinue treatment at any time, keeping in mind, of course, that, if he does so, he will have to serve the sentence. Making an offender undergo treatment does not guarantee that he will be cured, but it does give the offender additional stimulus to free himself from a harmful addiction.

85.7% of the judges who were questioned admitted to imposing this condition on offenders whom they give conditional sentences. 86.7% of the judges feel that this practice should be continued.

On February 1, 2002, there were 71 probationers registered with PIECJ, who were required to undergo treatment for alcoholism or substance dependency. This is 0.8% of the total number of probationers.

Differing views have been voiced about the way in which this condition should be formulated in the court judgement, i.e., about whether or not the rehabilitation center where the offender must undergo treatment should be named. For example, PIECJ

[36] Law on Medicine, adopted on June 12, 1997. *Latvijas Vēstnesis* No. 167, July 1, 1997.

officials were critical about the judgement of the Kurzeme Regional Court in criminal case No. K02-13/02, which ordered an offender who was given a conditional sentence to continue and complete therapy for drug dependency at the Bauska District institution "Kalna svētības kopiena."[37]

Having to undergo treatment at a specific rehabilitation center can be a problem if it involves a change of address for the offender. The police can consent to this, but a PIECJ inspector cannot make corrections to the court judgment and send the offender to another institution for treatment if a specific institution has been named in the judgement.

There are also certain doubts about the practice of ordering treatment at non-medical institutions, for example, religious communities. Without denying the capacity of some of these organizations, the question is whether it is up to the court to judge whether or not such organizations can help drug addicts and alcoholics. The problem would be solved if the Ministry of Welfare established a registry of organizations that are entitled to undertake treatment and rehabilitation of alcoholics and drug addicts.

When the court orders a probationer to undergo treatment for alcoholism or substance dependency, it does not have to name the institution/organization that will provide treatment. This can be done by a PIECJ official, with consideration for the availability of such services in a concrete territory, the capacity of the organizations, and the place where the offender is living at the time.

Problems involving the application of conditions not anticipated by the law

The conditions that may be imposed together with conditional sentences are rather strictly regulated in Latvia: the list of conditions that may be applied is all-inclusive, and the court can only choose conditions from this list or subsequently revoke them. The conditions are fairly inflexible, so that courts have only limited possibilities of choosing the most effective means of reforming an offender upon whom they impose a conditional sentence.

PIECJ officials who supervise probationers may not independently correct what the court has prescribed in its judgement. Even in cases where there are objective reasons that make it impossible to fulfil the conditions that have been imposed by the court,

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[37] Material from case file No. K02-13/02.

the police must ask the judge to revoke these conditions. The judge may then either revoke the conditions or leave them unchanged.

The majority of the judges who were questioned are dissatisfied with the fact that the law provides an all-inclusive list of the conditions that may be applied. Of 100 judges, 71 felt that it would be expedient to give courts greater powers to choose the appropriate conditions. The opposite view was expressed by 29 judges.

Conditions that are not anticipated in the Criminal Law, but that it would be wise to apply to offenders who are given conditional sentences, were named by 57 judges.

Table 18. Judges' suggestions for conditions that should be applied together with conditional sentences in addition to those anticipated by the law

✓	Attending school
✓	Working to compensate for damages suffered by the victim
✓	Carrying out tasks that benefit the community (similar to community service, but applicable as a condition, not criminal punishment)
✓	Finding a job, starting to earn a legal income
✓	Learning a vocation, for example, by attending special courses
✓	Attending special courses, taking part in special programs
✓	Refraining from meeting with persons named by the court
✓	Taking care of one's children, providing for them
✓	Attending consultations with a psychologist
✓	Attending language courses
✓	Taking care of sick or disabled persons who have suffered in traffic accidents
✓	Helping a victim
✓	Reporting to the probation service
✓	Undergoing treatment for various addictions
✓	Not leaving a municipal territory without permission from the police

When considering expansion of the list of the conditions that may be applied together with conditional sentences, it is worth taking a look at the situation in other countries. For example, Danish courts can order the offender to abstain from the use of alcohol, narcotics and similar drugs during the period of probation.[38]

[38] Danish Criminal Code, Section 57.

German courts can order the offender to pay a certain sum of money to a specific non-profit organization, for example, a non-governmental organization that carries out probation functions.[39]

It is important to keep in mind that every criminal offense has its causes. And even in cases where the court decides not to make the offender serve the sentence, thought must be given to ways of eliminating the causes of the offense. One of the possibilities is to impose special conditions on the offender. The greater the freedom of the court to choose the appropriate conditions, the greater the chances that it will find conditions that will have a positive effect on the attitude of the offender to public order.

Many jurists find that instead of expanding the list of conditions the Criminal Law should be amended to give courts the right to impose conditions not defined in the law, after considering the circumstances in the case and all relevant information about the offender. The majority of the judges who were questioned supported this idea.

Latvia is one of the few countries whose Criminal Law attempts to list all of the conditions that may be imposed on an offender who is given a conditional sentence. An examination of legislation in other countries reveals two predominant approaches:

- the law generally anticipates that conditions freely formulated by the court may be imposed on offenders who are conditionally sentenced;
- the law lists the conditions, but gives the court discretionary powers to choose other conditions, which are not specified in the law.

Since no two situations and no two offenders are alike, Latvia too should give judges greater authority to choose the conditions that they feel will more effectively serve to achieve the purpose of the conditional sentence. It is clear that, even if judges are allowed to choose conditions that are not set out in the law, they will not be able to do so arbitrarily inasmuch as they will still be required to observe the requirements of UN Resolution No 45/110[40] and other human rights documents that deal with the personal rights of offenders and their families.

For social rehabilitation purposes, it is important to involve the offender in activities that serve the community. It would be very important to find employment for the

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[39] German Penal Code, Section 56.b.

[40] United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules). Resolution No. 45/110, adopted at the 68th plenary meeting, December 14, 1990.

offender, but, as the judges correctly point out, these days the condition to "find a job and work" may not be easily fulfilled.

Some jurists support the idea of involving persons who have received conditional sentences in useful activities, ordering them to do service in the community. Formally, this could be similar to the community service that is set out in the Criminal Law. Starting January 1, 2004, the court will be able to apply this condition when conditionally sentencing a juvenile. It would also be necessary to apply it to offenders who are of age.

In Canada, Denmark, Russia, Sweden and several other countries, it is possible to combine a conditional sentence with community service. As D. Krauss and J. K. Pastille point out, in German criminal law, too, work that benefits the community is anticipated as an additional condition that can be combined with a conditional sentence, and there are not any conflicting views on this among legal practitioners.[41]

The Russian Criminal Code does not directly provide for the possibility of combining a conditional sentence with actual work in the community. However, it does not forbid the court to impose conditions that are not listed in the law. Several years ago, courts in Russia started to impose unpaid work in the community as an additional requirement together with conditional sentences.[42]

Involving offenders who have received conditional sentences in special programs could also play an important role in the social rehabilitation of such persons. It is clear that simply imposing restrictions and prohibitions will not suffice. It is necessary to work with the offender and to convince him that the law must be obeyed and public interests must be respected. UN Resolution No. 45/110 says that, when imposing alternative forms of punishment to imprisonment, it is important to have "various schemes such as case-work, group therapy, and the specialized treatment of various categories of offenders should be developed to meet the needs of offenders more effectively."[43]

A more effective choice of conditions would be ensured by pre-trial assessment reports on offenders, which in other countries are prepared by probation services. In Latvia, there is currently no probation service, and there is also no practice of preparing pre-trial reports. This is why it can sometimes be difficult for the court to choose the right condition that could help to rehabilitate the offender.

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41 Krauss, D. and J. Pastille. Krimināltiesību pamatjautājumi Latvijā un Vācijā [Basics of criminal law in Latvia and Germany], p. 106.

42 See: Условное осуждение с возложением обязанности выполнять общественно-полезные работы как альтернатива лишению свободы, pp. 4–5.

43 United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules).

Revocation of conditions

In accordance with CL Section 55, Paragraph 8, the court can fully or partially revoke the conditions that the offender is required to fulfil during the probation period.

If the probationer demonstrates good behavior and proves that he has reformed, at the request of the probationer and pursuant to Section 370, Paragraph 1 of Latvia's Criminal Procedures Code, a PIECJ official can submit an application to the court requesting partial of full revocation of the conditions that have been imposed.

In reality, this rarely happens. In 2001, only eight such applications were submitted. Of 98 judges, only four admitted that they had revoked conditions that the offender had been required to fulfil during the probation period. The remaining 94 had never done so.

The conditions that the court orders the offender to fulfil during the probation period are aimed at reforming the offender, and there is usually no reason to revoke these conditions during this time.

It is positive that, although most judges have no experience with revoking conditions, the majority does not consider this to be inconceivable. Of the 76 judges who answered the question about reasons that could induce the court to fully or partially revoke conditions imposed on the probationer, only 2 completely ruled out the possibility.

Table 19. Reasons mentioned by judges for revoking conditions imposed on the probationer

✓	The condition has been fulfilled (compensation for damages has been paid, treatment has been completed, etc.)
✓	The condition is being fulfilled honestly and conscientiously
✓	The probationer has demonstrated exemplary behavior
✓	Positive reports about the probationer from the supervisory institution
✓	Special family circumstances
✓	Special job circumstances (probationer's job makes it impossible to fulfil conditions)
✓	More than half of the probation period has passed
✓	Changes in the life of the probationer
✓	No further offenses have been committed
✓	Serious illness
✓	Fulfilling the conditions serves no practical purpose
✓	Conditions cannot be fulfilled for objective reasons

Before making the decision to revoke conditions, a judge must consider their nature and purpose. For example, it is hard to disagree with one of the respondents who argued that it is not permissible to revoke conditions connected with compensation for damages. Although, in this case, the court does not release the offender from the obligation to compensate for the damages, it simply eliminates the link between the conditional sentence and the compensation. The victim can still sue the offender for damages. Admittedly, not all offenders who receive a conditional sentence understand the legal nuances. The offender may simply believe that, if this condition is revoked, he can continue ignoring the legitimate demands of the victim. In other words, in a situation where the offender is not able to compensate for the damages in the specified period of time, it is better to extend the time allowed for compensation[44] than to revoke the condition.

Modification of conditions

Latvia's Criminal Law provides only for the possibility of revoking the conditions imposed together with a conditional sentence, but since the law also permits partial revocation of conditions, it is actually possible to modify individual conditions. However, despite the positive effect that the correction of conditions could have in certain cases, the legal possibilities for doing so are very limited.

The condition that the home address may not be changed is fairly flexible – a probationer may move to a different location with PIECJ permission. Where the other conditions are concerned, the court may only ease them. It may:

- order the probationer to report to PIECJ less frequently than in the beginning;
- revoke the ban on one of the places that the probationer has been ordered to avoid;
- shorten the time that the probationer must be found at home.

Unfortunately, the law does not provide for the possibility of replacing one condition with another. In view of the fact that the probation period is fairly long, conditions that were effective at the beginning of this period may be less effective later on and should be replaced by others. The impossibility of changing the conditions imposed on the offender for the duration of the probation period reduces the efficiency of conditional sentences.

It would be helpful if the law not only provided for the possibility of revoking conditions, but also for the possibility of modifying conditions and setting new ones. Of

[44] Unfortunately, Latvia's Criminal Law does not provide for this possibility.

course, any decisions about corrections to the conditions imposed on the probationer would have to be taken following consultations with the supervisory institution.[45]

Currently, PIECJ officials are only entitled to recommend that the court revoke conditions. Although the main job of PIECJ inspectors is to supervise probationers, in order to speed up decision making, it would be wise to expand the authority of supervisory institutions to correct the conditions imposed on a probationer. Supervisory institutions should be allowed to independently determine how conditions must be fulfilled.

It should be kept in mind that the UN Resolution No. 45/110 says that supervision of the offender should be periodically reviewed and adjusted as necessary.[46] It is clear that this can be done much more flexibly by increasing the authority of PIECJ (in the future, the probation service) to change the conditions imposed on probationers.

Extension of the probation period

Section 55, Paragraph 9 of the Criminal Law stipulates that if an offender who has received a conditional sentence fails to fulfil the conditions imposed by the court without a legitimate reason, or repeatedly commits administrative offenses for which administrative sanctions are imposed, the court, pursuant to an application from the supervisory institution, may decide to extend the period of probation by one year.

The court may also decide otherwise. After considering the circumstances, it may order the offender to serve the original sentence or it may decide to maintain the current status quo. This does not mean, however, that the court has complete freedom of decision – it still needs an application from the supervisory institution, requesting that either the probation period be extended or the offender ordered to serve the sentence. It can then either accept or dismiss the request.

Pursuant to Section 370, Paragraph 2 of the Criminal Procedures Code, the application is reviewed – without initiating criminal action – at a court hearing in the pres-

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[45] A similar system exists, for example, in Kazakhstan. Here, after a recommendation from the supervisory institution, the court can not only revoke, but also modify conditions imposed together with a conditional sentence. See: Постановление Пленума Верховного суда Республики Казахстан «О соблюдении законности при назначении уголовного наказания», § 9. In Norway, the court can also revoke and change conditions during the probation period, or impose new conditions. See: The General Civil Penal Code, with amendments of July 1, 1994, Section 54.

[46] United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), Section 10.3.

ence of the probationer and a representative of the institution charged with supervision of the probationer. Similar rules are anticipated in Section 611 of the Law on Criminal Procedure.[47]

At a public court hearing on November 12, 2001, the Cēsis District Court reviewed the application submitted by the Cēsis District Police Department requesting revocation of the conditional sentence or extension of the probation period for J. V.

J. V. was sentenced on February 8, 2001 by the Sigulda Court, in accordance with CL Section 176, Paragraph 1, to two years in prison without confiscation of property and with police supervision for a period of three years. In accordance with CL Section 55, J. V. was conditionally discharged, with a probation period of three years.

J. V. was ordered to report to the police once a week and not to change his home address without police permission. He was also ordered to pay I. P. the sum of 90 lats as compensation for damages by May 8, 2001.

J. V. was registered with PIECJ on May 15, 2001 and warned about the conditions connected with the sentence.

In the period following May 15, 2001, J. V. failed to report to the police as required a total of 10 times.

J. V. has not paid I. P. compensation for damages, has not even started making payments.

J. V. explained that he had not paid the victim because he had no money. Similarly, lack of money had at times prevented him from going from Līgatne to Cēsis to report to the police. He allegedly earned approximately 150 lats a month working at the sawmill in Līgatne and said that he had two children to support. He claimed he could pay what he owed I. P. within the next two months.

The court, after hearing the explanations of the offender and the representative of the Cēsis District Police Department, after examining the materials that had been submitted and considering the arguments of the public prosecutor, ruled:

to extend by one year the period of probation imposed on J. V. together with the conditional sentence pronounced by the Sigulda Court on February 8, 2001.

Materials from case file No. 4-3/7

[47] Draft Law on Criminal Procedure. http://www.tm.gov.lv/str/463_KPL_projekts.htm (last accessed on April 2, 2003).

Admittedly, in view of the total number of offenders who have received conditional sentences, the probation period has been extended for relatively few. At the same time, figures show that in recent years courts have been more actively making use of the option of extending the probation period instead of revoking the conditional sentence. In 2001, the probation period was extended by one year for 23 probationers; in 2002, for 39.

Table 20. Number of probationers whose probation period was extended by one year[48]

Year	1999	2000	2001	2002
Number of probationers whose probation period was extended by one year	18	23	23	39

While the law does anticipate the possibility of extending the probation period, it does not specify how many times the court may do this for one offender. However, the principle of the probation period would seem to rule out repeated extensions. The probation period is extended in cases where the offender fails to fulfil the conditions of the sentence or commits two or more administrative offenses. It is also extended if the offender continues to avoid fulfilling the conditions or commits further administrative offenses after the court has already extended the period of probation.

Unfortunately, the Criminal Law does not provide for the possibility of imposing new conditions when extending the period of probation.

[48] PIECJ data.

V. REVOCATION OF A CONDITIONAL SENTENCE

In principle, a conditional sentence is a bilateral transaction between the offender and the state. The state agrees not to execute the sentence imposed on the individual who has committed a criminal offense, but demands in return that the offender respect public interests, refrain from further offenses and fulfil special conditions. As long as the offender observes the rules of this transaction, the sentence prescribed in the court judgement is not executed. Failure of the offender to fulfil the conditions must be considered a breach of the transaction, which entails execution of the sentence.

The liabilities of the offender who has received a conditional sentence are defined in Section 55, Paragraph 2 of the Criminal law and explained in detail in Paragraphs 5, 6, 7 and 9, and in instructions issued by the Ministry of the Interior.

The offender who has received a conditional sentence is required to:

- abstain from further criminal offenses;
- observe public order;
- fulfil special conditions.

If the offender fails to observe public order or fulfil the conditions, the court may revoke the conditional sentence and order the offender to serve the original sentence. However, if the offender commits another criminal offense during the period of probation, the court must sentence the offender for this new crime and add this sentence, fully or in part, to the sentence that was previously imposed conditionally, i.e., the court must revoke the conditional sentence and execute the original sentence.

Table 21. Number of probationers whose conditional sentence was revoked for further offenses[49]

Year	1999	2000	2001	2002
Number of probationers	43	74	49	39

Further criminal offenses committed during the probation period

Section 55, Paragraph 2 of the Criminal Law says that, when a court imposes a conditional sentence, the sentence is not executed provided that the offender does not commit a further criminal offense. In 2002, criminal charges were brought in 398 cases against probationers who had committed criminal offenses while on probation (413 in 2001; 438 in 2000; 427 in 1999).

The logical deduction would be that in such cases the conditional sentence should be revoked and the offender ordered to serve the original sentence. However, the Criminal Law does not directly prescribe this.

Table 22. Criminal charges brought against probationers for committing further crimes[50]

Year	1999	2000	2001	2002
Number of criminal charges	427	438	413	398

Section 55, Paragraph 10 of the Criminal Law also stipulates that the court shall sentence a probationer who has committed a further criminal offense in accordance with provisions on sentences for multiple convictions. But even in this case, the law does not say that that the final sentence must actually be served and that the court may not impose a conditional sentence.

[49] According to PIECJ data.

[50] Ibid.

Repeated conditional sentences for probationers who have committed further criminal offenses are clearly disallowed in the Supreme Court's Ruling on Application of the Criminal Law to Conditional or Suspended Sentences, which was handed down on October 25, 1993. This document is still in force, but is not binding for law courts. The authority of the ruling is also diminished by the fact that it does not apply to Section 55 of the Criminal Law, but to the provisions of the Criminal Code, which is no longer in force.

The majority of Latvia's judges do not support repeated conditional sentences. Nevertheless, there are quite a number judges who do not actually give repeated conditional sentences themselves, but who feel that courts should be allowed to do so in certain circumstances.

At a public hearing on October 20, 1999, the Riga Kurzeme District Court heard the case against I. L. who was charged in accordance with CC Section 213, Paragraph 1 (violation of traffic regulations, resulting in slight injuries and damages to health in two cases, and moderate injuries in one).

I. L. had been previously sentenced: in 1995, in accordance with CC Section 197, Paragraph 2, to a fine of 280 lats; in 1997, in accordance with CC Section 204, Paragraph 2, to a conditional three-year prison sentence with a five-year probation period.

The court ruled:

to find I. L. guilty as charged and, in accordance with CC Section 213, Paragraph 1, sentence him to a fine of 30 minimum monthly wages, i.e., 1,260 lats, with confiscation of all manner of driver's licenses for a period of four years.

In accordance with CC Section 39, I. L. was given a final sentence: a three-year conditional prison sentence with a five-year probation period, and a fine of 30 minimum monthly wages, with a three-year probation period, which included the sentence pronounced by the Riga Regional Court on June 20, 1997, in criminal case No. K-97/6, imposing on I. L. a conditional three-year prison term with a five-year probation period, in accordance with CC Section 204, Paragraph 2.

Material from case file No. 1-253/9-99

At a public hearing on August 10, 2000, the Bauska District Court heard criminal case No. 1120027500 against D. O., born in 1966, with four previous convictions. The last conviction was on January 27, 2000, when the Bauska District Court applied CL Section 55 and conditionally sentenced D. O, in accordance with CL Section 175, Paragraph 2 (theft), to a one-year prison term with a probation period of one year and 6 months.

On April 28, 2000, D. O. again, together with A.B and premeditatively, stole a motor vehicle and personal property belonging to the victim K.

Having considered the material in the case, the court ruled:

- to find D. O. guilty as charged, in accordance with CL Section 175, Paragraph 2, and sentence D. O. to a prison term of one year and six months, without confiscation of property;
- to partially add to the sentence, in accordance with CL Section 51, the unserved sentence given by the Bauska District Court, and impose a final sentence constituting a prison term of 2 years and one month, without confiscation of property, to be initially served in a closed facility.

On September 8, 2000, a judges' panel of the Zemgale Regional Court's Criminal Court heard the appeal submitted by D. O.

In his appeal, without contesting the facts in the case or the legal qualification of the crime, D. O. asked the court to reduce the sentence.

After hearing the the material in the case, the court decided not to overrule the August 10, 2000 decision of the Bauska District Court.

Material from case file No. 1120027500

It is clear that an absolutely free hand to repeatedly impose conditional sentences would discredit this institution of law. On the other hand, an absolute ban on repeated conditional sentences would, in certain situations, force courts to act formally, which would seriously restrict their freedom to choose the most appropriate form and duration of criminal punishment.[51]

[51] Admittedly, there are also other views and approaches. For example, the Belgian Criminal Code stipulates that a suspended sentence is automatically revoked if an offender is sentenced to a prison term of more than two months during the period of probation. See: "Community Sanctions and Measures in Belgium." In: Albrecht, Hans-Jörg and A. M. van Kalmthout. Community Sanctions and Measures in Europe and North America, p. 49.

The author feels that the general rule in the future should be that offenders who have committed a further criminal offense during the probation period should be ordered to serve the original sentence. At the same time, it would be wise, in individual cases and in special circumstances, to allow courts to give repeated conditional sentences. For example, courts should, as an exception, be allowed to give repeated conditional sentences in cases where the new offense has been committed through negligence and in cases where the sentence for the new offense does not involve imprisonment.

In other words, repeated conditional sentencing should not be made a widespread practice; however, courts must be given the opportunity to choose repeated conditional sentences with consideration for the specific circumstances in a case and the personality of the offender. In such cases, courts should be required to pay special attention to the explanation of their reasoning in the judgement.

The necessary amendments should be made to Section 55 of the Criminal Law, and they should be explained in guidelines on the implementation of conditional sentences.

Violation of public order during the probation period

Violation of public order means commission of an administrative offense for which administrative sanctions are imposed. Although the law requires a person who has received a conditional sentence to observe public order, one administrative offense is not considered sufficient reason to revoke a conditional sentence. Section 55, Paragraph 9 of the Criminal Law stipulates that the sentence may be executed if the offender has committed no less than two administrative offenses and received administrative sanctions for each of these.

When the court receives a report from the police concerning an offense committed by a probationer, it is not obliged to revoke the conditional sentence. The court may decide to have the sentence executed, but it does not have to do so. Instead, it may extend the offender's probation period by one year. The law also does not forbid the court to maintain the current status quo.

Failure to fulfil conditions

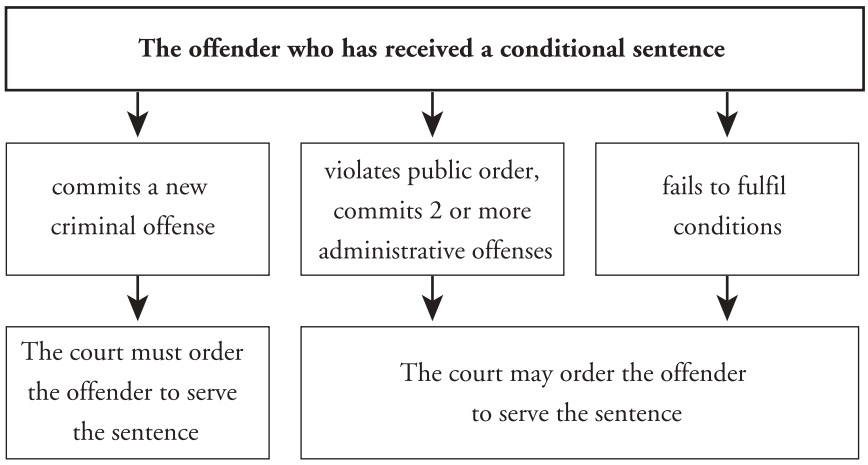
If a probationer fails to fulfil conditions without a legitimate reason, the court may order the probationer to serve the original sentence.

Instructions issued by the Ministry of the Interior say that conditions are to be considered unfulfilled if a probationer, without a legitimate reason:

- has failed to compensate for damages in the specified period of time;
- has violated the court's orders not to move to a new address without the consent of the police;
- has failed to report to the police at least twice;
- has been found in a place ordered by the court to avoid;
- has not been found at home at the specified time;
- has not undergone treatment for alcohol or drug dependency.

Of course, it should be kept in mind that failure of the probationer to fulfil these conditions simply provides the grounds for the police to prepare a report asking the court to revoke the conditional sentence. The court, on the other hand, is entitled to dismiss the request and qualify the offenses as not sufficiently serious to warrant an order to serve the sentence.

Figure 7. Requirements of CL Section 55, Paragraph 2



VI. SUPERVISION OF PROBATIONERS

PIECJ and district inspectors

In Latvia, the Police Inspectorate for the Execution of Court Judgements (PIECJ) is the institution that is charged with the supervision of probationers. In 2002, PIECJ had a staff of 48: 17 inspectors in Riga, 10 in other cities and districts, and 21 in rural areas.[52] In 2002, a total of 25,568 persons were registered with PIECJ; of these, 15,631 (61.14%) were probationers.

Table 23. Probationers registered with the police in 2002 (by city or district)[53]

Riga	Daugavpils City & Distr.	Jelgava City & Distr.	Jūrmala	Liepāja City & Distr.	Rēzekne City & Distr.	Ventspils City & Distr.	Aizkraukle District	Alūksne District	Balvi District	Bauska District	Cēsis District	Dobele District	Gulbene District
3,951	732	966	486	888	627	604	327	225	258	352	534	256	230

Jēkabpils District	Krāslava District	Kuldīga District	Limbaži District	Ludza District	Madona District	Ogre District	Preiļi District	Riga District	Saldus District	Talsi District	Tukums District	Valka District	Valmiera District
390	269	328	287	210	386	380	217	967	360	296	394	284	427

[52] Report on the work of PIECJ in 2002.

[53] Ibid.

In 2002, each PIECJ inspector was required to supervise about 326 probationers, which is 12.88% less than in 2001.[54]

When assessing the caseload of PIECJ inspectors, it should be kept in mind that the Inspectorate must not only supervise the behavior of probationers, it must also oversee the execution of additional penalties that involve restriction of rights and police control, and supervise persons released on parole. It is also in charge of persons who have been released on bail and placed under house arrest or police supervision pending trial. As a result, the average caseload of one PIECJ inspector in 2001 comprised 533 persons, which is 5.8% less than in 2001, but still much more than is objectively acceptable. With this kind of caseload, the inspectors are not physically able to effectively supervise probationers.

On October 6, 1999, the Chief of the State Police issued Instruction No. 697 on the Execution of Conditional Sentences and Additional Penalties Involving Restriction of Rights. This document precisely sets out how PIECJ must register and monitor persons who have been sentenced conditionally.

Although Section 55 of the Criminal Law says that conditional sentences can be given not only to offenders who have been sentenced to imprisonment, but also to those who have been sentenced to custodial arrest, community service or payment of a fine, the Instruction focuses on offenders who have received conditional prison sentences. Although this group of offenders constitutes the absolute majority of those who have been conditionally sentenced, it would be useful to have regulations on registration and supervision of all categories of probationers.

Since registration and supervision of offenders who have received conditional sentences that do not involve imprisonment probably does not require special regulations, the wording of the Instruction should simply be changed. Reference to conditional prison sentences should be deleted and the Instruction should be amended to apply to all offenders who have been conditionally sentenced, regardless of the type of sentence.

Pursuant to the Instruction on the Execution of Conditional Sentences and Additional Penalties Involving Restriction of Rights, PIECJ officials must do the following:

- obtain a copy of the court judgement;
- register a copy of the judgement in the registration journal;

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[54] In 2001, each PIECJ inspector had to supervise an average of 368 probationers.

- start a case file on the probationer, including in this:
  - documents on the basis of which the probationer is registered with PIECJ;
  - reports on the probationer's behavior;
  - reports on fulfillment of the conditions set by the court and offenses committed by the probationer;
  - a report to the court on registration of the probationer;
  - documents on measures that have been taken;
  - correspondence and other documents;
- invite the probationer to a meeting;
- during the meeting, explain to the probationer the conditions set by the court and the possible consequences of failure to fulfil the conditions, failure to observe public order or commission of further crimes;
- monitor how conditions set by the court are being fulfilled;
- establish a procedure for fulfilling the conditions;
- arrange for the probationer to be brought in if the probationer repeatedly fails to report to the police;
- review requests for permission to move to a new address from probationers whom the court has forbidden to move without the consent of the police;
- issue an official warning about possible consequences if the probationer has committed an administrative offense or has failed to fulfil the conditions set by the court;
- regularly check all sources of information on violations of the law;
- check on the probationer at home at least once every three months;
- when checking on the probationer at home, examine the living conditions, interview family members and neighbors, inquire into sources of income and obtain other necessary information;
- submit an application to the court requesting full or partial revocation of the conditions if the probationer has proved by good behavior that he has reformed;
- write a report informing the court that the probationer has failed to fulfil the conditions or has committed no less than two administrative offenses for which administrative sanctions have been imposed;

- strike the probationer from the PIECJ register:
  - if the probation period is over;
  - if the conditional sentence has been revoked and the offender ordered to serve the original sentence;
  - in the case of a conviction for a new crime;
  - in the case of an amnesty;
  - in the case of a pardon;
  - in the case of the probationer's death;
  - if the probationer leaves the country;
  - if the probationer moves to a different location.

Supervision of the behavior of probationers is carried out by PIECJ officials and district inspectors who receive reports from PIECJ officials. Other State Police agencies and municipal police officials can also be involved in supervising probationers.

The work of district inspectors with probationers is regulated by the Ministry of the Interior's Instruction on Police District Inspectors.[55]

Pursuant to this instruction, when organizing individual preventive measures in work with probationers who have received conditional or suspended sentences, district inspectors must do the following:

- after receiving a report, prepared by a PIECJ inspector and endorsed by the head (deputy) of the police department, that a probationer is living within the inspector's precinct, pay a visit to the home of the probationer and check the living conditions;
- interview family members and neighbors to find out their views about the probationer;
- explain to the probationer that his behavior will be monitored;
- check on the probationer at his home at least once every three months and request information from the Ministry of the Interior's statistics office;
- write a report for the PIECJ official informing him of the results of monitoring and other measures, and about all offenses committed by the probationer.

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[55] Instruction on Police District Inspectors, approved by the Minister of the Interior, Order No. 75, March 7, 1997.

If the district inspector carries out these duties conscientiously, monitoring of the probationer can be fairly effective. However, the author has found that since this is only one of the tasks that district inspectors must carry out, they frequently have neither the time nor the will to follow these instructions as precisely as they should be followed.

Views of PIECJ officials on supervision efficiency

Twenty PIECJ officials provided an assessment of the efficiency of their work with probationers. This is 43.48% of the total number of PIECJ employees. Ten respondents find that supervision of probationers is effective, nine do not, and one had no opinion. Nine PIECJ officials also agreed that their supervision of probationers is purely formal, and as long as the probationers do not commit a further offense, they do not actually feel the effects of the conditional sentence. However, 12 respondents had the opposite view.

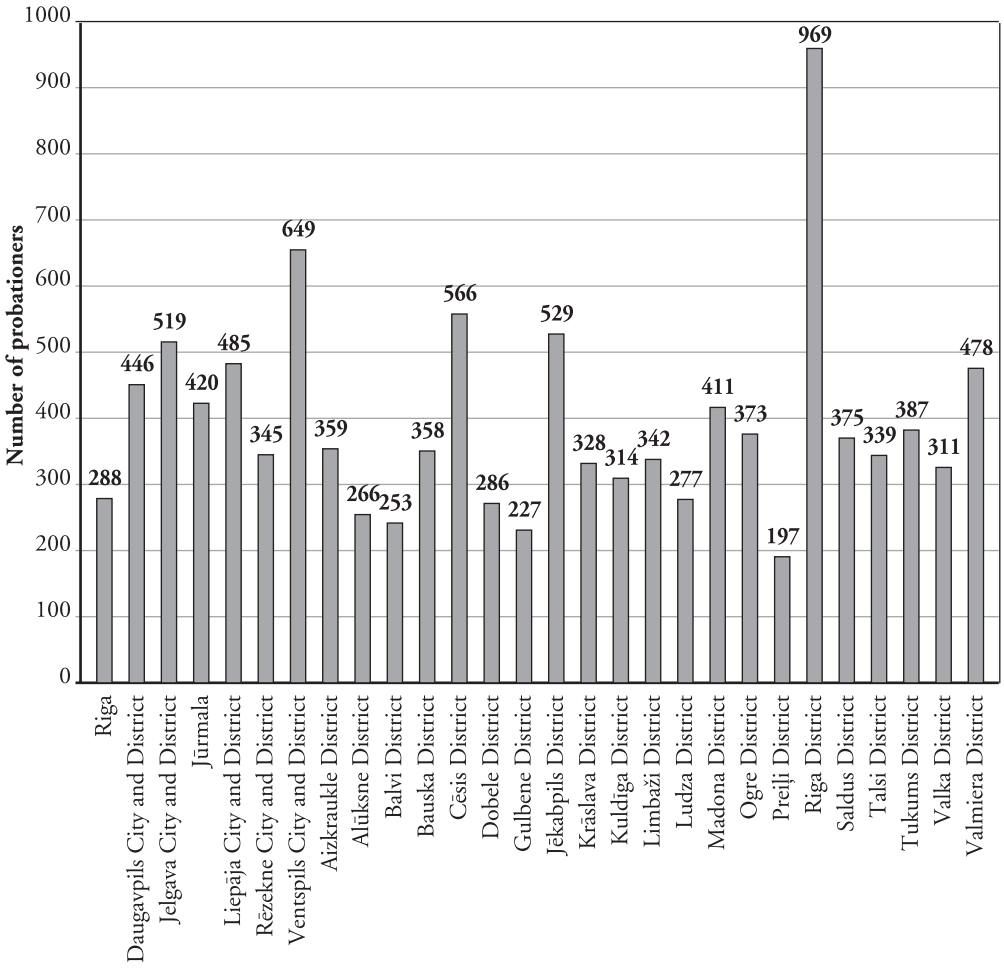
Eleven PIECJ officials (52.38%) noted that one of the reasons why supervision of probationers is not particularly effective is the huge caseload of PIECJ officials. Work with offenders who have received conditional sentences is only one of the tasks that the Inspectorate must carry out. PIECJ must also work with offenders who have been given additional penalties involving restriction of rights or police control. It is in charge of offenders who have been released on bail and placed under house arrest or police supervision pending trial, and offenders who have been released on parole. For example, in the Ogre District, on July 1, 2002, there were 464 offenders who were subject to preventive measures.

For district inspectors, as for PIECJ officials, supervision of probationers is also only one of the tasks that must be carried out. Subsequently, the amount of help that they can provide is limited.

Table 24. PIECJ officials' assessment of the work of district inspectors with probationers

Work of district inspectors with probationers is:	Number of PIECJ officials who hold this view
good	3
satisfactory	15
unsatisfactory	3

Figure 8. Number of probationers to one PIECJ official in 2001



The number of probationers to one official of a supervisory institution can be reduced by increasing the number of officials. This, however, would require additional financial resources, and achieving a normal ratio of 20–30 probationers to one official would require huge financial and human resources.

To ensure better supervision of probationers, it would be advisable to reduce the number of persons who must be supervised by PIECJ. The current law anticipates supervision as a mandatory element of a conditional sentence. However, in numerous cases, taking into consideration the nature of the crime and the personality of the offender,

special supervision of the probationer is objectively not necessary. Separating those who do not require special attention from those who do would facilitate a more rational use of PIECJ resources and ensure supervision and help for those who objectively need it.

Conditional sentences without supervision should be applied in cases where the court is convinced that supervision is unnecessary and the conditions that have been imposed do not require regular monitoring. Conditional sentences without supervision could be applied when sentencing offenders for criminal offenses committed through negligence or offenses that have not seriously harmed public interests.

A conditional sentence without supervision means that the behavior of the probationer is not specially monitored during the period of probation, and the probationer can be ordered to serve the sentence if he is found to have committed a further criminal offense or offenses for which administrative sanctions can be applied.

Conditional sentences without supervision are widely applied in other countries, for example, Germany, Denmark, Sweden, Canada, Switzerland, Estonia, Luxembourg and a number of others.

The term "conditional sentence without supervision" is not well chosen. It would be more logical to simply call it a "conditional sentence," allowing the court the option of imposing a conditional sentence with supervision.[56]

Views of judges on supervision efficiency

Insufficient (even non-existent) supervision of probationers is, according to judges, the main problem connected with conditional sentencing. Twenty-seven judges pointed out that supervision of probationers is inadequate, that it is purely formal, and that it is actually nothing more than registration of persons who have received conditional sentences. Special attention is paid to persistent offenders, but first offenders are not really supervised. In reality, no one checks their behavior or lifestyle, or whether they fulfill the conditions that the court has imposed. In other words, in order to receive the attention of PIECJ, a probationer must commit a new criminal offense.

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[56] The system in Latvia could be similar to that provided for in the Portuguese Criminal Code: a conditional sentence, a conditional sentence with conditions, and a conditional sentence with supervision. See: Kalmthout, A. M. van and J. T. M. Derks (eds.). Probation and Probation Services: A European Perspective, p. 455.

The judges feel that probationers should be supervised more actively, for example, through regular visits at home, etc. One of the judges noted that the police do not check whether probationers fulfil the conditions imposed by the court, and if they do discover that a probationer is not fulfilling the conditions, they do not ask the court to revoke the conditional sentence. Another judge finds that the police do not act consequently if a probationer commits more than one administrative offense.[57]

To improve and develop supervision of probationers, judges recommend:

- involvement of local governments in the supervision of probationers;
- involvement of the public (local residents) in the supervision of probationers;
- training of supervisory personnel in the use of complex and target-oriented approaches in dealing with probationers.

Six respondents pointed out that Latvia does not have a service that is responsible for monitoring the behavior of probationers and thought that the problem would be resolved when the planned probation service is established.

The judges think it is important that supervisory institutions regularly control the behavior of probationers and help them to deal with their problems. For example, the judges pointed out that:

- it would be extremely important to involve probationers in concrete social programs because the conditions that are currently imposed together with conditional sentences are not obligations that must be actively carried out;
- probationers must receive help in finding jobs, schooling opportunities, accommodations, and in integrating into society, which would reduce the rate of recidivism;
- there are no programs in which probationers could be involved. The purpose of such programs is to keep offenders from relapsing into criminal behavior. At present, whether or not further violations of the law are committed is dependent on the offender alone;
- during the period of probation, it would be useful for the police to have talks with the probationers. These should take place regularly (especially in the case of juvenile offenders).

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[57] PIECJ officials, on the other hand, say that judges do not act on information about administrative offenses committed by probationers.

Table 25. Judges' views on PIECJ work with probationers

The work of the police with probationers is:	Number of judges who hold this view
good	8
satisfactory	44
unsatisfactory	35

The Probation Service and supervision of probationers

Latvia still does not have a probation service. However, on November 19, 2002, the Cabinet of Ministers approved a Framework Document on the National Probation Service.[58] According to this document, the Probation Service will be an institution that coordinates at the national level the execution of sentences that must be served in the community and organizes help for persons who are released from prison. One of the functions of the Probation Service will also be correction of the social behavior of probationers.

With its approval for the Framework Document on the National Probation Service, the government has admitted that work with probationers is currently not sufficiently effective:

- these persons are not sufficiently supervised,
- no measures are being taken to prevent the causes of criminal offenses,
- pursuant to CL Section 55, a probationer may be required to refrain from certain activities, but may not be asked to carry out other activities.

The Framework Document anticipates that in 2004 the National Probation Service will begin the supervision of persons who have received conditional sentences and have been placed on probation. In this connection, it will be necessary to carry out a serious assessment of the role of the police in the supervision of probationers and consider the cooperation mechanism between the National Probation Service and the Police Inspectorate for the Execution of Court Judgements.

[58] See: http://www.tm.gov.lv/str/388_probacija.doc (last accessed on April 2, 2003).

The Probation Service will operate parallel to PIECJ; it will coordinate supervision of probationers and carry out administrative functions. The Probation Service will take some of the load off the police and allow them to devote more time and attention to police functions.

Work of local governments with probationers

Although work with probationers cannot be considered a priority of local governments, local authorities can contribute to the social rehabilitation of such persons. There are two ways in which local governments can participate in efforts to correct the behavior of probationers: a local government can help to supervise probationers and it can provide special rehabilitation and education programs for persons who have received conditional sentences.

Help with the supervision of probationers is possible if PIECJ officials cooperate directly with the local government of a specific territory. Cooperation is easier if the territory has a municipal police. The Standard Regulations on Municipal Police[59] say that the police must help with the social rehabilitation of persons. The document does not directly mention persons who have received conditional sentences, but it is clear that the municipal police must work with such persons as well.

Several local governments have set up special services or appointed coordinators to supervise persons who have been sentenced to community service. Since conditional sentences, like community service, are an alternative to imprisonment, it would be legitimate to involve such persons/institutions in active work with probationers. Of course, the question of financing must be resolved.

[59] Approved by the Ministry of the Interior on June 11, 2001.

VII. VIEWS OF JUDGES ON THE PROBLEMS OF CONDITIONAL SENTENCING

An analysis of judges' answers to questions about conditional sentencing reveals that the judiciary is not indifferent to the fact that serious problems exist, and that these must be resolved as quickly as possible. Of the 105 judges who participated in the survey, 75 not only acknowledged the existence of problems, but also elaborated on these. According to the judges, the main problem is ineffective supervision of probationers. The judges also drew attention to other problems and made suggestions about the improvement of court practice where conditional sentencing is concerned. The judges sometimes had radically different views on conditional sentencing; however, the ideas that were put forth are food for thought about conditional sentencing as an institution of law and the prospects for its development.

Views of individual judges on the problems of conditional sentencing:

- ✓ "...what is important: a probationer who has committed a criminal offense during the probation period should be ordered to serve the original sentence...."
- ✓ "...repeated conditional sentencing must be allowed if the new criminal offense has been committed through negligence...."
- ✓ "...repeated conditional sentencing must be allowed if the misdemeanor or crime that has been committed during the probation period has not had any serious consequences...."
- ✓ "...the court must be empowered to extend the period of probation instead of sending the offender to prison following an offense committed during this period...."
- ✓ "...the offender should not be imprisoned if the sentence for the second crime does not involve imprisonment...."
- ✓ "...the law should specify the types of offenses or the maximum length of sentence for which conditional sentences may be imposed...."
- ✓ "...probationers should be placed under police supervision...."

- ✓ "...the Criminal Law should anticipate a new condition for probationers – work in the community...."
- ✓ "...the penal system must be amended to make it possible to punish an offender without sentencing him to imprisonment... there are basically no alternative forms of punishment in Latvia...."
- ✓ "...courts should be empowered to impose other conditions than those provided for by the law, after considering the circumstances in the case, the personality of the offender, the nature of the crime and the damages...."
- ✓ "...the court should be empowered to set a probation period of up to five years when giving conditional sentences...."
- ✓ "...conditional sentences are frequently given without providing any arguments for doing so; there are cases where the offender has received as many as three consecutive conditional sentences...."
- ✓ "...there are cases where the probation period is shorter than the prison sentence. Conditional sentences should prescribe the minimum term of imprisonment, but a longer period of probation. This would discipline the probationer...."
- ✓ "...occasionally, a lower court will set conditions that the probationer is unable to fulfil...."
- ✓ "...public prosecutors frequently demand a conditional sentence for a criminal offense that has been committed during the probation period...."
- ✓ "...a person who has been given a conditional sentence cannot actually be made to compensate for damages because no mechanism has been established for fulfilling such a condition...."
- ✓ "...there is a problem if the offender has been ordered to compensate for damages within a specified period of time, but he is unemployed. The Supreme Court and the regional courts consider unemployment to be a legitimate excuse for failure to fulfil this condition and a reason for revoking the condition. For example: an offender was sentenced conditionally to three years in prison and ordered to pay 120 lats as compensation for damages within this period of time. Compensation was not paid within this time. The court ordered execution of the original sentence. The regional court revoked the order...."
- ✓ "...computers must be hooked up with the Information Center of the Ministry of the Interior to make it possible to check whether or not a person has a criminal record. Offenders often fail to reveal such information and as a result receive repeated conditional sentences...."
- ✓ "...the law must specify the administrative offenses for which, if committed repeatedly, the probationer can be ordered to serve the original sentence...."

- ✓ "...there is a high rate of recidivism among offenders who have received conditional sentences...."
- ✓ "...there are cases where a lower court imposes a prison sentence for an offense committed during the probation period, but the court of appeal revokes the sentence and imposes a repeated conditional sentence...."
- ✓ "...if the court sets no conditions together with the conditional sentence, the behavior of the probationer is not monitored...."
- ✓ "...problems arise if there are several charges against one person for the same type of crime (for example, theft). After the court has conditionally setenced the offender in one case, it receives a new case to which it can no longer apply CL Section 55. This undermines the point of conditional sentencing...."
- ✓ "...in practice, there are few cases where, following an application from the responsible institution, a conditional sentence is revoked and the offender sent to prison...."
- ✓ "...it is important to pay attention to the situation in the offender's family because such people frequently terrorize their family members. On the one hand, if the offender has several children, one is reluctant to send him to prison; on the other had, he is a negative example for his children...."
- ✓ "...after examining the judgements of different levels of law courts, it is difficult to understand why, if a criminal offense has been committed during the probation period, some courts quote CL section 49 and impose punishment that is less severe than that prescribed by the law. It is also not clear why courts ignore CL Section 55, Paragraph 2 and impose a fine for a repeated offense, but do not revoke the conditional sentence...."
- ✓ "...offenders who have received conditional sentences do not understand the principles of a conditional sentence and consider themselves to have been acquitted...."
- ✓ "...victims often feel that the offender who has received a conditional sentence has escaped punishment...."
- ✓ "...the media, which shapes public opinion, often describes a conditional sentence as an acquittal...."
- ✓ "...the public does not understand the principles of a conditional sentence and considers a conditional sentence to be an acquittal...."

VIII. PROBLEMS AND POSSIBLE SOLUTIONS

Different interpretations of provisions that regulate conditional sentencing

PROBLEM

There is no consensus among those who practice conditional sentencing about the interpretation of the provisions of law that cover conditional sentencing. Not all of these provisions have been defined precisely enough, and this leads to different approaches when applying conditional sentences.

POSSIBLE SOLUTIONS

1. To prevent different interpretations of the provisions, CL Section 55 should be supplemented with preconditions and procedure for the application of conditional sentences.

2. In view of the fact that the Supreme Court's ruling on the application of conditional sentences was handed down in 1993 and, therefore, does not interpret the provisions of the current Criminal Law, but those of the Criminal Code, which is no longer in force, the Supreme Court should prepare a new ruling or compile law reports on conditional sentencing. The Criminal Law cannot cover all nuances of conditional sentencing, but the Supreme Court could help judges to better understand the process of conditional sentencing by formulating guidelines for the application of conditional sentences.

3. Police instructions on conditional sentences should be amended. This would improve work with probationers.

4. A Law on the Execution of Criminal Punishment should include the procedure for the execution of conditional sentences.

5. A Law on Probation must define the rights and obligations of probation service officials in connection with conditional sentences.

Sentences that can be served in the community should be morewidely applied

PROBLEM

The system of alternative forms of punishment to imprisonment is not sufficiently effective, and in cases where imprisonment is not the best option, courts frequently see conditional sentencing as the only way of punishing the offender.

Although the Criminal Law does anticipate forms of punishment that do not involve imprisonment, they are not widely applied. Judges in some regions find it easier to sentence an offender to imprisonment than to consider how other forms of punishment such as community service or payment of a fine could be executed. This is why full advantage is not taken of the options that are provided by Latvia's penal system. When choosing the form of punishment, the court sometimes considers only two alternatives – a prison sentence or a conditional prison sentence.

POSSIBLE SOLUTIONS

1. The Criminal Law defines the forms of criminal punishment that do not involve imprisonment: community service and fines. These should be more actively applied when sentencing offenders for violations that pose a relatively small threat to public safety.

2. The range of criminal offenses for which a person can be sentenced to community service should be expanded.

3. In view of the fact that, pursuant to the Criminal Law, violations that pose a relatively small threat to public safety must for formal reasons be qualified as serious or very serious crimes, judges should be empowered to impose milder sentences than those prescribed by the law (CL Section 49) even in cases where the offender has repeatedly committed serious or very serious crimes, or has a criminal record.

Argumentation for the choice of a conditional sentence in court judgements

PROBLEM

Pursuant to CL section 55, Paragraph 4, when giving a conditional sentence, the court must indicate in its judgement the grounds for considering imprisonment of the offender to be unnecessary and the reasons for imposing specific conditions. Unfortunately, courts to not always provide sufficient arguments for their choice of a conditional sentence.

The lack of arguments or their purely formal character discredits conditional sentences as an institution of law and gives the offender a sense of freedom from responsibility. The public also frequently fails to understand the reasons for a conditional sentence and sees it as a sign of the judge's corruptibility.

POSSIBLE SOLUTIONS

1. The Criminal Procedures Code says that a court judgement must be well reasoned. It is difficult for the law to define all legitimate criteria that may be applied in the court's reasoning; nevertheless, when a court decides to give a conditional sentence, it must provide arguments for its choice.

2. To improve the quality of court judgements, it is important to ensure accessibility and transparency of court judgements. Making court judgements accessible to the public will not only promote judges' sense of responsibility, it will also make it possible to analyze court judgements, accumulate positive experience and prevent legal errors.

Length of the probation period for conditional sentences

PROBLEM

Pursuant to CL Section 55, when giving a conditional sentence, the court prescribes a probation period of no less than six months and no more than three years. The law makes no reference to the proportional relationship between the length of the prison term and that of the probation period. The probation periods that are set by courts in Latvia are generally similar in length or even shorter that the prison terms to which the offenders have been sentenced.

POSSIBLE SOLUTIONS

1. The length of the probation period has been left to the discretion of the courts. However, the logic of conditional sentences does not allow the courts complete freedom, especially if the offender has been given a conditional prison sentence. If the court decides that the offender deserves a certain term of imprisonment for the crime that has been committed, but after considering the circumstances in the case, gives the offender a conditional sentence, the length of the probation period may not be shorter than the length of the prison sentence. If the court prescribes a shorter period of probation, it not only discharges the offender without punishment, it also shortens the time during which the offender is under supervision.

2. In individual cases, courts give conditional prison sentences of more than three years because the Criminal Law does not allow a milder form of punishment. In such cases it would be wiser to refer to CL Section 49 and apply a form of punishment that is milder than that prescribed by the law. It is clear that in cases where the court considers a three-year prison term to be too mild a form of punishment, there is also no reason to give the offender a conditional sentence.

3. CL Section 49 should be amended to allow courts to impose milder sentences than those prescribed by the law also in cases where the offender has a criminal record.

4. Guidelines on conditional sentencing should make it clear that the length of the probation period should generally not be shorter that the length of the conditional prison sentence.

Additional penalties

PROBLEM

CL Section 55, Paragraph 1 says that a person can be sentenced conditionally to imprisonment, community service, custodial arrest or payment of a fine. CL Section 55, Paragraph 5 says that additional penalties may be imposed together with conditional sentences. Although courts generally interpret this as a possibility of imposing a penalty that must be executed together with a sentence that must only be conditionally executed, there are cases where judges also impose the additional penalty conditionally (for example, in 2000, the Riga Zemgale District Court conditionally confiscated an offender's driver's license, with a probation period of one year[60]).

The public prosecutor's office, the police and numerous judges are critical of this interpretation of the law.

POSSIBLE SOLUTIONS

1. To prevent different interpretations of this provision and divergent court practice, CK Section 55, Paragraph 5 should state clearly that the additional penalty must be carried out.

2. The Supreme Court should also hand down a ruling to make it clear that a penalty imposed in addition to a conditional sentence must actually be carried out once the sentence that has been imposed conditionally has entered into effect.

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[60] See: Riga Zemgale District Court judgement No. 1-187/4-2000.

Police control of probationers

PROBLEM

Diametrically opposite views have been voiced in connection with the option of imposing police control on offenders who have been given conditional sentences.

Pursuant to CL Section 45, police control is an additional penalty, which the court may impose for the purpose of monitoring the behavior of persons released from prison and subjecting such persons to restrictions prescribed by the police. In other words, police control must be carried out after a person has been released from prison. However, when a court gives a conditional sentence, it decides not to send the offender to prison.

Despite this, 50 of the 99 judges who were questioned, feel that the option of police control should be possible together with conditional sentences. This view is fairly popular inasmuch as judges consider the main problem with conditional sentences to be insufficient supervision of probationers. Police control is seen as a possible solution to the problem.

POSSIBLE SOLUTIONS

1. Police control of probationers is not permissible for purely formal reasons – it may only be carried out after a prison sentence has been served, but persons who receive conditional sentences are not actually sent to prison.

2. It is not forbidden for courts to prescribe police control together with a conditional sentence. However, in such cases, it should be kept in mind that the additional penalty (police control) will only be carried out if the offender commits further offenses for which the court decides to revoke the conditional sentence and send the offender to prison. Since a conditional sentence is only permitted if the court is convinced that a correctional effect can be achieved without imprisonment of the offender, it does not seem logical to impose an additional penalty that can only take effect after the offender has been released from prison.

3. To ensure more intensive supervision of probationers, courts should more actively apply the option of imposing additional conditions: regular reporting to the police; no change of address without permission from the supervisory institution; avoidance of specified places; presence at home at specified times.

4. The law should allow courts to impose additional conditions that are not directly specified in CL Section 55 if they feel that these will have a positive effect on the behavior of the offender and keep him from committing further offenses.

5. To promote a unified interpretation of the law, the issue of police control should be elaborated in guidelines on conditional sentences.

Explanation of the meaning of conditional sentences to offenders

PROBLEM

Several of the judges and police officials who were questioned remarked that persons who receive conditional sentences often do not understand the meaning of a conditional sentence. They take it to be an acquittal and do not draw the right conclusions.

A conditional sentence is an attempt to reform the offender with less repressive measures. However, the effect is sometimes the opposite of what has been intended – the offender receives the impression that it is possible to commit a crime without being punished.

As the judges themselves noted, it would be useful to explain the rules of a conditional sentence to the offender right there in the courtroom. It should be made clear that a conditional sentence does not free the offender from responsibility; that it is a demonstration of trust, which the offender must, through exemplary behavior, prove to be justified. Unfortunately, not all judges do this. Even in cases where the judge takes pains to explain the meaning of the conditional sentence to the offender, in some situations the offender is not able to understand it correctly.

POSSIBLE SOLUTIONS

1. In accordance with the instructions of the Ministry of the Interior, it is actually the duty of PIECJ officials to explain the meaning of a conditional sentence to the offender. Unfortunately, not all probationers report to the police as they are supposed to. Some deliberately ignore the police summons, others do not consider them to be binding.

2. It is important to make sure that the offender is at least roughly informed immediately after the reading of the judgment about the status of a conditionally sentenced offender and the obligation to report to the police for consultations.

3. The Administrative Offenses Code should anticipate liability for deliberate failure of a probationer to report to the police.

4. It would also be useful to prepare materials (four- to six-page brochures) explaining the meaning of a conditional sentence. These should be distributed to probationers at their first meeting with a PIECJ official.

Conditional sentences for serious and very serious crimes

PROBLEM

Pursuant to CL Section 49, Paragraph 4, a person who has previously been convicted and has committed another serious or very serious criminal offense may not be given a milder sentence that that which is prescribed by the Criminal Law. But the law does not forbid conditional sentencing of such a person. By making amendments to CL Section 49, lawmakers have attempted to rule out the possibility of a person who has committed a serious offense receiving an inadequately mild sentence. However, the effect will be minimal, even the opposite of what was intended, because there is nothing to prevent the court from giving a conditional sentence for a serious or even a very serious crime. For example, when sentencing a recidivist for committing a new crime, the court may not give a sentence that is milder than the punishment prescribed by the Criminal Law, but there are no legal obstacles to sentencing the offender conditionally, and not sending him to prison at all.

POSSIBLE SOLUTIONS

1. Guidelines on conditional sentencing should make it clear that – generally – courts may only give conditional sentences for misdemeanors and less serious crimes, i.e., if the offender is being punished for any type of offense committed through negligence or for a deliberate violation for which the maximum punishment is a five-year prison term.

2. Courts should not be categorically forbidden to give conditional sentences even for serious or very serious crimes. The Criminal Law classifies crimes by the maximum punishment that the court may impose for these crimes. However, in several sections of the law, the range of sanctions is extremely broad, and offenses for which the court may impose a six-month prison sentence or alternative forms of punishment are classified as serious or very serious offenses. Therefore, if courts were generally forbidden to give conditional sentences for serious or very serious crimes, this would unnecessarily restrict their powers to choose the punishment that is best suited to the crime.

3. In cases where the court has decided to give an offender who has committed a serious or very serious crime a conditional sentence, it must take special care to explain the reasons for its decision in the judgment.

4. CL Section 49 should be amended to allow courts to impose punishment that is milder than that prescribed by the law even in cases where the offender has a criminal record. For example, if the offender has committed a crime for which the law

anticipates a prison sentence of eight to 15 years, the court can only choose between an eight-year prison sentence or a conditional sentence, although, in the concrete case, a two-year prison sentence might be more effective.

5. The power of the court should not be restricted to give conditional sentences to persons who have planned or attempted to commit a serious or very serious crime, or persons who have not participated themselves, but have incited others or acted as accessories to a crime.

Conditional sentences for multiple crimes

PROBLEM

The Criminal Law does not specify whether or not a person may be conditionally sentenced if the person has committed several crimes. This is why judges have different ways of looking at the problem. Some feel that conditional sentences are out of question if the offender has committed several crimes, others feel that the number of crimes is not a factor that can sway their decision one way or the other.

POSSIBLE SOLUTIONS

Since the Criminal Law does not explicitly forbid it, courts may decide not to send an offender to prison even in cases where the offender has committed several offenses or a single offense that is composed of several episodes. However, although the law makes it possible to give a person who has repeatedly violated the law a conditional sentence, it does not release the court from the responsibility of making a comprehensive assessment of the offender's behavior. In cases where the court decides to give such a person a conditional sentence, it must pay special attention to explaining the reasons for its decision in the judgement.

This is also an issue that should be covered in the guidelines on conditional sentencing.

Conditional sentences for criminal offenses committed during the probation period

PROBLEM

The Criminal Law does not anticipate conditional sentences for criminal offenses committed during the probation period. However, it does not explicitly forbid this. Here, too, judges have different ways of interpreting this provision of the law.

Although the Supreme Court has ruled that conditional sentences may not be given for crimes committed during the probation period, this is done. 38.6% of the judges who were questioned expressed the view that in certain circumstances it should be permitted to give conditional sentences even when the offenders have committed further criminal offenses during the probation period.

There are also cases where the court imposes payment of a fine for a criminal offense committed during the probation period, and this sentence is executed independently, without revoking the conditional sentence.

POSSIBLE SOLUTIONS

1. To prevent diverse court practice in the question of repeated conditional sentences, the Criminal Law and the guidelines on conditional sentencing should clearly define the options open to the court when deciding the fate of offenders who have committed further criminal offenses during the probation period.

2. Generally, a person who has committed a further offense during the probation period must be ordered to serve the original sentence, i.e., the conditional sentence must be revoked.

3. Legislation must provide for the exceptional possibility of giving repeated conditional sentences in certain circumstances. For example, courts should be allowed to make exceptions and give repeated conditional sentences if the new offenses have been committed through negligence and in cases where the punishment for the new crime does not involve imprisonment.

4. If the court imposes a sentence that is not a prison sentence (community service or payment of a fine) for a crime committed during the probation period, this second sentence must be served. Here too, courts should be allowed the option of giving a repeated conditional sentence.

Types of administrative offenses for which a court must consider revoking a conditional sentence

PROBLEM

Pursuant to CL Section 55, Paragraph 9, if a probationer commits two or more administrative offenses, the conditional sentence may be revoked and the offender ordered to serve the original sentence. The ***law does not specify the types of administrative offenses*** *that could lead to revocation of the conditional sentence. On the other hand, the Ministry of the Interior's*

Instructions on the Execution of Conditional Sentences and Additional Penalties Involving Restriction of Rights and the Supreme Court's Ruling on Application of the Criminal Law to Conditional and Suspended Sentences say that a person must commit two ***violations of public order****. This lack of precision makes it difficult to establish uniform practice.*

Current legislation leaves no doubt that a probationer who commits administrative offenses that threaten public order may be ordered to serve the original sentence. However, Chapter XIII (Administrative Offenses that Threaten Public Order) of the Administrative Offenses Code (AOC) defines nine such offenses and, as judges correctly point out, not all of these are serious enough to warrant revoking a conditional sentence and sending the offender to prison. For example, some judges say that Section 171 of the AOC, which prescribes sanctions for the use of alcoholic beverages in public places, should not be taken into account in regard to conditional sentences.

At the same time, other fairly dangerous violations are defined in other sections of the AOC, but formally they do not threaten public order.

POSSIBLE SOLUTIONS

1. The Ministry of the Interior instructions and the Supreme Court ruling should precisely define the categories of administrative offenses that can lead to revocation of a conditional sentence or extension of the probation period.

2. It would not be right to prescribe revocation of a conditional sentence following any two administrative offenses whatsoever. Such an approach would mean that a probationer could be sent to prison for crossing the street twice at a red light or driving without a safety belt. Similarly, it would also not be right to make administrative offenses the only reason for revoking a conditional sentence.

3. It would be rather difficult for legislation to cover all possible types of administrative offenses about which the police must inform the court and ask it to revoke a conditional sentence. Therefore, it would be best to name the categories of administrative offenses and leave it to the police and the courts to determine whether other offenses can also be grounds for revoking a conditional sentence and ordering the offender to serve the original sentence.

4. The possibility to revoke a conditional sentence should be provided for in cases where the probationer has committed administrative offenses that:

   - threaten public order (no matter which AOC section prescribes the sanctions);
   - are similar to the crime for which the offender has received a conditional sentence: for example, a person convicted of contraband commits the administrative

offense contraband (AOC Section 196); a person convicted of arbitrary conduct carries out an arbitrary action for which administrative sanctions can be imposed (AOC Section 176); a person convicted of causing a traffic accident commits administrative traffic violations, etc.;

- are connected with the use of drugs or alcohol: for example, driving under the influence of alcohol or drugs;
- are punishable by custodial arrest.

Number of administrative offenses for which a court must consider revoking a conditional sentence

PROBLEM

A probationer can be ordered to serve the original sentence if he has committed two or more administrative offenses. However, legislation does not clearly define how these administrative offenses should be counted.

The Supreme Court's Ruling on Application of the Criminal Law to Conditional and Suspended Sentences says that a conditional sentence may be revoked if a probationer has committed no less than two violations of public order – an indication of the offender's unwillingness to reform – and has for each of these offenses duly received administrative sanctions.

The Instructions on Execution of Conditional Sentences say that PIECJ must inform the court if a probationer has violated public order no less than two times within a period of 12 months and has duly received administrative sanctions for these violations.

AOC Section 38 says that a person who has received administrative sanctions, but who commits no further administrative offenses within 12 months of the day when the penalty was paid, shall have no record of administrative offenses.

CL Section 55, Paragraph 9 says that the court can extend the probation period by one year or revoke the conditional sentence if a probationer repeatedly commits administrative offenses for which administrative sanctions are imposed.

In other words, there are three different views on how to count the number of administrative offenses. The court must consider revoking or extending the conditional sentence if the probationer:

1. *commits two administrative offenses within a period of 12 months;*
2. *commits a new offense within 12 months of the day when a penalty was paid for one administrative offense;*

3. *commits two administrative offenses during the probation period, which can be up to three years.*

POSSIBLE SOLUTIONS

1. To prevent different interpretations of this provision, it should be made more precise and the necessary amendments made to other laws and regulations.

2. When the court gives a conditional sentence, it rules that the offender shall not be required to serve the sentence and shall be subjected to a period of probation. Whether or not the offender has undergone a process of reform and rehabilitation is indicated by his behavior during the whole period of probation. There is no reason to split the probation period and judge the behavior of a probationer during one year, ignoring the same person's behavior in the previous one or two years. To be more precise, instructions on the application of conditional sentences should specify that the police must inform the court about the behavior of a probationer when the probationer commits a second administrative offense for which administrative sanctions are imposed during the period of probation. AOC Section 38 cannot be an obstacle to revoking the conditional sentence or extending the period of probation because, when considering the application submitted by the police, the court must decide on an issue governed by criminal and not administrative law.

3. The Ministry of the Interior's Information Center must pass on any information about administrative offenses committed by probationers to the supervisory institution.

The legal consequences of attempts by probationers to commit misdemeanors

PROBLEM

In accordance with current laws and regulations, a probationer who has committed two or more administrative offenses can be ordered to serve the original sentence. However, neither the Criminal Law nor the Instructions on Execution of Conditional Sentences say anything about the legal consequences of attempts by probationers to commit misdemeanors.

Pursuant to CL Section 15, no criminal action is taken against a person who has deliberately carried out an action planning to commit a criminal offense (misdemeanor) for which the Criminal Law prescribes a prison term of up to two years or punishment that is not connected with imprisonment if, for reasons beyond the control of the offender, the plan has not been carried out to the end (for example, there are no legal consequences if a pickpocket has been apprehended while attempting to steal 60 lats).

It is clearly not logical that a probationer can be ordered to serve the sentence for committing administrative offenses, but that there are no legal consequences for attempts to commit a misdemeanor.

PIECJ officials say that they do not receive information about misdemeanors attempted by probationers.

According to the Ministry of the Interior's Information Center, the police pass on information to the Information Center about persons against whom legal action has been taken, but in cases where no charges are brought, the police reports are not always passed on to the Information Center.

The Law on the Penal Register[61] *also does not anticipate the collection of data on persons who have attempted to commit misdemeanors.*

POSSIBLE SOLUTIONS

1. It is a negative aspect of our legislation that persons who have attempted but failed to commit a misdemeanor are in no way held liable for their actions.

2. A deliberate attempt to commit a misdemeanor during the probation period indicates that the attempt to reform the offender without sending him to prison has not produced the desired results.

3. It is not right that an attempt to commit a misdemeanor has no legal consequences for the offender; however, it would also not be right to equate an attempted misdemeanor with a completed criminal offense and automatically revoke the conditional sentence. An attempted misdemeanor – like an administrative offense – must be seen as a fact that prompts PIECJ and the court to reexamine the case and, if necessary, to extend the probation period, revoke the conditional sentence or set new conditions.

4. The Administrative Offenses Code should anticipate liability for attempted misdemeanors.

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[61] Law on the Penal Register, adopted on October 11, 2001. *Latvijas Vēstnesis*, October 31, 2001.

Conditional sentences for criminal offenses committed after the period of probation

PROBLEM

In accordance with CL Section 63, Paragraph 3, a conditionally sentenced offender who has committed no further criminal offenses during the period of probation has no criminal record. This means that all of the legal consequences of the criminal offense are voided. When trying criminal cases, courts often conclude that there are no grounds for considering previous offenses for which conditional sentences have been given, i.e., that this fact cannot influence the court's decision on whether or not to give the offender a new conditional sentence.

POSSIBLE SOLUTIONS

1. It would not be right to forbid courts to give conditional sentences to persons who have previously been conditionally sentenced and who have committed new criminal offenses after the end of the probation period.

2. Since Latvia's criminal law anticipates that a criminal record is extinguished after the end of the probation period, the offender is considered as having a clean slate and previous convictions cannot serve as grounds for increasing liability.

3. However, when assessing the personality of the offender, the court must take into account previous conditional sentences. Before giving an offender who has previously been conditionally sentenced another conditional sentence, the court must carefully consider the circumstances in the case, the personality of the offender and the circumstances connected with the previous conditional sentence. If, after careful analysis of the facts, the court comes to the conclusion that the offender should not have to serve the sentence, a repeated conditional sentence is permissible.

Sentencing of a probationer for offenses committed prior to a conditional sentence

PROBLEM

The Supreme Court's Ruling on Application of the Criminal Law to Conditional and Suspended Sentences says that in cases where the court, after having conditionally sentenced an offender, discovers that said offender has previously committed another crime, it may give a conditional sentence for the first crime, provided that such action is supported by the law.

However, a situation is also possible where the offender has been conditionally sentenced not for the last, but for the first crime, and later on, the court must decide on the appropriate punishment for the second crime and the final sentence.

CPC Section 131 says that criminal cases may be divided. Here, too, a situation is possible where a person who has been conditionally sentenced in one case, must later be tried in connection with another offense.

POSSIBLE SOLUTIONS

1. In cases where a person has committed several crimes and received conditional sentences for some of them, the court does not necessarily have to revoke the conditional sentences when trying the other cases. The court also does not necessarily have to maintain the current status when sentencing the offender for a new crime.

2. When adjudicating such cases, the court must refer to the rules set out in Sections 50 and 55 of the Criminal Law. If two or more criminal offenses had been committed before the offender was given a conditional sentence, the court must carefully consider all aspects of the offender's personality, and the nature of the offenses that were committed, when trying the new case. Should the court come to the conclusion that the offender can be conditionally sentenced even for a number of crimes, it may not necessarily revoke the conditional sentence when pronouncing the final sentence. Should the court see no way of upholding the conditional sentence, the offender must be ordered to serve the original sentence.

Crimes committed during, but discovered after, the probation period

PROBLEM

Latvia's legislation does not explicitly prescribe what to do in cases where a probationer has committed a further crime, but this is discovered only after the end of the probation period.

POSSIBLE SOLUTIONS

1. Since the main condition tied to a conditional sentence is abstention from further criminal activities, the logical conclusion would be that in cases where a person commits new crimes during the period of probation the conditional sentence must be revoked and the offender ordered to serve the original sentence. Even if the new violation is discovered after the end of the probation period, the offender must not only be sentenced for the new crime, but also be ordered to serve the sentence for

the first one. In other words, in such situations, courts must go by CL Section 55, Paragraph 10, which covers the procedure for addition and substitution of sentences.

2. The combined sentence for both crimes can be pronounced and executed only as long as the statute of limitations has not taken effect for the crime that was committed during the probation period.

Extension of the probation period

PROBLEM

CL Section 55, Paragraph 9 allows the court to extend the probation period of a conditionally sentenced offender by one year if the offender fails to fulfil the conditions of the sentence or commits administrative offenses. However, the law:

- *does not clearly define the preconditions for extension of the probation period (the law says that the court may decide to revoke the conditional sentence or extend the probation period, but does not provide any criteria for either the one or the other decision);*
- *does not say how many times in a row the court may extend the probation period.*

POSSIBLE SOLUTIONS

1. After a thorough assessment of the probationer's behavior during the period of probation, the court may use its own discretion to decide on extension of the probation period. It would be helpful if the Supreme Court handed down a ruling on extension of probation periods or if law reports were available on the issue.

2. The court may apply extension of the probation period as an alternative to execution of the original sentence if it is convinced that, despite further offenses committed during the probation period or failure to fulfill the conditions of the sentence, the offender can be reformed without actually being sent to prison. In other words, extension of the probation period is the best choice of punishment in cases where a probationer has failed to fulfil conditions or has committed new offenses, but the where court has identified mitigating circumstances and has reason to believe that the person in question will not commit any further offenses.

3. On the other hand, if a probationer has willfully avoided fulfilling the conditions of the sentence and has deliberately committed administrative offenses, if the behavior of the probationer indicates that the conditional sentence has not had a correctional effect, extension of the probation period is not advisable, and the court must consider revoking the conditional sentence.

4. When considering extension of the probation period, courts must keep in mind that the law does not anticipate extension by less than one year. Repeated extension of the probation period should not be allowed.

Setting the conditions for conditional sentences

PROBLEM

CL Section 55, Paragraph 6 lists the conditions that the court can impose on an offender who is given a conditional sentence. The list is all-inclusive, and the court can only choose between imposing/not imposing these conditions.

Since the list of possible conditions is not particularly exhaustive and does not include a number of measures that could have a correctional effect on the offender, courts must find a way of imposing conditions other than those prescribed by the law.

POSSIBLE SOLUTIONS

1. The Criminal Law should provide for the possibility of setting conditions that are not prescribed in Section 55, Paragraph 6 if there is reason to believe that other conditions will have a positive effect on the behavior of the offender and help him to reform.

2. Since it is not possible to list all possible conditions in the Criminal Law, it would be expedient to admit that the list of conditions in CL Section 55, Paragraph 6 is not comprehensive and allow the courts to set additional conditions not anticipated by the law.

3. After taking into consideration the circumstances in the case, the personality of the offender and whether or not the conditions can actually be fulfilled in a particular territory, courts could, for example, order the offender to:

   - start or continue to attend school;
   - attend special courses;
   - learn a vocation;
   - take part in special programs (e.g., therapy programs);
   - get involved in community work (supervision of this condition should be carried out by the local government agency that is in charge of community service in the specific area);

- work to compensate for losses incurred by the victim;
- abstain from the use of alcohol and drugs.

4. It should be kept in mind that, even now, the choice of possible conditions is greater than those listed in CL Section 55, Paragraph 6. When conditionally sentencing juveniles, the court may impose the special correctional measures anticipated by the law. On January 1, 2004, this list will be expanded. Then, the court will be able to order juveniles to carry out community work. It would seem logical to allow courts to impose this condition on adult offenders as well.

Modification and revocation of conditions

PROBLEM

Latvia's Criminal Law provides for the possibility of fully or partially revoking the conditions imposed along with the sentence. However, courts and police are given almost no possibility of modifying the conditions that have been imposed. The law does not anticipate modification of conditions or setting of new conditions during the probation period. A condition that has once been imposed may also not be substituted with another, even one that is anticipated by the law.

The probation period is fairly long, and conditions that were appropriate at the beginning may, in time, become less effective. In such cases, the impossibility of changing the conditions imposed on a probationer reduces the efficiency of the probation period.

The possibility of modifying conditions can be particularly important in cases where the court finds that the probation period should be extended.

POSSIBLE SOLUTIONS

1. The Criminal Law should provide for the possibility not only of revoking conditions, but also of replacing them with others. CL Section 55 Paragraph 8 could be worded as follows: "The court may modify, substitute, revoke fully, or revoke partially the conditions imposed on a probationer during the period of probation."

2. Supervisory institutions should be empowered to correct conditions imposed by the court. Currently, PIECJ officials can only give a probationer permission to move to another location. Supervisory institutions should also be allowed to determine:

   - how regularly a probationer must report to the police;

- the place where a probationer must be treated for alcoholism or substance abuse;
- the time when a probationer must be found at home.

Social rehabilitation of the probationer

PROBLEM

The decision of the court to impose a conditional sentence does not in itself guarantee that the offender will reform. A probationer's behavior may be supervised, but an effort must also be made to rehabilitate the probationer. It is important to work with the probationer, to involve the probationer in special programs, for example: training courses, treatment for alcoholism and substance abuse, psychotherapy, Latvian language courses, etc.

POSSIBLE SOLUTIONS

1. The probation service that is currently being established in Latvia will be working with probationers and parolees.

2. The Law on Social Services and Social Aid stipulates that local governments must provide social rehabilitation services.

3. It is important that the government and the local governments support/finance special programs for probationers.

4. Special programs for probationers can also be provided by non-governmental organizations, for example, church organizations, charity foundations, etc. Such initiatives should be popularized, and the government could encourage them by granting organizations that provide such services tax deductions.

5. A registry of available programs must be established. Information about special programs would help courts to impose effective and realistic conditions. This registry will apparently have to be set up by the new probation service.

Types of conditional sentences

PROBLEM

In a number of other countries, the court, after considering the nature of the offense and the personality of the offender, may impose a conditional sentence with or without supervision.

A conditional sentence without supervision means that, after sentencing, the behavior of the probationer is not monitored, the probationer is not registered with the probation service and probation officers do not work with the probationer. However, if such person commits a further criminal or administrative offense, the offender may be ordered to serve the original sentence.

In cases where the court finds it necessary to take measures aimed at social rehabilitation and monitoring of the offender, and also in cases where the probationer is required to be at home at certain times, not move to a different location, etc., the court imposes a conditional sentence with supervision.

Latvia's Criminal Law anticipates only conditional sentences with supervision. Failure to distinguish between those who require special attention and those who can be expected to reform without monitoring results in an irrational use of PIECJ resources. Since they are required to treat all probationers similarly, PIECJ officials have a tremendous caseload and are unable to pay greater attention to those who need it. For example, police officials are required to make home visits no less than once every three months to check on persons who have been conditionally sentenced for drunken driving, although it would be expedient for them to spend more of this time controlling persons who have been conditionally sentenced for hooliganism.

Latvia's Criminal Law allows conditional sentences only with mandatory police supervision. In other countries, in addition to conditional sentences there are other legal mechanisms that make it possible to sentence an offender without executing the sentence. It would perhaps be useful to introduce some of these in Latvia as well.

POSSIBLE SOLUTIONS

1. The Criminal Law should anticipate conditional sentences with and without supervision. Such differentiation would contribute to a more effective use of human and financial resources and more effective control of probationers in cases where this is really necessary.

2. Conditional sentences without supervision should be given only in cases where the court is convinced that supervision of the offender is unnecessary and where it has imposed no conditions that demand regular control. It is likely that conditional sentences without supervision would be widely applied when sentencing offenders for criminal offenses committed through negligence.

3. Assessment reports on offenders prepared by probation officers will help courts to make the right choice between conditional sentences with or without supervision. It should be kept in mind that courts will not be obliged to give conditional

sentences without supervision – in all cases where it is found to be necessary, the court will be able to impose supervision of the probationer.

4. CL Section 55, Paragraph 1 could be worded as follows: "If, when imposing a sentence involving imprisonment, community service, custodial arrest or payment of a fine, the court, after taking into account the nature of the offense and the damage caused, the personality of the offender and other circumstances, is convinced that the offender, if not required to serve the sentence, will commit no further violations of the law, it may impose a conditional sentence. Where the court finds this to be necessary, it may order supervision of the probationer, to be carried out by the Probation Service."

5. In addition to conditional sentences, the Criminal Law should anticipate the possibility of imposing suspended sentences. Suspended sentences differ from conditional sentences in that the court does not impose a sentence when setting the length of the probation period, but decides only after the end of the probation period whether the offender should be discharged or sentenced and ordered to serve the sentence.

6. The law could anticipate a combination of a sentence and a conditional sentence. In such cases, the court would impose a sentence of which the offender would only be required to serve a part. The offender could earn remission of the remainder of the sentence by demonstrating willingness to reform and not committing further offenses (a suspended sentence is similar to a parole, with the difference that the decision to discharge the offender is taken when making the court judgement and not after a certain part of the sentence has been served).

Compensation for damages within a specified period of time

PROBLEM

Pursuant to CL Section 55, Paragraph 6, when giving a conditional sentence, the court may order the offender to compensate for damages within a specified period of time. However, as practice shows, it is not always possible to fulfil this condition.

Police officials who supervise probationers do not always cooperate with bailiffs. There are cases where, after the offender has been ordered to compensate for the damages that have been caused, the court order is returned without having been executed.

There are cases where the Supreme Court and the regional court revoke orders to compensate for damages, pointing out that the probationer is unemployed and has no source of income.

POSSIBLE SOLUTIONS

1. The reason for this problem is not the insufficiency of legislation, but rather the negligent attitude of public officials. Police officials must check whether or not probationers fulfil the conditions that have been imposed, and, in cases where the probationer must pay compensation for damages, must cooperate with the bailiffs. Bailiffs, on the other hand, must strictly observe the Instructions on Execution of the Orders of Courts and Other Institutions.[62] Public officials may be disciplined for a negligent attitude to the execution of official duties.

2. In the instructions of the Ministry of the Interior on the execution of conditional sentences, it would be expedient to define more precisely what the police must do if a probationer has been ordered to compensate for damages within a specified period of time.

3. Pursuant to CL Section 55, Paragraph 8, the court can revoke the conditions that have been imposed for the period of probation. It is clear that in cases where a probationer is unemployed and has no sources of income, the court may also revoke the condition that compensation must be paid for damages. This can be done to avoid having to have a sentence executed for purely formal reasons in cases where a probationer is physically unable to compensate for damages and, therefore, to fulfil the conditions of the sentence.

   Revocation of this condition should not be allowed in cases where a probationer has sufficient resources to fulfil the condition and is simply trying to avoid payment.

   It should be kept in mind that revocation of this condition does not free the offender from the obligation of having to compensate for damages, it simply ensures that failure to fulfil this condition cannot lead to revocation of the conditional sentence. However, such legal nuances can be fairly difficult for a probationer to understand and can therefore be incorrectly interpreted.

4. Before the court orders an offender to compensate for damages, it must first assess the offender's financial situation and ability to earn the money needed to pay compensation. Although the offender must clearly be required to compensate for damages, it is not always sensible to make it a condition of the sentence that compensation be paid within a specified period of time.

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[62] Instructions on Execution of the Orders of Courts and Other Institutions. Ministry of Justice, March 3, 1999.

5. Generally, the condition that compensation must be paid for damages should not be revoked. If the offender cannot, for legitimate reasons, fulfil the condition within the given time, it is wiser to extend the time than to revoke the condition.

6. Amendments should be made to CL Section 55, Paragraph 8 to provide for the possibility not only of revoking conditions, but also of modifying them and changing the length of time given to fulfil the conditions.

Supervision of probationers

PROBLEM

Supervision of probationers is not sufficiently effective.

Probationers frequently do not feel any changes in their lifestyle connected with the conditional sentence; their behavior during the period of probation has little impact on their fate. In many cases, probationers receive attention only after they have committed further offenses.

Control of probationers is fairly formal. Rehabilitation efforts are extremely poor.

Probationers frequently do not feel that they have been sentenced and understand the court's decision to impose a conditional sentence to be an acquittal. Not only does this not prevent new offenses, it even encourages them.

When seeing the true situation of those who have received conditional sentences and the lack of supervision, other people, too, conclude that our legal system does not guarantee punishment for criminals and, instead, frees them from all responsibility. This raises the level of nihilism in society and increases skepticism about legal values.

POSSIBLE SOLUTIONS

1. Effective supervision of the behavior of a probationer does not mean that an officer from a supervisory institution must be at the side of the probationer day and night. However, it is important to create a mechanism to guarantee that information about all transgressions of a probationer will be received by those who require this information. And even more important than registering the offenses that have been committed is taking measures to prevent them.

2. The control mechanism for probationers must be reformed. Currently, control functions are carried out by the police. However, the Police Inspectorate for the Execution of Court Judgements (PIECJ) is not capable of carrying out this task

alone. PIECJ (in the future, the National Probation Service) should be a coordinating institution that ensures cooperation between other organizations with the goal of effectively reforming the offender.

3. To improve the supervision of probationers, it is necessary not only to clearly define the role of the police and the probation service, but also to involve local governments and non-governmental organizations in work with probationers.

4. The mechanism of the organization charged with the supervision of probationers must be set out in a Law on Probation and other laws.

Statistics on probationers

PROBLEM

Although analysis of recidivism is extremely important, statistics on the rate of recidivism are incomplete and questionable. As a result, it is impossible to draw conclusions about the effects of the forms of criminal punishment that are applied and ways to improve the penal system.

There are no statistics in Latvia on recidivism among persons who have previously received conditional sentences. However, a number of judges point out that the rate of recidivism among such persons could be rather impressive.

The Ministry of Justice compiles data on persons with a criminal record. If a person has previously received a conditional sentence and the criminal record has been extinguished or set aside, a further offense by such person will not be registered as a relapse.

The Ministry of the Interior's Information Center processes registration cards for criminal offenses (printed form KS-2) to obtain information on the number of persons who have previously committed two or more offenses. However, the accuracy of this information is questionable.

There are huge discrepancies between the figures provided by the Ministry of Justice and the Ministry of the Interior.

Since the Criminal Law anticipates extinguishing and setting aside criminal records, existing statistics do not provide an accurate picture in regard to the number of previously convicted persons who commit further crimes. There is no data on recidivism categorized by the previous form of punishment. There is, therefore, no data on cases where new crimes have been committed by offenders who have previously received conditional sentences.

Each year, several thousand persons in Latvia receive conditional sentences, but it is impossible to establish how effective conditional sentences are and how many conditionally sentenced offenders commit new crimes following their period of probation.

The Law on the Penal Register went into effect on January 1, 2002, but this institution is not yet able to provide comprehensive information on the rate of recidivism.

POSSIBLE SOLUTIONS

Statistical data is material that can help analysts to uncover deficiencies in the legal system. It is, therefore, important to ensure collection and systematization of accurate data.

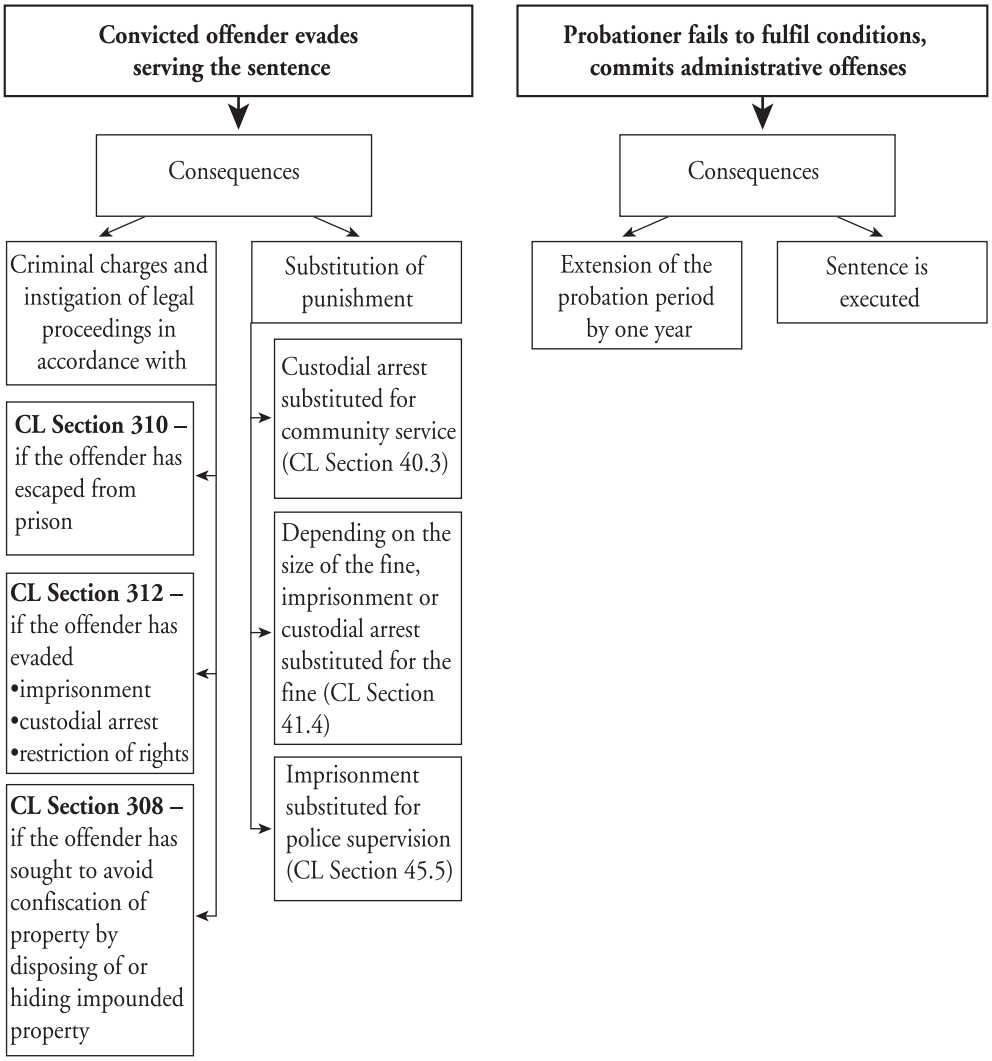
The Penal Register must compile and publish data on:

- the number of persons who have been convicted or who have been convicted, but whose criminal records have been extinguished;
- the number of conditionally sentenced offenders who have committed further crimes following their period of probation;
- data on recidivism categorized by the the previous form of punishment imposed on the offender.

APPENDICES

Appendix 1

Legal consequences of evading criminal punishment or failing to fulfil the conditions of a conditional sentence



Appendix 2

Probationers in Latvia (PIECJ data, February 1, 2002)

	Number of conditionally sentenced offenders
Probationers registered with PIECJ, February 1, 2002	8,926
Sentenced to	
imprisonment	8,746
community service	26
payment of a fine	172
Additional penalties	2,134
Conditions imposed pursuant to CL Section 55:	
compensation for damages within a specified period	649
no change of address without police approval	390
regular reporting to the police	851
avoidance of specified places	57
presence at home at specified times	136
treatment for alcoholism or drug dependency	71
Two or more violations of public order for which administrative sanctions were imposed in 2001	309

Number of applications submitted to courts in 2001 for revoking conditions imposed on probationers	8

Appendix 3

Crime in Latvia in 2001–2002

	Total number of registered criminal offenses	% solved	Total number of registered criminal offenses	% solved
	2001		2002	
Registered criminal offenses	51,082	45.5	49,329	45.3
Incl. serious crimes	25,382	43.2	24,519	43.9
Criminal offenses involving use of firearms	156	41.7	155	58.7
Murder	214	72.4	207	78.7
Grievous bodily injury	367	64.9	430	72.3
Rape	121	71.1	106	73.6
Robbery	3,059	29.1	2,664	32.1
Hooliganism	1,217	59.2	1,309	61.3
Theft:	28,697	34.0	27,160	32.6
from homes	5,439	36.4	5,177	38.4
from cars	2,769	14.0	2,845	13.4
Taking bribes	72	86.1	47	80.8
Counterfeiting money	236	58.1	192	54.7
Contraband	54	33.3	52	32.7
Other criminal offenses	8,706	57.0	9,245	58.1
Criminal offenses committed by offenders with criminal records	8,387	42.3	7,575	41.2
Criminal offenses committed by juveniles	3,981	17.1	3,724	16.7
Criminal offenses committed in gangs	5,421	23.3	5,055	22.6
Criminal offenses committed under the influence of alcohol	7,503	32.3	7,651	34.3
Criminal offenses committed in public places	16,941	42.3	16,269	43.1
Crime rate per 10,000 residents	**215**		**208**	

[63] Data provided by the Ministry of the Interior.

Appendix 4

Categories of crimes for which offenders received conditional sentences in 2002

Sections of CL and CC of Latvia	Category of crime	Number of persons sentenced	Number of persons given conditional sentence	% of total number sentenced	Im-pris-oned	% of total number sentenced
CL 96	Violation of provisions on management and exploitation of the earth, bowels of the earth, waters and forests	1	1	100	0	0
CL 111	Unlawful production, purchase, possession, sale, transportation or shipment of electrical fishing equipment	5	5	100	0	0
CL 119	Murder of a newborn child	2	2	100	0	0
CL 132	Threatening to commit murder or grievous bodily injury	2	2	100	0	0
CL 141	Failure to provide assistance	2	2	100	0	0
CL 165	Living on the avails of prostitution	1	1	100	0	0
CL 187	Deliberate destruction or damage of power cables, heating mains, and gas or oil pipelines	4	4	100	0	0
CL 197	Negligence	2	2	100	0	0
CL 206	Unauthorized use of a trademark, other distinguishing mark or design	1	1	100	0	0
CL 208, CC 161.9	Unlawful entrepreneurial activity	1	1	100	0	0
CL 215	Violation of provisions on insolvency proceedings	3	3	100	0	0
CL 220	Concealment of property	1	1	100	0	0
CL 252	Administering of narcotic or psychotropic substances against a person's will	1	1	100	0	0

CL 255	Production, purchase, possession, transportation, shipment and sale of equipment and substances (precursors) intended for the unlawful production of narcotic or psychotropic substances	1	1	100	0	0
CL 256	Unlawful sowing and growing of plants containing narcotic substances	2	2	100	0	0
CL 263	Permitting the use of transportation vehicles in a state of technical disrepair	3	3	100	0	0
CL 266	Violation of traffic regulations	3	3	100	0	0
CL 272	Failing to provide requested information or providing false information	1	1	100	0	0
CL 273	Arbitrary assumption of title and authority of a public official	1	1	100	0	0
CL 282, CC 194.1	Draft dodging	1	1	100	0	0
CL 308	Disposing of or concealing impounded property	1	1	100	0	0
CL 309	Unlawful provision of substances or objects to persons in custody or in prison and acceptance of substances or objects from such persons	1	1	100	0	0
CL 337	Opposing a superior or impelling a superior to violate the duties of public office	1	1	100	0	0
CL 340	Battering or torture of a military person	21	21	100	0	0
CL 341, CC 237	Abuse of power or overstepping of authority	2	2	100	0	0
CL 345	Destruction or damage of military property through negligence	1	1	100	0	0
CL 320, CC 164	Acceptance of bribes	12	11	91.67	0	0

CL 313, CC 182	Concealment without prior agreement	9	8	88.89	1	11.11
CL 323	Bribery	7	6	85.71	1	14.29
CL 170, CC 118	Failure to provide maintenance	75	64	85.33	8	10.67
CL 123, CC 103	Homicide through negligence	12	10	83.33	1	8.33
CL 269	Assault on a government or other public official	12	10	83.33	2	16.67
CL 260, CC 213	Violation of traffic regulations or rules on the exploitation of transportation vehicles	689	554	80.41	38	5.52
CL 233, CC 218	Unauthorized production, purchase, possession and sale of firearms, ammunition and explosives	221	173	78.28	23	10.41
CL 112	Poaching	9	7	77.78	0	0
CL 218, CC 148.1	Evasion of taxes or equivalent duties	17	13	76.47	0	0
CL 231, CC 204	Hooliganism	643	486	75.58	94	14.62
CL 265	Unlawful production, sale, issue, forgery, destruction or theft of transportation vehicle registration documents, vehicle identification number marks or registration number plates	8	6	75	1	12.5
CL 193	Unlawful operations with securities and currencies	31	23	74.19	4	12.9
CL 185, CC 146	Deliberate destruction or damage of property	245	164	66.94	38	15.51
CL 186, CC 146.1	Destruction or damage of property through negligence	21	14	66.67	1	4.76
CL 192, CC 82	Production and distribution of counterfeit money and government securities	30	20	66.67	10	33.33

CL 217, CC 147.3, CC 161.3	Violation of provisions on accounting and statistics	15	10	66.67	0	0
CL 234, CC 218.1	Illegal production, purchase, carrying and sale of special devices	18	12	66.67	3	16.67
CL 288	Damaging of telecommunications systems, radio or television transmitters, or postal technology equipment	3	2	66.67	1	33.33
CL 214, CC 161.11	Failure to submit a declaration of insolvency or submission of a false declaration	110	68	61.82	2	1.82
CL 179, CC 144	Misappropriation	174	107	61.49	25	14.37
CL 284, CC 78	Illegal crossing of the state border	134	81	60.45	29	21.64
CL 191	Possession or sale of illegally imported goods and other valuables	5	3	60	0	0
CL 175, CC 139, CC 89.1	Theft	4,068	2,436	59.88	1,422	34.96
CL 230	Cruelty to animals	17	10	58.82	5	29.14
CL 228, CC 206	Desecration of graves or corpses	43	25	58.14	15	34.88
CL 126, CC 106	Intentional moderate bodily injury	238	137	57.56	37	15.55
CL 172	Involvement of a juvenile in a criminal offense	7	4	57.14	1	14.29
CL 274	Theft or destruction of a document, seal or stamp	7	4	57.14	0	0
CL 300, CC 174	Knowingly giving false testimony, opinion or translation	14	8	57.14	0	0
CL 315, CC 183, CC 84	Failure to report a crime	23	13	56.52	7	30.43
CL 177, CC 142	Fraud	162	91	56.17	36	22.22

CL 318, CC 162	Abuse of office	9	5	55.56	1	11.11
CL 279	Arbitrary conduct	20	11	55	4	25
CL 190, CC 73	Contraband	22	12	54.55	8	36.36
CL 174, CC 111.1	Cruelty and violence toward a juvenile	48	26	54.17	7	14.58
CL 207, CC 161.1	Entrepreneurial activities without registration or permit (license)	13	7	53.85	0	0
CL 314, CC 145	Purchase or sale of illegally obtained property	105	55	52.38	9	8.57
CL 109, CC 161	Unauthorized cutting or damaging of trees	326	169	51.84	46	14.11
CL 127	Intentional bodily injury inflicted in a state of extreme mental agitation	2	1	50	0	0
CL 131, CC 110, CC 111	Bodily injury inflicted through negligence	22	11	50	0	0
CL 146, CC 134	Violation of job safety regulations	6	3	50	2	33.33
CL 162, CC 123	Immoral acts with a minor	8	4	50	3	37.5
CL 210	Fraudulent acquisition and use of bank credits and other loans	8	4	50	0	0
CL 213	Causing insolvency or bankruptcy of a company (corporation)	2	1	50	0	0
CL 264	Allowing persons under the influence of alcohol, narcotic, psychotropic or other intoxicating substances to drive a transportation vehicle	2	1	50	0	0
CL 283	Violation of the state border regime	2	1	50	0	0
CL 296, CC 181.3	Failure to execute a sentence or court judgement	2	1	50	0	0
CL 317, CC 162.1	Overstepping authority	8	4	50	4	50

CL 319, CC 163	Failure to act by a public official	4	2	50	1	25
CL 338	Violence against a subordinate	2	1	50	0	0
CL 125, CC 105	Intentional grievous bodily injury	313	150	47.92	160	51.12
CL 270, CC 184.1	Opposing a government or public official	36	17	47.22	5	13.89
CL 230.1	Violation of regulations on keeping animals	13	6	46.15	0	0
CL 275, CC 190, CC 190.2	Forgery of documents, seals or stamps, and sale or use of forged documents, seals or stamps	78	35	44.87	2	2.56
CL 128, CC 108	Intentional bodily injury exceeding the limits of self-protection	9	4	44.44	1	11.11
CL 332	Absence without leave	48	20	41.67	0	0
CL 176, CC 141	Robbery	849	348	40.99	500	58.89
CL 312	Evasion of serving a sentence imposed by the court	267	109	40.82	79	29.59
CL 183, CC 143	Blackmail	46	18	39.13	27	58.7
CL 262, CC 213.1	Driving under the influence of alcohol, narcotic, psychotropic or other intoxicating substances	1,083	419	38.69	45	4.16
CL 180	Theft, fraud and misappropriation on a small scale	1,078	413	38.31	240	22.26
CL 253, CC 222.1, CC 222.6	Unauthorized production, purchase, possession, transportation and shipment of narcotic and psychotropic substances	553	197	35.62	344	62.21
CL 160, CC 121.1, CC 124	Forcible sexual assault	26	9	34.62	17	65.38
CL 130, CC 109	Intentional slight bodily injury	62	21	33.87	4	6.45
CL 149	Violation of copyright and collateral rights	6	2	33.33	0	0

CL 153, CC 125.3	Kidnapping	3	2	33.33	1	66.67
CL 221	Violation of regulations on storage and transportation of spirits and other alcoholic beverages	28	9	32.14	0	0
CL 163	Violation of restrictions on prostitution	17	5	29.41	0	0
CL 159	Rape	55	15	27.27	40	72.73
CL 93	Defamation of national symbols	4	1	25	0	0
CL 182	Arbitrary use of electric power, thermal energy, gas or telecommunications	4	1	25	1	25
CL 298	Knowingly providing false information	8	2	25	0	0
CL 327	Forging official documents	4	1	25	0	0
CL 143	Violation of the privacy of the home	9	1	11.11	4	44.44
CL 161	Sexual intercourse, pederasty and lesbianism with a juvenile under the age of 16	5	1	20	2	40
CL 204	Defrauding customers and clients	6	1	16.67	0	0
CL 236	Negligent storage, carrying, transporting and shipping of firearms and ammunition	6	1	16.67	0	0
CL 219	Avoiding submission of a declaration	19	3	15.79	0	0
CL 116, CC 98	Murder	47	3	6.38	43	91.49
CL 118	Murder committed in especially aggravating circumstances	17	1	5.88	16	94.12
CL 310	Escape from a place of detention or imprisonment	20	1	5	19	95
CL 117	Murder in aggravating circumstances	44	0	0	42	95.45

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