The limits of rationalization of judicial sentencing

Daniel Kwiatkowski

Summary of the Doctoral Dissertation

The dissertation is focused on judicial sentencing, particularly in the aspect of determining the limits of rationalizing this process, which constitutes the study's primary goal. The initial step toward achieving this goal was to propose a new model of judicial sentencing in Poland, which would optimally combine the precision of sentencing rules with judicial discretion in shaping the penal reaction, allowing the sentence to be tailored to the case's individual circumstances. With this optimal model in place, I was able to identify problematic issues, the resolution of which, often unclear and arbitrary, also marks the boundaries of the rationalization of judicial sentencing.

The dissertation is based on the following initial assumptions, which were subsequently verified during the analysis. Firstly, the issue of judicial sentencing in Poland has not been sufficiently developed, particularly at the theoretical-dogmatic level. This intuition is confirmed when one compares the sentencing process with the process of assigning guilt (convicting), where the latter has been the main subject of criminal law analysis in Poland. Secondly, the currently established system is vulnerable to significant problems with rationalizing sentencing at the judicial level. The most important issue, though not the only one, is the presence of unwarranted disparities between different sentences imposed by courts in similar cases. These disparities are especially problematic when they result from factors such as the gender or socioeconomic status of the convicted person, which should not have a significant impact on the sentencing process. Thirdly, I assumed the possibility of developing a more functional model with more precise sentencing rules. In this aspect, I primarily referred to the regulations and experiences of other countries that have attempted to structure their sentencing processes.

The dissertation is divided into five chapters. In Chapter I, I analyzed preliminary issues, including terminological, philosophical, theoretical, and, in a supplementary scope, historical considerations. I discussed the understanding of the concept of rationalization, defining it as the pursuit of better understanding and justification. This concept, as opposed to intuition and emotion, aims to lead to more accurate and convincing decisions. I then presented the main philosophical theories of the rationalization of punishment, within the existing division of absolute, relative, and mixed theories. I also presented my position on this matter, arguing for

the need to combine both absolute and relative rationalizations, treating the latter as a complement to the former. Referring to empirical research, primarily in the field of psychology, on the retaliatory instinct, I pointed out the potential usefulness of revenge and, consequently, the punishment associated with it. From this perspective, I presented the possibility of viewing retributive theories of punishment as based on intuition, and utilitarian theories of punishment as based on a more conscious thought process, demonstrating that these theories are largely complementary.

In the latter part of Chapter I, I pointed out the theoretical complexity of the process of rationalizing punishment. I also identified two main dimensions of rationalizing punishment (vertical and horizontal), which are not independent of each other and may intersect. The vertical dimension refers to the differentiation of the levels of detail in sentencing, ranging from determining the catalog of penalties, the statutory ranges for a specific type of offence, the sentence imposed by the court, and the possibility of its modification at the enforcement stage. The horizontal dimension, on the other hand, defines the following stages of decision-making: the assessment of facts and information, the selection of a specific sentence, and its justification. As a result, I also identified the limitations of rationalizing judicial sentencing at this stage, stemming from the ambiguity of language, and thus the rules of sentencing, as well as from the limited possibilities of justifying the decisions one made. I also highlighted the constraints on the court's ability to rationalize sentencing due to decisions made at the legislative stage (the catalog of penalties and the statutory ranges of penalties), which are largely determined by cultural, though also practical, factors.

In Chapter II, I discussed the issue of sentencing disparities, which I consider one of the most significant contemporary challenges for the rationalization of judicial sentencing. However, the aim of this chapter was not only to present the current state of research (both domestic and international) in this area, but also to indicate the theoretical foundations for the occurrence of such disparities. Therefore, I pointed to systemic aspects, arising primarily from judicial discretion, as well as individual (psychological) factors, manifested in the occurrence of cognitive errors and biases in decision-making, particularly regarding numerical decisions. Additionally, I analyzed the risks posed by unjustified sentencing disparities, primarily leading to the violation of the principles of equality and justice. I concluded by discussing mechanisms for preventing such disparities, with particular emphasis on solutions already used in the practice of law enforcement.

In Chapter III, I compared selected criminal justice systems from different countries, which differ in terms of the precision of judicial sentencing rules and the scope of judicial discretion in this regard. In this section, Polish law was compared with regulations from the United States, England, and Finland, where numerous changes have been made in recent decades to structure judicial sentencing. The comparison included not only sentencing rules but also other normative issues, such as the catalogs of penalties, the statutory ranges of penalties, their modifications, and the possibility of challenging sentences within the justice system. Moreover, beyond the normative aspect, I analyzed the goals of the changes introduced and their effects, particularly regarding the severity of imposed sentences and the sentencing disparities.

In Chapter IV, based on the analyses conducted so far, I examined the issue of rationalizing judicial sentencing in Poland more broadly. To this end, I reviewed the works of criminal law doctrine, particularly focusing on the existing catalogs of principles and directives for judicial sentencing. Based on this, I identified contentious points and proposed their resolution, as well as presented my own modified catalog of principles and directives. Then, transferring these theoretical findings to practical ground, I proposed a more coherent method of imposition of a sentence. Assuming that the key significance of the sentencing process lies in the assessment of social harmfulness and guilt, which limit the possible sentence, I divided the process into three stages. Subsequently, to enhance the practical aspect of the analysis, I discussed the circumstances to be considered at each of these stages, namely those affecting the assessment of social harmfulness, guilt, and other individualizing circumstances, primarily determining the need for punishment. In this regard, to the necessary extent, I also discussed other theoretical issues, especially terminological ones, related to these stages and circumstances.

In the final Chapter V, I discussed the problematic issues of the proposed model and indicated possible solutions. These issues also marked the limits of rationalizing judicial sentencing. Their resolution was often unclear and to some extent arbitrary, thus limiting the ability to formulate a convincing justification. In this part, I primarily addressed the issue of developing a hierarchy of punitive reactions, the issue of defining the characteristics of a prohibited act and statutory sentencing range corresponding with it, and the methods of transferring sentencing factors into a specific sentence. Additionally, I analyzed the issue of judicial discretion in sentencing, with particular emphasis on the scope and limits of the possibility of changing the sentence during the judicial process at the later stages, and the extent

to which the court is bound by legislative decisions. Moreover, I discussed the court's possibilities of going against those legislative decisions.

In the conclusion, I pointed out the benefits and risks of adopting the model of judicial sentencing I proposed. At the same time, I also presented recommendations aimed at increasing the systemic coherence and functionality of the promoted model. These recommendations concern both changes in criminal law, such as structuring the types of prohibited acts by increasing the number of aggravated and mitigated types, structuring statutory ranges of penalties, both within specific types and general institutions (e.g., attempt), abandoning the statutory minimum sentence, and abandoning the institution of extraordinary mitigation and aggravation of statutory ranges. Additionally, I recommended further theoretical development of the proposed model by legal doctrine and/or judiciary, including, among others, the development of catalogs of factors determining the degree of social harmfulness of specific types of prohibited acts. I also proposed introducing broader institutional changes, such as separating the phase of determining guilt from sentencing (bifurcation of the process), developing a more accurate system of statistical information, and establishing an independent institute for sentencing research.