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**CAN FLOGGING BE A REMEDY TO THE PROBLEMS OF CRIMINAL JUSTICE?**

1. **The state of justice in Poland.** Polish justice for years is struggling with the problem of overcrowded prisons. Poland has one of the most severe penal systems in Europe. Incarceration rate, which showing the number of prisoners per 100,000 population, places Poland among the leading EU countries. According to research of the International Centre for Prison Studies, higher number of people in prisons have only three EU countries - Lithuania, Latvia and Estonia. Nowadays, the rate for Poland is 209 [1]. The highest rate was in 2007 (230), it decreased slightly, but it's still unsatisfactory. For example, in 1998 it was 142.

High population of prisoner is surprising due to the fact that for years there is a noticeable drop in the number of crimes committed. Number of criminal offenses decreased from 1,133,162 (2001) to 781,340 (2013) [2]. This is a decrease of more than 30%. The decrease in the number of committed crimes had no effect on the number of inmates. Comparison of these two years shows that in 2001 the incarceration rate, was even lower than in 2013 (208 and 209) [3].

This paradoxical situation is even more strange because of the introduction of the 2009 Act [4] allowing change short-term imprisonment for house arrest with the use of electronic surveillance. Minister of Justice announced in 2009 that the prison system will be revolutionized thanks to electronic surveillance and a population of inmates will decrease significantly [5]. Current statistics cannot confirm his thesis.

Is there any chance for an effective reduction in the number of prisoners in that circumstances? Issues of justice problems also are noted by the people, which are not directly associated with the system of justice. They propose their own solutions. One of the most controversial ideas for healing justice is the introduction of flogging to the criminal justice system.

2. **Flogging.** Flogging is present in some countries in the world - such as Singapore and Malaysia, but is not found in any of the European countries [6].

In Poland, the idea of ​​returning to the punishment of flogging proposed M. Nowak, A. Degrejt in the article "Corporal punishment - quickly, cheaply, reliably" [7]. The authors pointed that "penalties are inexpensive, easy to perform as well as possible for immediate use which reinforces a very important feature of educational punishment which is the inevitability and immediacy.". In addition, they claim that: "a few strokes with a suitable tool in the appropriate place causes unpleasant ailment that does not make permanent harm but it is very meaningful and memorable."

Apart from that general remarks, they not presented concrete solutions. The topic of introduction of flogging was thoroughly thought out by Peter Moskos from USA, who presented his observations on this subject in the book "In defense of flogging". As is the case of Poland, the USA has also a problem with overcrowded prisons. Incarceration ratio is 707 and prisons population is about 2.3 million of people [8]. This situation causes huge costs - both social and financial, and because of that hard circumstances this book had a chance to become a widely discussed. Thanks to this book the author was placed into The Atlantic's Brave Thinkers list, the magazine's annual guide to the people risking everything in pursuit of big ideas [9].

The author put a lot of effort in the preparation of this book and he even worked on guidelines for implementing flogging in a civilized society [10, p. 144-145], for example: a) Flogging can only be done with the consent of the flogged.; b) The status quo of incarceration is always an option.; c) Immediately upon arrest, suspects should be classified as to whether they’re imminent and grave dangers to society.; d) Some offenders do need to be incarcerated and kept away from society. But for the vast majority of criminal suspects, flogging would be a viable option.; e) Flogging is an alternative to incarceration, not an addition to it.; f) The purpose of flogging is to punish and be done with it.; g) Floggings should take place in one session and be administered as soon as possible after the consent of the flogged.; h) The punished should be released immediately after the punishment and any needed medical care.

As shown, there exist ideas about introduction of flogging to the legal system. The question is whether is it possible?

3. **Is it possible to introduce flogging as a criminal punishment in Poland**? It seems that in present state of law answer to this question must be negative. According to Article 40 of the Polish Constitution [11], the use of corporal punishment is prohibited. They cannot be introduced ​​or used within a system of penalties [12, p. 51]. It is pointed out explicitly that this also applies to flogging [13, p. 707].

**4. Conclusions.** Flogging raises many controversies, which are fully justified. Not without reason, flogging exist only in the legal systems of countries that do not respect human rights. Despite of that, even in such countries like Poland or USA there appear ideas of introduction such punishment. An effective way to fight against such attempts is to improve the situation of justice. When the state will solve the problem of overcrowded prisons, nobody will take seriously attempts to introduce flogging. Let us hope that recovery will occur quickly.

**Literature**

1. http://www.prisonstudies.org/country/poland, latest update 9 January 2014.
2. http://www.statystyka.policja.pl/st/ogolne-statystyki/47682,Postepowania-wszczete-przestepstwa-stwierdzone-i-wykrywalnosc-w-latach-1999-2012.html, latest update 9 January 2014.
3. http://www.prisonstudies.org/country/poland, latest update 9 January 2014.
4. Act of 7 Septeber 2007 on execution a sentence of imprisonment outside the prison in the system of electronic surveillance. Dziennik Ustaw No. 142, item 960, 2010.
5. Sobiech Ł. Dozór elektroniczny tylko dla warszawskich więźniów. Dziennik Gazeta Prawna No. 17 August 2009.
6. http://www.corpun.com/rules.htm, latest update 9 January 2014.
7. Nowak M., A. Degrejt, Kary cielesne - szybko, tanio, solidnie. Fronda.pl No. 1 September 2012.
8. http://www.prisonstudies.org/country/united-states-america, latest update 9 January 2014.
9. http://www.theatlantic.com/special-report/brave-thinkers-2011/, latest update 9 January 2014.
10. P. Moskos. In defence of flogging. New York, 2011, pp. 183.
11. The Constitution of the Republic of Poland of 2nd April, 1997. Dz. U. No. 78, item 483.
12. Skrzydło W. Konstytucja Rzeczypospolitej Polskiej. Komentarz. Warszawa 2013, pp. 328.
13. P. Mikuli [in:] W. Skrzydło, S. Grabowska, R. Grabowski (eds.) Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny. Warszawa 2009, pp. 706 - 707.