

The Interplay Between the Legislature and the Courts in the Formulation of Penal Policy: Analysis of the Initial Effects of Changes in the Prohibited Crossing of the State Border and Territory in the Criminal Code

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A criminal sanction is shaped through a series of stages in which decisions are undertaken by different decision-makers at different levels. This article focuses on the interplay between the legislature and the courts in the formulation of sentencing policy, where the authors examine how changes in the statutory sentencing range impacts sentencing at the judiciary level. They examine the case of an amendment to the Slovenian Criminal Code from 2020, which significantly increased the statutory sentencing range for one of the offence types for the crime of Prohibited crossing of the state border and territory. The analysis is based on examining a dataset of final criminal judgments decided in all eleven Slovenian courts before and immediately after the amendment came into force. The data collected show that, before the amendment, the Slovenian courts did not impose sentences from the upper half of the sentencing range. The legislature's decision to harshen the sentencing framework for this offence was not based on practical issues, but rather on a specific aim of changing crime and penal policy. On the other hand, an analysis of the first post-amendment sentencing reactions immediately after the amendment was enacted reveals two opposing responses in judicial and prosecutorial practice: the adaptation of sentencing to the normative change in some aspects (a significant shift towards custodial sentences as opposed to conditional sentences, resulting in the increase in the average length of imprisonment) as well as the resistance to the same change in other aspects (the limited dispersion of sentences across the statutory sentencing range).

Keywords: penal policy, punishment, prohibited crossing of the state border and territory, legal change, change in punishment

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