

# SWEDEN

Per Ole TRÄSKMAN

*LL.D. Professor of Criminal Law, University of Lund*

## I. INTRODUCTION — THE SWEDISH SYSTEM OF CRIMINAL SANCTIONS

A. — *The Swedish Penal Code* (Brottsbalken [SFS 1962 :700]) was adopted in 1962 and entered into force on 1 January 1965. It contains provisions on most of the acts that constitute crimes in Sweden. Some, in practice even important provisions, are however to be found in special legislation. The most important special criminal law statutes cover areas as road traffic offences (SFS 1972 :207), smuggling (SFS 2000 :1225), narcotic offences (SFS 1968 :64) tax offences (SFS 1971) and environmental offences (included as a chapter in the Environmental Code (SFS 1998 :808) <sup>1</sup>.

The Penal Code is divided into three parts : General Provisions (Chapters 1-2), Crimes (Chapters 3-24) and Sanctions (Chapters 25-38). This division is not entirely consistent, since Chapters 23 and 24, which are included in the part on crimes, deal in fact with general provisions, viz. The provisions relating to attempt, preparation, conspiracy and complicity, together with rules on necessity, self-defence and other general grounds for exemption from responsibility <sup>2</sup>.

B. — According to the provision in Chapter 1, Section 3 of the Penal Code the sanctions for a crime are either *punishments* or *other sanctions for a crime*. The concept of criminal sanction (sanction for a crime) is consequently broader than the concept of punishment. Punishments are only fines and imprisonment. In addition to these to

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<sup>1</sup> On the Swedish Criminal Law System generally, see Suzanne WENNBERG, Criminal Law, in Michael BOGDAN (ed.), *Swedish Law in the New Millennium*, Stockholm 2000, pp. 155-200.

<sup>2</sup> See also Nils JAREBORG, Justification and Excuse in Swedish Criminal Law, in *Scandinavian Studies in Law* 1987, Uppsala 1987, pp. 159-174.

punishments also conditional sentence, probation and committal for special care are sanctions for a crime. In addition to these sanctions for a crime the law also states some special consequences of a crime : Apart from a sanction, a crime may, in accordance with what is provided, result in forfeiture of property, corporate fines or some other special consequence defined by law and may also entail liability for the payment of damages.

So-called “*penalty scales*” are attached to the provisions on the specific crimes in the Code or elsewhere, with a particular maximum and a particular minimum sentence. Occasionally the minimum has to be deduced from general rules on minimum sentences. What is important is that the maximum and the minimum sentence in these penalty scales always is expressed using some of the two punishments, i.e. fines or imprisonment or a combination of these two punishments. Although the aforementioned sanctions (conditional sentence, probation and committal for special care) are not included in the penal scale for the crimes, they may be imposed instead of punishment in accordance with separately formulated provisions.

Many types of offences are divided into seriousness levels. For example, the punishment for theft is imprisonment from 14 days to 2 years, the punishment for gross (grand) theft is imprisonment from 6 months to 6 years, and the punishment for petty theft is imprisonment from 14 days to 6 months or a fine <sup>3</sup>.

C. — *Fines* shall be regarded as a less severe sanction than imprisonment (PC Chapter 1 Section 5). An offender is therefore sentenced to a fine in less serious cases. Chapter 25 of the Penal Code deals with fines. The punishment in the case of Penal Code offences is usually fixed in the form of *day-fines*, with regard being taken not only to the severity of the crime, but also on the offender’s financial situation. Day-fines shall be determined in number to at least thirty and at most one hundred and fifty. Each day-fine shall be imposed as a fixed amount from thirty up to and including one thousand Swedish crowns, having regard to what is judged to be reasonable with account taken of the income, wealth, obligations to dependants and other economic circumstances of the accused. If special reasons exist, the amount of the day-fine may be adjusted.

In addition to the day-fines the system also knows summary fines or standardised fines, but if a particular form of fine is not prescribed

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<sup>3</sup> PC Chapter 8, Sections 1 — 4 : Section 1 : “A person who unlawfully takes what belongs to another with intent to acquire it, shall, if the appropriation involves loss, be sentenced to imprisonment for at most two years.” // Section 2 : “If the crime under Section 1, having regard to the value of the stolen goods and other circumstances of the crime, is regarded as petty, a fine or imprisonment for at most six months shall be imposed for petty theft.” // Section 4 : “If the crime under Section 1 is considered to be gross, imprisonment for at least six months and at most six years shall be imposed for gross theft. — In assessing whether the crime is gross, special consideration shall be given to whether the unlawful appropriation took place after intrusion into a dwelling, whether it concerned the appropriation of property borne by a person, whether the accused was equipped with a weapon, explosive or similar aid, or whether the act was otherwise of an especially dangerous or ruthless nature, concerned property of considerable value or entailed a keenly felt loss.”

for the crime, fines shall be imposed as day-fines or, if the crime is punishable with less than thirty day-fines, as summary fines.

Unpaid fines may be transformed into imprisonment in certain cases, see Chapter 25, Section 8 and the Enforcement of Fines Act (SFS 1979 :1189). The enforcement service shall, in the first place, endeavour to collect fines by distraint or attachment of earnings.

D. — *Imprisonment* is dealt with in Chapter 26 of the Penal Code as well as in Act on Correctional Treatment in Institutions (SFS 1974 :203). According to the main rule in Chapter 26 imprisonment is imposed for a fixed term (minimum 14 days — maximum in general 10 years, except in instances of punishment for more than one crime or a case of relapse into crime, when the maximum can be increased at the most to 18 years) or for life. A person sentenced to life imprisonment is detained for an indefinite number of years, up to the remainder of his lifetime. The Government may pardon him, however, when life imprisonment is transformed into a fixed term of imprisonment.

A person serving imprisonment for a fixed term shall normally be *conditionally released* when two-thirds of the sentence, but at least one month, has been served. If the sentenced person seriously violates the conditions for the serving of the sentence in a prison, the date for conditional release may be postponed. The conditional release may also be delayed to a later time at the request of a sentenced person himself. After conditional release there shall follow a probationary period corresponding to the remaining portion of the sentence, but of at least one year. The conditionally released may be placed under supervision.

Short prison sentences of up to three months may be executed outside prison under intensive monitoring by means of electronic devices. The convicted person is ordered to stay at home, except for specially stipulated periods of time for specific purposes, for example employment, necessary purchases and similar matters.

E. — The court may, instead of imposing a punishment by way of fines or imprisonment, choose *another sanction for a crime*. Such sanctions are conditional sentence, probation or surrender to special care. The court may also use different combinations of punishment and sanction for a crime.

The provisions concerning a *conditional sentence* are included in Chapter 27 of the Penal Code<sup>4</sup>. A conditional sentence may be imposed for a crime for which the sanction of fine is considered inadequate. A conditional sentence may be combined with day-fines, at most two hundred, regardless of whether a fine is prescribed for the crime or not. A conditional sentence may also, if the accused consents, be combined with a condition of *community service*. Such a condition shall prescribe an obligation to

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<sup>4</sup> It must be noticed that the suspended sentence does not exist in the Swedish system of sanctions.

carry out unpaid work for at least forty hours and at most two hundred and forty hours<sup>5</sup>.

A conditional sentence means that the convicted person avoids other sanctions for the crime (with exception for the sanction the conditional sentence has been combined with, in cases when such a combination has been used), on the condition that he leads an orderly life during a probationary period of two years. The convicted person is not subjected to any supervision during this period. If he leads an orderly life and seek to support himself to the best of his ability, and if he also do what lies in his ability to meet other obligations, that may have been prescribed by the court as conditions for the conditional sentence (community service, compensation for damage caused by the crime), nothing more will happen. If he commits new crimes, the court may set aside the conditional sentence and impose another sanction embracing also the new offence. A conditional sentence presupposes that the court counts on the fact, that the convicted person will not become guilty of any further crime.

*Probation* can be considered to be a more severe sanction as a conditional sentence. This sanction, which is dealt with in Chapter 28 of the Penal Code, means that the convicted person must go through a probationary period of three years, being placed under supervision during part of this period. As in the case of imposing a conditional sentence a sentence of probation may be imposed for a crime for which the sanction of a fine is considered inadequate. Also probation may be combined with day-fines and with community service. Such a combination is possible according to the same conditions as in cases where an equivalent combination is used with a conditional sentence. Probation may also be combined with imprisonment for at least fourteen days and at most three months.

Probation shall be combined with supervision. Rules may be prescribed concerning the way of life of the sentenced person. If he is a drug addict and declares that he is willing to undergo treatment according to an individual plan prepared for him (contractual care), following that plan shall be part of the rules. The sentence may also contain other obligations, which the sentenced person has to fulfil. If the offender commits new crimes, the probation order may be revoked and another sanction imposed.

F. — The provisions concerning *committal to Special Care* are included in Chapter 31 of the Penal Code. Such sanctions consisting of special care are : treatment or other measure under the Social Services Act (SFS 1980 :620) or the Care of Young Persons Special Provisions Act (SFS 1990 :52)<sup>6</sup>, closed juvenile care<sup>7</sup>, committal for institutional treatment

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<sup>5</sup> When the court decides on a condition of community service it shall state in its judgement what length of imprisonment would have been imposed if imprisonment has been chosen as the sanction (Penal Code, Chapter 27, Section 2a).

<sup>6</sup> This sanction can be used when the accused is under the age of twenty-one.

<sup>7</sup> This sanction can be used when a person has committed the crime before attaining the age of eighteen, and the court finds that the sanction should be imprisonment. Instead of imposing a punishment of imprisonment the court shall decide on the sanction of closed juvenile care for a certain period of time. The court may impose closed juvenile care for at least fourteen days and at most four years.

subject to treatment under the Act on the Treatment of Drug Abusers (SFS 1988 :870) <sup>8</sup>, and forensic psychiatric care <sup>9</sup>.

G. — In certain cases, and according to certain specific conditions, also *waiver of prosecution* and the *exemption from sanction* can be used.

## II. THE SWEDISH SENTENCING LAW

A. — *Penalty scales* (penal latitudes) are attached to the provisions on the specific crimes. The scope of the penalty scale is supposed to reflect the relative seriousness of the specific offence. In the Swedish criminal laws there are a considerable variety of different penalty scales. Some of the more frequent scales are the following :

Fines	For example in the provision on <i>defamation</i> (Ch. 5, Sec. 1)
Fines or imprisonment for at most six months	For example in the provision on <i>inflicting damage</i> (Ch. 12, Sec. 1)
Fines or imprisonment for at most one year	For example in the provision on <i>unlawful threat</i> (Ch. 4, Sec. 5)
Fines or imprisonment for at most two years	For example in the provision on <i>assault</i> (Ch. 3, Sec. 5) and in the provision on <i>theft</i> (Ch. 8, Sec. 1)
Imprisonment from 14 days to four years	For example in the provision on <i>sexual exploitation of a minor</i>
Imprisonment from 14 days to six years	For example in the provision on <i>kidnapping</i> , when the crime is of a less serious nature (Ch. 4, Sec. 1,2)
Imprisonment from six months to six years	For example in the provision on <i>gross violation of integrity</i> (Ch. 4, Sec. 4a)
Imprisonment from one year to ten years	In the provision on <i>gross assault</i> (Ch. 3, Sec. 6)
Imprisonment from 2 years to eight years	In the provision on <i>gross sexual exploitation of a minor</i> (Ch. 6, Sec. 4,2)
Imprisonment from six years to ten years	In the provision on <i>manslaughter</i> (Ch. 3, Sec. 2)

<sup>8</sup> If a person who has committed a crime can be made subject to treatment under the Act on the Treatment of Drug Misusers (1988 :870), the court may hand the case over to the social welfare committee, or, if the person in question has already been admitted to an institution where such treatment is provided, to the board of such an institution, to arrange the necessary treatment. If the punishment provided for the crime is more severe than imprisonment for one year, a committal for institutional treatment shall be ordered only if there are special grounds for so doing.

<sup>9</sup> Forensic psychiatric care is used as a sanction when the accused has committed a crime for which the sanction cannot be limited to a fine, and the accused suffers from a serious mental disturbance. It must be noticed that a person who commits a crime under the influence of a serious mental disturbance may not be sentenced to imprisonment. If, in such a case the court also considers, that no other sanction should be imposed, the accused shall go free from sanction (Chapter 30, Section 6 of the Penal Code).

Imprisonment from four years to ten years, or for lifetime	In the provision on <i>kidnapping</i> (normal case) (Ch. 4, Sec. 1,1)
Imprisonment from six years to ten years, or for lifetime	In the provision on <i>gross arson</i> (Ch. 13, Sec. 2)
Imprisonment for 10 years, or for lifetime	In the provision on murder (Ch. 3, Sec. 1)

B. — The provisions on the *measurement of punishment* and remission of sanction are included

in Chapter 29. of the Penal Code, while the provisions on *choice of sanction* are included in

Chapter 30<sup>10</sup>. The present Swedish sentencing law is clearly based on a “neo-classical” just deserts-ideology.

A key concept is the concept of “*penal value*”. According to the principal rule on the measurement of punishment in Chapter 29, Section 1 of the Penal Code, “the punishment shall be imposed within the statutory limits according to the penal value of the crime or crimes, and the interest of uniformity in sentencing shall be taken into consideration. The penal value is determined with special regard to the harm, offence, or risk which the conduct involved, what the accused realised or should have realised about it, and the intentions and motives of the accused.”

In the code some *aggravating circumstances* (Section 2) and some *mitigating circumstances* (Section 3) are explicitly mentioned :

In assessing penal value, the following *aggravating circumstances* shall be given special consideration in addition to what is applicable to each and every type of crime :

1. whether the accused intended that the crime should have markedly more serious consequences than it in fact had,
2. whether the accused manifested especial ruthlessness,
3. whether the accused exploited some other person’s vulnerable position or that person’s special difficulties in protecting himself,
4. whether the accused grossly exploited his position or otherwise abused a special confidence or trust,
5. whether the accused induced another person to take part in the crime by coercion, deceit or misuse of that person’s youthfulness, lack of understanding or dependent status, or
6. whether the crime was part of a criminal activity which was especially carefully planned or carried out on a large scale and which the accused had a significant role, or
7. whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief or other similar circumstance.

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<sup>10</sup> For a more detailed description, see Nils Jareborg : The Swedish Sentencing Reform. In Chris Clarkson and Rod Morgan (Ed.) : The Politics of Sentencing Reforms. Oxford 1995.

In assessing penal value, the following *mitigating circumstances* shall be given special consideration in addition to what is prescribed elsewhere, if, in a particular case :

1. the crime was occasioned by the grossly offensive behaviour of some other person,
2. the accused, in consequence of a mental disturbance or emotional excitement, or for some other cause, had a markedly diminished capacity to control his actions,
3. the actions of the accused were connected with his manifestly deficient development, experience or capacity for judgement,
4. the crime was occasioned by strong human compassion or
5. the act, without being free from criminal responsibility, was such as is covered by Chapter 24 [contains provisions on general grounds for exemption from criminal responsibility].

The sentence imposed may be less severe than that prescribed for the crime in question if this is called for having regard to the penal value of the crime.

The rules on the measurement of punishment contain also a special provision concerning *recidivism aggravation*. The provision is included in Chapter 29, Section 4. Previous criminality, that is, previous criminality that has resulted in a court sentence, a prosecutor's summary punishment by fine, or a prosecutor's decision to forgo prosecution, shall be taken into account. Previous criminality has its major role in the choice of sanction. Previous criminality may affect the choice between imprisonment and conditional sentence/probation (or commitment to care within the social services), between conditional sentence and probation, between probation with a fine and probation without a fine, and between probation with a fine and probation with imprisonment. Repeated criminality may also result in revocation of parole (conditional release). Finally, previous criminality may influence ("to a reasonable extent") the severity of punishment if it has not been taken "appropriately into account in the choice of sanction or revocation of parole".

"In determining the appropriate punishment, the court, if sufficient consideration cannot be given to the circumstances through choice of sanction or forfeiture of conditionally granted liberty, shall, besides the penal value of the crime, take reasonable account of whether the accused has previously been guilty of crime. In this connection, special consideration shall be given to the extent of any previous criminality, to the time that has elapsed between the crimes, and whether the previous and the new criminality are similar in nature or whether in both cases they are of an especially serious character."

Finally, the rules on the measurement of punishment contain a special provision concerning *equity mitigation* :

"In determining the appropriate punishment, the court shall, besides the penal value of the crime, give reasonable consideration to :

1. whether the accused has suffered severe bodily harm as a result of the crime,

2. whether the accused to the best of his ability has attempted to prevent, remedy or limit the harmful consequences of the crime,
3. whether the accused gave himself up,
4. whether the accused would suffer harm through expulsion by reason of the crime from the Realm,
5. whether the accused, as a result of the crime, has suffered, or there is good reason to suppose that he will suffer, dismissal from, or termination of, employment, or will encounter any other obstacle or special difficulty in the pursuit of his occupation or business,
6. whether the accused, in consequence of advanced age or ill health, would suffer unreasonable hardship by a punishment imposed in accordance with the penal value of the crime,
7. whether, having regard to the nature of the crime, an unusually long time has elapsed since its commission or
8. whether there exists any other circumstance that calls for a lesser punishment than that warranted by the penal value of the crime.

If any circumstance covered by the first paragraph exists, the court may, if there are special grounds for so doing, impose less severe punishment than that prescribed for the crime.”

The measurement of the punishment can be described step by step as follows <sup>11</sup> :

Step A : Assessment of Penal Value

Step B : Recidivism Aggravation

Step C : Equity Mitigation

Step D : Youth Mitigation <sup>12</sup>

Step E : Special Cases of Mitigation (for instance deduction due to a sanction suffered abroad for the same crime)

Step F : Remission of Sanction

C. — *Choice of sanctions (Chapter 30 of the Penal Code)*. For the choice of sanction it is important to notice, that the different sanctions can be arranged on a *scale from the most lenient to the most severe*. According to Chapter 1, Section 5 of the Penal Code imprisonment is to be considered a more severe punishment than a fine. The provision in Chapter 30, Section 1 of the Penal Code states, that in choosing a sanction, imprisonment shall be considered a more severe sanction than conditional sentence or probation. According to existing court practice can probation be considered a more severe sanction than conditional sentence.

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<sup>11</sup> See JAREBORG (1995) *op. cit.* pp. 108-111.

<sup>12</sup> A young offender is normally less culpable than an adult. The provision in Chapter 29, Section 3(3) provides for mitigation because of reduced culpability. In addition to this provision there is an other provision in section 7 of the chapter, which stresses the need of youth mitigation : If a person commits a crime before attaining the age of twenty-one, special consideration shall be given to his youth in determining the punishment. A milder punishment than that prescribed for the crime may be imposed in such cases. No person shall be sentenced to life imprisonment for a crime committed before attaining the age of twenty-one.



A principal rule for the choice of sanctions (Chapter 30, Section 4 of the Penal Code) stipulates that in choosing a sanction, the court shall pay special attention to any circumstance or circumstances that argue for *the imposition of a less severe punishment than imprisonment*. If a crime has been committed by a person who has not attained the age of eighteen, the court may impose imprisonment only if there are extraordinary reasons for so doing. If a person who has attained the age of eighteen but not twenty-one has committed a crime, the court may impose imprisonment only if, in view of the penal value of the crime or other special reasons, this course of action is justified (Chapter 30, Section 5 of the Penal Code).

In choosing a sanction, the court shall consider, as a motive for imposing a *conditional sentence*, whether there is an absence of reason to fear that the accused will be guilty of continued criminality. As a special reason for imposing a conditional sentence instead of imprisonment, the court may consider that the sentence shall be combined with a condition of *community service* if the accused is willing to accept such a condition, and that such a condition is appropriate having regard to the accused person and the circumstances in general (Chapter 30, Section 7 of the Penal Code). In choosing a sanction, the court shall, as a reason for imposing *probation*, give consideration to whether such a sanction can contribute to the accused refraining from continued criminality (Chapter 30, Section 9 of the Penal Code). As mentioned above (Section 1.5) also probation can be combined with a condition of community service.

According to the law the court may take into account as a reason for imprisonment, besides the penal value and the nature of the crime or crimes, the fact that the accused has previously been guilty of committing a crime or crimes (see also above under section 2.2).

Unless other provisions are applicable, no person shall be sentenced to more than *one sanction* for the same crime (Chapter 30, Section 2). The main exceptions are those cases, were a combination of sanctions is possible (see also above, under section 1.5). If a person is sentenced for *more than one crime*, the court shall according to the main rule impose a *joint sanction* for the crimes. If there are special grounds for doing so, the court may impose a sentence of a fine for one or more crimes and, at the same time, impose another sanction for any remaining crime or crimes. In addition, the court may impose imprisonment for one or more crimes at the same time as it imposes a conditional sentence or probation for any remaining crime or crimes (Chapter 30, Section 3 of the Penal Code).

D. — As a process the choice of sanction can be described step by step as follows :<sup>13</sup>

Step 1 : The Penalty Scale for each individual crime

Each provision defining a crime contains a crime description and a penalty scale<sup>14</sup>. Sometimes the minima may have to be deduced from

<sup>13</sup> *Ibidem*, pp. 113-119.

<sup>14</sup> See above, under section 1.2.

general rules. The penalty scales for attempt, preparation, conspiracy, instigation, and aiding and abetting are found in Chapter 23 of the Penal Code. There are, however, several possibilities of using a scale, where the minimum is placed under the normal level. Such cases are *inter alia* : complicity ; reduced penal value<sup>15</sup>, Excess in cases of self-defence, necessity, official use of violence or force ; reduced penal value<sup>16</sup>. The penal value obviously calls for it<sup>17</sup>, equity mitigation and special reasons,<sup>18</sup> youth mitigation<sup>19</sup>, special cases of equity mitigation : voluntary aversion of danger after the completion of the crime<sup>20</sup>, double criminality considerations when a crime is committed abroad,<sup>21</sup> consideration of sanction abroad for the same crime<sup>22</sup>. There is one way of breaking through the normal statutory maximum : some exceptional cases of recidivism<sup>23</sup>.

Step 2 : The Penalty Scale for Multiple Criminality (See above under section 2.3)

Step 4 : Choice of Sanction : Commitment for Special Care (See above under section 1.6)

Step 5 : Choice of Sanction : Fines v. Imprisonment

Step 6 : Measurement of a Fine (See above under section 1.3)

Step 7 : Choice of Sanction : Imprisonment v. an Alternative (See above under section 2.3)

Step 8 : Measurement of Imprisonment

Step 9 : Choice of Sanction : Conditional Sentence v. Probation (See above under section 2.3)

Step 10 : Deduction of Period of Arrest or Detention.

E. — In an international comparison the Swedish criminal justice system can not be considered as particularly severe. The prisoner rate is at the present 70/100.000. However, as regards the choice of sanction, there is a tendency to day for more severe sanctions to be handed out more frequently than in the past. The proportion of sanctions taking the form of one of the three most severe forms of intervention (imprisonment, probation and conditional sentence) have more or less doubled during the last twenty-five years. In 1978, one-eight of those convicted of offences (12 %) were given one of these three forms of sanction. In the year 2000, the corresponding proportion was one-quarter (23 %). The proportion of convictions leading to a prison term, increased from six per cent in 1978 to ten per cent in the year 2000. The number of persons to day being sent to prison is nonetheless approximately the same as in the mid of

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<sup>15</sup> Chapter 23, Section 5 of the Penal Code.

<sup>16</sup> Chapter 24, Section 5 of the Penal Code.

<sup>17</sup> Chapter 29, Section 3 § 2 of the Penal Code (see also above under section 2.2).

<sup>18</sup> Chapter 29, Section 5 § 2 of the Penal Code (see also above under section 2.2).

<sup>19</sup> Chapter 29, Section 7 § 1 of the Penal Code (see also above under section 2.2).

<sup>20</sup> Chapter 13, Section 11, Chapter 14, Section 11, Chapter 15, Section 11 of the Penal Code.

<sup>21</sup> Chapter 2, Section 3 § 3 of the Penal Code.

<sup>22</sup> Chapter 2, Section 6 § 2 of the Penal Code.

<sup>23</sup> Chapter 26, Section 3 of the Penal Code.

1970s.<sup>24</sup> Information about the number of persons sent to prison 1996-2000 is presented in Table 1, as well as the prison term they were sentenced to.

Table 1.

Term of imprisonment	1996	1997	1998	1999	2000	%
Under 2 months	5 481	2 873	2 863	2 716	2 527	27.5
2 months — 6 months	3 358	3 012	3 167	3 100	3 054	33.3
6 months — 1 year	1 795	1 729	1 886	1 827	1 815	19.8
1 year — 2 years	632	692	759	830	798	8.7
2 years — 4 years	542	509	560	526	633	6.9
4 years — 10 years	266	255	210	251	284	3.1
10 years	42	34	45	36	52	0.6
Lifetime	7	8	7	14	15	0.2
Total	12 123	9 112	9 497	9 300	9 178	100 .0

### III. SPECIFIC TOPICS

1. Minima and maxima of the different sanctions and of the penalty scales attached to the provisions on the specific crimes	See about the minima and maxima of the different sanctions, sections 1.3, 1.4 and 1.5 above. See about the penalty scales for each individual crime, sections 1.2 and 2.3	
2. Which is the penalty scale for an attempt?	See under section 2.4	<i>Comment :</i> Swedish law conceives of criminal liability at three different levels. The first level concerns a perpetrator who has in some way planned a crime, but who has not taken any steps to commit it. This level. This level contains the concepts of preparation to commit crime and conspiracy to commit crime. This presupposes that the perpetrator has either performed

<sup>24</sup> See Jan Ahlberg, in Crime Trends in Sweden 1998-2000. BRÅ Report 2002 :2, pp. 16-17.

		<p>any of the acts of planning stipulated in the Chapter 23, Section 2, para. 1, i.e. the taking or receiving of money or something else as payment for a crime, or that he has been involved in the handling of equipment for a crime, or else that he, in the manner more precisely described in Section 2, in concert with some person or persons has decided or undertaken to perform a criminal act, etc. The next step is designated as attempt to commit crime. Here the perpetrator has gone beyond the planning stage and proceeded to action.</p> <p>The first prerequisite for any possible liability for preparation, conspiracy or attempt is that the legislative provision concerned specifically designates that such a crime is also punishable at these various other levels. Punishment for attempt shall be at most what is applicable to a completed crime and not less than imprisonment if the least punishment for the completed crime is imprisonment for two years or more. Punishment imposed for preparation or conspiracy shall be less than the highest and may be less than the lowest limit applicable to the completed crime. No greater punishment than imprisonment for two years may be imposed unless imprisonment for eight or more years can follow for the completed crime. Punishment shall not be imposed if the danger of the crime being completed was slight.<sup>25</sup></p>
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<sup>25</sup> See for a more detailed description, WENNBERG, *op. cit.*, pp. 178-180.

<p>3. Which are the punishments for different kinds of participation in the commitment of a crime?</p>	<p>See under section 2.4</p>	<p><i>Comment</i> : According to the provision in Chapter 23, Section 4 of the Penal Code, punishment as provided for an act in this Code shall be imposed not only on the person who committed the act, but also on anyone who furthered it by advice or deed. The same shall apply to any other act punishable with imprisonment under another Law or statutory instrument. A person who is not regarded as the perpetrator shall, if he induced another to commit the act, be sentenced for instigation of the crime and otherwise for aiding the crime. Each accomplice shall be judged according to the intent or the negligence attributable to him. — If someone has been induced to be an accomplice to crime by coercion, deceit or misuse of his youth, innocence or dependent status or has been an accomplice only to a minor extent, the punishment may be less than that otherwise provided for the crime. Punishment shall not be imposed in petty cases.</p>
<p>4. Mitigating and aggravating factors to be considered in the measurement of punishment</p>	<p>See section 2.2.</p>	
<p>5. Taking into account judgements passed abroad</p>	<p>See under section 2.2. (Step B [Recidivism Aggravation], and Step E [Special cases of mitigation, deduction due to a sanction suffered abroad for the same crime]), and under 2.4 (The existing way of breaking through the normal statutory maximum in some exceptional cases of recidivism).</p>	<p><i>Comment</i> : When previous criminality (that is, previous criminality that has resulted in a court sentence, a prosecutor's summary punishment by fine, or a prosecutor's decision to forgo prosecution), shall be taken into account, also court sentences etc. pronounced abroad, can be taken in account. It must be noted, that the court according to the existing</p>

		rules always in such cases (for instance when deciding on recidivism aggravation) has a certain margin of appreciation. The court shall decide which significance previous criminality shall be given.
6. The significance of aggravating factors.	See the answer to question 4	
7. Different possibilities to pardon, forgiving etc. of a sanction	<i>Waiving of prosecution</i> , see under section and <i>exemption from sanction</i> , see under section 1.7 and 2.2. (Remission of sanction); <i>Pardon</i> (mainly used in cases of lifetime imprisonment), see under section 1.4; <i>Conditional release</i> — see under section 1.4.; <i>Intensive monitoring</i> by means of electronic devices, see under section 1.4.	
8. Indeterminate sanctions? The only indeterminate sanction in the Swedish penal system is imprisonment for life — see under section 1.4.		

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