

The Impact of Prior Convictions on Sentencing Decisions in Croatia

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ABSTRACT The role of prior convictions in sentencing remains a central and controversial issue in criminal justice. Whether repeat offenders should be punished more harshly because of their past conduct, or whether each offence should be assessed in isolation, with punishment tied solely to the harm and culpability of the current act is at stake. This research examines the main models through which criminal history is integrated into sentencing: the flat-rate model, which disregards prior convictions; the recidivist sentencing premium model, which systematically increases penalties for repeat offenders; and the progressive loss of mitigation model, which withdraws leniency once reoffending occurs. These approaches are explored through their normative justifications, practical application, and implications for proportionality, deterrence, and fairness. Building on this framework, the study explores how prior convictions influence sentencing in Croatia, both through legislative provisions of the Criminal Code and through judicial practice. By analysing statutory rules alongside practical implications, the research aims to assess whether the Croatian approach reflects principles of proportionality and fairness, or whether it risks reinforcing penal populism and ineffective policies.

KEYWORDS *prior convictions, sentencing, recidivism, punishment*

1. Introduction

Punishment holds a central role in the criminal justice system. Perspectives on punishment have shifted throughout history, and there is no single, simple goal it seeks to achieve. It can be examined from many different aspects, including historical, legal, philosophical, and penological, and its purpose has been discussed since the works of early philosophers such as Plato and Aristotle.¹ In modern legal literature, there is generally a shared understanding of the main purposes of punishment, which include retribution, general and special

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¹ Zlata Đurđević, "Odluka o kazni – kaznenoprocena pitanja," *Hrvatski ljetopis za kazneno pravo i praksu* 11, no. 2 (2004): 751–782.

deterrence, and resocialisation.² However, the purposes of punishment are not limited to these, but they can also be understood more broadly to encompass concepts such as restitution³ or restoration,⁴ which emphasise repairing the harm caused by the crime. The challenge of imposing fair and effective punishment is longstanding, and research shows that sentencing depends on more than offence severity, culpability, and mitigating or aggravating factors. This article examines one specific influence: prior convictions. Their use in sentencing raises key questions. Should sentencing reflect only the current offence, or may criminal history justify different punishments for identical crimes? Should punishment rest on the offender's character or solely on the act? Do repeat offenders show greater culpability because they continue breaking the law despite previous sanctions, and can harsher penalties reduce reoffending? These issues frame the three main models discussed: the flat-rate model, the sentencing premium model, and the progressive loss of mitigation model.

2. Current Penal Policy Responses to Recidivism

2. 1 Flat-rate Model

The flat-rate model starts from a retributive perspective, where punishment is based solely on the current offence.⁵ In this view, prior convictions do not play a role: if two offences are the same and the offenders are in the same circumstances, they should receive identical sentences.⁶ Recidivism, therefore, does not justify a

² Henry Weinhofen, "The Purpose of Punishment," *Tennessee Law Review* 7, no. 3 (1929): 145–176.; Alfred W. Stearns, "Evolution of Punishment," *Journal of Criminal Law and Criminology* 27, no. 2 (1936): 219–230.; Frederic R. Kellogg, "From Retribution to Desert: The Evolution of Criminal Punishment," *Criminology* 15, no. 2 (1977): 179–192.; Mirko Bagaric, *Punishment and Sentencing: A Rational Approach* (London: Cavendish Publishing Limited, 2001); Mitchel P. Roth, *Crime and Punishment: A History of the Criminal Justice System*, 2nd ed. (Wadsworth: Cengage Learning, 2011); Mitchel P. Roth, *An Eye for an Eye: A Global History of Crime and Punishment* (Reaktion Books, 2014); Thom Brooks, *Punishment* (Routledge, 2012); Richard S. Frase, "Punishment Purposes," *Stanford Law Review* 58, no. 1 (2015): 67–84., Giorgi Arsoshvili, "Restoring Justice as Purpose of Punishment and Its Interrelation with the Resocialization of Criminal," *Journal of Law I* (2021): 24–40., Henrique Carvalho and Anastasia Chamberlen, *Questioning Punishment* (Routledge, 2024).

³ Shlomo Shoham, Ori Beck, and Martin Kett, eds., *International Handbook of Penology and Criminal Justice* (CRC Press, 2008), 411–443; Roth, *Crime and Punishment*, 377; Mike Maguire, Rod Morgan and Robert Reiner, eds., *The Oxford Handbook of Criminology*, 5th ed. (Oxford University Press, 2012), 415; Stephen C. Richards, "The New School of Convict Criminology Thrives and Matures," *Critical Criminology* 21, no. 3 (2013): 375–387.

⁴ Shoham, Beck, and Kett, *International Handbook of Penology*, 625; Peter Raynor and Gwen Robinson, "Why Help Offenders? Arguments for Rehabilitation as a Penal Strategy," *European Journal of Probation* 1, no. 1 (2009): 3–20, <https://doi.org/10.1177/206622030900100102>, 13; Maguire, Morgan, and Reiner, *The Oxford Handbook of Criminology*, 415.

⁵ Gabriel Hallevy, *The Right to Be Punished* (Springer, 2013), 71.

⁶ Hallevy, *The Right to Be Punished*, 71.

harsher sanction, and punishment remains constant regardless of the offender's criminal history. From a retributive standpoint, prior convictions should have no bearing on punishment, since the harm caused by an offence is judged on its own, separately from the offender's past or their personal characteristics.⁷ Exclusionary retributivists insist that sentencing must rest only on the seriousness of the current offence and the degree of culpability, without reference to criminal history.⁸ Prior convictions are seen as no more relevant than other external factors that might appear persuasive, such as a distinguished military record, and therefore should not influence sentencing.⁹ This approach promotes consistency by treating each offence on its own, without raising penalties simply because the offender has previous convictions. The flat-rate model emphasises that, even if ignoring an offender's past may seem counterintuitive, punishment should be based on the offence itself rather than on judgements about character.¹⁰ Support for this view can also be found in empirical research,¹¹ which repeatedly shows that harsher sentences for repeat offenders do not lead to stronger deterrent effects. A study of felony prosecutions across 39 urban counties in the United States showed that imposing harsher sentences on repeat offenders did not significantly reduce their chances of reoffending compared to first-time offenders.¹² Academic literature also puts forward arguments for treating both groups in the same way. Critics point out that relying on prior convictions can create disproportionality and unfairness in sentencing.¹³ Since offenders have already been punished for their past crimes, using that history again may lead to repeat offenders receiving harsher penalties than first-time offenders for identical offences, even though the harm to society is the same. It is often argued that punishment should reflect the gravity of the offence rather than the offender's criminal history. At the same time, repeat offenders are more easily detected

⁷ Hallevy, *The Right to Be Punished*, 71–72; Stewart J. D'Alessio and Lonn Lanza-Stolzenberg, "Should Repeat Offenders Be Punished More Severely for Their Crimes?," *Criminal Justice Policy Review* 30, no. 5 (2019): 1–17., <https://doi.org/10.1177/0887403417701974>, 11–12.

⁸ Julian V. Roberts, "Punishing Persistence: Explaining the Enduring Appeal of the Recidivist Sentencing Premium," *British Journal of Criminology* 48, no. 4 (2008): 468–481.; Rhys Hester, Richard S. Frase, Julia Laskorunsky, and Kelly Lyn Mitchell, "Rethinking the Role of Criminal History in Sentencing," in *Handbook on Sentencing Policies and Practices in the 21st Century*, ed. Jesper Ryberg, Julian V. Roberts, and Joost V. de Keijser (Routledge, 2019), 283–311.

⁹ Roberts, "Punishing Persistence," 470.

¹⁰ Sharon Ri and Ka-Kit Cheng, "Criminal Record and Sentencing: A Comparative Perspective between England and Wales and Hong Kong," *Journal of Criminal Justice* 92 (2024): 1–11, <https://doi.org/10.1016/j.jcrimjus.2024.102193>, 2.

¹¹ See: D'Alessio and Lanza-Stolzenberg, "Should Repeat Offenders," 1–17.

¹² The study's limitations include issues of causality, lack of experimental design, and restricted focus on urban counties, which suggest caution in interpreting the findings and highlight the need for replication in other contexts. See more details in: D'Alessio and Lanza-Stolzenberg, "Should Repeat Offenders," 12.

¹³ D'Alessio and Lanza-Stolzenberg, "Should Repeat Offenders," 12–14.

because their fingerprints, DNA, and other data are already stored in state systems.¹⁴ Although legislators frequently call for harsher penalties for reoffending, research shows that alternative strategies may reduce recidivism more effectively. One example is the “ban the box” initiative, which removes the requirement to disclose prior convictions at the start of job applications, supporting reintegration and lowering reoffending by removing early barriers to fair employment.¹⁵

2. 2 Recidivist Sentencing Premium Model

In sentencing practice, an offender’s prior criminal record is seen as a significant factor in determining the penalty.¹⁶ The severity of the sentence often increases in proportion to the extent of previous convictions.¹⁷ As a result, repeat offenders are typically given harsher sanctions than first-time offenders, even when the underlying offences are identical. This approach has been firmly rooted in judicial policy for centuries and continues to be applied today, with little critical examination of either its normative justification or its practical validity.¹⁸ Harsher punishment for repeat offenders is often justified either on the grounds that they have shown themselves resistant to ordinary sanctions and therefore require stronger deterrents, or that isolating them from society reduces the risk of further harm to the public.¹⁹ Stricter sentencing is usually justified by increased blameworthiness and by the view that prior convictions signal a higher risk of reoffending and the insufficiency of earlier punishments.²⁰ A repeat offender is seen as more deserving of harsher punishment because, unlike someone facing conviction for the first time, they have already undergone the process of trial and punishment, received formal condemnation from the state, and been given the opportunity to reflect and reform.²¹ Reoffending in spite of this experience is taken as a sign of failing to learn from past punishment and of a conscious

¹⁴ D’Alessio and Lanza-Stolzenberg, “Should Repeat Offenders,” 12–14.

¹⁵ D’Alessio and Lanza-Stolzenberg, “Should Repeat Offenders,” 12–14.

¹⁶ Moshe Burnovski and Zvi Safra, “Deterrence Effects of Sequential Punishment Policies: Should Repeat Offenders Be More Severely Punished?,” *International Review of Law and Economics* 14, no. 3 (1994): 341–350., [https://doi.org/10.1016/0144-8188\(94\)90048-5](https://doi.org/10.1016/0144-8188(94)90048-5); David A. Dana, “Rethinking the Puzzle of Escalating Penalties for Repeat Offenders,” *Yale Law Journal* 110, no. 5 (2001): 733–787, <https://doi.org/10.2307/797607>.

¹⁷ Burnovski and Safra, “Deterrence Effects,” 341.

¹⁸ Shoham, Beck, and Kett, *International Handbook of Penology*, 556.

¹⁹ Youngjae Lee, “Recidivism as Omission: A Relational Account,” *Texas Law Review* 87, no. 3 (2009): 571–622, 573.

²⁰ Burnovski and Safra, “Deterrence Effects.”; Dana, “Rethinking the Puzzle.”; Roberts, “Punishing Persistence,” 479; Shoham, Beck, and Kett, *International Handbook of Penology* ce, chap. 17.3.1.; Maguire, Morgan, and Reiner, *The Oxford Handbook*, 887; Youngjae Lee, “Multiple Offenders and the Question of Desert,” in *Sentencing Multiple Crimes*, ed. Jesper Ryberg, Julian V. Roberts, and Joost V. de Keijser (Oxford University Press, 2017), chap. 7.

²¹ Lee, “Recidivism as Omission,” 614; Richard Dagger, “Play Fair with Recidivists,” in *Recidivist Punishments: The Philosopher’s View*, ed. Claudio Tamburrini and Jesper Ryberg (Lexington Books, 2012), 54.

disregard for both the law and the opportunity for change. In this way, repetition of crime after conviction is regarded as demonstrating a deeper level of blameworthiness, since the offender knowingly chooses to offend again despite full awareness of the consequences.

The fairness of imposing harsher punishments on repeat offenders is open to question, particularly given the evidence that the impact of criminal history on sentencing is not straightforward but curvilinear.²² An increase in prior convictions may at first lead to tougher sanctions, but this effect weakens and can even reverse at the highest levels of criminal history.²³ This pattern suggests that sentencing does not consistently treat prior records as a simple, linear measure of risk or blameworthiness.²⁴ One reason for this inconsistency lies in the way criminal history scores are calculated, which can sometimes exaggerate or misrepresent the seriousness of an offender's past conduct.²⁵ Judges are often aware of these flaws and may respond by showing leniency when a score appears to overstate culpability.²⁶ However, such reliance on judicial discretion carries the risk of unequal treatment and undermines the goal of uniformity in sentencing. If criminal history produces uneven effects across cases, then using it as a decisive factor for harsher punishment raises serious concerns about fairness, proportionality, and consistency.²⁷ A further criticism of this model is that it shifts the focus of punishment away from the offence itself and onto the offender's past behaviour, which can undermine the principle of proportionality and lead to sentences that exceed the seriousness of the current crime.

One of the most well-known examples of a harsher stance towards repeat offenders is the "three strikes and you're out" policy. Rooted in the logic of the recidivist sentencing premium model, this policy institutionalises the escalation of punishment by imposing mandatory life sentences upon a third serious offence.²⁸ It reflects the assumption that repeat offenders pose a greater threat to society and should therefore be incapacitated through long-term imprisonment.²⁹

²² Brian Holmes and Ben Feldmeyer, "Reassessing the Influence of Criminal History in Federal Criminal Courts," *Justice Quarterly* 36, no. 7 (2019): 1206–1228, <https://doi.org/10.1080/07418825.2019.1685121>, 1223–1226.

²³ Holmes and Feldmeyer, "Reassessing the Influence," 1223–1226.

²⁴ Holmes and Feldmeyer, "Reassessing the Influence," 1223–1226.

²⁵ Holmes and Feldmeyer, "Reassessing the Influence," 1223–1226.

²⁶ Holmes and Feldmeyer, "Reassessing the Influence," 1223–1226.

²⁷ Roberts, "Punishing Persistence," 478–479.

²⁸ Michael G. Turner, Francis T. Cullen, Jody L. Sundt, and Brandon K. Applegate, "'Three Strikes and You're Out' Legislation: A National Assessment," *Federal Probation* 59, no. 3 (1995): 16–35, 33; James Austin, John Clark, Patricia Hardyman, and D. Alan Henry, *Three Strikes and You're Out: The Implementation and Impact of Strike Laws* (Justice Policy Institute, 2000), 1; Trevor Jones and Tim Newburn, "Three Strikes and You're Out," *British Journal of Criminology* 46, no. 5 (2006): 781–802, <https://doi.org/10.1093/bjc/azl007>, 783.

²⁹ See: Turner et al., "Three Strikes and You're Out' Legislation"; Isaac M. Shinbein, "Three Strikes and You're Out: A Good Political Slogan to Reduce Crime, but a Failure in Its Application," *New England Journal on Criminal and Civil Confinement* 22, no. 1

For the “three strikes” policy to work as intended, offenders must weigh the risk of committing another crime against the possibility of avoiding severe punishment by leading a crime-free life. This relies on two key conditions: first, that offenders are well-informed about the sentencing policy, and second, that they believe there is a high likelihood of being arrested and convicted if they continue to offend.³⁰ In reality, though, these conditions are often not fully met. Research into prisoners’ perceptions shows that many offenders believe the consequences will not apply to them, assume they will avoid detection, are unaware of the legislative framework, or consider their offences too minor to result in a life sentence.³¹

It is difficult to disregard prior convictions in sentencing, as both the public and criminal justice professionals tend to view an offender’s background as relevant to their level of culpability. Research indicates that people often judge the seriousness of a crime not only by the act itself, but also by the characteristics of the offender.³² At the same time, giving excessive weight to prior convictions risks weakening the principle of proportionality, shifting the focus from the crime to the person, and ultimately undermining public confidence in the justice system. A more balanced approach would be to recognise prior convictions in sentencing, while limiting their influence in order to safeguard fairness and proportionality.

2. 3 Progressive Loss of Mitigation Model

The progressive loss of mitigation (PLM) model takes a middle ground between the flat-rate model and the recidivist sentencing premium model. It accepts that an offender’s past matters in sentencing but gives it only limited weight.³³ Moreover, it reflects the connection between rehabilitation and recidivism.³⁴

The PLM model gives first-time offenders, or those with only a minor record, the benefit of a lighter sentence on the assumption that their crime may have been a one-off lapse rather than a sign of deeper criminality.³⁵ Once this first-time status is gone, the offender can no longer rely on mitigation and will face a harsher penalty. Unlike the recidivist sentencing premium, the PLM model does not raise punishments step by step with each new conviction.³⁶ Under this model, it makes no difference whether an offender has two prior convictions or many more; once the first-time offender status is lost, mitigation is no longer available. This

(1996): 175–206; Austin et al., *Three Strikes and You’re Out*; Jones and Newburn, “Three Strikes.”

³⁰ Austin et al., *Three Strikes*, 2–3.

³¹ Austin et al., *Three Strikes*, 98–102.

³² Roberts, “Punishing Persistence,” 478–479.

³³ Julian V. Roberts and Andrew von Hirsch, eds., *Previous Convictions at Sentencing: Theoretical and Applied Perspectives* (Hart Publishing, 2010), 1–17; Julian V. Roberts and Jose Pina-Sánchez, “Previous Convictions at Sentencing: Exploring Empirical Trends in the Crown Court,” *Criminal Law Review* 8 (2014): 575–588, <https://www.researchgate.net/publication/292828321>; Ri and Cheng, “Criminal Record and Sentencing.”

³⁴ Halleve, *The Right to Be Punished*, 76.

³⁵ Roberts and von Hirsch, *Previous Convictions at Sentencing*, 1–17.

³⁶ Roberts and von Hirsch, *Previous Convictions at Sentencing*, 1–17.

approach is based on the idea that a lighter sentence can be justified for first-time offenders, where the crime may be seen as a temporary lapse, but such reduction is no longer appropriate once offending becomes repeated. The PLM model is especially meaningful when applied to less serious crimes. People who commit minor offences are often influenced by factors such as peer pressure, impulsive decisions or substance use, rather than by a strong commitment to crime.³⁷ In these cases, some level of mitigation for first-time offenders recognises that their behaviour may not reflect a lasting tendency to offend. By contrast, harsh punishment at this stage can increase the risk of pushing them further toward criminal behaviour and making it harder for them to move away from crime.³⁸ The PLM model is built on the idea that first-time offenders deserve a degree of leniency, especially for minor offences, and that sentences should not automatically escalate for relatively trivial crimes.³⁹ This explains why the model emphasises reducing punishment at the beginning of a criminal career rather than continually increasing it with every new offence. However, once the offences become more serious, the logic behind this approach becomes harder to defend, as the stakes for public safety and proportionality grow higher. At the same time, the model recognises the need for balance: while some increase in punishment may be appropriate after repeated convictions, this escalation should have clear limits so that sentencing remains fair, proportionate, and consistent. This model recognises that culpability can vary between offenders, but it also stresses that mitigation cannot override the core principle of proportionality: the punishment must fit the seriousness of the current offence.⁴⁰ In line with modern desert theory, this means that even an offender with many prior convictions should not receive a sentence beyond the normal range set for the present offence.⁴¹ The idea of a “ceiling” ensures that repetition of crime cannot, by itself, justify penalties that exceed what is proportionate to the offence at hand.

2. 4 Reflections on the Models of Sentencing Repeat Offenders

Examination of the three main models shows how differently criminal justice systems balance fairness, proportionality, and social protection. The flat-rate model, rooted in retributive theory, reflects the view that punishment should be determined solely by the seriousness of the current offence and the offender’s culpability at that moment. By contrast, the recidivist sentencing premium model represents the most punitive approach, embedding harsher treatment of repeat offenders directly into sentencing practice. It is widely applied across legal systems and justified by claims of deterrence, incapacitation, and increased blameworthiness.⁴² A repeat offender, having already been convicted,

³⁷ Roberts and von Hirsch, *Previous Convictions at Sentencing*, 32.

³⁸ Roberts and von Hirsch, *Previous Convictions at Sentencing*, 32.

³⁹ Roberts and von Hirsch, *Previous Convictions at Sentencing*, 32.

⁴⁰ Ralph Henham, “Cumulative Sentencing and Penal Policy,” *The Journal of Criminal Law* 59, no. 4 (1995): 420–430, 421.

⁴¹ Henham, “Cumulative Sentencing,” 421.

⁴² Burnovski and Safra, “Deterrence Effects.”; Dana, “Rethinking the Puzzle.”; Roberts, “Punishing Persistence,” 479; Shoham, Beck, and Kett, *International Handbook of*

condemned, and given the opportunity to reform, is viewed as more culpable when they reoffend. Yet the fairness of this model is open to challenge. Empirical research casts doubt on its effectiveness in reducing reoffending, while its heavy reliance on criminal history risks undermining proportionality and shifting the focus of punishment away from the offence itself.⁴³ Concerns also arise from the inconsistency of criminal history scoring and the reliance on judicial discretion to correct inflated assessments of culpability, both of which weaken uniformity and fairness in sentencing. The “three strikes” policy offers a clear example of how this logic can become institutionalised, but it also illustrates the limitations of assuming that offenders will rationally calculate risks in line with harsh legislative frameworks.⁴⁴

Positioned between these two extremes, the progressive loss of mitigation model seeks a middle ground. It acknowledges that an offender’s prior record should have some relevance, but it limits its weight. The PLM framework insists on a ceiling: no matter how extensive an offender’s record may be, sentences should not exceed the proportionate range set for the current offence. In this way, it attempts to reconcile proportionality with the realities of repeat offending, without allowing criminal history to dominate sentencing outcomes. Together, these three models illustrate the persistent tension at the heart of sentencing policy.

3. Sentencing within the Croatian Criminal Justice Framework

3.1 Legislative Framework

Article 47 of the Croatian Criminal Code sets out the general rules for sentencing and establishes the principles that courts must follow when determining both the type and the measure of punishment.⁴⁵ The provision requires judges to begin with two central elements: the degree of culpability and the overall purposes of punishment. On this basis, the court must then assess all relevant circumstances that may justify imposing either a lighter or a harsher penalty, taking into account both mitigating and aggravating factors. The law provides a non-exhaustive list of such circumstances, which include the seriousness of the harm or danger to the protected legal interest, the motives for committing the offence, the extent of the

Penology, chap. 17.3.1., Lee, “Recidivism as Omission,” 581; Maguire, Morgan, and Reiner, *The Oxford Handbook*, 887.

⁴³ Fletcher George, *Rethinking Criminal Law* (Little, Brown and Company, 1978); Burnovski and Safra, “Deterrence Effects.”; Bagaric, *Punishment and Sentencing*; Bagaric, “Punishment Should Fit the Crime.”; Dana, “Rethinking the Puzzle.”; Anthony N. Doob and Cheryl Marie Webster, “Sentence Severity and Crime: Accepting the Null Hypothesis,” *Crime and Justice* 30 (2003): 143–195, <https://doi.org/10.1086/652230>; Dagger, “Play Fair.”; Roberts and Pina-Sánchez, “Previous Convictions at Sentencing.”; Hester et al., “Rethinking the Role.”; Holmes and Feldmeyer, “Reassessing the Influence.”

⁴⁴ Austin et al., *Three Strikes*, 2–3.

⁴⁵ Croatian Criminal Code, *Official Gazette* no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24 (2024).

offender's breach of duty, as well as the manner in which the act was carried out and the consequences produced. Further factors relate to the offender's personal situation and conduct, such as their previous way of life, personal and financial circumstances, behaviour following the offence, attitude towards the victim, and efforts to make restitution or repair the damage. Importantly, the provision also places a clear substantive limit on punishment by stipulating that the sentence must never exceed the offender's degree of culpability. In this way, Article 47 seeks to strike a balance between the individualisation of punishment and the fundamental principle of proportionality.

In Croatian criminal law, punishment serves several purposes: general prevention, which strengthens public trust and deters crime; special prevention, which seeks to correct the offender; resocialisation, aimed at reintegration into society; and retribution, which reflects the degree of guilt and communicates social condemnation in a proportionate manner.⁴⁶ Sentencing is also guided by the offender's degree of culpability, as Article 47(2) of the Criminal Code makes clear that punishment must not exceed this threshold. Culpability is evaluated on the basis of intent or negligence, mental capacity, and awareness of unlawfulness, ranging from the highest level; direct intent with full responsibility, to the lowest level, where unconscious negligence is combined with diminished capacity.⁴⁷

Although the normative framework in Croatian criminal law provides clear guidelines that serve as the basis for sentencing, important challenges remain in their application. The only comprehensive study dedicated to the problem of sentencing practices was published more than forty years ago, which itself highlights a serious gap in systematic research.⁴⁸ That research identified six major problems: the contradiction between repression and individualisation, the one-sided focus on repression, the absence of uniform criteria for determining the type and measure of punishment, the conflict between the principles of legality and individualisation, the overall leniency of penal policy, and the insufficient reasoning provided for sentences in judicial decisions.⁴⁹ In addition to these six areas, the study also produced three important findings: most sentences were imposed at or near the statutory or special minimum, many prescribed penalties were mitigated, and the proportion of suspended sentences was relatively high.⁵⁰ While the legal framework provides firm guidance for sentencing, long-standing challenges in practice, such as inconsistency, leniency, and insufficient reasoning, continue to raise questions about its effectiveness.

⁴⁶ Croatian Criminal Code, art. 41.

⁴⁷ Marin Mrčela, "Obrazlaganje kaznenopravnih sankcija," in *Novine u kaznenom zakonodavstvu – 2023* (Vrhovni sud Republike Hrvatske and Pravosudna akademija, 2023), 63–81, 65.

⁴⁸ See: Željko Hovatić, *Izbor kazne u jugoslavenskom krivičnom pravu i sudskoj praksi* (Informator, 1980).

⁴⁹ Mrčela, "Obrazlaganje kaznenopravnih sankcija," 63.

⁵⁰ Mrčela, "Obrazlaganje kaznenopravnih sankcija," 63.

3. 2 General Overview of Sentencing Trends in Croatia

Sentencing in Croatia is dominated by suspended prison sentences, which for many years have been the most common sanction.⁵¹ They reflect a tendency to formally impose imprisonment while avoiding actual time in prison, combining punishment with the chance of reintegration in the community. The second most frequent sanction is unsuspended prison, while fines, whether suspended or unsuspended, are rarely used. Other measures, such as admonitions or educational sanctions, appear only in exceptional cases. The low use of fines can be explained by everyday practice. Prosecutors usually do not propose them, and judges often avoid them because calculating fines requires assessing the offender's income, which is seen as complicated and time-consuming compared to simply imposing a prison sentence.⁵² As a result, imprisonment, whether suspended or unsuspended, remains the default sanction. This practice raises questions about efficiency and fairness, since fines could be a more proportionate and flexible response in many cases, especially for less serious crimes.

Most unsuspended prison sentences are short, usually between six months and two years.⁵³ Very short terms of less than six months, once quite common, became rare after the 2011 reform of the Criminal Code introduced the so-called "exceptionality rule," which obliges judges to explain in detail why such a short term is necessary.⁵⁴ Instead of reducing imprisonment overall, this rule led judges to shift towards slightly longer sentences, mainly in the six-to-twelve-month range, in order to avoid the extra work of providing justification. The shift in Croatian sentencing practice after the 2011 reform is best understood when considered alongside wider European patterns. The introduction of the exceptionality rule reduced the use of very short custodial terms of less than six

⁵¹ "Statistical data for various years," Croatian Bureau of Statistics – Republic of Croatia, accessed October 8, 2025, https://web.dzs.hr/default_e.htm.

⁵² See: Anna-Maria Getoš Kalac and Lea Feuerbach, "Sentencing and Imprisonment in Croatia," in *Mapping the Penological Landscape of the Balkans* (Springer Nature, forthcoming).

⁵³ "Statistical Data on Convicted Adult Perpetrators for 2024," Croatian Bureau of Statistics – Republic of Croatia, accessed October 8, 2025, https://web.dzs.hr/PX-Web_e.asp?url=%22Eng/Archive/stat_databases.htm%22.

⁵⁴ Having in mind the negative effects of short-term prison sentences, such as limited rehabilitative impact, stigmatisation of first-time offenders, exposure to more experienced criminals, disruption of employment and family ties, and prison overcrowding, the Croatian legislator introduced a reform in 2011 establishing the principle of exceptionality, under which custodial terms of up to six months may be imposed only where fines, community service, or suspended sentences cannot achieve the purpose of punishment. In practice, this means that if a court imposes a sentence of less than six months, it must provide additional justification explaining why it did not opt for a fine, community service, or a suspended sentence. See more details in: Ksenija Turković and Aleksandar Maršavelski, "Reforma sustava kazni u novom Kaznenom zakonu," *Hrvatski ljetopis za kazneno pravo i praksu* 19, no. 2 (2012): 795–817., <https://hrcak.srce.hr/file/163402>, 813.

months, but it did not decrease the overall reliance on imprisonment. Instead, courts largely shifted sentences into the six-to-twelve-month range, thereby complying with the reform while avoiding the burden of additional justification. While more recent data on sentencing is available from the Croatian Bureau of Statistics, the 2020 figures from the European Sourcebook of Crime and Criminal Justice Statistics⁵⁵ are particularly valuable, as they not only capture this shift in Croatian sentencing practice but also make it possible to compare Croatia's approach with that of other European countries.

In 2020, Croatia imposed a total of 61 unsuspended custodial sanctions, which is notably lower than the European mean of 103 and the median of 88. Its sentence-length distribution differs markedly from European patterns: only 10% of sentences were under six months (versus a mean of 43% and median of 45%), while Croatia concentrated penalties in the mid-range, with 42% between six and twelve months and 33% between twelve and twenty-four months.⁵⁶ Sentences of two to five years made up 13.3%, five to ten years 2%, and more than ten years 0.6%, the last figure broadly matching European levels.⁵⁷ In 2020, Croatia recorded a total of 285 convicted persons per 100,000 population, among these, 75% were convicted without any prior criminal record, while 25% had previous convictions.⁵⁸ Moreover, data on the share of previous unsuspended prison sentences among those with prior convictions was not reported for Croatia. These figures indicate that most persons convicted in Croatia in 2020 were first-time offenders, while just over one-quarter were repeat offenders. This outcome shows how legislative reforms can produce unintended effects, with judicial practice adapting in ways that do not necessarily support the original aim of reducing imprisonment.

Overall, sentencing in Croatia shows a clear pattern: suspended imprisonment dominates, short, unsuspended prison terms are used regularly, and fines remain almost absent. While this structure ensures that prison is formally central to penal policy, it may not always reflect the most effective or proportionate approach to punishment. Heavy reliance on suspended imprisonment risks creating a gap between symbolic punishment and real behavioural change, while the neglect of fines and alternative measures limits the flexibility of the sentencing system. These trends highlight the need for a critical discussion about whether current practices serve the goals of fairness, proportionality, and the prevention of reoffending.

⁵⁵ Aebi et al., *European Sourcebook of Crime and Criminal Justice Statistics*, 7th ed., Series UNILCRIM, 2024, 260.

⁵⁶ Aebi et al., *European Sourcebook*, 260.

⁵⁷ Aebi et al., *European Sourcebook*, 260.

⁵⁸ Aebi et al., *European Sourcebook*, 260.

3.3 The Role of Previous Convictions in Sentencing in Croatia

The existence of prior convictions, or conversely the absence of a criminal record, falls within the category of circumstances relating to the offender's previous life. In practice, a lack of prior convictions is typically treated as a mitigating factor.⁵⁹ When considering prior convictions, it is important to take into account whether rehabilitation has occurred. The time limits for rehabilitation are set out in Article 19 of the Act on the Legal Consequences of Convictions, Criminal Records and Rehabilitation.⁶⁰ Once these time limits have expired, a previous conviction may not be considered in sentencing, even if the court is aware of it through attached case files or the defendant's own statement.⁶¹ The weight of prior convictions is determined by whether they are connected to similar offenses.⁶² Reoffending of the same type is treated as aggravating, while unrelated convictions do not automatically increase the sentence unless they clearly reveal a pattern of behaviour.⁶³ Moreover, the court cannot consider the fact that other criminal proceedings are pending against the defendant as an aggravating circumstance, as this would breach the constitutional presumption of innocence.⁶⁴

The quality of judicial reasoning in sentencing has long been a concern, as research over more than two decades shows that courts often fail to provide sufficient justification for the sanctions they impose.⁶⁵ Mitigating and aggravating circumstances are frequently listed without any real evaluation of their impact on the final sentence, and in some cases, they are omitted altogether.⁶⁶ This lack of reasoning makes it difficult to establish a clear link between the stated circumstances and the punishment imposed, which in turn prevents meaningful assessment of sentencing policy. In practice, courts tend to rely on a synthetic rather than analytical approach, meaning that the sentence often appears to be an overall impression subsequently justified by selected factors.⁶⁷ As a result, sentencing decisions are frequently under-reasoned, and courts rarely specify the sources of relevant information or explain why certain

⁵⁹ Davor Tripalo and Marin Mrčela, *Odmjeravanje i obrazlaganje kaznenopravnih sankcija* (Pravosudna akademija, 2023), chap. 3.1.1.7.

⁶⁰ Croatian Act on the Legal Consequences of Convictions, Criminal Records and Rehabilitation, *Official Gazette* no. 143/12, 105/15, 32/17, 53/22 (2022).

⁶¹ Tripalo and Mrčela, *Odmjeravanje i obrazlaganje kaznenopravnih sankcija*, chap. 3.1.1.7.

⁶² Tripalo and Mrčela, *Odmjeravanje i obrazlaganje kaznenopravnih sankcija*, chap. 3.1.1.7.

⁶³ Tripalo and Mrčela, *Odmjeravanje i obrazlaganje kaznenopravnih sankcija*, chap. 3.1.1.7.

⁶⁴ Đurđević, "Odluka o kazni," 778.

⁶⁵ Đurđević, "Odluka o kazni," 779.; Velinka Grozdanić, Zoran Sršen and Davor Rittossa, "Kaznena politika općinskih sudova na području Županijskog suda u Rijeci," *Hrvatski ljetopis za kazneno pravo i praksu* 11, no. 2 (2004): 567–608., 607.; Mrčela, "Obrazlaganje kaznenopravnih sankcija," 80.

⁶⁶ Đurđević, "Odluka o kazni," 779.; Grozdanić, Sršen, and Rittossa, "Kaznena politika," 607; Mrčela, "Obrazlaganje kaznenopravnih sankcija," 80.

⁶⁷ Grozdanić, Sršen, and Rittossa, "Kaznena politika," 607.

evidence was considered credible.⁶⁸ Beyond improving sentencing reasoning, courts also need clearer public communication. Media criticism of sentences often stems from limited explanations or misunderstandings, leading to public debates based on incomplete information.⁶⁹ Courts therefore have a responsibility not only to justify decisions in judgments but also to explain them clearly to the public, which requires a more active role from court presidents and spokespersons in presenting sentencing reasons in a simple and understandable way.

4. Conclusion

The three sentencing models show how difficult it is to balance prior convictions with proportionality, and none fully resolves the tension between retribution, deterrence, and rehabilitation. The flat-rate model offers consistency but risks ignoring relevant risk factors; the recidivist sentencing premium model promises stronger protection and deterrence but undermines proportionality and fairness, while the progressive loss of mitigation model attempts to balance both sides by recognising first-time lapses without escalating punishment indefinitely. The broader lesson is that reliance on prior convictions cannot be treated as a simple formula. Any approach must remain attentive to proportionality, fairness, and effectiveness if it is to maintain legitimacy.

In Croatia, sentencing law is clear, yet practice remains inconsistent. Courts rely heavily on suspended sentences, rarely impose fines, and frequently use short custodial terms, which indicates routine rather than systematic reasoning. Although prior convictions are recognised as an aggravating factor when they reveal a pattern, judges often mention them without explaining their actual impact on the sentence, which undermines transparency and hinders proportionality. Clearer judicial reasoning, especially on the role of prior convictions, supported by updated empirical research, would improve coherence, predictability, and public trust in Croatian sentencing practice.

⁶⁸ Đurđević, “Odluka o kazni,” 779.

⁶⁹ Mrčela, “Obrazlaganje kaznenopravnih sankcija,” 80.