

Different penal climates in Europe

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Abstract. The European ‘penal climate’ is defined by consistent patterns of difference in penal policies that are well known and well documented. One such pattern involves differences between ‘old’ EU member states in Western Europe and ‘new’ EU member states, in Central and Eastern Europe. The two above zones of European ‘penal climate’ differ not only in the severity of sanctions imposed (as measured by imprisonment rate, average length of prison sentences, and average time spent in prison), but also in other characteristics of sentencing patterns, including types of sanctions used and their structure. This paper presents selected statistical data regarding differences in penal policies implemented in Western and Central and Eastern Europe, compared with the police data on registered offences. Comparison of the two data sets gives insight to the state of crime control policies in European countries.

Key words: penal climate – penal policy – punitiveness – imprisonment rate – alternatives to imprisonment

The term ‘penal climate’ (Steenhuis et al. 1983; Kommer 1994), although not a precise notion, serves to generally illustrate differences in penal policy and punitiveness among various countries or regions. Thus, it is possible to speak about a mild, moderate, or severe ‘penal climate’ prevailing in a given country, region, or continent. The European penal climate is defined by consistent patterns of difference in penal policies that are well known and well documented (Christie 2000, pp. 25–39).

One such pattern involves differences between ‘old’ EU member states located in Western Europe and ‘new’ EU member states, and other states located in Central and Eastern Europe. It is well known that enormous differences in

penal climates existed in Europe during the cold war, with penal moderation prevailing in the west, and severity dominating in the east. However, much data suggest that twenty-five years after the end of the cold war, the fall of the Berlin wall, and the collapse of the communist regimes in Central and Eastern Europe, two different climatic zones persist. The European continent remains divided, with a mild or moderate western zone and a severe central and eastern zone. The difference from twenty-five years ago to today is that the current 'penal curtain' dividing Europe into these two zones, as opposed to the 'iron curtain' of the cold war period, moved eastwards from the Elbe River (formerly the border between Western and Eastern Germany) to the Odra River (currently the border between Germany and Poland). This eastern shift occurred as a consequence of German unification when the former GDR joined the moderate western penal climate.

The two different zones of European penal climate differ not only in the severity of sanctions imposed (as measured by imprisonment rate, average length of prison sentences, and average time spent in prison), but also in other characteristics of sentencing patterns, including types of sanctions used and their structure. This paper presents selected statistical data regarding such differences in penal policies implemented in Western and Central and Eastern Europe. Some of those data create striking patterns of consistency. Those data are compared with the statistical data on crime patterns, primarily police data on registered offences. It is interesting that also in this area substantial differences exist between Western and Eastern Europe, although of an unexpected character. Comparison of the two data sets gives insight into the state of crime and crime control policies in European countries.

Police statistical data on registered offences constitute the most important source of official statistical data on crime in European countries. The *European Sourcebook on Crime and Criminal Justice Statistics* provides data on registered offence rates per 100,000 population in all member states of the Council of Europe since 1995 (Killias et al. 2003; Aebi et al. 2006; Aebi et al. 2010). For the purpose of the current analysis, data for three selected years 1995, 2000 and 2007¹ are used to illustrate patterns of differentiation among European countries and changes in those patterns. Figures 1, 2, and 3 list European countries by rank according to their registered offence rate.

1 2007 is the last year for which the data are available in Aebi et al. 2010.

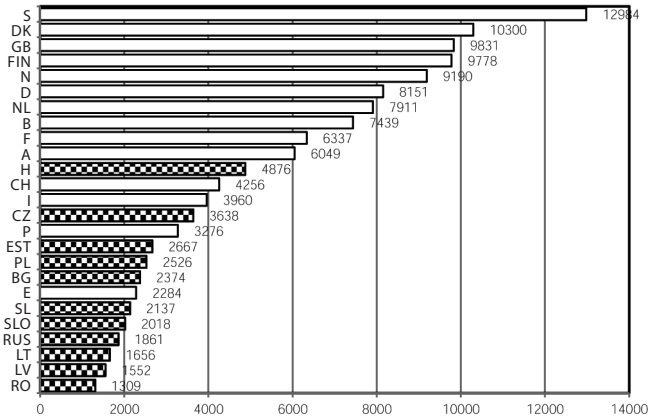


FIG. 1. Crime rate in European countries (1995)

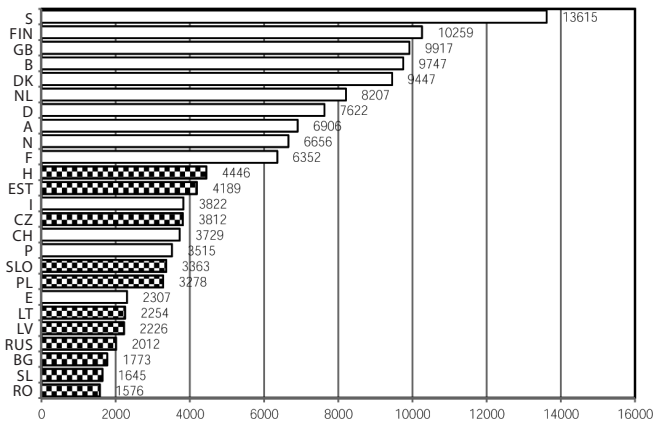


FIG. 2. Crime rate in European countries (2000)

It is possible to argue that using police statistical data on registered offences to make such comparisons is useless and completely wrong from the methodological point of view (van Dijk 2008, pp. 15–43; Lewis 2012). Crime is not a ‘natural’ but a normative phenomenon. What constitutes a criminal offence is decided by the law and results from a law-making process undertaken mostly at the national level. In consequence, there is no such thing as a unified, supra-national notion of what constitutes a criminal offence. Therefore, what is considered to be a crime depends on the definitions of offences provided by

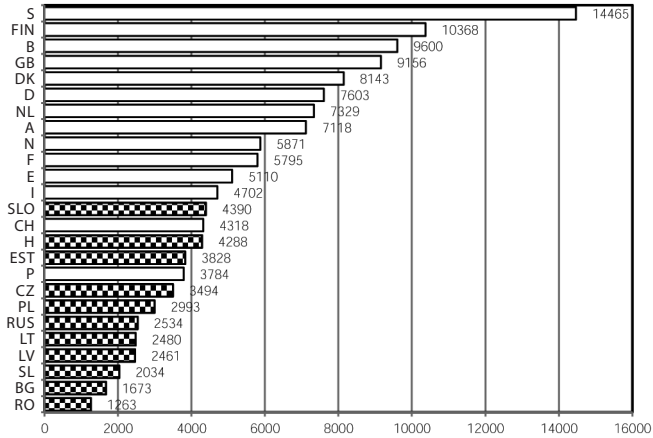


FIG. 3. Crime rate in European countries (2007)

the domestic legal system of any country. Those vary significantly. Even when there is no doubt about certain ‘common core’ offences recognized by most national legislations in Europe and worldwide, the margin of difference is still substantial. The growing tendency to approximate criminal law, especially in the EU, because of international obligations or supranational legislation, does not change this. The scope of criminalization differs substantially in the precise meaning and details of such notions as rape, theft, burglary, robbery, or fraud in each European country.

Also, police statistics in any country may record different categories of prohibited acts. In some countries they record practically all types of norm violations independently of their character, including various petty violations (primarily true in Anglo-American and Scandinavian legal cultures). In other countries, such statistics record often only what is called criminal offences of more serious character, while all kinds of administrative offences are registered in separate statistical systems (as seems to be the case in Poland, Germany, or Austria). Therefore, the latter group of countries may have lower registered offence rates than the former group, even though the only reason for this may result from differences in statistical registration and not real differences in the phenomenon to be measured (i.e. crime).

Finally, countries may differ substantially with regard to certain factors having crucial importance for the process of official registration of offences by

the police. On the one hand, it is readiness of the victims to report offences to the police, on the other, it is readiness of the police to register such reports. Victim readiness constitutes a well-known factor influencing registered offence rate and may be effectively measured by victimization surveys. Police readiness is a more elusive factor, although it played a significant role in Central and Eastern European countries before 1990, when communist authorities for ideological reasons tried to keep crime rate low by manipulating registration processes. In a country where both kinds of readiness are low, its registered offence rate may be much lower than in a country where both kinds of readiness are high. This may have nothing to do with the real number of offences committed in those countries. Another crucial factor may be the selection mechanisms present in any criminal justice system, for example as in juvenile justice in which discretionary powers are strongly rooted. German juvenile offense rates – at least during the 1990s – were much higher than in the Central European countries like Czech Republic, Hungary, and Poland; however, these different rates most probably reflected differences in the selection mechanisms functioning in those countries and not real differences in incidence of juvenile delinquency. In Germany, offences were first formally registered and only then ‘dropped’ from the juvenile justice system, using various discretionary powers. In the Czech Republic, Hungary, and Poland, offences were ‘selected out’ in an informal way by the police before being formally registered, and therefore many such incidents left no traces whatsoever in the statistical registration system (Neubacher et al. 1999).

For these reasons, official police statistical data on registered offences are usually considered to be of no great value for the purpose of making international comparisons. No one would readily accept that Sweden is *the* least safe European country because it has the highest registered offence rate, while Russia is much safer, or that Romania is *the* safest country because it has a substantially lower registered offence rates than any in Europe. In other words, any international comparisons involving registered offence rates must be treated with due caution. Registered offence numbers and rates are to a large extent – although not completely – independent of the real number of criminal law violations taking place in any country and are influenced by many factors not directly related to the real volume of crime.

All three diagrams reveal a consistent pattern of difference in registered offence rates. Western European countries are generally characterized by higher, sometimes much higher, registered offence rates than Central and Eastern European countries. For example, the average registered offence rate for 14 countries of Western Europe, listed in Figure 3, in the year 2007 was 7,383 per 100,000 inhabitants, while for 11 Central and Eastern European countries it was 2,858 per 100,000. Therefore, in Western Europe the offence rate was on average more than twice as high as in Central and Eastern Europe. Moreover, this pattern persisted throughout the entire analysed period, independently of the changes in registered offence rates that took place in each country or region.

This may be somewhat surprising. After the year 1989, a substantial growth of registered offence rates took place in all post-communist countries of Central and Eastern Europe. Despite the fact that many countries of the region lack reliable statistical data on crime for the period before 1989 (which makes comparisons sometimes difficult), this growth is usually well documented (Gruszczyńska 2004; Lévy 2012; Gruszczyńska and Heiskanen 2012). Even if there are problems with ascertaining how big was the crime growth in the region as compared with the period before 1990, there is no doubt that in most countries of the region crime was growing significantly throughout the 1990s and often continued during the 2000s. This growth is reflected in public perceptions of crime, as well as in political and media discourse. Crime growth was perceived by criminologists and the public as one of the most conspicuous characteristics of the political, economic, and social transformation processes in Central and Eastern Europe (Kossowska et al. 2012). However, it is important to note that never during the last 25 years and in none of the countries of Central and Eastern Europe did the registered offence rate approach the average rates for Western Europe. Nevertheless, most people in Central and Eastern Europe are deeply convinced that after 1989 their countries rapidly became high-crime societies (Garland 2000), in sharp contrast with the safe West. Contrary to that opinion and compared with Western Europe, countries of Central and Eastern Europe remain low-crime societies, at least according to the official police data on registered offences.

The above picture may change if we use data regarding particular offences and not data on all registered offences taken together. For example, it is often argued that data on homicide better suit the purpose of making international

comparisons. First, homicide is an offence similarly defined in most European jurisdictions². Second, registration of homicide is certainly less influenced by the readiness of people to report offences and the readiness of the police to record them than any other offence. Homicide may be considered to be an offence with a relatively small dark figure, in that its official rate approximates its real occurrence in a given society. Therefore, some authors are of the opinion that registered homicide rates are a better indicator for drawing conclusions regarding differences in crime among countries (Jasiński 1996). This may be partly true, although it may be well argued that registered homicide rates indicate the level of criminal violence in a country and not necessarily the general level of crime. Nevertheless, it may be worth looking at the differences in registered homicide rates in Western Europe on the one side of the penal curtain, and Central and Eastern Europe on the other.

Data regarding the rates of registered completed homicides in European countries for the years 1995, 2000 and 2007 are presented in Figures 4, 5, and 6. The pattern here clearly differs from the pattern of general offences. Here, most Central and Eastern European countries score higher than countries of Western Europe, and this is true for the entire period under analysis. Moreover, some Central and Eastern European countries are undisputed European leaders in registered completed homicides, primarily the Baltic countries³ and Bulgaria. Moreover, none of the countries of the region belong to the group of European countries with the lowest homicide rate. For example, in the year 2007, the average rate of completed homicides for 11 Western European countries, listed in Figure 6, is 1.25 per 100,000 population, while for 8 Central and Eastern European countries the average rate is 3.1 per 100,000. However, if Estonia and Lithuania, countries having exceedingly high homicide rates, are excluded, then the average completed homicide rate for the remaining six countries of the region is 1.7 per 100,000. Therefore, the average Central and

2 This does not mean that homicide is defined identically. Therefore, certain particularities, especially regarding criminal intent, may impact the differences in registered homicide rates, but certainly those differences are less significant than those of other offences.

3 *The European Sourcebook of Crime and Criminal Justice* provides data on completed homicide for Estonia and Lithuania only. There are no such data on Latvia. However, judging from the data on Latvia regarding intentional homicide (both completed and attempted), this country may have a slightly lower homicide rate than the other two Baltic countries, but still significantly above the European average.

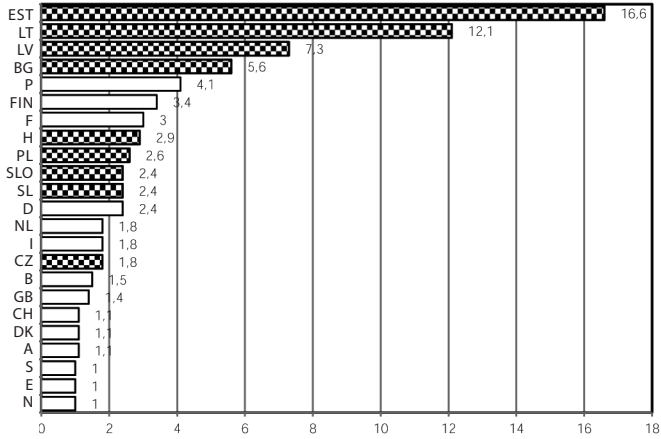


FIG. 4. Homicide rate in European countries (1995)

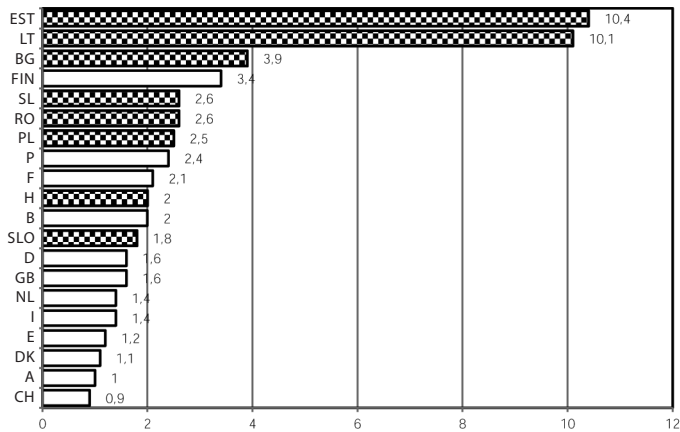


FIG. 5. Homicide rate in European countries (2000)

Eastern European rate is higher than in Western Europe, but by no means drastically higher. At the same time, unlike the data pattern regarding general offence rate, there is no clear pattern of differentiation in homicide rate between the continental West and the East. It is true that all European countries with the lowest homicide rates are Western countries, and those with the highest homicide rates are Central and Eastern European countries. However, in the middle of the ranking range, there are some western countries

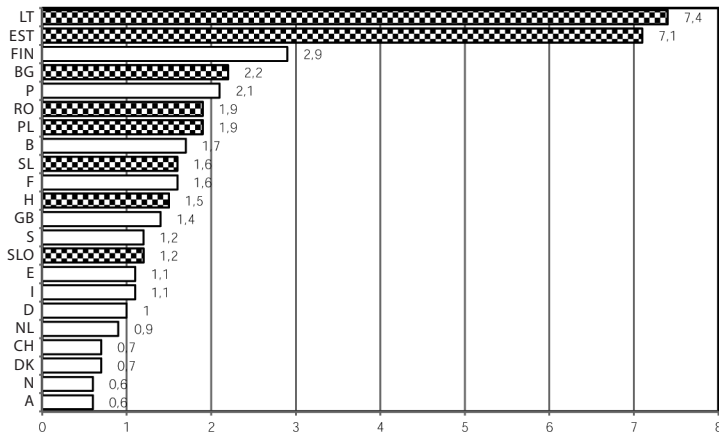


FIG. 6. Homicide rate in European countries (2008)

with rates absolutely comparable with some Central and Eastern European countries.

It is difficult to say whether offence rates or homicide rates better reflect differences in real incidence of crime between Western Europe and Central and Eastern Europe. Unfortunately, there are no victimization survey time series data available for all European countries, which makes it impossible to create a more comprehensive and reliable picture of differences in crime among European countries. This is especially true for countries of Central and Eastern Europe for which data obtained through International Crime and Victims Survey (ICVS) are available only for Poland for a longer period of time. Estonia and Hungary were included only in the 2004–2005 ICVS sweep (van Dijk et al. 2007). Nevertheless, the available data on victimization reveal a more complex and differentiated picture of crime patterns than the data regarding registered offences. For example, for the years 2004–2005 Poland had a victimization prevalence rate of 15.0, which is almost identical with the European average of 15.4. Estonia had a much higher prevalence with the rate of 20.2, but in Hungary it was much lower, with the rate of 10.0. There were equally substantial differences among the countries of Western Europe, ranging from a very high victimization rate in Ireland (21.9) or the United Kingdom (21.0) to a rather low rate in Portugal (10.4) or Spain (9.1). This seems to suggest that there may be no consistent pattern of differentia-

tion in real crime levels between the Western and the Central and Eastern continent.

This paper does not aim to provide a definite answer to the question whether the data on registered offence rates (general or by offence type) reflect real differences in crime levels among European countries or they are simply statistical artefacts, products of differences in counting rules and differences in the dimensions of the dark figure. For the purpose of the following analysis, it is sufficient to conclude that during the last 25 years all countries of Central and Eastern Europe were characterized by substantially lower registered offence rates than in the West. Consequently, those countries have had a much lower 'input' of cases to be processed by their criminal justice systems than their Western counterparts, which is of profound importance for the evaluation of crime control policies. Because readiness to report victimization in Central and Eastern Europe is still substantially lower than on average in the West, offences are significantly 'under-registered'; in other words, the proportion of offences remaining in the dark figure is much higher in Central and Eastern Europe. Therefore, it would be false to conclude that Central and Eastern Europe have less crime than the West. But it is not important to determine whether Central and Eastern Europe have less or more crimes than Western Europe. What counts for the current argument is that the input of cases to be decided by the criminal justice system in any country is determined by the number of registered offences and not by the number of offences actually committed. Only officially registered offences may be processed by the criminal justice system, subject to sentencing or other decisions, and therefore are of significance for the evaluation of the 'penal climate' prevailing in a given country.

In this context, it must be even more striking that countries of Central and Eastern Europe are commonly known for their rather harsh criminal justice systems and sentencing patterns as compared with Western Europe. These countries were known for extremely high levels of punitiveness before 1989, which was understandable considering their authoritarian political systems imposed by Soviet dominance. But it seems that, despite political changes in 1989, the situation did not alter substantially. This may be illustrated by data regarding the imprisonment rate in European countries, the indicator most commonly used for the purpose of comparative analysis of punitiveness. The

data regarding this rate for the years 1983, 1995, 2000, and 2007 are presented in Figures 7, 8, 9, and 10⁴.

The data reveal an astonishingly consistent pattern of differences in imprisonment rates or punitiveness of European countries since 1983. Moreover, despite changes in numbers for specific years, the ranking pattern changed very little since the communist period. Even considering that there are substantial differences in imprisonment rates among Central and Eastern European countries (with excessively high rates in the Baltic countries, even for the prevailing conditions), almost all countries of the region lead in the ranking of European countries in terms of imprisonment rate. The only exception among the post-communist countries is Slovenia which for years has been among the European champions of 'low imprisonment rate'. This pattern has persisted since the communist era without change, despite the political, economic, and social change in Central and Eastern Europe since 1989, including reforms in the criminal justice system and penal law. This is so, even though in absolute terms the imprisonment rate in Central and Eastern Europe usually diminished as compared with the period before 1989, while in Western Europe it usually increased, sometimes even substantially (Kuhn 1994; Lappi-Seppälä 2011).

The above picture is nothing new, and all presented data are well known; however, they illustrate that during the last 25 years the post-communist countries of Central and Eastern Europe were unable to introduce to their penal policies changes significant enough to equal the Western European average imprisonment rate, or at least to approach this average in a meaningful way. Moreover, this is obviously the consequence of highly punitive penal law and criminal justice systems and not of the situation regarding crime. Public opinion, media, and politicians in the region are often deeply convinced that just the opposite is true: that criminal justice systems in the region are excessively lenient, and crime is getting out of control (Krajewski 2009). Therefore, there is a widespread belief that increasing punishment for crimes and increasing the number of offenders sent to prison constitute the panacea for crime. What

4 Data for the year 1983 are taken from Jasiński (1984), pp. 52–66. Data for the year 1995 are taken from Killias et al. (2003) p. 196, and for the year 2000 from Aebi et al. (2006), p. 129. Finally, the source of data for the year 2008 is Aebi, Delgrande (2010), p. 27. The rates are calculated per 100,000 population.

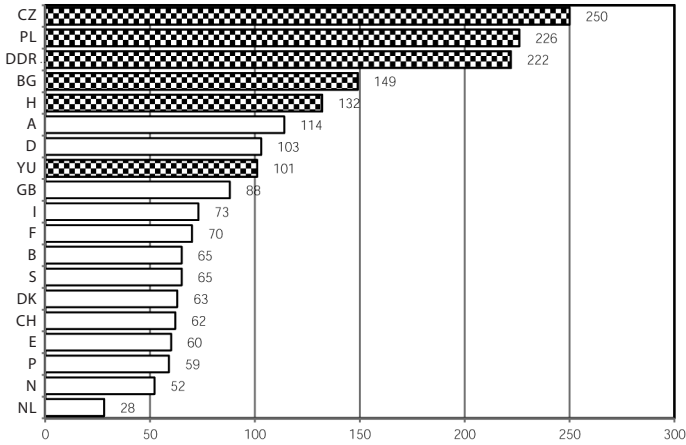


FIG. 7. Imprisonment rate in European countries (1983)

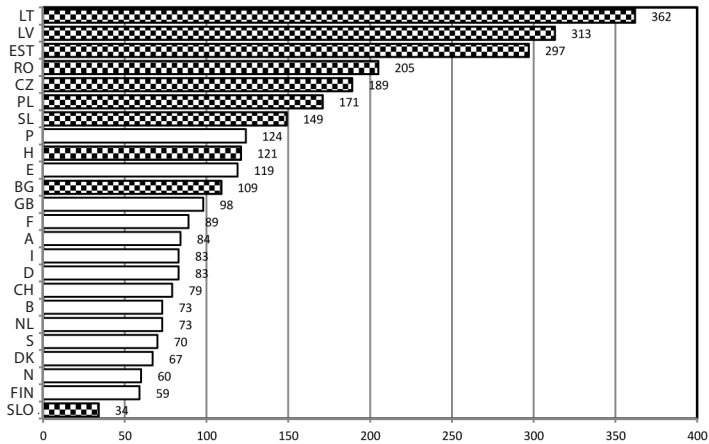


FIG. 8. Imprisonment rate in European countries (1995)

is completely ignored is that sentencing policies in Central and Eastern Europe are already harsh and result in prison populations of enormous dimensions.

From this point of view, it may be worth having a closer look at some additional data regarding sentencing patterns in the region. Imprisonment, or the frequency of imposing sanctions of deprivation of liberty rather than alternative sanctions, is an important factor in sanction structure. Data on

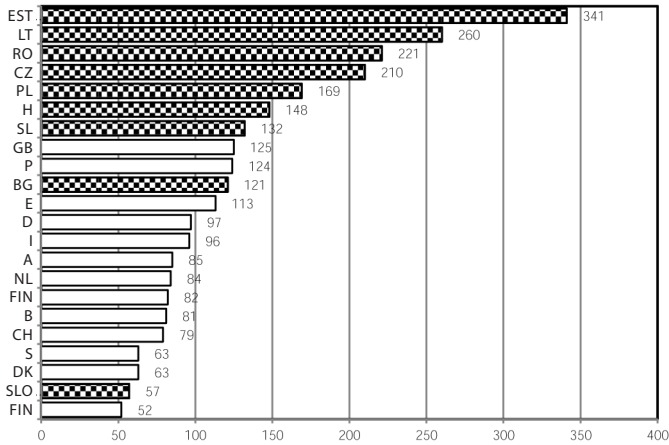


FIG. 9. Imprisonment rate in European countries (2000)

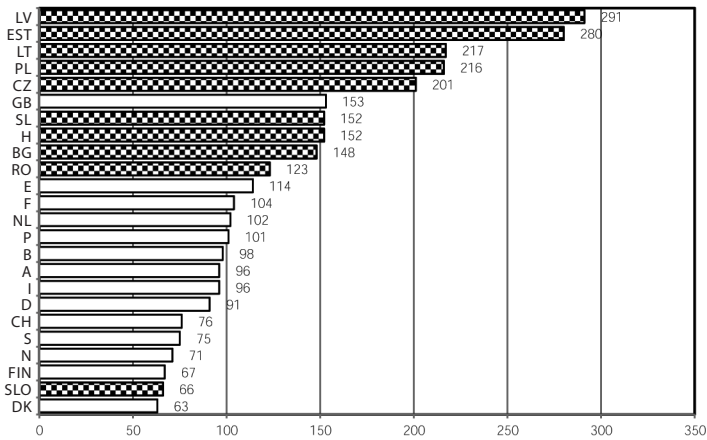


FIG. 10. Imprisonment rate in European countries (2008)

the proportion of immediate imprisonment sentences among all sentences pronounced in European countries are provided for the years 1999 and 2007 (i.e. two years for which data are available) in Figures 11 and 12⁵. These data

5 Data regarding the structure of sanctions imposed by the criminal justice systems in European countries are available in *The European Sourcebook of Crime and Criminal Justice Statistics* only for the years 1999 and 2007.

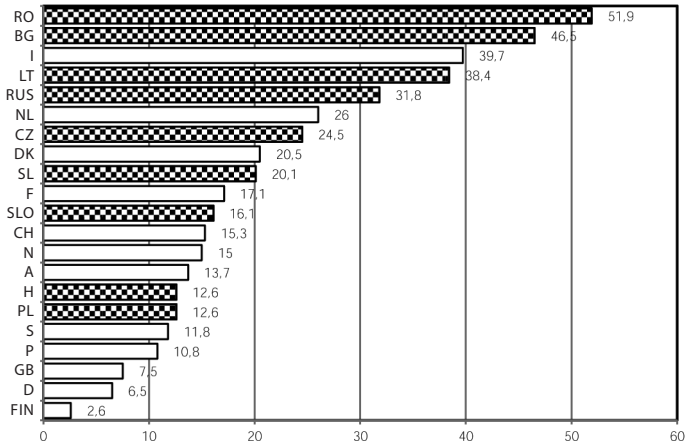


FIG. 11. Proportion of immediate prison sentences in European countries (1999)

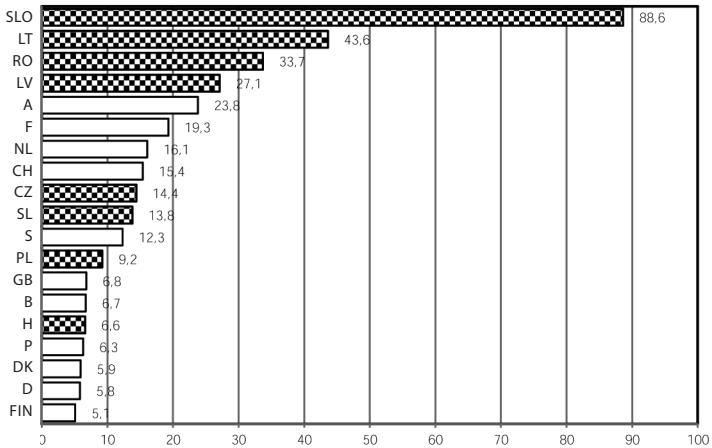


FIG. 12. Proportion of immediate prison sentences in European countries (2007)

clearly illustrate that European countries differ enormously with respect to the role played by imprisonment in their penal policies, and that, in principle, this differentiation is not clearly related to geographical criteria. The frequent use of imprisonment by no means constitutes a consistent pattern in Central and Eastern Europe. Therefore, it cannot be the main factor underlying the punitive

outcomes of crime control policies. Some countries of Central and Eastern Europe do lead in the use of imprisonment, primarily Romania, Bulgaria, Lithuania, and Latvia. However, there are also countries of the region, such as the Czech Republic or Slovakia, with the proportions of imprisonment sentences that are more or less within the European average (especially true for 2007), but still lower than in many countries of Western Europe (such as Austria, France or the Netherlands). Finally, there are countries of the region with the imprisonment proportions that are low by European standards (Poland), or even very low (Hungary). Hungary is absolutely comparable with European leaders in a restrained use of imprisonment, namely Finland and Germany. Moreover, there seems to be little relation between the proportion of imprisonment sentences imposed by courts in a given country and its imprisonment rate. Some countries (Hungary, Poland, Portugal, and England and Wales) have a low proportion of imprisonment sentences and a high or even very high imprisonment rate. In other countries, the opposite is true. Slovenia provides the most astonishing example. In 2007, Slovenia held the record for European standards in its proportion of imprisonment sentences at more than 80 percent, while at the same time it had for years the lowest, or one of the lowest, imprisonment rates. This is rather easy to explain. The problem is not only how often offenders are sent to serve prison sentences but also how long are sentences being imposed or – even more important – how much time in fact convicts spend behind bars. The frequent use of short-term imprisonment may result in a high proportion of such sentences among all sanctions imposed, but it not necessarily results in a high imprisonment rate. What matters is not only the stock of prisoners, but also their flow (Aebi, Kuhn 2000).

Therefore, it may be necessary to use some other measures to compare specific aspects of the use of imprisonment in European countries. One such measure may be the rate illustrating the number of immediate imprisonment sentences imposed per 100.000 registered offences, which is especially useful in evaluating the role of imprisonment in any country's penal policy, because it relates the frequency of application of this sanction to the number of registered offences, i.e. to the input to the criminal justice system. Because only registered offences, or, to be more precise, only registered and cleared offences are subject to penal policies, real crime and dark figures are completely irrelevant. Offences not known to the police cannot be processed by the criminal justice system

and, therefore, are not subject to any sentencing decisions. What matters are registered offences. Even if a given country is known for having a rather large dark figure of crime like most Central and Eastern European countries, this is irrelevant from the point of view of indicators characterizing sentencing policies. Due to the lack of victimization surveys before 1989, we cannot say anything certain about real changes in crime in Central and Eastern Europe as compared with the communist period. We know only that in most countries of the region the number of registered offences increased substantially during the 1990s. However, despite this increase, throughout the entire period after 1989 the registered offence rate in Central and Eastern Europe was consistently lower than in Western Europe. This means that Central and Eastern Europe's comparably lower volume of registered offences, when processed by the criminal justice system, results in a much higher imprisonment rate than in Western Europe. This suggests that the lower volume of crime in the region is dealt with more punitive means than in the West, including a more frequent use of immediate imprisonment.

Unfortunately, although data on the numbers of offences registered in European countries are commonly available, data on the absolute numbers of imprisonment sentences imposed are not provided by the existing sources of international statistical data on crime and criminal justice. These sources provide data only on the proportion of such sentences among all sanctions imposed. Therefore, the above-mentioned rate of imprisonment sentences per 100,000 registered offences is impossible to calculate. What is only available are the absolute numbers of people in prison (prison population). This makes it possible to calculate the rate of people being imprisoned per 100,000 registered offences. This rate does not involve the number of immediate imprisonment sentences imposed by the courts, in other words, data directly regarding patterns of sentencing. Instead, it involves the data illustrating the outcomes of those patterns, because the number of imprisoned people is an outcome of sentencing patterns. It is clear that the prison population in any country consists not only of persons sentenced to imprisonment, but also of those kept in preliminary detention pending investigation and trial. It may be argued that the higher the proportion of those in preliminary detention among the imprisoned, the greater is the distortion which results from using the numbers of persons imprisoned instead of the number of imprisonment

sentences imposed. However, it may be well argued that preliminary detention in most instances is used in serious cases only, which involve a high probability of imprisonment sentence. In fact, in most criminal justice systems, those who are kept in preliminary detention, unless acquitted, are usually sentenced to serve an imprisonment sentence. Therefore, the distortion is probably not substantial. Moreover, the purpose of the proposed rate is not to create a precise measure, but rather to approximate certain patterns. Given the above caveats, the data regarding the proposed rate of persons imprisoned per 100.000 registered offences for the years 1999 and 2008 are presented in Figures 13 and 14⁶.

Ranking European countries according to the rate of persons imprisoned per 100,000 registered offences perfectly reveals a deep division between Central and Eastern Europe and Western Europe. Except Slovenia, all countries with the highest rate of persons imprisoned per 100,000 registered offences in Europe are Central and Eastern European countries. Moreover, differences across the division are enormous. Even the highest-rating Western countries have rates several times lower than the highest-rating Central and Eastern European countries. This concerns not only Russia, which is notorious in terms of severity of its criminal justice system, but also the Baltic states, Bulgaria, and Romania. It seems also that the rate of persons imprisoned per 100.000 registered offences strongly correlates with the imprisonment rate and therefore confirms that imprisonment is used much more frequently in Central and Eastern Europe than in Western Europe. In purely descriptive terms, this rate reveals yet another dimension of a clear differentiation of the 'penal climate' prevailing in Europe.

For various reasons, the reliability of the rate of persons imprisoned per 100.000 registered offences may be limited. The main problem, mentioned above, is that the lower rate of registered offences in Central and Eastern Europe most probably results from much bigger dimensions of the dark

6 Calculations by the author using the data regarding the number of prisoners, i.e. persons in preliminary detention and persons convicted in a given year, provided in M. Killias et al. (2003), p. 196, and in Aebi, Delgrande (2010), p. 27, and the data on the number of registered offences in European countries in the years 1999 and 2008 available from the database of EUROSTAT at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_gen&lang=en. For Russia, the data on the number of registered offences for the year 2005 and for the Netherlands for 2007 were used.

number of offences than in Western Europe, which result from a substantially lower readiness of people to report cases of victimization to the police. It may be reasonably assumed that this readiness to report is lowest in cases of petty offences, especially petty property offences. In cases of more serious offences, especially serious violent offences, the reporting rate is probably much higher. Therefore, it may be that petty offences are significantly 'under-registered' in Central and Eastern Europe, and this distorts the structure of registered offences in that the proportion of registered serious offences in the region is higher than in the West. This may have serious consequences for the criminal justice system and sentencing outcomes. As discussed above, registered offences constitute the input to the criminal justice system. If more serious offences are 'over-represented' in such input, this may result in a more severe sentencing practice, particularly in using imprisonment sentences more often. In other words, the more frequent use of imprisonment may result not from a higher punitiveness of the criminal law and of sentencing practice, but simply from the fact that judges in Central and Eastern Europe in everyday practice deal on average with more serious offences than their western counterparts who process much more of petty crimes. This is, of course, only a general assumption. Its verification may be extremely difficult and its effects impossible to measure precisely. Therefore, clear patterns emerging from the data presented in Figures 12 and 13 must be treated with due caution. At the same time, it seems that even a precise measurement of differences in the dimensions and structure of the dark field of crimes and of their impact on sentencing outcomes would not change the established pattern of differences in regard to the proposed rate. What might diminish would be only the distance between the differences dividing the continent.

The established patterns of differences between the two parts of the European continent in regard to the use of imprisonment and the resulting differences in imprisonment rate are not the only striking differences in sentencing policies between Western and Central and Eastern Europe. Equally substantial differences seem to exist in use of alternatives for imprisonment, particularly suspended sentences and fines. Relevant data regarding these two types of sanctions for the years 1999 and 2007 are provided respectively in Figures 15, 16, 17 and 18.

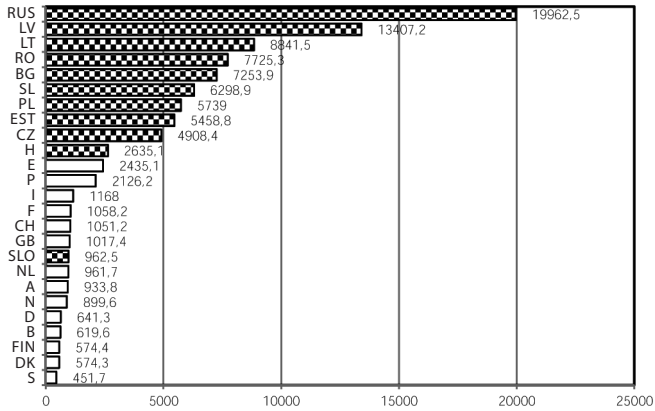


FIG. 13. Prisoners per 100,000 registered offences in European countries (1999)

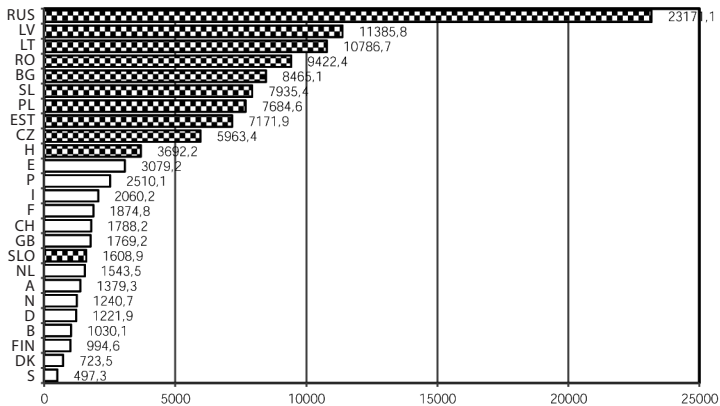


FIG. 14. Prisoners per 100,000 registered offences in European countries (2008)

The data presented in these figures show that there are clear differences in the use of suspended sentences and fines between both parts of the European continent. With the exception of Hungary and (in 2007) Lithuania, all Central and Eastern European countries were leaders in the use of suspended sentences in 1999 and 2007. In eight countries of the region, the proportion of suspended sentences imposed in the year 2007 averaged to 34.6 percent, while in the remaining 11 countries of Western Europe the proportion averaged to 16.4

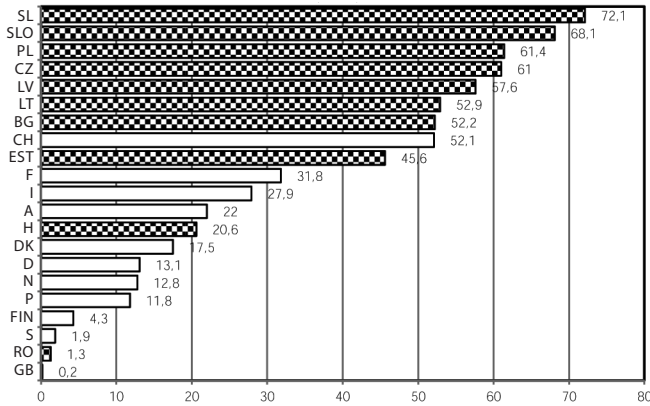


FIG. 15. Proportion of suspended sentences in European countries (1999)

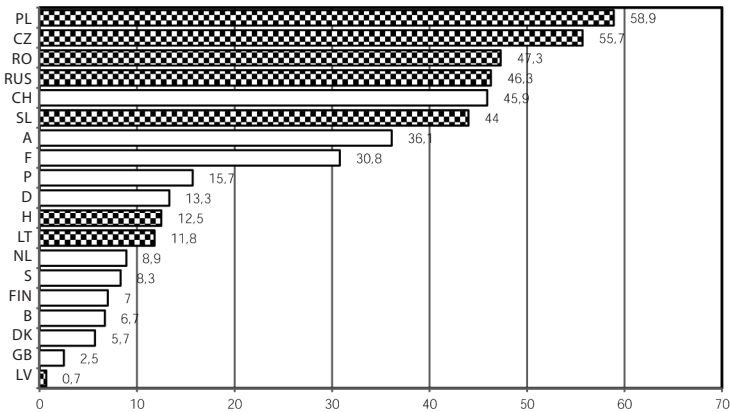


FIG. 16. Proportion of suspended sentences in European countries (2007)

percent. Therefore, a suspended sentence was *the* most important alternative to imprisonment throughout Central and Eastern Europe. The situation is just the opposite in Western Europe in which fines are the most important alternative to imprisonment and, in many cases, the most important instrument of sentencing policy and the most often used penal sanction. Comparatively, in Central and Eastern Europe (with the exception of Hungary in the year 1999), the role of fines was small, even marginal. This may be illustrated well

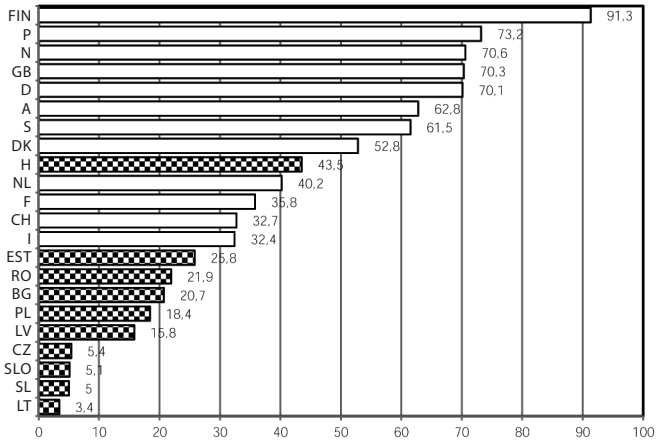


FIG. 17. Proportion of fines in European countries (1999)

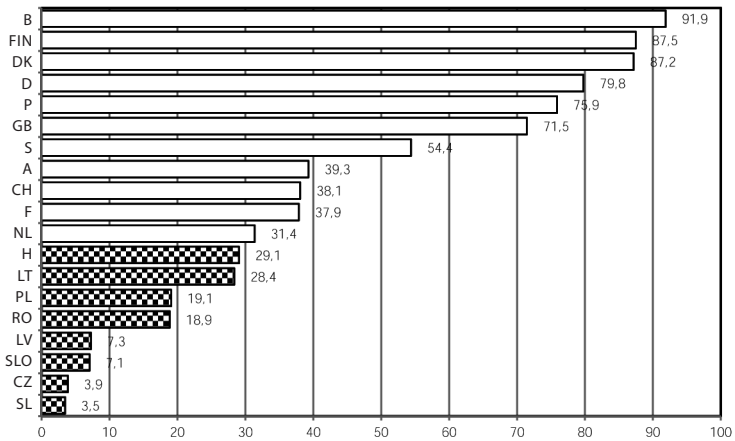


FIG. 18. Proportion of fines in European countries (2007)

by the fact that, in the year 2007, in 11 countries of Western Europe fines averaged to 63.2 percent of all sentences imposed, whereas in Central and Eastern Europe this proportion averaged to 14.7 percent. The line dividing the European continent into two separate zones of 'penal climate' seems yet again to be clearly visible.

Again, it is necessary to mention some reservations and limitations regarding the presented data. It may be true that the lower proportion of fines in

the countries of Central and Eastern Europe may result from certain particular features of their legal systems. Poland is a good example in which the data on convictions for law violations of petty nature constituting administrative offences are collected separately from the data on convictions for criminal offences. Such administrative offences are in practice dealt almost exclusively with fines, but these fines are not included to the statistical data on sentencing for criminal offences. Therefore, the actual proportion of fines imposed by the criminal justice system in Poland for all kinds of prohibited acts is substantially higher than the proportion of fines imposed for criminal offences only. The precise impact of that factor throughout Central and Eastern Europe may be difficult to ascertain. Nevertheless, the actual role played by fines may have more effect than what may be inferred from the presented data. Regarding the use of suspended sentences, however, there are no reservations. The observed differences are without doubt of 'real' character and reflect consistent patterns of differences between imprisonment and alternative sanctions.

The data presented above seem to indicate that there are two different models of alternatives to imprisonment in Europe. Solutions adopted in countries of Central and Eastern Europe are clearly based on the traditional, and rather outdated, model of the conditional sentence, while in Western Europe fines are established as the main type of sanction, accompanied additionally by community service and other similar sanctions (although here differences in patterns of use are much less consistent). The frequent use, or even abuse, of suspended sentences is very often subject to various kinds of criticism. Poland, again, is an example (Krajewski 2013). First, some authors argue that such a widespread use of suspended sentences proves that the criminal justice system is unduly lenient. A large proportion of suspended sentences imposed gives the impression – for offenders, victims, and the general public – that there are no real consequences, no real 'pain' inflicted on a substantial number of those who violate provisions of the criminal law. Second, the problem is that a suspended sentence usually means no real consequence for the offender beyond the fact of being convicted, and therefore being subject to a trial period of a couple of years. Although in the legal orders of many countries of the region a suspended sentence is considered to be a kind of probationary measure, in fact, it often differs from probation in most western European countries. Even in cases in which a suspended sentence is accompanied by some sort of supervision by a

probation officer (which usually happens only in the minority of such cases), this sentence hardly amounts to anything similar to 'community corrections'. Supervision is usually not very intensive and involves very little of social work with the convict (van Kalmthout et al. 2003).

However, at least in the case of Poland, it seems to be groundless to argue that the criminal justice system is lenient because of the widespread use of suspended sentences. It may be true that the proportion of immediate imprisonment sentences in Poland (and other countries of the region) is low, while the proportion of suspended sentences is high, or even very high. Unfortunately, to infer from this that the criminal justice system is lenient may be quite wrong. The problem is that a substantial proportion of offenders sentenced to a suspended sentence finish, anyway, in prison. In many cases, because offenders violate the conditions attached to their suspended sentence, or because they commit a new offence during the trial period, courts revoke the suspension of the imprisonment sentence and order its execution. This may be, by the way, one of the important factors contributing to Poland's enormous prison population. Original decisions of the criminal justice system may not send too many offenders behind bars. But subsequent decisions regarding suspended sentences may change this situation completely, making an impression of undue leniency – a wrong impression.

To sum up, it seems that, despite the potent processes of integration taking place since 1990 in Europe in the area of penal policy, the continent seems to remain divided into two separate zones of 'penal climate'. Despite all the reforms of penal law and criminal justice systems introduced throughout Central and Eastern Europe during the last 25 years, the region remains in the zone of a severe 'penal climate' and has unquestionable troubles with becoming closer to having the mild 'penal climate' prevailing in Western Europe. This may be surprising. At the beginning of the political, economic, and social transformation in Central and Eastern Europe, it seemed that bringing radical changes to the criminal justice systems and penal policy, and reshaping them according to the standards prevailing in the western part of the continent, would have been much easier than levelling off the differences in economic development, average income, social security, and infrastructure. It was not necessarily so. On the one hand, countries of Central and Eastern Europe have a lower registered offence rate, in other words, a lower input to their criminal

justice system. And it is that input which is the crucial factor determining responses to the crime problem and crime control policies at law-making and law-enforcement levels. On the other hand, countries of the region are characterized by much higher levels of punitiveness and rather conservative responses to the crime problem. This may be seen by the frequent use, or even abuse, of imprisonment, resulting in an extremely high imprisonment rate. Another important aspect of this phenomenon is the traditional structure of sanctions imposed by courts as reflected by the frequent use of suspended sentences and the marginal use of fines and community service. In other words, the region seems to track far behind most countries of Western Europe in regard to modern alternatives to imprisonment.

This paper is limited primarily to providing the diagnosis of the European 'penal climates' and illustrating the divided patterns of penal policy. The reasons for this division are a separate issue and beyond the scope of this article. Nevertheless, it seems that the most important causal factors are the region's communist past and the persisting influence of Soviet-imposed thinking about crime and punishment. This thinking was permeated by rigorist and punitive attitudes, with the deeply rooted belief that harsh sanctions constitute a panacea for all social problems, and that imprisonment is *the* most important and effective sanction. Such thinking located the Soviet Union and its satellites in Central and Eastern Europe in the arctic zone of 'penal climate'. Unfortunately, it seems that, despite all efforts and some unquestionable progress toward milder climatic zones, there is no unequivocal evidence to support the claim that some sort of 'regional warming' of the 'penal climate' is taking place in Central and Eastern Europe.

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