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Community Justice – Reconstruction of Assumptions and Critique of a Criminal Policy Model

Abstract: The article attempts to reconstruct basic assumptions of community justice – an emerging paradigm of penal policy, which gains popularity in Western Europe and the USA. The model assumes the empowerment of citizens in matters related to criminal justice, including various forms of public participation, aimed at reclaiming conflicts thus far appropriated by professionals and institutions. The article discusses both advantages and disadvantages of this “democratization” of penal policy.

Keywords: criminal policy, justice system, courts, civil society

1. Introduction

The concept of a closer connection between the justice system and local community life, which is a descriptive explanation of the English term ‘community justice’, has continued to gain popularity for several decades now. It takes various forms and embraces different areas; community policing being the most common example thereof, including such initiatives and methods as neighbourhood watch or restorative conferencing. Nevertheless, it also implies experimenting with closer “embedding” of work performed by prosecutors, courts and probation officers in the local community.

The origin of the above idea can be found in the perceived non-effectiveness of traditional solutions manifested, among others, in the prison population growth (often accompanied by concurrent crime rates decline, as it occurred in the United States¹, high reoffending rates and the ensuing phenomenon of revolving-door justice, where the same perpetrators constantly come back into contact with the justice

1 R. Wilkinson, K. Pickett, *Duch równości. Tam gdzie panuje równość, wszystkim żyje się lepiej*, Warszawa 2011, p. 162-174.

system being incapable of getting back on the straight and narrow, as well as the phenomenon of McJustice (coined by the critics) where required effectiveness on the one hand, and ever growing burdens on the other hand, practically limit the defendants' rights. Furthermore, general trends connected with greater expectations of citizens to participate in public and political life have played their role too. In his famous article published in 1977, Nils Christie wrote about professional attorneys monopolizing the handling of conflicts, which leads to the alienation of the justice system from the society as well as its invalidation². The effect thereof was a series of initiatives aimed at the "recovery" of conflicts by their stakeholders, which were frequently inspired by the examples of dispute resolutions by traditional communities.

Within the realm of the justice system, this participation has assumed specific forms, mostly connected with a widespread and common use of alternative dispute resolutions (hereinafter ADR)³ and restorative justice⁴. They are also closely related to the so called problem-solving justice⁵. It emphasizes the necessity to stop focusing on punishing a perpetrator and concentrating on the complete treatment of a crime instead – starting from circumstances which have led to it, through the elimination or mitigation of its direct consequences, and finally taking steps to prevent its commitment in the future. The authors of this proposal presumed that perpetrators of a considerable number of misdemeanours and offences in the USA need help themselves in many ways. Obviously, it does not exclude the element of restitution, nevertheless, it is often connected with the penalty embracing the element of compensation with some form of the perpetrator's therapy. It involves, in particular, addiction treatment therapy or treatment because many perpetrators commit crimes in order to get money for intoxicating substances. Another imprisonment sentence will not make them quit their addiction or refrain from further offending at all. Hence most initiatives based on the problem-solving justice approach assume not only the use of the justice system to make a perpetrator undertake therapy but complete education and actively search for a job too. Similar to restorative justice, it has been assumed here that a "therapeutic" impact of the justice system is necessary because a perpetrator will anyway return to their local community and continue to function there anyhow. Stigmatization due to imprisonment (even though apparently inevitable in serious cases), efficiently hampers perpetrators' positive reintegration, which will obviously benefit the entire community. This seems to confirm a close connection between the idea of community justice and the concept of problem-solving justice.

2 N. Christie, Conflicts as Property, "British Journal of Criminology" 1977, vol. 17, No. 1, p. 1-15.

3 Comp. N. Vidmar, Procedural Justice and Alternative Dispute Resolution, "Psychological Science" 1992, vol. 3, No. 4, p. 224-228.

4 G. Johnstone, Restorative Justice: Ideas, values, debates, Portland 2002.

5 Comp. G. Berman, J. Feinblatt, Problem-Solving Courts: A Brief Primer, "Law and Policy" 2001, vol. 23, No. 2, p. 125-140; A. Mansky, Problem-solving justice: responding to real problems, real people, "Criminal Justice Matters" 2004, vol. 57, No. 1, p. 30-31.

Thus the notion of community justice may be treated as a collective name for a certain paradigm involving a wider than in traditional western justice systems inclusion of entire local communities (or their representatives) in the processes of dispute resolution, among others through the use of ADR and restorative justice. Although initiatives undertaken thereon are most often grassroots and local – just in accordance with their own philosophy – i.e. they are greatly diversified, we may list several common features they typically share. These are, *inter alia*, the following principles:

- recognizing a local community as the most important and final “recipient” of services and a partner of the justice system;
- exerting pressure on imposing penalties embracing community service;
- imposing penalties including the element of assistance provided to the perpetrator in order to eliminate or mitigate circumstances which have led him or her to commit a certain act.

David R. Karp proposes his own, more elaborate characteristics of the model; he lists the following six core elements of community justice: it

- a) operates at the local level;
- b) is information-driven;
- c) entails a pro-active approach focused on problem-solving contrary to the responsive approach of the traditional system (acting in response to the committed offence);
- d) decentralizes authority and accountability;
- e) requires citizen participation, and
- f) is process-oriented – grassroots evolution of programmes in accordance with locally agreed priorities and strategies; slow consensus building⁶.

Considered jointly, these principles reflect the passage from the objectives of a traditional system of justice (most of all crime control) to a considerably wider formulated mission of enhancing the quality of life in a given community⁷. In practice, it is, among others, manifested by the fact that a community determines their own security priorities and deems certain projects successful. According to the author, a purpose of many such operations is a gradual replacement of formal mechanisms of social control by informal ones or, at least, supplementing the first by the latter as widely as possible. Such an informal local control efficiently impedes “the broken windows effect”⁸ while not generating unfavourable side effects that are connected with extended police activity.

6 D.R. Karp, Community justice: Six challenges, "Journal of Community Psychology" 1999, vol. 27, No. 6, p. 751-769.

7 *Ibidem*, p. 752.

8 J.Q. Wilson, G.L. Kelling, Broken Windows: The police and neighborhood safety, "Atlantic Monthly", 1982, vol. 249, No. 3, p. 29-38.

The community paradigm is rooted in A. Etzioni's communitarian vision of a human being⁹. Contrary to the traditional, individualistic model which perceives an offence mostly as a matter between people – a perpetrator and victim – communitarians believe that every man is a member of different communities: family, neighbourhood, religious and others, which are significant elements of one's individual identity. You cannot perceive a man disregarding his membership in such communities. Therefore each offence entails consequences beyond a single individual's life. Hence to handle crime effects efficiently and prevent offences, it is necessary to engage a wider group of community members where the law has been violated.

2. Examples of community justice initiatives

Overwhelming majority of community justice initiatives is undertaken systematically (with a wide support of the state) in Anglo-Saxon countries: the United States, Australia and Great Britain. Even though such initiatives are also implemented in a few countries of continental Europe (among others by prosecutors in Sweden or probation officers in Norway), I mainly focus here on the initiatives implemented in the USA, including those that are connected with the operation of justice system institutions (police, prosecutor's office, judiciary and probation officers). Hence I deliberately omit several interesting initiatives in other institutional contexts, among others in schools. A possibility of adapting community justice assumptions outside the common law system is subject to a debate. Generally, most scholars conclude that despite significant differences between Anglo-Saxon and continental legal systems and culture, exportation of community court elements into continental European states is possible and desired¹⁰.

Police. Community policing dates back to the 1980s; first initiatives were undertaken in the USA. They sparked the development of the whole concept of community justice. In Great Britain the police were first to start experimenting with a wider engagement of local residents in taking care of the neighbourhood security. Today such actions take various forms and it is difficult to list them all. One example are numerous programmes of neighbourhood watch and patrols. Such patrols are composed of local residents patrolling the streets in their neighbourhood to prevent crimes and protect property. In case of actual or suspected breach of law, patrols inform the police while not intervening themselves. This distinguishes them from civil militias whose activity, especially in the United States, arises a great deal of heated controversy. In Europe neighbourhood watch operates, among others, in Great Britain (named Neighbourhood Watch) and Scandinavian countries (*inter alia* Natteravnene

9 A. Etzioni, *Spoleczeństwo aktywne: teoria procesów społecznych i politycznych*, Kraków 2012.

10 E.R. Vilcica, V. Rely, S. Belenko, F.S. Taxman, M. Hiller, *Exporting Court Innovation from the United States to Continental Europe: Compatibility between the Drug Court Model and Inquisitorial Justice Systems*, "International Journal of Comparative and Applied Criminal Justice" 2010, vol. 34, No. 1, p. 139-172.

in Norway). Furthermore, policing operations as such are endowed with a community element. In 2012 a reform of the organizational structure of British police was implemented, which abolished previously existing local police authorities and replaced them with Police and Crimes Commissioners appointed directly by citizens. Although local police authorities were composed of local community representatives, they were basically responsible before central police authorities. Hence a decision was made to create a mechanism of more direct communication between citizens and police authorities to notify them about community needs and preferences¹¹. Since 2005 British police have been pursuing the strategy called Neighbourhood Policing, which emphasizes operations and activities focused on a specific community. The main principles of this approach are based on establishing police activities within a given area and undertaking common actions or operations by the police and residents¹².

The concept of community policing is sometimes translated into Polish as neighbourhood policing (*policeja środowiskowa*). Activities inspired by this concept are systematically undertaken by, e.g., Municipal Police in Krakow. In 2002, former New York City Police Commissioner William Bratton¹³ was invited by Helsinki Foundation for Human Rights to present the idea of community policing. He told Polish police officers about, *inter alia*, community councils operating in New York at every police station.

Prosecutor's Office. In the American practice, a community court model assumes participation of a prosecutor or prosecutor's office representatives in regular meetings of court staff and cooperating entities including justices themselves, which is particularly important in case of offenders serving suspended sentences. Moreover, a prosecutor can influence the proposal of a type of penalty to be presented to the judge on the basis of a thorough interview with the defendant.

This participation is additionally institutionalized in the form of penalty catalogues: punishment is proposed depending on the burden of a committed wrong. In the first stage of cooperation between these institutions, according to the discussed model, a prosecutor participates in preparing a grid which helps to match a penalty to the burden of an act. The use of such catalogues facilitates cooperation; as a result, court teams are able to propose promptly and adequately a penalty which will be adapted to the act's legal classification and perpetrator's possibilities and needs. What is more, such a penalty will be acceptable for a prosecutor and judge¹⁴.

Other methods of engaging communities by prosecutors embrace, among others: setting up advisory councils participated by local community representatives

11 Home Office, *Policing in the 21st Century: Reconnecting police and the people*, London 2010, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118241/policing-21st-full-pdf.

12 L. Casey, *Engaging Communities in Fighting Crime: A Review*, London 2008, p. 23.

13 K. Burnetko, Komisarz Bratton i komisarz Kowalski, "Tygodnik Powszechny" No. 14 of 7 April 2002.

14 R. Curtis, C.G. Lee, F.L. Cheesman II, D. Rottman, R. Swaner, S. Hynynen Lambson, M. Rempel, *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*, New York 2013, http://www.courtinnovation.org/sites/default/files/documents/RH_Evaluation_Final_Report.pdf.

who inform prosecutors about the main problems of residents, prosecutors participating in local events and open meetings with residents, or locating prosecutor's offices in easily noticeable and frequently visited places¹⁵. In return, prosecutors may expect, *inter alia*, that community representatives will help identify perpetrators or find witnesses ready to testify, or indicate places where illegal activity is carried out (drug trafficking or prostitution). In 2000 approximately half American Prosecutor's Offices declared conducting such actions. Apparently, even though such cooperation takes place in the traditional model of Prosecutor's Office operation, "community" model additionally presumes the element of prevention: acting on the basis of information from the community, prosecutors actively (rather than only in response to the crime) attempt to solve problems before they escalate. This system is further supported by assigning individual prosecutor's teams to specified areas or districts. Thanks to this, prosecutors are able to familiarize themselves with local specificity well and establish reasonable relations with local community representatives.

In Europe, the Prosecution is relatively least willing to incorporate solutions focused on the "local" aspect. Sweden introduced some elements of the problem-solving approach to prosecutors' work already in the 1990s. In 2002 twenty "community" prosecutors in several Swedish cities were employed; they focused on repeat offenders cooperating with police and probation officers. A similar solution functions in Holland too¹⁶. "Community" Prosecution focuses on minor misdemeanours which happen to be disregarded in the traditional system of justice, i.e. more often than not perpetrators do not face any penalty due to "insignificant harm caused by their act". Community justice is based on the assumption formulated in a form of the so called broken window theory, according to which impunity of minor tortfeasors leads them to commit more serious offences; that is why it is necessary to pay more attention to such wrongdoers, including consistent and possibly prompt sanctioning¹⁷. This theory implies that broken windows and other visible signs of disorder are a signal for offenders that there is no host in the area. Consistent fulfilment of the strategy is recognized as one of the causes of crime rates reduction as well as improved living standards and sense of security of New Yorkers. Even though the very concept itself is considered controversial (critics indicate, among others, that in practice it entails stigmatization of minorities' representatives¹⁸), most initiatives assuming closer cooperation of Prosecutor's Office with courts and local community focus on combating relatively minor misdemeanours and minor offenses.

15 A review of initiatives can be found in the study: R.V. Wolf, J. L. Worrall, John, *Lessons from the Field: Ten Community Prosecution Leadership Profiles*, Alexandria 2004, http://www.courtinnovation.org/sites/default/files/cp_lessons_from_the_field.pdf. See also R. Wolf, *Using New Tools: Community Prosecution in Austin, Texas*, New York 2000.

16 R.V. Wolf, *Community justice: An international overview*, "Judicature" 2008, vol. 91, No. 6, p. 306-309.

17 J.Q. Wilson, G.L. Kelling, *Broken Windows...*, *op. cit.*, p. 29-38.

18 Comp. B.E. Harcourt, J. Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, "The University of Chicago Law Review" 2006, vol. 73, No. 1, p. 271-320.

In 2009 British government prepared guidelines determining an appropriate way of involving local communities in administration of justice in criminal cases. In the introduction to the study, authorities' representatives notice that the last two decades were a period of considerable and objective improvement of a safety level: the crime rate decreased by one third in comparison to 1997 whereas a threat of becoming a victim of a crime was the lowest in 25 years; the authorities increased funding initiatives supporting crime victims three times¹⁹. Despite this, they say that objective improvement does not contribute to citizens trust the system more. They assure the government is committed to change this because the system of justice serves citizens and is based on their support. Citizens trusting the justice system "will be more willing to report a crime, give evidence as a witness, participate as volunteers and jurors, or consider a career in the justice system"²⁰. The proposed activities focused on three areas: a) strengthening relations between communities, the Prosecution and courts; b) increasing operational response of these institutions as well as their "visibility" in the public opinion; c) facilitating communication between local communities and representatives of justice system institutions. The authors recommended, among others, increasing cooperation of Prosecution Service with local communities following the example of police (which is efficiently implementing the idea of Neighbourhood Policing). One of the tools of such strengthened cooperation are Community Impact Statements, i.e. studies including information about the nature of crimes committed in a given neighbourhood and their impact on local community life; it has been declared that the authorities will respond to these documents. The authors also declare further implementation of the elements of the idea of implementing problem-solving courts to the traditional system.

The above cited study lists over a dozen pilot projects connected with wider engagement of citizens in the justice system operation. These are, among others, citizen panels where citizens express their opinions, e.g., about types of socially useful community service works that should be carried out by convicted offenders, a wider application of restorative justice in the context of juvenile delinquency, or further support for crime victims. An interesting police project is connected with publicly accessed interactive maps available in the Internet showing statistics on crime rates in individual districts. Further completion of police maps to include statistics showing work carried out by judicial bodies has been suggested (such a map has been recently made available to Krakow residents; yet the presented data are shown on the level of police stations not streets). Such information has direct impact on the real estate prices in a given area, therefore its residents are keenly interested in the cooperation to improve security therein. The authors of the recommendation assume that

19 L. Casey, *Engaging Communities in Criminal Justice*, 2009, Cm 7583, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228540/7583.pdf, p. 5.

20 *Ibidem*, p. 6.

improved access to information will enhance the courts' image. As it results from Luisa Casey report²¹, citizens mainly acquire negative information criticizing functioning of the system whereas in reality most perpetrators are appropriately punished and penalties are imposed justly and effectively. A wider and direct access to information is to convince citizens that the justice system is generally efficient whereas perpetrators face punishment they deserve. One of the measures satisfying this objective is, e.g., a characteristic and easily recognizable outfit worn by perpetrators carrying out community service²².

Courts. A prime example of local community justice are community courts. The first court of this type (Midtown Community Court) was established in 1993 in Midtown Manhattan. Soon afterwards another court was opened, this time in a much more problematic district – Red Hook Community Justice Center in Brooklyn. Both these projects, established and pursued by the consortia of many partners under the auspices of the New York think tank, Center for Court Innovation, have become a source of inspiration for numerous similar projects in other common law countries²³. In 2005, the first court of this type – North Liverpool Community Justice Centre – was opened in Great Britain. It mainly followed the Red Hook model, i.e. a problem-solving approach based on the expertise and esteem of one judge, localization of many services (judicial, social and educational) in the same building, providing services addressed not only to perpetrators but the entire community, and active engagement of a local community already in the planning phase. Soon afterwards a similar centre of justice was opened in Salford and 11 other locations in Great Britain; yet they operated there on the basis of already existing Magistrates' Courts. The latter courts deserve a short commentary here as they themselves are an example of engaging lay citizens in the process of justice administration – these courts adjudicate in approximately 95% of all criminal cases as well as in some family and civil cases. Magistrates may be ordinary citizens who volunteer to do this service satisfying certain conditions. Apparently, another opportunity to exert direct impact on the shape of the justice system for British citizens is a possibility (or rather a duty) to perform a jury service. Despite these opportunities, the most recent reforms assume further extension of a democratic element, among others by increasing the community's impact on the procedure of appointing justices. So far judges have been appointed at a national level and they have not been assigned to a specific court. According to L. Casey, it mostly concerns recruitment of magistrates from the groups that have been poorly represented by them so far²⁴.

21 *Ibidem*, p. 81.

22 *Ibidem*, p. 56.

23 See K. Henry, D. Kralstein, *Community Court: The Research Literature*, New York 2011, http://www.courtinnovation.org/sites/default/files/documents/Community_Courts_Research_Lit.pdf. See also S. Burdziej, *Wykorzystanie kary ograniczenia wolności w modelu problem-solving justice*, (in:) A. Kwieciński (ed.), *Teoretyczne i praktyczne aspekty wykonywania kary ograniczenia wolności*, Wrocław 2016, p. 11-24.

24 L. Casey, *Engaging Communities...*, *op. cit.*, p. 44.

3. A critique of the concept

Even though the concept of community justice has been more and more often recognised as a new paradigm of the justice system process in many western countries, it is not without some weaknesses. In the above cited study, David Karp indicates numerous problems and doubts connected with the idea of “justice in the local community”²⁵. He observes that the very definition of a local community ensues problems. What criteria should be used: geographical, social bonds and networks, or a subjective definition of community boundaries established by their members themselves? Today’s communities are less spatially concentrated than before, thus it is more difficult to launch activities addressed to such “communities”. On the other hand, seldom does the entire community, or even most of its members, actually undertake any action defined anyhow. Therefore who decides what is important for the community and how should a common goal be achieved? Who controls leaders and what are their responsibilities? Moreover, strong local communities may actually be based on informal control and be able to solve many conflicts by reaching an agreement without engaging external institutions. Too strong bonds, however, may be connected with exclusion and suppression of individual freedom of community members. Who will take care of the wrongdoers’ rights, including their right to presumed innocence and fair trial? Of course, vast majority of initiatives assume a close cooperation with traditional institutions. What is more, they are limited to minor misdemeanours which do not require court involvement, or require it only to a small degree. It may also be claimed that informal social control works anyhow, independent of systematic efforts, and in contemporary western societies too strong communities generally do not exist. Yet the problem is a decline of informal control leading to weakened bonds and greater vulnerability to victimization. More often than not, most members of a local community are passive and not interested to participate actively in actions aimed at common well-being. Although apparently everyone would like to live in a safe and well maintained area, it is a well-known fact that members of any big community tend to be fare dodgers²⁶. On the other hand, it has been observed that crimes committed in the districts where local community was able to organize themselves efficiently moved to less organized areas, that is initially even more disadvantaged. Hence a victim of the success of a better organized community may become its neighbour who is merely less organized.

Another problem is anticipated remodelling of the roles pursued by the justice system officials, from policemen to judges, which is connected with the demand for new competences. For instance, the community justice model expects police officers to be mediators whilst judges – addiction experts and therapists. Will it not ensue

25 D.R. Karp, *Community justice... op. cit.*, p. 752-755.

26 M. Olson, *Logika działania zbiorowego. Dobra publiczne i teoria grup*, Warszawa 2012.

negligence of other more traditional functions and areas of operation? Will not police officers and judges become social workers? Furthermore, at least at the beginning, due to limited resources, alternatives like community justice will be available only to some defendants: some of them will, for example, be tried before a “community court”, which will offer them a favourable ruling in return for their consent to undertake treatment, or under other conditions; most of them, however, will be prosecuted in an “ordinary” court. This may evoke concerns of unequal treatment. Social problems which community justice wants to solve are very complicated whereas appropriate diagnosing or evaluation of successful projects will always be difficult. Many social problems derive from complex causes (e.g. social inequalities, pathologies of a social welfare system, etc.), which are independent of a local context and possible impact. High-crime areas are often a “product” of not individual susceptibility of their inhabitants to crime as much as a result of spatial or social policy of city authorities. For instance, city authorities not infrequently decide to place social housings or works or plants causing nuisance (e.g. sewage treatment plants) in slums. Ghettoization contributes to crime rates increase. If the issue of high-crime areas is resolved without systemic and political solutions, it will merely be a “plaster cast for a fracture”, i.e. alleviation of symptoms of a more serious problem. Another risk is too tight or problematic community engagement, e.g. in the form of neighbourhood patrols when they themselves commit violent acts “in defence” of the community, or just the opposite, they become victims of violence committed by offenders.

One of the frequent objections against community justice-oriented projects is their cost. Actually, some projects do ensue considerable initial investment (it may result, e.g., from the need to build or reconstruct a building to house a court) whereas its financial consequences for the justice system are not always easily discernible. Nevertheless, the final result of evaluation depends on the applied assessment criteria. The balance becomes clearly positive if victimization cost is taken into account, i.e. a potential loss the society would suffer from if the crimes which were most likely prevented by the launch of innovative projects like community courts were committed²⁷. D.R. Karp and T.R. Clear²⁸ offered an interesting solution to this problem. They calculated that imposing penalties alternative to incarceration on merely 50 offenders who did commit violent acts would have generated as much as 114 million dollars savings only in Washington. They proposed a system of vouchers held by both a perpetrator and victim as well as community representatives which could be used for “buying” an alternative to a prison sentence. Since alternative solutions (e.g. community service connected with therapy or educational elements) are cheaper than

27 R.Curtis, C.G. Lee, F.L. Cheesman II, D. Rottman, R. Swaner, S. Hynynen Lambson, M. Rempel, A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center, New York 2013, [http://www.courtinnovation.org/sites/default/files/documents/RH Evaluation Final Report.pdf](http://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Final%20Report.pdf).

28 D.R. Karp, T.R. Clear, Community Justice: A Conceptual Framework, (in:) C.M. Friel (ed.), *Boundary Changes in Criminal Justice Organizations*, Washington 2000, p. 323-368.

incarceration, money saved this way could be used by the local community for development projects which, later on, would help to solve some social problems causing crime²⁹.

It should be added that some effects of the above mentioned projects are difficult to measure, or occur only after a longer time. A. Lanni lists such potential measure instruments: an improved quality of life, a sense of safety, cohesion and activity of a local community, court case law, the crime rates and tendencies to change crime, satisfaction of the assessed programmes participants, or their attitude to the state and justice system³⁰. For instance, a comprehensive assessment of the Red Hook Community Justice Center in New York established that the main success of the project is an increased level of the justice system validity in the eyes of neighbouring residents as well as the district revitalization. On the other hand, no significant decrease of recidivism was observed. These issues are not taken into account in many other assessments which are limited to traditional measure instruments such as recidivism rate or direct costs. Practitioners and scientists do not agree on the criteria of the project assessment; the inclusion of all the above listed ones is difficult and very expensive.

Apart from these theoretical objections and doubts, numerous problems already emerge in practice. The main problem is the fact that we rarely deal with a wide and authentic public participation in any sphere, including the justice system. Those representatives of a local community who actively participate in activities for the “common good” are generally richer and better educated than an average member of the community. This problem is particularly apparent in strongly racially or ethnically diverse communities. The “common good” the activists will struggle for may actually be beneficial only to a narrow group rather than all residents. For this reason, financial engagement of external partners have also been criticized. For instance in Minneapolis, the foundation set up by the US supermarkets chain Target pays a salary for a “community” prosecutor (even though the relevant agreement envisages mechanisms of avoiding the conflict of interest, i.e. such a prosecutor will not, e.g., deal with shoplifters) whereas in Portland a similar post is financially supported by a group of entrepreneurs interested in “cleaning” the shopping centre³¹. Finally, in practice, experts such as social workers and therapists play an important role in community courts. They recommend a judge a type of sanctions to be imposed while judges usually rely on such advice. There is specifically not too much place here for direct engagement of local community representatives.

Another set of problems is connected with the principle of a fair trial. Community justice initiatives frequently ensue the launch of mechanisms of informal social control. Thus in practice they may restrict the defendant’s right to a trial. An example

29 *Ibidem*, p. 361

30 A. Lanni, The Future of Community Justice, “Harvard Civil Rights-Civil Liberties Law Review” 2000, vol. 40, p. 379.

31 R.V. Wolf, J.L. Worrall, Lessons from the Field..., *op. cit.*, p. 23-25.

of the above limitation are initiatives assuming “proactive” operation of the prosecution or police, e.g. by attempting to hold liable individuals identified as wrongdoers by the residents themselves. Informal proceedings more often than not lead to disproportional penalties perpetrators of similar misdemeanours may be sentenced to. Moreover, others point out the issue of a partial departure from the principle of adversarial proceedings: defendants first deal with social workers who may acquire from them information indicating their guilt and next, theoretically, pass the word to a judge thus hampering the defence or exerting effective pressure on the defendant to plead guilty (even if they are innocent). Due to relative mildness and benevolence of sanctions that the defendants may face in community courts, public defence counsel may be less committed to defend their clients. Although Lanni perceives that, currently, participation in community justice programmes is optional and the defendants may always choose traditional litigation, he concludes that community justice principles cannot be directly applied in case of serious crimes. Therefore in his opinion, the community justice model may solely complement but not replace the traditional model.

4. Summary

In West European and many other countries (particularly in the United States) we can see a systemic reorientation of activities pursued by judicial institutions such as the police, courts and prosecution into closer cooperation with local communities. After the period of professionalization and centralization of operation, these institutions start to perceive concrete benefits coming from wider openness to the citizens’ needs. Models of wider engagement of citizens in the justice system operation elaborated so far aim at increasing social belief in the validity of these entities’ operation thus leading to their greater efficiency. On the one hand, a possibility of such engagement appears indispensable due to growing expectations of citizens to participate in governance. The belief in the validity of authority, including legitimization of the justice system, is a mechanism persuading citizens to cooperation and obedience much more efficiently than a show of force or even instrumental efficiency of operation. On the other hand, wider participation of citizens evokes numerous doubts. Will not the idea of community justice jeopardize the right to a fair trial? Will it not undermine the equality before the law? These are substantive questions. It seems, however, that they pose rather theoretical dangers in the present Polish reality. A lack of trust and citizens believing that the justice system has become alienated are much more serious consequences.

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