Institut pro kriminologii
a sociální prevenci

Petr Zeman (ed.)

Research on Crime and Criminal Justice in the Czech Republic

(selected results of research activities of IKSP in the years 2012–2015)

Praha 2017

Ediční řada Studie

Institute of Criminology and Social Prevention Prague 2017

Research on Crime and Criminal Justice in the Czech Republic

(selected results of research activities of IKSP in the years 2012–2015)

Petr Zeman (ed.)

Editor:
Petr Zeman

IKSP
Nám. 14. října 12
150 00 Prague 5
Czech Republic
email: iksp@iksp.justice.cz
tel.: 0042 257 104 404
fax: 0042 257 104 403

Translated by:
Presto, Aspena, Ema Vlčková, Daniel Soukup

Technical Editor:
Lucie Černá

ISBN 978-80-7338-165-3

www.kriminologie.cz

Table of Contents

I.

Introduction

The Institute of Criminology and Social Prevention (IKSP) is a research organisation under the Czech Ministry of Justice. It is engaged in research, study and analysis in the fields of criminology, criminal law, penal and security policy. IKSP's unique position is given by the fact it is the only specialised institution in the Czech Republic engaged in the systematic development of criminological research. The Institute was founded in 1960, making it the second oldest criminological institute in Europe. Its research and analysis focuses on areas such as the effectiveness of criminal law and other measures aimed at reducing crime, victimology, penology, crime prevention or the manifestations and causes of crime and related socio-pathological phenomena. IKSP's activity is based on Middle-Term Plans of Research Activities, which express basic thematic strands of its research over four-year periods and include the main research tasks (projects) to meet these objectives. The duration of these research projects is typically 3-4 years.

In addition to the research tasks listed in the Middle-Term Plan, IKSP also performs a range of other activities corresponding to its field of specialisation. It provides the Czech Ministry of Justice and other state authorities and institutions with information and other material in the areas of criminology, criminal justice and penal policy for the performance of their tasks, and proposes policy, legislative, organisational and other measures in these areas. It organises professional events such as seminars, conferences and workshops alone or in cooperation with other organisations and institutions, and participates in the life of both the domestic and international scientific community. IKSP´s employees are involved in the professional training of police officers, public prosecutors, judges, probation officers and prison service staff, and are also involved in teaching criminology and related subjects at Czech universities. To disseminate IKSP's research results and other findings in the field of criminology and criminal justice, the Institute publishes its own edition of professional literature comprising two publications series – STUDIES and SOURCES. In the STUDIES series it publishes the results of original IKSP´s research and in the SOURCES series it publishes Czech translations of relevant international legal regulations, international documents, foreign research studies and other important legal and criminological materials. Each year, IKSP elaborates and publishes an analysis of the trends of crime and its selected types in the Czech Republic. It also contributes to the development of criminology in the Czech Republic through the elaboration and publication of methodology handbooks for criminological research.

The research tasks included in the Middle-Term Plan, however, are the most important part of IKSP's activities. This involves original criminological research that systematically brings new findings that can be used to both the development of a theoretical base in the field and the formulation of specific policy, legislative, organisational, situational and other measures in the area of penal policy. This publication aims to present the results of IKSP´s research conducted under the preceding Middle-Term Plan to foreign colleagues and interested parties who do not understand Czech.

The IKSP´s Middle-Term Plan of Research Activities for 2012-2015 determined the following basic thematic strands of research:

(a) the needs of society in the field of criminal and sanctions policy and resulting suggestions for changes in penal legislation, better law enforcement, and improvement of the system of sanctions;

(b) serious forms of crime presenting significant security risks for the state (organised crime, corruption, economic crime, inter-ethnic conflicts, migration, extremism, violent crime, crime and social pathology associated with drugs), including risks arising from opening up society and phenomena related to globalisation;
(c) trends in crime, its selected forms and related socio-pathological phenomena, offenders and victims of crime;
(d) possibilities and methods of prevention, evaluation of the effectiveness of prevention programmes and methods.

These thematic strands were addressed in 2012-2015 through eleven research projects. Their results have become the basis for, inter alia, more than two tens of monographs by IKSP´s employees published in the Institute's internal edition in recent years. This publication provides English summaries of these monographs, broken down into individual research projects as part of which they were prepared. This follows similar English-language overviews of IKSP´s research results under previous Middle-Term Plans issued in 2003, 2005, 2009 and 2012, which are available on the Institute's website (www.kriminologie.cz).

Petr Zeman

II.

Penal Policy and Criminal Justice

II.1. Theoretical and criminal-political aspects of criminal law reform in the area of criminal sanctions

II.1.1. Criminal sanctions and their impact on practice, press and public opinion

Miroslav Scheinost, Lucie Háková, Jana Hulmáková, Petr Kotulan, Jan Rozum, Jan Tomášek, Jiří Vlach

The new Criminal Code (Act No. 40/2009 Coll.), which came into effect on January 1st, 2010, introduced several significant changes in the area of criminal law sanctions. They are especially characterized by the principle of depenalization, leading not only to necessary modifications of the existing sentences and protective measures but also to outlining new and more effective sanctions, which, in the spirit of restorative justice, take also into account the needs of the victims of crime. Great emphasis is put on an individual approach to solutions of criminal cases where a wide range of possible alternative sentences will provide a sufficient motivation for the offender for rehabilitation. These changes represent a significant challenge for the entire criminal justice system – only their application in real situations will show if the expectations of the legislators can be met.

Criminological research shall play a considerable role when analyzing and assessing our experience with applying the new Criminal Code. One of the first studies, which has focused on this topic, is the research project "Theoretical and Criminal Policy Aspects of the Penal Law Reform in the Area of Criminal Sanctions", approved by the Grant Agency of the Czech Republic for the period of 2012 to 2015. Its solvers are employees of the Institute of Criminology and Social Prevention (IKSP) and the Faculty of Philosophy and Arts at Charles University, who have prepared it in a close cooperation with experts from the area of criminal law and criminal policies, working in the criminal justice system.

The subject of the research is an analysis and assessment of the legislative frame of criminal sanctions after the changes, which have been implemented as a result of adopting the new Criminal Code within the context of sanction policies applied in the Czech Republic after 1989. The study analyzes the impact of applying the new Criminal Code on the application practices of selected criminal justice institutions, on the character and structure of the imposed sanctions and thus also on the composition of prison population and activities of the penitentiary system as well as the system of the Probation and Mediation Service. **The objective of the research** is to verify if the above mentioned legislative changes have fulfilled their purpose especially with regard to the number of people who serve prison terms, to the effectiveness of the imposed sanctions and to the elimination of at least some of the problems of the application practices. Special attention is given to the effectiveness of four selected criminal sanctions – house arrest sentences, community service orders, conditional sentences with supervision and short-term prison sentence. Because of the extent and complexity of the subject of the research, a wide spectrum of **research methodologies and techniques**, quantitative as well as qualitative, have been utilized. Among others, these include legal analyses and comparisons that focus on the development of the Czech criminal legislature, an analysis of available statistical data (especially judicial statistics, police statistics, statistics of the Prison Service of the Czech Republic and statistics of the Probation and Mediation Service of the Czech Republic), a secondary analysis of the relevant sources from the Czech as well as foreign literature, questionnaire surveys conducted on samples of employees of judicial bodies, of the Probation and Mediation Service of the Czech Republic and of the Prison Service of the Czech Republic, or expert surveys in the form of controlled interviews.

The submitted publication presents some of the findings that we have acquired during the first two years of the project. The intention of the authors has been to provide a brief but comprehensive view of the new Criminal Code and, at the same time, to confront the changes it has brought about with available statistical data, based on which we can assess their application in practice. Furthermore, this view is complemented by findings acquired from media analyses, which allow us to see how the new Criminal Code and its introduction have been presented to the public and, partially, by opinions and attitudes of our population, mapped in a public opinion survey.

Changes in sentences pursuant to the new Criminal Code (and related amendments from 2011 and 2012) especially apply to the expansion of the scale of sanctions by two new sentence types, **house arrest** and prohibition to enter sport, cultural and other social events. The first mentioned sanction represents a court order, specifying that a given offender is obliged to be at a certain specified address at specified times, with the exceptions specified by the law. In the sequence of the sentence taxonomy, this should be the most severe alternative sanction, which can be imposed on persons who have to be imminently punished by limiting their personal freedom because of the character and seriousness of their crime, the personalities of the offenders and possibilities of their re-socialization, however, for whom a significantly less intense intervention is sufficient because of their personal characteristics and family relations. In comparison to imprisonment, the offenders do not lose contact with their close ones and can continue going to work. However, the reality is that courts do not use the house arrest sentence too often. The main reason of this situation is the absence of across-the-board tools for executing the sentence by the means of electronic monitoring.

The prohibition to enter sport, cultural and other social events means that the sentenced person is prohibited from participating in the events of the stated types during the duration of the sentence. The sentence can be imposed for up to ten years on offenders who committed any intentional criminal act in relation with participating in such an event. When serving the sentence, the sentenced person is obliged to cooperate with a probation officer, proceeding in accordance with the given probation plan, participating in specified social training and re-education programs and psychological counseling programs and, provided the probation officer considers it necessary, reporting to a specified unit of the Police of the Czech Republic short time prior to the given prohibited event in accordance with the instructions of the probation officer.

Besides the introduction of the new types of sanctions, the conditions for imposing the already existing types of sentences were significantly modified. These modifications clearly reflect the philosophy of an overall limitation of the space for imposing imprisonment terms, supported by widening the options for applying alternative sentences. On the other hand, the new Criminal Code also made sentences related to crimes of a serious character more severe. This approach applies two opposing sentencing courses, leading to their deeper differentiation.

Imprisonment sentences continue to represent a universal type of punishment, which can be imposed for any criminal act and on any adult offender. It is the most severe punishment and the law expects that it should be imposed only if it cannot be expected, because of the identity of the offender, that imposing a different sentence would result in the offender leading an orderly life. The new Criminal Code extended the general maximum permitted imprisonment term from 15 to 20 years. This time can be extended only for extraordinary imprisonment cases when imposing imprisonment terms on offenders who have committed criminal acts for the benefit of an organized crime group and in the cases of extraordinary sentences. For conditional sentences**,** offenders who are, based on their age, close to being minors can be newly subjected to some of the corrective measures stated in the Youth Justice Act. For conditional sentences **with supervision,** the probation period was made identical to conditional sentences without supervision, i.e. 3 years. It means that the difference between both of the above stated sentences is now only in the conditions attached to given sentences.

Community service orders were considerably changed. Courts can newly impose them only on offenders who committed a misdemeanor (i.e. all negligent criminal acts and intentional criminal acts with the maximum severity of the sentence of 5 years). The extent of the service was reduced and it can be now in the range of 50 to 300 hours (previously between 50 and 400 hours). On the other hand, sanctions were made more severe for convicted persons who do not comply with the sentence or who do not maintain orderly life – even just one hour of the sentence not performed is transformed into one day of imprisonment (previously, the ratio was two hours / one day). The deadline for completing community service orders was extended from one to two years. When imposing this type of sentence by the means of a criminal order, a report of the appropriate probation officer is newly required. The report needs to address the possibilities of serving the sentence and health abilities of the defendant, including his/her opinion with regard to the imposed sentence.

In comparison with the previous legislature, **fines** were subjected to significant changes in the new Criminal Code as well. They are related to a new procedure for their assessment, which is now governed by the system of daily tariffs (at least 20 and at the most 730 whole daily tariffs). Daily tariff amounts are within the range of 100 CZK and 50.000 CZK. The number of daily tariffs is determined by the court, which takes into account the character and seriousness of the given criminal act. The amount of a single daily tariff of the fine is determined by the court, which takes into account personal and proprietary relations of the offender. When doing so, the court considers the income of the offender, his/her assets and revenues from them, which the offender has or could have on average per day.

The difference from the old Criminal Code is clear from the perspective of **protective measures** – the new Criminal Code does not only specify them but it also defines general principles for their imposition. It therefore respects the requirements of criminal studies for the protective measures to accent the adequacy principle, subsidiarity principle of a more severe sanction and legality principle. These principles have been already applied in modern amendments abroad. One of the important measures is **security detention**. The conditions for facultative imposition of security detention were newly expanded also for offenders who abuse addictive substances, provided they repeatedly commit an especially serious crime even though they had been already sentenced to an imprisonment term of at least two years in the past for an especially serious crime, committed under the influence of an addictive substance or in relation to its abuse, and it cannot be expected that ordering a protective treatment would sufficiently protect the society, while always considering the already expressed attitude of the offender with regard to the protective treatment.

On January 1st, 2012, Act No. 418/2011 Coll., on **Criminal Liability of Legal Entities and Legal Proceedings against them** came into effect. By addressing liability of legal entities for committing criminal acts, the Czech Republic complies with international obligations arising from international agreements and EC/EU legal regulations. The Czech Republic was the last EU country without a legal regulation that would address this responsibility. Criminality of acts committed in the Czech Republic by a legal entity, which has a registered seat, its branch or organizational unit here, or which conducts its business or has its assets here, is assessed pursuant to this law. It comprehensively specifies 78 criminal acts, to which criminal responsibility of legal entities can apply. Individual bodies of crime are specified by the Criminal Code. Sentences that can be imposed on legal entities are partially different from sentences that can be imposed on physical persons – they include dissolution of the legal entity, forfeiture of assets, fines, forfeiture of an object or of another asset value, prohibition to do business, prohibition to participate in public contracts, concession proceedings or public tenders, prohibition to accept grants and subsidies and also publishing the sentence. Protective measures can be also imposed for criminal acts committed by legal entities – seizing an object or another asset value.

Analyses of judicial statistics allow for monitoring the impact of the above stated changes on sanction policies. However, we have to state here that the new Criminal Coed has been in effect for a very short time so far. Moreover, we have to also consider other factors, which can have a great impact on the imposition of sanctions, such as securing their effective performance or the assessment manner of the given criminal proceeding bodies when applying various types of sanctions and procedures. Nevertheless, we can see that the growth in the number of imprisonment sentences, which had began earlier, has continued even after the new Criminal Code came into effect. This has been the case despite the fact that, since 2010, the number of prosecuted, indicted as well as sentenced people has decreased. An increase of the share of imposed imprisonment terms on the total number of sanctions, imposed as the main sentence, is also clear. After a relatively stable period between 2002 and 2009, when this share amounted to 13.6-15.6%, the share in 2010 and 2011 was 17% and in 2012 16.5%. Changes can be also observed in the structure of the imposed imprisonment terms based on their length and also based on their share of the total number of sentenced persons. The share of imposed imprisonment terms for up to one year significantly declined in 2011 and 2012 while the share of imposed imprisonment terms for between 1 and 5 years increased. The number of sentences for up to 15 years slightly declined.

The share of house arrest sentences with regard to the **overall structure of imposed sanctions** has been negligible during the first three years the new Criminal Code has been in effect – for example, it amounted to only 0.6% in 2012. The same situation applies to the sentence on the prohibition to enter sport, cultural and other social events, which has not been practically imposed as the main sanction almost at all. In 2010, this order was imposed in two cases, in 2011 in five cases and in 2012 in three cases. Even when connected to other sanctions, imposition of this order is rather exceptional, even though there has been some increase in the number of cases when it was imposed. The share of community service orders has decreased significantly. In comparison with 2006 through 2009, when it was between 16 and 18%, since 2010 it has been in the range of 9.4 and 11.5%. However, at the same time, the decline of the share of community service orders is compensated by an increase of the conditional sentences (without supervision). In comparison with 2000 through 2009, when their share was somewhere between 53 and 56%, in 2010-2012, this share soared to 60-61%. The rise is probably caused by cases when courts, deciding by the means of a criminal order, opt for conditional sentences because of the more difficult conditions for imposing community services or house arrests. The share of the number of conditional sentences with supervision has also grown. On the other hand, after the introduction of the new Criminal Code, the share of fines has not changed much and these orders are still used in a very limited extent as a main sanction. The same is true for the institutes of waiving punishment and conditional waiver of punishment with supervision, which are used by the courts only rarely.

The analysis of statistical data thus basically suggests that the expected depenalization (after the new Criminal Code came into effect) has not materialized so far. To the contrary, the trend of a growing number of imposed imprisonment terms has continued its course. The new alternative punishments have not made any headway, which is, in the case of a house arrest, probably related to the problems connected to its execution. More changes of the criminal regulations have been already adopted as a reaction to this situation and to the previous negative trend of a high number of convicted people in prisons. We can expect to see their impact in the coming years.

As a part of the project, a **media analysis** has been conducted. It focused on exploring the media perception of the changes of sanction policies and of the application of the new Criminal Code. This is an important aspect of the given topic since the media represent a fundamental source of information for the public and thus for forming people's attitudes and opinions. The study, conducted so far, uses a combination of qualitative and quantitative content analyses of the text. The study focuses on the first three months of 2010, i.e. immediately after the new Criminal Code came into effect. Examined materials were selected from 5 national daily newspapers (MF Dnes, Lidové noviny, Právo, Hospodářské noviny and Blesk). Based on individual keywords, a total of 289 relevant articles were gathered from the above stated period. The analysis especially focused on the manner, in which the newly introduced legal changes were commented on, which topics were presented most often and in what context, and which legislative changes the media presented in a positive light and which as problematic.

When informing about the new Criminal Code, the press used general informative news related to the legislative changes, case interpretations, expert commentaries, media accentuation of the topic on the front page, photographs and also informative articles or interviews. Individual newspapers used these methods to various degrees. The most often mentioned legislative changes applied by the new Criminal Code included the introduction of house arrest sentences, legal regulations related to the criminal act of murder (more severe sanction for this crime and the differentiation between a murder and manslaughter), legal regulations related to theft, driving motor vehicles without a driving license, poaching and unauthorized production of alcohol (topics related to the media-attractive new year's amnesty), newly introduced crime of stalking, issues related to drugs (new legal regulation with regard to the conditions for drug possession) and the newly introduced alternative sanction of prohibition to eneter sport, cultural and other social events.

Because of the orientation of the project and its parts, a special attention has been paid to the topic of community services and security detentions. It was determined that the partial legislative changes, introduced to these institutes by the new Criminal Code, are not too attractive topics for the media. Similarly, the overall concept of the new Criminal Code was not presented either. The media tend to present particular legislative changes, especially in relation to particular criminal acts. Nevertheless, the media did inform about the important changes. This is true, for example, for the introduction of new alternative sentences, even though in the case of house arrest sentences, their attractiveness for the media is rather caused by the organizational problems related to the implementation of the tender for electronic monitoring of the house convicts. The new sanctions were presented in the media mostly in a positive light and with an expectation of their more extensive application in the future.

The research project also envisions repeated surveys of the **public opinions with regard to punishments, sentencing and sanction policies.** The first survey was conducted in October and November 2012. It focused on evaluating how well people are informed about individual types of punishments and the frequency of their imposition, on their perception of the basic trends of the criminal policies (i.e. if sentences have been getting more or less severe over time) and also on their opinions with regard to the options for reducing the number of the prison population. Some of the questions were prepared in a way as to be able to compare the gathered data with the previous IKSP studies. Data were collected by PPM Factum Research, s.r.o., using the CAPI method as a part of the so-called omnibus survey. The number of respondents from a representative sample of 1.000 respondents 15 years and older, who answered the questions, was 963. The sample of the respondents was selected using the standard quota selection method pursuant to the following criteria: age, gender, education and residency address.

When it comes to the types of punishments, which represent alternatives to imprisonment terms, people most often recognize fines, conditional sentences and community services (even though they often quote it under the wrong name of "public services"). Almost one third of the respondents were even able to state the house arrest option when asked a question without the possibility to choose from several alternatives. Other alternatives were stated only rarely. Only slightly more than one quarter of the respondents were able to state three or more correct answers. On the other hand, about one fifth of the respondents were not able to give a single correct answer. Almost one half of the respondents stated that the most commonly imposed sentences in the Czech Republic are conditional sentences.

Despite the fact that the new Criminal Code made sentences for serious crimes more severe, the Czech public believes that the sanction policies in the Czech Republic are getting rather more lenient – only just under seven percent of the respondents think that sentences for serious crimes have become more severe during the last ten years while a little more than one half of the respondents believe that these sentences are less severe today.

The largest part of the population of the Czech Republic believes that the most effective way for reducing the number of inmates in our overcrowded prisons is to make the prison conditions stricter (32% of the respondents selected this option) and punishments more severe (30% of the respondents). 17% of respondents recommended the use of alternative sentences and 11% of them think we should focus more on prevention. 7% of the people believe that the best option is to build new prisons. The monitored demographic characteristics of the respondents did not play a big role for most of the questions. Exceptions to this rule were represented by a slightly better knowledge and support of alternative sentences by the middle age generation and by respondents with higher education, and by the fact that the most "punitive" opinions with regard to solving the issue of overcrowded prisons were recorded among people between 45 and 59 years old.

Translated by: Presto

Scheinost, M. a kol. (2013): *Trestní sankce a jejich odraz v praxi, tisku a v názorech veřejnosti.* (Teoretické a trestněpolitické aspekty reformy trestního práva v oblasti trestních sankcí I.) Praha: IKSP. ISBN 978-80-7338-135-6

II.1.2. Sanction policy as seen by practice

Miroslav Scheinost, Lucie Háková, Jan Rozum, Jan Tomášek, Jiří Vlach

The research project "Theoretical and criminal policy aspects of the reform of the criminal code in regard to criminal sanctions" is a cooperation between the researchers of the Institute for Criminology and Social Prevention and experts in the field of criminal code and sanction policy at the Philosophical Faculty UK and in the justice system. It has been approved by The Grant Agency of the Czech Republic for the years 2012 to 2015 as number P408/12/2209.

Research subject, goal and methodology

The research focuses predominantly on gathering information about the effectiveness of particular criminal sanctions – house arrest, community service, suspended sentences with supervision and short term unconditional imprisonment.

The goal of this project is to ascertain whether the legislative changes in force since January 1, 2010 fulfilled their purpose, whether there is a change in the number of inmates currently imprisoned, whether the effectiveness of sanctions imposed on convicts is rising and whether there was success in eliminating at least some of the problems in their practical application.

The primary method used in this phase of research was a survey in the form of a questionnaire which took place in 2013. The survey was anonymous by design but it should be noted that some of the respondents admitted to their opinions and observations, as they refused to conceal their identity. The survey consisted of a combination of closed questions (the answers consisting of several different provided options) and open-ended questions. Our primary focus was to provide our respondents with enough room to voice all of their respective relevant knowledge and any and all personal experience which they would share with us.

We reached out to the heads of all district courts (or circuit courts where applicable) and district prosecutor's offices (or circuit prosecutor's offices where applicable) with a request to distribute the questionnaire as physical documents to three of the criminal judges at their respective courts or to three of the state prosecutors in their respective prosecutor's offices. In total, we have received 160 filled-out questionnaires, which makes for a 62% return rate. The judges' average number of years of experience was 14.5 years (the shortest stated experience was 4 months while the longest was 42 years). We have received 186 filled-out questionnaires from prosecutor's offices, which makes for a 72.1% return rate. The state prosecutors' average number of years of experience was 16.5 years (the shortest stated experience did not exceed one month while the longest was 40 years). In the case of the probation officers, our respondents were the heads of the Probation and Mediation Service's probation centres. We distributed the questionnaires in cooperation with the Directorate of the Probation and Mediation Service and reached out to all of their 76 centres. We have received 45 filled-out questionnaires in the end (which makes for a 59% return rate).

The focus of the questionnaire was divided into several topics. We were interested in chosen alternative punishments and measures, the impact of the new criminal code on practical application, the cooperation of subjects while serving their alternative sentences, a general evaluation of the quality of the old criminal code and the new criminal code and also the opinions of our respondents as to what specific steps should be taken in criminal policy in order to lower the recidivism rates in convicts.

Criminal code evaluation

Requesting a general evaluation of a specific legal standard is always problematic, because the respondents must, in their effort to evaluate the standard, connect various constituent aspects or viewpoints according to which they evaluate the law as a whole. Respondents were asked to evaluate the overall quality of the old criminal code n.140/1961 Sb. and the new criminal code n. 40/2009 Sb. This was evaluated on a scale from 1-5 where 1 was the highest quality and 5 the lowest score available. Judges and state prosecutors evaluated the criminal code with similar average scores. If we compare the average score of both criminal codes, the old criminal code came out with a slightly better average score with a 2.4 than the new criminal code, which was evaluated at an average of 2.6. In comparison of both legislations in the case of the probation officers, the new criminal code has come markedly on top of the old – the average score it received was 2.18 while the average score of the old criminal code was 3.02.

On alternative punishment legislation

The new criminal code added to the range of options for alternative punishment. Judges (90.6%) and state prosecutors (91.6%) consider the range of possible alternative punishments to be sufficient. Several respondents would supplement the existing alternative punishment options with a modified imprisonment option which would combine its suspended and unsuspended sentence.

Judges and state prosecutors commented on the issue of the link between the speed of proceedings and the application of alternative punishment. Both respondent groups predominantly think that the application of alternative punishment has no effect on the speed of criminal proceedings (an opinion held by 48.2% of the judges and 53.3% of the state prosecutors). We should also mention a relatively frequent opinion held by members of both respondent groups who gave negative scores, which can be summed up as follows; the fact, that an alternative punishment sentence requires a special report concerning the capabilities of the offender to execute it, does not speed up the proceedings.

On punishment of house arrest

All three respondent groups evaluate the introduction of house arrest positively. The introduction of house arrest into law has had the highest support among probation officers (97.8%). Respondents commented on very low rates of house arrest sentencing due to the absence of electronic monitoring. According to them, the house arrest option is lacking an effective tool with which to monitor the execution of the punishment in the form of electronic monitoring. Most probation officers see the punishment of house arrest as a valid addition to the range of punishments alternative to imprisonment. They consider this punishment a strict sanction which enables the convict to keep his or her social bonds with his/her close friends and relatives and his/her occupation and therefore settle his/her possible obligations or debts as opposed to imprisonment.

Concerning the evaluation of the house arrest legislation in respect to its application, 45% of judges and 34.1% of state prosecutors think that the current legislation causes great difficulty in practice. Respondent judges predominantly pointed out that the transformation of the home arrest punishment into imprisonment according to § 61 of the criminal code cause issues in practice. Almost all of the judges who chose to comment did not forget to mention the practical problems in the execution of house arrest. The absence of an effective way to monitor the convicts was mentioned most often. Some respondents listed further issues they came in contact with in practice in regard to house arrest – e.g. there was a frequent complaint about the scarcity of suitable offenders who were able to execute this kind of punishment (a large part of offenders has trouble with their place of residence).

A large portion of the state prosecutors‘ comments also focused on the issues with sentencing and executing this punishment, rather than the legislation itself. Again, most respondents think that the greatest difficulty lies in the absence of a system of effective control of execution of this punishment. Much like the judges, some of the prosecutors noted the issue of offenders without a permanent residence or a residence that does not allow for a proper execution of this punishment and therefore disqualifies the option of a house arrest sentence.

Judicial statistics show that in the first years after the law went into effect the house arrest option was used very sporadically. Expert discussions mentioned the absence of ensuring the execution of the punishment by a large scale system via electronic monitoring, which was linked to the reluctance of the judges to hand out these sentences. Judges and state prosecutors consider the introduction of electronic monitoring an important prerequisite for proper execution of the house arrest punishment. It was therefore not a surprise for us to discover that most of the judges (63.2%) as well as most of the state prosecutors (74.2%) disagreed with the statement that a house arrest punishment can still be effective without an electronic monitoring system.

The opinion of probation officers on the effectiveness of the house arrest punishment without electronic monitoring differed from the opinions of judges and state prosecutors. As opposed to the opinion of judges and state prosecutors, a slight majority (58.9%) believe in the effectiveness of the house arrest punishment without an electronic monitoring system, but the portion of those who do not share this view (35.6%) cannot be overlooked.

In contrast to the opinions of the probation officers, a large portion of state prosecutors listed some doubt in their comments about the effectiveness and sufficiency of control in the area of execution of this punishment merely via random inspections performed by probation officers of the Probation and Mediation Service. Most judges agreed with this opinion as well. It needs to be said that a portion of state prosecutors also noted in their comments that the house arrest punishment would not be effective even when provided with an electronic monitoring system because it would not be imposed at rates expected by the Ministry of Justice. The respondents list the shortage of viable offenders as the main reason.

In additional comments, probation officers highlighted the importance of a timely introduction of an electronic monitoring system along with the belief that electronic monitoring would undoubtedly raise the effectiveness of the house arrest punishment. They linked it not only with detection of each violation of the conditions of the punishment, but also with an expected raise in the judges‘ confidence in this kind of punishment as well as more concern on part of the convict for violating the conditions of his/her punishment. Some of the respondent probation officers saw the way towards better effectiveness in increasing the number of probation officers, or in a sufficient amount of well allotted time which probation officers could use to keep track of the convicted offenders. The dissatisfaction with the effectiveness of the house arrest punishment was also rooted in the fact that, according to their opinion, courts do not react to reports of breaches of conditions radically enough.

Probation officers were given room to voice their opinions on possible issues they currently face regarding the execution of the house arrest punishment and furthermore to comment on potential changes that could be made in order to make the execution of this punishment more effective. It was not a surprise to us that the main issues they raised was the absence of electronic monitoring, the approach of the courts towards this kind of sentencing and a greater tendency of convicts to violate its conditions. However, a different topic was even more prevalent; the issues linked with the management of random inspections so that they would abide by the requirements of the labour code. Respondents also raised concerns with the time requirements of the inspections of proper execution of the punishment with regard to the fact that this activity subtracts from the time probation officers could spend with other activities. A part of the critical commentary was concerned with the way courts operate. According to some probation officers, courts sometimes impose a sentence of house arrest inappropriately and without previous investigation by the Probation and Mediation Service or in conflict with its recommendation, or that the courts do not react strictly enough to reports of convicts‘ violations of conditions of the execution of the punishment.

Regarding the changes suggested by the probation officers in the interest of making the house arrest punishment more effective, it has again been shown that the most frequent suggestion was not concerned with a reform of the law but simply with the above stated issue of introducing electronic monitoring. Probation officers also mentioned the problem of transforming the house arrest punishment into a substitute punishment by imprisonment. Respondents recommended the law return to its previous version, which would result in a resurfacing of substitute imprisonment, which is considerably more suitable than a partial transformation according to the law which is currently valid and in effect. Other more frequent topics mentioned by the probation officers included the suggestion that courts should have an obligation to impose the house arrest sentence only after having requested and received a statement from the Probation and Mediation Service which would lead to a raise in effectiveness.

On the punishment of community service

The legislation regarding the punishment of community service has been modified in the new criminal code in order to increase the effectiveness of executing this punishment. Judges and state prosecutors were asked to compare the new legislation regarding community service with the old legislation. The opinions of respondents differ. In total, 40.6% of judges consider the new legislation to be worse than the previous one and 28.8% consider it to be better than the old legislation. The answers provided by state prosecutors clearly show that most (41.1%) of them lean towards the opinion that the current community service legislation is better than the old legislation. Only less than a fifth of the state prosecutors view the current legislation as worse.

Judges and state prosecutors commented most critically on the obligation to request a report of a probation officer according to § 314e paragraph 3 TrŘ /of the code of criminal procedure/ in cases where the community service punishment is imposed by a court order.

Amendments to the criminal code made by the laws n. 330/2011 Sb. and n. 390/2012 Sb. introduced the legislation for transforming the civil service punishment into a punishment of imprisonment and also the options of transforming it into a house arrest punishment or a fine (provision § 65 paragraph 2 letter a) and b) of the criminal code). This particular change was most criticised by the judges.

The original wording of the new criminal code has been changed by the law n. 330/2011 Sb. which, among other changes, amended the provision § 65 paragraph 1, which extended the original requirement to execute the punishment of community service within one year to two years. This change has also become a subject of quite significant criticism from the judges.

Comments made by the judges and state prosecutors (not as often), also recommended to increase the length of the community service punishment to 400 hours (previous version).

The criminal code law n. 140/1961 Sb. was changed in regard to the transformation of the community service punishment according to § 65 paragraph 2 letter c), which amended the conversion rate between unserved length of community service and length of imprisonment. The new law regards each incomplete hour of the community service punishment to be equal to one day of imprisonment, that is to say there is a ratio of 1:1. Judges as well as state prosecutors viewed this increase in severity positively.

Respondents had an opportunity to voice their thoughts on the issue of the obligation to request a report from a probation officer, as well as the expectation to impose the punishment of community service by court order (§ 314e paragraph 3 TrŘ /of the code of criminal procedure/). Almost half of the state prosecutors questioned (49.5%) and more than half of the judges (56.3%) viewed the introduction of the aforementioned obligation to be a change for the worse. In additional commentary, respondents most often mentioned that the mandatory request of a probation officer's report makes for an additional process which delays the proceedings. On the other hand, there is a large enough portion of respondents in both groups, which views the obligation to request reports as a way to further individualise the punishment of community service, which in turn contributes to its proper execution.

The comparison of the new criminal code with the old criminal code as for the changes made to the conditions of the community service punishment was not unanimous by any means even among the probation officers. According to 38% of respondents, the new law is better than the old and 26% conversely view the previous one as better than the new. The ambivalence in opinion becomes clearer if we take into account the additional comments of respondents. It has been shown that some changes included in the new criminal code were welcomed by the heads of Probation and Mediation Service centres, but other changes were criticised and in these cases, probation officers call for the return to the original law.

Unfortunately, one of the changes made by the new criminal code in regard to the execution of the community service punishment, has obviously not taken the practical needs of the Probation and Mediation Service into account – the extension of the period in which community service is to be executed. This legislative change was evaluated by most respondents as erroneous. Heads of Probation and Mediation Service listed the most reasons for their negative perception of the extension. They most often noted the increased difficulty of enforcing the punishment according to the new criminal code – clients become unmotivated and have a tendency to postpone the execution of the punishment and it is additionally significantly more difficult to negotiate the terms of the execution with providers of community service.

Probation officers differed in their opinions of the newly introduced option of transforming the punishment of community service into different punishments other than imprisonment. Respondents who viewed the change critically blame the lawmakers for inappropriately substituting one alternative for another, which is also problematic in regard to appropriate motivation for offenders to execute their community service punishment. Respondents, who welcomed the introduction of a possibility to transform this punishment into other alternative sanctions especially, value the increase in the amount of combinations that are available to them while working with a client.

Probation officers were asked to describe the most significant difficulties or obstacles their centre faces in the area of enforcing the execution of the community service punishment. Respondents repeatedly returned to the issue of extending the period in which community service is to be performed to two years and to the question of transforming the community service punishment. They detailed their discontent in regard to specific issues that were introduced by the change. Worse negotiating conditions with both their clients and providers were mentioned most often. By numerical account however, two other issues these centres face in practice were more prevalent – the difficulties linked with the clients' attitude towards executing their punishment, the second issue being cooperation with the courts. As for the clients' attitude and working with the client, the comments listed in particular the frequent unreliability, passiveness, low motivation and reluctance to execute the punishment, weak work ethic (sometimes including the absence of work habits and a sense of order), or a bad attitude towards compliance with their duties. We have also received the observation that some clients commit crimes against property directly at their workplace and are thus causing damage to the provider. Also mentioned was the clients' tendency to cheat via "surrogates", which is to say people who do the work instead of the convicted offender. Some respondents connected the criticism of their clients' attitude with the above stated change in the length of the period of executing the community service punishment, or with the possibility that unserved work is not automatically transformed into imprisonment, but can also be transformed into other (alternative) forms of punishment. The courts were criticised the most by the heads of probation and mediation centres for inappropriately chosen punishments (sometimes contrary to a negative recommendation expressed by probation officers) and also for inconsistency in executional proceedings, where in some cases, the courts do not react to suggestions for transformation of the punishment made by probation officers. The lack of providers that allow their clients to execute their community service punishment is also not an unimportant issue for a portion of respondents. This matter has been repeatedly linked with the providers' bad experience with the clients and, again, with the extending of the period of execution of the punishment to two years. There have been comments which stated that there are specific categories among the sentenced offenders whose "ease of placement" with providers is more difficult than others'. This mainly refers to drug addicted offenders, who are said to be very unreliable, but also adolescent clients. Some of the respondents call for a systemic solution to the issue of "ease of placement" by bringing into law an obligation for local municipalities to create jobs to allow for executing the community service punishment, or potentially by a financial subsidy to organisations that would decide to cooperate with the Probation and Mediation Service.

The change in the law concerned with the obligation to request a report from a probation officer was unanimously welcomed by the probation officers. Better executability of the punishment was by far the most mentioned justification for the answers provided by the respondents. All of the changes listed still rely in practice on the expectation that the court will respect the report of the probation officer and the opinions expressed within it. According to some probation officers, this is not always the case.

One of the points that the reports are to focus on especially is the medical fitness of the offender. Seeing as this topic was spontaneously mentioned by a whole 40% of respondents, we may safely assume that namely the medical fitness of the offender used to make for a noticeable issue in practice. But now, according to our respondents, the cases where the offender is not capable of executing his or her punishment can be pre-emptively avoided.

One of the key factors in assessing the effectiveness of any alternative punishment is the motivation of the convicted offender to execute it. A portion of respondents is convinced that the introduction of the obligation of the court to request a report from a probation officer allows the probation officer to discern the clients who are determined not to comply by the conditions of the community service punishment, which makes this punishment to be an inappropriate choice for the sentence.

As for the probation officers‘ suggestions for changes in the criminal code, which would lead to a more effective execution of the punishment, the suggestion that was mentioned most often was directed at the issue respondents focused on in previous questions – that is the period of time in which the offender is to perform the community service punishment. This once again affirms that most heads of Probation and Mediation Service centres consider the change to be misguided and furthermore that shortening the period back to a single year (that is to the period detailed in the previous legislation) would be one of the possible ways to achieve the required effectiveness of the punishment.

The probation officers‘ second most listed suggestion also repeated some previously mentioned ideas – according to a fourth of the respondents, a quicker or a more flexible reaction of the courts in transforming the punishment of the clients who do not fulfil the conditions of their punishment would contribute to an increase in effectiveness of the execution of this punishment. In this case the respondents do not call for a change of legislation, but merely for a refinement of current practice.

A less significant portion of respondents would amend the law in the sense of repealing the option of transforming the unserved punishment by community service into other punishments than that of imprisonment. This opinion is not as prevalent here as it is among the judges and state prosecutors.

Suspended sentence of imprisonment with supervision, the issue of supervision

The new criminal code also refines the legislation for supervision and the respondent judges and state prosecutors were asked to evaluate this change. More than two thirds of the respondent judges and approximately half of the state prosecutors are convinced that the current legislation is neither better nor worse than the previous one. In their comments, judges did not focus as much on the legislation itself as they did on its execution. The most voiced opinion was that the effectiveness of supervision over an offender serving his suspended sentence of imprisonment is entirely reliant on the quality of work done by the probation officers. A portion of state prosecutors see the current legislation to be more cohesive and sophisticated, especially in the sense of defining the duties and authority of a probation officer in the provision § 51 of the criminal code.

The supervision by a probation officer is defined in the new criminal code under the provisions § 49 to 51. Heads of the Probation and Mediation Service were given the opportunity to comment on any and all significant issues, from the definition of the purpose of the supervision itself to the definition of the duties of the offender and the duties and authority of the probation officer. Concurrently, we focused on the greatest issues Probation and Mediation Service centres face in practice, as well as potential legislative suggestions, which could help increase the effectiveness of practical supervision.

Based on the opinions of the heads of the centres, we can conclude that the purpose of supervision is defined appropriately in the new criminal code. The laudatory nature of the comments also corresponded with a positive attitude towards the change.

The rules that the offender under supervision must comply with are defined in the new criminal code in § 50. Our survey shows that most heads of the Probation and Mediation Service view the wording as satisfactory, the opposite view being held only by a tenth of the respondents. The comments cited especially the clarity and explicitness which makes it easier to supervise the client and his behaviour during the probationary period.

The duties and authority of a probation officer while supervising an offender are defined in § 51 of the new criminal code. In this case, the heads of the Probation and Mediation Service centres also view the cited law positively.

We have received substantial feedback from probation officers when we asked them to detail the greatest difficulties probation officers face during actual supervision. The comments were clearly dominated by the topic of cooperation between the Probation and Mediation Service and the courts, which did not come as a surprise to us due to the frequent comments already made in previous questions. Three quarters of our whole sample size expressed criticism towards the work of the courts. The common denominator of most of these comments was little (or no) reaction of the courts to the report of a probation officer concerning the client's breach of the conditions of his or her supervision. It is not surprising that many probation officers are frustrated with the judges' approach in these cases. It must be very demotivating for them to have their reports about severe breaches of the conditions of supervision overlooked. Furthermore it is shown that under these circumstances the necessary authority the probation officers should have above the sentenced offenders comes into danger. Some respondents described their experiences with courts which refrained from ordering the offender to be punished by imprisonment despite the continued criminal activity of the offender during the probationary period. Surprisingly, even these individuals sometimes receive "certification". Courts were also the subject of a different phenomenon our respondent pointed to. Suspended sentences with supervision of a probation officer are, according to them, in some cases imposed inappropriately (according to a fourth of our sample). They perceive errors being made in ordering supervision inappropriately in regard to the type of the offender as well as the conditions of the supervision itself, especially the length of the imposed probationary period.

The court may impose appropriate limitations and appropriate duties to the offender for the duration of the probationary period which are meant to assist the offender in his efforts to live an orderly life. A portion of the respondents see an issue in the fact that some of them cannot be fulfilled in practice – either due to unfeasibility of actual supervision of the client in a given area or due to the lack of adequate conditions for their realisation.

There is no doubt that the key to successful rehabilitation of an offender is his or her own motivation to live in accord with the law and actively participate in solving the problems he or she is facing in his or her personal life. This level of motivation then results in a corresponding level of cooperation with the probation officer. According to some respondents, it is exactly this lack of motivation on part of the client which makes their supervision significantly more difficult. In their experience, clients refuse to attend consultations, are not interested in cooperating and some of them go so far as to change their address, which makes them difficult to reach.

As for the suggestions for changes which would lead to more effective supervision made by the heads of the centres, the most frequent reaction we have seen was the statement that a significant step towards change does not necessarily require a change in legislation as much as it requires a change in the approach of the courts. A portion of the respondents believe that the approach of the courts could change if there were a clear set of rules in place for cases when the client breaches the conditions of supervision. The specific form of these rules varied between respondents, some for example suggested changing the position of the Probation and Mediation Service in the system as a whole (according to them, the probation officer should become a direct participant of the court process). Some of the respondents see an opportunity for change in defining the some parts of the conditions of supervision. These would namely include a more flexible approach to its length, either in the sense of potential shortening for "good behaviour" or ordering supervision only for a portion of the probationary period. Such a law might not only be beneficial for the Probation and Mediation Service (freeing-up necessary resources) but obviously for the clients themselves (a significant motivating factor). A more flexible approach should be taken, according to some of the respondents, in relation to the duties and limitations that can be imposed on the sentenced offender as part of supervision. Conditions and important events affecting his or her life can change during the probationary period, which should be taken into account and reacted to appropriately, should the supervision fulfil its "educational" or rehabilitative purpose. The court should therefore accept the suggestions made by the Probation and Mediation Service which are incorporated in the probation plan.

On fines

The survey also focused on fines (§ 67–§ 69 TrZ). We were interested in how our respondents from among the judges and state prosecutors view the current law in contrast to the previous criminal code law n. 140/1961 Sb. Almost two thirds of the judges (60%) questioned and almost half (46,8%) of the state prosecutors see the current legislation regarding fines to be worse than the previous one.

Judges voiced their discontent over the legislation concerned with the transformation of an outstanding fine according to § 69 paragraph 2 a 3 of the criminal code. Widely criticised by the respondent judges as well as state prosecutors was the problem of imposing a daily charge according to provision § 68 TrZ. Respondents generally pointed out that imposing a fine in this way is confusing and impractical. A large portion of the judges indicated that the obligation to attempt to enforce an outstanding payment (according to provision § 343 TrŘ /of the code of criminal procedure/) before proceeding to transform it into a different punishment.

Evaluation of cooperation

One of the factors which can significantly alter the effectiveness of alternative punishments is the level of cooperation between the institutions responsible for their realisation. Almost two thirds of the judges evaluate the cooperation with the prosecutor's offices positively and a whole 92% of them favourably evaluated their cooperation with the Probation and Mediation Service while imposing alternative punishments. Only a small group of judges added further comments which were critical towards the cooperation with prosecutor's offices. These most often pointed out a passiveness or a kind of formalism of procedure on part of the state prosecutors in connection to imposing alternative punishments.

Conversely, the cooperation with probation officers during imposition of alternative punishments was praised by a number of judges in their comments that predominantly listed quality of work as well as initiative displayed by probation officers participating in the process of imposing alternative punishments. The state prosecutors (three quarters of them) evaluated their cooperation with the Probation and Mediation Service during imposition of alternative punishments very positively. They especially valued the active approach and swift (to the extent possible) work of the Probation and Mediation Service. A portion of state prosecutors pointed out the insufficient number of Probation and Mediation Service employees, which they viewed as a factor which hinders their otherwise productive cooperation. There were nonetheless some opinions, which were not as common that considered the cooperation with the Probation and Mediation Service during the process of imposing alternative punishments a significant hindrance to the proceedings.

Much like in the case of imposing alternative punishments, the cooperation in the area of execution of these punishments with the Probation and Mediation Service was evaluated very positively by the judges, who also amended their comments with praise for the work of the probation officers.

The probation officers also had the opportunity to express their opinions on the cooperation between the Probation and Mediation Service and prosecutor's offices as well as courts. If we compare both institutions, the courts come out on top with a higher score – 95.6% of the heads of Probation and Mediation Service centres evaluate the cooperation with them positively while in the case of prosecutor's offices the same options were chosen only by 77.8% of respondents. The respondents' commentary which followed can be, with a slight simplification, divided into three groups; the "positive", the "negative", and "mixed" opinions. Most comments by far fall into the first category, as they evaluated the cooperation with the court positively without reservation. They linked their satisfaction with speed with which the courts reacted to the probation officers' suggestions, high quality of communication, taking the observations of probation officers into account or with general helpfulness. Some comments noted an increase in quality of cooperation over time. Mixed comments therefore contained appreciative as well as critical observations. A certain dissatisfaction most often stemmed from experience with insufficiently strict reactions of courts to reports of breaches of conditions of the punishments imposed. Approximately a tenth of our sample commented decidedly negatively. Unfortunately, these comments show that the respective courts do not accept the Probation and Mediation Service as a partner and are not interested in cooperating with it.

The heads of Probation and Mediation Service centres evaluated the cooperation with prosecutor's offices slightly worse than the cooperation with courts. This corresponds with the fact that the commentary following the answers made by the respondents more frequently showed negative observations. Similarly to the case of the courts, the predominant point was the general lack of acceptance of the role of PMS in the criminal justice system. It was not a rare occurrence to see responses detailing the experience that the cooperation, be it a quality cooperation as it may, relies mainly on the internal activity of PMS and without this initiative (or without cooperation with the Police of the Czech Republic) the probation officer would not even see the cases which are in the stage of preparatory proceedings.

The issue of decriminalisation, more lenient or stricter punishment for some criminal offenses

We mapped the opinions of judges and state prosecutors on the possibility of a full or partial decriminalisation of some of the current criminal offenses as well as the possibility of introducing stricter punishment for some criminal offenses. In the case of suggestions for decriminalisation, we have received a positive reaction by almost a half of the respondent judges and state prosecutors. Almost a third of the judges and 40.9% of state prosecutors evaluated the possibility of decriminalisation with disapproval. Respondent suggestions were clearly dominated by the suggestion for "removal" of the criminal offense of failure to pay alimony according to § 196 TrZ. This suggestion was made by 60 judges and 65 state prosecutors, who in their additional comments also suggested that a more appropriate alternative would be to enforce payment from the offender as part of a civil law proceeding. As for additional suggestions, which were significantly less common, the respondents listed the criminal offense of defamation according to § 184 (5 judges and 21 state prosecutors) and some behaviour fulfilling the characteristics of the criminal offense of obstruction of justice according to § 337 (9 judges and state prosecutors were in agreement).

Stricter punishment for some criminal offenses was introduced in relation to the new criminal code. Therefore we were interested whether, according to the judges and state prosecutors we approached, it would be appropriate to make the punishment for some of these offenses more lenient. Only 15.6% of judges and less than a tenth of state prosecutors would allow for more leniency. Most often mentioned by both groups was the suggestion to lower the punishment for recidivism in the criminal offense of theft according to provision § 205 paragraph 2. Conversely, approximately a fifth of the judges and less than a third of the state prosecutors would welcome a stricter punishment for the criminal offenses listed. Suggestions made by the judges and state prosecutors only contained groups of criminal offenses which the respondents would punish more strictly. Judges and state prosecutors both listed criminal offenses of violent nature most often.

Lowering the prison population, working with offenders, rehabilitation

One of the main goals of the new criminal code was a change in the general philosophy of imposing sanctions. The explanatory report of the criminal code highlights the need for a change in the hierarchy of sanctions, which would view the punishment of imprisonment as an "ultima ratio" and focus on an individualistic approach to criminal affairs, presupposing a wide variety of alternative options in place which would provide the offender with positive motivation. The new philosophy for imposing criminal sanctions rooted in the criminal code stems from depenalisation, which on one hand in addition to the current criminal sanctions (punishments and protective measures), which are modified as necessary, conceptualises new, more effective alternative sanctions, which are formulated in respect to an appropriate sense of satisfaction on part of the victims of criminal offenses, while a special part of the criminal code makes some punishments for criminal offenses more lenient in the context of revision. On the other hand, with respect to the need to ensure an adequate response of the criminal justice system to serious criminal offenses (brutal murders, armed robberies, kidnappings, etc.) and new specific types of crime (organised crime, terrorism, etc.), in the case of these most severe criminal offenses a befitting repression will be applied, corresponding to the nature of these crimes.

We have therefore also attempted to uncover how our respondents perceive the connection between the introduction of the new criminal code and the state of the prison population. Almost two thirds of respondent judges lean towards the opinion that the new criminal code did not contribute to a reduction of the prison population. Half of the state prosecutors lean towards the opinion that the new criminal code did not contribute to a reduction of the prison population. More than 40% of respondent probation officers did not have a clear opinion, and of those who did a slight majority was convinced that the number of people actively imprisoned has been reduced due to the new criminal code. However, judicial and prison statistics show that the amount of people serving an unsuspended sentence of imprisonment has paradoxically increased after the new criminal code went into effect.

Recidivism is undoubtedly a serious issue which has a significant effect on the prison system. Respondents from all groups were asked to think about possible measures or steps that could be taken in the area of rehabilitation of offenders, which would, according to them, lower the rate of recidivism and what exactly does the criminal policy need to focus on in this area. All of our respondents agreed on the importance of job placement as a tool for rehabilitation and a significant factor lowering the possibility of subsequent recidivism. A considerable portion of judges view the employment of convicts, who are already executing their punishment of imprisonment as very important for keeping, or in many cases even facilitating the creation of working habits in the convicts. Probation officers thought about how and whether it would be possible to make the effect on the offender more effective during his stay in prison. These most often suggested focusing on employment and on rehabilitation or requalification programs for prisoners (including adequate preparation for their release).

All of our respondents suggested various options for strengthening the system of post-penitentiary care. These consisted mainly of suggestions to create "halfway houses" which would at least in part address the issues a released prisoner may have with a place of residence, or to introduce start-up support programs which would provide effective help during the process of their integration into society. There were also opinions to strengthen the role of social curators and probation officers in the process of rehabilitation.

A group of judges and state prosecutors voiced some doubts concerned with the ability of the current criminal policy as such to affect the rehabilitation of offenders. Instead, they assigned more weight to social policy and the socio-economic circumstances in our society. Probation officers showed noticeable dissatisfaction with the general setup of criminal policy, which, according to them, acts too leniently towards offenders who do not display an effort to improve their behaviour. Furthermore, probation officers highlighted the need to connect and harmonize the activity of individual institutions in the criminal justice system, but also the need to cooperation between different sectors and different fields. Probation officers very frequently mentioned the issue of indebtedness as a major obstacle for offenders on their way to rehabilitation. Probation officers also perceive a lack of probationary or rehabilitative programs for adult offenders, where offenders could learn the required abilities and habits. They also accentuated the need for supporting these programs systematically and continually. Approximately a tenth of the probation officers pointed to the need for a quicker resolution of cases as well as a need for a more thorough and stricter approach to offenders who breach the conditions of their alternative punishments. Therefore, it has again been pointed to the issue of a timely reaction by courts to the reports made by probation officers concerning convicted offenders who breach the conditions of their respective sanction.

Translated by: Aspena

Scheinost, M. a kol. (2014): *Sankční politika pohledem praxe.* (Teoretické a trestněpolitické aspekty reformy trestního práva v oblasti trestních sankcí II.) Praha: IKSP. ISBN 978-80-7338-144-8

II.1.3. Criminal sanctions – their application, impact on recidivism and presentation in media

Miroslav Scheinost, Lucie Háková, Jan Rozum, Jan Tomášek, Jan Vlach

A part of the research project was to test the effectiveness of sanctions imposed with an emphasis on alternatives to prison. **The recidivism of convicted persons** was chosen as a measure; this was examined through the analysis of data from Criminal Register. We infer it based on information about possible another conviction, a practice common in the criminological research. However, it has its weaknesses, especially with regard to the inability to capture the hidden crimes. In addition, a new conviction cannot automatically be equated with a new crime and it is also necessary to count with some delay between the commission of the offense and its legal sanction. Yet it can be argued that such studies provide at least a tentative answer to the important question of whether the recidivism rate varies considerably for individual sanctions. It is also possible to focus on assessing the impact of certain factors that are considered as a risk in view of criminal careers by criminology and which can be found in the Criminal Register (these are particularly sex, age and nationality of the convicted person, his/her criminal history and the type of crimes committed). In our consideration, the strength of our research is the sample size, which makes it the most extensive analysis of recidivism in our environment so far.

The sampling was based on two criteria, namely on the period when the sanctions or measures of the convicted persons were recorded in the Criminal Register (1st April, 2012 to 30th June, 2012), and further the type of sanctions imposed (house arrest, sentence of community service and a suspended sentence with supervision). The control group consisted of persons previously sentenced to a prison sentence, which ended in these months of 2012 (by serving the term or a conditional release). In total, there were 4.233 people, among whom males (90.6%) were prevalent.

Most of the persons were sentenced to community service (52.7% of the entire sample), the least to house arrest (3%). The average age was 33 years, the most convicts were aged 30-39 (31%) and 22-29 years (28.4%). They were punished mostly for property crimes, while nearly a third of the sample was convicted of theft. Obstructing the execution of an official decision or deportaion (14.5%) and neglect of compulsory maintenance (14.1%) were also more numerously represented. Serious acts against life and health were significantly less represented in the sample.

Most of the convicted had prior experience with crime. Only 12% of the people were convicted for the first time (a criminal record dating from 2012 on the basis of which our sample came, was their first). We found out an average of nearly five previous convictions for the remainder of subjects. A third of previously convicted had also experienced with imposed unconditional imprisonment. The same ratio was also found in relation to records of conversion of the execution of alternatives to prison to unconditional prison sentence. As expected, it was determined that the number of previous convictions grew with age. The finding known from the criminal career research was confirmed as well that a strong predictor of a large number of convictions is low age at the first registered crime. The relationship between these two variables proved to be statistically significant.

The recidivism itself for the purposes of our research was defined as the record about possible another conviction that we followed in the index in the second stage of investigation in July 2014 (i.e. about two years following the first stage). It turned out that 48.1% of our sample have a new record which is nearly every other convict. There were relatively frequent cases that a habitual offender had more new records (the average for habitual offenders was 1.99). There even appeared fourteen new records for one of the monitored person and eleven records for three convicted persons. Approximately in two-thirds of habitual offenders the new entry appeared in the first year after a previous conviction.

Based on bivariate analysis, it was found that the type of sanctions imposed does not have a significant impact on the recidivism of the convict. The largest share of people with a new entry in the register was among those sentenced conditionally with supervision (49.4%) and persons who have been sentenced to community service (48.8%), lower values were reached by imprisonment (45%) and house arrest (46%). However, these differences were not statistically significant. On the basis of logistic regression model, which we created for a part of the set, the punishment of imprisonment appeared as most effective in terms of reducing the risk of recidivism which could be seen as a proof of its deterrent effect in the sense of individual prevention. A deeper and more critical view of the data leads to the conclusion that the predictive value of these finding is limited by the nature of the data from the register. Records of a conviction which appear in the register within the monitored period following the previous conviction may in fact relate to crimes committed earlier. The probability of such a situation is significantly lower for those who stayed in prison than in subjects with alternatives to prison imposed.

While the effect of examined sanctions on recidivism appears to be questionable, we managed to establish a relationship between the risk of further conviction and some relevant demographic characteristics in terms of criminology. The sex is of relevance in particular (men are more likely to relapse than women) and age (the share of habitual offenders falls significantly with age). The indication of the age also had a predictive value when the individual concerned first got into contact with the justice system, as well as the fact whether there was a reoffending in the past (in our sample, first time offenders re-offended in less than a quarter of cases, people with criminal records in more than a half by contrast). A higher proportion of reoffending was observed also among people who have been previously sentenced to imprisonment, and also for prisoners who have experienced the conversion of alternatives to prison to a prison sentence or the order to serve the remainder of sentence in prison after conditional release. Regarding the type of crime, the highest proportion of recidivists was among the offenders of crimes against property (theft), lower for crimes against life and health (bodily harm). These two groups also differed in terms of the type of recidivism where special recidivism was more frequent for offenders of property crimes (re- convictions for theft), the recidivism in offenders of violent crimes was rather non-uniform (convictions for other type of crime).

As part of this research project **a media analysis** was also conducted with focus on the way crime, punishment and criminal sanctions are presented on the main news reports. The results of current criminological studies make it apparent that crime is a frequent subject of media interest and reports on it form an important part of the news. Research has shown that most of the general public receives information about the crime just from mass media, public attitudes towards punishment and the criminal policy thus being formed through the increasingly strong position of television news. Therefore, it is important to deal with media content in relation to crime and punishment.

The presented image of crime differs significantly from official police statistics, which include recorded crime. The criminal acts attractive to the media fulfilling "news value" are not identical to conventional and characteristic offences in terms of overall crime. The media more often display exceptional and serious crimes; violent and sexual offenses are overstated compared to statistics as well as cases where adolescents or children appear as victims or offenders. The media image of sentences corresponds to the crime displayed in this way.

The sample set of our media analysis included one hundred major television news programs (fifty sessions of "Události" of the Czech Television and fifty sessions of "Televizní noviny" of Nova TV) randomly selected during 2014. This enabled us to observe the differences between informing by the public and private television stations. A combination of quantitative and qualitative content analysis was used for the analysis of the media image of criminal sanctions on television news. Selected characteristics of imaging crime, various types of crimes and punishments were coded, quantified and statistically analyzed using SPSS software.

Foreign studies show that crime is a hot topic for the media and reports of crimes form an important part of the news. These findings were also confirmed by our analysis. Posts relating to crime and safety in general accounted for over twenty percent of posts on television news. Nova commercial television gives more space to media attractive criminal reporting than public Czech Television. While the reports featuring crime amounted to 12.6% on the Czech Television news, with the main news report of Nova TV with a share of 28.5% it was more than two times higher.

Almost three quarters of crime reports dealt with traditional forms of crime, usually committed by individuals. The topic of the next almost one fifth of the reports are serious economic offenses, criminal activities with some degree of organization or directly to organized crime. The most frequently displayed type of crime was violent crime in the total sample set, mainly due to the news of private Nova TV, where it is a significantly overvalued category. The most interesting offences for the media are offenses directly after or with short interval after their commission or disclosure. The news of public Czech Television, in contrast, most frequently display economic crime, Czech Television significantly more informs about this type of crime, corruption cases, etc.

Violent crime is contained in 43% of posts on criminal news while in police statistics it accounts for less than 6%. If we look at the structuring of individual crimes, the attractiveness of serious violent crime for media viewing is obvious. While according to police statistics, the proportion of homicides in overall crime amounts up to 0.08%, the posts on this topic on television news amount to 24% and they are most frequently featured crime.

Media presentation of crime is significantly different from the official police statistics, which include recorded crime, and media discourse is determined by focusing on “atypical” crime yet attractive to the media. Also, the presentation of criminal sanctions is significantly affected by this disproportion of media display. Considering the fact that television news and media in general display a significantly more serious violent crime, most featured kind of punishment is imprisonment (82%, of posts in which the punishment is mentioned). The presentation of alternatives to prison (probation, fines, community service, house arrest) is minimal and these types of sentences can be also categorized as “escape from real punishment.” The image of punishment and criminal penalties on television news corresponds primarily to the most frequently presented long-term imprisonment. Without much exaggeration the identification of punishment and imprisonment of an offender apply in the media discourse. In terms of media presentation of penal policy the prevailing displayed approach to punishing the criminals is a repressive approach with minimal presentation of alternatives to prison, rehabilitation of offenders, etc., which can have a significant impact on shaping the attitudes of the general public.

In our research of alternatives to prison we also **analyzed a selected sample of case files dealing with cases in which offenders were sentenced to house arrest and a ban on attending sports, cultural and other social events**. Fifteen files were requested for this analysis in total. Ten of them reported on the cases terminated with the imposition of house arrest, and the remaining five files featured all cases of imposition of a separate punishment of entry ban, the statistical sheets of which were sent in 2011.

The house arrest in our sample was imposed for a relatively diverse group of crimes involving bodily injury, neglect of compulsory maintenance, theft, endangerment under the influence of drugs, production and other handling of narcotic and psychotropic substances and poisons, obstructing exercise of official authority and expulsion, as well as stalking and dangerous threat. In cases where the punishment imposed was a ban on attending sports, cultural and other social events the range of offenses was not so varied, as they were four cases of disorderly conduct and one case of expression of sympathy for a movement aimed at suppressing human rights and freedoms.

The primary impetus leading to the prosecution of the offenders was most often a notification by damaged parties (i.e. 40% of the cases). The offender was caught and detained by Czech police patrol directly in the act in a third of the examined cases. The average length of criminal proceedings was 134 days. The longest procedure lasted 486 days, the shortest only 10 days. Thirteen cases (i.e. 87%) was the final decision made within six months and even within three months in five of them. In two cases the offenders were taken into custody, the length of which was in one of them 21 days and the second 122 days.

The average length of imposed house arrest sentences was eleven months in our sample. The longest imposed house arrest sentence was two years; the shortest sentence was four months. The average length of sentences imposed for punishment of ban on attending sports, cultural and other social events was twenty-six months. The longest sentences of entry ban were two three-year sentences in our sample; the shortest sentence was one year in length.

With the exception of one female offender all the offenders in our sample were men (93.3%). The average age of offenders in our sample was 31 years. The oldest of them was 45 years old at the time of committing the offence, while the youngest of the offenders was 21.

More than half of the offenders stated that they were unmarried (total 8 people), three offenders were divorced and the other three said that they lived with a partner. Only one of the offenders was married in the time of the commission of the crime.

The survey was also aimed to find out the socio-professional status of the offenders. Six of them (i.e. 40%) were without steady employment, while only two were registered with employment offices as job seekers. Most of them said that they earned money by occasional jobs. Five offenders said they were working in an employment relationship and two received a disability pension. One of the offenders said he was self-employed and another was a high school student.

The highest level of education achieved among the offenders was secondary education with school leaving examination, which was attained by three of them (i.e. 20%). A third of the offenders (i.e. 5 persons) were trained workers. Four of the offenders (i.e. 26.7%) completed primary education. The information on educational attainment could not be determined for the remaining three offenders.

A significant part of the offenders (total of 12 persons, ie. 80%) has previously been punished. Two of them were previously punished only once, while the remaining ten offenders had previously been punished several times. One of the offenders was punished even eight times already in the past. Until now there were only three offenders with no previous convictions who were subsequently sentenced to entry ban to sports, cultural and other social events.

We were also interested in course of performance of the sentences imposed. Five convicted offenders, who have been sentenced to house arrest, performed this punishment without any breaching the terms found. One of these persons, however, did not exercise the sentence imposed in its entirety, as the case was covered by the amnesty of the president. Another three convictions performed under house arrest in the whole length, but there were isolated cases of breaching the conditions found. The house arrest for two convicts was converted to imprisonment for failure to fulfil the conditions.

Offenders who have been sentenced to entry ban to sports, cultural and other social events approached the execution of the punishment imposed somewhat more conscientiously. Three of them executed the sentence in its entirety, without having found a breach of the obligations imposed under probation plan. The court decided on a conditional waiver from exercising the rest of the sentence imposed at the request of one of the convicts. We failed to obtain the information about the execution of the sentence imposed from the file for the last of the convicts.

An inquiry of the views of persons sentenced to a prison sentence serving up this punishment in the facilities of the Prison Service of the Czech Republic at the time of the research was conducted to complement the views on sanctions policy of involved experts and the public. Investigations were carried out as tentative inquiry of a sample selected by the deliberate selection of a limited number of respondents selected according to the characteristics of sex and type of prison in which they were located. Women were partially overrepresented in the sample and the prisoners were selected from such types of prison in which the largest part of the prisoner population is concentrated.

In July 2013 the range of the basic set of Czech citizens convicted in prison without juvenile amounted roughly to 13.000 people, including about 780 women. At the time of the preparation of this research, women made up 6% of the population of convicts, respectively of the basic set. 31% of the inmates were located in prisons with "supervision" (low security prison), 59% of the inmates in high security prisons, i.e. 90% of the total population of inmates.

The number of 150 respondents was determined as a required minimum range of research sample (i.e. slightly more than 1% of the basic set). All prisoners from one specific department ("supervision" or high security) with the exception of the sick, currently absent or those who did not agree to participate in the research were chosen for answering the questionnaire. According to such established principles the collection of questionnaires was conducted in November and December 2013 in four prisons. The questionnaire was answered by 201 respondents in total, of which 10.5% were women.

When compared with the data of the Statistical Yearbook of the Prison Service of the Czech Republic for 2013 the characteristics of the research sample get near to the characteristics of the total prison population in terms of prison recidivism and age composition. On the other hand, the characteristics differ in the details of the length of the sentence; the respondents with higher penalties prevail in the sample, and also in terms of education in the categories of basic education, apprenticeship and secondary education, where there is a significantly higher proportion of high school graduates (36% to real 10%) in the sample. It is, however, questionable how much exactly the respondents answered the question, respectively to what extent they were able to state the educational attainment precisely.

The questionnaire focused on determining whether the prisoners preferred alternatives to prison to imprisonment and what amount of alternative punishment was deemed appropriate, their opinion on the application of the criminal policy by courts and its rigor, opinion on the adequacy of penalties for concretized crimes, opinion on the quality of institutions involved in criminal procedure and coming into contact with the convicts and the situation they will have to deal with after their release from prison. Open questions were aimed at finding those problems in the form of a free statement that prisoners face in prison and which they assume after release.

It is not surprising that the convicts always voted significantly more often for an alternatives to prison than imprisonment in the provided option; always at least in 80%. From this perspective, the "most popular" sentence is community service, for which 91% of respondents voted. The largest number of preferences of unconditional sentence (but still low - 9.5%) is in the selection between the unconditional sentence and suspended sentence with supervision.

The respondents stated most often an amount ranging from 25 to 100.000 crowns, or 5 to 50.000 crowns as an adequate amount of compensation corresponding to one year of imprisonment; these respondents each amounted to about 49%. The preference of the amount of the fine is likely to be interpreted in relation to the social situation of the respondents, where the amounts indicated apparently represented a significant amount. An amount exceeding fifty thousand crowns (even more than one hundred thousand crowns for approximately 12%) would be acceptable for thirty percent of the prisoners.

Three quarters of the respondents consider the penalties contained in the Czech Criminal Code generally rather severe. In this the prisoners differ from the Czech population very significantly because, for example the survey of public opinion on penal policy, which was conducted by IKSP in 2009, showed that 57% of respondents believed that the Criminal Code inflicts mostly too mild punishments for crimes. Similarly, unlike the public the prisoners believe that the penalties tightened over the last decade.

When the prisoners were in the position of a fictitious judge to decide on punishment in relation to six specifically characterized crimes, it showed that the largest percentage of respondents always inclined to an imprisonment, and this surprisingly even in the case of neglect of compulsory maintenance and the sale of soft drugs. The strictest attitude was taken by respondents in the case of violent crime (robbery), where 80% of them would apply imprisonment. In other cases, although the sum of respondents who would vote for any of the penalties of non-custodial nature is higher than the number of those who would impose a prison sentence, the prison sentence was also always favoured by the largest proportion of respondents. In all cases where the first place was taken by an imprisonment, suspended sentence ranked as the second. The community service was slightly more frequent of the other alternatives to prison.

It is not surprising that respondents tended to believe that Czech courts do not approach all the people on trial equally. The judges also placed in last place following the public prosecutors on a scale assessing the work of staff of the institutions with which the prisoners come into contact with. On the other hand the NGO workers were the best evaluated.

What the prisoners essentially lack during their imprisonment are social contacts; especially with the family, but also with friends. The need for freedom expressed in various forms, ranks in second place, but is also prevailing in responses and even more among respondents who have already been punished, or who were previously serving unconditional sentence. The main issues that the respondents will need to deal with are employment, housing and family relationships. The fact that they do not expect any problems applies to only a small part of the respondents. The employment and housing problem along with the absence of family support was provided as the main cause of the impasse after returning from prison.

The role of the family as the nearest support of the respondents was confirmed; it is the family from whom the vast majority of them expect help after the release. The role of social contacts is confirmed by the “ranking” of friends and companions in second place, even though with a considerable distance. The Employment Office and social workers are the institutions that should be systematically the aim of requests for assistance; it is rather surprising that the number of expected requests directed to them is not high.

The key findings of the research are that the views of prisoners clearly confirm the urgent need for a significant improvement of preparation for release and subsequent post-release care. This is especially in terms of assistance in securing employment and even housing for a part of the prisoners; this is related to the care of the maintenance of social (in the narrow sense of family) support during their imprisonment. It can be estimated that the need for urgent support through the system of post-penitentiary care concerns up to one third of those released from prison.

Translated by: Aspena

Scheinost, M. a kol. (2015): *Trestní sankce - jejich uplatňování, vliv na recidivu a mediální obraz v televizním zpravodajství.* (Teoretické a trestněpolitické aspekty reformy trestního práva v oblasti trestních sankcí III.) Praha: IKSP. ISBN 978-80-7338-148-6

II.1.4. Security detention from the perspective of certain foreign legislations

Petr Škvain

In recent years the institute of preventive detention has become a subject of international attention, mainly in conjunction with a crucial decision of the European Court of Human Rights on 17 December 2009 (M. v. Germany) that was followed by a surprising decision of the German Federal Constitutional Court on 4 May 2011. It is the development of the institution of preventive detention in Germany, especially from 1998 onwards, that shows how, in a country that is otherwise characterised by long-term stability in its system for criminal sanctions and their imposition, individual forms and legal grounds for the imposition and the duration of this protective measure have been extended as a result of political interventions. In this respect we can also mention a very interesting, but nevertheless unfounded, line of reasoning used by the German Federal Ministry of Justice before the European Court of Human Rights in the case of M. v. Germany; the Ministry asserted that the legislation on preventive detention contributed to a low number of prisoners in Germany. The aforementioned argumentation on preventive detention corresponds to a current trend in criminal policy: ensuring the safety of citizens against potentially dangerous offenders can be identified throughout the world as having been the main reason since the 1990s for implementing criminal policy reforms, with a focus on the area of criminal penalties including protective measures. The specialised and largely foreign (other than Czech) literature also presents some critical views, asserting that a shift has taken place in the focus of the model for the protection of society, specifically from the proper investigation of offences and subsequent punishments of offenders to efforts to identify a certain group of 'dangerous individuals' who – because of their status – ought to be deprived of their personal freedom for purely preventive reasons.

If we make a broader comparison, it is clear that problems with dealing with *dangerous offenders* also occur in the Anglo-American legal system. Different legislative solutions, including legislation on preventive detention, always show specific features as a result of historical development and, in particular, of the specific needs of the criminal sanctions system in the particular country. In addition, various tragic cases of serious sexual offences, often committed against children and which have been widely discussed in the media, have had a significant impact on shaping the protective detention legislation.

Although the approaches towards the problems under discussion can differ significantly, the basic questions, related to finding a suitable way of treating a specific group of high-risk offenders, remain essentially the same within every legal system. In relation to the institution of preventive detention, the problems of the possible intrusion into the basic human rights of the detained person, and the gravity of any such intrusion, can in this respect be regarded as of great importance.

The research was mainly focused on a basic analysis of preventive detention legislation with regard to selected foreign (i.e. Australian and German) laws. The aim was not to give an exhaustive description of the given legislation, but, in a comprehensible way, to point out the most important contexts for this legal institution, so that the findings could contribute to its proper understanding and possibly also prevent inappropriate interference in the current Czech legislation on security detention (zabezpečovací detence), which is a Czech variant of preventive detencion. The part of the research summarised in this monograph focuses on preventive detention legislation in Australia, or in the individual Australian jurisdictions where this special measure is in force, and on the relevant legislation in the Federal Republic of Germany. The selection is not random, although these laws show considerable differences even when the different concepts that apply generally in the legal systems are taken into account.

Classic methods were used to solve the task, namely an analysis of the relevant laws, including basic case law and a study and analysis of the specialist foreign literature and other original sources, and the comparative method was also used for part of the study.

In the Czech penal code *security detention*, along with protective treatment, the confiscation of items and protective education, is classified as a *protective measure*. This classification can, of course, can raise some doubts, specifically concerning the definition of this institution in association with the protective treatment in chapter five of the penal code (which is devoted to criminal sanctions). Neither in the foreign literature nor in the individual laws is the term 'preventive detention' interpreted and used in a unified way. With regard to this lack of terminological unity, the following interpretations can be considered in relation to 'preventive detention' in the broadest sense:

- *Ante delictum* or *praeter delictum detention*. A person's liberty is, in these cases, restricted not on the basis of a criminal charge, but merely on the basis of the person's status following a political decision to identify individual persons as a 'threat to society'.

Examples are decisions made under the *Military Commission Act 2006* (USA) or the *Community Protection Act 2006*, which governs immigration policy in the United States of America;

- A measure of a procedural nature whose purpose is to prevent the offender (when still a defendant) from committing further crimes. In most European countries this type of preventive detention is defined as the institution of custody during criminal proceedings;
- Modalities within a custodial sentence. Typically this involves placing a convicted offender in a prison with a high-security regime (e.g. under Section 41 of the Italian law on custodial sentences). The stricter regime for serving the sentence is, in this case, based on the need to prevent the offender from committing further crimes;
- A preventive measure taken in reaction to the offender committing a criminal offence or an offence that is otherwise punishable (i.e. in different circumstances, e.g. unless committed by persons not criminally liable). The offender's danger to the public in terms of his or her potential for repeat offending must usually be proved. Here, the time when the preventive detention is imposed is decisive. If the preventive detention is imposed after a convicted offender has served a custodial sentence, we speak of *post-sentence preventive detention*.

The problems of preventive detention have been intensively discussed within individual Australian jurisdictions since the early 1990s. Preventive detention, in the form of post-sentence preventive detention, was first introduced in the state of Victoria by the *Community Protection Act 1990 (Vic)*. Another landmark in the development of Australian preventive detention legislation is the case of Gregory Kable from New South Wales (NSW), whose expected release, in the same way as that of Garry David, attracted much political debate. In reaction to this situation the government of New South Wales submitted a proposal to parliament for a special law that would enable the further detention of persons who had already served their custodial sentences and were due to be released. The *Community Protection Act 1994 (NSW)* was subsequently adopted and came into effect on 6 December 1994. In 1996, however, the High Court of Australia decided that the *Community Protection Act 1994 (NSW)* should be revoked, because the powers given to the Supreme Court of New South Wales were incompatible with the exercise of federal jurisdiction.

As a consequence of this judgment of the High Court of Australia, no new legislation on preventive detention was adopted in any of the Australian jurisdictions until 2003.

Post-sentence (preventive) detention was first introduced by the (special) *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* in the state of Queensland in 2003. This was the first law in whole of Australia to introduce the possibility that a measure could be imposed for an unlimited time with the aim of depriving a convicted offender of his personal freedom after he had served his custodial sentence, based on the presumed dangerousness of this person to the public. As is clear from the explanatory memorandum, the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* was adopted in reaction to increasing concerns about public safety after the release of offenders who had been convicted of sexually motivated crimes, not only because of the repulsive nature of the offences, but also because of the lack of evidence of the rehabilitation of those convicted offenders who refused to participate in special therapy programmes [*Explanatory Memorandum, Dangerous Prisoners (Sexual Of-*

fenders) Bill 2003 (Qld) 1]. The *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* came into effect on 6 June 2003, just three days after it had been presented for discussion in the unicameral parliament of the state of Queensland. Following the adoption of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* and the subsequent ruling of the Supreme Court of Australia in Fardon v. Attorney-General in 2004, similar laws were adopted in Western Australia [*Dangerous Sexual Offenders Act 2006 (WA)*], New South Wales [*Crimes (High Risk Offenders) Act 2006 (NSW)*], Victoria [*Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)*] and the Northern Territory [*Serious Sex Offenders Act 2013 (NT)*]. As part of the basic overview of individual laws, it is necessary to mention that the New South Wales legislation was substantially amended in 2013 by the *Crimes (Serious Sex Offenders) Amendment Act 2013*. The amended legislation in New South Wales is now applicable not only to a group of high-risk sex offenders, but also to high-risk violent offenders; this was also reflected in the change of the name of the relevant law.[1]

Numerous objections have been raised within Australian academic and judicial fields to the concept of post-sentence preventive detention. The criticism is not aimed only at this concept, but also at, for example, the special form of custodial sentence of *indefinite detention* and the concept of preventive punishment in general. Although in the Fardon case the Supreme Court of Australia ruled that the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* does not contradict the federal constitution, discussions concerning, primarily, the legality of this special measure continue to abound. The aforementioned decision of the Supreme Court of Australia played a key role in the development of this special form of legislation, for the case represented a test of the constitutionality not only of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* in force in the state of Queensland but also of the whole concept of the special treatment of a specific group of convicted offenders in Australia.

Other objections are that the imposition of post-sentence preventive detention infringes:
- The principle of proportionality and finality of the sentence imposed;
- The rule of law;
- The principle of *ne bis in idem (double jeopardy);*
- The principle of non-retroactivity;
- The principle that deprivation of liberty should be based only on the commission of a criminal offence.

Apart from the custodial life sentence (*lebenslange Freiheitsstrafe*), preventive detention (*Sicherungsverwahrung*) is considered one of the severest sanctions in Germany. This opinion is primarily based on the fact that the protective measure is connected to a deprivation of personal liberty that may be indefinite in time and therefore potentially lasts for a lifetime. The institution of preventive detention has also been subject to long-term criticism. The specialist literature states that the role of preventive detention as a tool of criminal policy is contentious. It is often pointed out that between 1998 and 2008 the legislator inappropriately extended and eventually almost obscured the statutory conditions

1 The original name of the law in question was *The Crimes (Serious Sex Offenders) Act 2006 (NSW)*.

for imposing this preventive measure. The question of whether it is even possible to make a reliable prediction of the future commission of a serious offence after the execution of a custodial sentence can be seen as another problematic factor.

The purpose of preventive detention in Germany is to ensure the protection of the public against a specific group of high-risk offenders who are likely to commit (repeatedly) a particularly serious crime in the future. When compared with the former legislation, the emphasis is on the treatment and rehabilitation of the convicted offender as part of the execution of this protective measure, and therefore not only on simple 'neutralisation'. This purpose follows from the current legislation on the execution of this protective measure, which explicitly includes an obligation to provide the convicted offender with assistance for social reintegration (§ 129 StVollzG).[2]

The legislation on preventive detention (*Sicherungsverwahrung*) in Germany is found in the penal code, namely in the provisions of Sections 66 to 66c StGB. An important source is also included in the provision within sections 7 and 106 of the Juvenile Justice Act of 1953 (*Jugendgerichtsgesetz*, JGG) which is *legis specialis* to the penal code. The procedural context is governed by the Criminal Procedure Code (StPO). The execution of preventive detention was originally governed in all the states of Germany by the law on custodial sentences and measures involving the restriction (deprivation) of personal liberty (*Strafvollzugsgesetz*, StVollzG); this was in force until 31 December 2007.[3] Following changes to the German Constitution (GG), the German states have had independent legislative powers within this area since 1 January 2008. Some states of Germany have used this power and adopted their own laws that also cover the conditions for execution of preventive detention.[4]

The German legislation on preventive detention is, when compared, for example, with the relevant Czech legislation, quite complex. In principle it distinguishes three basic forms of preventive detention:

- Primary preventive detention (*Sicherungsverwahrung*) – Section 66 StGB;
- Reservation of preventive detention (*vorbehaltene Sicherungsverwahrung*) – Section 66a StGB;
- Post-sentence preventive detention (*nachträgliche Sicherungsverwahrung*) – Section 66b StGB;

However, the current German legislation on preventive detention sets out seven variations (legal reasons) for the imposition of this criminal sanction, within the aforementioned basic forms. Depending on the legislative requirements, we can also distinguish between

2 The purpose of preventive detention is also defined in the laws of some of the states of Germany covering (among other things) the conditions for the execution of this protective measure (cf., for example, Article 2 of a particular law on preventive detention – *Bayerisches Sicherungverwahrungsvollzugsgesetz*, BaySvVollzG).

3 *Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung (Strafvollzugsgesetz - StVollzG).*

4 See cf. e.g. Baden-Würtenberg (JVollzGB), Bayern (BayStVollzG), Hamburg (HmbStVollzG), Essen (HstVollzG), Niedersachsen (NJStVollzG).

cases in which a court *must* impose preventive detention (mandatory form) and those in which, provided that the legal conditions are have been met, it *may* decide to impose this criminal sanction (facultative form):

- variation no. 1 – Section 66 par. 1, StGB, mandatory form,
- variation no. 2 – Section 66 par. 2, StGB, facultative form,
- variation no. 3 – Section 66 par. 3, first sentence, StGB, facultative form,
- variation no. 4 – Section 66 par. 3, second sentence, StGB, facultative form,
- variation no. 5 – Section 66a par. 1, StGB, facultative form,
- variation no. 6 – Section 66a par. 2, StGB, facultative form,
- variation no. 7 – Section 66b StGB, facultative form.

The analysis of the legislation on preventive detention in Australia (or in the different Australian jurisdictions whose laws define this institution) and in Germany reveals that the institution of preventive detention is, when one makes a broader legal comparison, not understood in a unified way. This conclusion is not necessarily surprising if one takes into account the generally different conceptions of the two legal systems. The different legislative solutions to preventive detention in Australia and the Federal Republic of Germany show specific signs as a result of historical development and, in particular, of penal and political needs. On the other hand, it should be pointed out that the fundamental legal problems (questions) connected with preventive detention are basically the same in both states. The problems can be discussed primarily from the standpoint of the interference of preventive detention with the basic human rights and freedoms of the person in detention, the possible alternatives to preventive detention, and the use of specialised risk assessment tools. The role of preventive detention as a tool of criminal policy is, at the very least, controversial. Despite that it has been observed during recent decades that politicians increasingly tend to support the use of this criminal sanction, usually in connection with dramatic reactions of the public to publicised cases of sex crime. The aforementioned conclusion is, however, also true for the laws that provide for preventive detention outside the criminal law, usually as a preventive measure of a non-penal nature.

From the perspective of the Australian legislation, post-sentence preventive detention is used purely as a preventive measure, and not as a legal consequence of a criminal offence or an action that is otherwise punishable (i.e. in different circumstances, e.g. unless committed by persons not criminally liable). Despite the elements that are said to constitute preventive detention, post-sentence preventive detention has regularly been included among preventive detention schemes in the broader sense, for example along with the possibility of imposing indefinite detention. However, it is necessary to make a strict distinction between indefinite detention and this preventive measure. The imposition of indefinite detention, a special form of punishment by the deprivation of personal liberty, is only applicable as part of the decision-making process on guilt and punishment for a criminal offence that has been committed. This is in clear contrast to the Australian conception of preventive detention [*post-sentence (preventive) detention*], which is imposed as a subsequent (preventive) measure only. On the other hand, in the German legislation preventive detention (*Sicherungsverwahrung*) is defined as one of the preventive measures (*Maßregeln der Besserung und Sicherung*). The basic theoretical foundation of this legislation is that the impositions of a penalty that is limited by the offender's level of guilt cannot effectively ensure the safety of the public in all cases.

Although the approaches to the concept of preventive detention in the laws studied in this paper differ significantly, the main purpose of this legal institution remains the same – to ensure the safety of the public against a specific ('narrow') group of high-risk offenders who are likely (in the future) to commit a serious crime repeatedly. The execution of preventive detention, however, cannot focus on mere neutralisation (insulation), when an emphasis must be also placed on the possibility of the treatment and rehabilitation of the offender, if this is possible given the state of his health. Otherwise, the preventive detention would represent a mere extension to the custodial punishment that has usually already been served.

In this respect one can point to a 'transformation' of the German legislation, in relation to the crucial judgement of the European Court of Human Rights on 17 December 2009 (*M. v. Germany*) that was followed by the decision of the Federal Constitutional Court on 4 May 2011. On the other hand, the legislation on the secondary purpose of preventive detention in the different Australian jurisdictions can be considered inconsistent. The comparison of the individual laws reveals interesting findings. According to Article 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, in Queensland a primary purpose of the legislation in question is to ensure the appropriate protection of the public and to do so either by the continuing detention of the offender or by deciding on a special form of supervision, and further to ensure the continuous monitoring, care and treatment of the special group of convicted offenders in order to achieve their rehabilitation or correction (cure). However, in the legislation of Western Australia [Article 4 of the *Dangerous Sexual Offenders Act 2006 (WA*)], correction is not mentioned at all; and the legislation of New South Wales [Article 3 of *The Crimes (High Risk Offenders) Act 2006 (NSW)*] contains a requirement for rehabilitation, but does not mention that monitoring, care and treatment must be ensured, and focuses on the 'mere' protection of the public. The *Serious Sex Offenders Act 2013 (NT)* of the Northern Territory, on the other hand, explicitly states as its primary purpose the improvement of protection and the safety of victims of serious sex crimes and of the public in general. The tools to achieve these objectives (goals) are monitoring, and the imposition of post-sentence preventive detention or a special form of supervision for convicted persons who have committed serious sex crimes and represent a serious threat to the public. A secondary purpose of the cited law is the explicit provision of conditions for the rehabilitation, care and treatment of these convicted offenders.

From the analysis of the laws in question, and seen from the perspective of a broader comparison with other laws, it is possible to classify the Australian conception of post-sentence preventive detention as a *Community Protection Model*, whereas the German legislation on preventive detention can be classified as a *Clinical Model*.

While preventive detention is a measure that is unlimited in time, the people in detention are required to be provided with special care in the form of therapeutic and rehabilitation programmes that create conditions that reduce the risk of recidivism and in this way help towards their possible release. In this respect, it is of crucial importance whether the care and treatment that is required to be provided is actually available in the conditions in which the execution of the measure takes place and during the imposition of this measure.

In terms of defining the formal and especially the material conditions that must be met before preventive detention is imposed, it is possible to trace certain differences in the meaning of the 'presumed dangerousness' that the convicted offender must represent for the public or an individual after his possible release.

In the laws of the different Australian jurisdictions we can find quite similar definitions of this material condition. In Queensland, for example, the presumed dangerousness must be demonstrated by evidence in the preliminary hearing that the convicted offender represents a serious danger to the community. The Supreme Court draws a conclusion of presumed dangerousness by considering whether there is *an unacceptable risk* that a convicted offender will repeatedly commit serious sex crimes if he is released after serving his sentence or if he is released from his custodial sentence and no special form of supervision is imposed on him. When deciding whether to classify the convicted offender as *a person representing a serious danger to the community*, the decision of the Supreme Court must be based on *acceptable and cogent evidence*, a *high degree of probability* that the offender will commit a serious sex crime, and other circumstances set out in law. By contrast, the German legislation defines the material conditions for the imposition of preventive detention (*Sicherungsverwahrung*) with regard to the particular form of preventive detention and the person (whether adult or juvenile) upon whom it is or will be imposed. For instance, in the case of primary preventive detention (Section 66 StGB) it must follow from the overall assessment of an offender and his actions that, because of his disposition to commit serious criminal offences, particularly those that cause severe mental or physical damage to the victim, the offender represents, at the time of the conviction, a danger to the community. Perfectly logically, the material conditions are modified in the case of a reservation on the imposition of preventive detention in accordance with Section 66a StGB (*vorbehaltene Sicherungsverwahrung*), for at the time of decision the court only reserves an option to order preventive detention in the future. However in this case as well it needs to be identifiable, or at least probable with sufficient certainty, that the defendant represents a danger to the community by reason of his tendency to commit serious crimes that cause severe mental or physical damage to the victim.

The Czech criminal law, in a similar way to the German law, defines the institution of security detention as a protective measure (Section 100 of the penal code). Although the institution of security detention has always been part of the recodification of the substantive criminal law in the penal code, this new protective measure was introduced by an amendment no. 123/2008 Coll. effective from 1 January 2009, however in a reduced version, while the penal code no. 140/1961 Coll. was still in force. After the introduction of the new penal code in 2009 (law no. 40/2009 Coll.) the institution of security detention was included in the full text, effective from 1 January 2010. A subsequent amendment of the penal code adopted by law no. 330/2011 Coll., effective from 1 December 2011, modified the formal condition for the imposition of the obligatory form of security detention in accordance with Section 100 par. 1 of the penal code, by unifying the category of 'criminal offences' (offences) as crimes punishable by any of the three forms of security detention. Another fundamental change is the alternative of changing the in-patient protective treatment in a psychiatric hospital to security detention, in accordance with Section 99 par. 5 of penal code, without satisfying the general conditions stated in Section 100 par. 1 or 2 of the penal code. The aforementioned amendments to the legislation can be considered as non-systematic, because they should be implemented only after they have been properly evaluated.

A broader comparison with other laws suggests that the Czech model of security detention can be classified as a *Clinical Model*, because, besides the protection of the community, it also emphasises the therapeutic, rehabilitative and other effects on detained persons. From a general point of view, it is possible to state that the Czech legislator maintained the necessary 'distance' between security detention and custodial sentence. The Czech legislation on security detention also fulfils the other minimum requirements defined in the decision of the German Federal Court on 4 May 2011, namely that security detention must be only imposed as *ultima ratio* in relation to other protective measures; the detention must take place away from custodial sentences in special buildings that are suitable in terms of the purpose of the execution of such a protective measure; the detained persons must be provided with treatment programmes that are aimed at reducing the level of the danger they represent for the community; and finally, in accordance with the principle of proportionality, there must be a review of the reasons for the further continuation of the security detention at least once every 12 months. In these basic respects it is possible to regard the legislation on security detention as satisfactory.

When comparing the different formal and material conditions required for the imposition of security detention under the Czech legislation, the analysed laws seem very detailed and even complicated. In contrast with the German legislation, it is also possible in the Czech Republic to impose security detention on an insane person. Comparing the material conditions for the imposition of this criminal sanction in greater detail, we find that the Czech penal code requires that *the continuing liberty of the perpetrator of a criminal offence or an offence otherwise punishable would represent a danger to the public in the future* [cf. Section 100 par. 1 or 2 letter a) of the penal code]. When compared with the German legislation, for example, no further detail is given for this condition. When examining the formal conditions, the Czech legislation is more general than the foreign laws analysed above. This situation was to a certain extent caused by legislative changes as part of which the categories of criminal offences were unified as *crimes*.

The analysis of the different conditions for the imposition of security detention also shows that, in the Czech legal environment too, the institute of security detention can be used, in relation to other protective measures or sanctions, only as a last resort (*ultima ratio*). In this respect it is possible to mention that the state can use the deprivation of personal liberty as a tool for the protection of the public, but that at the same time the state must aim for the rehabilitation of the offender. The experience from abroad shows that the non-systematic extension of conditions or the implementation of new forms of this institute, especially under the pressure of dramatic reactions of the public to highly publicised cases of sex crimes, can at a later time result in serious legal consequences whose correction is usually complicated and financially demanding.

Translated by: Ema Vlčková

Škvain, P. (2015): *Zabezpečovací detence z pohledu vybraných zahraničních úprav*. Praha: IKSP. ISBN 978-80-7338-147-9

II.1.5. Sanction policy and its implementation

Miroslav Scheinost, Helena Válková, Lucie Háková, Jana Hulmáková, Petr Kotulan, Jan Rozum, Pavel Šámal, Petr Škvain, Jan Tomášek, Jiří Vlach

After the adoption of the new Criminal Code (No. 40/2009 of the Collection of Laws of the Czech Republic), which came into force on 1 January 2010, the question arose to what extent and how quickly the changes brought about by the new Criminal Code, especially regarding alternative sanctions, would manifest themselves in sentencing practice. The legislative regulation expressed by the new Criminal Code offered a relatively broad spectrum of penal sanctions which should enable a more nuanced differentiation when deliberating in search of a suitable response to crime. The issue is, on the one hand, to what extent the possibilities of alternative sanctions started to be used, and, on the other hand, how the toughening of penal policy with regard to most serious offences would influence the application of the unconditional prison sentence. More specifically, whether, in the case of recidivists and perpetrators of very serious forms of crime, the number of persons imprisoned would rise and the length of the term of imprisonment would extend; and also whether and how these legislative changes would influence the make-up of the prison population. In a word, it was necessary, not only from the point of view of scholarly interest, but particularly from the point of view of practice, to answer the question whether and to what extent the new Criminal Code fulfilled the expectations of the legislator.

In order to respond to the need for such an analysis and evaluation, a research project was prepared and implemented, with the title **"Theoretical and penal-political aspects of the criminal law reform in the area of penal sanctions"**. The research team comprised employees of the Institute of Criminology and Social Prevention, and also experts in the area of criminal law and penal policy working at the Faculty of Arts, Charles University and in the justice system. The project was endorsed by the Czech Science Foundation to be implemented between 2012 and 2015 (project No. P408/12/2209). This period was considered adequate for the gathering of a sufficient amount of findings about the implementation of the Criminal Code, enabling its evidence-based analysis and evaluation.

The research objective was the analysis and evaluation of the legislative regulation of penal sanctions after the changes which were brought about as a result of the adoption of the new Criminal Code, placing them in the context of sanction policy as applied in the post-1989 Czech Republic. The research focused on the impact of the new Criminal Code on the sentencing practice of selected criminal justice institutions, on the character and structure of the sanctions imposed, and, consequently, on the make-up of the prison population, and also on the activities of the Prison Service of the Czech Republic and the Probation and Mediation Service.

The aim was, above all, to ascertain whether the abovementioned legislative changes fulfilled their purpose, which means: whether the numbers of persons serving a term of imprisonment had changed, whether the effectiveness of the imposed sanctions had increased, and whether at least some of the problems in sentencing practice had been removed. The research deliberately focused on gathering findings pertaining to the effectiveness of selected concrete penal sanctions: house arrest, community service, conditional sentence with supervision, and short-term unconditional prison sentences; furthermore, it encompassed also the issues of juvenile offenders, and the relatively recent protective measure of preventive detention. In addition, re-offending in the case of these sanctions was examined, as well as selected characteristics of the offenders on whom these sanctions were imposed. It was ascertained to what extent these institutes fulfilled their expected function, and which factors stimulated – or, conversely, hampered – their application and effectiveness.

Therefore the central axis of the research was sanction policy and the application of penal sanctions. This central topic was examined from several perspectives, including legal analysis of legislative changes in the context of the development of Czech criminal law, the application of sanctions in the practice of criminal justice, and the attitudes and opinions of expert practitioners regarding the new Criminal Code, the sanctions and their effectiveness. Last but not least, the project also aimed at assessing the impact of sanction policy on the development of crime, especially re-offending, which, of course, directly influences the make-up and quantity of the prison population. The unifying element of this broad spectrum of research approaches was the effort to ascertain the effectiveness of penal sanctions, as well as the problems linked with their application and impact; and the measure of re-offending, determined particularly with regard to selected sanctions which were the object of research, served as one of the criteria of their effectiveness.

Of course, the effective application of the new Criminal Code, and the fulfilment of the purposes and aims which it targeted, depend, to a large extent, on the measure of its acceptance and implementation by the justice organs and employees, but also on the measure of its comprehension and acceptance by the civil public. Therefore the research focused not only on ascertaining the opinions and attitudes of judges, prosecutors, the Probation and Mediation Service and the Prison Service, but also on ascertaining the attitudes of the public towards sanction policy, as well as its awareness of the sanctions imposed, the ways of public presentation of sanction policy in the media, and also the perception of sanction policy by the persons who it is imposed on.

On the basis of the findings gained, an evaluation was carried out whether and to what extent the outcomes of the application of the new Criminal Code signal the need for certain corrections, both with regard to its concrete provisions and pertaining to the perspective aims of sanction policy in the Czech Republic.

During the implementation phase, several publications came out, presenting findings gained from the point of view of the aspects listed above. Apart from a number of articles in scholarly periodicals and anthologies, five monographs were published successively.

The concluding monograph summarizes the main findings of the whole four-year research project, attempting to place them in the overall context of the implementation of sanction policy in the Czech Republic.

A counterpart to the evaluation of findings from the analysis of sanction policy, sanctions and their application in justice practice is the analysis of public opinions on sanction policy, and of the opinions of persons sentenced to unconditional imprisonment. In a sense, this is a mirror which society holds up to sanction policy. Obviously, the reflection of sanction policy in this mirror is not objective; and this is because the research, including this final synthesis, deals with the way most information about sanction policy and sanctions reaches the public through the media.

Finally, the concluding summarization presents proposals which follow from the research findings with regard to possible corrections of sanction policy, and also recommended measures or suggestions de lege ferenda.

Due to the complexity, scope, and also development of the issues covered, the research was implemented as medium-term, covering the 4 years between 2012 and 2015. This period made it possible not only to adequately analyse sources and data, but also to observe the application of the Criminal Code and its influence on the implementation of sanction policy in the mid-term horizon.

The research covered a very large field, which demanded the inclusion of a number of specific approaches towards the issues examined, and the **use of a broad spectrum of both descriptive and explorative research methods, and qualitative and quantitative techniques**.

When researching sanction policy and the implementation of the Criminal Code, the methods used included legal analysis and comparison focusing on the development of the Czech penal legislation, analysis of statistical data, and secondary analysis of relevant sources from both Czech and international scholarly literature, including documents and materials published by international organizations. When researching the implementation of provisions of the new Criminal Code, the methods used included primarily analysis of statistical data (analysis of figures from justice statistics, police statistics, statistics of the Prison Service of the Czech Republic, and statistics of the Probation and Mediation Service); a questionnaire survey among judges, prosecutors, and employees of the Probation and Mediation Service and Prison Service; analysis of court files; analysis of data on convicted persons from the Register of Sentences; analysis of materials compiled by district courts at the request of the Supreme Court; case studies; and expert examinations in the form of guided interviews and expert's opinions on selected issues. When researching the public response to the changes in sanction policy and the implementation of the new Criminal Code, the methods used included probes into the opinions and attitudes of the public on a representative sample of the population, in the form of the so-called omnibus investigation which was repeated for three successive years; content analysis of the print media and analysis of television news reporting; and a questionnaire survey among the prison population.

A prominent feature of the legal regulation of penal sanctions in the new Criminal Code, distinguishing it from the previous regulation, is the application of two opposite lines of punishing, leading to a more nuanced differentiation of penal sanctions. On the one hand, this legal regulation, following the amendments of the previous Criminal Code which had been underway since 1989, implemented the principle of depenalization and stressed the principle that imprisonment must be seen as *ultima ratio* of the sanction system.

Thus the Criminal Code continued with restricting the space for imposing an unconditional prison sentence, further extending the opportunities for the use of alternative sentences and substantive law alternatives for the punishment of the less serious category of offences, i. e. misdemeanours. A conspicuous manifestation of this tendency was also the inclusion of new alternative sentences in the system of sentences: house arrest, and the prohibition to enter cultural, sports and other social events.

Sanction policy as part of penal policy reflected significant social trends, particularly the strong politicization of crime (which took place in the Czech Republic, too) – the process whereby, over the last few decades, crime has become an important topic of public political discussion, leading to a repeated toughening of penal repression. In response to this, the Criminal Code introduced the opportunity to punish crimes, above all the particularly grave crimes, more severely.

Another way the strengthening of penal repression influenced the newly-adopted Criminal Code was through the toughening of punishments for less serious crimes (such as neglect of compulsory maintenance or obstructing the enforcement of an official decision) and through dependence on re-offending, which led to quite a marked increase in unconditional prison sentences, especially between 6 months and 3 years, causing the long-term growth of the number of prison inmates by 2700 persons. Taking into account also the simultaneous slow onset of the new alternative sentences, particularly house arrest (where the delay was caused by the fact that electronic control of its execution was not introduced concurrently with the Criminal Code, although this had originally been anticipated) and the prohibition to enter cultural, sports and other social events, the combined effect was decidedly negative, because, in the Czech Republic, especially petty property crime and neglect of compulsory maintenance jointly comprise around 70 percent of detected crime.

The imposition of short-term unconditional prison sentences was strongly influenced also by a certain restriction of the imposition of the community service punishment, based on the new provision of § 62 Art. 2 of the Criminal Code, stipulating that the court usually shall not impose a community service punishment in the case of an offender who, in the course of the three years before the imposition of this kind of punishment, had a community service punishment transformed into a prison sentence in line with § 65 Art. 2 of the Criminal Code (see also the regulation of the criminal order where it is now, in line with § 314e Art. 3 of the Criminal Procedure Code, necessary to request a report by a probation officer). Another phenomenon which must be assessed negatively is the constantly low number of pecuniary punishments imposed.

All of this manifested itself not only in the larger number of unconditional prison sentences imposed, but also in the increasing imposition of the conditional prison sentence at the expense of other alternative punishments.

In the case of diversions with restorative elements, we can, since as early as 2009, see their decreasing implementation during pre-trial proceedings, followed by certain stabilization in the last few years. However, this decrease was not substituted by a conspicuous rise of their implementation during court proceedings. This is broadly linked with the current regulation of shortened pre-trial proceedings, and the pressure on law enforcement bodies to try the case as soon as possible. Consequently, this complicates the collaboration with the Probation and Mediation Service both when preparing conditions for diversions, and when gaining information about the conditions for imposing alternative sanctions.

More conspicuous changes in sentencing practice took place only in 2013, comprising mainly a marked decrease in the percentage of unconditional prison sentences, and, on the other hand, the rise of, particularly, the "simple" conditional sentence. This can be partly attributed to the amendment of the Criminal Code, which, excepting the case of theft, obstructing the enforcement of an official decision and neglect of compulsory maintenance, returned to a previous legal regulation. The 2013 amnesty of the president of the Czech Republic is seen as a significant influence, too. Nevertheless, an important factor will also be the increase in cases dealt with by a criminal order, the prevailing sanction, in this case, being a simple conditional sentence.

Similar trends in sanction policy, although, of course, the ratio of the various sanctions imposed by courts differs markedly, can be observed also in the case of juvenile offenders, and offenders aged 60 years and older.

Thus one of the main aims of the recodification – depenalization and the reduction of the unconditional prison sentences imposed – remained, strictly speaking, unfulfilled. Even after the adoption of the new Criminal Code, the number of persons imprisoned per 100,000 population in the Czech Republic, especially when compared to Western European countries, remains high over a long period.

As expected and in line with existing criminological research on crime career, it was confirmed that re-offending is closely linked with some basic demographic factors, especially gender and age. Of course, a key variable in all analyses was also previous experience with crime, including the number of offences committed, their type, and the age when the given person first came into contact with criminal justice.

The negligible difference between the resultant effect of the sanctions examined by our research confirms the thesis that the central theme of crime policy should not be punishments and their severity or suitability. When comparing the outcomes of this research to similar international studies, we can observe that, in the main, our research project produced the expected figures, since, in investigations of this type, the standard rate of re-offending is between 30 and 50%.

The system of post-penitentiary care needs not only to be filled with content and adapted to meet the needs of the persons ending their term of imprisonment, but should also be provided for in its operational, financial and personal aspects so that services and programmes can operate on a multi-year basis. An essential component of post-penitentiary care must be also independent and expert evaluation of the effectiveness of the various programmes so that, in the course of time, really effective programme are put into practice, and their existence and further development are secured. The testimonies of prisoners gained as part of our research decidedly confirm the urgent need to substantially improve the quality of the preparation for release, as well as the quality of follow-up post-penitentiary care. Especially important is assistance in securing employment, and, in the case of some prisoners, also housing; this is linked with the effort to maintain a social (in a more narrow sense, family) background during the term of imprisonment.

The need for temporary housing and/or employment and financial support after the release from prison may apply to two thirds of prisoners; nevertheless, it can be estimated that at least a third of them do need such help with securing "input" conditions after their return to freedom. Therefore the capacity of post-penitentiary care should be arranged in such a way as to be able to deal at least with 30% released persons.

It would be useful to dedicate more attention also to the presentation of penal policy in the media. The presentation of penal sanctions is strongly influenced by the media attractiveness of depicted crimes. The image of punishing and penal sanctions in television news reporting corresponds, above all, to the most frequently presented punishment of long-term imprisonment. Thus we can say without much exaggeration that, in the media discourse, punishment equals the imprisonment of the offender. From the point of view of the media presentation of penal sanctions and sanction policy, the predominantly depicted attitude towards punishing perpetrators of crime is the repressive approach, with minimum attention being given to alternative sentences, resocialization approaches towards offenders etc. We should realize that this fact significantly influences the formation of attitudes of the lay public. It is essential that alternative sentences are thematized in the media discourse in other than problematizing contexts, too.

Therefore it is no wonder that the outlook of the Czech public remains quite punitive, with some 60–70% percent of respondents believing in the deterring effect of severe punishment and a severe regime in prisons, and also considering the punishments imposed to be the same or rather more lenient when compared to the situation ten years ago. The knowledge of alternative sentences and measures, and the knowledge of the structure of sentences imposed remains rather limited. These public opinions then naturally result in the public pressure on the further tightening of sanctions or sanction policy.

Admittedly, the present legal regulation including a system of measures for juveniles – despite the abovementioned partial problems – provides sufficient scope for the application of alternative sanctions including possible individualization of a concrete sanction so that it corresponds to the gravity of the offence and the criminogenic characteristics of the offender while also reflecting the interests of the injured, which applies also to diversions with restorative elements. However, these opportunities are not utilized. Apart from other things, it is necessary to focus on extending co-operation between the various bodies which participate in the imposition and execution of sentences, while also providing sufficient time for this activity.

Conclusions

One of the main conclusions is the finding that the impact of criminal justice and the measures used on the criminal careers of convicted persons is very limited. In line with the opinions of experts (judges, prosecutors, and heads of centres of the Probation and Mediation Service), it can be stated that effective penal policy must not be restricted to the area of punishing, because the effect of the sanctions imposed is, as a rule, much smaller than the influence of various factors operating in the natural social environment of the offender. State interventions can be the most effective when they manage to launch or speed up these natural life processes.

Therefore if our aim is to decrease crime or reduce re-offending, it is absolutely essential to extend the discussion about suitable measures to encompass also the area of broader social policy. It is really not enough to rely on penal repression; although it is often necessary, it addresses only the consequences, not causes of certain negative social phenomena. Not even alternative sanctions can be expected to have a stronger effect on these processes if we do not create the required conditions for their application, both in the area of legislation and criminal justice, and as part of broader social policy. At the same time, it is necessary to focus more on the area of penitentiary and post-penitentiary care.

The abovementioned findings confirm the need for a realistic assessment of the possibilities of penal repression and imposed sanctions, as well as the necessity of deeper analyses which could become the basis of a rationally conceived and more effective sanction policy. Offenders must not be seen only as objects of educational treatment, but it is necessary to strive for their cooperation, while respecting their personality, particularities, rights, and duties they have towards their family, employer, community etc. Therefore it is absolutely essential to develop the positive aspects of the offender's personality and their socially beneficial ties, as attempted, for instance, by the approach based on restorative justice.

Consequently, it is necessary, as far as possible, to create favourable conditions for the resocialization and reintegration of each offender, which should be taken into account not only when imposing a penal sanction, but also in the course of its execution, and, particularly, in connection with the concluding stage of the sanction. As part of the envisaged reform of the prison system, it is therefore important to focus also on securing the smooth transition of convicted persons back into civil life, for instance, through specialized facilities (halfway houses or probation houses) or agencies offering post-penitentiary care. In this respect, it is important to cooperate with the Probation and Mediation Service, social curators, child welfare services, employment agencies, and governmental and non-governmental organizations including churches which provide care for convicted persons and post-penitentiary care. In the case of other convicted persons, it is important to provide assistance with the search for employment and housing, as well as counselling when solving difficult situations and personal problems.

Only this complex approach can lead to a more effective and functional sanction policy in the Czech Republic.

Translated by: Daniel Soukup

Scheinost, M. & Válková, H. a kol. (2015): *Sankční politika a její uplatňování.* (Teoretické a trestněpolitické aspekty reformy trestního práva v oblasti trestních sankcí IV.) Praha: IKSP. ISBN 978-80-7338-154-7

II.2. Shortened forms of criminal proceedings – possibilities and limits

II.2.1. Shortened forms of criminal proceedings – possibilities and limits

Petr Zeman, Simona Diblíková, Vladan Slavětínský, Michaela Štefunková

In the Czech Republic, as in a range of other countries, the effort to accelerate and simplify criminal proceedings is one of the most significant trends in the development of criminal procedure law and in the criminal justice system as a whole. This monograph presents the results of research by the Institute of Criminology and Social Prevention (IKSP) conducted in the years 2012 and 2013. ***The subject of research*** was legal regulation of shortened preliminary procedure and subsequent simplified proceedings before the court (referred to hereinafter as "summary procedure") and their application in practice in the Czech penal process. Other procedural institutes meant to contribute to acceleration of criminal proceedings in the CR as well as approaches to acceleration and simplification of criminal proceedings in certain European countries were also subjected to scrutiny. ***The aim of this research*** was to gain detailed information about the application of shortened forms of criminal proceedings, in particular shortened preliminary procedure and simplified proceedings before the court and evaluation of the options and limits for their further application in the CR.

The research method involved document analysis – Czech legal regulations, specialised literature, relevant official documents and a selected sample of criminal court files, and also an analysis of statistical data from the Ministry of Justice and the Supreme Public Prosecutor's Office, analysis of data from the penal register and finally expert questionnaire survey conducted among judges, public prosecutors and police officers.

The theoretical part of the monograph contains a brief overview of the issue of acceleration and simplification of criminal proceedings generally and in the Czech Republic in particular, a study of simplified forms of criminal proceedings in certain European countries, and the study of the state and development of Czech legal regulation of summary procedure and other institutes which are meant to contribute to acceleration and simplification of the penal process.

Often, the fundamental problem of penal justice systems lies in the burden represented by too high caseload with respect to the capacities of the police, public prosecution authorities, courts, prisons, probation services etc. The common reaction to this problem may be divided into three areas – increasing the capacity of the criminal justice system, reducing the numbers of criminal cases by decriminalisation, de-penalisation and use of diversions and alternative measures, and shortening the length of criminal proceeding by the introduction of simplified forms of the process. Of course, such approaches tend not to be used in their pure form, but in combination, and overlap to a certain extent. Criminal proceedings with the application of certain diversions may be seen as a special (shortened) form of proceedings, in other cases the rigorous use of diversions could, on the contrary, prolong proceedings.

The speed at which the perpetrator of an offence is detected and punished tends to be the deciding factor in the efficacy of criminal proceedings and subsequent punishment. At the same time, the speed of criminal proceedings influences fundamentally the public confidence in the work of the law enforcement and judicial authorities. Great differences exist in the severity, factual and legal complexity of separate offences. A situation where all proceedings are conducted under the same rules and formal prerequisites does not help in meeting demands for speed and individualization of criminal justice. The use of special and, as far as possible, simplified proceedings for less serious criminal matters is contained in the Committee of Ministers of the Council of Europe Recommendation No. R (87) 18 of 17 September 1987. The economic factor is also significant. The complexity of the process leads to criminal proceedings taking longer and costing more. However, making the penal process cheaper should be a secondary goal, since the primary aim of criminal proceedings are fair punishment of offenders and fair trial as imperatives for the existence of a democratic government and a rule of law. While attempting to simplify criminal proceedings the principle of a fair trial, and especially the right of defence, must not be surrendered, even in trivial matters.

Amendment to the Penal Code No. 265/2001 Coll. with effect from 1. 1. 2002 introduced the institute of shortened preliminary procedure and subsequent simplified proceedings before a single judge. Research by the IKSP focused on the application of summary procedure between the years 2002 and 2006 found that summary procedure as a new type of criminal proceedings for the least serious and factually and legally simple criminal cases had proved their overall worth; the authorities involved in criminal proceedings adopted this procedure while the rights of the persons against whom summary procedure were conducted remained preserved and their implementation was ensured. Simplification and acceleration of criminal proceedings remains one of the priorities of re-codification of criminal procedure law. Successful introduction of summary procedure more than ten years ago is certainly encouraging in this respect. This is reflected also in the separate legislative steps which have increased the range of situations where summary procedure can be applied. On the other hand, some experts call for caution and others are openly critical in respect of continuing efforts to accelerate criminal proceedings.

A survey of approaches to alternative (simplified) forms of handling criminal matters outside "standard" criminal proceedings in 9 European countries showed that simplification of criminal proceedings is the preferred solution to the problem of overburdened criminal justice systems across Europe. The deciding factor of to what extent the simplified approach may be applied is the particular criminal law traditions and their fundamental principles as well as the relationships between the separate authorities involved in criminal proceedings or the role of the public prosecutor in criminal proceedings in relation to how strictly the principles of legality are applied. In almost every country, the courts may opt to use simplification of proceedings by issuing a penal order without a trial. Also, elements such as so called bargaining procedure, typical for the Anglo-American legal system, are being applied more and more often. One the other hand, it is also clear that each country is taking care not to allow simplification of the process be at the expense of the rights of the defendant or the damaged party, or at odds with the accepted basic principles of criminal proceedings. The employment of simplified procedures is limited to a group of offences for which application of "standard" procedures would mean unnecessary administration and demands on time. Generally they are petty offences where the offender has been caught in the act or immediately afterwards and where the case does not demand any complicated evidence procedure. Employment of a simplified procedure is in most cases subject to the approval of the defendant, or at least the right to appeal against the decision in the event of disapproval is preserved. Increased protection is also applied for youths for whom in certain cases such procedures cannot be applied.

Legal regulation of summary procedure has been amended several times since 2002 in order to remedy the shortcomings of the original wording and to increase the applicability of this institute. The most significant changes include the introduction of the option for the public prosecutor to conditionally defer a petition for sentencing and to approve an out-of-court settlement in shortened preliminary procedure, the widening of the range of offences for which summary procedure may be conducted, and the shift of the beginning of the two-week deadline for completing shortened preliminary procedure forward to the date on which the police body informed the suspect what he/she is suspected of having done and what crime such actions constitute. These changes had a significant influence on application of summary procedure in practice and contributed to the high proportion of their use in comparison to the total number of criminal proceedings conducted.

Further institutes that may encourage acceleration and simplification of criminal proceedings include conditional suspension of criminal prosecution, conditional deferral of a petition for sentencing, out-of-court settlement, waiver of criminal prosecution of youths, penal order and, most recently, guilty plea. It should be added that, with the exception of a penal order – and, it seems, the guilty plea – the acceleration and simplification of criminal proceedings is not the only purpose of the aforementioned institutes. Other important goals include, to varying degrees, to achieve a more profound re-socialisation and educational effect on the offender, to reach reconciliation between the offender and the victim, to prevent of stigmatisation connected with conviction, and to rectify damage incurred by the victim in consequence of an offence. Also in the case of these institutes, amendments of legal regulation have expressed efforts aimed at increasing their efficacy.

Statistical data concerning the use of summary procedure and other institutes under scrutiny must be treated with great care, since the current system of processing and reporting statistical data on criminal justice has significant room for improvement. It is clear from statistics that, judging by the number of cases conducted therein, summary procedure have evolved into a form of criminal proceedings that are of equal weight to "standard" or "classic" proceedings. In fact, during recent years **the majority of all criminal matters were conducted in summary procedure** and more than half of all convicted offenders have been convicted in such proceedings. However, differences in the extent of use of summary procedure exist between regions, and although the gap is closing, they still persist in some regions (even in 2012, classic preliminary proceedings are still the form most commonly used in two judicial regions).

While comparing statistical data on cases conducted in summary procedure and classic criminal proceedings, it can be stated that the differences are becoming less marked. As for the **structure of persons convicted**, the only significant difference between groups of people convicted in summary procedure and standard proceedings was in the age of the offender. Amongst those convicted in summary procedure, the proportion of youths convicted is markedly lower (almost ten times) than among those convicted in standard proceedings. When looking at the **structure of sentences imposed**, it can be said that amongst the punishments (or punitive measures that are imposed to juveniles) imposed in summary procedure, there is clearly a lower proportion of unconditional prison sentences (approx. 15% as against approx. 20%), and on the contrary, the proportion of alternative punishments is higher. The proportion of the most frequent sentence, i.e. a suspended prison sentence, is similar for both groups. Differences can be seen in the **structure of offences** of which offenders are most often convicted. From this point of view, in both types of proceedings the highest occurrence in recent years is for the offence of theft, although numbers of convictions for the offence of disregarding maintenance obligations is also high. Conversely, the numbers of cases of the offence of obstructing the enforcement of an official decision and expulsion, and the offence of threat under the influence of addictive substance, both of which are very frequent in summary procedure, account for only 4% or 3% of standard proceedings, respectively. On the other hand, the offence of fraud in recent years is prosecuted more often in standard proceedings that in summary procedure.

A fairly predictable difference between summary procedure and standard criminal proceedings lies in **the average length of proceedings**. The greatest difference is in the average length of preliminary proceedings conducted by police authorities which is more than ten times shorter in summary procedure that in classic preliminary proceedings. The difference in the average length of proceedings before the court is also considerable. In 2010, the average length of court proceedings from the beginning (i.e. the day when the indictment - or the petition for sentencing in summary procedure - is delivered by a public prosecutor to the court) till to day 1 of the trial in summary procedure was almost half that in standard proceedings. The difference in the average length of proceedings before the court from the beginning until the date on which the court decision becomes final is even more striking – in 2010 this period was about three times longer in standard proceedings.

As concerns the **use of diversions in criminal proceedings**, statistics indicate that the situation is fairly stable. The absolute prevalence of diversions involving conditional termination of preliminary proceedings, i.e. conditional suspension of criminal prosecution and conditional deferral of a petition for sentencing is obvious. These two related types of diversion together account for more than 95% of all diversions employed in each separate year. The proportion of all diversions in the total number of completed preliminary proceedings hovered between 6%-8%. Also in court proceedings the most frequently used diversion (with the exception of penal orders) was conditional suspension of criminal prosecution (in about 95% of cases). Proceedings before the court during the reference period were terminated by some type of diversion (with the exception of penal orders) only in about 2–3% of criminal cases. The use of penal orders in the long-term is at a high level, with more than half of all criminal cases tried in the first-instance by district courts being decided upon in this way.

Analysis of a selected set of 47 criminal court files showed that in comparison with the results of research from 2007, certain differences in the application of the institute of summary procedure are apparent. Although the structure of crimes in the set was more varied, all together this concerned rather cases of petty offences with easy identification of the offender and where the collection of evidence was not demanding. The difference lies in a significantly lower proportion of foreign nationals in this sample. If we simplify the implications, we can say the in the focus group of 2012 the typical offender dealt with in summary procedure is a man, Czech citizen, aged between 30 and 39 years who had already committed an offence in the past. The basic difference from the results of analysis from 2007 lies in the length of summary procedure which, calculated from the very start of criminal proceedings, was almost twice as long in the present research. The difference is most striking in proceedings by police authorities during shortened preliminary procedure where proceedings have become approximately ten times longer.

Also, the ***expert questionnaire survey conducted among 175 judges, public prosecutors and police officers*** was conceived in such a way as to facilitate comparison with the results of research from 2007. The preference for approaches for **solving the high incidence of trivial crime** (simplification of criminal proceedings or decriminalisation) have shifted in the separate professional groups from clear prioritisation of simplified criminal proceedings to a more balanced ratio in the range of answers. While supporters of simplifying criminal procedure among police officers represented almost 90%, their proportion among public prosecutors was just below three-quarters, and among judges their proportion in comparison with supporters of decriminalisation was around two to one. The **greatest benefit of summary procedure** was seen by the respondents to be considerably quicker resolution of significant part of criminal cases and considerably faster sentencing of offenders, as well as reducing the degree of "bothering" witnesses and other persons involved with the proceedings, freeing capacities of the authorities involved in criminal proceedings for more serious cases, and reducing costs of criminal proceedings. While assessing the possible benefits of summary procedure, judges were the most reticent, whereas the police valued its advantages most. The respondents did not see any fundamental **obstacles to more effective application of summary procedure in practice**, only possibly with the exception of persisting formalism in proceedings before the court even in trivial cases. Such obstacles are considered more significant by judges, while public prosecutors feel them less strongly.

In the answers given by members of all professional groups questioned, the prevailing opinion was that, from a point of view of **individual preventive effect**, summary procedure does not differ significantly from standard criminal proceedings. Most convinced of this were judges, while police officers believe more than the remaining two professional groups that summary procedure has a greater individual preventive effect than standard criminal proceedings.

All professional groups shared the opinion that the range of criminal acts which, under the current penal code, may be dealt with in summary procedure fully corresponds with its purpose. In this respect, judges were rather more reticent, but even so, the vast majority of this group approve of the existing legal regulation.

According to the experience of the judges and public prosecutors taking part in this survey, in practice there are significantly fewer cases where an **arrested suspect is brought before the court with a petition for sentencing**. Approximately three-quarters of the respondents from both groups stated that the proportion of cases where a petition for sentencing is delivered to the court without the presence of an arrested suspect is 80% or more. This situation however seems not to apply universally and differs from one court district to the next.

More than half of all respondents from amongst public prosecutors answered with the opinion that the **institution of indisputable facts** has proved its worth, while under half of judge respondents shared this opinion. More than three-fifths of public prosecutors and nearly three-quarters of judges questioned are in favour of expanding the options of using the institution of indisputable facts for criminal proceedings in general.

Public prosecutor respondents expressed greater satisfaction with the legal regulation for **penal orders** from a point of view of its utility in deciding on guilt and punishment in simplified proceedings, with two-thirds of them ticking the "very satisfied" box, while amongst judges this view was shared only by one half of respondents. Judges were also more critical with regard to the range of sentences possible to impose with a penal order, with only one third ticking the "satisfied" box as against 60% of participating public prosecutors.

Satisfaction with **mutual cooperation during conduction of** summary procedure prevailed among representatives of the professional groups questioned. Public prosecutors most often stated that reports on the results of shortened preliminary procedure receives from the police authorities in practice usually contain minor errors which, however, do not significantly reduce the possibility of submitting a petition for sentencing (this was the answer selected by 63% of respondents). Just under one third stated that such reports usually contain no errors. Almost half of judges questioned stated that petitions for sentencing received from public prosecutors mostly contain no errors (this answer was chosen by 48% of respondents). Minor errors which, however, do not significantly reduce the possibility of hearing the case in simplified proceedings are contained in most petitions for sentencing, according to 39% of judges. The opinions of police officers and public prosecutors on mutual cooperation during conduction of shortened preliminary procedure did not differ significantly and indicates that such cooperation on the part of the aforementioned authorities is considered to be basically the same as in other cases.

The majority of respondents in all three professional groups suppose that the **right of defence** in the legal regulation of summary procedure is safeguarded in the same way as in other types of proceedings. Nevertheless, a far from negligible section of participants conceded that slight restriction of this right exists (one-fifth of police officers, one third of public prosecutors and judges).

Respondents from all professional groups pointed out in their answers that the changes had contributed to the phenomenon that they are currently dealing with certain cases in the summary procedure regime which cannot be considered trivial or simple in terms of facts of the matter or evidence, as was the original assumption for implementation of summary procedure. In particular (but certainly not exclusively) judges shared the view that the option of conducting summary procedure against an arrested suspect is used too little, which in their opinion significantly reduces the effect of this institution. Overall, respondents appreciated the fact that the institute of summary procedure have actually contributed to acceleration and simplification of processing of a considerable part the crime load.

The results of the expert questionnaire survey show that the authorities involved in criminal proceedings are aware of the problematic areas in existing legal regulation of summary procedure in practice. Despite the prevailing positive attitude to summary procedure, on comparison with a similar survey conducted as part of research in 2007 it could be seen that, based on practice with this institute, professionals have a rather more sceptical view and identify several aspects that they see as problematic.

Analysis of the ***criminal careers of a selected group of 49 offenders*** convicted in the years 2002, 2004 and 2006 in summary procedure showed that a quarter of them were not convicted again after that conviction in the years indicated. It should be realised that these were persons who had been convicted of a crime several times before – in three cases four convictions, and even offenders with five, six and even up to nine prior convictions. On the other hand, one fifth of offenders in this group subsequently had at least 5 more entries in the penal register, three of them as many as ten entries. These offenders can be classified as multiple special recidivists, while, from a point of view of the number of cases of special recidivism, the periods before and after the conviction in question did not differ significantly. It can be inferred that the mentioned conviction in summary procedure was simply another in a long line of encounters with the criminal justice system due to repeated criminal activity of the same sort (obstructing the enforcement of an official decision, theft). In the case of offenders who, after their conviction in summary procedure, were convicted at least once more, we investigated further how much time elapsed before the offender was convicted again. The vast majority of offenders who continued in their criminal career after conviction in summary procedure were convicted again within a year.

Based on the results of this research, the following *recommendations* can be made for the purposes of the re-codification of criminal procedure law that is currently underway:

- consider clear definition of the conditions for conducting shortened preliminary procedure which, if met, would make such conduction obligatory;
- consider a change in the concept of the deadline for completing shortened preliminary procedure so that it would provide sufficient room for collecting the necessary materials while at the same time not allowing artificial prolongation of the verification phase by the police, or to consider introduction of an obligation for the police to inform a potential offender that he/she is a suspect without delay after he/she is found, and of a deadline by which "verification" must be completed in shortened preliminary procedure;
- during re-codification to focus on eliminating the identified obstacles to the speed and fluency of standard criminal proceedings;
- consider eliminating the limit of applicability of a penal order in cases where a cumulative or joint sentence should be imposed and where the prior sentence was imposed by judgment (under condition that such cumulative or joint sentence does not deviate from the range of sentences and from the length of sentence that may be imposed under a penal order);
- consider amending the diversions system so that the ranges of offences for which they are suitable are better differentiated (typically conditional suspension of criminal prosecution vs. out-of-court settlement), thereby reinforcing the applicability of those diversions that are procedurally and administratively more demanding;

- consider thorough revision of the system of collection, processing and reporting judicial statistical data on criminality and operation of the criminal justice system, which are (if reliable) the essential source of findings for creating and implementing an effective penal policy, in such a way as to eliminate all currently existing serious shortcomings of this system and to avoid devaluation of the efforts of criminal justice professionals who collect such data and of the finances laid out for this system.

Summary procedure were introduced into the penal code as a special form of proceedings, a deviation from standard procedure, intended for dealing with the least serious and most simple types of offences from a factual and legal point of view. Introduction of summary procedure was without doubt successful and had a positive effect on processing criminal matters in the CR. It is clear however that, since 2002, not only legal regulation of summary procedure has changed but also its form in practice. Now the structure of cases heard in summary procedure has changed (also more complicated cases) and the overall duration of shortened preliminary procedure has become longer – in some cases so much that the word “shortened” in its title is beginning not to make sense.

Translated by: Presto

Zeman, P. a kol. (2013): *Zkrácené formy trestního řízení – možnosti a limity.* Praha: IKSP. ISBN 978-80-7338-133-2

III.

Serious Crime

III.1. Present situation in the area of extremist movements in the CR with the emphasis on their potential support by juveniles and on propagation of extremist ideological thoughts on the Internet

III.1.1. Political radicalism and youth

Jakub Holas

In 1989, in the Czech Republic as well as in other countries of Central and Eastern Europe, a fundamental change in the political system occurred. In the new situation political entities began to appear and assert that benefited from the frustration of some parts of the population and populistically abused in particular the issue of the Roma ethnic minority in the Czech Republic. New subcultures appeared quickly – in addition to punkers, who have already existed here in the communist era, mainly numbers of skinheads grew rapidly - they mostly took extreme right-wing positions and began to attack primarily against punkers, Roma and other visually distinct minorities. Some of these attacks ended in serious injuries or even death of a victim. As a counterweight groups of militant anarchists began to form and the middle of the 1990´s was marked by frequent clashes of these groups. Mainly belonging to the skinheads became almost a fashion phenomenon in certain strata of youth and the increase in the number of „bare skulls“ has on the other hand encouraged their confidence and aggressiveness.

In this situation, in 1995, the Institute for Criminology and Social Prevention in Prague started an extensive research project mapping the newly created scene, which began to be called extremist (this term was later considerably downgraded). The research carried out by two-man team used a variety of research methods. They conducted semi-structured interviews with representatives of radical groups (from both sides of the opinion spectrum), participant observations at street demonstrations, marches and rallies, printed matters published by sympathizers of radical subcultures were collected and later analyzed. Also members of the police of the newly established specialized units to combat extremism were contacted and expert investigations were conducted among them.

However, a representative survey of youth aged around 16-17 was the main pillar of the whole event. Mainly such views, which could imply support of some of the extreme political movements, were investigated; also the awareness of such movements and how these movements are evaluated by the youth were investigated. In other words, how strong the group of supporters and potential members is. The results of research actions, including the questionnaire survey, became the basis for the publication Youth Extremism in the Czech Republic (IKSP edition, published in 1996), which was probably the first professional work on this topic in the Czech Republic. The research findings were subsequently used in the creation of the first educational materials for teachers, social workers, police and the judiciary. Members of the research team got also deeply involved in the training of specialists for the treatment of young political extremists.

The research project, the results of which are summarized in this report, of course was not and could not be the automatic replication of fifteen-year-old event. We have tried to maintain especially crucial element: exploring views of high school students. Of course, the original questionnaire had to be modified, however we have tried to maintain major questions so that a comparison with the original research could be made. In comparison with the first research we have improved the structure of the sample. The target group was divided into two subgroups: 1 / high-school students (3.000 respondents) and 2 / non-students - i.e. young people who do not attend any school (300 respondents). Both groups answered the same questions. Lists of schools were designed to take into account the proportional distribution of students from different types of schools (grammar schools, vocational schools, technical schools) within each region. Also the various age groups are evenly represented in the set (26% young people aged 16, 36% at the age of 17 years and 38% aged 18). The file of non-students was created by purposive sampling of the snowball system.

Other methods have been included in the project such as expert survey among members of the Police of the Czech Republic, who are professionally engaged in the issue of extremism. We believe that these specialists are among the most competent persons who can comment on issues of criminal matters of peripheral political currents. Thanks to the coordination of ÚOOZ staff of the Police of the Czech Republic, we managed to gather a massive sample of 67 specialists, who are professionally engaged in the investigation of crime associated with extremist attitudes. Due to the workload of the respondents, we chose a relatively short questionnaire with closed items, which ensured the mentioned high number of returned sheets. With some issues, of course, there was an opportunity to comment on the specific issue at length in free form,

The third component analysis that took place within the project was a comprehensive description of Czech-language websites with extreme-right and extreme-left focus. The time of printed fanzines is long gone and all of their indoctrination, mobilization, and other functions have been fully taken over by the Internet. Therefore, we found it important to determine what types of information and in what form are currently distributed by extreme political entities.

In the first part of the questionnaire for youth, we tried to map the sample in terms of basic satisfaction with the social situation. This then gave us the opportunity to further classify the respondents to generally satisfied and dissatisfied. The comparison with the year 1995 is marked by profound differences: whereas at that time three-quarters of young people were satisfied (albeit with reservations, of course), at present, there is only approximately one half of „satisfied“. Therefore, if the society is perceived so critically, it is necessary to ask what problems are considered most important (respondents chose three variants from the submitted list). Also here interesting differences become obvious; it should be noted that the current research was completed with the item called „injustice – people are not measured by the same standards“ as this reservation has in recent years frequently appeared in researches. The fact that it was included rightly is proven by its high preference – it appears in third place. Criticism of politicians dominates – six of ten people feel irritated by their moral character. It is interesting that in the years shortly after the „velvet revolution“ people were generally more optimistic towards a new political class. But both then and today, almost half of the respondents emphasized the presence of „dirty money“. In 1995, it was the money of unknown origin, used in the privatization of state assets, the establishment of financial institutions and the like, whereas in recent years the entire political hierarchy has been under the strong suspicion of massive corruption in public procurement.

Another set of questions, by which we tested the tolerance of the respondents were personal sympathy or antipathy to various social, ethnic and sex groups in our society. It can be considered proven that intolerance is a fundamental characteristic of a number of fundamentalist and anti-democratic movements. Respondents were to classify the following groups by marks as at school: i.e. one means a very positive relationship expressed verbally as „I like them," whereas five on the other hand, could be characterized by the words „I hate them." In addition to minorities traditionally tracted as „controversial", quite „mainstream" groups were intentionally included in the survey. The aim was to identify among the respondents the fundamental critics of contemporary social organization, including its main representatives.

Overall, the tolerance of young Czechs dropped in comparison to the mid-1990s. We can only speculate about the causes - whether the numbers from the 1990´s were positively influenced by the „intoxication of freedom", after which sober had to come, or whether the current generation in their opinions reflect global disillusionment and anxiety. Homosexuals are the only group, to which the relationship is significantly more positive than before; their essentially trouble-less position in the Czech reality is expressed by the existence of a law on registered partnership.

A number of monitored social groups of completely different types have seen a significant drop in popularity. For example, currently more than two-thirds of the respondents dislike homeless and there has also been a decline in popularity of Jews. Also the popularity (which was low even in the past) of the Roma dropped: more than three-quarters young people strongly dislike this ethnic minority.

In the central part of the questionnaire young people were directly asked about their attitudes to listed radical movements from both sides of the political spectrum. Among other things, we logically wondered whether respondents sympathize with some of mentioned movements and which of them they find to be the best. For clarity they could only choose one option. Exactly one half of the respondents said that they do not like any of the submitted groups. Most respondents agree with radical environmentalists and every twelfth teenager sympathizes with the Workers› Party; adding supporters of right-wing skinheads, open neo-Nazis and «imaginary» Ku-Klux-Klan, we get the 16% support for the extreme right groups. Also the opposite camp - the anarchist / anti-fascist groups (including anti-racist skinheads) has around the same base of supporters (17%).

Half of the respondents do not sympathize with any of the listed movements and therefore are not involved in any street events, such as demonstrations or marches. However, more than a quarter of respondents have been considered a future participation, 15% rarely attended and small portion is really active (but remember again, that these are children mostly under 18 years of age).

When asked whether respondents are afraid of some of these movements, 62% of them gave a positive answer. Most of them fear neo-Nazi (17%, together with right-wing skins 25%). Anarchists + antifa placed next - 15% respondents fear them. 7% of respondents have the largest concerns of Young Communists. In summary, we can say that a high percentage of respondents who expressed their concerns, suggest that young people and relatively sensitive to the danger of political extremists and most young people can simultaneously estimate where the most serious danger come from.

The content analysis of extreme-right and extreme-left websites focused on defining various forms of publicity and propaganda of the current extreme-right and extreme-left websites, i.e., how those web sites communicate with their readers, potential supporters and members. Content analysis was directed at getting to know the attributes that give the importance to internal and external communication of extremist and radical groups. It was the case of following characteristics: mobilization issues, propaganda (internal, external), defining and shaping identity, including used instruments, methods of mobilization and recruitment. Furthermore, "categories of the enemy», own group, own identity» and «tools of propaganda and publicity» were specified.

Researched websites were in the Czech language, easily searchable through the common Internet search engines, i.e. easily accessible even to disinterested person or persons less familiar with the issue. The analysis covered the 7 websites of the extreme right and 9 websites of the extreme left. Sites were examined comprehensively, i.e. articles, news, reports, audiovisual material, links, tools of websites; on the whole 924 posts were analyzed. In terms of time these were the posts published in 2011 (The analysis included only those websites that were active in 2011)

As an additional probe we included a preview of the work of police experts in the field of extremism. Experts were asked about the constricted range of issues directly related to their activities in the field. There was no attempt to «force them» to the broader general speculations about the causes or social context of extremist crime, and on the other hand, we did not try to obtain information on specific cases.

We were mainly interested in their views on current danger of individual radical political movements, the development of their activities for the last three years and the expected trend for the next period, including the risk of possible transition to terrorist methods. For the purposes of this questionnaire, we recognized (in accordance with the present political science) openly neo-Nazi groups, ultranationalists, anarcho-autonomous and Marxist – communist groups. It appeared that the same share of experts - about 40% each, considered the right-wing extremism more dangerous or found them both identically dangerous. Only one fifth of respondents considered the extreme left more dangerous. At the same time two-thirds reported that the anti-extremist policy of the state focuses more on the right-wing extremism. According to most experts openly neo-Nazi activities have been stagnating or declined; on the other hand especially of extreme nationalists of anarcho-autonomous groups have been on rise. Estimates of future development are highly heterogeneous, but experts agree that the deteriorating economic conditions in the country will strengthen activities on both sides of the spectrum and will find larger number of potential supporters.

Experts agree on the existence of increasingly risky regions in terms of the growth of extremist activities. They are mainly in the high unemployment areas with a high proportion of the Roma minority. In the first place there is a danger of stirring up racial conflicts by the extreme right. Addressed policemen have been mostly facing in their practice verbal support and promotion of banned movements, along with defamation of nation, race and ethnicity. However, half of them in the last two years have also worked on cases of physical attacks against ethnic minorities or opinion opponents. Cooperation with the prosecution is most often (45% of votes) assessed as fluctuating depending on a particular person of a public prosecutor. Nevertheless, only 6% have more serious reservations to this collaboration. The most common objection to prosecutors (and judges) is that they are not always sufficiently aware of the issue of extremist movements and occasional disparagement to underestimation of this problem. Also inconsistencies in the assessment of individual wrongdoing with individual public prosecutors and judges have been mentioned. Criminal penalties, especially alternative sanctions are considered inadequate.

Traslated by: Aspena

Holas, J. (2013): *Politický radikalismus a mládež.* Praha: IKSP. ISBN 978-80-7338-131-8

III.2. Violent sexual crime in the Czech Republic, with the focus on its current forms, on enhancing the effectiveness of detecting and sanctioning its perpetrators and on the possibilities of the protection of society against sexually motivated violence

III.2.1. Violent sex crime – a topic for experts and public

Šárka Blatníková, Petra Faridová, Petr Zeman

Violent crime of sexual nature results not only in serious consequences for its direct victims, but it subsequently disrupts and jeopardizes relationships and undermines a sense of safety in society. The phenomenon of violent sex offences brings out intense emotions and reactions in society over the long term, has a significant impact on people`s sense of safety and their fear. The public keeps a close eye on this type of crime and in reaction to its individual cases often calls for a stronger response by the state authorities and more severe sanctions for the offenders. The actual evidence base on violent sex crime in the Czech Republic does not match the seriousness of the problem. So far, no comprehensive criminological research on the occurrence and forms of the violent sex crime and its offenders, analysing the measures taken against offenders of this type of crime, has been carried out in the Czech Republic. Partial studies exist that study the offenders of selected specific violent offences (for example child molesters, murderers, rapists) or are aimed very locally (focusing on a specific district or convicted offenders in a particular prison).

The presented monograph summarises the outcomes of the initial part of the research carried out by the Institute of Criminology and Social Prevention (IKSP) which specifically focuses on the issue of sexually oriented violence, its offenders and victims and also response of the public authorities` to this serious type of offending.[5] The **subject of the research** involves sexual offences with an element of violence registered in the Czech Republic within a relevant period, identified perpetrators of these offences and individual measures taken to protect society from such crime. The **main research objective** is to gain new criminological knowledge about the sexually motivated criminal violence and its perpetrators in the Czech Republic and to evaluate the means used to punish this type of crime. The **research sub-goals** include evaluation of the penal legislation concerning prosecution of sexually motivated violence in the Czech Republic, identification of instruments used for assessing dangerousness of a violent sexual crime offender and mapping the picture of the violent sexual offences and offenders in the Czech media. **Part of the research, which is summarised in this monograph, focused on the description, basic analysis of the research problem** (mapping study) **and grasp of the issue**.

The standard criminological research methods and techniques were used such as analysis of statistical data from the law enforcement authorities registers, analysis of the current legislation including available case law, study of literature and relevant official documents to learn about the current state of knowledge about the examined area, media content analysis and also the secondary statistical analysis of the opinion poll data using multivariate techniques which completed the research with the information about the public knowledge, opinions and attitudes regarding the area of sexual violence, gathered in the IKSP_SEXKRIM2011 survey The research task was carried out in accordance with the generally binding regulations, including the regulation on personal data protection, and the ethical principles of research work were respected.

For purposes of this study, the **"violent sex crime"** means a set of offences, where the offender intervenes in the sexual sphere of the victim while using physical violence, a threat of physical violence or of another severe injury and does so without the victim`s consent. The conceptual characteristics of this rather a criminological definition of violent sex crime include interference with the victim`s sexual sphere, use of physical violence, threats of physical violence or of other serious injury by the perpetrator towards the victim and absence of the victim`s consent with such behaviour.

The first part of this monograph examines the violent sex crime from the perspective of Czech law and current available statistics. With regard to criminal legislation it is difficult to exactly identify the group of offences that can be classified as violent sex criminality within the above mentioned concept. The research focuses on the offences of rape, sexual constraint and cases of sexually motivated murders.

5 The research project „Violent Sex Crime in the Czech Republic - focusing on its present forms, increase in efficiency of detection and sanctioning of offenders and on possibilities of protecting society from sexually motivated violence" is funded by the Security Research Programme of the Czech Republic (Program bezpečnostního výzkumu ČR) from 2010 to 2015 (No. VG20122014084, the provider is the Ministry of the Interior of Czech Republic).

The constituent element of **rape** has been regulated in the provision of Section 185 of the current Penal Code since 2010, the previous penal code from 1961 defined it in the provision of Section 241. The original merits of the case that punished only the forcing of a woman to a sexual intercourse or abusing her defencelessness for this purpose, has been gradually complemented and at present it covers the whole range of coercive interferences with sexual sphere of a victim who can be a woman or man of any age. The number of rapes recorded by the police does not show any significant fluctuations in the police statistics and range from 480 to 675 cases per year. The judicial statistics of the public prosecutor`s office show about 400-500 cases of rape being annually resolved in the preliminary proceedings. Several tens of cases are deferred (this item does not include the cases deferred due to failure to identify the offender) and about 330-400 individuals were prosecuted for rape. Actions were brought against the vast majority of the prosecuted persons in only a few tens of cases (maximum of 51 in 2009) the proceedings were halted. The judicial statistics show that about two thirds of the defendants whose cases were decided in the given year were convicted. About two hundred persons were convicted of rape annually in the target period (2010 to 2013). The distribution of the convicted population according to age categories indicates that most offenders within the target period were 30-39 and 40-49 years old. Even though the absolute number of adolescent offenders was very low, it is noteworthy to mention a relatively high proportion of juveniles (approx. 5 to 10%) and a higher proportion of the youngest age category offenders (under 20 years) among the convicted rapists as compared with the general convicted population. Equally, there was a higher proportion of persons aged 50 years and older among the convicted rapists. It should be noted, however, that the low absolute numbers of convicted rapists do not allow any categorical conclusions.

The constituent elements of **sexual constraint** are regulated in Section 186 of the Penal Code. An offence can be identified as a violent sex crime in the above mentioned sense when the offender uses violence, a threat of violence or of another serious injury (i.e. in cases pursuant to Section 186, par. 1, alinea 1). The statistics of cases of sexual constraint are considerably affected by this offence having being introduced to the Penal Code rather recently, in 2010. The number of the offences recorded by the police in the target period did not exceed a few tens annually (22 to 46 cases) and the number of offenders was very low (7 to 16 offenders annually). The overall number of sexual constraint cases heard in preliminary proceedings was also low – within the four years since the introduction of this offence to the Czech criminal law, the preliminary proceedings were completed in only 88 cases.

Sexual murder does not constitute in the Czech catalogue of criminal offences a stand-alone offence, nor is it a stand-alone aggravated form of murder. Also because of that, such cases are not separately recorded in the judicial statistics which adhere to the criminal law classifications. However in the police statistics sexual murders are recorded in a separate category. In the years from 2007-2013 the number of recorded sexual murders ranged from zero to seven per year.

The issues of **recidivism of sex offenders** in terms of both official statistics and empirical evidence, including the data on re-offending of sex offenders, who completed protective treatment in the Czech Republic, are widely discussed topics among both the experts and the public. The outcomes of individual research studies in this area - carried out in the Czech Republic as well as abroad - are influenced by a range of factors such as definition and concept of recidivism, size and composition of a research sample and control group, and also e.g. the length of the target period. Also for these reasons it always involves a great risk to compare or possibly take over the conclusions without the knowledge of the used methodology and composition of the research sample. The official statistical summaries of the Czech law enforcement authorities indicate the number of the detected rapists previously convicted for any intentional offense. For example the proportion of rapists with at least one previous conviction in the years 2008 to 2013 in the police records, amounted to under 50 percent ranging from 39% to 47% in the individual years. As for sexual constraint perpetrators detected by the police from 2010-2013, eight out of 42 offenders were recidivists. The judicial statistics show that 58% of the rapists convicted in the years 2010-2013 had already been previously convicted. The proportion of individuals without previous convictions in the target period was always about 40%, with the exception of 2012 when the first offenders amounted to almost 50 percent. This sub-group of offenders with no previous convictions, who committed a serious violent offence, which a rape undoubtly is, is considered as significant by us. This to a certain extent confirms the empirical findings from studies on the **low rate of sexual recidivism**, i.e. repeated commission of the same sexual offence, **among rapists**. The **proportion of first offenders** among the convicted rapists in the Czech Republic in the target period was **moderately higher** than their proportion in the total offender population convicted in the Czech Republic from 2010-2013, which reached 34-38%. Just under half (19) of 40 individuals convicted for **sexual constraint** from 2010-2013 had no previous convictions and 21 offenders had been previously convicted.

Sexual recidivism in the Czech Republic and abroad has been consistently documented as low (5%-15%). Researches carried out abroad, where a group of sex offenders was followed for a longer period of time, revealed that a majority (76%) of convicted sex offenders were not convicted again for sexual offence and the meta-analysis of almost a hundred research studies showed that a vast majority (about 87%) of offenders did not commit any other subsequent sex offence. Apart from the limitation following from the above mentioned problem of different definitions of recidivism in the foreign research studies, it is important, while interpreting the findings, to take into account that the samples of sex offenders are often mixed samples not distinguishing between offenders with paraphilia and offenders without disorders of sexual preference. There is a significant divergence between the empirical research findings and the **views of the public** regarding **sexual recidivism**. In the IKSP_SEXKRIM2011 poll the vast majority of respondents (83%) identified with the statement that in the criminal history of offenders convicted for serious sex offences there are other previous convictions of similar nature. Similarly, the majority of respondents (80%) also believed that these offenders, regardless of the length of the sentence they would serve, would commit another sexually motivated offence again in the future. Practically identical outcomes were obtained from the respondents regarding (in)efficiency of the protective treatment (80% agreed with a statement that even after the protective treatment an offender would still commit another sex offence). In the public opinion, there should be a minimum of first offenders among sex offenders, whereas a majority of sex offences should be committed by individuals with the previous convictions mainly for sex offences. However this is not consistent with the official statistics in the Czech Republic and other countries or the findings of research studies.

The attitude towards sex offenders in different countries has its specificities. The basic question regarding the attitude towards sex offenders is whether it is more appropriate to punish these offenders or treat them. Judging from the responses obtained in the IKSP_SEXKRIM2011 poll, the public sentiment toward serious sex crime offenders is rather punitive. The share of the supporters of the sanctioning approach to rapists as opposed to their treatment was more than half (55%). The sanctions imposed by Czech courts on these offenders were considered too lenient by a vast majority of respondents (87%). If we compare the above mentioned finding with the knowledge of the sceptical public approach regarding the corrective or deterrent effect of however severe punishment, two possible explanations present themselves. This may be a manifestation of stereotyped conceptions of too mild punishments for crime in general and for serious crime in particular. This phenomenon is known in a number of countries and is to a large extent independent of the actual severity of the criminal legislation in a particular country. The presented findings, however, can also suggest that citizens who do not believe in the role of punishment in reducing specific recidivism (i.e. repeated commission of the same offence) of sexual offenders, demand a strict penalty at least as a revenge against the offender of a condemnable offence.

Considering the gravity of sex crime in general, it is not surprising that **the vast majority** of imposed **penalties are custodial sanctions, either suspended or unsuspended.** The proportion of suspended (379) and unsuspended (386) custodial sentences imposed on rapists in the target period of 2010-2013 was essentially balanced and without any significant variations, although it gradually changed in favour of the suspended sentences. However this trend should not be overestimated given the low absolute numbers. By way of comparison, suspended sentences otherwise represent a substantial majority of the pronounced sentences in the Czech Republic; e.g. 74% of all the convicted had their sentences suspended while 11% received unsuspended prison sentences in 2013.

Czech criminal law is based on a dualistic concept of criminal penalties, where in response to the committed offences, in addition to sanctions, an offender can be ordered to undergo a **protective treatment** in specific cases. Apart from persons criminally responsible for an act committed, it can also be ordered for those not criminally responsible due to their low age or insanity. Protective measures are regulated by the Penal Code, and the protective treatment (Section 99 of Penal Code) and security detention (Section 100 of Penal Code) are of particular importance in relation to offenders of violence sex crime. Protective treatment means a state-mandated compulsory treatment of a perpetrator whose criminal activity was connected with a mental disorder or substance abuse. Security detention is a subsidiary measure in relation to the protective treatment and can be ordered for an offender in the case the protective treatment alone cannot be expected to result in sufficient protection of the society.

Courts in the Czech Republic imposed **security detention** on twelve convicted rapists in total in the target period of 2010-2013. Either in-patient or out-patient **protective treatment** was ordered for approximately 40 offenders annually during the same target period.

The protective treatment was imposed mostly (in two thirds of cases) in the in-patient form and the most common type of protective treatment was understandably a sexological protective treatment (for paraphilic sex offenders) in both the in-patient (72 cases) and the out-patient (31 cases) forms. Further types of protective treatment included the treatment of alcoholism (in-patient treatment for 15, out-patient for 11 offenders), drug addiction (7 resp. 2 cases) and 'other' (11 cases in the in-patient as well as out-patient regimes) that typically involves the protective psychiatric (or psychiatric-sexological) treatment. By way of comparison, the protective treatment was imposed on 542 individuals in the Czech Republic in 2013, of that 129 cases involved sexological protective treatment. Of the total of 40 offenders prosecuted for sexual constraint, in whose cases the court issued a judgement in the period of 2010-2013, the protective treatment was imposed on 9 individuals in all cases sexological (5 in-patient and 4 out-patient regimes). From the medical point of view, the main goals of the protective treatment are to guide offenders toward developing an insight into their mental disorder that contributed to their offending, their re-socialisation and integration to the common life, prevention of re-offending provoked by a mental disorder, and also an offender`s isolation in a medical facility in case he/she presents a threat to the community with regard to their medical condition. The concept of the **Czech sexological protective treatment** is marked by its distinguishing between sex offenders with disorders of sexual preference (paraphilia) and non-paraphilic sex offenders.

The range of **means** used in different countries **in order to protect society from sex offenders** is relatively large. The support of the **measures** consisting in court decisions (*restraining order, restriction order*) which **restrict the possible access** of a convicted child molester, after serving their sentence, to places where children gather, is based on the presumption that a typical offenders seek out and contact their potential victims at just such places and if they do not have access to them, re-offending will not occur or its possibility will be significantly reduced. The fact is that no empirical studies have so far discovered the direct link between sexual assaults of children and a geographical proximity of an offender`s place of residence to places where children gather. Nor has the existing research been able to support the assumption that the measures based on restricting the movement or residence of a released offender reduce the probability of re-offending. Still the public is of different opinion. Among the respondents participating in the IKSP_SEXKRIM2011 survey this measure was given the highest support. Eighty-seven percent of the respondents agreed that such measures can ensure the protection of society against offenders of serious sex crime.

The belief that **monitoring devices** - GPS monitoring system, microchips or electronic bracelets – will protect society from sex offenders, rather simplifies reality. Such considerations are based on an erroneous assumption that offenders stop committing sex crime if they are monitored by a device (or by society). It is, of course, true that GPS surveillance records can e.g. facilitate criminal investigation or discourage some offenders from entering areas where they should not, or possibly from contacting their former criminal accomplices. However active GPS surveillance can be quite time-consuming and above all cannot alone prevent a commission of an offence. The system monitors the place where the offender under surveillance is present but not what is he doing, who is he talking with or following or what is he thinking of. Eighty-five percent of the respondents in IKSP_SEXKRIM2011 survey marked this measure as an effective tool of protecting society from serious sex offenders.

Sex offenders registration represents a system designed to enable the authorities to monitor the location and activities of sex offenders including those who already served their sentence. This system does not always include only the database of sex offenders itself, but in some countries it is connected with providing access to certain information from the register to the public or to designated persons (*community notification*), or with the obligation of a sex offender to report relevant data and its changes in the register. In this respect it is not quite accurate to speak of 'sex offenders registers', but rather of 'a sex offenders registering and monitoring system' which besides the register itself also includes the other above mentioned elements.

The registration system is a controversial measure that raises doubts in many respects, especially if it includes releasing of information from the register. There have been strong objections to it as regards protection of human rights and freedoms. The existing studies are ambiguous when it comes to the impact of the registration systems on re-integration, re-offending and supervising of sex offenders, or the institutions of criminal justice system. One of the reasons for introducing a sex offenders registration is the endeavour to minimise the number of sex offences which is, however, based on the misconception assuming a high probability of re-offending among these perpetrators. The studies examining the recidivism rates among registered sex offenders yield varied results. Most of them have so far concluded that the **registration has no impact on either specific recidivism, generic recidivism** (i.e. repeated commission of the offences of the same kind – e.g. consecutive commission of the different sex offences like rape and sexual constraint), **or general recidivism**. Other studies have established that even though the registration has no significant impact on recidivism, it markedly shortens 'the failure period', after which the offender is again arrested, sentenced or imprisoned. Also ambiguous and not sufficiently conclusive are the findings of the research on the deterring effect of the registration system towards the public. Regarding **the impacts in the area of controlling** registered sex offenders, the concept of registration and monitoring is based on the presumption that the system can provide information usable in risk management relating to such offenders and investigation of sex offences. It is assumed that such system can increase the efficiency of offender supervision, sometimes may discourage certain types of offenders from further manifestations of violent behaviour and increase the number of cases where the offender is caught. However the existing studies only support this presumption partially and, contrariwise, their findings show that **the system of sex offenders registration can make their control more difficult**, for example by causing some registered offenders to make considerable efforts to 'disappear from sight', which also entails the discontinuation of therapy or rehabilitation programme. Releasing of information about the registered sex offenders thus may negatively affect the original purpose of monitoring the given individual. An offender whose past of a sexual offender is made publicly known often cannot find a job and moves to places of residence where he/she is unknown to both the local authorities and the community.

An increasing number of research findings indicate that the system of sex offenders registration and monitoring instead of **reintegration** leads to their ostracism and harassment causes or increases feelings of shame, hopelessness, stress and alienation. It also contributes to the creation of certain obstacles to rehabilitation such as homelessness, unemployment and a loss of social support including disruption of existing relationships in the family, with friends, etc. It was established that sex offenders after released from prison have problems to find a home, find and keep a job and, most importantly, have difficulties to attain some level of 'social anchoring or acceptance' in their community that is aware of their criminal history. They continue to be perceived by people around them as a threat which leads to them being rejected. The failed rehabilitation can enhance the possibility of recidivism and another sex offence may be more serious than the previous assault which led to the offender`s registration. One of the arguments in favour of implementing the registration and the community notification claims that such obligation can work as a form of threat which may motivate a sex offender to take the decision to undergo a specialist programme not only focused on treating paraphilia, but also e.g. anger management programmes, etc. On the other hand we should mention that such measures generally have a greater effect on the offenders exhibiting the smallest risk of re-offending.

Considering the **impact on the criminal justice institutions** it is evident that the implementation and operation of a sex offender registration and monitoring system is costly, in terms of both finance and load on human resources, as running of such system presents the work force of the institutions involved with a number of new tasks (including for example verification of register data, communication with offenders, etc.).

The existence of the register can create a false sense of security among the public. The IKSP_SEXKRIM2011 survey participants were also asked about their opinion concerning the appropriateness of introducing a sex offender register and release of information. Seventy-one percent agreed (of that 36% agreed definitely) that informing the public of the released sex offenders can ensure the protection of society against the criminal sex violence. However almost a quarter (23%) of respondents expressed doubts about the effectiveness of such measure, i.e. disagreed with the presented statement. Respondents were further asked whether, in their opinion, a national register of sex offenders should be in place in the Czech Republic and if so, whether it should be accessible to the public or only be used for administrative purposes. Three quarters of the respondents (76%) were in favour of such register with 41% preferring a confidential register to be used by selected institutions only, while 35% would prefer a register accessible to the public in the way familiar e.g. from the USA. Eight percent were against the existence of the register and 16% were unable or unwilling to give their opinion on the matter.

In recent years various instruments have been created and published, mainly abroad, that should improve the ability to 'diagnose' a probability rate of an offender behaving violently, engaging in criminal activities or committing a sex offence again. The assessment tools such as **diagnostics and recidivism risk assessment**, i.e. *risk assessment instruments*, work with the variables affecting relatively stable dispositions or tendencies to delinquency and also with factors indicating the onset of new, further offending that is not random. More and more often, however, these instruments are created 'ad hoc', more in response to the current needs of legislation that requires a 'guaranteed' specialist instrument. The created instruments were standardised and repeatedly validated using a specific sample of individuals. They are useful tools assisting in assessing the risk elements of a given individual. However it is important, inter alia, to choose a specific tool in accordance with the intended goal of the assessment (i.e. whether to identify risks or to reduce them). A number of tools based on statistical factors can be considered useful when assessing the risk of sexual recidivism, especially when identifying high-risk individuals. Nonetheless it is not possible to establish by means of these tools, 'how' an intervention should be applied or directed or whether the intervention was effective for the individual in question.

Sex offenders, who exhibit paraphilic sexual motivation, represent, due to this 'quality' of theirs, a long-term risk with regard to a specific recidivism, i.e. repeated commission of the same sex offence. Among other **predictors or risk factors** significantly correlating with a sexual re-offending are the 'common' criminogenic factors such as previous offences, low age or presence of antisocial personality disorder, low self-control, psychopathy or unstable or criminal lifestyle. These factors apply not only to sex offenders but to the general criminal population. Although 'personality pathology' alone has been proven by analyses as only having a moderate relation to sexual recidivism, there are empirical findings showing that a combination of paraphilia and psychopathy places an individual in a position of a high-risk offender in terms of sexual recidivism risk. One of the important criminogenic factors is **substance abuse**. In the case of **child molesters** the proportion of those offending under the influence of alcohol is usually smaller (about 14-50%) than that of rapists. Similarly, the proportion of perpetrators of non violent sex crime who offend under the influence of alcohol is lower than that of rapists. According to the majority of foreign authors, 50 to 65 percent of all cases of rape are committed after drinking alcohol; some even established alcohol influence for more than 80% of rape cases. Also Czech authors specify the presence of alcohol factor in about 60% of rape offences, whereas offenders of sexual abuse were under the influence of alcohol in less than a third of cases.

Some **characteristics** assumed to be connected with sex crime and its perpetrators form a basis for some **stereotyped beliefs** among the public that are not grounded on empirical evidence or may be in conflict with it. A traditional stereotype of a 'real rape' claims that a rape is typically committed by an individual with no relation to the victim (they do not know each other); outside in the night time and it is accompanied with an extreme physical violence against the victim. In reality, the studies show that albeit most rapes are committed in the night time, the offender is more often a person familiar to the victim, and the assault happens at home more frequently than outdoors. If violence occurs, it is usually of small intensity particularly when rape between partners or former partners is involved. Some items in the above mentioned IKSP_SEXKRIM2011 survey were focused on these false beliefs. For example about one third of the respondents (30%) in our poll did not agree with the statement '*In most cases of child molesting a victim is someone from the offender`s family or social circle*', while on the other hand more than half of them (59%) expressed views consistent with the empirical evidence. Eleven percent of the respondents were not able or willing to give their opinion on the matter. The empirical research both in the Czech Republic and abroad confirms that most sexual assaults are committed by a person familiar to the victim or right by a member of the family. This applies to child victims of sexual violence (where the proportion is even higher) and to adult victims alike. The risks following from the above described stereotypical belief are quite evident. For example '*the stranger danger myth*' can create a false sense of security in a parent, when their child spends most of the time among their acquaintances and relatives, which if fact does not reduce the risk of sexual assault at all.

Almost half of the respondents (46%) believed that sexual abuse in childhood leads to subsequent commission of sexually aggressive actions. Sexual victimisation in childhood can increase the probability of sexually aggressive behaviour, yet the majority of children who were abused never commit anything like that in adulthood. The Czech public also identifies (83%) with an opinion that rapists are mostly sexual deviants, in other words persons diagnosed with paraphilia (disorders of sexual preference). Such 'medicalization' of sexual delinquency does not only match the empirical knowledge, but also leads to considerations that these offenders need to be handed over to the doctors who will 'remove' the disease. The above mentioned misunderstanding may result from confusing a health disorder called paraphilia (i.e. disorders of sexual preference, sexual deviation according to the earlier terminology) with sexual delinquency, i.e. violation of the social and legal standards of sexual behaviour.

There has been no empirical evidence available so far that would prove the existence of certain specific personality traits or a particular personality profile characteristic of sex offenders. This group of offenders represents a very heterogeneous sample in which individual differences may be due not only to age or the offence type committed, but also to the risk (dangerousness) they represent, their criminal histories, also due to presence or absence of paraphilia or another mental disorder. Still the determination of personality traits, possible personality disorders in particular, is useful e.g. in relation to decision-making on the most appropriate therapy or treatment programme, predicting further development of possible recidivism and assessing the rehabilitation possibilities. The empirical studies provide information about individual characteristics of sex offenders which they usually compare with a control group. For example it is stated that offenders of sexual abuse are more socially inept and unassertive or rather less assertive as compared with rapists. On the other hand, rapists exhibit a more serious antisocial behaviour in their anamneses and a higher rate of general as well as violent criminal recidivism. It is nothing new that rapists exhibit a stronger similarity with perpetrators of violent non-sexual crime than e.g. with child molesters. The common characteristics of sex offenders are e.g. presence of non-sexual offences in an offender`s criminal history, repeatedly detected maladaptation in professional life and partnership. Maladaptation in interpersonal relations manifests itself as hostility towards people, irresponsibility and immaturity shown in human relations, suspiciousness, and lack of empathy and absence of compassion. Psychopathological findings in these offenders testify to only a small number of them suffering from a more serious mental illness, most frequently there is antisocial personality disorder or psychopathy diagnosed. The fact that an offender`s actions show attributes of sexual aggressiveness does not have to be a 'consequence' of sexual deviation, but can be a manifestation of his/her personality. A larger part of sex offenders are motivated by these non-sexual factors (psychopathy, impulsivity, etc.).

The data gathered from several different studies show a complex **connection between psychopathy and sex crime**. The diagnosis of psychopathy was identified as a predictor of sexual or violent recidivism. Several authors confirmed a higher risk of sex offence commission (sexual recidivism) in the case a deviant sexual orientation and psychopathy are present. As an example, a correlation was identified between psychopathy and the number of previous non-sexual offences in **rapists**, but no relation to the previous sex offences was identified. Also a higher prevalence of psychopathy was identified for rapists than for child molesters.

A smaller group of violent sex offenders is represented by individuals with forensically significant **disorders of sexual preference** (paraphilia). The Czech sexological school includes in them particularly aggressive forms of sadism or paedophilia and pathological sexual aggressiveness (paraphilic coercive disorder). **Pathological sexual aggressors** achieve sexual arousal and satisfaction through overcoming the resistance of an assaulted woman and minimizing her cooperation. This disorder does not indicate any sadistic ability (the offender does not torture his victim or prolong her suffering). The essential characteristics of this group of offenders probably include the tendency to repeat sexual violence of the same type and what is known as predator or hunter way of approaching and attacking a victim, while the assault is usually not preceded by any attempt at verbal communication. It is not easy to distinguish the extent to which an offender's behaviour manifests features of pathological sexual aggression or whether it is 'only' a demonstration of pathologically structured personality. Some experts do not consider these 'repeated sex offenders' as pathological, i.e. deviant, and refuse to include this type of sexual aggressors among paraphilics. The main difference between a pathological sexual aggressor and a **sadistic sexual aggressor** lies in an offender's motivation. A pathological sexual aggressor's goal is to achieve an intercourse, whereas a sadist is mainly concerned in physical and psychological suffering of the victim. An important feature of true **paedophilia** is the 'teacher's´ perceptivity, responding to children's curiosity, submissiveness and dependence. If a paedophile commits physically violent practices on a child, then it is usually not true paedophilia, but **paedophilic sadism**. The dangerousness of such an offender does not primarily come from paedophilia but from sadism. The paedophilic component increases his dangerousness by the fact that a child is more defenceless as a victim than e.g. an adult woman. In addition to the unequivocal sexual deviations regarding an activity (e.g. a sadism) or an object (e.g. a paedophilia), there are also combinations of several deviant preferences occurring simultaneously. Such cases are referred to as **multiple paraphilias**.

Criminal thinking, besides other factors, supports and maintains the so called criminal lifestyle. This system of beliefs helps the individual in everyday interaction with external and internal environments. The **criminal lifestyle** is not initially embedded into an individual`s personality (there is no genetical predisposition), nor it is predetermined by a set of environmental circumstances. It is rather a set of individual interactions through which an individual is integrated to his inner and outer environment. The currently prevailing opinion says that **criminal thinking patterns** can occur across a criminal population, in different types of offenders, but also in a non-criminal population (just here in a different degree and intensity). Such patterns can be seen in **cognitive distortions** of sexually motivated offenders. For example offenders who commit rape on an adult person (woman) have a tendency to ascribe extreme externality to their actions; they often blame the victim for the unpleasant situation she got herself into. Externalization or transfer of guilt to the victim may be carried out in a number of ways. The most common exhibitions of criminal thinking include an assertion that a woman 'was asking for it (rape)' by the bold outfit she was wearing or that she did not do everything she could have to prevent the rape or she was in the wrong place at the wrong time (mollification).

Quite a large number of reports in the press, on television and the radio on the problems of sex crime can be seen as objective evidence that the mass media take a great interest in this topic. A **media content analysis** described some characteristics of the picture of sex crime in the Czech Republic, including the view on its offenders, presented by the Czech media. A number of criteria described in the literature that determine the attractiveness of criminal cases for the media (for example sex, violence, risk, connection to celebrities, persons of a high social status or children) repeatedly appeared in the research sample of media reports. The reporting quality of Czech media can be, based on the analysis outcomes, assessed as relatively satisfying. Lack of objective reporting, primarily the unbalanced attention given to different opinions and standpoints and a markedly negative assessment of the 'perpetrator' was, not surprisingly, prevalent in reporting of the most tabloid newspapers and commercial television channels and radio stations. What can be considered as disturbing is the strengthening of a stereotypical picture of a rapist which is presented in the media messages and which may 'guide' the public to, or act in the way of strengthening of, a simplified, exaggerated and therefore false perception of an offender as a sexually deviant man, stranger to the victim, attacking a young woman or a child usually in remote areas and in the night time. Although the situation in the media has not been found as gravely disturbing, the above mentioned drawbacks are definitely in the way if we want to win over the recipients of the media messages, i.e. the public, for a truly rational approach to the discussed problems. Achieving of this goal would only be possible through increasing the quality of the media reporting on this complex issue. There should also be a targeted effort to avoid supporting of undesirable stereotypes of the offenders, and accentuate consistent abidance by such an essential principle of the legal system of a democratic society as the presumption of innocence, also within the media outputs.

Sex offences of violent nature belong to the acts most seriously violating human dignity, and have severe and long-term, if not fatal, consequences for their victims. Understanding the mechanisms leading offenders to sexual aggression and their personality characteristics or motivation is the basic precondition for adequate procedures of detection, investigation and prosecution of this type of crime. The same applies, regarding the importance of accurate and reliable data and information, to the sphere of approach to and treatment of violent sex offenders. Only the well 'targeted' interventions in the form of punishment, medical therapy, treatment programmes, surveillance and restriction measures, etc., can succeed in reducing the risk of sexual violence recidivism. Finally, the extensive and reliable evidence base is a prerequisite for success in the field of sex crime prevention. The knowledge of the risk factors and the level of their significance or seriousness in relation to sexually oriented violent behaviour can contribute e.g. to identification of risk groups – of potential offenders and victims – and to the development of interventions in the area of social prevention. Similarly the information on offenders, victims, and ways of committing sex offences form a basis particularly for the development of measures of situational prevention.

Translated by: Ema Vlčková

Blatníková, Š., Faridová, P. & Zeman, P. (2014): *Násilná sexuální kriminalita – téma pro experty i veřejnost.* Praha: IKSP. ISBN 978-80-7338-143-1

III.2.2. Rape in the Czech Republic – offences and convicted offenders

Šárka Blatníková, Petra Faridová, Petr Zeman

Rape is a serious crime that affects not only the direct victims, but also their surroundings and society as a whole. It has negative consequences that are not restricted to the time of the crime or immediately after, but which sometimes last for the rest of the victim's life. This monograph presents the selected results of empirical research carried out by the Institute of Criminology and Social Prevention (IKSP), which focus on the issue of sexually oriented violence, its offenders and victims, as well as the response of public authorities to this type of serious crime.[6]

The **subject of the research** was sex offences with an element of violence registered in the Czech Republic, identified perpetrators of these offences and individual measures taken to protect society from this type of crime. The **main research objective** was to gain new criminological knowledge on sexually motivated criminal violence and its offenders in the Czech Republic and to evaluate the means used to punish offenders of this type of crime. **Sub-goals** included an evaluation of legislation governing the prosecution of sexually motivated violence in the Czech Republic, identification of instruments used to assess the danger of violent sex offenders and mapping the portrayal of violent sex offences and offenders in the Czech media.

In the empirical part of research, which is presented in this book, the standard criminological **research methods and techniques** were used such as a content analysis of relevant documents (criminal court files, expert witness reports on the mental state of offenders, criminal records), psychodiagnostic techniques (Psychological Inventory of Criminal Thinking Styles (PICTS-cz) and the MMPI-2 personality test), descriptive and bivariate statistical analyses. The research task was carried out in accordance with the generally binding regulations, including the regulation on personal data protection, and the ethical principles of research work were respected.

From a criminological perspective, **violent sex crime** can be defined as a set of offences, where the offender intervenes in the sexual sphere of the victim using physical violence, the threat of physical violence or threat of other severe injury, and does so without the victim`s consent. In the catalogue of offences offered by Czech criminal law, there is none that fully meets this definition. The closest to this definition and general notions regarding this type of crime is the offence of rape under Section 185 of the Penal Code (Section 241 of the previous Penal Code of 1961), or the new criminal offence of sexual constraint under Section 186 (1) of the Penal Code. However, it should be noted that these offences can be committed in a manner that is disputative in terms of meeting the above definition. The legal definition of "sexual intercourse" includes, in its broadest sense, certain less

6 The research project „Violent Sex Crime in the Czech Republic - focusing on its present forms, increase in efficiency of detection and sanctioning of offenders and on possibilities of protecting society from sexually motivated violence" was funded by the Security Research Programme of the Czech Republic (Program bezpečnostního výzkumu ČR) from 2010 to 2015 (No. VG20122014084, the provider is the Ministry of the Interior of Czech Republic).

intensive forms of intervention in the sexual sphere of the victim, which also applies to the activities the offender forces the victim to perform in case of sexual constraint (masturbation, denudation or other comparable behaviour). In addition to the use of actual physical violence or threats, the perpetrators of these offences can achieve their objective by abusing the victim's defencelessness or making her feel defenceless through deceit or other similar method.

The comprehensive group of studied variables focused on the **legal classification of the examined cases and final court decisions**.

The research sample, which included 610 criminal files on 796 violent sex offences committed by 584 offenders, concerned the **crime of rape** in 95% of cases. Three quarters of the examined offences were completed by the offender and the significant majority of these were one-off attacks. The manner in which the basic and research sample was compiled contributed to the fact that **unconditional prison sentences** were imposed more often for the violent sex offences examined in our sample in comparison to official judicial statistics. In more than one quarter of the examined cases, the offenders were also ordered to undergo **protective treatment** (i.e. quasi-compulsory treatment ordered by the court), mainly in institutional (in-patient) form. **Security detention** was imposed in 9 cases. Among the groups of offenders who were ordered to undergo various forms of protective treatment, there were distinct differences in terms of their mental state. With regard to offenders ordered to undergo in-patient treatment, the significant majority were diagnosed with disorders of sexual preference (paraphilia) by experts in criminal proceedings, and half were found to have personality disorders, indicating that offenders in this group often had a combination of paraphilia and personality disorders. Paraphilics and offenders with personality disorders were in the minority among offenders ordered to undergo protective treatment in out-patient form, and comorbidity of both diagnoses occurred in a single case.

In respect of the legal classification of the **forms of intervention in the sexual sphere of victims and the means used for this intervention by the offender**, there were various combinations in the research sample. More than half the examined offences were classified as coitus (or attempted coitus) by the court, while sexual intercourse conducted in a manner comparable to coitus was less common, and "plain" sexual intercourse was much less frequent. Particularly in forms of "coitus" and "other sexual intercourse conducted in a manner comparable to coitus" (i.e., oral sex, anal intercourse, etc.), there was frequently a combination of both forms of sexual intercourse in the same offence. In the majority of cases, according to the court, the offender committed an act of violence, but it should also be borne in mind that "violence" for the purposes of legal classification is also considered a crime committed against a person whom the offender placed in a state of defencelessness through deceit or other similar method. In almost one third of cases, the offender committed the crime under the threat of violence, though cases where the offender used the threat of other serious injury were rare. In roughly one tenth of cases, the offender exploited the defencelessness of the victim, though partly in combination with one of the above forms of coercion.

In terms of the **time and place of the crime**, the analysis showed the following results. Most offences in the research sample took place indoors, in enclosed spaces (interiors), which does not correspond to the usual notion of rape as random victims attacked on their way home from work, a party, etc. However, the fact is that the proportion of offences committed under the open sky (outside) was not very much lower - the ratio of the number of offences committed indoors and outside was about 1.5 : 1. The sample included several cases where the offence took place in both environments, however this was more of an exception. Despite the preponderance of offences committed indoors, where climatic conditions should not play a role in terms of seasons, the largest number of offences took place in summer and the lowest in winter. Unsurprisingly, violent sex offences occurred much more often on non-work days, especially Saturdays and in the evenings, or respectively night time hours.

A large number of variables were studied in relation to the **circumstances of the commission** of the examined offences.

Of the 584 offenders in the research sample, 579 were **men** and 5 **women**. The **age structure** of offenders in the research sample **at the time of the offence** roughly corresponds to the age structure of the general convicted population in the Czech Republic (cf. Czech Ministry of Justice, 2014), though perhaps with a slightly higher proportion of juvenile offenders, and conversely, a lower proportion of offenders over the age of 45. An interesting aspect in the juvenile group is the high, almost fifty percent representation of the youngest, i.e. fifteen-year old offenders. Unsurprisingly, most crimes in our sample were committed by Czech **citizens** (85% of examined offences). The remaining offences were shared by citizens of 15 other countries, with the major share in the research sample committed by citizens of Slovakia, Ukraine, Israel and Romania. The composition of the research sample was virtually the same by the offender's **country of birth** - only the proportion of offenders born in the Czech Republic was somewhat lower (81%), in favour of people born in Slovakia. This means there was a distinct group of offenders in the sample who were citizens of the Czech Republic, but born in Slovakia, which is probably a consequence of the division of Czechoslovakia, and subsequent "selection" of between citizenship of the Czech Republic or Slovakia by its citizens.

Offences in the sample were clearly dominated by individual attacks by a single offender over attacks in pairs or in a group. In half the examined cases, the offender was **under the influence of addictive substances** when committing the offence, in the vast majority alcohol. Risk factors in assessing the danger of an offender, or possibility of criminal recidivism, include the fact that the offence was committed at a time when the offender should, on the contrary, have been more "careful" because he had been subjected to certain measures (duties) in connection with his other, previous delinquency. Offences committed by an **offender** in similar **contact with the criminal justice system** made up nearly two fifths of the research sample. This particularly concerned offences committed by offenders during the probationary period of a suspended sentence or on conditional release from prison, or while undergoing protective treatment. In a considerable number of cases (15%), in addition to sexual assault, the offender also **attacked the victim's property**, mostly in the form of theft or robbery, during the same offence. Cases where the offender robbed or stole from the victim after the sexual assault clearly predominated over offences in the opposite order. In terms of stolen goods, this was mainly mobile phones or purses (or just cash), as well as the theft of credit cards, documents, keys, jewellery or watches. Often the victim's entire handbag was stolen.

In one fifth of the examined cases, the offender was **carrying a weapon** or other object that could be used as a weapon when committing the offence. In most cases, the offender brought the weapon or similar object to the scene. The most common weapon was indisputably a knife. The offender had a firearm in a total of 15 cases. The offender used the weapon against the victim in over a third of cases in which the offender had a weapon. Certain kinds of weapons, however, were predestined to be used. While the number of cases in which the offender had a knife was roughly four times higher than the number of cases in which he had a garrotte, there were more offences in which a garrotte was used than those involving a knife. In other words, a knife was used in one fifth of cases, when the offender had a knife, while a garrotte or bonds (restraints) were used in virtually all cases where they were available to the offender. It can be assumed that people usually carry bonds only if they intend to use them (unlike knives), and in terms of garrottes, offenders usually turned everyday objects (electric cable, shoelace) into this type of weapon at the moment they choose to attack the victim with them.

In more than three quarters of examined cases, the offender **contacted the victim in some way** prior to the sexual assault - either they already knew each other, he addressed to the victim, or met her. In terms of the place of such contact, there were about the same number of cases where it took place in public or a place inaccessible to the public, or where the offender contacted the victim at the future scene of the crime or from another location.

In almost one third of cases, the offender attacked the victim suddenly, without watching or stalking the victim in advance. Usually the **offender's behaviour before the attack** showed certain elements of planning. The offender most often spent some time watching the victim and the victim already knew about him at the time of the attack. Cases where the offender attacked unexpectedly from ambush, after watching the victim were less common. Cases in which the offender hid from the victim in the period preceding the attack were an exception.

Unquestionably the most frequent **sexual activity by offenders** in the examined offences was vaginal intercourse, which (including attempted sexual intercourse) occurred in about two thirds of cases. Oral sex was also very common, which occurred in almost half of the cases. Other common forms of sexual activity during offences were penetration of the victim with the offender's fingers or hands, masturbation of the offender by the victim (which was used as an alternate activity in some cases after the offender failed to achieve satisfaction during vaginal intercourse), and less frequently anal intercourse. Other activities "accompanying" sexual assault involving one of the "main" activities above, is a high incidence of groping the victim by the offender, and kissing, or respectively other forms of activity involving the offender's mouth, such as sucking or biting the victim. A notable finding was that almost half the examined offences included **multiple sexual activity**, i.e. multiple, different types of sexual activity during one attack against one victim.

Forms of violence used during the examined sexual assaults included a wide range of activities. In the vast majority of cases, the practices used were designed to restrict the victim's movement or other activity, such as holding their hands, restraint, covering their mouth, binding or holding the victim in a confined space. A violent change of the victim's position by being thrown to the ground, pressed into a corner or other space, or being dragged across the ground were also common. More intense forms of violence in the form of punches, slaps, kicks, or beating the victim, whether the offender used his hands, feet or a blunt object, were present in two fifths of cases. Less common forms were strangulation, suffocation or choking the victim, and the victim was cut or stabbed by the offender in only 15 cases. No cases in which the offender fired on the victim were reported.

In most cases, the offender gained **control of the victim** through physical violence, whether with or without a weapon – this was the case in three quarters of offences. A weapon was used by the offender to gain control of the victim in a total of approx. 16% of cases. In one tenth of cases, the offender's mere presence at the scene was enough to gain control (though, this includes cases where the violent sex offence was committed by exploiting the defencelessness of the victim).

In more than two thirds of cases, the victim actively resisted the offender's attack, usually physically, albeit in a quarter of these cases the victim's activity was limited to verbal **resistance**. The victim did not offer any resistance whatsoever to the offender in more than one tenth of cases, while passive resistance (simple non-compliance with the offender's demands without active resistance) was an exception. The offender paid no heed to the victim's manifested resistance in over half of cases and continued in his violence with the same intensity, which was sufficient to overcome resistance. Another large group consisted of offences where the offender responded to the victim's resistance by increasing the intensity of violence, or initiating violent behaviour, where he had previously proceeded without violence until the victim showed resistance (approx. one quarter of cases). In just under ten percent of examined cases, the offender desisted in his sexual assault or fled the scene in response to the victim's resistance. In a few cases, the offender responded to the victim's resistance by "agreeing" with the victim on a less unpleasant form of sexual interaction – e.g. he refrained from oral sex and contented himself with the victim masturbating him. In almost two-fifths of rape cases, the offender took action that spoke of an attempt to **minimise the possibility of his subsequent apprehension**. This most often involved threatening the victim not to report the incident, but also the offender covering his tracks after the crime or giving the victim a false name on contact, etc.

In terms of the **degree of regulation of violent sexual conduct**, it was possible to see a frequent low level of regulation of aggression in offenders of the examined offences, which was characterised by a strong urge that could not be controlled, or a medium degree, which already showed elements of planning. A high, or conversely, very low level of regulation of sexual violence was found in similarly numerous (almost one fifth) categories of offences. The offender's conduct in four fifths of examined offences corresponded to an instrumental **type of aggression**, where the aggressor acts so as to achieve a specific goal, such as sexual satisfaction. Reactive-hostile aggression, i.e. impulsive, un-programmed aggression, which is the offender's goal in itself, was much less common.

Most of the examined offences ended by the offender leaving the victim at the scene and his departure, whether quietly or by fleeing the scene (almost a third of cases). In one quarter of cases the opposite occurred, where the offender remained at the scene, while the victim left (departed, ran away or left the scene under false pretences). In a similar number of cases, the offender decided to "release" the victim after the crime, consciously relinquishing control of the victim and allowing her to leave the scene.

In subsequent criminal proceedings, the offender pleaded guilty in about one third of cases. More frequently, the **offender's position** was such that he at least partially denied the charges. Of this group, the most common cases were where, although he admitted sexual intercourse with the victim, the offender claimed it was voluntary on the victim's part. Complete denial of the crime, in the sense that the offender did not know the victim, was not at the scene of the crime at the time of the attack, etc. was less common. Situations where the offender admitted violent behaviour towards the victim, but denied intercourse were rare.

The research devoted considerable attention to the **characteristics of offenders** of the examined offences in terms of their criminal, personal, partnership, educational and work history.

Approximately 30% of offenders in the research sample were **first-time offenders**, i.e. persons without prior criminal convictions. Other offenders in the sample have already been convicted in the past (**general recidivists**). One quarter of the examined offences committed by first-time offenders, were committed by people who had been diagnosed with paraphilia (disorder of sexual preference). **Generic (sexual) recidivists**, i.e. persons previously convicted of a sex offence, accounted for only a slightly less numerous group than first-time offenders. One third of them were diagnosed with paraphilia by experts in criminal proceedings. One-sixth of offenders in the research sample (98 persons) were **specific recidivists**, i.e. persons who had been previously convicted of the same sex offence, namely rape.

Almost half of the examined offences were committed by offenders who had already **been in prison** in the past and completed their prison sentence. The average time that had elapsed since their release from prison to committing the (examined) violent sex offence was approximately 4.5 years in this group. A significant majority of examined offences were committed by persons who had never been ordered to undergo **protective treatment** in the past. This group naturally includes offences committed by first-time offenders. In the group of offences committed by offenders who have had experience with protective treatment, the majority were committed by generic recidivists - offenders previously convicted of a sex offence (violent and non-violent in nature).

In terms of the **upbringing (family environment)** of offenders in the research sample, nearly two-thirds of examined offences were committed by offenders who grew up in a family. There was a minimum number of offenders who had grown up in institutional care during their formative years in the sample. Less than one fifth of offences were committed by offenders who, in addition to family, had also gone through some form of institutional care in their childhood. Most were offenders who came into institutional care from a family, and only 12 offences were committed by offenders who were initially in institutional care from which they were placed in a family environment. A slight majority of offences (where this information was ascertainable), were committed by offenders who experts found during the course of investigation had had lower grades for conduct, truancy, fights or other **serious discipline problems** in childhood.

In terms of **marital status**, almost half of the examined offences in the research sample were committed by single offenders. The rest were almost equally shared by married offenders and offenders in de facto relationships, with a slightly smaller representation of divorced offenders. Offenders who had been widowed were an exception. Offences by offenders who were in a **partner relationship** at the time of the crime slightly prevailed in the research sample over offenders un-adapted to a partner relationship. Likewise, the number of offences by **childless** offenders and those where the offender had at least one child at the time of the crime was balanced – this latter group slightly prevailed.

Almost half the offenders in the research sample had completed primary school as their highest level of **education**. Another large group was offenders who had been trained (apprenticeships) or completed secondary school without GCSE. Offenders with GCSE or tertiary education accounted for only a small part of the sample – there were only five university-educated offenders. In addition to data on the level of education, we also registered a **"drop out" factor** at various educational levels. A total of 133 offenders in the research sample had "not completed their educational journey." The largest group was offenders who had not completed their apprenticeship.

More than one third of examined offences were committed by **unemployed** offenders. Almost one quarter of offences were committed by persons in employment and another circa 17% of offences were committed by offenders who earned a living doing temporary work. Offenders who were members of working professions and students, apprentices and pupils were also significantly represented. Nearly half of offences were committed by persons who, if not in prison, could be considered **work adapted**, i.e. they have work habits and were not long-term unemployed at the time of the crime.

Very interesting was the analysis of data relating to the **personal characteristics of offenders** identified by forensic experts in the course of criminal proceedings. One fifth of examined criminal proceedings took place without an expert witness report on the mental state of the offender. These offenders "without an expert witness report" committed 125 examined offences (i.e. 15.7% of the total number of examined offences). In 18 criminal proceedings an expert witness report on the mental state of the accused was not prepared, despite the fact this was an offender who has been previously convicted of a sex offence (generic recidivist). In 172 cases it was clearly established that an expert witness report - psychological, psychiatric or sexological – had been prepared in the past in the context of another, earlier criminal case (in 127 cases this information could not be clearly ascertained).

In evaluating **intellectual capacity**, experts noted that the perpetrators of nearly half the examined offences had an average level of intellect. Offenders of more than one quarter of offences were found to have a below average level of intellect. Experts found an above-average level of intellect in offenders in only three dozen cases. Given that we were unable to ascertain the level of intellect of one fifth of offenders from the available material, offences with offenders of "average intelligence" constituted nearly two-thirds and offences with offenders of below-average intelligence almost one third of all offences for which an indication of intellectual level was available.

The **offender's relationship to addictive substances** was also examined. One quarter of the examined violent sex offences were committed by offenders whose relationship to addictive substances, according to experts, had the nature of harmful use. Another 7% of offences were committed by persons who misused addictive substances, and 8% of examined offences were committed by offenders with diagnosed dependence. According to the conclusions of experts, less than one third of offences were committed by offenders who were abstainers or only "occasional" users of addictive substances.

Offenders of the majority of offences (63%) were persons without a **diagnosis of paraphilia** (non-paraphilic offenders). Paraphilic sex offenders (persons diagnosed with a disorder of sexual preference) were involved in more than one quarter of the total number of examined offences. Paraphilic offenders in the research sample were diagnosed with both paraphilia "in activity" - pathological sexual aggressiveness (paraphilic coercive disorder), aggressive sadism, sadism and masochism - and paraphilia "in the object of their interest", such as paedophilia, homosexual paedophilia, fetishism. Equally common in our sample was multiple paraphilia which the given individual suffers simultaneously (paedophilic sadism). There was also paraphilia identified as polymorphic. In some cases, experts also designated psychosexual immaturity, hebephilia (paedohebephilia), ephebophilia (paedoephebophilia) or adolescentophilia as paraphilia. Only one tenth of offences were committed by paraphilic sex offenders who had already committed a sex offence (violent or non-violent) in the past.

The largest subgroup of offences by paraphilic offenders was offences committed by persons diagnosed with **pathological sexual aggressiveness** (paraphilic coercive disorder) or pathological sexual aggressiveness with traits of sadism. Of the total number of examined offences, these offenders were involved in one fifth. Most of these were persons diagnosed with paraphilia, only two offenders were identified as non-paraphilic pathological sexual aggressors. Half the offences committed by pathological sexual aggressors were committed by persons who were also diagnosed with personality disorder. In a number of other cases, offences were committed by pathological sexual aggressors, whose personality was evaluated as anomalous.

In terms of **personality**, the largest part of the research sample consisted of offences committed by offenders who experts found to have a specific personality disorder - these cases accounted for almost 40% of the sample. In one fifth of cases, the offender's personality was designated by an expert as accented or anomalously structured (without extending to personality disorder). Somewhat fewer offences were committed by persons with an unbalanced or slightly dissonant personality. Experts found a harmonious personality without salience in only 6% of offenders.

We tried to identify the **"fundamental** (underlying) **psychopathology"** of offenders in the research sample from available material, i.e. a factor that was at the forefront in committing the examined violent sex offence. When categorising basic psychopathology on "personality", "sexuality" and "a combination of personality and sexuality," it was found that almost two-thirds of the examined offences in the research sample were committed by offenders whose underlying psychopathology was personality. Offences committed by persons whose underlying psychopathology was sexuality, and offenders whose underlying psychopathology was a combination of personality and sexuality, represented almost equally numbered groups.

Although the research primarily focused on violent sex offences and their offenders, it did not overlook **aspects of victimology**. As expected, the clear majority of the victims of the examined offences were **women**. Offences, whose victims were men, accounted for one tenth of the examined cases. Three fifths of offences in the research sample consisted of attacks against **adult** victims, two fifths against persons under the age of 18. In this group of **juvenile** victims, about half the offences were committed against children under the age of 14, the other half on adolescent, pubescent victims (15-18 years of age). The average age of victims at the time of the crime was 24 years of age, the youngest victim was 6 months old, the oldest 82. The analysis showed that offences whose victims were children under the age of 15 or adolescents, were committed significantly more often by juvenile offenders (i.e. those aged 15-17). In most of the examined offences, the offender was older than his victim. One fifth of violent sex offences were directed against victims who were older than the offender. Cases where the offender and victim were of the same age were much less common.

In terms of the **relationship between the offender and the victim,** one third of the research sample was cases where the offender was a person completely unknown to the victim. Cases where the offender and the victim were next-of-kin or knew each other very well (close, very close relationship) accounted for one quarter of the examined offences. Of this group, 28 were offences where the offender and the victim had a close family relationship. Approximately 13% of offences were committed shortly after the offender and victim had met (e.g. in a bar, at a party, etc.).

One quarter of the examined offences were committed against a victim who was **under the influence of addictive substances** at the time of the crime. Mostly the victim initiated this state of intoxication herself, the offender only contributed to this state in a smaller number of cases (poured her drinks, gave her drugs...). It must be added, however, that it was not possible to find information on the victim's possible intoxication at the time of the crime in more than one quarter of cases.

With regard to the victim's **activity immediately prior to the attack**, the victims of offences in the research sample were most often at home prior to the attack (in roughly one quarter of cases). Situations where the victim had been enjoying herself in a bar, restaurant, at a party, etc. or was returning home from a similar environment, doing outdoor activities such as travelling to/from work, school, or associated with other routine activities, or enjoying a stroll in the countryside before the attack were also common. Other types of activities that were notably represented were the victim was sleep or visiting friends or relatives. In only 5 cases the victim was hitchhiking before the attack, and in 10 cases a prostitute was attacked while exercising her profession.

One of the most frequent **consequences** of the examined offences for the victim was minor physical injuries such as superficial wounds, bruises or abrasions. Consequences in the form of injuries after choking, fractures, cuts and stab wounds occurred in several dozen cases. In seven cases the sexual assault resulted in the victim's pregnancy and in 18 cases in the victim's death. Consequences in the form of post-traumatic stress disorder were found in almost one fifth of examined cases. In terms of the **severity of physical injury** to the victim, two-thirds of the examined offences did not result in injuries requiring medical treatment. Outpatient treatment of the victims as a result of the offence was provided in less than one fifth of cases. Serious injuries requiring hospitalisation were suffered by the victim in 39 cases, while in 28 cases the offender caused the victim injury capable of causing death - of which 13 cases involved extreme injuries beyond those necessary to kill the victim (i.e. overkill).

In the **research** subsample of convicted rapists or perpetrators of sexual constraint serving a prison sentence, the research also examined their personality traits and criminal thinking styles using two psychodiagnostic techniques - Psychological Inventory of Criminal Thinking Styles (PICTS-cz) and the MMPI-2 personality test. The subsample consisted of 133 incarcerated sex offenders, entirely of men, whose average age at the time of administering the test methods was 38.9 years of age. The average number of previous convictions for any offence returned a figure of 5.3. The subsample included both first-time offenders and multiple recidivists (min = 0, max = 24 previous convictions). The average number of previous prison sentences (prison time) was 2.6. Almost half the subsample was previously convicted of a sex offence and about two-fifths of the subsample were diagnosed with paraphilia by experts. Personality disorders were diagnosed in more than half the subsample. The mean MMPI-2 profiles of male incarcerated sex offenders featured a clinically significant elevation on the Schizophrenia scale, Paranoia and Psychopathic Deviate scale, where a higher score on the scale of Psychopathic Deviate scale reflects general criminal or antisocial characteristics rather than characteristics specific to sex offenders. In the PICTS-cz inventory, incarcerated sex offenders with diagnosed personality disorders (ASPD) scored higher on the scale of General Criminal Thinking (GCT), the factor scales of Self-Assertion/Deception (AST) and Avoiding Problems (PRB), and in thinking styles, on the scale of Cognitive Indolence (Ci), Mollification (Mo) and Entitlement (En), as well as in both content (CUR and HIS) and composite scales (P and R). Data obtained on convicted offenders points to the fact that the criminal history of offenders has a more significant relationship to the measured intensity of criminal attitudes than the type and severity of their crime.

In view of the carefully prepared and meticulously collected data, an extensive database of information on cases of violent sex crime perpetrated in the Czech Republic over a several year period has been created, which offers **great potential for further and more challenging analyses**. Based on the data contained therein, it is possible to focus on specific aspects in much greater detail - selected groups of offences, offenders or victims. The file size enables a multivariate statistical analysis and creation of typologies. The database structure allows variation of the research sample in a variety of ways, or the creation and examination of subgroups based on the focus of the specific analysis.

Translated by: Presto

Blatníková, Š., Faridová, P. & Zeman, P. (2015): *Znásilnění v ČR – trestné činy a odsouzení pachatelé.* Praha: IKSP: ISBN 978-80-7338-153-0

III.2.3. Criminal thinking styles: Inventory PICTS-cz

Šárka Blatníková, Petra Faridová, Marek Vranka

This expert monograph presents a summary of research findings about the concept of criminal thinking and the criminal lifestyle, and acquaints the reader with the tool - Psychological Inventory of Criminal Thinking Styles – designated for mapping the thinking styles in the criminal population. The subjects of research were convicted offenders, criminal thinking styles and the aforementioned Inventory of Criminal Thinking Styles (PICTS). The main objective was to assess the possibility of identifying criminal thinking styles in the Czech prison population, to evaluate the option of using the inventory in the conditions of forensic and penitentiary practice and to describe, or rather clarify the structure of the PICTS. Quantitative procedures, multivariable statistical methods and document analyses in particular were used.[7]

Irrational or erroneous beliefs, which have little or no support in evidence, can commonly be encountered even among members of the majority, non-criminal population. However, the fundamental difference is that they usually appear in an increased degree among criminals, are strongly emphasised/in an increased degree and intensity among criminals and relate to socially undesirable or downright antisocial behaviour. In the first part of the publication, we apply to the theoretical background of criminal thinking as conceived by Glenn Walters and his integrative-interactive theory of criminality, which combines a dispositional and situational approach. He identifies mental constructs, representing perceived reality, as belief systems.

Criminal thinking occurs across the criminal population, regardless of the given type of crime. Research, comparing the results between groups of perpetrators of various crimes, respectively various types of criminality, is currently minimal. However, the intensity of

7 The core part consisted of empirical surveys – onsite data collection – that served to adapt the technique to Czech conditions, which was conducted within the research project "Violent sexual criminality in the Czech Republic with a focus on its current forms, on increasing the effectiveness of exposure and sanctioning its offenders and on the possibility of protecting society from sexually motivated violence", which was granted special-purpose support within the Security Research Program of the Czech Republic in 2012-2015 (BV II/2-VS), project identification code VG20122014084.

criminal attitudes differs substantially between groups of perpetrators, sorted according to various aspects of their criminal history, such as the age of criminal onset and the extent of criminal career (high scores on the PICTS scales are associated with a richer criminal history and earlier onset of the criminal career – the sooner an individual starts their criminal career, the more intensive and profoundly rooted criminal attitudes they show). The same applies to the number of prior convictions according to empirical research – the higher number of earlier convictions the individual has, the more maladaptive attitudes can be expected of them.

There are several methods used for the partial identification and description of criminal thinking – interviews, content analysis of testimony, or analysis of statements obtained within certain projective techniques. Foreign expert literature mentions the existence of a number of questionnaires or inventories directly concerning criminal cognition, in the sense of criminal thinking, beliefs, attitudes, cognitive distortions and other similarly defined or related concepts. These tools are generally designated for the criminal population as a whole, or apply to the perpetrators of a specific type of criminal activity, most often sexually motivated offences. In the Czech Republic, the offer of similarly focused tools is entirely different; most often it is possible to use only some personality inventories, which may simultaneously depict certain aspects of criminal thinking, albeit only very marginally. In the course of 2012–2015, our research team at the Institute of Criminology and Social Prevention, with the consent of the author Glenn D. Walters, worked on adapting to the Czech environment the Psychological Inventory of Criminal Thinking Styles (PICTS), which is considered one of the most thoroughly elaborated tools for "measuring" criminal thinking. The first version of the inventory was created by Walters in 1995 and at present it offers eight thinking style scales, four factors scales, two content and two composite scales. It also offers one special scale – Fear of change scale – and a general criminal thinking score. What we consider important about this method (instrument) is the inclusion of validity scales, which help identify the respondent's response style and depict their attitude to the test situation. Based on a whole range of performed studies, it may be observed that this is an instrument with repeatedly proven reliability (in the sense of internal consistency, inter-item correlation and test-retest reliability) and validity; the predictive validity of the inventory was proven in relation to institutional adjustment and recidivism. Another important factor for practical application of the tool is its incremental validity, respectively the incremental validity of its individual scales (ability of the PICTS instrument to contribute to predicting recidivism). According to Walters, author of the technique, the eight thinking styles, despite their mutual correlations, represent the sufficiently distinguished and independent primary cognitive aspects of a criminal lifestyle. The reference for formulating the eight thinking style scales was above all the observation and study of "thinking errors" that appeared in the description of criminal conduct, as presented by the perpetrators. The PICTS instrument is thus considered one of the few empirically based, respectively empirically referenced tools for assessing criminal thinking styles.

Adaptation of the instrument to the Czech prison population as conducted in 2011–2015 and the **Inventory of Criminal Thinking Styles (PICTS-cz)** now constitutes a fully standardized test. To ensure the objectivity of the method/instrument, standard conditions, process of administration, scoring, evaluation and interpretation were defined. The Czech version largely preserves the procedures stipulated in the original questionnaire.

The individual steps of adapting the technique fully respected the basic principles set by the author, including the method of distributing this psychodiagnostic tool. According to available results, the Czech version of the questionnaire corresponds to the original version of the instrument, which is a widely accepted instrument for detecting the occurrence and intensity of criminal attitudes among adult criminals (criminal population), respectively the adult prison population. PICTS-cz shows satisfactory basic psychometric properties, comparable with the results of studies carried out on the author's/original standardization sample. Tests of reliability and indicative proofs of validity of the inventory indicate the possibility of employing it as a useful tool in the diagnostic practice of prison psychologists and expert witnesses in psychology.

We believe that the core of using PICTS-cz, which we have presented in this publication, lies primarily in the penitentiary area, not just in the prediction of the individual's institutional/disciplinary adjustment to the conditions of a prison environment, respectively prediction of the prison misconducts (risk of disciplinary offences). We also see the possibility of using this tool in the field of intervention, or psychological/psychotherapeutic work with offenders, following the example from abroad. In this area, it can serve to define the level/intensity and dominant characteristics of criminal thinking, assess the possibility of changing these attitudes, and subsequently detecting the achieved change (e.g. after finishing a specific intervention program); this is where we believe the technique's potential to be the strongest. However, applicability of the concept for practice of expert witnesses, consisting mainly of assessing the risk of recidivism or resocialization prognosis, should not be omitted. Verification and use of the technique when measuring effectiveness of intervention programs for the prison population/assessing the effectiveness of programs for treating the prison population would be a suitable step for further work.

Translated by: Presto

Blatníková, Š., Faridová, P. & Vranka, M. (2016): *Kriminální styly myšlení: Inventář PICTS-cz*. Praha: IKSP. ISBN 978-80-7338-156-1

III.3. Prosecution of drug offences and the new Penal Code

III.3.1. Drug offences and the Penal Code

Petr Zeman, Michaela Štefunková, Ivana Trávníčková

Criminal activity related with drug manufacture, distribution and consumption covers a range of illegal behaviour, from petty offences bordering on misdemeanours up to the large-scale activities of international organised crime. This monograph presents the results of three-years of research by the Institute of Criminology and Social Prevention (IKSP) focusing on detection and prosecution of drug offences in the Czech Republic and the influence that the re-codification of substantive penal law in effect since 2010 had on this field.

Drug offences for the purposes of this monograph mean criminal activity involving illicit traffic in narcotic drugs and psychotropic substances (NDPS), or precursors thereof. The Penal Code of 2009 addresses such offences in the provisions of Sections 283-287, while in the preceding Penal Act 1961 they appeared in Sections 187–188a.

The subject of research was the reaction of the State (the Czech Republic) in the area of repression of drug offences from a perspective of comparison of the situation before the adoption of the Penal Act and after. With this focus, research was conducted into legislation concerning drug offences and related criminal law institutes, their practical application in detection and prosecution of such types of crime as well as the level, development and forms of drug offences in the context of the drug scene in the Czech Republic (CR).

The purpose of the research was to analyse developments in legal regulation of drug offences and related criminal law institutes, to collect the necessary data on their practical application of the criminal authorities, to define the situation, development in and forms of this type of criminal activity and use this to evaluate the impacts of the adoption of the Penal Code for detection and prosecution of drug offences.

Qualitative and quantitative procedures, **standard methods and techniques** of criminological research were used to address the research task. The resources comprised namely an analysis of Czech legal regulations including available case law, analysis of statistical data from the Ministry of Justice of the CR, statistics from the Police Presidium of the Police of the CR and from the National Drug Headquarters of the Czech Police, analysis of scientific literature, analysis of relevant official documents, expert questionnaire surveys among judges, public prosecutors, police officers, customs authority officers, semi-standardised interviews with selected employees of the law enforcement authorities and analysis of criminal case files.

The theoretical part of the monograph firstly outlines the situation on the drug scene and the context in which the new legislation originated and is applied. The subsequent chapter gives an overview of legislation governing drug offences and their prosecution in the CR. Attention is given not only to provisions of international law, analysis of the new domestic legal regulation, but also to related legislative changes that might affect detection and prosecution of drug offences. A whole chapter is also devoted to legislation relating to drug offences abroad.

The level of drug use in the CR is described as stable over the long term. The most frequently used illegal drug is cannabis in various forms. The prevalence of the use of other illegal drugs is significantly lower. After a more or less universal rise in illegal drug use in the second half of the nineties and in the first years of the new century, this trend has halted. However, the long-term rise in the estimated number of problematic drug users, especially those injecting methamphetamine, is worrying.

The main characteristics and trends in the development of drug offences in the CR over the past years may be summarised under the following items:

- continuing methamphetamine manufacture in home laboratories

- growth in large-scale, industrial methamphetamine production by organised criminal groups controlled from foreign countries
- growth in cross-border drug tourism
- availability of medicines containing pseudoephedrine
- growth in industrial cannabis cultivation using indoor technologies
- substitutional pharmaceuticals diverted to the black market
- cases of "false ecstasy" on the dance scene
- advent of new synthetic drugs
- boom in illegal drug dealing on the internet
- growth in trade in pre-precursors and auxiliary substances
- intensive involvement of Vietnamese criminal groups in drug dealing.

Over the past years, **control of drug offences has become a priority for both the leadership of the Police of the CR and the Ministry of the Interior**. The basic statistic indicators of registered drug offences have risen significantly since 2010. Due to the high latency of primary drug offences, the data on recorded cases of this type of criminal activity is only of very limited illustrative value as to its real dimensions and structure.

The adoption of the Penal Code No. 40/2009 Coll. may be considered one of the greatest changes to Czech criminal law since 1989. As for **legal regulation of drug offences**, however, no fundamental changes were announced as regards the categories of behaviour prosecuted as this type of criminality. Current Czech legislation governing penalties for illicit handling with NDPSs is greatly influenced by the obligations of the Czech Republic arising from internationally binding documents. The international system for control and regulation of NDPS handling is based on three multi-partite accord documents known as the UN drug control treaties: the 1961 Single Convention on Narcotic Drugs, amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances of 1971, and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Of the legal acts of the European Union, Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking has direct significance for the prosecution of illicit handling with NDPS in EU member states.. Other European Union regulations of key significance for prosecution of illicit drug trafficking in the CR are legal acts concerning the control of precursors and so-called new psychotropic substances. For this reason, the new Penal Code is based to a considerable extent on the preceding law, although it brings with it certain changes. Conceptual differences can be found in the following aspects:

- for the crime of possession for personal use of NDPSs and poisons (Section 284 of the Penal Code) **sentences have been stipulated for unlawful possession of a drug for personal use of a quantity that is greater than small that differ for cannabis on the one hand and for other NDPSs on the other.** This facilitated the differentiation of NDPSs demanded by the government according to the degree of the medical and social risk involved, i.e. according to negative medical and social impacts resulting from abuse of such drugs.
- **a new criminal offence** has been introduced **involving unlawful cultivation of plants containing NDPSs for personal use of a quantity greater than small**, where the severity of sentencing differs between cultivation of cannabis and cultivation of other

plants containing NDPSs (Section 285 of the Penal Code). According to legislators, the purpose of this privileged offence was to differentiate between supply for personal use and "commercial" cultivation and to eliminate ambiguity in the legal qualification of acts involving cultivation of plants containing NDPSs.

- **The empowerment afforded to the government by Section 289 of the Penal Code to stipulate by government decree what constitutes a quantity greater than small of NDPSs and products containing them and of poisons** was intended to achieve unification of practice (performed by government decree no. 467/2009 Coll.). The government was also meant to stipulate by the decree **which plants or mushrooms are considered to be plants and mushrooms containing NDPSs and what constitutes a quantity greater than small in this case** (implemented by government decree no. 455/2009 Coll.). Nevertheless, with effect of 23 August 2013, the part of the empowerment and the part of the government decree no. 467/2009 Coll. concerning stipulation of values for a quantity of NDPSs that is greater than small was abolished by Constitutional Court Ruling ref. Pl. ÚS 13/12. This was due to inconsistency with Art. 39 of the Charter of Fundamental Rights Freedoms in combination with Art. 78 of the Constitution, specifically breach of the principle of *nullum crimen sine lege*. Guide values specifying a "quantity greater than small" for selected NDPSs are currently contained in the appendix of the standpoint issued by the Criminal Division of the Supreme Court, No. Tpjn 301/2013. With respect to this matter, the Criminal Division added that in order to deem that this element of the crime has been proven, the fact of whether this concerns a first-time user or a user of such substances who is at an advanced stage of dependence, or other facts affecting the degree to which the situation is health or life threatening for the user should be taken into account.

The adoption of the new Penal Code has also meant a range of **further legislative changes** not addressed directly at the drug offences, nevertheless it may have a significant influence on the detection and prosecution of drug offences. Such changes include for instance the introduction of bipartition of criminal offences, a move to purely formal concept of crime or changes in application of penalties and protective measures. In the subsequent part of the chapter, attention turns to other institutes that might be relevant in this respect, such as the institution of cooperating defendant, the Act on Criminal Liability of Legal Entities, the Act on International Judicial Cooperation in Criminal Matters or amendments to the administrative misdemeanour law.

The next chapter outlines the **approaches chosen by the European Union states with respect to prosecution of unlawful handling with illicit drugs.** Attention is paid to the matter of defining controlled substances, solutions for penalising drug use, differentiating possession of drugs (especially cannabis) for personal use from supply, defining the legally relevant quantities and the question of control of precursors. The concluding part considers current tendencies in the area of drug control, in particular about the diversion from primarily repressive drug policy. Nevertheless this overview has to be considered as descriptive and indicative only. Deeper analysis of the legislation and a more detailed comparison of the drug situation in each country exceed the focus and the extent of this publication.

Due to our historical connections, **Slovak legislation concerning drug offences** is analysed in more detail. Despite the fact that both legislations stem from the same basis, they differ considerably from each other and their similarities are merely imagined. Slovak legislation is significantly more repressive. Despite the declared intention of recodification, it remains severe in particular towards drug users.

From a point of ***basic statistical indicators***, the development in the area of drug offences in the sense of the numbers of drug offences registered by the police since 1990 may be divided into four imaginary stages. The first covered the nineteen nineties for which sustained and noticeable rise in the level of drug offences was characteristic. This rise peaked in 1999 and a noticeable overall reduction followed. From a point of view of recorded drug offences, the period between 2005 and 2010 can be described as a time of stagnation with a gradual rise from 2007. A sharp increase has been apparent since 2010. As for developments in numbers of people undergone preliminary procedure and those convicted for drug offences, a gradual upward trend can be seen for both indicators during the years surveyed.

Certainly the most frequent drug crime is unauthorised manufacture and other handling of NDPSs and poisons according to **Section 187 of the former Penal Act, now Section 283 of the Penal Code,** which accounts for more than three-quarters of all recorded drug offences. Development in the incidence of other drug offences in recorded drug criminality and the number of people convicted thereof diverged in the reference period. Possession of illicit drugs for personal use (a crime under **Section 187a of the Penal Act, now Section 284 of the Penal Code**) has gradually increased its incidence among reported drug offences to approximately 15% over the past years. The proportion of cases of cultivation of plants containing NDPSs for personal use **(Section 285 of the Penal Code)** has fluctuated since its existence as a separate drug offence between 3.5% and 5% of drug criminality recorded by the police and between 2% and 5% of convicted persons. Manufacture and possession of equipment and other objects intended for the manufacture of drugs **(Section 188 of the Penal Act, Section 286 of the Penal Code**) accounted for the greatest incidence of recorded drug crime in 2004 at 9%. Since then, the level has been falling constantly (with the exception of 2006) and in 2014 accounted for 3%. Evidently due to different record-keeping methodologies, the highest proportion of persons convicted for manufacture and possession of equipment and other objects intended for the manufacture of drugs was recorded at the beginning of the reference period, when in 1994 it reached 15% and then 12% in 1995. Afterwards, this incidence gradually decreased, despite a growth in absolute numbers. In 2014 persons convicted for this crime accounted only for 3%. The share of police recorded incidence of the crime of inciting or promoting the use of addictive substances other than alcohol **(Section 188a of the Penal Act, Section 287 of the Penal Code**) had reached almost 20% at the turn of the century. Since the year 2000 it fell sharply to around 1% where it has remained since 2009, with the exception of 2013 where increased police activity in connection with "grow shops" made its mark. The share of persons convicted of this crime between 1996 and 2000 was on average at 7%, then gradually falling and remaining at around 1% since 2006.

Detailed statistical data of the Police Presidium of the CR and of the National Drug Headquarters of the Czech Police relating to the issue of drug offences shows that clarification of drug offences is very high in the long-term, fluctuating between 80% and 90% since 2007. No significant differences are apparent in numbers of identified perpetrators of drug offences as against the total population of identified perpetrators. In the long term, the majority of perpetrators of drug offences are prosecuted for illicit handling with methamphetamine, although over the last three years this figure has fallen slightly. Contrarily, the share of perpetrators prosecuted in connection with cannabis is rising. Perpetrators of offences committed in connection with methamphetamine and cannabis currently account for more than 90% of all perpetrators of drug offences. In the reference period there was a noticeable drop in the share of perpetrators of drug offences connected with heroin. Since 2005, the number of foreigners amongst arrested perpetrators of drug offences has more than doubled and since 2010 has been over 10%. Those arrested were dominated by citizens of Vietnam, the proportion of whom rose sharply in 2008 and since then has not fallen below 50%.

Statistical data clearly shows a steady rise in the number of detected cannabis grow sites, while there is a slight downward trend in the number of methamphetamine laboratories discovered. Over the past two years, more grow sites have been discovered than laboratories. The largest proportion of detected cannabis grow sites are home sites with a capacity of up to 50 plants (approx. 40%). However, the proportion of large-scale cannabis grow sites with a capacity of between 500 and 1,000 plants (approx. 15%) and 1.000 plants and more (approx. 10%) is not inconsiderable. While smaller grow sites with a capacity of up to 500 plants tend to be operated by Czechs, large-scale cannabis grow sites with a capacity of 500 plants and more are the domain of the Vietnamese. Prices of drugs on the street level in the CR have been fairly stable over the past ten years. A gentle fall can be seen in prices of heroin and a gentle rise in the price of marihuana. However, none of these changes can be seen to coincide with to the period immediately after the new Penal Code coming into effect. The wide price range for methamphetamine is also interesting, pointing to a wide range of drug quality available on the street level.

For **more detailed analysis of statistics from the Ministry of Justice** the chosen source of data were special statistical summaries gleaned from the judiciary's CSLAV statistics and records system. The system enables summaries to be compiled on the basis of the criteria entered, going back to 2008. A gradual rise in the index of those convicted for drug offences is evident for all regions. Relatively low indexes are found for the South Moravian and North Moravian Regions. The Capital City of Prague has gradually reached first place. The index for the Central Bohemian Region made a sudden jump in 2010. The high index in the West Bohemian, South Bohemian and North Bohemian Regions may be due to cross-border activities in connection with growing demand for methamphetamine in Germany and Austria. Statistical data shows that preliminary proceedings for drug offences are becoming gradually faster. In particular, the number of cases processed within two weeks has risen. This is probably due to the widening of the option of using shortened preliminary proceedings since 2012. In 2014, 40% of preliminary proceedings took less than 2 months. Completed criminal proceedings right up to legally binding verdicts have also accelerated in drug-related cases. The proportion of drug-related criminal cases completed with binding verdicts in 2014 had risen as against 2008 by more than 20%.

The number of foreign nationals, mostly Vietnamese, involved in the crime of unauthorised manufacture and other handling of NDPSs and poisons (Section 187 of the Penal Act and Section 283 of the Penal Code), has risen in absolute and relative figures. As against 2008, the number of Vietnamese convicted is almost nine times as high. The second most numerous group is composed of citizens of the Slovak Republic. Since 2009, the third most populous group are citizens of the Federative Republic of Nigeria. After a slight fall in 2010, a rise is evident of the past years in the number of persons prosecuted and convicted for the offence defined by Section 187a of the Penal Act and Section 284 of the Penal Code. This is dominated by perpetrators of possession of cannabis for personal use under the first paragraph, who represent over 60%. Possession of cannabis is also most often dealt with in shortened preliminary proceedings, accounting for as many as 47% of cases in 2014. The number of persons convicted for the offence of illicit cultivation of plants containing NDPSs (Section 285 of the Penal Code) is rising gradually, while so far these have always been cases of illicit cultivation of cannabis plants. The offence of manufacture and possession of equipment and other objects intended for the manufacture of NDPSs and poisons (Section 188 of the Penal Act and Section 286 of the Penal Code) is the only drug offence showing a downward trend in the reference indicators, with a minor fluctuation in 2013. The least frequent drug offence of promoting drug use (Section 188a of the Penal Act and Section 287 of the Penal Code) shows a gradual increase, after a fall in the reference indicators in 2010. In 2014, the rise in the number of prosecuted persons is striking, and can evidently attributed to the police "grow shop" raid that took place at the end of 2013. The statistics do not demonstrate that re-codification has had any fundamental effect on the composition of penalties imposed. The most frequently imposed penalty is a suspended prison sentence. Alternative sanctions are only rarely applied. Despite the growing number of persons convicted, the numbers of imposed compulsory treatment are falling.

In order to discover the opinions of employees of law enforcement authorities involved in detection and prosecution of perpetrators of drug offences concerning the changes brought by the new Penal Code for this field, as well as other observations, experiences and proposals concerning the subject of research, ***an expert questionnaire survey*** was conducted ***among judges, public prosecutors, police officers and employees of the Customs Drugs Unit***. The field phase of the survey was conducted in March and April 2014. A total of 146 completed questionnaires were collected.

Most of the respondents are convinced of a rise in drug offences after the year 2010. The high latency is closely linked to drug offences. The primary cause of latency according to all groups of experts is the peculiarity for this type of crime in that a special relationship exists between user and perpetrator, and the user protects his source of drugs. The majority of respondents in all professional groups do not see any significant effect of the new Code on levels of latency. All groups of respondents also mainly share the opinion that after 2010, the involvement of Vietnamese in drug trade has increased. Respondents from the ranks of the police force and customs service agree on the fact that an increase in the numbers of perpetrators from the Vietnamese community can also be expected in the future. As for changes in drug consumption, specialists in both groups expect a rise in abuse of methamphetamine, marihuana and of new synthetic drugs. They also agreed on the fact that heroin consumption has fallen. Experts from both groups most often identified tolerance of drugs in society or the social aspects of drugs in general as the main reason for the increasing availability of drugs in this country. Another serious factor contributing to greater availability of drugs in the CR is seen by the respondents to be shortcomings in legislation and their enforcement.

If the respondents were to evaluate current conditions for prosecution of drug offences in the CR in comparison with the period up to 2010, a marked difference existed between the professional groups. More police officers perceive a difference between the current situation and that of before 2010, although they are not united in their opinion of its nature – the proportion of those that think that conditions for prosecuting drug offences has improved and of those that think they have deteriorated are similar. According to the majority of respondents among public prosecutors, either conditions have remained unchanged, or they have deteriorated. Judges constituted the professional group that interpreted the development of conditions for prosecution of drug offences most favourably – although most judges from the sample group did not notice any changes, a whole third considers conditions to have improved. The respondents' comments, however, indicate that experience with the new legislation and its application on the part of the law enforcement authorities, and the resulting evaluation of development, vary considerably from one member of the same professional group to the next.

Overall the new legal provisions for drug offences stood up fairly well in the respondents' answers in comparison with the previous legislation. More than half of police officers, more than a third of public prosecutors and almost a half of the judges identified them as better. Contrarily, roughly one tenth of police officers and judges involved consider them to be worse. Only among public prosecutors was there a significant proportion who shared this opinion, even though this group was in the minority. Even so, it cannot be taken lightly that a tenth of respondents from this professional group consider the new legislation to be considerably worse than the preceding legislation. All seven participating customs officers identified the new legislation to be better. Respondents of all professional groups that consider the new legislation to be better than the preceding legislation appreciate that it is more detailed. Contrarily, respondents according to whom the legislation for drug offences has deteriorated point mainly at the fact that the new legislation has introduced more grey areas into application practice.

The main individual changes that the Penal Code has brought to the legislation for drug offences to be evaluated most negatively were changes consisting of the introduction of more levels of "scope" as a qualifying aspect of drug offences and in the empowerment in the government decree to change the qualification of "a quantity greater than small" of NDPSs. On the other hand, respondents most positively evaluated the impacts of the changes brought by making prosecution of certain forms of drug offences harsher (repeated manufacture and distribution of NDPSs, promoting drug use to children below the age of 15). In evaluation of the separate changes of drug offences, the police officers tended to be more critical than public prosecutors and judges. In their opinions on a suitable method of stipulating the values for a "greater than small" quantity of NDPSs, the respondents agreed on the fact that they would prefer the existence of a document with concretely stipulated values for a greater than small quantity of NDPSs to the option of this aspect being left to application at individual discretion. The option of a chart of defining quantities of drugs would be contained in a unifying standpoint of the Criminal Division of the Supreme Court won the highest support with all groups of respondents.

Experts see the impacts of the legislative changes on the various forms of drug offences in different ways. Although, with respect to prosecution of manufacture and distribution the prevailing opinion among respondents was that the new Code is stricter, or remained at the same level, with respect to prosecution of possession of drugs for personal use, the respondents tend to be of the opinion that if any change occurred, it was a change towards less severe prosecution. Manifest differences existed between the separate professional groups. With regard to the length of imprisonments for separate drug crimes, the opinion that the penalties stipulated by the Penal Code were reasonable applied without exception with all of the professional groups. Despite certain unifying tendencies, opinion regarding different drug offences varied to a certain extent. A part of the respondents consider the sentences to be too lenient, this answer was chosen mostly bythe police officers.

A significant amount of drug offences is committed by persons who use drugs themselves. One of the approaches used by criminal justice with respect to perpetrators who are drug users is to impose them protective measures – compulsory treatment of drug addiction and security detention. Most respondents consider the provision concerning compulsory treatment and security detention for perpetrators who are NDPS users to be appropriate. When evaluating the utility of the institute of security detention, there were a high number of those who were unable to give their opinion and a similar answer dominated when evaluating the changes in legislation of inpatient compulsory treatment during serving a prison sentence. However, most respondents consider the change involving widening the opportunity of imposing security detention on drug users who repeatedly commit a crime under the influence of or in connection with drug use to be positive.

The legal institutes considered by respondents to be useful include the institute of cooperating defendant and protective measure of confiscation of items or other assets . To the question of definition of NDPSs for the purposes of criminal law, the respondents preferred the so-called "analogical" approach, i.e. defining NDPSs in the law only according to their similarity in chemical composition and their pharmacological effects (traditional drugs and any substances that distinctly resemble them in their chemical composition and pharmacological effects). The most used source of information concerning the issue of drugs for all of the professional groups of respondents involved are experiences from the professional practice of these respondents. In any case, it can be said that in general personal contact with colleagues and scholarly literature are some of the most frequent sources.

Proposals "*de lege ferenda*" by respondents who attached a commentary concluded that the increase in the length of prison sentences and imposition of harsher punishments would be the most useful. Most proposals for change came from police officers who would welcome a complete tightening up of repression towards a certain form of criminalisation of drug use. Public prosecutors and judges consider the liberal attitude of society to the issue of drugs with respect to prevention and elimination of medical and social risks to be important. Another aspect that all professional groups mentioned was more detailed definition of the legally relevant scopes and quantities relating to drug crimes. In this respect, the respondents inclined towards reduction of the current values. In all professional groups the opinion prevailed that increasing the effect of prosecution of drug offences is not a question of a change to substantive, but rather to procedural law.

The new Penal Code has brought changes to legislation of drug offences and their prosecution that are evident at first glance. It can be deduced from the Explanatory Note to the Penal Code that the reason was not the need to change the focus or intensity of legal repression in the area of drug policy, but more of an attempt to make the substantive legislation more precise and more rational. It can be claimed that the new legislation has not presented any fundamental obstacles to detection and prosecution of drug offences. Also, the attitude of the law enforcement authorities to it is mainly positive. Comparison of the new and preceding legislations shows that the changes brought about by the Penal Code for the area of prosecution of drug offences cannot be defined as being clearly stricter or more lenient in approach to such criminality and its perpetrators, because a shift in both directions is apparent. This can be seen as a desirable attempt of greater differentiation of criminal penalties depending on the degree of severity of drug offences. **From a point of view of legislation or in view of its practical impacts, the adoption of the new Penal Code has not meant any significant variation to the approach applied thus far.** No shift in the drug policy of the Czech Republic has occurred that would merit significant change in the intensity or the focus of legal repression as one of the elements of such a policy and the legislation for drug offences and its prosecution in the Penal Code and related regulations correspond with this fact.

Translated by: Presto

Zeman, P., Štefunková, M. & Trávníčková, I. (2015): *Drogová kriminalita a trestní zákoník.* Praha: IKSP. ISBN 978-80-7338-151-6

IV.

Crime Trends

IV.1. Selected issues concerning domestic violence in the Czech Republic

IV.1.1. Selected issues concerning domestic violence in the Czech Republic

Milada Martinková, Vladan Slavětínský, Jiří Vlach

This monograph concerns certain aspects of domestic violence in the Czech Republic. It presents nationwide data from the statistics of state bureaus (Ministry of the Interior and the Ministry of Justice of the Czech Republic) on the incidence of cases of domestic violence over the past few years (according to selected provisions of the relevant legislation). It also presents information concerning legal regulations for prevention of domestic violence and in this respect informs on what corrective measures are currently applied to perpetrators of domestic violence (in units under the control of the Ministry of Justice of the Czech Republic) – prison, probation and meditation service). Additionally it presents data gained from two surveys focused on inter-partner violence. One of these surveys concerned female victims of inter-partner violence seeking accommodation in asylum facilities, due to the violent or otherwise offensive behaviour of their life partner. The second survey focused on examination of cases of inter-partner violence through analysis of judicial criminal files (with legally binding verdicts). This paper is supplemented by several case studies and the questionnaire used for the survey on female victims of inter-partner violence.

The following methods of criminological research were applied while addressing the purpose of the survey focused on the issue of domestic violence in the Czech Republic:

- analysis of Czech legislation addressing domestic violence
- analysis of internal statistics of the Police of the Czech Republic (hereinafter also the CR), the Ministry of Justice of the CR, and the Probation and Mediation Service of the CR during which we focused mainly on certain actus rei of crimes that either directly concern the topic of domestic violence or are closely connected with it. Our main focus of interest during this analysis was the crime of abuse of a person in a common abode (Section 199 of Act No. 40/2009 Coll., the Criminal Code, effective as of 1. 1. 2010, which, in Act No. 140/1961 Coll., the Criminal Code, effective until 31 December 2009, had been described as the crime of abuse of a person living in a commonly inhabited apartment or house – Section 215a).
- study of literature in the field and relevant official documents
- analysis of a selected sample of criminal files
- questionnaire survey of victims of domestic violence

The following findings arose from our research:

- We have not yet succeeded in gaining precise ***complete nationwide numerical data*** concerning domestic violence in the Czech Republic due to the nature of available data concerning this socio-pathological phenomenon. However, according to available data it can be claimed that both the police and judges have dealt with hundreds of serious cases of domestic violence over the past years, and therefore also with hundreds of perpetrators and victims.

As for victims of the crime of murder motivated by personal relations (incl. attempted cases of and preparations for this crime), whose incidence among all victims of murder in the CR over the past nine years (2004-2012) has been around 50% per year (46% - 56%) – this concerned about one hundred persons per year, some of whom were the victims of domestic violence. However, due to the statistical data-keeping methods employed by the police, the precise number of such victims of domestic violence cannot be established. As for less serious expressions of domestic violence supported by official police records about incidents with indications of domestic violence, in some years such records for the CR are as high as six to seven thousand cases per year (years 2010 and 2011).

- ***The Probation and Mediation Service of the CR*** (hereinafter also referred to as the PMS) arranges for convicted perpetrators of domestic violence, as well as perpetrators of other criminal offences to perform alternative punishments and other measures imposed by the court, including attending re-socialisation programmes intended to improve their behaviour. No special probation re-socialisation programme for adult perpetrators of domestic violence has been created by the PMS itself, and under the powers of the PMS, such offenders are treated exactly the same as adult perpetrators of other crimes. The "Against Violence" pilot programme for youth perpetrators of violent crimes will be launched by the PMS in 2014.

We have established that among the perpetrators of the crime of abuse of persons living in a common abode (Section 119 of the new Criminal Code, Section 215a of the old Criminal Code) who have been dealt with by the Probation and Mediation Service of the CR, there were only very few cases where, as some of the adequate restrictions and adequate obligations imposed, courts ordered the offender to undergo a suitable social training and conditioning programme or a suitable psychological advice programme.

- Based on previous developments and experiences during attempts to implement a pilot plan for convicted imprisoned persons aimed exclusively at perpetrators of domestic violence, the ***Prison Service of the CR*** has not yet implemented an independent therapeutic programme for this target group of convicted persons. Perpetrators of domestic violence currently may join the following therapeutic programmes: therapeutic programme KEMP aimed at perpetrators of violent crimes (Vinařice Prison), the STOP programme (Ostrov Prison) and also into the care of the department for convicted persons with mental disorders and behavioural disorders at Liberec Prison. We expect that this target group will have the opportunity to participate in other programmes at other prisons in the future.
- During our research of domestic violence, we conducted ***analysis of selected criminal files*** concerning inter-partner domestic violence (43 files). This concerned cases with legally effective verdicts from 2011 or from the previous year.

Analysis of criminal files was conducted using a record sheet containing 124 items. The record sheets were divided into several thematic sections (criminal offence according to the prosecution, impact of the crime on the victims of domestic inter-personal violence, the course of criminal proceedings, ejection and non-molestation orders, the perpetrator and the victim). Gathering of files for analysis and making data entries into the record sheets went on for the duration of the period December 2012 to May 2013.

- We established from the analysed criminal files that in the vast majority of cases (76.7%) the primary report leading to criminal prosecution came directly from victims of domestic inter-personal violence. In other cases, the report came from amongst relatives (9.3%) or neighbours, employees of healthcare facilities or social workers (14.0%).
- The vast majority of cases (79.1%) ended with the conviction of the accused offenders. In five cases (11.6%) the defendant was acquitted and in four cases (9.3%) charges were dropped by the damaged party.
- Twenty of those convicted (58.8%) received a suspended prison sentence. The remaining fourteen offenders (41.2%) received non-suspended sentences. The average length of non-suspended sentences was 35 months. Six of those convicted (17.6%) were also ordered to undergo treatment in custody (3x against alcoholism, 2x psychiatric and 1x against addition to drugs).
- The average length of criminal proceedings in the cases analysed was 430 days.
- In more than a third of cases from our sample group (37.2%), police ejection from the common abode occurred. Almost a third of the ejected persons then broke the conditions of the ejection order. Non-molestation orders under Section 76b of the Civil Procedural code were issued in five cases.
- In our sample group, those charged with committing domestic violence of an inter-partner nature were almost always men (95.3%). Women were charged with inter-partner violence only in two cases (4.7%).
- Almost three quarters of offenders (74.4%) had been convicted in the past, while 37.5% of these had been convicted of a violent crime. Four of them had even been convicted of domestic violence in the past.
- The average age of the charged offenders was 41 years old, while the youngest of them was 21 years old at the time he committed the crime, while the oldest was 73 years old. Four of the offenders (9.3%) were foreign citizens.
- The victims of domestic inter-partner violence were for the vast majority women (95.3%). Two male victims (4.7%) were the exception to this.
- The average age of the victims in our sample group was 40 years old. The youngest of the victims was 19 years old; the oldest was 68 years old. One of the victims was a foreign citizen.
- The most serious impact of domestic violence in the cases that our analysis covered was one case of death of one of the victims. Four of the victims (9.3%) suffered serious harm to their health as a result of domestic inter-partner violence. One victim suffered significant material damage, because under mental and physical coercion from her partner she was forced to sign several loan contracts which she then paid off herself. The remaining cases (86.0%) involved minor physical injury (mostly bruises or contusions), alongside likely mental suffering.
- The second ***survey*** in the field of domestic violence focused on the victims of domestic violence. It concerned ***women who took advantage of the accommodation services of asylum facilities*** when they left their life partner because he had behaved violently or otherwise offensively. The surveyed sample group comprised 124 women. This was about half of the women living in asylum facilities providing accommodation to victims

of domestic violence[8] across the Czech Republic during the approximately five-week period when we were conducting our research (approx. 20 February to 22 March 2013). The survey was conducted using a questionnaire created especially for the purposes of this research. The women completed the questionnaire by themselves. The questionnaire was anonymous and its completion was voluntary.

- The sample group of 124 respondents – victims of inter-partner domestic violence – comprised 75.8% of women housed in asylum homes whose address is not confidential (94 persons) and 20.2% of women from asylum homes whose address is confidential (25 persons). Five respondents did not specify in which type of asylum facility they were housed (4%).
- The respondents were predominantly women of between 20 and 40 years of age (80.6%, 100 persons). The youngest were four 20-year olds and the oldest - three women of 56 years of age.
- About 40% of respondents came to asylum housing after one year to five years of constant cohabitation with their partner (42.8%, 53 persons). About a quarter of respondents found themselves in an asylum facility after more than ten years of cohabitation with their partner (24.2%, 30 persons), and about the same number of women after 5-10 years of cohabitation (26.6%, 33 persons). Only 4% of the women cited a period of cohabitation lasting a year or less (5 persons). Three women did not divulge the length of their cohabitation.
- Almost 30% of respondents had completed secondary school education (secondary school or vocational school with a "maturita" final examination certificate) (29.0%, 36 persons). Five respondents had graduated from university or college (4.0%). More than a third had completed vocational school without a "maturita" final examination certificate (35.5%, 44 person) and about a quarter had completed only elementary education (26.6%, 33 persons).
- 12.9% of respondents (16 persons) were employed, 37.1% of women were unemployed (46 persons), 43.6% of respondents were women on maternity leave (54 persons). Three women had disability pensions and we categorised four women as "other".
- 62.9% of women (78 persons) came to asylum housing directly from a common household with their partner. About a tenth of the women came from other asylum facilities (12.1%, 15 persons), two women from a hostel, two women from the street. Approximately one fifth of the women came to the asylum facility from other provisional accommodation, mostly with relatives or friends (21.8%, 27 persons).
- Almost all women lived with their children in the asylum facility (97.6%, 121 persons).
- At the time of conduction of the survey, 225 children were living with the respondents. At least half of these children had been witness to abuse of their mother by their father/step father at various degrees of frequency ("occasionally" to "almost always when it occurred").
- Almost 40% of respondents were dependent upon social support from the state (e.g. on parental benefit, child support etc.) as their only source of money for life (39.5%, 49 persons) (Social support does not include unemployment benefit, which we monitored separately).

8 These were asylum facilities which as at 14 December 2012 were registered in the MoLSA CR Register of Social Service Providers and which also offered accommodation to the victims of domestic violence (a total of 99 asylum facilities).

- Three quarters of respondents were in debt in some way (75.8%, 94 persons).
- About 90% of respondents (of 120 women) was attacked by their life partner at least once in the period running up to leaving him (93.3%, 112 persons). Of these 112 women, about three quarters cited fairly frequent physical assaults (frequent, very frequent, constant) by their partner during this same period (76.8%, 86 persons).
- More than four fifths of the 112 women (83.9%, 94 persons) physically assaulted by their partner (in the period running up to leaving him) cited that they had suffered at least one physical injury. 16.1% of the 112 women assaulted by their partners stated that they had suffered no obvious physical injury after such aggression (18 persons).
- Half of the 94 women physically injured by their partner suffered physical injury several times (i.e. more than twice) (47 persons). 27.6% of these 94 respondents (26 persons) cited one physical injury. About one fifth of the women stated that they had been injured twice (21.3%, 20 persons). One person did not cite the frequency of injuries.
- About half of the 94 physically assaulted women (51.0%, 48 persons) had the bodily injuries resulting from physical attack by their partner treated by a doctor. The other approximate half (47.9%, 45 persons) never visited a doctor for treatment of such injuries. One person made no comment in this area. We did not inquire about the reasons for not seeking medical treatment, nor did we investigate the nature of injuries in more detail.
- A quarter of respondents stated that in the period running up to leaving their partner, their partner had behaved in such a way that they were in constant fear of him (30 persons); more than two thirds of respondents were often or very often in fear of their partner (68.3%, 82 persons).
- In the period running up to leaving their partner, half of the respondents (61 persons) cited that their partner had threatened to kill them "frequently, very frequently, constantly". Almost 30% of women asked (28.1%, 34 persons) had experienced violence on the part of their partner during sex.
- When seeking help and advice due to the intolerable behaviour of their partner, amongst the most frequently authorities and facilities approached, 34.9% of respondents turned to the police (47 persons), to the authority for social and legal protection of children (OSPOD) (35.5%, 44 persons) and to various organisations providing help to the victims of domestic violence (32.3%, 40 persons). The women turned to other facilities and institutions less often.
- Before coming to their current asylum facility, about one fifth of the respondents had not sought out any organisation or facility with a request for advice of help with their problems concerning their partner's bad behaviour towards them (21.0%, 26 persons).
- About 40% of respondents labelled their departure from their partner as fast, not long prepared (41.9%, 52 persons). Almost 30% of respondents were assisted by the police during their departure from their partner from their common household (29.0%, 36 persons).
- At the time of the survey, 7.3% of respondents (9 women) were officially protected against their partner/husband by means of a non-molestation order.
- One fifth of the 124 respondents stated that their partner was facing criminal prosecution for their abusive behaviour towards them – as a result of which they eventually found themselves in their current asylum housing (19.4%, 24 persons).
- 89 of the remaining 100 respondents answered the question regarding potentially bringing official charges against their partner for abusive behaviour towards them in

the future: about half of the women stated that they would not address the problem with the involvement of the authorities (52.8%, 47 persons). Only about one fifth of the women expressed their intention defending themselves in some way with the involvement of authorities (by bringing criminal charges, by filing a complaint to a civil infractions committee) (19.1%, 17 persons). The remaining women did not yet know how they would behave (28.1%, 25 women).

- One tenth of the 124 respondents stated that their life partner has been criminally prosecuted at some time in the past for his behaviour towards them (9.7%, 12 persons).
- At the time of the survey, one fifth of respondents (25 persons) did not feel strong enough to resolve their current life situation, almost one fifth of the women had no exact idea about their life in the future (22 persons); around 30% of women did not feel fully well from a point of view of mental health (38 persons); about one tenth of the women were not very optimistic about their future life to be (14 persons) and one fifth of the women did not have the best of relations with their relatives (25 persons).
- At the time of the survey, almost one fifth of the respondents already knew that at the end of their current asylum stay, they would have to find accommodation for themselves and their children (17.7%, 22 persons) in another asylum facilities, while 4 of the women had come to their current asylum stay from another asylum home.

Translated by: Presto

Martinková, M., Slavětínský, V. & Vlach, J. (2014): *Vybrané problémy z oblasti domácího násilí v ČR.* Praha: IKSP. ISBN 978-80-7338-139-4

IV.2. New phenomena in violent crime

IV.2.1. Violent crime in uncertain times

Alena Marešová, Radovan Havel, Milada Martinková, Miroslav Tamchyna

Manifest examples of violence enjoy considerable attention in the Czech media (including Internet news servers). The professional community in relevant fields devotes much less attention to the matter of violence. When the professional press addresses violence, or else aggression or aggressiveness, this tends to concern cases of domestic violence. The overall approach to the causes, manifestations and to identifying definitions of what we understand under the terms violence and aggression, including providing the theoretical starting points of all of the above terms, has, with certain exceptions, been adopted by Czech professionals from foreign professional literature.

The prevailing, inconsistent attitude towards violence (aggression, violent behaviour, hostility) is becoming more intense in society as regards dealing with specific manifestations of violence that overstep the mark tolerated by society and are therefore punishable under the law, i.e. violent criminality.

In professional literature, the term "**violent criminality**" has never been and is still not understood in universally in the same way. Not even Czech penal laws cite crimes of a violent nature as one single group. Although, unlike its forerunner, the penal code applicable as of 1 January 2010 places crimes against life and health in the first chapter of a special section thereof, we find violent crime in almost all other chapters of that same penal code: in the second, third, fourth, seventh, eighth, ninth and tenth. As a rule, the most dangerous forms of violence are contained in the last chapter – thirteen: crimes against humanity. Many further crimes also tend to be committed in a violent manner, even if such violence or threat does not constitute the essence of the crime in question. We find the same grey areas too in the statistics issued by all criminal justice authorities. In some commentaries – e.g. that of the Supreme Public Prosecution Office, we can come across the label violent criminality, but this primarily refers to crimes that appear in the first chapter of the special section of the penal code and therefore markedly differs from the interpretation in materials issued by the MoI CR.

This publication, following up on previous IKSP studies, presents new findings concerning violence and the results of research, the **subject** of which was violent crime, in the current interrelationships between such findings, reflexion on violence from the viewpoint of theorists from the Czech Republic and abroad – subjective attitudes of persons who encounter violence and its perpetrators, or the consequences of violent acts in the course of their occupation. The **objective** of the research was to describe the phenomenon of violence in a wider social context, including its tangible manifestations in the form of violent criminality in the Czech Republic; concretely to identify any quantitative and qualitative changes evident from analysis of the statistic data published by criminal justice authorities, to establish whether there really is an increase in brutality and ruthlessness in the violent behaviour of perpetrators, including the use of excessive violence by means of a questionnaire presented to experts/specialists from various professions that have long-term experience of violent criminality and its consequences.

To achieve this objective, the following **methods and techniques of criminological research** were employed:

1) Analysis of statistical data on cases of violent crime on police record that occurred between 2005 and 2014, including a description of their structures, a breakdown of the perpetrators and their victims and the consequences of violent attacks.
2) Analysis of statistical data and materials concerning criminal justice, primarily Reports on the activities of public prosecutors between 2005 and 2014, including commentaries in the separate reports, Czech Ministry of Justice Year Books etc.
3) Study of Czech and foreign literature addressing the phenomenon of violence (aggression, aggressiveness, hostility) published over the last few years.
4) Study of available official sources addressing violent criminality: Reports on the situation in the field of domestic security and public order for the years studied, etc.
5) Processing of data obtained using specially created questionnaire for experts from the ranks of forensic doctors (expert witnesses) and criminal police officers working in the violent crimes unit, a questionnaire focused primarily on changes in the intensity of recorded violent crime (murders, intentional bodily harm, robberies, extortion, abuse of persons in a common household).

Where the conditions of the research permitted, the above methods were supplemented by interviews with criminalists on the topic of contemporary violent crime.

6) The research was broadened (as against the plan) by an analysis of violence committed by the prison inmates, both retrospectively and currently, addressing men and women separately.

The following terms have been used in the text of this publication: **Aggression** – this term is used in the study to identify the **behaviour (actions) of an individual or a group of persons** who knowingly (intentionally) cause harm, forcefully restricts freedom and harms other people or objects. (Acts of aggression may be committed by an individual, a group of people or even by the State).

Aggressiveness is an **inherent readiness** to act aggressively (a character trait), a tendency towards aggressive behaviour which can take various forms. It is a natural and essential characteristic of animals for their survival. It is a manner of reaction in the case of fear, frustration, but it is also hereditary.

Brutality is a **mental property** that manifests itself in conscious, remorseless behaviour directed at causing pain to other people with the purpose of achieving the perpetrator's intended goal (in which case brutality is merely a means). In many cases, the parallel or even the sole goal may be satisfaction from the mere act of harming another person (or animal), to abuse them.

Hostility – an unfriendly **attitude** to people in general. This term is used mainly by forensic psychologists for identifying people remarkable for their unfriendly attitude, malice towards people linked with feelings of resentment, suspicion and anger, with a paranoid and hostile personality.

Violence – in the study, this is often used as a synonym for the term aggression, i.e. **behaviour of an individual or group of persons** that knowingly (intentionally) causes harm (not only physical harm), forcedly restricts freedom and harms other people or objects.

Violent Criminality

Violent criminality is a term used primarily by the Police of the Czech Republic and may be defined by what constitutes the crimes included under this term by the police and identified by the police's tactical and statistical classification of crimes defined by articles of the applicable penal code (a list of crimes identified by the police as being violent appears in table 1). Since quantitative analysis of violent criminality in this study is based mainly on police statistics, **what falls under the term violent crime is identical to the police interpretation**. Unless specified otherwise in the text, **perpetrators of violent crimes are understood to include persons with criminal responsibility from a point of view of criminal law, i.e. sane persons and those over the age of 15 years old**.

In view of the vast quantity of data processed in electronic form in criminal statistics (approx. 1.500 pages for the past year) lacking any detailed commentary, the use of statistics from the criminal authorities for necessary synthesis of findings concerning criminal phenomena in the Czech Republic and methods of reaction against them (completely ignoring the matter of latent criminality) is becoming problematic.

In order to explain the paradoxes found, we must use field workers – experienced experts who alone generally help to elucidate certain statistically surprising turnabouts.

The problematic nature of interpretation of certain findings in the criminal authorities' analytic materials eventually led to a plan for the task of searching for answers to fundamental questions about contemporary violent criminal activity by collecting facts and opinions on the current situation and development trends in violent criminality.

Official materials from the Ministry of the Interior of the Czech Republic, the Supreme Public Prosecutor's Office etc. highlight a sharp drop in violent criminal activity over the past years. The number of both murders and robberies on record has fallen significantly. As in previous years we may read in materials that in 2015, the Police of the Czech Republic has registered a higher level of brutality in the attacks made by youths. "Attacks using weapons and rash behaviour resulting in the most serious of crimes are no exception."

Over the past decade, **as against only a slight drop in solution of such crimes, the number of annually criminally prosecuted known perpetrators of violent crime has fallen by a sharp 4%** (from 16.000 persons prosecuted in 2005 down to 12.000 in 2014), which applies mainly to perpetrators of robberies. **The most radical fall in numbers** of perpetrators of violent crimes on police record **concerns youth offenders**. In 2005, 1,027 youths were prosecuted for violent criminality, while in 2014 this number had fallen to 529 youths, which represented approx. 4% of all persons prosecuted for violent crime in 2014[9]. For comparison: the proportion of youths amongst perpetrators of robberies in 2014 was 10.4%, amongst perpetrators of intentional bodily harm 5% and in the case of property criminality 3.5%. Known child perpetrators (under the age of 15 years old) of robberies, intentional bodily harm and extortion on record numbered approx. 300 persons (while in 2005 this number was ten times higher at over 3.000). For illustration, in 2014 there were altogether almost 1.000 perpetrators of violent criminality under the age of 18. Murder was committed by 3 of them – all youths.

Of the groups under scrutiny, **most violent crimes over the past years were committed by criminal recidivists**. They account for more than half of known perpetrators in the case of robberies, murders and almost half in the case of intentional bodily harm.

Numbers of victims of violent crimes, both of those that figure most often in the annually high number of victims on record with the police and of those with smaller numbers of victims, have **fluctuated variously** over the past ten years. **Exceptions to this were victims of robberies** where a longer-term, uninterrupted, **sustained downward tendency** is apparent, particularly over the last five years of the decade studied. **A smaller**

9 The proportion of youths to all perpetrators prosecuted in 2014 was 2.3%.

number of murder victims is also apparent during the second half of the decade as opposed to the first**.** This fall however is not part of a sustained downward tendency, as it is in the case of robbery.

Analysis of the ten-year development of numbers of victims of selected violent crimes showed that although the numbers of victims underwent various fluctuations, for the most part during for the decade under scrutiny they did not indicate any stable long-term tendencies towards change, either upwards or downwards.

Questionnaire survey and its results

The fundamental impulse for conducting the research were frequent claims even by the professional public that, **on the one hand, perpetrator aggressiveness is rising sharply** (they often attack at a time when the victim is defenceless, unconscious etc.), i.e. in situations where for the attacker aggressiveness is unnecessary and senseless, and **on the other hand the age of perpetrators is falling** (it is no coincidence that the ministry of education is currently considering a change in the law due to growing aggressiveness in those below the age of majority). Such a situation is, in the eyes of substantial numbers of those involved in criminal proceedings and also of forensic doctors, regarded as a growing problem where police statistics are lagging behind reality. "In other words, we all know about it, but it is not visible in the publications of the "competent" professional authorities". The estimated rise in aggressiveness is therefore put into the broader context of common problems of the so-called "postmodern society" – the disappearance of the elite, the absence of role models and vision to the future, the crisis of the family, absolutisation of performance and growth, the absence of morals, general vulgarisation and reversion of society to slobbery, the destruction of culture, disappearance of empathy, the cult of money and success, the growth of the gutter press.

We drew upon approx. 100 experienced investigators from the Criminal Police of the Czech Republic focused on violent crime (more than 5 years' service in this specialised unit) and all Czech doctors working with the courts. Subsequently 6 public prosecutors, 2 judges and 2 employees of the Prague Police Academy – according to our criteria, all were experts on violent crime. For comparison we also approached Slovak criminalists, but we received just 3 completed forms from the city of Prešov. The questionnaires were distributed to all respondents at the end of 2014 and the beginning of 2015.

The goal of this part of the survey was to establish whether, in the eyes of the experts, brutality and the abandon used in violent attacks of has actually increased over the past years. The questionnaire was distributed in considerable numbers, but the response rate was low. This was on the one hand due to scepticism of criminalists, lawyers and doctors regarding similar projects, and on the other hand a certain jadedness from incessant completion questionnaires from all directions. We must confirm these last claims from our own experience. Some of those approached warned us of the pointlessness of similar projects. Despite this, we chose this method because we are of the opinion that rather than presenting our own opinions or to merely accept the opinions published in the media, it is better to turn to experts who are willing to complete a questionnaire here or there and who understand that this is one of the few practical methods of learning the opinion of the professional public in the greatest number of regions. At the same time, by admitting to such a method of data collection, although we might be limiting the usefulness of the opinions learnt due to greater generality, we can still substantiate the opinions of more than 100 experts in the violent crime unit, which certainly holds greater value than speculation over departmental statistics.

The questionnaire was anonymous and was submitted for completion by one of the co-authors (MUDr. Havel) to all expert witness doctors in the field forensic medicine (approx. 80 persons) – just 10 questionnaires were returned. Via the Police Academy, the questionnaire was distributed to criminalists working in the violent criminality unit – just 78 questionnaires were returned. In addition to these, the questionnaire was completed by 3 criminalists from the Department of Criminal Police of the County Police Force Directorate in Prešov, 2 judges and a total of 6 persons from 2 violent crime senates at the Supreme Public Prosecution Office in Prague (penal department). A further 2 questionnaires were completed by PA employees – experts on violent crime. I.e. all together this meant 101 correctly completed questionnaires. **The tables contain data processed from 98 questionnaires (from Czech respondents) divided into three groups: criminalists, forensic doctors, others together with public prosecutors. The answers from our Slovak colleagues are displayed beneath each table simply as extra information to the findings.**

The findings from the questionnaire were processed for each group separately. In the course of processing and afterwards, the findings were supplemented by interviews with certain respondents.

The answers to the basic questions of the questionnaire divided respondents into 2 groups of roughly the same size, regardless of their profession. One group contains respondents that disagree with the frequently presented claim that the intensity of violent criminality has been rising over the past years, and a second group is formed of those who agree with such a claim. We had expected a greater prevalence of answers agreeing with the publicly presented opinion that violence in society is on the rise and brutality is increasing. However, the result did not surprise us; the authors of the survey itself do not hold firm opinions with regard to evaluating the level of violent behaviour and, after completing research and processing all materials, in the end they tended towards the opinion of one of our respondents among the criminalists, that the current situation in the Czech Republic in comparison with times past is not remarkable as concerns exceptional acts of violence. In comparison with the 1990s, the situation concerning violent criminality has calmed and stabilised. The excessive rise in violence, the use of unusual items of attack, firearms, a massive rise in the numbers of murders, intentional bodily harm etc. is something that belonged to the last decade of the last century.

But our times are not calm, fears about the near future are growing in society and so it might happen that we might have to rethink our the attitude to violence in this country and elsewhere in the not too distant future, find alternative solutions to conflict situations that do not involve the use of violence, and learn how to combat new criminal phenomena.

Only after processing the research task did we realise that the perpetrators of violent crimes together with perpetrators of property crimes constitute the mainstay of criminal recidivism and so it is important to study not just violence itself, but also the reasons behind the same offenders repeating their actions, the efficacy of the sentences given and the efficacy and manner of implementation of the most stringent sentences – i.e. serving unconditional prison sentences and options for how to prevent repetition of violent crimes under the current circumstances. **Therefore we have attempted to collect the opinions of experienced penologists about violence in prisons**, although experience in this area is considered undesirable in the field of penology.

In the end, we (the authors of the study and the survey) arrived at the relatively unanimous opinion that violence (violent criminality) is a topic that is very hard to pin down, or at least that is the conclusion at which we arrived in the course of our work on this publication. The use of statistics to describe what form the violence takes, the frequency of its occurrence, the dynamics of its development, identifying changes in violence as influenced by spatio-temporal development is insufficient to paint a clear picture, because the bounds of the phenomenon of violence are very vague and hard to set. Not even professional literature in the fields of psychiatry, psychology, sociology and politics from home or abroad contribute anything clear towards the issue of violence, not even a firm opinion on which to build (that would provide a topic for expert discussion). Aggression, which is often seen as a synonym for violence, is part of all of our lives to some extent, either from a point of view of self-defence against violence from others or protection of other people from criminal attack, defending the weak from those who are stronger etc. And the line where violence becomes a pointless attack, motivated by pure selfishness, is hard to define, let alone prove.

The influence of society and the accepted culture on the attitude to violence, manifestations thereof, its restriction, and also chastisement of socially unacceptable violence, but also the influence of society on forming a scientific opinion of violence cannot be denied. Nor can it be denied that, for its own defence, but also to achieve prosperity, society employs, justifies and condones certain types of (especially group) violence as being in the general interest of society, for religious reasons etc. Many societies even base their existence on, and impose their authority with violence and individual acts of violence aimed at supporting them is seen as necessary and right.

Although our attempt at mapping the current level of violence and violent crime through the eyes of criminologists, forensic doctors and penologists has a fairly narrow focus and opinions are more a matter of personal standpoint – any generalisation is impossible in our opinion – but we are confident that it will contribute to potential subsequent discussion on how to regard violent criminality more objectively with its new findings and potentially critical claims, because only by knowing one's enemy can one combat it more effectively.

The target we set ourselves was to define the phenomenon of violence from a broader range of viewpoints and to describe in more detail the current situation with respect to violent criminality in the Czech Republic according to the sources available to us. We believe that the preceding text achieved that target.

However, real life rarely takes scientific opinions into account, does not read professional literature and always manages to surprise us all, especially the experts.

Translated by: Presto

Marešová, A., Havel, R., Martinková, M. & Tamchyna, M. (2015): *Násilná kriminalita v nejisté době.* Praha: IKSP. ISBN 978-80-7338-149-3

IV.3. Research into social sources of organised crime

IV.3.1. Social origins of the development of organised crime

Martin Cejp, Šárka Blatníková, Lucie Háková, Jakub Holas, Ivana Trávníčková, Jiří Vlach

This publication presents the outcomes of the research task "Development of Serious Crime in Relation to Social Impacts and Risks", which was part of the Intermediate Plan of Research Activity of the Institute Of Criminology and Social Prevention for 2012-2015. The study follows on the relatively extensive research activity dedicated to the issue of organised crime at the Institute Of Criminology and Social Prevention since the beginning of the 1990s.

The study focused exclusively on organised crime in the Czech Republic, with **two main objectives**. Firstly, to identify the possible social impacts and risks (criminogenic factors) that can be exploited by the world of crime, and secondly to continually monitor the qualitative and quantitative characteristics of organised crime groups in the Czech Republic and try to outline probable future development in the period up to 2020.

The following research **methods** and **techniques** were used in completing the task:
- analysis and comparison of information from documents,
- information from judicial files,
- statistics,
- case studies,
- expert investigation,
- public opinion poll and secondary analysis of similarly oriented research,
- information and statements from the print media (for illustration or more specific expression of information acquired from expert reports).

The findings are presented in this publication in two basic areas. In the **first part**, we wanted to determine what possible (i.e. not clearly demonstrated) social **impacts and risks** (criminogenic factors) exist in the Czech Republic that could be exploited by the world of crime. We considered the area of politics, economics, law, state and local government, social structures and the media. All in connection with developments abroad.

Of the possible risks arising for the Czech Republic from **international developments**, the most significant is the vulnerability of society as a result of globalisation. Organised crime groups operating in the largest possible area may exploit the growing differences between political systems, between wealthy developed countries and poor backward regions, between cities and fringe settlements and social differences between people. Another risk factor is that due to free movement across borders, there is also free movement of illegal goods and services, weapons, money from and for criminal activity, criminal groups and offenders. Information and communication systems can also be misused. The proceeds from criminal activities are being legalised, and the funds hidden in tax havens.

The unstable political situation in certain regions or conflicts in which organised crime can become directly or indirectly involve in some way, or which can be exploited by organised crime groups, also pose a risk. At the turn of 2014 and 2015, radical Islamism became the dominant security threat. Hatred between religions can also be problematic. Yet, an excessively liberal approach may also be a risk. If Europe really wants to counter the current threat of Islamic extremism and terrorism on its territory, it must clearly and strongly state that radical Islam is a global threat to western civilization and that it must defend against it.

An unfavourable economic situation, reduction in living standards, differences in the living standards of individual countries and poverty in third world countries lead to economic migration. Some migrants may then be exploitable in the commission of crime. Subsidies provided by various EU bodies can also be problematic.

Another risk factor is inconsistent legal regulations to combat organised crime, with varying conditions for the classification of groups or activities in organised crime. Legislation on economic crime is not consistent. In the fight against organised crime, police experts have criticised complicated cooperation and exchange of information with police units in certain EU Member States, while criminal justice experts point out the insufficiently wide-ranging possibilities for direct legal contact with foreign countries, the highly formalised approach to international cooperation in criminal matters, and the lengthy, dilatory and almost unwilling approach to the provision of international assistance in criminal matters, sometimes influenced by the position of the respective state on the given issue.

The disadvantages of open borders affect the Czech Republic more significantly than many other countries because of its geographic position. It is not only a transit country, but also a destination country, where various international organised crime groups have settled. In this context, we noted (March 2015) conflicting views among police on the so-called Schengen Area (most mentioned both pros and cons.) Among the main positives was the possibility of active cooperation with individual states and security forces, interconnected information systems, the ability to use the databases of other Member States, financial aid, better control of people passing through the Schengen Area, customs control at airports, and strict rules for obtaining residency. A negative aspect was that illegal immigrants can more easily enter the Czech Republic due to the abolition of passport and customs border controls. The addition of south-east European countries to Schengen was rated as a risk, with mention of poor cooperation and information between individual countries, the risk of illegal and uncontrolled migration and movement of suspicious persons and an increase of crime in border areas.

A risk factor in the area of **politics** is a lack of clear policies and their related strategies. Problematic areas include the preference of the interests of parties or individual politicians over the public interest, disinterest in consistently addressing the security situation, and an underestimation of the problem of crime. The character of politicians, such as selfishness, superiority, arrogance, supremacy, untouchability, irresponsibility, naïveté, dilettantism, incompetence, inexperience, ignorance can also pose a risk. Recriminations and conflicts, discrediting those who fight crime can be similarly misused. Contacts can also be a considerable risk: ties with lobbyists and "acquaintances" in politics, networks of friends and clans. The risk is corruption and clientelism, non-transparent financing of political parties, a connection between political and economic powers, and the disrespect or abuse of law. A consequence of all these risk factors is the untrustworthiness of politicians, widespread mistrust of the political system, and the passivity of citizens. These circumstances may weaken society's ability to act in solving the problems of criminality and crime could take advantage of this atmosphere, both against politicians and citizens.

The risks associated with the **economy** have a lot of weight, because economic and financial profit is the basic motive for organised crime. The only effective means of combating organised crime is to stop the flow of funds from these crimes, whether in the course of committing these crimes, or before, i.e. in the context of prevention - preventing these funds from being generated.

Risk factors include ties between the private sector and politicians. One such risk factor is the shadow economy. This drains the economic resources of the state or public corporations through the activities of criminal groups, which is covered by legal or pseudo-legal activities. The problem is the legalisation of the proceeds of crime. In this context, the most frequently mentioned response to how criminal organisations can exploit flaws in the economy, was state and public contracts, or even European Union subsidies. Other risk factors include the insufficiently transparent ownership structure of companies, easy transfer of companies prior to, or already in bankruptcy, support for damaging activities (photovoltaic power, biodiesel, etc.), the premeditated creation of so-called holding companies and the existence of bearer shares. Experts also mentioned the expansion and emergence of virtual currencies. A number of risks are also associated with the tax system. This relates to the tolerance of money being siphoned into tax havens and the deliberate relocation of prosperous companies there. Another problem is the irresponsible management of state assets and collapse of the internal and external control system, as well as insufficient control of public and EU funding.

The ongoing economic recession increases the criminogenic situation, with an increasing incidence of property crime for financial benefit with a violent element. A lack of job opportunities is one of the sources from which organised groups recruit people willing to commit crime. A difficult financial situation forces "straw men" into the arms of organised crime with the vision of easy earnings. Organised crime groups also damage the economy by offering people illegal goods and services. A risk factor is also the inadequate ability of the Czech Police to analyse economic crime.

In the field of **law and justice**, excessive legislation, unsystematic and large numbers of individual amendments and a related lack of transparency and incomprehensibility of legal standards are all risk factors. In the context of the lack of transparency and incomprehensibility of legal standards, the issue of Czech society's poor legal awareness and lack of respect for the law was also mentioned. A risk is also a shortage of court personnel, poor and slow law enforcement, significant formalism of court proceedings, and inadequate material, personnel and organisational support for the operation of the justice system.

Lobbying may also be a risk factor, through which organised crime groups try to influence newly approved legal standards so that they allow the promotion of their own interests as much as possible and, at the same time, minimise the risk of criminal prosecution. Another factor is influencing the activity of judicial authorities, notably through corruption. There is also a risk in the lack or difficult use of certain tools in the fight against organised crime, particularly the lack of the institute of crown witness, as the concept of cooperating defendant (accused) embodied in Czech criminal law seems too restrictive to effectively detect and combat organised crime in practice. Another limiting factor is current legislation governing wiretapping and recording telecommunication operations. The absence of legislation on proof of the origin of income can also be considered a risk, as too is insufficient international cooperation in the fight against organised crime, particularly the lack of international agreements between certain countries on mutual cooperation and international law.

In the area of **public administration**, the risk is associated with the infiltration of organised crime. There is a danger that civil servants could be used to gather information, establish contacts, secure impunity, recruit colleagues and participate in the commission of crime. Through sophisticated clientelistic networks of contacts at the highest levels, organised crime groups would be able to gain influence in state-owned companies to obtain advantages in awarded public contracts or to legalise the proceeds of crime. Organised crime (particularly of an economic nature) could even be committed by civil servants themselves.

A considerable risk could be the politicisation of public administration. System errors, where individual systems are not connected, lagging communication and sharing information between individual public administration bodies, or the duplication of effort may also be risks. The problem is the devolution of responsibilities among various public administration bodies, collective irresponsibility, too many decision-making powers, and the transfer of a growing number of competences to private entities, without their adequate control. Frequent changes in conditions for the execution of public administration, insufficient control of public and EU funding, insufficient disclosure of contracts entered into by public administration bodies, limited access to certain financial and tax administration data by criminal justice authorities are also a risk. Continual reorganisation also contributes to this destabilisation. A criminogenic factor is also the low professional level of civil servants occupying managerial positions on the basis of other than professional qualifications, i.e.

accelerated study, corruption and clientelism, particularly in public procurement. A risk factor may also be, if citizens feel the state does not sufficiently protect their interests or sufficiently protect their property. In the area of **local government**, a risk factor is excessive politicisation and ties between local politicians and local entrepreneurs. This relates to the influence of interest groups and the creation of public contracts tailored to specific entities. A risk factor is the lack of personal responsibility, low transparency, insufficient control of local government management and the activities of municipal and regional representatives, particularly in the area of public or European Union funding.

In terms of the **police**, we can distinguish between external and internal risk factors. An external risk may be an attempt by interest groups and political representatives to influence criminal proceedings by exerting pressure from higher authorities. In the economic area, police activities are adversely affected by a lack of funds. The police are allocated less and less resources, so they no longer request expert opinions and reports, without which, however, crime cannot be resolved, which is why so many cases are suspended. In the legal field, police are hampered by the excessive formality of criminal proceedings, but also the complexity of the legal definition of organised crime. There is also a problem in the use of international treaties and agreements and the establishment of new active international treaties. With regard to the possible risks relating to the abuse of police authorities by organised crime groups, this could involve obtaining information from Czech Police databases and files.

An internal risk factor is the lack of a concept for the long term, where the instability of the system gives rise to police uncertainty. A reduction in police salaries and other material benefits leads to an exodus of experts, reducing the professional level, and leads to the lower quality of many newly recruited officers, as quality professionals are not interested in working for the police. A reduction in police salaries and other material benefits may also lead to a higher risk of corruption. Repeated, inexpert reorganisation by political order, done hastily and without knowledge or determination of the impact on the Czech Police and their operation could contribute to the destabilisation of the Czech Police. A risk is also inefficient cooperation between police departments in the Czech Republic, and poor international cooperation. There are problems with the establishment of international teams.

Police officers often complain about limited powers. Repressive forces would be helped in fighting criminal organisations by obtaining maximum information, contacts, informants and collaborators with financial and expert capabilities. A risk factor is the lack of professional education. There is a lack of qualified police officers investigating economic crime, yet there is a need for specialisation by those involved in the detection, verification and investigation of corruption offences. Insufficient education, little experience and a lack of interest in work relates to an inability to decide and fear of making decisions. A risk factor is crime committed by police officers. In some cases, this also involves the direct involvement of police in criminal structures (e.g. Tofl's gang, Berdych's gang). A risk is also a leak of information from investigative files during the investigation.

A risk factor in the **life of the population** may be a deterioration of living standards, the deteriorating economic, financial and social situation in certain groups, various differentiation in social structure - by gender, age, income, wealth, racial and ethnic differentiation.

People believe that wealthy people with good connections, who belong to major influential groups, are not punished for their crimes. There is no sense of effective protection by the state. Dissatisfaction can lead to mistrust in the state apparatus, a gradual loss of respect for state power and gradual anarchy in the economy and society as a whole, with an unwillingness to contribute to a change in the approach to crime and criminals. There may even be a certain form of cooperation with organised crime groups.

Another criminogenic factor may be the consumer lifestyle and efforts to obtain resources to maintain this lifestyle. A risk factor is also moral decline, a lack of ingrained ethical principles, and a lack of decency and modesty. A criminogenic factor may also be the fact that many people abused the system. A typical way in which people abuse the social system is corruption. A risk factor is the tolerance of crime. The problem is that the citizen's freedom is preferred over general security. The population is abused by organised crime by creating demand for illegal goods and services.

The **media** may represent an effective means for organised crime to influence public opinion in their favour. They try to penetrate this sector not only for profit, but also to increase demand for illegal goods and services. In certain parts of the media there may be a suspicion of efforts to manipulate consumers in favour of certain influential groups: certain politicians, lobbyists and godfathers. A significant risk factor could arise in a situation where certain media is controlled by a group of people financially secured and financially dependent on politicians, as this could be exploited to obtain information and influence decision-making processes.

A risk factor may also be the sensationalism, superficiality and lack of expertise of the media. The media is not interested in providing objective and accurate information, but rather feeding viewers or readers exciting, sensational or shocking news. Some risk may also be posed by the way the media reports on crime, which may act as a guide, providing inadvertent guidance through the disclosure of details of the crimes committed. A situation in which potential offenders exploit the ongoing activities of other offenders cannot be ruled out. Other risk factors can also be considered depictions of violence without sufficient detachment and the presentation of inappropriate lifestyle models. Although the Czech media devotes considerable attention to the issue of organised crime, especially in the case of clientelistic ties to politics, it is only sporadic, as journalists do not follow problems persistently. A considerable risk is information leakage. Premature disclosure of certain information hampers the work of criminal justice authorities in criminal proceedings. Influencing public opinion on the activities of criminal justice authorities may also be problematic. A risk may arise on the relativisation of judicial decisions, highlighting negatives and failures, questioning the work of police, public prosecutors, judges, and the presentation of cases without knowledge of the law.

Currently preferred **values in society** must also be taken into account in relation to the emergence, operation and development of organised crime in the Czech Republic. It is difficult to clearly distinguish value preferences in groups of individuals eliciting deviant behaviour patterns in the framework of value orientations. Values are not always as straightforward, however, we can suggest certain criminal contexts on this basis.

The criminal context of values - money, financial profit – probably also corresponds to the fact that all definitions of organised crime give this as the dominant or target value. It turns out, however, that rather than the size of one's account, it is one's demeanour, lifestyle, advocated views and especially the manner of acquiring one's wealth that are decisive. Originally, the financial and later economic crisis was often referred to as a crisis of confidence, a product of the deficit in values and lack of accountability. This relates to the replacement of utility values by exchange values, which manifest in tense egoism and promoting personal interests at all costs, i.e. including involvement in criminal activity. Power, or respectively influence, is a determining value, as it is essential for the effective realisation of organised crime. Values that can almost universally be considered negative, or risk values (lack of morals, increased aggression, and criminal delinquency), i.e. that support the participation of individuals in criminal activities, do not figure at the forefront of interest in the opinion of experts.

As part of our research, we confronted how the development of organised crime and related risks are perceived by **public opinion** through secondary analysis and our own representative survey. The public repeatedly ranks organised crime among the most pressing problems and sees it as a significant risk to society. People primarily associate organised crime with the business sector, high politics and the activity of the police. People consider the main factors that may affect the incidence of organised crime, as factors in the area of law and its enforcement, i.e. shortcomings in legislation, the organisation and activities of the police and courts. This is followed by economic factors (the country's poor economic situation, the economic problems of the population), political factors (shortcomings of politicians and political parties and deficiencies in public administration) and cultural and social factors (the boom in modern technologies, people's indifference on public matters, people's distrust of public institutions, the decline in interpersonal relationships, people's carelessness in relation to the risks of organised crime, people's ignorance of the risks, shortcomings in the work of the media). In addition, two other potential risk factors were spontaneously highlighted - corruption, especially in the political sphere, and open borders and the associated influx of foreigners into the Czech Republic.

The dominant illegal activities of organised crime groups are seen by the public as the production, trafficking and distribution of drugs, as well as economic and financial crime (i.e. money laundering, tax and credit fraud), corruption, property and violent crime. (Compared with the expert view, it can be said the illegal activities of organised crime placed in leading positions by both the general public and experts essentially agree – the only difference being that experts believe economic and financial crime is currently dominant, while the public associates organised crime groups with drug-related crime.)

The public believes that foreigners are mainly involved in the commission of organised crime. (In contrast, experts have long been inclined to a very slight preponderance of the foreign element.) When naming specific nationalities that the public thinks are currently most involved in organised crime groups in the Czech Republic, people most often named Ukrainians, followed by Russians and Vietnamese. (Experts list the same nationalities in the first three places, but in different order compared to the general public – they regard the Vietnamese as the most strongly represented group of foreign nationals, followed by Russians and Ukrainians.)

People consider stricter punishment as the most effective means to protect society against organised crime, but also consistent confiscation of illegal profits and preventive measures against corruption in the public sector. In open answers, respondents consistently mentioned measures directed against foreigners as potential perpetrators of organised crime.

In the **second** main part, we followed **developments in the qualitative and quantitative characteristics** of organised crime groups in the Czech Republic.

According to **police statistics**, the number of detected crimes with the participation of an organised criminal group (Section 361 of the new Penal Code/ Section 163a of the Penal Code) varies in one year from three (in 2008) up to 29 detected crimes (in 2014). The number of investigated, prosecuted persons ranges from 1 person (in 2012) up to 149 people (in 2004). According to crime statistics processed by the **Ministry of Justice**, 169 people were prosecuted for the offence of participating in an organised crime group (Section 361 of the new Penal Code/ Section 163a of the Penal Code) in 2011-2014, of whom 157 were indicted. It can thus be deduced from court statistics that a total of 88 people were convicted in the last five years (2010-2014). Yet almost a third of the sentences imposed for convicted offenders in 2010-2014 were suspended prison sentences.

We obtain information on **developments in the structure and forms of organised crime** through regular expert studies that have taken place annually since 1993.

Organised criminal activity may be realised in either a group with a lower **degree of organisation** or in a fully developed group with a three-tier control structure. In 2015, we recorded 44% of groups with a fully developed structure, 56% of groups with incompletely developed structure.

To a large degree, **external collaborators** (accessories) are also involved in many activities by organised crime groups. According to expert estimates, it was found that in 2015 organised crime groups were composed of just over half of regular members and just under half of external collaborators. External collaborators mostly engaged in transport, accommodation, human smuggling, car rental or lease of apartments, storing items from criminal activities, arranging forged papers and documents, sending mail, procuring weapons, the receipt and further distribution of stolen goods, customs clearance, taking care of documents, contracts, invoices, tax returns, working as interpreters, legalising the stay of foreigners, legalising the proceeds of crime, securing courier, distributor and intermediary services, and securing customers and consumers. External collaborators are involved in the creation of fictitious companies, the formal establishment of bank accounts, withdrawal of funds from accounts, filing fictitious tax returns, processing fictitious accounting, providing transportation and fictitious documents for the carriage of goods, figuring as so-called "straw men" to whom accounts are registered, transferring vehicles, real estate and property into their name. External collaborators act as observers and watchdogs, tipsters, provide information and consulting, basic knowledge on the issue of interest, establish and mediate contacts, communicate with the authorities, deal with Czech citizens, help penetrate the environment, lobby, broker services, influence project evaluators, secure access to important people in economic, political and VIP circles, supply intermediaries to commit crimes, and seek new people willing to engage in criminal activity. Among the more demanding activities of external collaborators is legal consultancy by experts in the Czech legal environment, advocacy services, tax consulting, accounting, consulting on computer systems and forensic expert reports.

There are also **women** in organised crime groups in the Czech Republic. An estimation of the gradually increasing proportion of women was 20% in an expert report in 2015. Women are most often involved in providing organisational support and the management of criminal groups: they purchase the necessary goods and items for crime, arrange car rental, collect funds from banks and financial forwarding companies, deposit and transfer money, distribute products, provide tips, conduct administration, accounting, business supervision, car rental, accommodation for offenders from abroad, file tax returns, make cash withdrawals from accounts, recruit so-called straw men, transport such persons to places where fraud occurs; procure false documents, the issue of documents and their confirmation, proof of accommodation, employment, and deal with banks. Women also acted as figureheads and in the role of "straw men". Within specific activities, they also provided legal services, legal consultation and advocacy services.

Another area in which women were involved was economic and financial crime: credit, insurance, exchange, bank, subsidy and tax fraud, issuing fictitious invoices, tax returns, evasion of taxes, fees and other mandatory payments, corruption, legalisation of the proceeds of crime, establishing fraudulent and fictitious companies, establishing off-shore companies, the abuse of EU funds, payment card fraud, and real estate fraud. Women also figured as the managing directors of fictitious companies.

Other areas included prostitution and human trafficking for sexual exploitation, in some cases, forced labour, trafficking in narcotic and psychotropic substances, and establishing contacts. The least common area was the organisation of illegal migration.

Foreigners are involved in slightly over half of organised crime in the Czech Republic. Based on individual foreign nationalities, the four most predominant nationalities involved in organised crime in the Czech Republic after 2010 are the Vietnamese, Albanians, Ukrainians and Russians. The second largest group includes Bulgarians, Romanians and Slovaks, followed in the third group by the Chinese, Poles, Serbians, Turks and Nigerians; the fourth group are Macedonians, Algerians, Croatians, Georgians, Armenians, Hungarians and Chechens. Less frequently represented are the Syrians, Tunisians, slightly less Lithuanians and Latvians, and then sporadically the French, Italians, Dagestanis, Moldovans, Kazakhstanis, Belarusians, Uzbeks, Spaniards, Thais, Germans, Montenegrins, Slovenians and Austrians. In 2010–2013, in addition to the above mentioned nationalities – there were occasional Dutch, Iraqis, Indians, Israelis, Brits, Libyans, Egyptians, Greeks, Colombians, Kurds, Moroccans and Uzbeks.

A factor worth mentioning is the relatively large range of nationalities present in the Czech Republic. After 2010, experts reported between 25-30 states, and no fewer than 37 in 2014. Another factor is that perpetrators almost never include citizens of developed

European countries. Sometimes Italians, Germans and Dutch appeared at the very bottom of the list. In 2013, we saw a rise in the number of Germans, with some Dutch, then newly Spaniards and Brits. In 2014, French and Austrians were also reported.

Organised crime groups run a variety of **illegal activities** in order to maximise profits or security. In the 1990s, the most widespread activities were car theft, prostitution, and the production, trafficking and distribution of drugs. Up to 1998, the most widespread activity was the theft of art objects; in 1996 and 1997, 2002 and 2005 it was tax, credit, insurance and exchange fraud. In 1998-2004 illegal migration appeared among the most widespread activities of organised crime groups, but in 2005 its share began to decline. In 2006, money laundering and forgery of documents, cash and coins became widespread, and there was a significant rise in cybercrime. The illegal production and smuggling of alcohol and cigarettes has also increased significantly since 2005. In 2009, there was another increase in activities associated with financial crime. Among the most common activities were the legalisation of proceeds of crime (money laundering), corruption, tax, credit, insurance and exchange fraud, bank fraud, and the establishment of fraudulent and fictitious companies. In 2011, there was a significant rise in the misuse of EU funds and abuse of PCs for crime. Traditional activities such as the production and trafficking of drugs and car theft declined to some degree.

In **2014**, the trend of increasing activities associated with financial crime continued, and a further increase in the illegal production and smuggling of alcohol and cigarettes was noted. The misuse of European Union funds continued to be among the most widespread crimes, while the production, trafficking and distribution of drugs returned to first place, and prostitution to tenth place.

In expert reports since 1999, we regularly examine in **what activities individual foreign groups** are engaged in the Czech Republic. The Vietnamese have mainly focused on drugs, customs and tax fraud, trademark violations, the production and smuggling of cigarettes and alcohol and illegal migration; the Russians on extortion, money laundering, violent crime, tax fraud, and prostitution; the Ukrainians focus on extortion, violent crimes and exploitation for forced labour; the Albanians on drugs and violent crime; the Chinese on tax fraud, trademark violations, customs fraud, forgery of documents and duty stamps; the Romanians and Bulgarians on theft, payment card fraud, the Nigerians on drugs, illegal migration and prostitution, the Slovaks on tax fraud, establishing fictitious companies and arms trafficking, and the Poles on tax fraud, car theft and smuggling alcohol and cigarettes.

Of the other nationalities, the Serbs, Turks, Croatians, Algerians, Tunisians, Macedonians and Dutch focused on drugs; the Armenians, Georgians, Moldovans, Lithuanians, Uzbeks on violence; the Chechens on violence and arms trafficking; the Syrians on illegal migration (as early as 2014), arms trafficking, forgery of documents and human trafficking; the Latvians on burglary; the Belarusians on extortion and human trafficking; the Spaniards on property crime, and the French and Italians on tax fraud.

Research also included an expert projection of the **likely development** of organised crime. The first area covered the extent of the incidence of organised crime. In quantitative terms, 57% of experts expected a rise up to 2020, 43% stability. No one expected a decline.

Those who expected the incidence of organised crime in the Czech Republic to rise over the next five years in **2015**, indicated the reasons as the political and economic situation in the world and related influx of refugees, the liberal policy towards immigration, open borders, poor security of the EU's external borders, the entry of other countries into the EU and the enlargement of the Schengen Area. They also mentioned that due to its geographical location and the possibility of huge profits from illegal activities, organised crime was flourishing in the Czech Republic. Respondents also mentioned the unstable political and economic situation in individual regions, the uncertainty on banking markets, a lack of finances in society, debt, the general view of corruption and its high incidence, and the intersection of organised crime with the economy and legalisation of illegal capital in the economic field. They pointed out the limited options of repressive forces, that legislation has not adequately responded to new trends in organised crime, poor law enforcement, poor legal awareness and a disregard for the law. The work of the police is degraded by political clientelism, which attempts to negatively interfere in the operation of the police. A limiting factor is also poor police facilities and underfunding.

According to experts, the situation will deteriorate because organised crime is constantly evolving, improving professionalization, conspiracy, specialisation, the use of new, more sophisticated technologies, and has considerable financial possibilities. Organised crime still pays, giving rise to huge profits. The development of so-called virtual currency allows hidden cash transactions, the development of cybercrime, and offers absolute anonymity. There is a strong effort to obtain power and ownership structures. Organised groups operate in several states, which complicates the exposure of their whole structure.

Those who expected the incidence of organised crime in the Czech Republic to remain the same over the next five years in **2015**, mainly stated that external factors from the political, legal and economic environment would not change radically, and there is a relatively stable economic and political situation. Organised crime is already so developed that further growth is unnecessary. Spheres of influence are divided and there is virtually no competition. Territorial division between individual organised groups is practically complete, as well as spheres of influence in individual types of crime. Experts noted that measures taken by security forces and steps by the government for the implementation of statutory regulatory safeguards had also led to stability.

In 2015, none of the addressed experts (N = 48) expected the incidence of organised crime in the Czech Republic to **fall** over the next five years.

The second compared question concerned the degree of expansion of the activities of organised groups. (The first survey in 1993 was directed at 2000. In 2000, we asked which activities would be most prevalent in 2005, and in 2010 which would be most widespread in 2015. We could then progressively confront estimates with established findings.)

In **2015**, experts were asked to comment on the **degree of development of activities in 2020**. In 2020, organised crime associated with the production, trafficking and distribution of drugs should maintain a significant position, along with tax offences, money laundering, corruption, fraud, credit, bank and exchange fraud. Experts expect a rise in cybercrime. An increase in human trafficking, illegal migration and arms trafficking is also expected. Experts expect a further decline in car theft, prostitution, customs fraud, smuggling of alcohol and cigarettes, abuse of payment cards, and the establishment of fraudulent companies. Newly emerging activities will include fraud associated with public procurement, clientelism, terrorism and extremism (understood by some experts in connection with organised crime), and some increase in forced labour is also expected. Extortion, debt collection and violent crime may not be significant in relation to organised crime in the coming years.

In addition to quantitative indicators, we also examined views on possible **qualitative changes**. In the next five years, i.e. **by 2020**, experts expect high security and more sophisticated conspiracy in crime, an improvement in the quality of preparation of organised crime, more sophisticated concealment of criminal proceeds, and increased sophistication in disguising the origin of goods and services bought and sold. Organised groups will be characterised by the acquisition and subsequent use of better quality material equipment, the use of new technologies, particularly in the area of internet and telephone communications, a high level of education and the application of modern technologies. Experts expect more economic crime, especially tax and bank fraud via the internet. There will also be an increase in corruption in connection with the allocation of public contracts, the legalisation of the proceeds of crime and trade in military material.

There will be active penetration into public administration, state and local governments, and the greater involvement of highly qualified professionals and educated people as regular members of organised crime groups is expected. Some experts also expect greater ruthlessness in committed crimes, and an increase in brutality and cruelty towards victims.

The development of organised crime in the regions was determined indirectly through the outcomes of research on political radicalism and research on preventative work in the regions. Although neither of these studies focused on the area of organised crime, we examined whether or not it spontaneously appeared in any responses. Locations with a possible increase in the occurrence of extremism were found. The influence of organised crime manifested in human trafficking, drug crimes and car theft. Corruption and bribery are a special area. However, most criminal threats, do not most likely relate to organised crime.

Translated by: Presto

Cejp, M. a kol. (2015): *Společenské zdroje vývoje organizovaného zločinu.* Praha: IKSP. ISBN 978-80-7338-155-4

IV.3.2. Russian and Ukrainian organised crime (Threats and risks for the Czech Republic in the context of globalisation of organised crime)

Petr Pojman

It is highly probable that those members of Russian-speaking organised crime groups in the Czech Republic who have been exposed, arrested and, mainly, convicted represent the more primitive end of the evolutionary spectrum. The higher-ranking criminal elements tend to remain untouchable both in their country of origin and abroad. These people cannot merely be called criminals and the structures which they head often bear no resemblance to criminal subcultures.

When attempting to describe modern forms of organised crime, criminological analysis must be accompanied by political analysis. The latter very frequently also provides answers to questions relating to the topic of organised crime. In the same way, political scientists involved in political analysis often find themselves driven to become criminologists and, instead of the clashes of political thought, they are studying the struggle between criminal syndicates and the workings of complicated corruption networks. This discovery in itself is an objective indication of a high degree of security risk which reflects much of the nature of this threat to which not even countries with a long tradition of democracy are fully immune.

As long ago as the early 20th century, American political scientist, Robert Michels, formulated his “Iron Law of Oligarchy”. According to this Law, every multiparty democracy evolves into party-based oligarchy and democrats become oligarchs. Formerly democratic parties themselves thereby become a source of criminal behaviour. The probability that this in fact happening is higher in countries where the principle of division of power is disrupted. Political power becomes an instrument for achieving profit. Politics ceases to be based on ideals but becomes a certain type of business.

The greatest risk factor objectively increasing the vulnerability of a country to expanding and domestic organised crime today is irresponsible behaviour of the political elite of that country. This frequently manifests itself in the creation of various corruption networks. The supremacy of politics is replaced by supremacy of economics, and so each administrative and political decision carries a price.

Organised crime should therefore be described as the greatest non-military threat for the Czech Republic and the fight against organised crime is, therefore, one of the most important conflicts of the present day. It is primarily organised crime and its influence that seriously threatens the stability and security both of society and the state, even in a democratic country. It should be pointed out that not enough attention is paid to the matter of organised crime. Society and, all too often, also its elite, underrate this problem. The population is not sufficiently informed of this situation and therefore cannot demand that their political representatives take adequate steps against it.

Discussions and efforts towards launching or deepening democratisation in various countries around the world, including Russia and Ukraine, frequently underestimate the danger rooted in the existence of organised crime. So many well-intended reforms in practice founder either because they failed to take this aspect into account or that its capabilities have been underestimated. Central Europe, including the Czech Republic, is no exception in this respect. Here too, a range of transformation measures were unsuccessful, since their execution was affected by latent influence of various interest and criminal groups. The current situation in several branches of commerce and politics is actually dictated by groups, which could be for various reasons described as criminal syndicates.

In former Soviet states, this problem is particularly acute; corporate and corruption networks, the compound risks involved with attempts of exposing them are all too evident. The most visible difference in the nature of functioning of organised crime in Russia and Ukraine lie primarily in the fact that in Ukraine, organised crime has taken control of a large section of the state apparatus which, in its hands, has become an instrument for achieving high financial profit. It would not be too much of an overstatement to say that the situation in Ukraine is to a certain extent comparable to that in the Czech Republic.

On the other hand, in Russia, significant groups of organised crime have been swallowed up by the state, which in turn has taken over a large segment of the criminal marketplace. The power elite of the country consider a strong state to be the greatest imperative. Financial profit is therefore allowed only for those criminal networks which are not at odds with this concept.

An important factor in reducing risk is international cooperation between the security services of all countries involves. However, if organised crime has a strong influence on these state authorities, such cooperation becomes very problematic and is able to function only to a rather limited degree. The risks may be limited also by other means. A very important element in such considerations is to create conditions which would make it impossible for organised crime to offer its services and products in such a way that it is beneficial or even essential for certain groups of the population to use such services. Transparency in promoting the legitimate political and economic interests of various groups and effective and well-organised functioning of state authorities are an essential condition for achieving this goal. Legislative measures such as the Civil Service Act must be adopted in this area. One very important factor for limiting the influence of organised crime within political parties is passing an act on the financing of political parties. A fundamental step is the creation of a special state prosecution service aimed directly at combating this type of threat. It is also essential to buttress state police units whose personnel and financial assets currently are absolutely inadequate to the level and nature of the threat which they are meant to fight.

Apart from this, criminological research is exceedingly underfunded here in the Czech Republic. Effective exchange of knowledge between criminologists and the police is non-existent. The result of this situation is, among other things, that not even specialised police units have information on the workings and nature of foreign organised crime groups at their disposal. Conversely, Czech criminology does not have sufficient knowledge for more detailed research of the workings of organised crime in the territory of the Czech Republic.

In a situation where even the official administration of the Czech Ministry of the Interior identifies organised crime as the most acute non-military threat of the present day, such a situation is completely unacceptable. Almost certainly, it would mean massive savings for the state if the measures mentioned above were to be adopted. The interest of the political representation in taking such steps is, however, limited by their real financial interests, determined mainly due to infiltration of criminal elements into politics itself.

In today's world, there exists a whole range of threats and related risks. This study was aimed only at a few fundamental segments of one very acute threat. It should also be pointed out that a certain amount of risk comes with any type of human activity. Minimising the risks to zero would only be possible in a totalitarian and fully isolated state whose existence is merely a theoretical and utterly undesirable concept. The risk must be reduced through well-directed, well-thought out steps based on detailed analysis of the issue. All-encompassing intervention, limiting whole sections of the population are wholly ineffective, mostly hitting completely upstanding citizens and in many cases causing these very citizens to become a criminogenic factor.

Translated by: Presto

Pojman, P. (2013): *Ruský a ukrajinský organizovaný zločin. Hrozby a rizika pro ČR v kontextu globalizace organizovaného zločinu.* Praha: IKSP. ISBN 978-80-7338-129-5

V.

Crime Prevention

V.1. Public and crime prevention

V.1.1. Government and citizens in the process of preventing criminality

Jakub Holas, Kazimír Večerka

The "Government and Citizens in the Process of Preventing Criminality" publication has been prepared based on a survey of public opinions by the employees of the Institute of Criminology and Social Prevention Jakub Holas and Kazimír Večerka. The survey took place in November 2012. It was initiated by the National Committee for Preventing Criminality. The survey was conducted by the Institute of Criminology and Social Prevention, which prepared the survey concept (including the research instrument) and assessed the collected data as well. The actual survey was implemented by the IBRS agency on a sample of 3.080 respondents throughout the entire Czech Republic.

The target population was the general population of the Czech Republic, 15 years and older. When selecting the sample, the quota selection method was used, taking into account the age, gender, education and population of the given community in a way that the acquired data are representative for the entire Czech Republic as well as individual regions. Based on a quota schedule, a total of 220 interviews in each region of the Czech Republic were conducted.

The research has especially strived to provide a certain current information base for the institutions represented in the National Committee for Preventing Criminality. This base should improve their preventive strategies for the next period.

The research included several topics, closely related to the area of criminal policies and especially in the area of criminality prevention. The first part of the study considers relations between citizens and the state authorities, which are involved in the process of securing safety of the citizens. This part thus elaborates on the degree of expectation of assistance from the government for addressing individual problems and on the questions related to the evaluation of the activities of the state authorities. A special attention was paid to the activities of the Police of the Czech Republic.

Satisfaction with the work of the police was assessed from many perspectives. Primarily, opinions of the respondents with regard to the policemen, in relation to their numbers, focus, equipment, character and communication qualities as well as their wages, were mapped. The survey also touched other questions, such as: To which extent should policemen be involved in preventive activities and, on the other hand, to which extent it is suitable to include laymen in the professional police work? Respondents were also asked questions, objective of which was to determine activities of the police force that should be significantly strengthened.

Moreover, the respondents were also asked questions that mapped their trust in individual police bodies based on their willingness to actively participate in the criminality overseeing process. These questions focused on the issue of how the respondents would most likely react if they witness criminal activity – if and how they would cooperate with the law enforcement agencies, if they would report such criminal activity and if they would be willing to consequently testify as witnesses.

In relation to this topic, the second part of the questioning process included questions that were supposed to determine what kind of experience the respondents have with criminal activities, i.e. if they have been victims of a property offence or violent crime within the last year. These victim-focused questions, dealing with the past, were complemented by inquiries related to the degree of the respondents' concerns that they could become victims of a property offence or violent crime in a near future. The questions aspired to assess if, and to what extent, the respondents consider the Czech Republic to be a safe country.

Furthermore, the publication focused on the issue of criminality and its prevention. The entire presentation is introduced by a reflection on the sensibility of the perception of the causes of criminality by the respondents, respectively on the way the respondents assessed 25 theoretical causes, which could result in a long-term development of asocial or antisocial behavior of individuals. The publication also addresses the tendency of the respondents to relate criminal activities to certain groups of citizens.

A separate part of the study addresses prevention questions, once again, from various perspectives. The respondents expressed their opinions about the importance of various preventive programs, which are applied in the public sphere, as well as preventive measures, which they have applied in order to protect their lives and assets. The results of the research, which testify about the degree of the social distance between the correspondents and some public interest facilities (Romani cultural center, police station, home for seniors, drug rehabilitation center, etc.), are also very interesting.

Let us state some of the main findings of the research. It was demonstrated that the respondents are accepting a significantly greater responsibility for most matters that effect them (this is especially true when compared with the findings from 2005). The respondents consider topics related to the way of how they spend their leisure time and how families raise their kids, and topics about the responsibility to protect one' own health to be parts of the private sphere. On the other hand, the correspondents believe that the government shall be especially involved when it comes to securing adequate retirement conditions for retired people. The respondents also expect a greater responsibility of the government when securing actual safety.

When assessing the selected authorities and organizations, the respondents consider the traffic police to be the best, followed by police units that secure order. On the other hand, the respondents were deeply critical when asked about the work of courts. The research survey demonstrated that a positive perception of the Police of the Czech Republic has been growing in many areas. The biggest shifts were recorded in the area of an improved communication between the policemen and the citizens. The respondents also admit, more often than before, that the wages of the policemen are insufficient. From the perspective of preventive activities, the respondents expect that the Police of the Czech Republic should devote more time to inspecting hazardous locations and securing preventive supervision in the area of road traffic. People believe that Police activities should be most supported in the area of securing public order on the streets as well as in the field, as well as when dealing and determining violent criminality and property offences. At the same time, it is clear that, about a quarter century after the velvet revolution, a majority of the respondents do not approve assistance of laymen for regular police work. The respondents are willing to accept a certain smaller help of laymen for securing safety of children around schools.

When it comes to the possibility of being a witness to a property offence, two fifths of the respondents would be willing to notify the police bodies about such an offence under their own name. However, about one third of the respondents would do so only anonymously. Similarly, only every tenth respondent would be willing to offer his/her testimony spontaneously while almost one fifth of them would not be willing to do so under any circumstances. Generally speaking, the respondents are willing to testify in criminal proceedings related to a theft, which they would witness. Nevertheless, they would be willing to testify in this case only if requested to do so.

The respondents believe that criminal acts are especially caused under the influence of alcohol or illegal drugs. According to them, criminal activities are – probably as a result of the current frequency of discussions about this phenomenon in the public sphere – also related to institutional corruption and negative examples of politicians. Furthermore, the respondents also connect criminal activities with the phenomena that are closely related to poverty and to being excluded from the society (homelessness, unemployment, established ghettos). On the other hand, the respondents connect the divorce rate, which currently represents a significant social problem, with the criminality causes only rarely. Similarly, they do not see any correlation between the increase of criminality and the education system with its educational methods and personnel composition of the teaching staff (negligible impact of the school system feminization), secularization of the society or the consumer life style supported by aggressive marketing. It would be worth it to contemplate why the respondents connect antisocial behavior with disrespect to legal standards only rarely. When comparing the results of the survey for determining causes of criminal behavior in 2005 and now, we can see that the current respondents permanently emphasize the poverty factor and significantly underestimate the violence showed in the media, which can represent a negative behavioral model as an integral part of people's lives.

The respondents were also answering the question, which preventive programs they consider suitable for further development. The most beneficial preventive programs for the respondents are programs that focus on the issues of unemployment and management of drug addictions. Since the last survey in 2005, the prestige of the above stated programs has increased. Programs that secure more policemen on the streets and that can improve safety on the streets (lighting, camera systems) enjoy continuous support of the respondents. Programs that focus on problematic youth enjoy a certain support as well. On the other hand, the least supported programs include preventive measures that focus on educational activities (printing flyers and preventively oriented information booklets), preventive activities of various churches, activities that lead to cultural and educational development of the Romani minority as well as theoretical research of criminality causes and conditions as the sources of targeted preventive interventions. Generally speaking, we can say that people do not sufficiently understand and value the real importance and objectives of individual prevention measures, are often under the influence of negative stereotypes and often emphasize, more or less hidden, repressive accent.

Most respondents believe that the current situation when it comes to households security against criminality is "average", i.e. the most common answers are related to such measures, which correspond to the necessary degree of caution (most respondents lock their building entry doors, do not let unknown people into their buildings or apartments, know the emergency police phone number, etc.). When comparing the information about this topic with the research survey in 2005, we can generally see that popularity of the technical security measures of households has grown for a significant part of the people (especially for the more educated part of the population). On the other hand, it seems that the actual active accumulation of preventive aids generally stagnates. We can state, to a certain extent, an optimistic hypothesis that alertness of the citizens has decreased also in relation to the perception that there are no serious dangers in the area where they live. In other words, based on the data from this survey, we can assume that the so-called moral panic, incurred in the society after the changes in the 1990's, has receded.

Translated by: Presto

Holas, J. & Večerka, K. (2013): *Stát a občan v prevenci kriminality.* Praha: IKSP. ISBN 978-80-7338-137-0

V.2. Early Intervention System as a tool of crime reduction

V.2.1. Systemic approach to prevention of juvenile criminality

Markéta Štěchová, Kazimír Večerka

This publication addresses analysis of the systemic approach to prevention of juvenile criminality in the Czech Republic and experiences so far with this system in operation. The publication draws on the results so far of a study entitled "The Early Intervention System as a Tool for Limiting Criminality" conducted at the Institute for Criminology and Social Prevention as part of the Czech Republic Security Research Programme for the years 2010-2015 (BV II/2–VS). This research project focuses on new forms of preventive work, at the functioning of Early Intervention System (hereinafter EIS) in separate localities, at mapping the experiences of officials from municipalities with extended powers with this system and also mapping concrete procedures implemented by OSPOD (Authorities for the Social and Legal Protection of Children) employees while working with problem clients within this system.

The subject of this research is the Early Intervention System, its technical, personnel and other conditions for its operation in practice.

The main aim of the research is to establish whether and under what conditions the procedures for dealing with children and youths at risk applied under the Early Intervention System are capable of eliminating or at least reducing the number of endangered juveniles engaging in delinquent activities.

Research activities have so far included the following methods and techniques of criminological research:

- study of specialised literature concerning systemic approaches to prevention of juvenile criminality and successful (positively evaluated) preventive programmes applied abroad
- study of documents concerning the EIS from the Ministry of Interior of the Czech Republic and the Ministry of Labour and Social Affairs
- questionnaire survey with wide use of open-ended questions
- modified SWOT analysis
- semi-structured interviews using answer sheets.

The results of phases 1, 2 and 3 of the study are published in this monograph.

Methodology and Results of Phase 1 of the Study:

In the first phase of the EIS study, questionnaires with ample room for open-ended answers were sent out to respondents (i.e. employees responsible for the EIS at municipalities with extended powers), distributed to 36 municipalities, i.e. to all municipalities involved in preventive work following EIS methodology at the time of the survey (eventually 27 municipalities with extended powers cooperated in the survey). The task of each respondent was to provide information about 15 children or youths who were registered in the EIS network after a randomly chosen date in 2012. Using this research tool, we established not only background information about endangered children, but at the same time information about the functioning of the system. In all, information about 398 endangered individuals was received. In this first phase, all endangered children and youths were included in the programme, whether they had problems with behaviour or they were threatened by behaviour in their environment (family, school mates, etc.).

It was established that the majority of clients (63%) had been registered in the EIS due to behavioural disorders, while a smaller proportion of the clients (26%) were included due to problematic behaviour in their social environment, mostly their guardians. The remaining clients were included in the sample group for both of the aforementioned reasons, became victims or witnesses of problematic behaviour in their social environment (e.g. physical aggression towards them or serious conflicts between parents) and alarm signals were noticed in their behaviour. The event that led to a child being registered in the EIS was reported as a rule by the Police of the Czech Republic.

The respondents were of the opinion that social work with a client should at first consist of an interview with the child's guardian (34%) and of an interview with the client him/herself (34%), while not forgetting appropriate guidance of guardians (32%), examination of the family's case history, adoption of appropriate remedial measures and so on. An ideal procedure assembled in this way is considered by the majority of respondents to be effectible (some however avoided answering this question), only about one third of the respondents considered it would be best to develop new, innovative and more effective measures and procedures.

The range of reasons behind what the respondents consider to be the main impediments to their preventive efforts is interesting. Most frequently, they identified the cause to be the impossibility of implementing the ideal strategy through parents (parent) or other guardians, and their approach to the child's problems. Other frequently named impediments concerned problems with OSPOD itself (insufficient capacity of programmes on offer, availability and overlapping of programme services for youths in general and staff shortages at OSPOD). Many see the causes of the problems in the actual organisation of the Early Intervention System, namely in lacking or limited involvement of other institutions in activities under the EIS, failure to link information of clients with EIS files, complaints also cited limited compatibility of information coming from the EIS information system and from other information sources and the resulting difficulties when working with clients.

Factual information about clients showed that only about a third of clients live in a formally complete family and a further third is in the care of only one parent, mostly the mother. Another fairly large group of clients lives in families supplemented by the partner of a parent, or in extended families (grandparents etc.).

Methodology and Results of Phase 2 of the Study:

In the second phase of the study we tried to establish to what extent EIS methodology is actually applied during modification of clients' anti-social behaviour. Because in the first phase of the study we discovered that not even in localities where the Early Intervention System was routinely used was it applied adequately. We decided to verify this fact by changing the conditions for client selection for the study sample group. The condition for selection in this phase was not that the problem child or youth had to be registered in OSPOD records via the EIS information system, but merely that he/she had been entered in general terms into the OSPOD register of ideas after a randomly set date, while we subsequently monitored whether or not EIS tools were used for client registration.

Respondents this time were selected from the 22 localities where the Early Intervention System was functioning best. The task of each respondent was to submit information about five consecutive child or youth clients with problematic behaviour. Overall, we received information on 110 OSPOD clients.

The age range of these clients was considerably different from the age range of the clients in the first phase of the study which included young people not only with behavioural problems, but also children or youths under threat of or harmed by their social environment. In this phase, the clients were considerably older, 70% of them being between the ages of 14 and 18 years old. More than two thirds of the sample group were boys.

Problem individuals are most often reported to OSPOD staff by the Police of the Czech Republic (49%), considerably less by their school (18%) and municipal police (15%). The reasons for reporting were, in a third of cases, some recorded offence (34%), then behaviour problems generally or in the family (total of 23%), alcohol related problems (23%), suspicion of committing a crime that was subsequently dealt with by criminal justice (13%). The most serious matters reported by police included property related offences, then cases of unleashed aggression and sexually motivated crimes. Of the property related offences, the most frequently cited were various types of theft, in particular theft in shopping centres. In cases reported by schools we find reports of smoking cannabis and contact with alcoholic beverages and also of serious problems in the pupil's family which contribute to anti-social behaviour by the child.

In this phase of research it has been confirmed that when the relevant institutions report cases of child and youth clients, the Early Intervention System is not employed to any great degree. Most often clients' problem events are reported by traditional means (47%) and only in a third of cases (36%) did OSPOD staff learn of the case via EIS methodology. It was also established that although a considerable number of cases was reported to OSPOD electronically, this was not however via the EIS (17%).

Methodology and Results of Phase 3 of the Study:

The third phase of field research was conceived to be an expert survey and was conducted in the field in the second half of 2013. In this phase of the study, we initially interviewed eight selected experts, applying the semi-structured interview method to topics related with the issue of the actual functioning of the EIS, then we asked them if they would give answers to some problem areas in writing. The selection of experts was based on their competence and experience with the methodology and practical use of the EIS, while personal commitment to work with the system was also taken into account.

It became clear from the respondents' answers that the main reason for municipalities with extended powers accession to EIS was the potential opportunity for more intensive and work with youth with behavioural disorders at an earlier stage and also the enhancement of communication between individual social work agencies. Some experts claimed that the decision to adopt the EIS was partly motivated by hope that the introduction of electronic client record keeping would mean reducing the administrative work load, which unfortunately has not yet happened.

The respondents commented on each pillar of EIS methodology, i.e. to the creation and development of cooperation between institutions that are (or could be) EIS stakeholders. The experts' main comments focused on the following pillars of the system:

- Creation of an cooperative and competent Team for Youth – the most frequently cited problem was the need for quality and active cooperation between team members
- Creation of the "Prevention Manager" post – experts mentioned the need for closer contacts between the prevention manager and Team for Youth
- Ensuring due cooperation between separate OSPOD employees while implementing the EIS – with reference to this, emphasis was put on the fact that, as the central element in the system, OSPOD was most burdened with problems involved with implementation of the system, and with all the other difficulties encountered while organising cooperation between individual employees, and the uncertainty with regard to future development of the system

- Collaboration with the Police of the Czech Republic – in the experts' prevailing opinion, cooperation with the PCR was at a very good level; the problem in this area was seen in the not always suppressed police tendency to solve certain cases prematurely by implementing repressive measures. There were also certain remarks concerning administrative problems arising during work with the EIS information system
- Collaboration with city police – in the experts' opinion, cooperation with city (municipal) police was at a good level; the advantage it has in its operations is its knowledge of the terrain and immediate contact with clients and with OSPOD staff; criticism of their activities were few and far between
- Collaboration with the Probation and Mediation Service (PMS) – in many municipalities cooperation with the PMS is at an above-standard level, but the problem is that those cooperating relationships focused on the purpose of the work are too often based on personal ties and long-term work connections, rather than on the systemic basis of the EIS. Upon the departure of certain staff members, communication barriers could arise between institutions
- Collaboration with the judicial authorities (judges, state prosecutors) – the greatest problem in the eyes of the experts is that judiciary employees have too little time on their hands, which makes extensive cooperation impossible. The terrain would welcome greater ingression of these authorities into certain preventive work
- Collaboration with schools (educators) and school facilities – cooperation with schools was evaluated as being quite good, the problem being delays in reporting problem pupils, which is due on the one hand to fear of damaging the school's reputation and on the other by the belief that the school can manage the problem on its own, which often proves to be an erroneous assumption
- Collaboration with healthcare facilities (doctors) – experts signalled the main risk factor for cooperation is that medical workers have too little time on their hands and doctors are unwilling to cooperate in preventive activities, citing medical confidentiality and personal data protection of their patients
- Cooperation with non-profit organisations – the respondents saw the advantage of cooperation with NPOs in their flexibility, motivation, volunteer work and collective implementation of specific measures, while the main problem is the certain instability of NPOs due to their reliance on uncertain financing from donations
- Other partners – experts named a wide range of other partners working within the EIS; these are primarily various city and municipal council departments, community centres, Educational Care Centres, Social Prevention Centres, Education Psychology Advisory Centres, school psychologists, Marital and Family Advice Centres, organisers of probation programmes, procedures for prevention and organisations working with drug addicts. According to the experts, cooperation with these organisations is mostly in its infancy and tends to be short-term.

Experts' statement on the further pillars of EIS methodology:

- Creation of a unified information and communication environment – this was one of the most controversial issues connected with the introduction of the EIS; it came mainly from misunderstanding between the creators of the computer information system and its users, when the expert opinion (i.e. the opinion of one side of the dispute at the time) was that their needs and requirements were not taken sufficiently into consideration. Amongst other things, interconnection of the IS with municipal registries and the civil registry is still lacking.

- Measures which form the actual process of delinquent rehabilitation, i.e. development of methods for working with endangered youth – in the main, the experts expressed the opinion that before the introduction of the EIS, measures were applied roughly in the same way, but they stressed that after introduction of the EIS, application of preventive measures became faster. Also the flow of information about clients also became faster.
- Complementarity of EIS methodology with the amended Act No. 359/1999 Coll. on the Social and Legal Protection of Children - for the main part, experts stated that both forms of approach to preventive work interconnect with and supplement each other. More sporadic was the opinion that the amendment of the Act does not complement the EIS, or that it does so only in certain areas. The respondents considered it to be positive that the amendment to the SLPC Act introduces standards into the area of social and legal protection and they hope for the creation of a uniform EIS information system and for reinforcement of OSPOD staff with further preventive workers. Experts also noticed that not even the amendment of the Social and Legal Protection of Children Act mentions EIS methodology as support for a systemic approach to care for endangered children.

The overall opinion on whether the EIS programme has played any significant part in regulation of juvenile crime, was as follows:
The majority of respondents expressed the opinion that thanks to the introduction of the EIS, a better communication environment has come into existence for cooperation of all entities involved in the issue of prevention of criminality. They stated that it was hard to say whether or not any significant drop in youth criminality has occurred thanks to application of the EIS (that could only be documented in the future). In certain municipalities, however – according to experts – juvenile criminality has fallen, but it cannot be said with certainty that this is directly due to the effects of the EIS; there may be more factors behind such positive development. A fundamental obstacle to quality work with the EIS is the unclear future of development (or stagnation) of the EIS, which is reflected in a lack of unequivocal support from municipalities in this area. The overall opinion expressed by experts on hitherto experience with the EIS and on the next stage of this project suggested that the architecture of the new version of the EIS should be compatible with the electronic records of documents that is standard in most municipalities, and should also comply with the requirements of the MoLSA instruction concerning the scope and content of file documentation on children kept by OSPOD, including the keeping of registries and statistics (MoLSA Instruction No. 21/2000).

Conclusion: It is perfectly obvious from the conducted survey that a systemic approach to solution of anti-social behaviour in young people is very necessary. Experiences both at home and abroad show that preventive work has a greater chance of succeeding the earlier it is applied on a child, therefore problematic behaviour of a child and his/her family must be reacted to as early as possible. It showed that the Early Intervention System is founded on the correct principles, but their fulfilment is an extremely hard task for the reasons cited above.

Translated by: Presto

Štěchová, M. & Večerka, K. (2014): *Systémový přístup k prevenci kriminality mládeže.* Praha: IKSP. ISBN 978-80-7338-140-0

V.2.2. Preventive practice after the amendment of the Law on the Social-Legal Protection of Children

Kazimír Večerka, Markéta Štěchová

The subject of the entire multistage survey, which took place in 2000-2015, is the Early Intervention System (hereinafter EIS), its technical, personnel and other conditions of operation in practice. Given that the amendment to Act No. 359/1999 Coll., On the Social-Legal Protection of Children (hereinafter SLPC Act) extended some procedures that were applied only in the context of the EIS in the previous period to the work of all departments of social and legal protection of children (hereinafter OSPOD) in the municipalities with extended powers and it also modified them partly, so except for EIS, our current survey attention also focuses on the aforementioned amended law, in particular on its actual use at work of OSPOD social workers and crime prevention managers.

The publication informs about the results of two empirical surveys which were focused on wider context of the current state of the Early Intervention System, particularly in relation to the situation described above. The first empirical survey included respondents of the employees of the department of social and legal protection of children in municipalities and took place in the second half of 2014; the second survey included crime prevention managers and was implemented in the first half of 2015. Both surveys were carried out in cooperation with ppm factum agency using their interviewer network.

Methodology and Survey Results in OSPOD

The interviews with respondents were conducted in 206 municipalities with extended powers, i.e. 91% of all participating localities. The questions relating to the amended law were put to all respondents, the questions relating to the EIS only to those workers who had worked in the system, which was 31% of the total number of OSPOD (64 municipalities with extended powers) and they started to work with the system after 2007.

The municipalities whose management was aware of the importance of preventive actions to increase the safety of citizens were more supportive in introducing EIS. The main reason for rejection of EIS was a concern that the introduction of new methodology would be costly and too complicated and time consuming for the existing staff. Some respondents found the problem in lack of awareness of the new strategy by the Ministry of Interior of the Czech Republic. Low prestige of preventive work also played its role in decision making.

The respondents who had had some experience with EIS were interviewed on the functionality of the system. They best assessed the fact that EIS can simplify work, facilitate the registration of clients and accelerate problems solving. The respondents assessed EIS less optimistically as a system that contributes to computerization of agenda and facilitate statistical reporting. The respondents were also rather critical to the statement that EIS is a sophisticated system, which saves labour force and facilitates the monitoring of deadlines. The respondents also assessed a success rate of EIS: about half of the opinions within six characteristics reported that work in the system more or less improved the success of social interventions, however, the other half of the respondents' held the view that, in principle, "there was no - positive or negative - change" in success rate of work. The relatively greatest success rate was seen in the possibility of a faster response to client problems and ability to coordinate an action better in a particular case.

Furthermore, we were interested in working of the OSPOD under the amended Act No. 359/1999 Coll., On the Social-Legal Protection of Children (SLPC Act), which includes some important aspects of EIS. It was found that OSPOD learns about its clients most often from the Czech Police and also often from the school facilities. The most common reported problems of the OSPOD clients include truancy, discipline problems at school, especially in relation to peers (verbal abuse, threats, etc.), the issue of alcohol use by children and less intoxication by other addictive substances. Also other disciplinary problems were very common - in family as well as in school against teachers.

Presently, the most serious adverse influences on young people include, in the social workers' of the OSPOD opinion, dysfunctional family including its financial and social situation, problematic level of upbringing in family, bad friends and antisocial gang influences, addictive drugs and alcohol. Wrong use of leisure time plays negative role as well.

SLPC Act in Section 10 paragraphs 3 and 5 puts certain requirements on workers of OSPOD. We asked to what extent these requirements are feasible in practice. The implementation of procedures to limit adverse influences is considered to be realistic, as well as the monitoring of adverse influences affecting children and identifying causes of these adverse influences. Less than a fifth of all respondents consider these requirements expressed by law to be hardly feasible.

The Act on Social and Legal Protection of Children in Section 10 paragraph 3 c) refers to that the municipal authority with extended powers should regularly assess the situation of children and their families, especially in terms of assessing whether they are still children covered by the provisions of this Act. Overall majority of the respondents (55%)

of OSPOD said that there were (in order to improve the characteristics of the client) no case of removal from the register within a specified period. In the case of OSPOD where a removal from the register occurred, from 5% to 20% of clients were removed, rarely more.

The amendment to Act No. 359/1999 on the Social-Legal Protection of Children (SLPC Act) results in (see Section 10 paragraph 3 d)) that the municipal authority with extended powers is required to prepare an individual child protection plan based on the assessment of the situation of a child and his/her family. According to their own statements, a half of all respondents manage to do this without problems and another 29% shows only minor difficulties with this activity. A very positive finding is that an individual plan is in the absolute majority of cases created together with the child in question.

The respondents consider the real fulfilment of the law requirement to prepare an individual child protection plan within a period of one month to be problematic. In most cases (73% of responses), the respondents considered this period to be too short for a good preparation of an individual plan and the suggested extension of the period. The respondents stated that the short period does not give enough time to collect information, analyse the situation, contact and meet the client and members of his immediate surroundings, or to cooperation with other institutions. The suggestions to extend the period were - with rare exceptions - mostly between two and three months.

The respondents consider the cooperation of OSPOD with external bodies in preparing individual plans to be relatively good, but some of them consider it rather average.

Statutory holding case conferences are an important tool for dealing with child clients. It includes a discussion of experts of a particular case of a threatened child or his/her family; the purpose is to evaluate a situation in order to find an optimal solution. The respondents consider this law requirement mostly feasible, which is in contrast with the fact that a case conference did not take place in a third of the municipalities in the monitored period of the first half of 2014 and in other municipalities it did not take place so often. Although this institute has not been used much so far, some positive expectations are associated with it: in particular, a qualified agreement on procedures in solving a case, partly also educational influence on the client. It was found that a child client is, in most cases, being prepared to a case conference by OSPOD workers. A concerned social worker is in charge of case conferences, both in the preparation of the event and control of outputs.

The most important measure for dealing with antisocial manifestations of a child according to the respondents is definitely remedy of family background, i.e. a positive and systematic influencing on family members, as well as regular interviews with the child and his/her parents, more frequent use of interventions by specialized centres, stabilization of the child's behaviour at school, preventing truancy and ensuring adequate teachers' attention to problem children.

It was found that the reporting of cases of troubled children from smaller municipalities that are discussed in OSPOD of municipalities with extended powers is not at very good level, although the law gives this option. The importance of this option is obviously not appreciated yet.

On the other hand, about two fifths of OSPOD develop some methodological activities towards the smaller municipalities that are aimed at enhancing preventive work in the localities. These activities are mostly of advisory nature.

According to the amended act, a municipality with extended powers can, under certain circumstances, impose an obligation to use professional advisory assistance on parents, but this obligation is not sufficiently appreciated by OSPOD yet, it was imposed only by a fifth of all respondents. Other possible measures that were imposed (also rarely) include supervision over a child, reprimand of a child and imposing an obligation to use a professional advisory assistance or mediation. Most of OSPOD have not used any of these or other options yet.

In general, the respondents commented on the benefits of the amended SLPC Act. Two thirds of the respondents think that SLPC Act serves as a functional integration node that collects and evaluates information on youth with problematic behaviour. On the other hand, almost half of the respondents doubt that their offices are operational under the amended Act, some of them even expressed serious doubts. Approximately half of the respondents (49%) sees the benefit of the amended Act in ensuring the supply of statistical and other factual data from collaborating institutions. In general, it seems that the amended form of SLPC Act was accepted in practice, but it would be still useful to make some elements of social work with a client and his family to a better form of implementation.

At the end of the questioning, it was found that the absolutely biggest problem for workers of OSPOD is unacceptably high rate of administrative burden, which is negatively perceived by almost all respondents and two out of three respondents identified this as a significant problem. The respondents also negatively perceive a low level of prestige of a social worker profession and a lack of time that can be dedicated to a single case, as well as the related lack of workers of OSPOD and the level of financial evaluation of the worker of OSPOD.

Methodology and Results of the Survey between Crime Prevention Managers

The position of crime prevention manager was established in the municipalities gradually and should ensure a function of a certain liaison officer for practical communication with the Ministry of the Interior as well as a number of other preventive tasks in municipalities. The survey group includes most (88) crime prevention managers of larger municipalities. The respondents include slightly more women than men mostly between 41-50 years old (47%), 31% was younger and 23% was over 50 years old. In terms of education, nearly two thirds of them were university graduates, other workers have secondary education. Three fifths of the respondents of crime prevention managers have performed this function for more than 5 years, thus they are experts in the field, conversely, only less than one tenth of the survey group were relatively new staff at this position. 38% of the respondents works full time in this function, the rest works part-time.

It was found that the vast majority of the respondents work in their municipality individually, which is reflected, for example, in creating crime prevention programs or creating safety analyses, where the crime prevention managers are key individuals in all aspects and at all stages of their implementation.

Safety analyses are targeted according to a local situation and they especially deal with youth crime and locations threatened by crime. Drug and alcohol use, situation of excluded groups, vandalism, truancy and other negative phenomena are monitored, too. Safety analyses are the basis for creating prevention programs and adequate orientation in them.

Main preventive programs are focused on the prevention of major social pathological phenomena. The means of prevention include lectures, practical motivational drill of appropriate behaviour, consolidation of legal awareness and personal development and increasing confidence in the Czech Police. Many programs are aimed at good spending leisure time. In almost half of the cases, the respondents believe that prevention programs significantly contribute to problem solving. The other half of the respondents evaluate the results of the preventive efforts more realistically, they believe that the program only reduced problems.

According to the prevention managers, the city (municipal) police is most involved in the preventive actions, along with OSPOD, elementary schools, city managements and the Police of the Czech Republic, followed by the probation and mediation service, pedagogical-psychological advisory centres, educational care centres, secondary and vocational education institutes and with a great distance by public prosecutor's offices and district courts.

Regarding social rehabilitation activities, the survey results best evaluated the OSPOD, probation and mediation service, educational care centre, city management, pedagogical-psychological advisory centres, elementary schools, city (municipal) police followed by secondary and vocational education institutes, the Police of the CR, district court and public prosecutor's office.

The Early Intervention System was assessed only by those respondents who came into contact with it within their work. They evaluated the system rather positively, albeit with reservations. They expressed the view that the EIS rather makes solution solving faster and easier, but they also expressed that the EIS is not sufficiently developed. They were often unable to clearly say if working with young clients is better coordinated, or whether the results of work with clients and their families are worse or better when applying EIS procedures.

Regarding the work of OSPOD, the crime prevention managers evaluated it very positively in all aspects. The activity of the OSPOD in the field of social work with vulnerable children was evaluated as the best, as well as the work with the families of vulnerable young people. This was followed by also very good evaluation of ability of OSPOD to provide clients with the assistance of external experts, to conduct screening and other preventive activities.

The differences in the activities of organizations operating in the EIS and those operating outside the system are not so substantial. According to the results of the survey, if a municipality formally involves in the EIS, there is a danger that instead of intensifying the problem solving a diffusion of specific responsibility can occur, as well as a mere feeling of "lightening the burden" of a particular institution. This is particularly the case of schools that, with relief, receive a team students' solving problems, which they sometimes interpret as shifting responsibility away from school. Conversely, the EIS has a relative success within activating the interference of courts and public prosecutor's offices.

Translated by: Aspena

Večerka, K. & Štěchová, M. (2015): *Preventivní praxe po novelizaci Zákona o sociálně-právní ochraně dětí*. Praha: IKSP. ISBN 978-80-7338-152-3

V.3. Local distribution and conditions of crime; issue of so called hot-spots

V.3.1. Regional crime and its impact on quality of life

Jakub Holas, Eva Krulichová, Lucie Háková, Miroslav Scheinost

The aim of the project (whose results are presented in this publication) was to verify the validity of certain foreign criminological theories regarding the links between the type of environment (neighbourhood), victimisation and fear of crime. This was achieved through a survey of public opinion in eight selected locations in the Czech Republic. Questions focused on the pros and cons of living in the given location, the level of concern about crime, the respondents' sense of security, satisfaction with life in the neighbourhood, and, last but not least, victimisation.

In addition to this survey, we gathered data on the amount of recorded crime in the research locations. The purpose was to describe the dependence of the current level of crime or victimisation and the fear of crime based on the type of location.

The introduction focuses on the important theoretical foundations affecting the study of environmental impact on crime. We concentrated on core criminological theory dealing with the relationship between the physiognomy of the physical environment and intensity of deviant phenomena. This concerns the theory of social disorganisation, the theory of incivility (known as the broken window theory) and the concept of collective efficiency, taking into account the relationship between social cohesion and informal social control.

The selection of research locations was deliberate. We decided to compare two districts in the capital of Prague, two housing estates in regional cities and the central area of two (former) district towns, selected according to crime statistics in their region as average. In addition, we chose two rural areas, covering eight villages of 200–3.000 residents. One region was located in a traditionally stable rural area, the other near the border, where there had been a virtually complete change of population seventy years ago. One of the introductory chapters also includes a socio-geographic description for a more comprehensive idea of these locations.

Fieldwork was conducted through a professional agency using face to face interviews. Respondents were chosen in the selected locations on a random walk. Overall, 3.523 residents were interviewed; 3.361 interviews were used for statistical analysis. The research tool used was a specially crafted questionnaire, in which the team relied on the above criminological theories. Questions were designed to assess the place of residence in terms of its social (dis)organisation, the victimisation of respondents or a member of their household, their sense of security and fear of possible criminal assault.

The research locations differed considerably in terms of the socio-demographic characteristics of the sample. Differences primarily prevailed in terms of income, level of attained education, unemployment, as well as the time respondents had lived in the area and number of family and friends in the neighbourhood.

At the beginning of interviews, we focused on three basic groups of socio-psychological characteristics in individual locations. We measured the degree of social disorganisation using a battery of questions mapping the presence of annoying manifestations in the neighbourhood. The level of informal control was studied using seven model situations to determine how witnesses to these events would respond according to respondents. Thirdly, we were interested in the nature of neighbourhood relations in the area.

In each of these areas, we construct a summary index to find out how individual research locations differed. It became clear that order, social cohesion and related informal control were highest in rural areas and the residential district of Prague. Conversely, North Bohemian Chomutov and the centre of the capital proved to be the most socially disorganised locations.

To what extent these characteristics relate to the level of victimisation and fear of crime is the subject of the following chapters. Victimology research provides information on latent criminality; we were interested in the extent to which our selected locations would differ in this aspect. Furthermore, we examined how the declared victimisation experience related to the respondent's characteristics, and how the victimisation experience manifested in their assessment of the area and their sense of security.

24% of respondents in the sample said they or a member of their household had been the victim of a crime (or attempt) in the last five years somewhere in the Czech Republic or abroad. This was most commonly reported by the residents of Prague 3, where 34% of respondents were victimised; in Chomutov and Prague 6 this was almost one-third of respondents. The least experience with crime (14-16%) was reported by residents in the City of Písek and rural locations. We also asked about victimisation in the immediate vicinity of their place of residence - this was an average of 16%. Distribution between locations copied overall victimisation. In terms of victimisation, housing estates were in the virtual middle between urban and rural locations.

Crime in their neighbourhoods was more frequently encountered by people over sixty, pensioners and the unemployed (but also entrepreneurs and tradesmen), and in terms of marital status, the widowed. As expected, victimisation in the neighbourhood thus mainly applies to those groups that spend more time here.

Respondents cited specific crimes of which they were the victims, from which we derived their experience with property and violent crime. In the sample, 13% of respondents reported direct experience (either personal or of a member of their household) with property crime in their place of their residence and 3% had experienced violent crime. Local differences were significant; a striking example was the noticeably higher declared experience with violent crime in their neighbourhood by respondents in Chomutov (which corresponds to official statistics).

People with experience of victimisation have less trust in others and feel subjectively less happy. They are also less satisfied with housing, rating neighbourhood relations as weaker and they think about moving more often. However, these relations also generally apply for victimisation in the place of residence anywhere else.

One of the core aspects of the study was to examine the sense of security and fear of crime, i.e. variables for which we expected there could be significant differences between research locations. We were interested in whether there was a relationship between crime, victimisation, the physical and social characteristics of the location and the sense of security or fear of crime. We examined the influence of gender, age, education and other factors. In accordance with the most common international approach, we measured the sense of security using questions on how safe respondents felt in their place of residence during the day and after dark. In addition, we asked about their level of concern about property and violent crime.

By day, 71% of respondents felt safe; in Chomutov this was only about half of respondents and in rural areas the vast majority (91%). After dark, residents did not feel safe, especially in Chomutov (12%). The fear of crime was lowest in rural areas and highest in Prague, Chomutov and housing estates in Brno and Plzeň. In terms of individual characteristics (based on international findings), there was a strong correlation between gender and the sense of security after dark. A significant association was also found with subjectively perceived health. We noticed a relationship between the sense of security after dark in and around the respondent's place of residence and their subjectively perceived contentment and trust in other people (a positive relationship and trust in people gave in a stronger sense of security). A similar correlation is found between the overall fear of crime, trust in other people and sense of satisfaction (contentment).

Understandably a relationship between the respondent's victimisation experience, sense of security and fear of crime was shown. Data shows that any victimisation leads to a greater sense of danger and a greater fear of crime. This applies to all research locations. In terms of the type of neighbourhood, it holds true that people feel most secure in neighbourhoods they see as less disorganised, where relations between neighbours are relatively strong and where people help each other, keep an eye on each other's property and maintain order in the given location.

We investigated which factors influence the sense of security and fear of crime most using regression analysis. Social disorganisation proved to be a relatively strong influence, while neighbourhood relations or the level of informal social control did not play as significant a role in the overall scale of things as that attributed to them in foreign studies.

Finally, we analysed the connection between the above findings and the criminal and socio-economic situation in the given location. It turned out that there was a very close relationship not only between reported victimisation and statistically recorded crime, but also the fear and concept of registered crime. However, there are certain differences, for example, between the two rural areas and housing estates, so it is evident the fear of crime is determined by other factors than the urban form of the neighbourhood and higher crime rate; this opens the door for further research. In contrast, the level of unemployment or percentage of households receiving welfare benefits does not affect the fear of crime in any apparent manner.

Translated by: Presto

Holas, J., Krulichová, E., Háková, L. & Scheinost, M. (2016): *Regionální kriminalita a její odraz v kvalitě života obyvatel.* Praha: IKSP. ISBN 978-80-7338-160-8

VI.

Penology

VI.1. Analysis of structural changes, trends and development characteristics of prison population

VI.1.1. Serving a term of imprisonment – a criminological analysis

Alena Marešová, Eva Biedermanová, Jan Rozum, Miroslav Tamchyna, Petra Zhřívalová

One of the most difficult research tasks in social sciences in the Czech Republic in recent decades has been the study of offenders as a specific group of citizens, assessing the efficacy of their imposed sentences, and in particular, exploring the effectiveness of current methods in the treatment of convicted offenders serving unconditional terms of imprisonment. Ministerial analyses (if available at all) provide little of the information needed to form a real picture of sanctions policy over the last twenty years in the Czech Republic, a comparison of the methods of unconditional imprisonment with at least neighbouring countries, or the real issues of the Czech prison system in a broader context.

Given this situation, a research task was set up as part of the preparation of the mid-term plan of research activities by the Institute of Criminology and Social Prevention for 2012-2015, titled: Analysis of Changes in the Structure, Trends and Characteristics of the Prison Population. The reason for the assignment of this task was the fact that from approximately the beginning of the new century, at least according to official statistics, the rate of crime in the Czech Republic has been slowly and steadily decreasing, yet despite this the number of convicted offenders and inmates continues to rise. Since the 1990s, when, as a result of the infamous amnesty announced by the President of the Czech Republic, the prison population dwindled to a minimum (approx. 8.000 including accused), by the end of 2011, the number had significantly exceeded 20.000 inmates (23.000 including those in remand). In this situation, another presidential amnesty was announced at the end of 2012, effective from 1 January 2013. The general public was caught off-guard by this broad amnesty, as it repeatedly and vigorously rejected the option of amnesty in various opinion polls and equated its realisation with an increase in crime. On its part, the expert public was surprised by the fact the amnesty had not been accompanied by any systemic solutions to problems that arose in the course and as a result of the amnesty in 1990, which led to a later increase in the number of convicted offenders to their original number.

Taking advantage of the interest shown by the superior authority, i.e. the Ministry of Justice, a proposal for a penology study was formulated, divided into two parts: l) an Analysis of Changes in the Structure, Trends and Characteristics of the Prison Population, and 2) Dangers and Violence During Imprisonment and Custody.

The presented publication contains information found during the execution of the tasks in the first part of the study, i.e. **Analysis of Changes in the Structure, Trends and Characteristics of the Prison Population.**

The team of authors divided the individual parts of the monograph according to the expertise of individual members and in accordance with the stated objective. The following chapters were formulated as subtasks: sanctions policy in the Czech Republic after 1990; developments in legislation on the Czech prison system and issues on the treatment of convicted offenders in recent years; an analysis of the structure of the inner life of convicted offenders; a comparison of prison populations in selected states. This was supplemented by an examination of general information on the history of the prison system and the issue of the so-called "other life" of convicted offenders.

Certain adjustments over the authors' original intent where made when processing the final research report in relation to the fact a new concept for the development of the Czech prison system up to 2025 was commissioned in the last two years of the research task.

Unconditional imprisonment – is a punishment that is still effective and its abolition is not planned. This was clearly shown by the conducted criminological analysis, however, it requires vital reform - to eliminate dysfunctional rules for its execution, to bring prisons into line with European standards by building new facilities for serving unconditional terms of imprisonment, to modernise security technology, and to improve and give prison staff greater powers. The Czech Republic is not alone in its pursuit of this reform, but it lags behind especially some of the Nordic European countries that have been progressively implementing reforms in this area. However, it is not true that Anglo-Saxon countries and the US must necessarily be our model in this endeavour. However, what we should adopt from most European countries is, above all, their critical attitude to unconditional imprisonment and efforts to ensure their transparency, greater control over the execution of sentences at individual facilities (prisons) and a reduction in the directives of central management. At the same time, however, we should increase the personal responsibility of prison officials for their decisions - rewarding good, emulatable decisions and penalise bad decisions. Perhaps the concept of the prison system for future years (up to 2025), which arose from discussion by a wide platform of experts, will meet these expectations.

Currently, unconditional imprisonment has many problems, which not only remain unresolved, but of which the greater part of the expert public has no knowledge. We took the opportunity to familiarise at least our readers with some of these problems in this publication.

Many of the differences found between prisons and presented in various ministerial materials, analyses and studies would be of another form if the authors had taken into account, in their interpretation, that many of the observed differences were given in advance by the specific type of prison and nature of prisoners placed there according to predetermined rules. The choice of the type of prison (according to so-called external differentiation) when sentencing convicted offenders is directly determined by court decision. Convicted offenders are then placed in the designated type of prison according to the court's decision by the General Directorate of the Prison Service, usually through one of its dispatchers. However, more information about its work is not available to the public (or inside the resort). When placing inmates in specific prisons, the dispatcher typically takes into account how disturbed the individual is, the convicted offender's family background, his/her professional qualifications, training needs and the needs of individual prisons for certain specialisations by inmates, etc.

A separate chapter on imprisonment at individual prisons is information on the so-called "other life" of convicted offenders (activities outside the supervision/attention of prison staff) that are generally hidden or derogated by the prison service. At many facilities no-one is even aware of its manifestations, because, in our opinion, the necessary intermediary in the form of a pro-socially cooperating self-government of inmates is lacking. The "other life" of inmates can then only be inferred from cases that end up at court and which receive wide media coverage, or from the testimonies of inmates following their release or that of their relatives and friends, or the testimony of redundant prison employees. The less reliable information we have about the conditions of imprisonment in Czech prisons, the more scope there is for various speculations and often bizarre ideas about prisons among the general public.

The problems we have presented build a strong case for the argument that punishment, namely **unconditional imprisonment does not have the expected effect on changing the behaviour and conduct of inmates to socially desirable forms, both during incarceration and after release from prison**. Prison is more likely to create negative changes. In general, offenders do not overcome ingrained ways of behaviour, including aggressive behaviour in prisons, but simply learn to better hide them from supervising staff and to express their aggression indirectly - through submissive fellow inmates, creating group pseudo-social standards, etc. They learn to induce their forms of behaviour in fellow inmates by raising tensions in informal groups of inmates. In this way, they support the existence of the afore-described other life of inmates and obstruct the success of resocialisation processes, including those specifically aimed at eliminating violence in prisons.

The state's implemented sanctions policy has a major impact on imprisonment in Czech prisons (its standard, the number of inmates, etc.). Rated retrospectively, sanctions policy implemented in the Czech Republic after 1990, has been fundamentally influenced (in our opinion) by the following measures: depenalisation and decriminalisation in the first years after the Velvet Revolution, the extension of the range of alternative punishments, major amendment of the Code of Criminal Procedure and amendment of the Penal Act by Act No. 265/2001 Coll., the adoption of the Juvenile Justice Act (Act No. 218/2003 Coll.) and the adoption of the new Penal Code (Act No. 40/2009).

It was characteristic in the analysed period of 1990-2015 that measures often did not meet the expectations of legislators in terms of reducing the prison population. Another characteristic feature of this period was the absence of a functional criminal policy.

If the state wants to develop a coherent and functional criminal policy, it must ensure its link to other entities or authorities operating outside the Ministry of Justice. The bodies responsible for its implementation must realise that the impact of the criminal justice system and its measures on the recidivism of convicted offenders is very limited. Criminal policy must not be limited to the area of punishment (penalties), and focus more on discussion of appropriate measures in the field of social policy, even though the prerequisite or basis is naturally the motivation of convicted offenders to live in accordance with the law, their own activity and an interest in solving problems.

Only with this comprehensive approach can a functional criminal policy be achieved.

The issue of the prison system is broader than it appears at first glance. Methods of serving unconditional terms of imprisonment, and individual programmes for the treatment of inmates are defined and described in terms of methodology, but their fulfilment is often difficult. One of the cornerstones of programmes for the treatment of inmates is their employment. This should be meaningful, and at the same time, bring convicted offenders serving time a financial reward, which could cover both statutorily defined payments, as well as the convicted offender's debts. If we add the need for job creation on prison grounds at a time of unemployment, the need to train workers for specific jobs, etc., there is nothing to envy this public sector. Employment is preceded by another important pillar, which is training convicted offenders, not only academically, but above all practically, which would then find its application in the future after being released from prison. Finally, all the positive experience gained in the practice of social services should be optimally utilised after the release of inmates, with the help of the state.

In view of the ever-growing prison population, which no country can afford in economic terms, tertiary prevention in prisons and after release from prison is both desirable and necessary. Although this issue is broad, and difficult in terms of implementation (especially for prison staff), it is still an illusory concept. Unceasing work with inmates is not known to the general public, and if some aspects come into wider awareness through newspaper articles, the internet or other means, it is very often perceived as inappropriate, or above standard.

Countries throughout Europe and around the world are trying to steer their criminal policy towards the same goal, that is, ideally, a secure state with minimum crime and a stable number of people in prison, and they choose different means to achieve that goal. Unfortunately, we cannot simply rely on tertiary prevention in prisons to solve everything in this case. Even if done responsibly, it will and does have its limits.

The introduction to the new concept of the Czech prison system begins with the words: "Prisons are an essential part of the state's criminal policy. The Czech Republic, as a democratic, constitutional state, proceeds on the basis of its international commitments, respect for human rights and freedoms, and its duty to protect society from perpetrators who violate the law. The purpose of unconditional imprisonment is not only to isolate convicted offenders, but especially an intense effort to reform the offender and his/her future reintegration into a society of people acting in accordance with the law".

The only thing missing is sufficient support (including financial) from other state institutions so that the Czech prison system can achieve these set goals.

The conducted criminological analysis set itself the goal of identifying and describing the causes of the current large number of inmates, the causes of changes in trends in the development of the prison population, but also to gain further knowledge on imprisonment under the conditions of Czech prisons. The authors of the analysis are confident they have achieved the objective of the analysis. The subtask that presented proposals for a reduction in the number of inmates in the future was also met. The authors hope that in the coming years the completed analysis will be a good basis for further measures to improve the quality of imprisonment, and that it will provide a sufficient information and knowledge base for further research, including a separate penology study.

Translated by: Presto

Marešová, A. a kol. (2016): *Výkon nepodmíněného trestu odnětí svobody – kriminologická analýza.* Praha: IKSP. ISBN 978-80-7338-157-8

VI.2. Dangerousness and violence in the course of prison sentence and pre-trial custody

VI.2.1. Dangerousness and violence in prisons

Šárka Blatníková

The prison population (group of incarcerated individuals) is not a homogenous group in terms of level of threat, risk of violent or problematic behaviour. Moreover, the specific social setting in which prison sentences or pre-trial custody are served, has its own particular rules of functioning and group dynamics. This is one of the reasons why management of the prison population – in the sense of organisational and technical measures aimed at preventing violence among inmates – is an important and difficult task for the prison service.

This monograph offers selected results from a research by the Institute of Criminology and Social Prevention (IKSP), the subject of which were violence in prisons and dangerousness of incarcerated individuals. The task was aimed primarily at mapping ways of assessing the dangerousness of prisoners in Czech prisons, and measures to prevent violence in the prison setting. The main objective was to obtain new criminological findings about prisoners identified as problematic, respectively dangerous persons, about violence among prisoners and about measures implemented in reaction to violent incidents. The idea to implement this penological research survey focussed on the issue of violence among the accused and convicts and the dangerousness or risk presented by persons in pre-trial custody and serving prison sentences, arose from practice (from the General Directorate of the Prison Service of the Czech Republic - PSCR). In our view, one of the foundations of such interest was the fact that mapping this issue at prisons in the Czech Republic using officially registered incidents may, despite the expected high degree of latency, offer a range of interesting information usable for analytic and strategic purposes. The conducted research survey was focussed on describing and summarizing the issue (mapping survey), not at testing hypotheses. The core of the research plan was the description of phenomena. The task was solved using standard methods and techniques of criminological research, such as the analysis of professional literature or statistical overviews and data from records and information systems of the PSCR. Descriptive statistical methods were also used. The research project relied on close cooperation with the General Directorate of the PSCR, especially as regards the access to their anonymised data about violent incidents and incarcerated persons. Within the framework of risk management, the research project anticipated that it may be necessary to use alternative sources of data, and when in the course of fieldwork the research team had to cope with the fact that the necessary data was not available in the scope and form required to perform all the analyses planned within the project, the survey was implemented in a limited variant (the empirical part was focussed on an analysis of the available documents and descriptive analysis of statistical data about persons included in the index of dangerous persons, particularly dangerous persons and potential perpetrators of violence). Because the research project anticipated this possibility, the aims of the research in the given context may be considered fulfilled. Solving of the project was concluded in compliance with generally binding legal regulations, including laws on the protection of personal data, and the ethical principles of scientific research were observed.

It is desirable, not only for the purpose of determining an adequate treatment program, to differentiate the population of convicted inmates firstly based on the level of risk (to distinguish dangerous persons from those less dangerous) and secondly based on the resocialization prognosis (in simpler terms, separate the "rehabilitatable" individuals from "unrehabilitatable" ones). "**Dangerousness**" is often perceived as a social construct, which includes a range of not entirely objective (clearly measurable) variables. For this reason too, its usefulness is often put to doubt – there is most often a conflict of opinions between two groups where the contested issue is a priority: whether they consider more important the safety of the group at the expense of the individual or the freedom of the individual at the expense of the group's safety. However, in our view an important factor in applying the concept is which criteria are determinant for identifying or classifying an individual in the "dangerous" category and particularly for what purposes such categorisation should be used.

Despite doubts about the actual construct of risk, most of professional literature discusses the ways of "measuring" a **perpetrator's dangerousness**. Abroad, a number of **standardised instruments** are used for this purpose, but there are also instrument (usually simply called check lists) designated only for specific situations or wards of the prison facility. The effort for better (more accurate) prediction, be it either by verifying the validity of existing instruments, their comparison, updating of "standards" or improving the structure of individual instruments, is also one of the arguments for using the concept of risk. The instruments used around the world include e.g. Psychopathy Checklist–Revised (PCL-R) (Hare, 1991, 2003), Walters's Life Style Criminal Screening Form (LSCF–R) or the Psychological Inventory of Criminal Thinking Styles (PICTS). Also used are: the Canadian tool Violence Risk Appraisal Guide (VRAG), or the revised Historical Clinical Risk (HCR-20 (V3)). The British OASys (Offender Assessment System) also served as inspiration for the SARPO/SARPO-2 method currently used by the PSCR.

Foreign professional sources state that dangerous prisoners differ from the "normal" prison population in many variables, and despite the high heterogeneity of the prison population, this group of ***problematic, difficult, conflicting/incorrigible, disruptive, dangerous or risky prisoners can be distinguished.*** Within the entire prison population, dangerous persons represent a very small group in terms of numbers. However, the problematic behaviour they display is often described among other as systematic, creating a major burden on the prison staff. Sorting offenders into groups may be a useful tool e.g. during differentiation, within treatment programs or when presenting data, because it reduces complexity. However, there may be a risk – not only in criminology – in the rising trend of presenting the groups as different, rather than "similar". Therefore, it is desirable also to work e.g. with the fact that different types identified in scientific studies may not exist in reality.

An effective **prisoner classification system** is among the key factors for successful operation of the entire prison. Systems of internal classification of convicts (inmates) are supplemented by external classification mechanisms. While external classification is governed – not only in the Czech Republic – by the way of guarding and ensuring security, internal classification represents a "finer" and more individualised sorting system. This involves higher subjectivity, less standardised procedures and more contradictions. Prison classification systems (internal classifications) are in many cases based on factors which we can find in tools or systems for "general" risk assessment – be it in connection to the risk of recidivism or the person's danger to themselves or others. Unlike these, however, prison classification systems take a greater interest in **identifying prisoners who either pose a risk of escape or who are expected to be problematic during treatment.**

Legal regulations of serving prison sentences and pre-trial custody in the Czech Republic address the issue of prisoners´ dangerousness. The basic legislation in this regard consists of Act No. 169/1999 Coll., on serving prison sentences, Ministry of Justice Decree No. 345/1999 Coll., which issues the rules of serving prison sentences, Act No. 293/1993 Coll., on serving pre-trial custody, Ministry of Justice Decree No. 109/1994 Coll., which issues the rules of serving pre-trial custody, and the internal regulations of the Prison Service of the Czech Republic. The draft bill which amends inter alia Act No. 169/1999 Coll., on serving prison sentences, foresees that prisons in the future will be classified in terms of the method of guarding, ensuring security and (newly) the regime of serving the sentence into only two types, rather than the present four types. Depending on the level of "risk", convicts are to be placed in individual types of wards at lower-security prisons, those being wards with minimum, medium and high security. In terms of the regime within the lower-security prison, the draft bill operates with the terms **internal and external risk**. When assessing internal risk, i.e. when identifying risks directed inwards the prison, the draft bill proposes considering criteria – such as data arising 1) from the current security risk, which means the present threat of escape, further expected prosecution for a specific crime or imposition of in-patient quasi-compulsory treatment or security detention, as well as 2) safety risk from the past, which means imposed but not yet executed in-patient quasi-compulsory treatment or security detention, or the occurrence of specific criminal activity in the past.

Violence in prisons is a problematic phenomenon and one that is difficult to grasp, particularly because it is a part of a subcultural system of norms, also because it happens covertly. In attempting to clarify and theoretically define violence and aggression in the prison population, but also when studying prison subcultures, we most often encounter a deprivation-situational model, an importation model or integration model. Although studies based on the importation model have provided more consensual conclusions and findings than research studies based on the deprivation theory, researches often found support for both models in their investigations. The specific type of prison or personality of the prisoners also play a role in determining whether prison subcultures in the specific prison will "form" themselves and "react" more based on a deprivation or importation model. Social ties in the past (in the case of the importation model) and the need to adapt to the present (in the case of the deprivation model) are the factors that most authors have taken into account not only when clarifying undesirable behaviour of the individual in prison, but also e.g. when studying prison subcultures. The explanation also includes other aspects, e.g. circumstances or variables related to visits by the prisoner's family, the individual's ability to cope with their imprisonment and of course the institutional environment, which also has an impact. According to some scientists, the discussion of whether the behaviour of incarcerated persons can be explained using the deprivation or importation model, is defined incorrectly and even the consensus among experts that the answer lies in an integrated model ("a bit of everything" perspective) is not an exhaustive answer. In the course of their careers, offenders acquire attitudes and thinking styles that ease and allow them to explain (rationalise) their criminal behaviour. They will most likely employ their criminal identity, which they were used to and which was associated with certain behavioural patterns, even in the new social environment, i.e. in prison. The lifestyle exposure model allows us to understand the relationship and connection between what prisoners bring to the institution, how they behave in the prison environment and how they perceive themselves. Unlike the importation and deprivation models, which emphasise the prisoner, the administrative control model focusses on the prison staff and method of managing the corrective facility. This is then viewed as a fundamental determinant of prisoners' behaviour.

Violence in a specific environment – such as serving a pre-trial custody or a prison sentence – has a **number of shapes and forms,** from bullying through economic abuse, psychological extortion to sexual or physical assault. It includes violence not only towards other individuals, but also to one's self – auto-mutilation (self-harm), attempted or successful suicide among prisoners. One of the ways we can view violence in this specific environment is by distinguishing **interpersonal and collective violence**. While manifestations of collective violence (usually in the form of riots and unrest) disrupt the normal running and social order of the given institution, **interpersonal violence** does not disrupt the operation of the prison as an organisation, but it does affect day-to-day prison life. It involves the violent behaviour of individuals serving prison sentence or pre-trial custody among each other, the violence among prisoners that is directed at members and civilian employees of the prison service (prison staff), or takes the form of inappropriate violence of the staff vis-à-vis the inmates. The subject of studies and discussions concerning prison violence (violence in prisons) can thus be mental or physical violence, or on a more general level victimisation or bullying, etc. Interpersonal violence is most often divided based on the nature of the relationship between the offender and the victim. This concerns violence between prisoners, attacks by a prisoner (prisoners) against prison staff, or violence by the staff against a prisoner (prisoners). Some authors also separate the category of sexual assault, psychological violence, self-harm, or group violence (gangs). Each variant of interpersonal violence can then take various form or manifestation – it can by physical, psychological or economic violence. If the manifestations of interpersonal violence are transposed into terms of criminal law, they can take the form of criminal offences like murder, manslaughter, etc.

Cases of **collective violence** are generally classified as extraordinary incidents. They are not a common part of prison life and if they occur, they usually take the form of unrest and riots. It is obvious that such behaviour disrupts the normal functioning and social structure of the entire institution. The American Correctional Association (ACA, 1996) identified three types of events that can be included in the category of collective violence. Incidents, defined as less critical events which involve only several prisoners and do not lead to the "occupation" of any part of the prison. Disturbances are more serious than incidents, involve more prisoners, but the facility management (prison staff / prison governor) do not lose control over the institution (prison). A riot is a case when a majority of the inmate population controls and manages a larger part of the prison institution for a longer period of time.

The reasons (or motives) behind the violent behaviour of prisoners may be an effort to acquire or affirm their status within the prison group. Manifestations of violence in prisons can serve e.g. to show strength or scare off other prisoners (demonstration of power), to exploit and use others e.g. through theft, to maintain one's own image (status), as a means of protection against insults or e.g. as a means of sexual satisfaction. Another motives for using violence can be material gain (e.g. addictive substances) and of course mutual antagonism, or the fact that the perpetrator takes pleasure in violence as a reason for physical assault.

There have always been, are and will be manifestations of violence in prisons. Predicting problematic behaviour when serving prison sentences, in the sense of the given individual's maladaptation to the prison environment (prison misconduct, institutional/disciplinary adjustment), is among the priorities of every prison system. Identifying conflicting prisoners, respectively violent individuals, and predicting their behaviour in the institution (prison) setting helps to improve security. By identifying prisoners with the highest risk of misconduct (violence) – which was achieved through prediction – it is possible not only to increase supervision specifically above these individual (group of individuals), but also to monitor them more, add them to the index of dangerous persons, or include them in a "stricter" category within the internal differentiation, or involve them in special treatment programs.

Interaction between personality factors (variables on the part of the prisoner) and social or situational factors (on the part of the social setting and institution itself – prison) is what makes prediction a probability estimate. Often mentioned as important among the variables pertaining to the person/personality are: the given person's criminal history, prior experience of imprisonment and imprisonment at a young age, anti-social attitudes and pro-criminal behaviour. Opinions on the relationship or connection between community violence and subsequent prison violence (misconduct) in professional studies vary. The conducted empirical studies partly confirm and partly refute the hypothesis of behavioural continuity, meaning that the perpetration of a violent crime in the community predicts a higher degree of involvement in violent incidents in prison. The results of empirical studies thus indicate that there is no scientifically-grounded reason to perceive a prisoner serving a prison sentence for violent crimes as the equivalent of prisoner inclined to commit institutional violence automatically.

Important situational variables that are often mentioned include institutional factors, meaning those related to the given correctional facility, such as e.g. the level of care/treatment, demographic data about composition of the prison population, costs, level of security, prison movement (relocation), ratio of employees to one prisoner or overcrowding. Factors related to the imposed unconditional prison sentence are also always considered, such as the length of the imposed sentence, the time of the prison sentence already served, or admission of guilt. Outputs from instruments evaluating the presence of antisocial aspects in the personality are also taken into account. The prediction of prison conduct must anticipate the interaction of personality (prisoner) and situational factors (prison). For a risky individual (person in whom risk factors were identified or who was classified as dangerous – violent) finding themselves in adverse life conditions multiplies the probability of misconduct. Hence, if a person reaches high scores/level in personality risk factors (e.g. antisocial attitudes and behaviour) and finds themselves in a prison setting, undesirable consequences e.g. in the form of violent behaviour are probable. A prisoner's risk factor may to some degree be inferred from their individual characteristics, values and attitudes and criminal history, with a role played by situational factors. Variables that predict the presence of misconduct (prison violence) with a varying degree of probability can be divided into several categories, which are in continuous interaction. These are the characteristics of the prisoner (personality and social variables), environmental factors and variables arising from the prison management. The factors or variables that the prisoner "brings" to the prison are a particular weakness of many prediction instruments and their abilities must not be overestimated.

Legislation concerning prison management address the issue of violence among prisoners, be it among themselves or vis-à-vis prison staff, within the regulations on ensuring security, order and discipline at prisons. Nevertheless, the Act on serving prison sentences, Act on serving pre-trial custody and implementing decrees to these laws only contain a few provisions on this topic, referring to the fact that the observance of order and discipline are among the basic obligations of the convicted and accused (Section 28(1) of the Act on serving prison sentences, Section 21(1) of the Act on serving pre-trial custody). Prison regulations also regulate the right of the convicted serving prison sentence and accused serving pre-trial custody to protection against unauthorised violence, degradation of human dignity and insults or threats (Section 35 Decree on serving prison sentences, Section 61 Decree on serving pre-trial custody). Within this protection, the prison governor is i.a. obliged to ensure that convicts, who given their mental characteristics, age, medical or physical condition and other identified facts could be the victims of violence and degradation of human dignity, be housed separately from convicts with aggressive inclinations; in doing so, they employ the findings of the physician, psychologist, sociologist, special pedagogue, social worker, priest and wardens (Section 35(5) of the Decree on serving prison sentences).

Contrary to generally binding legal regulations concerning the serving of pre-trial custody and prison sentences, the **internal regulations of the prison service** address the issue of preventing and solving violent behaviour among prisoners in greater detail – they specify the provisions of generally binding legal regulations directly for the area of violence. This particularly refers to the Directive of the Director General of the Prison Service of the Czech Republic (DDG) No. 12/2012, on the avoidance, prevention and timely detection of violence among the accused, convicts and inmates, which in its second part addresses the prevention of violence among prisoners, including auxiliary measures implemented for so called specified persons. The head of the pre-trial custody and prison sentence department at each prison is responsible for keeping the list of these prisoners. The list of specified persons can thus be understood as an instrument for avoiding, preventing and detecting violence among prisoners. The list contains prisoners in several categories – prisoners identified as possible victims of violence, possible perpetrators of violence, persons with significantly reduced body weight, persons of obvious low mental capacity, so called other specified persons and other specified persons characterised by their profession. Specified prisoners account for about 10% of all prisoners, where the largest group every year tends to be persons identified as possible victims of violence, which e.g. in 2012 accounted for 40% of all specified prisoners.

One of the categories in the list concerns **possible perpetrators of violence**, meaning persons inclined towards aggressive behaviour or violence (Section 7(1) of DDG No. 12/2012). A person can be proposed for addition to this list by prison employees, in particular employees of the pre-trial custody department, prison sentence department or security detention department. The head of the pre-trial custody and prison sentence department decides about the proposal. Information that is considered in connection to proposing the inclusion of a person as a potential perpetrator of violence: current conduct of the prisoner and information from their personal file (e.g. degree of self-control, physical condition, severity of committed crime, manner of its committing and resulting consequences). The share of identified possible perpetrators of violence is very low given the total number of prisoners. E.g. in 2012 the possible perpetrators of violence in Czech prisons accounted for ca. 22% of the total number of all specified persons, which given the total Czech prison population was less than 2%.

The efficacy of preventive measures largely depends on the given framework conditions that the prisons cannot stipulate themselves. Apart from preventive measures such as the aforementioned specifying of potential perpetrators of violence, the prison service also detects violence among prisoners. Prison employees who identify physical violence among prisoners are obliged to report this fact.

An analysis of empirical data in the form made available to the research team did not reveal any major problem or trend in the occurrence of dangerous persons and violent incidents in Czech prisons (nor could it really, given the said form and extent of provided data). Nevertheless, based on the findings collected in the research, the results of which are presented in this book, it is definitely recommended that the Prison Service of the Czech Republic devote attention to conceptualising the category of dangerous prisoners in terms of precising the terminology and above all the system of recording and reporting of data about violent incidents and dangerous prisoners. Despite the vast amount of data that the employees of individual prisons continuously record about this issue, the data is apparently registered in a manner that does not allow the automated creation of structured overviews, and thereby more detailed or reliable analyses. It is possible that similar overviews and analyses can be created from the recorded data on the level of individual prisons, but similar partial data sets are not greatly adapted to further use for the purposes of fulfilling the strategic, conceptual, analytic, methodical and controlling role of the General Directorate of the PSCR.

Translated by: Presto

Blatníková, Š. (2016): *Nebezpečnost a násilí ve vězeňském prostředí*. Praha: IKSP. ISBN 978-80-7338-158-5

Research on Crime and Criminal Justice in the Czech Republic
(selected results of research activities of IKSP in the years 2012–2015)

Editor: Petr Zeman
Publisher: Institute of Criminology and Social Prevention
Nám. 14. října 12, Prague 5, Czech Republic
Design: addnoise.org
Typography: Lukáš Pracný, sazbaknih.cz

First edition

www.kriminologie.cz

ISBN 978-80-7338-165-3