

INSTITUTE OF CRIMINOLOGY AND SOCIAL PREVENTION

**CRIME FROM THE PERSPECTIVE
OF CRIMINOLOGISTS**

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Foreword

The book now presented to the reader represents in a sense an exception in the production of the Institute for Criminology and Social Prevention. It does not deal with any particular problem related to crime or criminal policy, nor does it present findings of a specific research project. Rather, its authors acted out of aspiration to reflect on the knowledge accumulated over the years from empirical research carried out by the Institute research workers since 1990. We want to respond, at least in part, to the problem perceived for many years, namely that there has been no time and strength to reflect on the collected material, look at the data and findings from a broader perspective and try to put and interpret them in the wider context. Subject of our interest does not include only the data but also research topics which have been tackled by the researchers at the Institute over the years. The chapters are written so as to facilitate using the findings for getting a more comprehensive view of the investigated crime-related issues in the Czech Republic. In this sense the publication makes a whole, connected by the related themes and the approach taken by the authors.

The impulse for the compilation of this book, which deviates from the usual form of ICSP publications, came from the opportunity of the 50th anniversary of the Institute, commemorated in the year 2010. Owing to the dramatic development of criminology and the events surrounding the Institute from its founding, there was a good reason to look back at the work done, in particular in the perspective of the last 20 years, when the nature of crime and social conditions have significantly changed. It attempts to go beyond the usual monographic approach based on research of specific issues and try to present a wider application of the work carried out over a longer period.

We believe that Czech criminology deserves such an attempt. This book is primarily addressed to the professional public and users of the findings of criminology. We leave it to the reader to judge to what extent the body of authors succeeded.

PhDr. Miloslav Scheinost
Director, ICSP

Chapter 1

Crime and Criminology in the Czech Republic

Criminology is a field which has never been all rosy in our country. It has always been a modest field and while its importance for understanding the negative phenomena in society has been recognized, not always did such recognition translate in the proper care and provision necessary for its development. Criminology has been more or less left to its own ability to survive and thrive; the development of criminology has often been marked by strong will and stubbornness of many generations of criminologists who had to cope with less than favorable conditions and prove that criminology deserves to be heard and that it can bring trustworthy findings which should be respected.

Criminology in our country is sometimes considered to be fairly young, with beginnings in the 1960s. At that time its institutional basis was laid in the form of the Research Institute of Criminology (originally Scientific and Research Institute of Criminology). Paradoxically, the totalitarian regime, which mutilated ideologically most of liberal arts and totally neglected others, could appear to be responsible for the establishment of criminology in our country.

However, the truth of the matter is that criminology was not exempt from the beating the social sciences took after 1948. Criminology, like many other disciplines, was proclaimed by the official ideology to be unnecessary, since crime in the era of socialism was interpreted either as a temporary leftover from the class society, which will disappear on its own accord with the development of the classless society and under the new social conditions, or as a manifestation of heightened class struggle and resistance put up by the defeated exploitation classes, a political problem to be dealt with by the security apparatus. Therefore, it was manifestly useless to study and investigate crime, since its causes were clear. Criminology as a field of study in fact did not exist. Even statistic data on crime were confidential, sometimes strictly, for a certain period of time.

Unfortunately, crime cannot be put down by slogans and although it took some time, this truth finally set in. The development of crime was far from ideological expectations; to put it simply, crime persisted. Suddenly proclamations were not adequate and practical measures had to be devised to respond to the problems related to existing crime. Even the ruling regime had to concede that practical solutions had to be based on certain knowledge

base. The need reminded of the existence of the scientific field dealing with crime. Therefore, the above mentioned modest institutional base in the form of the Research Institute, created in 1960, was born out of recognized necessity rather than of affection towards a field which is always critical in its nature.

Criminology in the Czech Republic, however, is not as young as it might appear to be. Its roots go much deeper: we can find them at the turn of the 20th century. This is not to say that criminology existed as a separate science at that time. However, it is worth noting how some experts already felt the need to respond to criminal phenomena in the context of the social reality. Knowledge of criminological thinking of Europe, where criminology was already forming as a science in its own right, manifested itself.

Our criminological thinking at its beginning sprouted from two roots: from legal science and sociological reflection of social problems. This makes no exception in comparison with other countries; however, to a certain extent we can see here the source of later discussions, which sometimes carry on until today, namely whether criminology from the systematic point of view is closer to penal law or whether it is more sociological in nature. Today such discussion is – at least in my opinion – rather academic. Dyed-in-the-wool proponents of opposing views may be referred to the founding fathers of Czech criminology whose approach was formed less by preconceived ideas than by the subject of study. That approach and their ability to bring specific views from their original fields of expertise into the study of crime while going beyond the boundaries of their own fields made it possible for them to lay the foundations of criminology as a separate field of science.

In 1890 Josef Prušák, a lawyer, judge and professor of penal law at the Charles University, used the term “criminal science”. In his concept this science studies crime as a social phenomenon caused by individual, social as well as natural factors. He differentiated between “criminal anthropology”, which deals with the personality of the perpetrator, and “criminal sociology”, which studies social roots of crime. Obviously, such concept transcends the boundaries of penal law and opens the way for criminology towards other fields of science. Thanks to him findings of European criminology, represented by names like Lombroso and Garofalo, also found their way into our country.

In the 1920s the term “criminology” was fairly common in the Czech milieu as a designation for the science dealing with crime. Both approaches were still kept distinct: the study of the personality of the perpetrator on the one hand and the study of social connections to crime on the other. It could be expected that criminology developing out of the legal law

milieu would be closer to the former approach, i.e., the issues relating to the perpetrator and his punishment. But in fact Czech lawyers who stood at the foundations of Czech criminology exhibited unusual sense for a wider consideration of crime as a social phenomenon. In 1899 Prušák published a study called “The Beginnings of criminal etiology” and in 1904 the “Criminal noetics”. In 1931 Vladimír Solnař, another important Czech lawyer who also contributed significantly to the rise of Czech criminology, published his study on “Crime in Czech Lands during the period 1914 - 1922 from the point of view of criminal etiology and reform of penal law”. But also the interest in the personality of the perpetrator developed, again in a broader context, as shown by the work of the lawyer František Procházka from 1925 entitled “Discourse on criminals as an introduction to criminal psychology and sociology”. Also other important figures of Czech legal science like Augustin Miříčka, Jaroslav Kallab and others dealt with criminology.

Interest in social-pathological phenomena, understood primarily as a social problem, can be seen also in the work of several important sociologists. From the period when criminological thinking was beginning to develop, criminology can boast the classical work by T. G. Masaryk “Suicide as a mass phenomenon of the modern time” from 1878, which is characterized by notable empirical approach, including large-scale use of statistical data. This line of thought was further developed by several followers of Masaryk, some of whom have also ventured into the legal field, like Emanuel Chalupný, who organized and published a widely based research on the death penalty in 1923.

Thus the developing Czech criminology was not represented by “pure” criminologists in the first half of the 20th century but was characterized by criminological approach to crime-related issues developed both by lawyers and sociologists. Criminology played primarily the role of theoretical reflection. Empirical approach was characterized mostly by the use of statistical data.

During the period of the pre-war Republic fairly promising foundations were forming to establish criminology as a specialized field of science in its own right.

This promising development was interrupted by the first of the fateful blows our country suffered in the 20th century, in the form of the Nazi occupation. Criminological thinking and approach had been cultivated mainly at the universities; after the closure of Czech universities this basis was lost. After a short interim period, the year 1948 brought another blow to the development of humanities, including criminology, which could not be practiced for more than a decade.

Thus the establishment of a research institute for criminology in 1960 (and also the creation of the Criminology Cabinet at the Department of Criminal Law as a joint workplace of the Law Faculty of the Charles University and the Institute of State and Law of the Czechoslovak Academy of Sciences) did not mean a “green field” establishment of the criminological science but rather the first opportunity to revive the criminological approach again. It should be pointed out that both at the Institute and the Cabinet work got under way to access the knowledge from countries where the development of criminology had not been interrupted, in particular in the area of empirical research; such focus also made it possible, at least in part, to avoid the ideological limitations in the theoretical realm.

It is typical for Czech criminology to note that this development, again, was disrupted. During the time absurdly called “normalization” in the years after the Soviet invasion of 1968 the pressure of ideology grew stronger again, the Institute was accused of non-Marxist aberrations and some researchers were forced to leave. In spite of that, some in its time fundamental works were published, including the first Czech textbook on criminology, even if the mandatory tribute to the ruling ideology had to be included and limitations observed. Thanks to several researchers the tradition of empirical research was kept up and some interesting findings were produced. Lectures in criminology were again read in faculties of law. For a period of time, also the Penological Research Institute was active, unfortunately to be closed down in 1980 as “redundant”. A small department of penology which was created instead at the Prison Service could not serve as full replacement. Thus the institutional basis for criminology survived in the 1970s and 1980s in a limited scope, maintaining the professional level mainly thanks to the diligence of individual employees.

The profound changes in the society after 1989 opened new space for criminological research and it seemed that no artificial barriers would stand in the way of the development of criminology any longer. The need for valid criminological findings seemed to be obvious, in particular at a time of sharp increase in recorded crime, which became one of the top concerns of citizens. After a long time, ideological barriers were down and Czech criminology started to quickly absorb global criminological knowledge and establish international contacts.

Statistical data show sharp increase in crime in the first half of the 1990s as well as changes in its structure. Property crime clearly dominated and the number of first-time offenders grew significantly. Since approximately 1993, the first-time offenders, perpetrators of minor offenses, negligence offences etc. accounted for approx. 70 % of known and

prosecuted offenders.¹ The increase of violent crime was accompanied by its growing brutality. Qualitatively new phenomena appeared, like the emergence of organized crime, including domestic organized crime, illegal migration and some new forms of economic crime, which has had up to now a crucial share in damages incurred. The growth of drug-related crime was also apparent. Statistical data were likely able to cover the scope of corruption only marginally, while the real situation can only be estimated. Already in 1998, according to research carried out on behalf of the Czech Ministry of the Interior, full one-fourth of a representative body of respondents had personal experience with corruption behavior.² Victimological research pointed out high level of victimization of citizens, which for some types of crime reached levels above the known European average.³

During this period the method of criminological work was dictated by the specific situation, characterized by this overall increase in crime and some of its novel manifestations. It was logical that the work of criminologists at an institute, after some staff replacement and renamed as Institute for Criminology and Social Prevention, focused first of all on topical empirical research.

However, the scope of both traditional and new crime-related problems has significantly exceeded the capacity of current Czech criminology. The focus on empirical research serving practical needs like the creation of penal legislation, criminal policy, preventive work, prison service etc. has not left much room for deeper development of theoretical reflections. Although the need to strengthen the capacity of Czech criminology should have appeared justified in light of the scope of the issues, no increase of its institutional or personal basis has followed. The Penological Research Institute was not revived and the work of the Institute for Criminology and Social Prevention has been marked by instability and later even by reduction of staff. Academicians working at the Criminology Department of the Police Academy – the second criminological workplace in the Czech Republic – can devote their efforts to research only partially, their contribution obviously being mainly in teaching.

Criminology has not been taught so far as a separate subject in the Czech Republic. Therefore, criminologists in our country come and mature, as has always been the case, from among lawyers, sociologists, psychologists and even experts in other fields of science. All the more important is the existence of a specialized workplace of criminology, where gradual and

¹ See annual crime surveys of the Czech Republic: Marešová, A. et al.: *Kriminalita v roce 1992 – 2008*.

² *Korupční klima v ČR*. Prague (Corruption Climate in the Czech Republic): GfK, Institut pro výzkum trhu 1998.

³ Martinková, M.: *Zkušenosti obyvatel České republiky s některými delikty – výsledky viktimologického výzkumu* (Experience of inhabitants in the Czech Republic with some delicts – results of victimological research). Prague: IKSP 2007.

professional transformation of experts from different fields of knowledge into criminologists is both possible and natural.

This possibility of a systematic education of new criminologists is very limited in terms of capacity, though. Therefore it is important that thanks to positive approach on the part of some university faculties, students in other fields can learn about selected criminological findings and approaches, receiving at least basic overview of criminology, its subject matter and methods and often choosing criminological themes for their theses. Lectures on criminology are read within the framework of forensic disciplines at faculties of law and criminology can be studied as optional subject. Selected criminological themes are included in the study of sociology, social work and social policy at some universities. The interest in these subjects on the part of students is certainly a positive sign for future development of this branch and indicates that there is likely sufficient number of students who would consider the career of a criminologist (especially given the fact that the more financially attractive professions have been mostly saturated).

For these reasons, while criminology in our country can be considered a relatively consolidated field, it is still characterized by little numbers, both in terms of staff and institutions. It is a typical interdisciplinary field, connecting in particular penal law, sociology, psychology as well as other scientific branches with the common subject matter. In a way, this is in line with its roots and beginnings, although one could ask whether this science could and should have gone farther, had it not been for different external hindrances. Nonetheless, in spite of the scarcity, Czech criminologists have recently been able to compile and publish two fundamental criminology textbooks, publish many studies and articles in professional periodicals, including abroad, and provide findings that could be used in designing legislation and systemic measures, e.g. when preparing alternative measures, establishing a crime prevention system etc.

In a positive development, criminological approach overlaps with other spheres of research, which primarily are not criminological in nature but engage in the research of drug issues, attitudes of the public towards and concerns about crime, domestic violence, issues relating to victims of crime etc. This overlap can also be seen in the activities of the social pathology section of the Masaryk Czech Sociological Association, which deals with issues of criminology, crime and socially pathological phenomena on a regular basis and which is composed by far not only by sociologists. For these reasons, the present absence of a specialized professional society of criminology has not been felt as a major problem.

Nevertheless, as stated above, the basis of criminology in the Czech Republic cannot be considered sufficient. It would be important for Czech criminology to be able to respond to a larger extent to wider scope of new and traditional problems of current crime, to trends of crime development, to their theoretical reflections and also to sufficiently develop applied criminology, focusing on verifying the efficiency of legal and other institutes of criminal policy, both in the area of repression and prevention.

Regardless of the current capacity, which does not allow for sufficient reflection of these issues, even the limited selection of themes must always include answers in particular to the following fundamental questions:

- How the very subject matter of our study is changing – crime, socially pathological phenomena and criminogenous factors in this globalized world characterized by mass movements of inhabitants, social, ethnic and ideological differences and conflicts, terrorism, global economic and organized crime, global economic processes and their socially pathological consequences? How are these global phenomena and influences reflected in the Czech environment? Are these new phenomena really new ones, or are they just traditional forms of crime and criminogenous factors clad in a modernized cloak?
- In what proportion should we be dealing with these global threats and their reflection in our environment in relation to traditional criminological themes like common property and street crime etc.? What should be the priority for Czech criminology given the limited research capacity? Should it be these new risk factors, relevant to the whole society, or rather the traditional forms, which are, after all, perceived by the citizens as immediate threat and concern? In this respect it is also important to know what and how should be taken over and used from the wealth of foreign findings and how to be best prepared for a critical evaluation of these findings and ideas.
- How should the theoretical framework and theoretical basis be created in order to better generalize and interpret collected empirical knowledge, which has been and logically will continue to be the primary focus of criminological research? How should specific findings, the gathering of which has been and will continue to be the basis for the work of Czech criminologists, be put into context in order to create a more precise picture of crime and criminogenous factors in our society? To what extent is it possible to interpret the knowledge on the development of crime in a transforming society on the basis of present criminological theories?

- How should criminological research be focused so that it reflects the need to create more efficient tools that would respond to current crime in terms of repression, alternative approaches and prevention? What are the possibilities and limits of prevention, repression and some current criminal policy trends (e.g., restorative justice) and how can criminology contribute to finding out? Are the creators of criminal policy formulating tasks in this respect? If not, how can criminology contribute to formulating them?

Of course, we have to ask ourselves in particular whether our tools for getting the knowledge are adequate and efficient and whether the current forms of presenting criminological findings are sufficient.

Public demand could facilitate finding answers to these questions. The setting of priorities, however, also depends on the ability of criminologists to determine and justify the range of issues which deserve priority interest and to convince the users of the outputs or findings that these issues are indeed significant. This is not a minor task for Czech criminology.

As criminologists we are convinced that in order to formulate good criminal policy and implement it effectively it is necessary to examine phenomenology and etiology of crime, its manifestations and causes and its wider social context including social pathological phenomena which, although not criminally punishable, nevertheless create conditions for crime or criminogenous environment. But the trick is to be constantly convincing about this need, not only by using some marketing tools but mainly by the quality of findings that are produced and offered.

Possibilities and influence of criminology cannot be overestimated. Nonetheless there is expectation from criminology and criminologists that their findings and outputs will somehow contribute to positive solution of problems which criminology deals with. This brings up the question of responsibility for quality and to a certain degree also for possible impact of the results of research. The work of a criminologist affects the fate of human beings and, therefore, they should be very careful in thinking through any unwanted and unintended consequences of their otherwise well intended conclusions and recommendations, even though they are not directly responsible for their implementation.

This is not an easy task. Criminology works in a complicated terrain: the subject matter of our research – crime – is committed in secret and usually with the intention to remain hidden, so that compared to other fields of science we often have to deal with facts uncovered by others or overcome barriers which are intentionally erected to hinder us from getting the knowledge. On top of it, the subject matter of our interest is sometimes clouded by collective

myths and stereotypes. The picture of crime, and sometimes even of criminal policy, as it is presented to the public tends to be distorted by the media so that it is far from reality. Sometimes, in particular with highly latent forms of crime, we find ourselves in virtual reality environment, which it is difficult to filter out and where it is equally difficult to defend the result if it differs from such virtual reality and if we need to refute widespread errors or illusions.

In this respect criminology is a unique science because, being critical in nature, it should contribute to dispelling myths, distorted notions and illusions. Humanities arts in general are critical sciences since they provide a reflection of society and its problems; all the more so criminology as it focuses by its very nature on issues people are afraid of, issues which are not pleasant; it deals with the ugly face of society.

Criminology deals specifically with very sensitive part of the life of society, it deals with phenomena that touch the whole society and very significantly affect also the lives of many citizens and their families. As a result the criminologist is not only in a position of an independent researcher, since his work is necessarily based on certain value standards. There is underlying basic consensus that certain forms of behavior are intolerable (criminal acts), usually defined by criminal law, and some factors contribute to such intolerable forms of behavior or stimulate them (criminogenous factors). The responsibility of the criminologist, therefore, is based upon the fact that his work objectively rests on the positive side of the norm, it is carried out in the interest of protection against violators of the norm and its results should become an active element applied when dealing with the studied phenomena.

Victimological research shows that at least one-third of the citizens of the Czech Republic have had personal experience with crime or have become victims of crime⁴; taking into account, moreover, that damage to an individual usually affects also his family and loved ones, we face an obvious fact that the subject of our professional interest is far from being just academic, it is part of life experience, mostly unpleasant, of many inhabitants of this country. We deal with problems which sometimes very drastically affect the lives of human beings, not only victims and their families but ultimately also the perpetrators, not mentioning damage to society and costs of crime control. It is these issues that are usually also politically hot and therefore, sometimes present a dangerous terrain.

⁴ Martinková, M.: Zkušenosti obyvatel České republiky s některými delikty – výsledky viktimologického výzkumu (Experience of inhabitants in the Czech Republic with some delicts – results of victimological research). Prague: IKSP 2007.

It is all the more dangerous because criminology, if honest and trying to credibly describe reality, is unpleasant and critical since it shows where we fail and what are some of the unwanted and unintended consequences of otherwise well-intended measures, interventions, regulations etc. By its very nature it focuses on problems and cases of failure by both individuals and the society as a whole and when looking for causes it has to point out these failures, errors and deficiencies if it wants to be truthful, which is not always pleasant or popular.

Criminology, however, cannot afford to resign to this critical role, if it is to remain trustworthy and useful for its users and for the formulation and implementation of criminal policy. Criminology would deny its purpose if it were to succumb to the temptation to choose the easy path and respond with its findings to certain expectations, without being fully convinced that such findings are correct, let alone knowing that they are not true. But in my opinion this is not what Czech criminology is doing and thanks to many of its representatives it tried to avoid it even in the past when circumstances were much more difficult.

How could Czech criminology be judged in comparison with other countries?

Czech criminology is certainly not one of globally constitutive national criminologies. However, there are two comparative criteria we can apply: one is *content comparison*, judging whether Czech criminology sufficiently reflects development trends of global criminology as far as content of research is concerned; if criminological knowledge finds its application in practice, what is the standing of criminology as a field of science, by which we can understand both the position of criminology in the scientific system and its teaching but also the weight attributed to it. This international comparison can show whether or not our criminology is lagging behind in its development.

The second possible criterion is the evaluation of *systematic involvement of Czech criminology in international scientific and professional life*. This can include involvement of Czech criminological institutions and criminologists in international professional associations, participation, in particular active participation, in international events, organizing of such events in our country and finally representation of Czech criminologists in the bodies of relevant international professional organizations with the opportunity to influence international professional agenda.

It also includes participation in international research projects and publication of our results in internationally monitored periodicals and publications.

From this point of view of systematic involvement, we cannot be fully satisfied.

True, Czech criminology is nowadays represented in the most important international professional associations like the International Society for Criminology, International Criminal Law Society, European Society of Criminology, UN International Scientific and Professional Advisory Council, World Society of Victimology and European Crime Prevention Network. As much as we can, we try to participate in main international professional events and report our findings there. Czech criminologists have worked in some international bodies, in particular in expert committees and groups and we participate in some international projects. Czech criminology is not unknown in Europe and it has a recognized level of expertise.

At the same time, however, we need to admit that Czech criminology is not represented yet in the steering bodies of international professional organizations. Our participation in international research projects could and should be more extensive and so far we have not contributed significantly to international cooperation by organizing domestic professional events. The interest to organize the European Criminological Conference in Prague is a positive signal in this respect. To be honest, this is something that has been already expected of the Czech Republic and Czech criminology. We need to admit that Hungarian, Polish or Slovenian criminology is objectively speaking far ahead of us in terms of their systematic involvement in the international context and professional life.

If we look at our criminology in terms of content comparison, the results are, so we hope, more favorable. In spite of weak domestic basis and capacity limits mentioned above it can be stated that Czech criminology has been following most of the main themes currently in the focus of the international community, from so-called crime globalization, organized and cross-border crime, drugs, human trafficking, impact of social changes on crime, issues of victims, partially also social exclusion and its impact; we also try to follow manifestations and development of extremism.

Outside of the scope of our criminology have stayed of the “big issues” of world criminology as terrorism, genocide, war-related crime; fortunately, these issues are not urgent for Czech society and Czech criminology and, therefore, it is understandable that they have stayed outside of our main focus due to capacity constraints.

However, there is another area which has so far been sidelined and which will undoubtedly deserve our attention the sooner the better: it is the co-existence and clash of cultures, multiculturalism and related ethnic and social conflicts which often lead to criminal acts. These issues are being widely taken up the world over and one does not have to be a prophet to understand that even the Czech Republic will not be able to avoid tackling them.

A fairly large portion of Czech criminological capacity has been occupied by applied research. This can mean verification of effectiveness of certain, mainly legal, institutes and organizational measures in practice (legislation, functioning of the justice and prison systems, alternative measures methods, mediation, preventative approach and measures etc.), monitoring and evaluation of their impact on crime, its prevention and on social pathological phenomena and criminogenous factors.

This constitutes a fully legitimate avenue of criminological research, focusing on close connection to practice, which is widely applied abroad. It remains to be wished that, given the capacity of Czech criminology, which is to a large degree taken up by these tasks, the findings are subsequently taken into account in all seriousness and will be able to better contribute to recognizing criminology domestically as a field which brings useful knowledge.

Our problem is that given the limited capacity and basis of Czech criminology, we lag behind in the development of theoretical and critical reflection, which concerns theoretical generalization of gained empirical knowledge as well as critical self-reflection of criminology itself, in other words asking questions about efficiency of methods, validity of knowledge, method of formulating problems which are subject of research.

We need such professional self-reflection and it is in this area that academic workplaces, though limited in numbers, should find their place.

We are gradually succeeding in strengthening the position and teaching of criminology at the universities, which should hopefully contribute to expanding the basis for the necessary theoretical reflection of the findings. It should become a clear challenge for the universities.

Summing up the above, it can be stated that in terms of content, Czech criminology does not lag behind the world in any significant way. There is no reason to believe that our findings cannot contribute to most of the main topics of current global criminology. Our problem is to use the gathered empirical data to formulate more general conclusions and views.

If we are to analyze what is the missing element that would help our criminology find a more distinguished place in international context, we should name in the first place the width of our institutional and personal basis, on which we could lean and which would provide for better stability of the branch, better allocation of resources and cover the missing areas not only of empirical research but also of theoretical reflection. The current basis is not only narrow but also fragile. In this connection the problem of insufficient respect towards criminology as a specific field of science should be mentioned; while questioning of its

contribution is not always based on professional criticism. Removing these doubts falls primarily upon the shoulders of the criminologists themselves.

It might appear to be our internal problem. However, the stability of the basis for a field, the importance of which for the understanding of significant social problems should be obvious, provides long-term perspective, which is necessary for involvement in international projects and for pushing the representation of Czech criminology in international professional organizations. But mainly it is required so that we are able to formulate and implement at least some long-term research projects, which could bring more valid findings than just short and middle term ones. Stabilization and, if possible, expanding of the basis of this field is in a long-term strategic interest of Czech criminology; it will be difficult to gain stronger influence in the international context without it. Of course, Czech criminology will have to start from looking at itself. Our standing and professional authority is directly related to the content we are communicating – both in terms of quality and communication skills, at home and abroad. We would only wish that in the near future we can discuss professional issues and tasks of Czech criminology, rather than questions of its existential basis.

Chapter 2

Social Factors Influencing the Development of Crime

Before we start reflecting on the models and techniques applicable in the research of societal conditions influencing the rise of criminogenous factors and pondering over some research findings, we need to recall several *basic assumptions*. It is beyond dispute that crime is no isolated phenomenon; it is played out in a particular framework. Some elements in the societal system have such effect that crime arises and becomes reality. The existence of crime conversely has consequences for society.

Criminology accepts these facts. Besides gaining knowledge about the condition, structure and development of crime, on perpetrators and victims, and besides analyzing the effectiveness of legal instruments, preventative and other measures or, as the case may be, besides forecasting possible options of future development, it also deals with social and individual criminogenous factors. Analysing them should bring to light why certain types of crime are perpetrated, why the perpetrators focus on that particular activity and why they are doing it in a particular way. Analysing criminogenous factors should also find out why the victims are certain people under certain conditions. If we know this data as precisely as possible, we can be in a position to propose an effective criminal policy.

We assume that societal conditions form a general category and within its framework there are specific factors that can cause crime and endanger individuals as well as the social system and its institutions. Analysing these factors is not self-serving. Society must be able to defend itself against the outworking of criminogenous factors and the consequences of crime. The defence must be as efficient and effective as possible. Research cannot include just analysing possible societal factors but should also analyse their possible impact. Uncovering potential sources for the working of crime and its consequences under specific social conditions is one of the important preconditions for finding measures that could be applied against the unwanted phenomenon.

Another known fact that deserves to be recalled is that criminogenous factors are understood as risk factors which cause, facilitate or foster committing crime. We distinguish between individual and societal criminogenous factors. Individual (subjective) ones relate to personality structure, psychological and physical attributes and the behaviour of the

individual. Societal (objective) factors work within the framework of the social system. By combining specific criminogenous factors in different ways we can uncover more general causes of crime.

Findings which form the basis for the ideas presented in this article are based on the research of the Institute for Criminology and Social Prevention carried out in the late 1990s and after 2000. The foundation researched the causes and methods of functioning of organized crime in 1998 and 1999⁵. After 2000, probes followed, which investigated the problems to be solved, likely scenarios of crime development⁶ and the possibilities for defending society against the threat posed by serious crime⁷. Details can be found in the publications mentioned; here I will try to present a more general overview.

The research of criminogenous factors is a fairly complex issue as far as *methodology* is concerned. The first problem is to define what is it actually that criminogenous factors cause. If we say that they generate crime it may sound simply but we have to specify what actually is meant by this. First of all we mean that certain conditions contribute to the situation where crime can become a reality. But this is not enough. Criminogenous factors may also have an indirect effect and contribute to making conditions for committing crime, in particular to getting information, establishing contacts, providing impunity and influencing decision-making processes. Thirdly, there are some factors in society that cause more and more hitherto unpunished people to get involved in crime, expanding the number of perpetrators. Besides this, there are factors which enable collaborators to be recruited for the functioning of security services of criminal gangs. Fourthly, there are factors which lead to creating and maintaining a demand for illegal goods and services and which, therefore, provide the necessary conditions for the existence of criminal gangs.

The methodological pitfalls consist of the fact that the criminogenous factors that we have found can only be considered potential (rather hypothetical) sources, which under certain social conditions can provide direct or indirect opportunity for criminals to carry out criminal acts, gather information, recruit collaborators, get contacts, provide impunity and influence decision-making processes. The factors cannot be considered unambiguously proven. Not only are the relations potential, we also have to call attention to the fact that they are not determined. In most cases we cannot unambiguously infer that such and such conditions cause

⁵ Cejp, M.: Společenské příčiny a důsledky organizovaného zločinu (Societal causes and consequences of organized crime). Prague: IKSP 1999.

⁶ Cejp, M., Marešová, A., Baloun, V., Trdlicová, K., Trávníčková, I.: Variantní scénáře vybraných druhů kriminality (Alternative scenarios of selected types of crime). Prague: IKSP 2008.

⁷ Cejp, M., Baloun, V., Krejčová, S., Scheinost, M.: Obrana proti ohrožení společnosti závažnými formami trestné činnosti (Defense against the threat posed to society by serious forms of crime). Prague: IKSP 2009.

such and such consequences. It is about charting a mosaic of forces which can have the effect that crime can develop.

The second problem is that if we want to analyse the outworking of criminogenous factors in society we have to take into account the whole system. When finding criminogenous factors, therefore, we should use as a base as comprehensive as possible an analysis of the living conditions in society that could represent a direct or indirect source leading to some form of relation between crime and the social system. The methodological pitfalls include how to approach the social system, how to break it down, how to look for connections. In our research, in which we analysed societal factors or their consequences and measures against them, we approached the social system from a structural point of view, i.e., according to separate areas. Within the areas we differentiated by subgroups and individual elements. We defined the areas of politics, economy, law, public administration and self-government, social structures and culture in the broadest sense. In the area of politics we analysed the effects of the political system on a general level, then specifically the effects of politics on internal security, migration, the visa and asylum policy, and other policies, which could relate to crime. We also focused on the efforts, intentions and impact of political parties and typical traits of politicians. In the area of the economy, in the late 1990s we focused on privatization-related problems, the effects of market principles, the beginnings of private enterprise, granting licenses, credits and trade certificates and property transfers. After 2000 we focused on quantitative and structural manifestations of economic crime, identifying and transforming factors influencing its origination, the development and forms of financial crime, new elements in economic and financial crime in relation to EU legislation and funds. In the area of law we were interested in legislation, the performance and prestige of justice, and the level of legal awareness. In the area of public administration we confronted the role of the state in fighting crime with specific deficiencies of the system or skills and traits of public sector employees that prevent them fulfilling this role. We focused in more detail mainly on analysing deficiencies in sectors that deal with restraining crime, problems in the justice and home departments – in the latter in particular on the Czech Police – as well as the finance department and intelligence services. To a certain degree – but not to the same extent as with public administration – we also followed issues relating to self-government administration. We studied in depth the changes of the social structure, upward mobility after 1990, adhering to the principle of equal chances and social justice, differentiation and discrimination of various kinds, e.g., by age, region, assets, position and power share. We analysed to what extent the principle of equal chances is violated due to favoritism and how it can be abused by

criminal structures. We were also interested in the effects of the standard of living, the poverty level, unemployment and other social issues on crime. In the area of culture in the broad sense we dealt with lifestyle, life strategies and values, the level of interpersonal relationships, morality and the influence of the family, media and science.

If we investigate the possible impact of the social system on crime, we cannot limit the analysis to the Czech Republic only. We have to take into consideration global development when judging the problems in Czech society. Crime, and in particular its most serious forms such as terrorism, organized crime and economic crime, including so-called large corruption, is one of the most severe global security risks at the beginning of the 21st century. Crime is becoming more and more international, it is carried out irrespective of national boundaries and it is this global nature that brings it the highest revenues. Crime is mostly carried out on a broad, usually global territory, jeopardizes the security of people, institutions, financial systems and businesses, devastating complete sections of society.

Another problem is related to defining different areas of social life. The break-up into areas and classifying problems according to these areas has been created for the purpose of the analysis. Most issues can be classified in the respective area relatively easily, but there are others, which overlap and permeate several spheres. For instance, a particular political decision affects the economy, sometimes even the law, the public administration deals with it in a certain way and sometimes so does the media. It can directly or indirectly affect morality and subsequently the way people act. Even though the list of factors is fairly long (between 1998 and 1999 we found 150), we can never consider it complete. Many circumstances may have been omitted or were not considered important.

A problem not to be underestimated is that since the beginning of the systematic research in this area (1998) there have been constant changes in the social system. Due to the changing situation the analysis cannot dwell on specific issues or approaches but has to find generally valid solutions to problems. Since changes are going to continue occurring, the analysis of criminogenous factors should not be a one-off initiative but should be carried out on a continuous basis. Last but not least, it must be taken into account that a researcher who is analysing the deficiencies of a social system will never be popular with those who are responsible for it. This is true despite the researcher being led by efforts to remove or at least limit the deficiencies and in so doing prevent crime from abusing them.

The third methodological problem is that when applying specific methods and techniques, we are limited by not being able to use research methods and techniques that would put the researcher in direct contact with the criminal environment. Police and court

statistics give the numbers of recorded or, as the case may be, prosecuted criminal acts but do not provide information about actual crime, which is much higher. With serious organized crime we could only use a limited number of closed court files, due to the low number of cases. As a consequence we had to rely mostly on findings gained indirectly. In this respect we usually used different ways to ask experts. We turned to specialists at special Police departments, to public prosecutors, judges, in some cases to sworn experts and lawyers. In the case of the research of the societal causes of crime, experts from universities in Prague and other cities were also asked to provide their expertise⁸. (*Cejp, 1999*) When analysing criminogenous factors we used findings from expert publications and sources, often from abroad. While foreign experience cannot be applied in our country without reservation, the fact that certain factors played a role in other countries can be used as an indicator that they can also appear in our country. In this respect there was another problem, namely that the choice of experts and the authors of professional literature was limited in a certain way, for objective reasons. Since we dealt with a wide spectrum of social issues it is possible that we failed to ask some experts or did not cover all that has been published in that particular field.

In the following text we will cover the most important criminogenous factors. We will describe the consequences of their operation and suggest possible countermeasures. As already mentioned, as part of three research projects that dealt with these issues, about 150 different factors were found. This study will name those for each area, which we consider the most important. For most of them we will also recall possible methods for eliminating their effect. It is in this part that most changes continuously occur. In particular the current government is trying to actively deal with many circumstances described here, so it is reasonable to assume that before this text is completed, many proposed changes will already have taken place.

In the international context crime, and in particular its serious forms such as terrorism, organized crime and economic crime, including so-called large corruption, is one of the most severe global security risks. Serious crime is mostly carried out on a broad, usually global territory, jeopardizes the security of people, institutions, financial systems and businesses, devastating complete sections of society. If the development of crime in general is more and more influenced by the international context, it is all the more so in the case of organized crime. The international character is dominant in the case of organized crime. The large-scale territory, usually the whole world, where organized crime operates is a necessary condition

⁸ Cejp, M.: Společenské příčiny a důsledky organizovaného zločinu (Societal causes and consequences of organized crime). Prague: IKSP 1999.

for its activities. If it wants to maximize revenues and minimize risks, it has to use as wide as possible a territory. It then determines where criminal acts will be perpetrated, where from and to where will its operation relocate so that it pays off, where and how revenues from crime will be legalized and where will the perpetrators hide.

In the international context the most important criminogenous factor is the process of globalization, which paradoxically occurs in parallel to deepening the gap between advanced and underdeveloped countries. The capacity for defence in current society is low because of the growing complexity of global problems and also to the continuously improving organization of crime. For instance, it is over-dependent on computer networks and limited energy sources. The open systems of today's world without borders make it relatively easy for criminal gangs to move illegal goods, the revenues from crime, weapons, criminals and their victims. The differences between advanced and underdeveloped countries are the cause of smuggling drugs, prostitutes, cheap labour and works of art from the poor to developed countries. Conversely, illegal smuggling from the developed world to poor countries can include weapons, finance to support illegal activities, stolen cars or hazardous waste and sexual tourists may come. Criminals, illegal goods, revenues from crime and used for crime and criminal gangs also arrive in advanced countries through the growing migration of people. Enormous wealth is accumulating in decision-making centres, which attracts the criminal world, enticing it to sponge upon it. In addition, consumerism thrives in rich societies. As a consequence, the type of lifestyle and use of free time that goes with it sometimes demands goods and services, which may not be according to the law. In addition there may be legal activities, which are so financially demanding that the necessary funds are obtained in an illegal way. In countries with low-level or non-existent democracy the differentiation is even more pronounced. There is a narrow, extremely wealthy and powerful elite in such countries while the remaining inhabitants are impoverished. There are still some differences between the countries of the former Eastern Bloc and traditional democracies. The remaining institutional and personal connections to central and eastern European countries, a legacy of the past, can play a fairly significant role. The world of crime can also make use of regional, religious, ethnic and social conflicts. *"A threat (...) comes from states, groupings and organizations, whose main aim is to suppress human rights and generally apply violence."*⁹ We have noted recently that European Union funds are being misused.

⁹ Vize rozvoje České republiky do roku 2015 (Development vision of the Czech Republic until 2015). CESES, FSV UK 2001.

Under these circumstances it is imperative that measures against crime are not taken only at the level of single states but always at the international level. The international community has tried to adopt a joint approach to crime since the late 1800s and many international organizations have been formed. Since the beginning of 1960s the action of the international community against crime has been very systematic. (The Czech Republic joined these initiatives after 1990.) The UN, Council of Europe and European Union have initiated many countermeasures. These organizations have drafted documents and conventions against illicit drug trafficking, trans-national organized crime, terrorism, conventions on laundering, search, seizure and confiscation of the proceeds of crime, on the fight against corruption involving foreign public officials in international business transactions, against corruption, for the protection of witnesses, illegal human trafficking, on assistance to victims of crime and many others. These initiatives have climaxed in binding documents against crime or some of its forms, ratified by the respective governments. In addition to this, methodological instructions for solving particular situations are drafted, in particular for international assistance in prosecuting criminals and finding and returning stolen goods transported across national boundaries. Study stays, training courses and international criminological research are carried out. The international fight against serious crime also includes an internationally designed criminological research project that provides data for drafting criminal and security policy by shedding light on the possible sources of the emergence and operation of crime under specific social conditions. At the same time, the effectiveness of measures against crime is being monitored and amendments are proposed if needed.

In the area of *internal policies* we tried to look for criminogenous factors at the general level of the political system, in the operation of political parties and the personal level of politicians. The basic internal policies risk factors consisted of cases of a non systemic, bureaucratic approach, responding only to the problem at hand without taking into account the long-term effects. The political representation must submit well thought-out concepts and ensuing strategies for effectively challenging crime. Recently there have been attempts at a strategy for fighting organized crime and corruption; there is an anti-drug policy and a developed crime prevention system. At the beginning of 2010 a draft anti-corruption measures bill, the “anti-corruption package” was prepared. The amendments envision the introduction of the institute of the crown witness and a change in the institute of a cooperating defendant, an amendment to the institute of an anti-corruption agent and the correction of unwanted consequences of the new Criminal Code. Together with the “third anti-corruption package” a Draft Government Resolution was compiled on measures to check the employees

of ministries and other central public administration bodies who participate in public procurement. The aim is to be able to guarantee the integrity of those public employees who participate in calls for tenders or decisions on public procurement exceeding CZK 5 million excluding VAT. One of the main priorities is also the fight against organized crime. It is based on the Concept of the fight against organized crime. The priorities are: protecting the members of Czech bodies responsible for criminal proceedings and investigating cases of organized crime; protecting serious crime witnesses; stronger protection of the police, state prosecutors and judges participating in the fight against organized crime; protecting the identity of an agent in accordance with the Criminal Procedure Code; measures supporting higher motivation to witness against perpetrators of serious crime; protecting interpreters in relation to criminal proceedings; submitting theses for a law on introducing the administrative liability of legal persons for illegal behaviour, the prosecution of which is required by international conventions on the fight against organized crime; creating legislative and organizational conditions for confiscating the proceeds from crime, establishing a system for gaining information on holders of accounts kept by banks and other financial institutions in the Czech Republic for the purposes of authorized state bodies; adopting measures against car theft and related crime. The tasks relating to the anti-drug policy are carried out according to the Action plan for implementing the National anti-drug strategy for 2007–2009, approved by Government Resolution No. 845/2007. The priorities of the National crime prevention committee in 2009 were to develop a system of crime prevention at the local level, in particular strengthening the self-government role of regions in this respect, expand and improve the quality of interdepartmental cooperation, in particular in juvenile crime prevention, prevent crime in socially excluded and handicapped communities, assist the victims of crime, support and protect the victims of human trafficking, draft and methodically manage specific projects and develop international cooperation.

On the other hand, the Czech Republic has not yet adopted international conventions against trans-national organized crime and corruption. The convention against trans-national organized crime has been signed but not ratified yet. The main hindrance to ratification is the absence of the criminal (or administrative) liability of legal persons for acts qualified as criminal in the case of natural persons and the prosecution of which is required by many international conventions and EU laws. In order for these strategic plans to be fully implemented, clearly declared and actually existing political, material and media support of the bodies responsible for criminal proceedings is necessary. Specific measures against organized crime penetrating to the social system, in particular to the areas of justice, police

and media should be adopted. At the same time, rules must be established for protecting the system and its employees and for proper conduct in the case of attempted corruption or extortion.

Widespread migration is another risk that calls for a political solution. In this respect, the most severe security risk for the Czech Republic is posed by the group of illegal migrants in our territory. The Czech Republic is also a transit country for migration. An important criminogenous factor is that illegal migration has become a lucrative business. Under the conditions of the Czech Republic the abuse of the migration and asylum policy for members of criminal gangs penetrating our territory must be prevented. In particular the influence of foreign organized crime structures must be constrained in the Czech Republic by new effective laws in all spheres.

The link of political and economic power is another important criminogenous factor. This is where people, relations and interests in political and economic realms overlap. In this situation, besides market principles, external influences also operate, favouring those who penetrate among top politicians to oblige them or enjoy another form of kinship. Inter alia, favourable conditions for legalising suspicious companies thus arise.

Besides factors relevant to the whole political scene, there are also specific risk factors connected to the operation of different parties. A situation where political parties prefer their own strategic interests over the public interest and that of voters can be considered a serious criminogenous factor. As a consequence the gap between the political representation and the citizens widens, weakening the ability of society to solve problems in general and crime in particular. The attempts of political parties to use various sources of financial support may be tricky.

As far as politicians are concerned, a serious criminogenous factor is that some politicians can be taken advantage of. People occupying important political and decision making positions can be endangered by criminal structures through aggressive attempts at corruption, compromising, threats or extortion. Criminal elements try especially to establish contacts with politicians who are selfish, greedy, career-seekers, who want to grab power, assets or influence and at the same time naïve politicians who have no clue that those they are working with may come from a criminal environment.

The main limitation in the *economic system* is that practices usual in the criminal environment are brought into it. Criminal elements penetrating financial circles under the cloak of legal businesses bring into the legal economy the proceeds from illegal activities and causing the “grey economy” to expand, bringing major losses to the income side of the budget

due to unpaid taxes and fees. By getting their illegal proceeds into legal financial circulation, those who successfully “laundered” the money can get a competitive advantage over legally operating enterprises.

It is appropriate to note here that corruption has a devastating effect not only on the economy but on the whole social system as well. Besides corruption in the economy corruption also occurs in almost every aspect of society’s life. Political corruption that overlaps with an economic one is particularly dangerous. The fact that the corrupting party gains an advantage for a payment, or an exchange of advantages takes place between the corrupting and the corrupted, not only violates the principle of equal opportunities but threatens the very principle of democracy – the equality of citizens. If the business environment is destabilized by corruption, untaxed money stemming from crime becomes the main decision-making factor. Illegal trading practices, the suppression of competition by illegal means and violent elements in business prevent honest entrepreneurs from competing. The world of crime is using corruption for practically everything: to get required information, to establish contact networks, to secure impunity. Criminals use corruption as one of the main tools to reach their goals. It is the first stage of applying pressure. If it fails to produce the desired effect, criminals move to more drastic methods: threats, extortion or even violence. Also transferring property to other persons is used to legalize the proceeds from crime or mask corruption. Fictitious companies can receive unjustified advantages by receiving large amounts of money for their not fully legal start-up and operation in the market environment. Establishing fictitious companies is also often used for tax evasion purposes.

Defence options in the economic area consist of adopting such legislative and administrative measures that prevent overlapping of persons, relations and interests between both realms. The use of the illegal proceeds of crime in a legal economy must be prevented. Confiscating illegal proceeds is an effective method. Since corrupt behaviour is the main form of crime penetrating public administration, systemic changes in the process of awarding public procurement and handling public budgets must be adopted. Ways should be found of applying controlled provocation as an important preventative measure.

In the *justice* sphere any deficiencies in the legislation and judiciary can become criminogenous factors. Especially sobering is that the criminal world already tries to obtain unjustified advantages at the stage of creating law. They try to influence the legislation process so that the outcome is either favourable for them or can be misused. There was such a suspicion, for instance, in the case of “light fuel oils”. Other advantages for criminals can come from the delayed adoption of specific legislation, from too low sentences for the most

serious crimes, or from acquittals just for formal reasons without taking into account the evidence of the case. Also, laws and regulations should be designed so that they help eliminate a corruption environment. If there is no duty to prove the origin of funds or property, legalizing illegal proceeds is easier. The delayed adoption of measures against money laundering and the fact that the proceeds from illegal activities remained undefined in our country for a relatively long time after 1990 enabled especially trans-national criminal organizations to use these proceeds to buy companies or launder them in another way. Too liberal migration and asylum policy legislation enables organized crime to relocate members of criminal gangs in the Czech Republic and engage in human trafficking. If sentences meted out for the most serious crimes are too low and witness protection inadequate, it is difficult to prove a crime, especially an organized one. The use of extraordinary measures is complicated, inefficient and doubts are often cast on it in the eyes of the public.

Besides legislation, the enforcement of, adherence to and respect of the law is also important. From this perspective, the current Czech justice system appears to be inefficient, in particular because criminal proceedings are too lengthy and too complicated. In some cases, court decisions are not respected at all, for instance the perpetrators fail to pay their debts or serve the penalty. They often use the possibilities for repeated appeals, accuse the judge of being biased or pay bail. Also administrative omissions contribute to the low efficiency of courts. Deficiencies in the work of the courts may also be the reason for increasing tolerance towards negative social phenomena. If the justice system can not enforce law, debts, assets, obligations and agreements, trust in justice and law declines. It would be a dangerous development if some inhabitants took law enforcement into their own hands. The problem is the low legal awareness and low respect of the law.

Since 2010, significant changes to the Criminal Code and Criminal Procedure Code have been in effect. In particular the possibility of higher sentences for serious crimes is important. Legislative amendments relating to corruption, stricter laws for conflicts of interest, establishing the institute of the crown witness should be implemented as soon as possible. The collaborators of organized criminal gangs should be punished more consistently. High penalties should be reserved for public officials who knowingly collaborate with organized crime. Enforcement of the law must be guaranteed.

In the *public administration* area there are several severely limiting factors which decrease its efficiency and make it vulnerable to abuse by criminal elements who want to secure favourable conditions for their criminal activities, gain information and get impunity. The risk factor is that in many areas the rules and norms of behaviour are not clearly defined.

The consequence is that anyone can do as they please, without taking into account public interest and the need of internal security. If clear and consistent rules are defined, the system will protect public officials and exactly delineate the framework for their acts and responsibilities.

As there was a lack of high quality professional education for public administration in the 1990s, and to a certain degree this is still the case, the insufficient professional qualifications of employees in this area is a criminogenous factor. The low professionalism of public servants may manifest itself in inconsistently discharging their duties, a careless relationship to confidential information, with regard to corruption or in violating impartiality towards various interest groups. Another deficiency which is prone to abuse is when public administration positions are filled on the basis of favouritism and political clout. Another criminogenous factor, which could prevent the optimum development of public administration in the future, is its politicization. The composition of the apparatus of line ministries is still too much dependant on election results. After each election then, whole teams are replaced and there is no continuity. An important negative factor is the mistrust of most people in public administration institutions. Citizens are sensitive to disorder, failure to fulfil the basic duties, incompetence, arrogance and the complacency of public servants as well as other negative phenomena.

Regional and local self-government has not yet developed fully in the Czech Republic. The limiting factor is that the level of citizens' participation in government has been low. In 1997 M. Potůček noted that "more than half of the population is not prepared to become personally involved in public affairs"¹⁰ and today the situation is probably not any better. There are also subjective constraints at work. "It is much easier for a person to keep his independence and integrity if he stays away from the decision-making process than when he becomes involved and participates in it. When he agrees to participate in problem-solving, he faces pressures, risks and situations which would otherwise leave him indifferent."¹¹ But local politics has the potential to play an important role in crime prevention at the local level, in particular in constraining property and violent crime. Protecting public places and the safety of citizens and their property can play a significant role in this respect.

Measures against the influence of criminogenous factors in the public administration and self-government area should be based on an analysis and a clear vision of the desired

¹⁰ Potůček, M.: *Nejen trh* (Not only the market). Prague: SLON 1997.

¹¹ Keller, J.: *Sociologie byrokracie a organizace* (The Sociology of Bureaucracy and Organization). Prague: SLON 1996.

target. Strategic steps should be planned, the actors defined and tasks distributed. The activity should be coordinated and success and failure should be continuously analyzed. The political, material and media support of bodies responsible for criminal proceedings – including specialized Police departments – should not be questioned; on the contrary, it should be clearly declared. The difference between public interest and the interest of groups and private individuals should be clearly distinguished. The personal responsibility of politicians, nominated officials and management must increase. At the same time, rules must be established to protect the system and its employees and for proper conduct in case of attempted corruption or extortion. As a matter of principle, the Police and the justice system must be separated from political influences.

There have been some changes to the social structure after 1990. Quantitatively speaking, the changes were not too strong. Between 1988 and 1993, 79.4 % of the economically active population remained in the same status category, 13.8 % experienced upward mobility and 6.8 % downward mobility.¹² However, the more significant changes were qualitative. New people assumed decisive positions in public administration, restitution of property and small privatization took place, groups of wealthy entrepreneurs emerged and different trades and crafts were rejuvenated. As a consequence of this development, a group of wealthy people with large amounts of money emerged and social disparities grew.¹³

The growing differentiation between people on the basis of their property and social status can cause not only enmity between the poor and the rich but can also lead to the middle class having a sense of being endangered. The access to power is unequal. The social system also allows success in life to be attained in an immoral manner. There are people among those occupying the higher ranks in society who gained their property, and usually also the corresponding social status, in an illegal way. Social distances deepen. Favouritism is thriving, careers and social status are often based on connections. People who know each other exchange favours.¹⁴ In order for the bosses of criminal gangs to carry out their activities with minimum risk, they have to be either part of the rule-defining elite, or to have very good contacts to them. Based on these contacts they get information or protection from official circles, without having to resort to corruption or even violence. They have a certain feeling of superiority. They think that they are untouchable due to their social status, support of

¹² Machonin, P., Tuček, M.: *Česká společnost v transformaci* (The Czech Society in Transformation). Prague: SLON 1996, p. 144.

¹³ Machonin, P., Tuček, M.: *Česká společnost v transformaci* (The Czech Society in Transformation). Prague: SLON 1996, pp.17-18.

¹⁴ Keller, J.: *Dvanáct omylů sociologie* (The Twelve Errors of Sociology). Prague: SLON 1995.

influential people and the low efficiency of law enforcement. Besides this, social control is also weakening. Tolerance towards antisocial and sometimes illegal behaviour is related to this.

As far as the general population is concerned, inadequate information on crime is a criminogenous factor. People should be aware of the danger crime poses to the whole society, they should not be overly enthusiastic to populist measures and they should have no tolerance to crime. It is wrong when instead of information on the nature and causes of crime and ways of protection against it the public is presented with various substitute issues such as the scandals of inconvenient politicians, celebrities, higher public officials or top policemen. Incorrect information on crime results in the public having widespread vague feelings of threat and fear. This can lead to indifference in communication and to weakening of social control. Weakened social control causes growing tolerance towards antisocial and sometimes illegal behaviour. Decreasing economic performance can result in falling living standards for many citizens. Growing unemployment and mortgage defaults can bring about efforts to raise income in an illegal way. The criminal world also exerts a negative influence on the population by offering illegal goods and services, not only satisfying existing demand but consciously creating it. The dependence on illegal goods and services can bring some people to collaborate with the criminal world.

If the awareness of the population on crime is improved, if people grasp its nature, they will also be aware of the danger it poses to the whole society. They will appreciate the results of continuous activity aimed against perpetrators and towards assisting victims and will have no tolerance of crime. Better awareness of the dangers connected with drug abuse, taking sexual services or risky offers of financial help will result in decreasing demand for illegal goods and services. This in turn will cause a drop in the revenues of criminal gangs. Improving the care of voluntary and state organizations for crime victims could also play a positive role.

Also in the area of culture – understood in a broad sense as lifestyle, morality, interpersonal relations, influence of the family and school, media and science – there is a number of criminogenous factors. For instance, as far as lifestyle is concerned, one-sided consumer life strategies can be misused by crime. The desire to live a luxurious life combined with idleness can sometimes become the driving force leading to involvement in criminal structures. There are many negative elements in the education system and a lack of opportunities to spend free time in a reasonable way. In most cases, the family also fails to fulfil its educational role. People are often irresponsible towards their own health. In this

context the supply of drugs and the number of drug-addicts are growing. Undesirable behaviour is often the result of uncontrolled emulation. The consequence of such a lifestyle is at least a long-term dependence on addictive substances in a large portion of the population. The fact that crime is often connected to excessive consumption of alcohol or psychotropic substances is an immediate threat.

The media is also part of culture. They can negatively influence the future development of crime in many ways, in particular by treating crime as an attractive subject, which lures masses of readers and viewers by its dramatic and thrilling nature. In chasing sensations, the media describes virtual reality and fails to pin down the essence, downplaying or glorifying evil and missing the greatest danger, namely that thriving crime will paralyze society. Another mistake is depicting violence without an appropriate distance as the only possible way of solving conflicts or as a form of self-fulfilment. The media often disregards the principle that victims should not be harmed and their relatives and property endangered. If the media stresses a lifestyle, which in its nature is close to unethical or even illegal practices, it can also work as a negative factor. People who have gained a fortune disproportionate to their work effort can be elevated. The way the media confronts readers with the lifestyle of celebrities can also cause people to become frustrated with their own lives. By having a strong influence on public opinion, the media may actually throw their support behind issues, which are of advantage to the criminal world. Some criminals may even be presented as victims of criminal justice. At the same time, authorities and law enforcement officials, in particular legislators, state prosecutors, police and judges, are doubted, denounced and even ridiculed. Unfortunately due to the market dictate the media is under strong economic pressure. The commercial media especially depends on advertising and, therefore, are hard pressed to keep their objectivity if generous sponsors expect otherwise.

Public relations can be used as an important countermeasure. The public must be informed that crime is detrimental to the whole society – it impairs the political, economic and legal system, violates ethical norms and can destroy everything people have created by their efforts. The school as well as the family should warn of the dangers connected to pathological lifestyle forms and offer opportunities for the active use of free time. The media should inform the public not only about the dangerous nature of crime but also how to effectively fight it. At the same time rules should be found to prevent the abuse of the mass media to distort or even falsify reality.

We also stress the importance of scientific knowledge. Unless crime is subjected to continuous scientific analysis relying on international experience and unless this analysis is

sufficiently used in the crime fighting policy, the measures against it cannot be well thought-out and, therefore, effective.

To sum up, there are many risk factors in politics, economics, the legal system, public administration and self-government that can be abused by the criminal world to secure conditions which enable it to effectively commit criminal acts, if possible with impunity and recruit collaborators and clients who would consume illegal goods and services. There are dozens of such criminogenous factors in each area; some of them have significant influence while others are less important but still necessary in the sense that they open the way for the stronger factors to come into play. Some risk factors diminish over time, either of itself or thanks to the successful operation of social forces tasked with fighting crime. As some factors disappear, others arise as a reaction to changed conditions in society. If we want to be successful in preventing crime we have to identify risk factors in time, in particular the new ones, and look for effective countermeasures to eliminate or at least reduce them.

Criminal Policy – the Purpose of Punishment

It is a general understanding that each state declares by its criminal policy in particular the level of protection of basic human and civil rights and freedoms which it is willing and capable of actually safeguarding. A criminal policy of a state finds concrete expression especially in its substantive and procedural criminal legislation, in the system and setup of law enforcement bodies and institutions and in the practical activity of these entities.

Criminal policy may be defined as “part of general policy formulating goals and means of social control through criminal law” (J. Musil), and it is in this context that the issues of penalties and punishment come to the forefront.¹⁵ The importance of criminological view of such multi-faceted phenomenon as the penalty and its purpose is evident, since law (criminal law) only deals with its normative dimension.

Imposing and enforcement of penal sanctions is traditionally seen as the evident manifestation of the sovereignty of the power of the state and authority of its criminal justice bodies. The way the punishment of crime perpetrators is administered, i.e., which penalties are imposed and how the offenders are treated relates very closely to the nature of the political and social arrangement of society, to its respect for human and civil rights and reflects the concept of the entire legal order of the state.

It can be argued that in the imposition and enforcement of criminal sanctions the criminal policy of a state is directly manifested. Here we refer to “sanction policy” as a relatively autonomous (in terms of function, aims and application of selected instruments) component of criminal policy.

Punishment historically relates to crime in the sense that it has always been the natural reaction to a committed act. This connection between “the crime and the punishment” is notably found also in literature (F. M. Dostoyevsky) and is generally understood as right and

¹⁵ Musil, J.: Úloha trestní politiky při reformě trestního práva (The role of criminal policy in the reform of criminal law). Trestní právo 1998, No. 1, pp. 3-5.
Also cf. e.g.: Kaiser, G.: Kriminologie (Criminology). 1st ed. Prague: C.H.Beck 1994, p. 257.
Kunz, K.-L.: Souvislosti mezi kriminologií a kriminální politikou a jejich odlišnosti (Relationship between criminology and criminal policy and their differences). Právník 1997, No. 8, pp. 673-692.
Novotný, O. et al.: Kriminologie.(Criminology) 2nd ed. Prague: ASPI Publishing 2004, pp. 26-30.
Kuchta, J., Válková, H. et al.: Základy kriminologie a trestní politiky (Foundations of criminology and criminal policy). 1st ed. Prague: C.H.Beck 2005, p. 8 ff.

as a matter of course, whether we see under punishment retribution, deterrence, revenge, harm to the offender, protection of society, satisfaction for the victim, means to correction or deliverance from guilt, or anything else.

Questions about the purpose of punishment and penalty and answers to them have also marked turning points in the development of criminological thinking. Let us recall the message handed down by the lawyer Cesare Beccaria (1738-1794) in his pivotal study from 1764, *Dei Delitti e delle Pene* (On Crimes and Punishments), in which he turned the attention to drastic investigation methods and a cruel system of sanctions. Criminology has subscribed to his enlightened ideas on humanistic concept of criminal justice and has made it the foundation for its constant attention to the safeguarding of human rights and fair criminal process and enforcement of sanctions imposed by the courts.

His radical and, in his time, utopian demands are being gradually fulfilled in most countries today. Criminology as a scientific branch, which is able with its theoretical arguments and findings from empirical research to convince the public, the legislators as well as the executive power of the need for a desirable criminal and sanction policy, plays an important role in the process.

We can refer for instance to an important document prepared on the basis of scientific criminological studies, namely the Recommendation of the Council of Europe to Member States No. R(96)8 on Crime Policy in Europe in a Time of Change (approved by the Committee of Ministers on 5 September 1996), which contains in particular the following theses:

- Every response to crime must conform to the basic principles of democratic states governed by the rule of law and subject to the paramount aim of guaranteeing respect for human rights;
- Therefore, however serious the situation of a society might be with respect to crime, any measures aimed at dealing with that situation that do not take account of the values of democracy, human rights and the rule of law are inadmissible;
- It must be one of the fundamental functions of criminal justice to safeguard the interests of the victims of crime. To this end it is necessary both to enhance the confidence of victims in criminal justice and to have adequate regard, within the criminal justice system, to the physical, psychological, material and social harm suffered by victims.

Current criminology is aware of the long historic development of views on the purpose of punishment and penalties as well as of the fact that criminal and sanction policy is determined by the overall civilization, cultural, economic and political development of the

society. The development of other fields of science like sociology, psychology, philosophy and obviously of criminal law sciences, including penology and victimology, has also brought a number of new views and insights as to the nature of judicial sanctions, imposing and enforcement thereof.

The most important issues relate in particular to the severity and types of penalties imposed. Historic experience shows that while harsh and cruel methods of punishment, like those in the Middle Ages, may have satisfied the public, they have certainly brought about no reduction of criminality. Even such drastic forms of punishment like the display of the offender in the pillory or leaving the body of the hanged criminal at the gallows as a warning did not have, in today's terminology, any generally preventative effect.

The absolute punishment, namely the death penalty, has been understood for ages as a common tool for punishing criminals, so that various qualified methods of execution had to be devised in order to differentiate according to the severity of the crime or the offending person. Such qualification basically consisted in gradation of suffering and humiliation that could be brought on the offender to bear before his or her life was cut off. Cruelty and sophistication of executions was often boundless.¹⁶

According to Sutherland, four different types of penalties can be distinguished: monetary fines, penalties causing pain, social degradation and isolation. Shorter or longer isolation from society can be achieved by imprisonment or exile, while execution represents the ultimate isolation. Physical suffering consists of torture, social degradation is achieved for instance by permanent marking of the perpetrator (by branding a sign, maiming).¹⁷

The history of "imprisonment" is rather confusing; in the European context, the prevailing opinion is that originally, imprisonment was used as a means of detention, that is custody of criminals waiting for the verdict, or as a way of putting pressure on debtors to fulfill their obligations and to be available to creditors (examples of such purpose of imprisonment are quoted from ancient Greece and Rome).

A broader use of imprisonment arrived in the Christian era. It was the church that first used temporary (but sometimes lifelong) confinement to strict conditions of a monastery as a form of punishment for privileged levels of society. Ascetic conditions of religious orders and isolation from the outside world meant significant limitation of personal freedom. Similar isolation in castles and other places was used to settle various conflicts over succession,

¹⁶ See e.g. Monestier, M.: History of the death penalty (history and techniques of the capital punishment from the beginning until today). Czech translation: Prague: Rybka Publishers 1998, 405 p.

¹⁷ Cf. Sutherland, E.H.: Principles of Criminology, Philadelphia, 1955.

inheritance or power struggles among the ruling aristocracy. The punitive character of incarceration gradually came over into the secular sphere, although the said securing or administrative concept of imprisonment for debtors or otherwise obligated persons (for instance liable to damages) was dominant for a long time.¹⁸

The use of imprisonment as a criminal sanction resulted in creation of very harsh conditions for the punishment to take place. It was so mainly because incarceration was understood as an alternative to traditional penalties, namely execution or other physical and humiliating forms of punishment. Preservation of the offender's life, albeit under the cruel prison conditions, was understood as an act of grace and mitigation of the punishment.

Approximately in the 1600s we can find different levels of imprisonment in terms of the length of the sentence or conditions under which it was carried out. In the following century, deprivation of liberty became a common sanction imposed by the courts for acts which did not call for a more severe punishment.¹⁹

More or less at the same time when the deprivation of liberty as a punishment began to be used more widely and became an integral part of the sanction system in European and other overseas countries, critical voices appeared that drew attention to various drawbacks of this penalty, in particular when it comes to its effects on the perpetrator and method of its execution. It was logical that also the question of proportionality of the length of sentence to the committed act and the person of the offender was raised.

It was already then that uncertainty and doubts as to the methods and forms of treating prisoners were voiced. The well-known Pennsylvania system²⁰ was based on strict isolation of prisoners who were separated in solitary confinement and in the early stage of serving sentence they were not even put to work, there was only a Bible in their cell and they were left alone to search their conscience (this is where the term penitentiary handling comes from, derived from Latin *penitence* for *repentance*).

Similar in its profile and one-sidedness was the Auburn System²¹, which consisted in enforcing absolute silence among the inmates (*silent system*). They were isolated overnight in their cells and any verbal contact with other inmates during the day when they worked or ate was forbidden and enforced with physical punishments.

¹⁸ See also: Karabec, Z. et al.: Krátkodobé tresty odnětí svobody (Short term sentences of imprisonment). Prague: IKSP 2000, p. 87

¹⁹ Melossi, D.: The Sociology of Punishment. University of Bologna 1998, p. 523.

²⁰ Established in Philadelphia in 1786.

²¹ Established in the Auburn Prison in New York State in 1823

Of course, the repressive one-sidedness of these systems was modified overtime, various mixed systems and models of treating prisoners emerged, but the question about the sense and purpose of punishment remained.

Criminal and sanction policy, or the way we look at proportionality and appropriateness of the response of society to a committed crime, is historically and culturally contingent. It is different in different civilization areas and it changes with time.

Ancient understanding of criminal justice, as we know it from verifiable historical documents, was based on the notion of *retribution and compensation*. The well-known principle “eye for an eye, tooth for a tooth” expresses not only the intention to cause the same harm to the perpetrator as he caused to his victim, but also includes an attempt at “equalizing” the conditions of the perpetrator and the injured. Such equalization, however, was in certain cases also possible in an indirect way, i.e., through compensation (by paying adequate damages). This forms the substance of different possibilities to “redeem oneself from punishment”, in other words, to avoid retribution by paying compensation to the victim.

These processes have been understood as “just”, i.e., acceptable and appropriate, in most known civilization areas at different stages of their cultural development.

Any modalities to this concept of criminal justice were reflected mostly in procedures (they were of rather “procedural nature”), e.g. in different cultural and religious customs according to which offenses were heard and perpetrators treated.

Authority to hear different offenses went through radical changes over the ages. Originally such authority was probably left to the inner family circle (this is the basis of still enduring vendetta), or to the elder of the tribe or a body of tribal representatives. As the power of leaders (chiefs, rulers), who managed and decided about general and particular issues in the community and whose power was often explained and shielded by religious authority, became more articulate the possibilities for the direct participants to the conflict (offense) to decide according to their ideas and interests of the victim diminished.

Over time different offenses lost their “private law nature”, in other words, ceased to be primarily an issue between the offender and the injured, and the state (at first the absolutistic ruler, later other bodies on which the ruler delegated his authority) created a full *criminal monopoly*.

In Europe this development received its specific traits during the 11th and 12th centuries, as different state bodies gradually formed and the power of rulers and church became solidified. At first the emerging state authority only reserved the right to prosecute the most

serious acts that posed a danger to the ruling power or state religion. Later the state monopoly extended to all offenses and criminal acts were fully integrated into public law.

This criminal monopoly included also the *exclusive authority of the state to define the concept of criminal policy and to implement it through its means of power*. This development climaxed in advanced industrial nations in the 1800s, where it was part of the philosophical and political thinking of the day, reflecting the general view of the role of the state.²²

In criminal law theory the concept of punishment is based on the well-known principle *nullum crimen sine lege, nulla poena sine lege*, in other words both the crime and the punishment must be defined by law. One might note that the word *poena*, coming from Greek, originally meant purification of the community from crime and referring the perpetrator to the deity. Various current theoretical definitions of punishment include in particular the following aspects: punishment includes harm, the harm is caused with a purpose by an authority so entrusted, penalty is meted out for a transgression of law, such transgression must be culpable and the penalty is imposed for a justifiable reason.²³

Sentences of imprisonment started to be applied as a means of criminal policy which is expected to bring rehabilitation and re-socialization effects and by its humane nature differs from the death penalty, physical punishments, exile etc.²⁴

Let us briefly recall that historically, two concepts regarding the purpose of punishment developed. One basic school of thought considers a crime to be an act of free will of the perpetrator and the punishment, therefore, a natural consequence of the act committed; the adequacy of punishment is judged by the seriousness of the offense, so to speak it “mirrors” the act. The punishment has significance “in itself” and its imposition is a moral imperative. It is necessary to punish because a crime has been committed (*punitur, quia peccatum est*). This concept is called the absolute theory of punishment, retribution theory, classical school of criminal law or similarly.

The second basic view considers the commission of crime to be the consequence of certain cognizable influences, for instances deficiencies in education, family environment, existential need, biological and psychological conditions. The perpetrator, therefore, does not decide “freely” to commit a crime but rather acts under the pressure of various personal and social factors. The main and only justifiable purpose of punishment, therefore, consists in providing professional treatment to the perpetrator during his serving of the sentence, which

²² See also: Karabec, Z.: Koncept restorativní justice (The Concept of Restorative Justice). In: Restorativní justice. Sborník příspěvků a dokumentů. Prague: IKSP 2003.

²³ Cf. e.g.: Walker, N.: Why Punish? Oxford University Press, Oxford – New York 1991.

²⁴ Garland, D. (ed.): Punishment and Modern Society. The University of Chicago Press 1999, p. 312.

will suppress the causes that had led to the commission of the crime. Therefore, it is necessary to punish in order to prevent crime (*punitur, ne peccetur*). This concept is called the utilitarian theory of punishment, rehabilitation theory, positivist school of criminal law or similarly.

Unconditional prison sentence contains in particular the following elements: harm to the perpetrator, retribution, moral judgment, isolation as a means of protection of society, opportunity for re-education and re-socialization, deterrence of other potential perpetrators, satisfaction to the victim and the public, chance for compensation of the damage.

O. Novotný states in his publication *O trestu a vězeňství* (*On punishment and the prison system*), which was quite a pioneering study at his time and in our environment:²⁵ “When serving a prison sentence, the primary danger to the prisoner comes from harmful influence of the fellow inmates, to whom he is exposed literally day and night. The community of the inmates begins to decide about right or wrong. Coercion, one of the main instruments of prison facilities, may cause cynicism, insensibility, indifference, hypocrisy, lies, deceit and servility. The prison sentence, being an artificial intervention in the life of the convict, while often breaking relations detrimental to society, also often disrupts socially beneficial relationships, breaks up families, causes divorce and disturbs other positive emotional relationships, creating formidable barriers to re-socialization of the convict. We want to teach the convict how to live a normal life, but we have to take away normal life conditions from him. This breeds the possibility of new deformations. Abnormal conditions of life in prison are conducive to homosexual habits. Artificial climate of the prison may escalate inferiority feelings raised by the prosecution and can cause depression and apathy. Volitional qualities may be disrupted because, to a large degree, we deprive of the freedom of decision the very person we want to teach how to decide properly in the future. The stay of the convict in a prison facility can also create other barriers to his re-socialization (e.g., getting tattoos etc.). However, it is hard to imagine a prison facility where the convicts would live under fully normal living conditions. Since each punishment amounts to an artificial intervention in the life of the convict, all the more so then an unconditional prison sentence. However, this brings about a situation where we are to teach someone who has been deprived of freedom how to use freedom properly. Without solving these contradictions there can be no talk of educational effects of unconditional prison sentences.”

We might add to this insightful characteristic of prison life that a longer stay in prison necessarily leads to adaptation to the prison environment and passive conformation to the

²⁵ Novotný, O.: *O trestu a vězeňství* (*On punishment and the prison system*). Prague: Academia 1969. p. 142

prevailing conditions. Manifestations of non-conform behavior ensue in conflicts with prison staff or fellow inmates. The necessary suppression of the convicts' individual personality results in their loss of sense of responsibility for their own decisions (after all, lack of responsibility is very often found in etiology of criminal behavior), which may cause, after their release after a long sentence, ultimately even their loss of social and psychological ability to live in freedom.

For instance, in our research on long-term prison sentences²⁶, when answering the question “what is the most negative influence for you when serving sentence” the inmates said the following: behavior of fellow inmates (26.9 % of answers), environment (24.6 %), behavior of staff (21.5 %), isolation (14 %), stereotype, boredom (7.7 %), helplessness (4.3 %).

When asked “what strengthens you most when serving sentence”, the respondents said the following: hope of the end of sentence (17.8 % of answers), personal qualities (10.3%), correspondence (8.4 %), sports (3.7 %), reading, free activities, work (1.9 %).

Proper differentiation must form the basis of effective penitentiary treatment, in order to create different conditions imprisonment according to the seriousness of the crime and the level and nature of the disorder suffered by the perpetrator. This so-called external differentiation is secured by a court ruling, by which the convict is sent to serve his sentence in one of four categories of prisons (with supervision, with monitoring, with prison guard duty, with increased prison guard duty).²⁷ At the prison facility the inmates are separated by sex and usually also the juvenile are separated from the adult, recidivists from first-time offenders, offenders convicted of premeditated criminal acts from those convicted of negligent crimes and also separated are inmates who are incapable of work, suffer from mental and behavioral disorders and convicted persons with court-ordered medical treatment (so-called internal differentiation).²⁸ Owing to constant overcrowding of Czech prisons, actual accommodation possibilities and building conditions of some prison facilities, practical implementation of proper internal differentiation is very limited.

There are also treatment programs, which offer some measure of differentiation as they influence the imprisoned convicts. These programs include a specific goal that the influence should bring about in the convict, methods of treating the convict which aim for the goal and the way and frequency of evaluation. Formally speaking, they can be seen as

²⁶ For more details see: Karabec, Z. et al.: *Dlouhodobé tresty odnětí svobody* (Long-term prison sentences). Prague: IKSP 2004.

²⁷ Sec 56 of the Criminal Code No. 40/2009 Coll.

²⁸ Sec 7 of Act on the imprisonment No. 169/1999 Coll.

fulfilling the penological requirement of differentiation and individualization of the punishment, or at least creating the necessary legal conditions.²⁹

It is therefore interesting to note the response to such programs of the inmates themselves. In the said research on long-term sentences³⁰, when asked “have you considered the sense of the treatment program which was discussed with you at the beginning of your sentence”, 67.0 % of the respondents asked in the affirmative and 33.0 % negative. When asked about the sense and purpose of treatment programs, 37 % of prisoners saw it as a duty, 12 % said the purpose was to re-educate the convicts and 21 % saw in it a nice way of spending time.

Closely related to unconditional prison sentences is the issue of adequacy of punishment. The principle is simple; the punishment should be proportionate to the crime committed and the person of the perpetrator. Czech law requires the court (Sec 39 (1) of the Criminal Code) when setting the type and size of the penalty to take into account the nature and seriousness of the criminal act, the personal, family, property and other conditions of the perpetrator and his previous way of life and the possibilities of his correction. The court is also to take into account the behavior of the offender after the commission of the crime, in particular his effort to compensate for damages or otherwise remove harmful consequences of his act and also the effects and consequences the punishment will likely have on the future life of the perpetrator.

The law is articulated clearly. However, from the criminological (penological) point of view it is evident that for instance, one year of unconditional imprisonment will be perceived differently by a multiple recidivist, who returns to familiar environment and subculture to which he had adapted and considers life in prison as one of the options his lifestyle has. On the other hand, for a dutiful citizen, who was sentenced to the same penalty for instance for causing a serious car accident, one year in prison can be too long to bear. The above principles governing adequacy of punishment raise also other questions. In case of long-term imprisonment the issue is mainly the personality of the offender and possibilities for correction (re-education, re-socialization) of persons sentenced to such penalties.

Very long prison sentences are guided mainly by the aim to isolate a dangerous and practically uninfluenceable offender from society. Research has shown that such penalties often cause negative changes in the way the prison term is perceived, which are of long-term nature and work against attempts at re-socialization.

²⁹ Cf. Sec 41 of Act No.169/1999 Coll.

³⁰ See Note 12

From the point of view of the regulatory function of the punishment (change of behavior), long-term sentences which are likely to terminate while the convict is still alive, are “overdesigned” in terms of duration. The result is that socially desirable behavior patterns go out because they are not adaptive under prison conditions, while new patterns emerge, which are unsuitable for life in freedom. There is a loss of initiative, narrowing of interests and social degradation of the convict’s personality. Research focusing on changes of personality due to serving life sentences shows gradual loss of perspectives, and institutionalization, which manifests itself in dependence on staff and life under prison conditions. Introversions increase and hostile attitudes, in particular to one self, increase partially.

The inmates usually go through three phases when serving a long-term sentence. The first phase is characterized by “abandoning the past”: the prisoner is less and less plagued by omnipresent memories of his former life in freedom and gradually adapts to the conditions of the prison life. The second phase is “getting ready for change”: the prisoner is, sometimes very hardly, disengaging mentally from habits and stereotypes of everyday prison life and adaptation stereotypes which made it possible for him to survive the long imprisonment. The third stage is “shock of freedom” after release, when he has lost the sense of security and confidence he had in prison and adapts to new realities of life.

Each stage requires very specific adaptation; some inmates are willing and able to go successfully through all three stages of long-term imprisonment, while others are not. This is why the latter fail and the desirable effects of punishment do not arrive.

The problem lies in the fact that some aspects of imprisonment may be counterproductive; on the one hand they help prisoners mitigate the effects of long-term isolation and facilitate their adaptation to prison conditions, on the other hand they increase stress and deprivation. For instance, most convicts, as confirmed by our research³¹, welcome visits by relatives and friends as great support and help in overcoming the effects of imprisonment. However, after such visits the feeling of helplessness often increases in the inmates because they cannot influence events which touch them personally and which take place behind the prison walls, so that their stress increases with all the related consequences.

On the contrary, total severance of contacts with the outside world makes it often easier for inmates to accept the conditions of long-term imprisonment, but at the same time it very

³¹ See Note 12

significantly, sometimes irrevocably, impairs their return to life in freedom after release from prison.

Prisoners serving a long-term or life sentence were usually convicted of a particularly serious crime and the court judged them to be dangerous persons endangering society.

Penitentiary experience confirms that under the conditions of imprisonment these inmates usually do not pose increased risk for the prison staff or fellow inmates. Of course, exceptions are possible and non-conflict behavior of some prisoners may be a deceptive tactics, hiding preparation for escape, violent rebellion against the prison regime etc.

However, convicts serving long-term sentences, especially life sentence, paradoxically represent more often a stabilizing element in prison, because they have interest in quiet and as far as possible bearable flow of time of their imprisonment. Nonetheless, growing deprivation and other undesirable aspects of long-term imprisonment require systematic attention and timely intervention.

There are some specific aspects to life imprisonment. Even though it follows from definition that it terminates with the death of the convict, nevertheless in virtually all European countries the imprisonment does not actually reach this ultimate point. Even these convicts can be released, so that they also should be given opportunities for re-socialization and preparation for life in freedom. In every case where the aspects of security and protection of society allow so there should be a possibility even for prisoners serving life sentence to change over to more lenient prison conditions, they shouldn't be permanently isolated from other prisoner groups etc.

It is logical that with the passing of time, prisoners serving life sentence experience problems related to biological ageing. Therefore, prison facilities must be able to provide adequate medical care and other professional help to these prisoners.

It is also for these reasons that the possibility of early release should always be provided for in the legal order. Every now and then circulating proposals that criminal policy should be made stricter by excluding the possibility of early release from life imprisonment should be rejected. Such approach is generally considered inhumane and contradictory to the basic human need to retain the hope of freedom.³²

An important aspect of each criminal or sanction policy form naturally the financial requirements for its implementation, which burden the State budget and drain money that

³² Even the Statute of the International Criminal Court, which is to punish the most serious crimes against humanity including genocide, stipulates the obligation of the court to consider release from life sentence after 25 years of imprisonment (Art 77 and 110 of the Rome Statute of the International Criminal Court: A/Conf. 183/2).

could otherwise be used in other areas of public interest. This economic context points to the willingness of citizens to participate in suppressing crime (even though in an indirect way, by paying higher taxes) and reflects also the way citizens perceive the danger stemming from crime and the level of their feeling of being threatened by crime.

Virtually in all countries the “cost of crime” is raising sharply. It includes not only expenditures for police, criminal justice, prison service and the like but also the costs for society deriving from the fact that during imprisonment part of productive human resources is denied the opportunity to contribute to the creation of gross domestic product.

Growing costs of prison service are particularly striking in those countries which rely on repressive approach to offenders (even though, naturally, various preventative and re-socialization programs are also financed in these countries). Imprisonment is very costly for society; growing number of prisoners usually requires the building of new prison facilities, increasing prison staff, higher operating costs of prisons etc. Attention is also drawn to the fact that constant extension of the time during which part of the population is held up in prisons will ultimately transform, at least to some degree, prisons into old age institutions with disproportionally high financial and labor costs of medical and other care for persons in retirement age.

The hypertrophy of prison services as a consequence of retributive sanction policy has in many countries caused the “prison industry”, which secures the financial, design, building, logistical and other needs of prisons to become a significant part of the national economy. The treatment of offenders is then seen more as an economic issue, rather than a penological one, and solutions tend to concentrate on the financing of the sanction policy (especially imprisonment) also from non-government and non-budgetary resources (see for instance so-called private prisons in the US, England, France, Switzerland etc.)

One day, each prison sentence comes to an end (unless it is a consummated life sentence) and then the issues relating to re-socialization, post-penitentiary assistance and care of the released persons come to the forefront. But there is also another problem. If the criminal policy relies mainly on isolation, albeit temporary, of offenders, then over time large proportion of the population will have experienced prison conditions and its subculture and will face the risk that after release, they will bring with them harmful habits or contacts to the criminal underworld.

However, criminological, penological and criminal-law issues also are connected with short-term prison sentences. The first wave of criticism charged that short-term imprisonment

(it usually means sentences of up to three months, sometimes up to eighteen months) have the following main deficiencies:

- they do not provide enough time to re-educate the offender, but on the other hand are long enough to expose the convict to the harmful influence of the prison,
- they are counterproductive as far as individual and general prevention is concerned, because they have only minimum deterrence effect and potential offenders may take it as reasonable risk,
- these penalties reflect certain discrimination because they are most often meted out to persons who could not be given a monetary fine because it would be manifestly uncollectible,
- economic costs of the prison system are high and serving a short-term sentence burdens the system disproportionately because it ties up most of the prison capacity.

Already at International penitentiary congresses in London (1872) and Rome (1885) viewpoints were presented that strongly rejected short-term prison sentences; the efforts to restrict them have gradually gained international dimensions. In this respect, also Franz von Liszt, important representative of criminal law and criminology, was quite strongly involved. He maintained categorically: *“Our current criminal justice rests almost exclusively on short-term prison sentences. This has the following consequence: if these sentences are not good, then the whole system of criminal justice is bad. Short-term sentences are not only of no use, they hurt the whole legal system more than if there was no criminal law system at all.”*³³

Reflections of such radical positions can be found in criminological theory, legal doctrine and judicial practice also in modern times. It is as if the words of F. von Liszt still resonated today: *“A short-term sentence in its current form is of no use, actually it is harmful. It does not deter, does not correct, it only infects the convict”*. This is where the roots of reforms probably lie which altered sanction systems in most European countries. These reforms have brought a number of changes; we might recall in particular special methods for punishing juvenile offenders, introduction of probationary sentences, extension of conditions for imposing monetary fines, extension of possibilities for imposing penalties and measures which are not connected to imprisonment, development of probation system and so forth.

As a result of this development, short-term prison sentences ceased to occupy a dominant position among penalties imposed. Where they were used, they played various roles; they were imposed as a substitute penalty where monetary fine could not be enforced,

³³ Liszt, F. von: Kriminalpolitische Aufgaben (Tasks of Criminal Policy). In: Strafrechtliche Aufsätze und Vorträge, 1875-1871, Vol. 1. Berlin 1905, pp. 346-347.

they were used as a “springboard” for various re-socialization programs, sometimes they were applied as a “shock therapy” to first-time offenders with an individual preventative objective and, of course, they were used as a more lenient alternative to longer imprisonment.

One has to admit, however, that the criticism, in particular when it comes to questioning the deterrent effect of short-term sentences, is sometimes a bit one-sided. It is an indisputable fact that the gravity of the punishment, in other words the harm caused to the convict, is perceived very differently by different individuals, depending on their personality. We might recall the results of a large body of criminological research³⁴, which assembled fairly valid data on the modalities of punishment perception in relation to gender, age, ethnic origin, personality, social standing, effects of the environment, level of social integration and other factors.

For instance, there are interesting findings on the relationship between the motivation for committing a crime and deterring effects of the potential punishment. The motivation scale is naturally very wide; it is evident in case of such motives as martyrdom inclinations regarding activity aimed against the established society that the severity of the potential punishment (in particular the length of imprisonment) does not deter the perpetrator. Similarly insufficient deterrence effects are found in cases where the person has no feasible alternative (e.g. illegal interruption of pregnancy).

However, in most cases the perpetrator does not ignore the threat of criminal punishment, weighs the risk of prosecution and evaluates his needs that are to be satisfied by the criminal act against the harm that can be caused by the punishment.

Even a short-term prison sentence is able to cause many difficulties to the perpetrator and the consequences can be quite harsh; even for short-term sentences, therefore, the potential harm does bring in the deterring effects, depending on the above indicated detention factors.

In the period after 1970 European countries faced severe economic problems (the oil crisis), with many related issues and political consequences. There was an enormous increase of the number of short-term sentences in criminal justice, which was understood in particular as a consequence of the following:³⁵

- growing skepticism regarding the actual results of rehabilitation and re-socialization programs,

³⁴ Cf., e.g.: *Sanctions and Social Deviance. The Question of Deterrence*. New York: Praeger Publishers 1980, 346 p.

³⁵ Cf.: Kalmouth, Anthon van, Tat, Petr J.P.: “Sanctions - System in the Member - States of the Council of Europe” (Part I., II). Kluwer Law and Taxation Publishers, Antwerp-London - Frankfurt 1988, 361 p. (pp. 4-5)

- breakup of traditional institutions of social control like the family or wider community as a result of growing urbanization, industrialization and technological changes,
- strong load of the judicial system,
- retreat from the ideals of the “welfare state”.

The increase of short-term prison sentences then logically resulted in overburdening the prison system and chronic lack of prison capacities developed.

It meant that after many decades short-term prison sentences became the dominant response to acts against society. This brought about a new wave of discussions and criticism, which used arguments not unlike those that had been presented in the mid-1800s. It evidently shows not that criminology, legal doctrine and other fields lack theoretical invention or empirical data, and therefore they continue repeating certain viewpoints, but rather the fact that *it is indisputable that short-term prison sentences are not appropriate*.

It has been incidentally proved by empirical research and many professional studies on the subject, which analyzed the effectiveness of punishment and other measures of treatment, sometimes using very sophisticated methods.³⁶

It was obvious that the historical development of understanding of the purposes of punishment has already gone through so many stages (from purely retributive function up to complete rejection of its fundamentally punitive nature), and each penological theory has contributed with its part to the body of knowledge, that current criminal justice cannot rely on or solely aim at only one particular aspect of punishment. But it was also indisputable that criminal justice – put it simply – must not succumb to often contradictory penological requests and must ensure the elementary goal, namely to show that “crime does not pay”.³⁷

It may be noted that the main features of modern approach to short-term prison sentences, in contrast to reform efforts from the turn of the century, consist mainly in the following:

- these sentences are largely replaced by other penalties and measures and such steps are not only understood as humanization of criminal justice, but also as a rational way of treating offenders,
- alternatives to short-term prison sentences are by nature no charitable measures and become an integral part of social work, following up on the work of criminal justice,
- the openly stated main motive for limitation of short-term sentences is economical,

³⁶ Cf. e.g.: “The Effectiveness of Punishment and other Measures of Treatment”. Council of Europe, Strasbourg 1967, 257 p.

³⁷ Srov: Brody, S.R: „The Effectivnes of Sentencing“. London: Home Office Research Studies No 35 1976, pp. 2-3

- a broad application of non-prison penalties should help solve the crisis of the prison system and open up its capacity for the isolation of perpetrators of serious crime.

Looking for suitable alternatives to prison sentences generally – and to short-term sentences in particular – has ceased to be the subject of scientific societies and various NGOs and has become the focus of interest of relevant government bodies in most western European countries and also caught the attention of multinational institutions. Especially the Council of Europe has played an important role here, taking the initiative and by numerous resolutions, studies and other documents putting the issue of prison sentences and conditions of serving them on the agenda and drawing attention to the possibility and advisability of replacing them with other penalties. Similar efforts are carried out at the UN by the Committee on crime prevention and control and the Economic and social council.

In 1981 the Parliamentary Assembly of the Council of Europe adopted a recommendation, which formulated the basic principles of criminal policy as follows:³⁸ *“It is desirable to encourage the current trend in Council of Europe member states to replace as far as possible short-term prison sentences by other measures, which have the same effectiveness without drawbacks.”*

The above mentioned openness about economic motives that lead to efforts aiming at reduction of prison sentences was fully reflected in a resolution adopted at XIII Conference of European justice ministers (Athens, 25.-27.5.1982)³⁹, which stated the consequences of the economic crisis for proper functioning of the justice system. The conference therefore recommended the following:

- prevent any increase of the number of detentions and short-term prison sentences and seek convenient alternatives that could be used at a time of economic crisis,
- reduce, wherever possible, imprisonment of juvenile offenders who find rehabilitation especially difficult at a time of economic crisis,
- develop various forms of diversion and de-criminalization.

Even more succinctly are these economic aspects of imprisonment summed up in a report by the Council of Europe on alternative punishments:⁴⁰ *“Financial costs of prison administration are rising so sharply and quickly that in many locations economic problems become the decisive factor of the development of criminal policy. In the face of overcrowded prison facilities, discussions are held not only on the basis of criminological criteria*

³⁸ See: Resolution adopted at 25th session of the Parliamentary Assembly, Council of Europe. 29 January 1981

³⁹ See: Council of Europe, MJU-13 (82) Concl., Strasbourg 1982

⁴⁰ Rentzmann, W., Robert, J.P.: Alternative Measures to Imprisonment, Report of the 7th Conference of Directors of Prison Administrations. Strasbourg: Council of Europe 1986, p. 2

(recidivism, punitive character of sanctions), but also economic aspects are applied (financial and social costs of prosecution, social effects of punishment)."

Therefore, it is an established fact that economic problems, in particular in connection to costs of the prison service that became almost unbearable in many countries, have speeded up the general trend of reducing unconditional prison sentences.

Although various partial measures were taken to reduce the growing demands on prison capacities (e.g., building new prisons, reduction of detention and acceleration of detention proceedings, broader use of the institute of parole, legal and organizational steps towards privatization of prisons, for instance in England, France, Switzerland, proclaiming broader amnesty, for instance 12 thousand inmates received amnesty in France in 1981, or 8 thousand inmates in Italy in 1986), it was obvious that the difficulties could not be mastered without significant changes to criminal policy.

Thus, the issue of short-term sentences has found itself at the crossing point of two interests: *the traditional effort to reduce these penalties, which is based on professional arguments concerning their unsuitability and supported by results of recent empirical research, and the interest to find a way out of the current problems of the prison administration, or a broad interest to keep the cost of crime at an acceptable level.*

All arguments were so convincing that almost no dissenting voices were heard.⁴¹ Criminological doctrine as well as judicial practice identified with the idea that short-term imprisonment should be speedily replaced with some other sanction.⁴² So the question was not "whether and why" but rather "how and when".

In 1986 at the meeting of the Committee of Ministers of the Council of Europe a resolution was adopted "On certain alternative penal measures to imprisonment"⁴³, which called for the governments of member countries to investigate various new alternatives

⁴¹ There were certain reservations, e.g., in an article by M. Killias: „Überfüllte Gefängnisse - Was nun? In: Aktuelle Probleme des Straf- und Massnahmenvollzuges, Reihe Kriminologie, Vol. 1, Bern 1987. He disputes, inter alia, the absolute claims that short-term penalties have no generally preventative effects and that reduction of these penalties will significantly free up prison capacities.

In the ensuing discussion, economic argumentation was predominant, as these penalties bind the funds spent on prison staff, which ineffectively deals with short-term prisoners, which is why there is a lack of funds for security and other needs relating to the imprisonment of offenders sentenced for serious crimes.

⁴² Nevertheless, it is worth noting the case of abuse of the more or less justified opinion that the short time available for correction of short-term prisoners virtually rules out any effective re-education activities. It was abused in Czechoslovakia and other so-called socialist states during the totalitarian period, where the above professional opinion became the main argument for overstraining criminal repression and meting out disproportionately long sentences. It was the case in particular when political opponents and "class enemies" were subject of prosecution and justified doubts about effectiveness of short-term sentences were used to isolate unwanted persons from society for a long time in response to acts which even according to law applicable at that time were to be considered less serious.

⁴³ Resolution of the Council of Europe (76) 10 of 9 March 1976

(besides, e.g., probation or monetary fine) to imprisonment from the point of view of their possible inclusion in the legal order, and in particular to:

- consider measures which only determine the guilt of the offender but are not connected with any significant criminal sanction;
- consider extension of the time for serving sentence after the guilt of the offender was determined by the court so that a sanction can be imposed which would take into account the behavior of the offender after the verdict of guilt has been pronounced;
- take into account the benefits of community services, especially the chance given to the offender to improve his behavior when carrying them out, and the opportunities they provide for society to actively re-socialize the offender on the basis of the work carried out voluntarily by him;
- consider to what extent semi-detention can be beneficial as a more lenient form of punishment than full imprisonment, which would make it easier for the convicted person to establish or maintain positive contacts with society.

Recommendations similar in content were adopted later also at the UN and at 6th and 7th UN congress on prevention of crime and treatment of offenders.⁴⁴

Thus, gradually a fairly broad spectrum of various alternative types of treatment of offenders has been applied, replacing the classical imprisonment. Various analytical studies name more than twenty alternative sanctions that replace or significantly modify the prison sentence, like semi-detention, weekend sentences, home detention, interruption of imprisonment to carry out civil employment, suspension of sentence and the like.

However, these are not alternatives to imprisonment within the strict meaning of the word, namely sanctions imposed instead of a prison sentence. Nonetheless it may be noted that the above resolutions of the Council of Europe and UN, recommending broad application of alternatives to imprisonment and in particular reduction of short-term prison sentences, *have fairly quickly influenced criminal policy in many countries, particularly by expanding the space for judicial discretion.*⁴⁵

The concept of *restorative justice* represents the latest trend in the thinking about the purposes of punishment and penalties. It posits that the interest of society in the punishment of the perpetrator should not have priority over the interest in the compensation of harm

⁴⁴ See e.g. Resolution of UN Economic and Social Council "Alternatives to imprisonment" of 25 May 1984 (1984/46) and 21 May 1986 (1986/10-XI), Resolution of UN Economic and Social Council "Alternatives to imprisonment" of 25 May 1984 (1984/46) and 21 May 1986 (1986/10-XI)

⁴⁵ Cf., e.g.: "Alternatives to imprisonment and measures for the social resettlement of prisoners". Report of the Secretary - General, United Nations, A/CONF. 121/13, New York, May 1985.

caused to the victim of crime.⁴⁶ The concept of restorative justice, which brings some new elements into the traditional criminal justice system - like mediation between the perpetrator and the victim, extrajudicial group hearing of petty offenses by juveniles (so-called family conference), accent on the compensation of harm caused to the victim etc. - has been expanding in terms of context in recent years. The concept was originally meant to be an alternative to the classical criminal proceedings (or a form of diversion from the usual process in hearing criminal cases). It has been first applied in preliminary hearings or proceedings before the court, or instead of a court hearing. Currently the principles of restorative justice begin to establish themselves (especially on a theoretical level) also in the stage of enforcement proceedings, in other words during the enforcement of imposed criminal sanctions. They consist mainly of various proposed modifications of unconditional imprisonment.

In this context, the term “restorative prison system” (see, e.g., the project of Belgian Ministry of Justice for the reform of imprisonment) refers to a system which should eliminate the unwanted effects of imprisonment, in particular long-term one. It is well known that the crucial pre-requisite for the corrective (re-socialization) effects of imprisonment is the acknowledgment of the convicted person’s own guilt and the justice of the sentence. This could be facilitated by certain already proven methods of restorative justice, for instance some contact (maybe only in writing) between the convict and the victim (in the extreme also with the bereaved), which would strengthen the subjective experience of guilt (e.g. by an apology, manifestation of regrets) and motivate the offender to redress the consequences of his offence, to compensate for the damage and thereby to contribute to own re-education. Other “restorative” methods of serving long-term, even life sentences include extended contact with the outer world, enabling the convicted person to partake of the organization of his everyday life in prison etc.

More thorough development of internal differentiation in prison facilities will likely be a pre-requisite to practical introduction of elements of the “restorative prison system”, since it is obvious that restorative approach can only be applied in appropriate cases, without prejudice to general aspects of security and protection of society.⁴⁷

We regret that the new Criminal Code (Act No. 40/2009 Coll.) does not explicitly state the purpose of punishment in any provision. The previous Criminal Act No. 140/1961 Coll.

⁴⁶ See e.g.: Karabec, Z. (ed.): *Restorativní justice (Restorative Justice): Sborník příspěvků a dokumentů*. Prague: IKSP 2003, 143 p.

⁴⁷ Cf. note No.12

laid down in Sec 23 that the purpose of punishment was to protect society from perpetrators of criminal acts, prevent the convicted person from continuing to commit crimes and educate him towards living proper life, thereby having an educational influence also on other members of society. The purpose of punishment, therefore, was seen in the protection of society, re-socialization of the perpetrator and individual and general prevention. One would certainly agree with these elements of punishment but it should be added that the purpose of punishment also includes compensation of damage (or harm) caused to the victim of crime. Although an agreement was reached during elaboration of the concept of recodification of criminal law that no principles would be enumerated in the new criminal code because these should be named and interpreted by doctrine (and also because it was not evident which principles should be included in the law and which ones belong to criminal law textbooks), a number of them is still explicitly stated in the new Criminal Code. In this context, the determination of the purpose of punishment probably should have been included, as it is a legal expression of an important element of criminal policy of our state.

The problems and issues of criminal policy and treatment of perpetrators outlined here certainly are not the latest word on the purpose of punishment and penalty; these questions will continue to worry and inspire further generations of criminologists. However, one thing should be beyond dispute: a penalty meted out within the criminal proceedings as well as its enforcement must not be cruel and humiliating, perpetrators of even the most serious crimes must be approached as human beings who cannot be denied the benefit of humanity.

New and Alternative Forms of Punishment in the Czech Republic after 1989

Significant increase of crime in the Czech Republic after 1989 resulted in considerable load and sometimes overload of bodies responsible for criminal proceedings. This affected in particular the duration of criminal proceedings. Other democratic states reacted to the increase of crime, among other things, also by reinforcing out-of-court approach and alternative procedures. This took into account also the need to quickly satisfy the claims of persons injured by crime as well as to limit the growing cost of criminal justice and prison administration.⁴⁸

Imprisonment was the dominant type of sanction in our system of punishment. Also in our case the high number of persons sentenced to unconditional imprisonment resulted in overcrowded prison facilities and more difficult social rehabilitation of prisoners. After the “Velvet Revolution” attention was drawn to inefficiency of imprisonment, not only from the perspective of the possibility of rehabilitation of offender, but also due to high financial costs of the enforcement of the prison sentence. The range of alternatives to imprisonment was relatively narrow.

Crucial for European criminal policy was the Recommendation of the Council of Europe No. 2/87/18, adopted by the Committee of the Council of Europe on 17 September 1987, regarding the simplification of criminal procedure. Five forms for dealing with criminal cases were recommended, namely: conditional stay of criminal prosecution or suspension of the case, shortened written procedure, mediation, simplified procedure for less serious offences in relation to circumstances of the case, acknowledgment of guilt and conciliation procedure.

⁴⁸ Vůjtěch, J. et al.: Účinky transformace trestního zákonodárství na stav kriminality a zvyšování efektivnosti justice ve vztahu k bezpečnosti občanů ČR v horizontu r. 2000 (The effects of transformation of criminal legislation on the state of criminality and increase in the effectiveness of the judicial system in relation to the security of Czech citizens in 2000). Prague: IKSP 2000.

Among the arguments supporting alternative procedures were named in particular the following:

- Rationalization of the criminal justice system (high load of court cases result in extended duration of proceedings, often as a consequence of the tactics on the part of the defendants to drag out the proceedings with the aim to reduce the value of evidence against them, and of the sometimes less than sufficient activity of state prosecutors),
- Solution of the conflict between the defendant, the injured and society,
- Avoiding of excessive stigmatization of the defendant,
- Finding and use of less intensive but sufficiently efficient forms of coercion by the state,
- Providing assistance to the victim harmed by the criminal act.

The issues of alternative punishment and alternative procedures have become one of the key issues of criminal policy. Within the framework of the reform, the range of alternative punishments was expanded and new alternative modes of procedure were introduced. Practical implementation of alternative procedures brought about the need to effectively include qualified staff – probation officers, whose task would be to responsibly select cases appropriate to be dealt with in an alternative type of procedure, to be responsible for gathering the necessary findings and information for the court to be able to impose an alternative penalty or to secure the enforcement of alternative punishments. In our country, these tasks are fulfilled by probation and mediation officers since 2001. Their active approach to fulfilling these tasks during the whole criminal proceedings is important for implementation and attainment of the aims that motivated the recent introduction of alternative punishments or alternative criminal procedures.

It should be noted that while the formation and development of the probation service, or the work of probation officers at district and regional courts, has continuously developed since 1996, there was certainly no connection to the adoption of new alternative penalties or diversions. For instance the institutes of community service, supervision or settlement had been enacted a few years before probation service came into existence as part of the criminal justice system.

Probation and Mediation Service is based in its activity on the principles of restorative justice, which sees a criminal act as an event with social dimension that intervened in the life of people in certain community, and the handling of its consequences requires to take into account the interests and needs of the offender, the victim and society. Restorative justice seeks in a balanced way an acceptable solution for all sides of the dispute underlying the

criminal proceedings. Within the framework of restorative justice there is room for communication between the offender and the victim, giving the offender an opportunity to take responsibility for his act and its consequences. It should be emphasized that the concept of restorative justice has not developed as a competing theory to the traditional retributive system of criminal justice.⁴⁹

Probation and Mediation Service strives to attain the following goals:

- Integration of the offender - inclusion of the offender into the life of society without any further contravention of law. Integration is a process, which strives to re-establish respect to the legal state of society by the offender and to give him self-fulfillment.
- Participation of the victim – striving to involve the injured in the “process” of compensation, dealing with the consequences of the crime and re-establishing his feeling of security and confidence in the criminal justice system.
- Protection of society – protection of society by effectively handling conflict and crisis conditions related to criminal proceedings and efficiently enforcing imposed alternative penalties and measures.

The latest large legislative change, strongly emphasizing the restorative approach within the Czech criminal justice system, was the reform of juvenile criminal law. The previous regulation did not take into account sufficiently the specifics of this age group of offenders: it did so in part by different course of criminal proceedings but attributed more or less the same measure of criminal responsibility and – apart from some exceptions – meted out the same range of penalties, only more lenient in duration. For these reasons, criminal responsibility of juveniles and its consequences were fully treated within the classical retributive approach of criminal law, where the protection of society by means of punishment plays a decisive role. The turning point came in June 2003 with the adoption of Act No. 218/2003 Coll., on the responsibility of juveniles for unlawful acts and on the juvenile justice, where the principles of restorative justice for the first time received unambiguous support and were preferred over of retributive justice.⁵⁰

The system of measures provided for by the Juvenile Justice Act consists of three components – educational, protective and penal measures – which form an integrated and internally coherent system, enabling flexible response to various aspects of juvenile crime and to the personal situation of the offenders. It treats the juveniles as immature adolescents

⁴⁹ Karabec, Z. (ed.): Restorativní justice (Restorative Justice): Sborník příspěvků a dokumentů. Prague: IKSP 2003.

⁵⁰ Karabec, Z. (ed.): Restorativní justice (Restorative Justice): Sborník příspěvků a dokumentů. Prague: IKSP 2003.

whose value system is still developing and whose attitudes and lifestyle can be significantly influenced and altered by suitable form of treatment. Therefore, measures responding to their current life situation and measures aiming at the future play a key role in this system. This makes the system and its philosophical basis diametrically different from the current adult justice system, which is focused on the past, on the crime perpetrated.

While measures taken in juvenile criminal cases obviously do include, or may include, also different forms of harm, their main thrust consists in actively affecting the behavior of the juveniles and their social environment. The juvenile and his future development stay in the center of their interest. Their dominant feature is conscious activity aiming at removing the causes of the prosecuted crime and building good social background for the juveniles. The philosophical basis for this approach to juvenile offenders, which rests on the principles of restorative justice, is reflected in several provisions of the Juvenile Justice Act.

Within the framework of our research activity we have dealt with questions pertaining to criminal and security policy and crime control, in particular through research on the implementation and effect of the newly introduced alternative punishments and diversions.⁵¹

The first significant alternative to unconditional imprisonment, which was enacted within the framework of the reform of criminal law by amendment No. 152/1995 Coll., was the penalty of community service, which came into effect from 1 January 1996. It is a classical alternative punishment, which can be imposed in cases where the offender could be sentenced to prison. According to the motivation report to the amendment the conditions for

⁵¹ Kotulan, P.: Výzkum institutu podmíněného zastavení trestního stíhání (Research on the institute of the conditional suspension of criminal proceedings). Prague: IKSP 1996.
Osmančík, O., Vůjtěch, J., Karabec, Z., Janda, P., Zborník, F.: K problematice alternativních trestů a opatření (On alternative punishments and measures). Prague: IKSP 1997.
Vůjtěch, J. et al.: Výzkum institutu obecně prospěšných prací (Research on the institute of community service). Prague: IKSP 1997.
Kotulan, P., Rozum, J., Vůjtěch, J.: Výzkum institutu narovnání (Research on the institute of settlement). Prague: IKSP 1998.
Rozum, J., Kotulan, P., Vůjtěch, J.: Výzkum nově zavedených prvků probace do trestního práva ČR (Research on newly introduced elements of probation in Czech criminal law). Prague: IKSP 2000.
Vůjtěch, J. et al.: Účinky transformace trestního zákonodárství na stav kriminality a zvyšování efektivnosti justice ve vztahu k bezpečnosti občanů ČR v horizontu r. 2000 (The effects of transformation of criminal legislation on the state of criminality and increase in the effectiveness of the judicial system in relation to the security of Czech citizens in 2000). Prague: IKSP 2000.
Karabec, Z. (ed): Restorativní justice (Restorative justice): Sborník příspěvků a dokumentů. Prague: IKSP 2003.
Rozum, J., Jarkovská, L., Kotulan, P.: Institut dohledu u podmíněného propuštění (The institute of supervision in cases of conditional release). Prague: IKSP 2004.
Rozum, J. et al.: Ukládání nepodmíněného trestu odnětí svobody a jeho alternativy (Sentencing to unconditional imprisonment and alternatives thereto). Prague: IKSP 2005.
Rozum, J., Kotulan, P., Tomášek, J.: Účinnost dohledu u osob podmíněně propuštěných (Effectiveness of supervision for conditionally released convicts). Prague: IKSP 2008.
Rozum, J. et al.: Uplatnění mediace v systému trestní justice I (Use of mediation in the system of criminal justice I). Prague: IKSP 2009.

imposing the sentence were defined so that they apply to offenders who committed less serious criminal offences on whom there is no need to impose a prison sentence and for whom also for some reason mere imposition of a fine is insufficient or unsuitable. The motivation report expected that the imposition of the sentence would be applied in particular for manifestations of vandalism, hooliganism or less serious property crimes where it is desirable that public opinion be brought to bear on the offender.⁵²

The legal regulation of community service was amended by Act No. 265/2001 Coll., which came into effect on 1 January 2002 and amended the wording of the alternative nature of this punishment so that the community service is not defined any more in contrast to serving a prison sentence; instead the relevant provision contains the condition that achieving the purpose of the punishment does not require the imposition of any other type of punishment but community service. At the same time, the amendment extended the range of non-profit bodies (beyond communities) for the benefit of which community service can be carried out. It was explicitly stipulated that the service cannot be used for gainful purposes. Another new requirement is that when imposing community service, besides the medical condition also the viewpoint of the offender regarding the possibility of imposing the sentence needs to be taken into account. The enforcement procedure was also amended: the most important element has become the participation of a probation officer in enforcement of the sentence.

The institute of community service is extraordinary not only due to the number of entities participating in its implementation but also to the consequences of this fact, which include much higher demand on flexible cooperation among the participating bodies, cooperation with the convicted person as well as feedback.

In 2002 for the first time more community service sentences were imposed than unconditional prison sentences. One of the reasons for the sharp increase of community service sentences between 2002 and 2003 was the amendment of the Criminal Procedure Code, carried out by Act No. 265/2001 Coll. Significant changes brought about by this amendment of the Criminal Procedure Code applied also to the penal order procedure. The amendment ruled out completely the possibility to impose an unconditional prison sentence by a penal order. This change did not affect so much the frequency of issuing penal orders but the choice of the type of sentence was influenced by it significantly. In case of recidivists sometimes community services had been imposed repeatedly, without the court examining

⁵² Vůjtěch, J. et al.: Výzkum institutu obecně prospěšných prací (Research on the institute of community service). Prague: IKSP 1997

whether such sentence has already been imposed on the offender or whether it has already been carried out. It had become a rule that community services were imposed beyond the maximum rate stipulated by the criminal law, contrary to provisions of the criminal law. Such unlawful penal orders were later abolished by the Supreme Court following a complaint for breach of law. The consequence of the above procedure, due to the prohibition on *reformatio in peius*, was practical impunity of the defendants.

Another serious problem when enforcing community services was the lack of coordination with the Probation and Mediation Service (PMS) when imposing the sentence, which complicated matters seriously. In many cases the choice of offenders to be sentenced to community service was inappropriate, the sentence was never carried out and the number of proposals to transform the community service sentence was growing. This finding was confirmed, among others, by a probe carried out by the staff of the PMS Directorate in June 2004. It was followed whether PMS Centers find out about the opinion of the defendant before community service is imposed. The response from the centers showed that it was not the case, except only for exceptional cases. In our opinion the sentences of community service imposed in such a way were contrary to the purpose of alternative punishment.

Wrong implementation of community services resulted in higher number of cases where unconditional imprisonment was imposed (as a consequence of transformation of community service sentences) and, therefore, in higher number of prisoners, in particular those serving short-term unconditional prison sentences (fairly frequent were also just a few weeks of unconditional imprisonment).

The main purpose of community service sentences consists in reducing unconditional imprisonment and helping solve the problem of overcrowded prisons. They should minimize, even if not completely eliminate, short-term prison sentences. They should be, therefore, imposed for medium-serious offenses for which typically short-term imprisonment has been imposed so far. Community service should not replace conditional sentences because it would not account for a significant reduction of the prison population. It is evident that more frequent imposition of community service has so far failed to show significantly in a reduction of the prison population, in particular because transformation to substitute unconditional imprisonment is rather frequent.

The amendment of the Criminal Code enacted by Act No. 253/1997 Coll., which came into effect on 1 January 1998, represented a significant change by bringing *probation elements* into our criminal legislation. Probation was introduced within two new institutes of the Criminal Code – conditional discharge with supervision and suspended prison sentence with

supervision. The amendment further came with a more detailed specification by demonstrative enumeration of adequate limitations and obligations that may be imposed by the court on the offender in order for him to lead law-abiding life during the probationary period.⁵³

Immediately after the law was enacted, there were problems in court practice because the Criminal Code did not define the term, purpose and content of supervision. This was the main reason of relatively low level of application of the supervision institutes, until the enactment of Act No. 257/2000 Coll. (effective from 1 January 2002) removed this serious flaw and at the same time extended the possibility of imposing supervision also to conditional release and made it possible to replace custody with supervision by a probation officer. Until this amendment to Criminal Code has been adopted, it was not stipulated that it is the Probation and Mediation Service that is responsible for the supervision of the convicted person. Another serious problem at first was the non-existence of the probation service and later lack of probation officers (in the first three years after the establishment of supervision no Probation and Mediation Service existed).

Supervision can be defined as a specific alternative sanction other than imprisonment, which consists in the obligation of the client (convicted person) to cooperate with a probation officer during the probation period. Causes of crime are very diverse and experience shows that people who commit crimes, besides problems stemming from their breaching of criminal and other norms, often experience in addition personal or family difficulties or social problems, which often form the direct or indirect cause of their conflict with the law. Solution of these aspects of the client's life and his social stabilization, which can significantly reduce the risk of recidivism, is part of the overall concept of probation. However, this institute cannot be understood as a manifestation of certain decriminalization or more lenient response of the state to the crime committed. The imposition of probation can constitute in selected cases an effective response to the breaching of generally binding legal regulations and does not release the convicted person from responsibility for the crime. Probation understood as a combination of the controlling and assisting functions, or in other words of the repressive and rehabilitation elements, can contribute to the perpetrator's assumption of responsibility for the crime committed and its consequences and to supporting the client's ability to live law-abiding life with no conflicts with the law. From the perspective of society it contributes

⁵³ Rozum, J., Kotulan, P., Vůjtěch, J.: Výzkum nově zavedených prvků probace do trestního práva ČR (Research into newly-introduced probation elements in Czech criminal law). Prague: IKSP 2000.

to providing for re-socialization of the perpetrator in his natural social environment and ultimately to strengthening the protection of legal and social relations.

We have devoted intensive research activities in particular to supervision of conditionally released persons. By increasing behavior requirements during the probation time and strengthening control arrangements, chances for conditional release have increased even for those convicted persons where the consideration on the granting or otherwise of their petition was inconclusive. From this perspective there are no doubts that the establishment of the institute of parole influenced the number of convicted persons who were conditionally released from serving a prison sentence. On the other hand, these persons pose a higher risk of failing the court's expectation to live law-abiding life after their conditional release and to abide with all the imposed conditions, so that the remaining prison sentence will have to be served in the end. The institute of supervision in case of conditional release, besides providing for the control of the released person's behavior during the probation period, represents an important tool of assistance to these persons so that they can successfully complete the conditional release. It is only up to the conditionally released persons to what extent they will use the opportunity and by living law-abiding lives during the probation time fulfill the expectation of the courts. According to our findings, this institute is used mostly when releasing recidivists. Subsequent analysis of data in the Criminal records has shown a fairly high rate of recidivism of these persons (40 %); unfortunately it happens rather frequently in these cases that transformation and the order to serve the remaining prison sentence is not carried through.⁵⁴

We believe that much emphasis should be placed on the very selection of convicted persons who can benefit from the institute of parole. In ideal case each convicted person in prison would be subject to a risk assessment concerning the danger he poses to society. The program of treatment of the convicted person for the duration of his prison term should focus on elimination or at least mitigation of negative factors and after his release a probation program should follow up on it.⁵⁵

When implementing supervision in connection with conditional release, cooperation between the court and the PMS should be strengthened. It has followed from questionnaire investigation and analysis of criminal files that the cooperation is often far from ideal, which pertains to all stages of the implementation of parole. This fact can be strongly discouraging

⁵⁴ Rozum, J., Jarkovská, L., Kotulan, P.: Institut dohledu u podmíněného propuštění (The institute of supervision in case of conditional release). Prague: IKSP 2004.

⁵⁵ Rozum, J., Kotulan, P., Tomášek, J.: Účinnost dohledu u osob podmíněně propuštěných (The effectiveness of supervision for conditionally released persons). Prague: IKSP 2008.

to probation officers. As an example of unsatisfactory cooperation can be quoted the experience where in spite of repeated signals by the probation officer that parole conditions have been seriously breached, the court has not responded and in some cases even fictitious compliance with conditions of parole by law after one the period of year has occurred (often in spite of another conviction within the probation period).

The research has clearly shown that the choice of suitable re-socialization programs in the Czech Republic is totally insufficient and fails to cover the needs of potential clients. No re-socialization can be done without providing for basic existential needs of the released person. It is generally true that the best prognosis, regardless of the type of crime and length of sentence, have those convicted persons who enjoy a permanent family relation, permanent place of residence and permanent employment. If any or all of the above factors are missing, the risk of recidivism increases. Experience of probation officers in principle agrees with these findings; they have cited financial problems of the conditionally released person, return to unhealthy environment, worsened chances to find a job, loss of family and social background or loss of the place of residence as the most frequent causes of recidivism.

The government, or the municipalities, as the case may be, should in cooperation with NGOs see to it that suitable conditions for re-socialization of released persons are created. Businesses should be made interested in employing released persons (for instance by way of incentives); municipalities should provide for accommodation of released persons who have no place to stay, etc. The work of civil associations or volunteers can be of significant help in the post-penitentiary realm. Naturally, re-socialization is no cheap issue, but without creating adequate conditions no reduction of recidivism of released persons or reduction of prison population can be expected.

With the *conditional suspension of criminal prosecution* (hereinafter referred to as the CSCP), the institute of diversion has significantly penetrated not only into our criminal law system but into the practical activity of bodies responsible for criminal proceedings as well. The CSCP is being used in a sufficient manner. Criminal proceedings have accelerated due to the application of the institute and the decisions do have the expected and needed rehabilitative effect.⁵⁶

It is a gratifying fact that the CPCS is used more often in preliminary procedure rather than in court procedure, which is in line with the intent to divert criminal proceedings from its typical course as soon as possible, after the urgent, unrepeatable and all other necessary

⁵⁶ Kotulan, P.: Výzkum institutu podmíněného zastavení trestního stíhání (Research on the institute of conditional suspension of criminal prosecution). Prague: IKSP 1996.

steps have been taken in order to prevent the frustration of the purpose of the criminal proceedings, in case a decision to continue criminal prosecution has been taken.⁵⁷

The institute of the CSCP undoubtedly contributes to a more speedy handling of criminal matters without having to hold often demanding and complicated proceedings in court, while at the same time satisfying the demands of the victim, who does not have to resort to claiming damages in consolidated civil and criminal procedure or in civil procedure.

In spite of these positive results relating to the application of the institute of CPCS, on the other hand, growing number of cases cannot be overlooked in which the defendant failed to comply with the conditions of the concluded agreement on damages, so that the decision to continue the criminal proceedings must be taken.

In contrast, *out-of-court settlement* has so far failed to become a frequent form of handling criminal matters and during the recent period it was only used in a negligible number of cases. Its proportion in the total number of handled cases is minimal. The situation has not changed significantly even after the possibility to have the settlement approved by a state prosecutor has been introduced; this possibility of having the settlement approved is used only minimally.⁵⁸

The reasons for the lack of utilization of the institute of settlement can be seen in particular in its too complicated provisions, insufficient capacity of the Probation and Mediation Service and finally also in lack of interest on the part of the defense in submitting motions aiming at this form of handling of the case. The stipulation of many formal conditions for decision, and the related demands on labor, time and administration, lack of funds on the part of the defendants form the main reasons for only sporadic use of this institute. In addition, settlement can be considered practically in all cases where criminal prosecution can be conditionally suspended, which solution is preferred by prosecutors as well as judges because of its relative simplicity. Also attorneys – in spite of the defendants being enlightened about the conditions of its use – make rather use of the conditional suspension of criminal prosecution, the implementation of which, in particular regarding mere compensation of damages, does not require any additional finances.

The method of *mediation*, which forms the subject of our research, can be very successful because it provides an opportunity for genuine differentiation and individualization of not only the sanction imposed, but also of the way the offence is handled, i.e.,

⁵⁷ Rozum, J. et al.: Ukládání nepodmíněného trestu odnětí svobody a jeho alternativy (Imposing unconditional prison sentences and its alternatives). Prague: IKSP 2005.

⁵⁸ Rozum, J. et al.: Ukládání nepodmíněného trestu odnětí svobody a jeho alternativy. Prague: IKSP 2005.

differentiation of the criminal procedure. Mediation is a method which strongly supports the concept of re-socialization of offenders. It gives a great chance to offenders to realize the harmful character of their behavior and be motivated to remove the consequences of the crime perpetrated (our analysis of Criminal records of convicts after mediation shows in case of willful crimes 25 % recidivism after four years). Mediation is used only minimally even after ten years of operation of the Probation and Mediation Service; it is used annually in approximately 500 cases. It is interesting that mediation is not even carried out in all cases where the court or prosecutor has used the institute of out-of-court settlement when handling the crime; this is very strange and in our opinion it is even contradictory to the very idea of this institute.

Findings of our research have clearly indicated the benefits of the combination of mediation with court handling of cases. Besides settling the conflict between the offender and the victim, agreeing on the compensation of damages and removal of other harmful consequences of crime, also qualified and useful conditions have been created during the mediation procedure to handle criminal matters outside of standard court proceedings (by using diversion) or to impose rehabilitative punishments and measures, which do not entail imprisonment.⁵⁹

The work of probation officers must be praised for their high quality and speedy process of mediation, assistance provided to clients (both the injured and the offenders) in finding ways to arrive at a desirable solution to their conflict and conclusion of agreements on the settlement of disrupted relations and compensation of damage caused by the criminal act. Also important is their contribution to the creation of conditions for out-of-court handling of cases, and thereby for speeding up the court procedure.

Also the direct participants (offenders and victims) have evaluated mediation as a suitable and effective measure from the perspective of satisfying their needs. The results of our research are in principle consistent with the findings of comparable foreign studies. Most of mediation participants are satisfied with the measure and consider their experience positive. Key role of aspects such as genuine apology by the offender, explanation of the motives of the offense or genuine commitment to mend things has been confirmed. If these are the elements that the victim expects of mediation, he is likely to be satisfied by his participation in it; dissatisfaction can be expected of victims who had doubted the sense of meeting the offender

⁵⁹ Rozum, J. et al.: Uplatnění mediace v systému trestní justice (Use of mediation in the system of criminal justice) I. Prague: IKSP 2009.

from the start and such aspects as mentioned above did not matter to them much. In some cases the hindrance preventing overall satisfaction of mediation was caused by inappropriate approach of the other party (for instance a formal stance of the offender or arrogant behavior of the victim). On the contrary, satisfaction about the activity of the mediator has prevailed.

The research has confirmed our assumption that the motivation of both parties for mediation increases or that mediation is more frequent, if the conflict is handled within rather short time of its inception. This corresponds also with the practical experience showing that the start of activity of the PMS in an early stage of criminal prosecution makes it easier to offer mediation to the parties than after a longer period of time, e.g., several months after the crime was perpetrated, when the PMS contacts the parties at the initiative of the court.

Mediators have mentioned the issue of motivation in general as the most frequently occurring problem in mediation. In this category of answers the mediators commented both on the unwillingness and lack of interest of the parties to meet face to face during mediation, especially on the part of the victims, and on the motivation in the sense of expectation of the parties of mediation. The mediators have also drawn attention to various problematic phenomena, which are not related to mediation directly but according to the opinion of the mediators polled strongly influence the practicing of mediation. The main point mentioned in this respect was the strong emphasis put by the bodies responsible for criminal proceedings on the speed of mediation activities. Even though the mediators did not make a direct connection between such time limitation and the quality of their mediation, the high number of answers may identify limits existing for a more detailed consideration, besides the solution to the given conflict, of possible causes of the criminal behavior and acting of the defendants from the perspective of further prevention of crime. Another problem, in the opinion of the mediators, is also very low awareness on the part of the lay public of the possibilities offered by the Probation and Mediation Service.

Foreign experience shows that in fulfilling the objective of the protection of society, alternatives to imprisonment are often more effective with less short-term or long-term costs than imprisonment. However, this holds only provided they are well prepared and carried out. In our opinion this condition has not been met so far in the Czech Republic.

The current trend in the practice of Czech courts prefers the imposition of punishments other than imprisonment, which can, however, paradoxically cause an increase of crime, unless adequate conditions are created to carry out such out-of-prison sanctions. It is namely often the case that offenders who are within a probation period of a conditional prison term

are imposed further conditional sentences for new crimes and thereafter, when they have committed another crime, are imposed the penalty of community service, which is served by some of the convicted persons in a very problematic way. This leads to a certain feeling of impunity on the part of such offenders so that they keep committing crimes when they have not yet served all the sentenced imposed upon them.

One of the main goals of the introduction of alternative sentences was to reduce the prison population. Unfortunately, statistics show that this is not happening, mainly in consequence of improper carrying out of some alternative punishments, in particular the community service. It should be also recalled that it is practically impossible to carry out exhaustive control in case of supervision, unless reliable and qualified staff is available, which can only be provided by sufficiently staffed probation service. If the average number of clients per one probation officer starts to be unmanageable, supervision turns into mere formality – it is in fact only carried out from the office (our research has unfortunately confirmed this fact in some cases subject to analysis).

When implementing the alternatives, the probation officer should be seen as an equal partner to the judge and prosecutor. Further it is important that the bulk of his activity be directed at the preliminary procedure. It has also been shown that unlike other parts of the justice system, like a court of a state prosecutor's office, general awareness of this institution is very low, maybe also due to the specific nature of its tasks (our research on mediation included a poll of the public; only a quarter of the respondents knew about the existence of the PMS).

Judges and prosecutors asked within the framework of ICSP research on alternative punishments and measures unambiguously drew attention to lack of probation officers and the need to strengthen the staffing of the Czech Probation and Mediation Service. The workload of the service (in spite of stronger staffing) is still enormous, also in the context of newly adopted types of punishment (e.g., home confinement), and unless it is strengthened with more staff there is a serious threat that the enforcement of alternative punishments and the whole operation of the service will become very formal. We might recall the wording of Principle 9 – Improving implementation of European rules for alternative punishments and measures – of Recommendation (2000) 22 issued by the Committee of Ministers of the Council of Europe on 29 November 2000 – *“If alternative punishments and measures are to be properly implemented, adequate bodies with sufficient funds are required”*.

In our opinion we still do not realize strongly enough that municipalities should be given an important role in post-penitentiary treatment. It can include assistance in finding a job, accommodation, provision of educational and advisory services or benefits in kind and monetary benefits. No re-socialization can be done without providing for basic existential needs of the released person.⁶⁰ Also in our conditions holds true that the best prognosis regarding recidivism have those convicted persons who enjoy a permanent family relation, permanent place of residence and high chances of integration in employment.⁶¹ It means that also the level of assistance provided by society, or to put it more precisely, the level of openness of the social system, is an important factor. Our research has repeatedly had judges, prosecutors and probation officers draw attention to the absolute lack of re-socialization programs for the convicted persons. Also lacking is the support of such programs; so far no enough funds have been earmarked from the Ministry of Justice budget to accredited probation programs for the juveniles.

Public funds are limited, but still society, or the state, must focus on the creation of conditions for the carrying out of alternatives; starting with responsible preparation of the introduction of alternative punishments, over increasing the number of probation officers up to financial support of diverse programs focusing on re-socialization of the convicted. Unless such conditions are created, no reduction of the prison population or reduction of recidivism or savings can be expected of the alternative solutions.

⁶⁰ Novotný, O., Vanduchová, M., Šámal, P. et al.: Trestní právo hmotné. Obecná část. (Material criminal law; General Part) 6th Ed. Prague: Wolterry Kluwer 2010

⁶¹ Kaiser, G.: Kriminologie (Criminology). 1st ed. Prague: C.H.Beck 1994.

The Role of Prevention in the Control of Criminality in Particular in Relation to Young People

If we speak of criminality among young people, we are actually talking of failure, of the failure of the individual in his human and social capacity. Something negative has happened, something has been neglected or not dealt with well enough, the warning signs of incorrect attitudes and aspirations were not picked up in time; put simply, something was passed on to the child or young person in the wrong form at the wrong time. A defenseless human being comes into the world as a body full of possibilities, as a person equipped with a diversely refined set of tools of perception on the journey of life and a remarkable, if diversely efficient, intellectual apparatus, which allows him to touch the reality of the world through his senses and to understand and emotionally grasp it. A child brings with it into the world the genetic inheritance of a boundless number of predecessors on the mother's and father's side and his arsenal is therefore entirely unique and irreproducible.

It is perhaps not without reason that it is said that a good educator actually begins preparing his upbringing role to his own child at his own birth. This "catch-phrase" conceals the profound knowledge that during his own socialization an educator learns (and is taught) to use the tools of his own genetic make-up in the midst of various socially formative circumstances and that in doing so he is preparing for his future role as educator of his own children, and therefore for the role of guide, advisor and agent of instructions of how to socialize the next generation. Parents and grandparents therefore are in the best position to understand the different stages of their children's development, especially since their inner needs are very often derived from the needs of previous generations, their battles from their own battles and their desires from the desires of their predecessors. Of course it is not as mechanical as it might appear from this statement; after all, many traits and in-born tendencies of the young individual are the result of a combination of genetic deposits of previous generations that can radically alter the configuration of settings of the child. Nonetheless, it is important to stress on the other hand that a profound understanding of the

attitudes of a child must be built, among other things, on the genealogical principles of family history from the side of the actual mother and actual father of the young individual.

Each and every person living in society must necessarily be socialized. The problem, however, lies in whether he socializes (or is socialized) well or poorly or, put better, predominantly well or predominantly poorly. The primary tools of the genetic armor can be used or left unused. Their spectrum of use is wide indeed, from pro-social development to anti-social misuse. The same quality or aptitude can often be the source of much good or evil, and just to make the situation more complicated, even within the same individual in different life situations. Nonetheless, the sociologist Cohen⁶² truthfully notes in this regard that a person has the tendency to act well in the future all the more as he acted well more frequently in the past and vice versa; systematic poor decisions of the past lead to the increased likelihood of future failure. In other words, the tools of personality become something beneficial with the right pro-social use and the misuse of these tools leads to the dangerous perfection of these in a negative direction.

However, let us return to the situation of the born child. This child hastily learns by watching the surroundings in which it finds itself. The knowledge taken in through the senses enters the consciousness and becomes basal knowledge, with which other knowledge of a similar nature is compared. Early experience then influences the beginning of creation of concepts. Research into the prenatal development of a child shows with more and more precision that a child begins forming an opinion of the outside world within the body of the mother from the first moment at which his sensory receptors are able to present some knowledge of an environmental nature to the structures of the mind. Of course this human ability develops considerably after birth and in the first stages in the life of the child. The child is remarkable in his ordering and sorting of the knowledge offered to him by his social surroundings. Whatever takes hold of his senses becomes the primary certainty of his outside world. Whatever he sees, hears, feels, tastes and smells becomes the basis of recognition, something to shape into some kind of more lasting opinion or life stance in light of more and more stimuli. Without wanting to discuss the absoluteness of the sensualistic thesis formulated by John Locke; “*nihil est in intellectu, quod non prius fuerit in sensu*”⁶³; it is important to take into consideration that it is in particular primary socio-pathological environment that affects a human being significantly as it confuses him when creating a positive concept of the world accepted by global society. On the other hand, stimuli which

⁶² Cohen, A.K.: Deviance and Control. New Jersey 1966.

⁶³ Nothing is in the understanding that was not earlier in the senses.

are in agreement with the cultural and moral context of society equip a young individual with usable truthful knowledge and accelerate him towards independent intellectual performance in the areas of abstract concepts and consideration. It comes as little surprise, therefore, that experts consider the first stage of life of the human individual to be decisive in his onward development, at least to a certain extent.

In this regard we can consider it almost undoubted that it is very important for the creation of concepts and life principles for the stimuli that reach a person, in particular during the early stages, to be consistent in nature and not incompatibly conflicting and unpredictable. The situation in which a child is praised once and punished another time for the same activity brings about confusion that writes itself very profoundly into the concept of forming a required uniformity of the world. There is perhaps nothing worse than a young person coming to the opinion (based on his own experience) that there are no standards and values acknowledged as a rule and collectively in society which surrounds him, that the decisive criterion for his action is unbounded personal pragmatism and egoism, which causes the individual not to (and not want to) incorporate his needs and interests in the needs and interests of others. We can say in general, then, that it is a relatively lesser evil for a child when he is brought up perhaps not as well, but at least uniformly, than if exposed to differing and opposing upbringing processes and influences of different quality. One can argue with relatively consistent bad opinions and attitudes among young people, it is possible (although often difficult and slow) to change and cultivate false convictions and stances. It can be proven that certain socially unacceptable principles and standards acquired at young age lead to mistaken results and life mistakes. On the other side of the coin, inconsistent socialization leads to the absence of an elaborated value system and attempts at re-socialization and re-education come up against the barrier of incomprehension. The opinions of those who are trying to rectify the value systems of young clients brought up in this way (or better put not brought up at all) are thus seen by those being re-socialized as yet more inconsistent attitudes to which little attention should be paid, just as little attention was paid to those that came before.

The results of criminological research show that young delinquents are often born into abnormal upbringing conditions, which are frequently even compounded. This naturally makes preventative work far more difficult and at the same time indispensable. Certain negative upbringing elements do appear in the upbringing environment on more than one occasion even among the non-delinquent population of young people, but these are often

compensated for by some neutralizing upbringing influence, which is produced appropriately and, most importantly, on time, by the close or extended family, pre-school or school facility, various free-time organizations, a positive peer group etc. By contrast, problems among delinquent youths are more numerous and more serious, and their intensity is unfortunately increased by their mutual interconnection. Awareness of this circumstance allows us to make reference to certain particularly damaging upbringing circumstances.

It would appear that we have to look to the orientational family for the most important pro-delinquent factors which direct a young person towards an asocial path. The future delinquent is often born into what is from the perspective of upbringing a poorly prepared family background. A serious problem here is the incompleteness of the family, the physical absence of a mother or father or the merely formal taking of the role of parents. We have already mentioned the need for both actual parents when decoding the genetically conditioned traits of the child. Here we would like to add that an actively present male and female element in upbringing ideally creates educational complementarity, something that is hard for one single parent to replicate. Problems upon the arrival of the child into the world and later problems to occur in the orientational family particularly during the pre-school life of the child (aggressive disputes, formation of antagonistic coalitions of members of the family, leaving the family, financial crash and failure to secure the needs of the family etc,) are conspicuous in research into the social background of delinquent youths.

A child who later becomes a delinquent is often born unwanted (or at least not welcome), is born to young parents who often get to know each other's personalities in more detail "along the way" in a tense atmosphere following the birth of the child. The first stage in the life of the child is therefore marked by paternity disputes and by disillusion with partnership that stems from not knowing the partner well enough before the birth of the child and by the widespread myth that living together smoothes out various animosities in the lives of partners. In this regard it is mainly mistakenly expected that problems with alcoholism or drug abuse can be positively solved in this way, that manifestations of aggression will be subdued etc. Criminological analyses of the social background of pre-delinquents and young delinquents show that for one, a stable family with the child's own parents is not formed (promiscuous lifestyle), and second, that there is an unhealthy relation between the single mother and the child living together (in which the child is usually emotionally overloaded) or living together with grandparents in a common household in severe dependency. To offer a more complete picture, it is also important to point out that the delinquent development of

a child is also usually seen in families in which one of the upbringers dies. Girls in particular (although we also find this phenomenon among boys, albeit in a somewhat different form) do not take the death of their father well and are often very aggressive in opposing the upbringing principles of their mother's substitute partner.

We also find delinquent young people in other types of families. These are large families with many natural siblings and sometimes step-brothers or sisters. In such families we come across expressions of educational helplessness of parents who are incapable – for objective or subjective reasons – to cope with the upbringing of all children. Larger families have a larger inner dynamic and a competitive environment among various coalitions of family members is formed. It is more difficult to harmonize the needs of older and younger children, the varying tendencies of boys and girls during different development periods, the interests of one's own children and those of another, more talented and less talented children, healthy and ill children, successful and unsuccessful children etc. Delinquent young people often signalize (to a lesser or greater extent) the feeling of being cast aside, excluded, abandoned, neglected or unloved by their parents (or step-parents or upbringers), from which there comes an effort to make themselves seen at all costs, even at the cost of asociality.

Analyses of the case histories of young people on a delinquent life path show that the problems of their orientational families cannot be reduced to mere quantitative indicators. Without a doubt the size and make-up of a family play a large part in upbringing efforts, but the same (if not a bigger) role must be seen in the qualitative indicators of the upbringing abilities of the parents and the whole broader family background. Morally competent, intelligent and involved upbringers are usually able to alleviate or even divert dangerous criminogenous factors with the help of a cooperating “preserved” and relatively consistent family and pass on to their children at the right time appropriate positive stimuli and means of immunization from dangerous development tendencies. Unfortunately, however, this mostly does not reach our young delinquents. Analyzing case histories, one is sometimes reminded of the truth of the saying “like father like son”.

Bad prerequisites for a successful upbringing role are usually manifold among the parents of delinquents. In mentioning at least some, we should start by referring to the age of the parents. Analyses of case histories show that a number of parents of young delinquents are either too young (the more common case) or too old at the time of birth. Parents to whom a child is born (especially unplanned) not long after they reach legal age or even before this probably do not have sufficient upbringing prerequisites to cope with a demanding upbringing

role, are unable to move from the often unfinished role of being brought up themselves to the role of an upbringer and are not mentally set to leave the position of the “child” and take on the position of the “parent”. The hypothesis may be put forward that this lack of mental setting can be negatively manifested in insufficient or inappropriate care for the child, in particular during the primary formative period. In this situation the child possibly perceives the often prominently manifested dissatisfaction of the mother or father with her or his fate, with his or her curtailed youth and liberty, feeling that he is seen as the cause of his parents’ discontent. On the other side of the coin, relatively old parents are too anxious and protective in their upbringing. This situation is often caused by the long wait for successful biological conception. The parents subsequently do not sufficiently develop the independence of what is often an only child, burden him and overload him emotionally and are not able to understand his developmental needs and in the end the child rebels.

The parents of delinquent children or young people make many mistakes in providing an upbringing. Perhaps the most fatal of these are two extreme upbringing strategies that would seem to differ at first glance, but that produce the same poor upbringing results in the end.

One is upbringing based on the strict restriction of the child, continually checking him, directing him, commanding him and training him, with sometimes unbelievably elaborate systems of frequently inappropriate drastic punishments (and sometimes strange rewards), little interaction between the child and the parents and the hard imposition of rules and procedures regardless of the needs of the development of the child and his age. The motivation for such procedure is often different among the parents and ranges from hatred of the child as a source of problems through passing one’s unsatisfied expectations in life on to the life of the child, educational helplessness stemming from one’s own experience in the orientational family of one’s delinquent parents to almost psychiatric fears for his fate that are usually hidden in so-called “upbringing scrupulousness“. The degree of warmth or coldness in the relationship of the parents to the child does modify the result to a certain extent, but nonetheless the basic characteristics of this approach to upbringing remain as follows: children become dependent and excessively pliant (the danger of increased suggestibility and acclimatization to a delinquent group), they are not creative, turn aggression against themselves and against their weaker social surroundings (bullying) and head towards psychiatric disorders.

The second, more common but similarly inappropriate procedure, is a style of upbringing in which the parents are too inattentive and compliant. No restrictions are usually placed on the children, their aggression and excessive activity are not regulated, their lives pass without notice, the parents care not what their children are doing, they do not provide their children with an order of things and give up on any kind of upbringing. Again the motivation of such behavior among the parents differs, from absolute failure to accept the role of parent to an effort to ensure the child's "free development". This approach to upbringing results in a child who is incapable of dealing with problems in life, an individual who collapses before burdens and reacts to the outside world through means of aggression and explosions of rage. These children also suffer from unstable self-assessment and have the tendency at some stage in their lives to run away from home to join gangs of delinquents and ensure their unregulated needs through delinquent activity.

Another stumbling block in the case histories of delinquent youths is the insufficient level of education of the parents. Mothers in particular, who often remain alone with their children, regularly have low, often incomplete basic education, often received their schooling at special schools or are in extreme cases illiterate. The situation is similar for fathers. However, this is more difficult to document since a large number of delinquent fathers remain unknown. It can, however, be substantiated that even the educational and cultural level of substitute fathers in supplemented families is meager. Hand-in-hand with this low level of education is the low status of employment and of course the low financial rewards that stem from the less demanding nature of the work done. These findings are all the worse in that the parents in question are a bad example to their children in terms of education and work. Only exceptionally do we come across a situation in which one of these parents tries to improve his or her qualifications at some stage or attempts requalification or an active job search after losing his or her job. What we find more in this area are examples of parents that before the very eyes of our young delinquents resolve their situation on the labor market by escaping to the status of being incapable of work or to the position of clients at the employment office. Anamnestic conversations with young delinquents show that the material level of the family is often improved by some sort of illegal and asocial activity. The negative relationship to regular work passes from generation to generation over the long-term and the parasitic way of life is one of the fundamental characteristics of these specific environments, something that is passed on and sometimes even taught.

This brings us to another more general problem of upbringing to affect or modify the development of young people in such families. In-depth anamnestic analyses of the family backgrounds of young people on the slippery slope show that their socialization sometimes takes place in direct contact with asocial examples and instructions for life. The frequency of entries in the criminal records, information about proceedings for administrative infractions or civil cases relating to the inappropriate behavior of the family in the social setting testifies to the pro-delinquent environment in such families. Interviews with young delinquents also point to the defective specificity of the upbringing environment, from which it sometimes arises that, learning from the example of parents, siblings or people from the extended family, they consider deeds which to various degrees go beyond the broadly accepted norms of surrounding society to be standard procedure or “understandable” ways of behaving. The findings of E. H. Sutherland, developed in his well-known theory of differential association⁶⁴, still apply to a considerable degree. Here he talks of the fact that antisocial behavior is predominantly learned, that the individual absorbs it in his upbringing environment and categorizes it under the register of “normal” behavior. Even taking into account the later criticism of this theory (D. Glaser – the theory of differential identification), which makes reference to the undisputed role of the personality determinants of an offender in accepting asocial examples, it cannot be ignored that it is these negative examples within one’s own family that logically mount the similar genetic base of the young individual, meaning that they can more easily find a lasting place in his mind.

The theory above applies not only to the way of behaving, but to the lifestyle of these parents at a similar level. There are problems both in the sense of contact with the asocial phenomena which accompany criminality and in the lack of interest in a positive offer. We therefore find in family case histories frequent contact with alcohol and drugs, problems with gambling and other addictions. A promiscuous lifestyle that sometimes has the characteristics of prostitution corresponds to the unclear contours of the family background. Family life is also marked by expressions of aggression (in particular men towards women), communication vulgarity and intergenerational disputes. On the other hand, there is no input of positive stimuli from the sphere of the intellectual culture of society and the lifestyle is material consumption-cum-parasitic. This family niveau is manifested among delinquent children as lack of interest or active negation of most positive offers that arrive from the outside environment.

⁶⁴ Sutherland, E.H.: *Criminology*. London: Philadelphia 1924 (1st issue).

Research into free time among this population shows that the interests of young people heading towards a delinquent life path are mainly of the consumption and passive type. The main differences between the delinquent and non-delinquent population to the detriment of delinquents come in the areas of more demanding intellectual interests (reading books, playing musical instruments, creative artistic activities, more systematic sporting activities, cognitive and educational activities). By contrast, they spend more time than the control group of the regular population watching television, listening to music, chatting with friends, often taking the form of sitting in pubs drinking alcohol or various group events in which non-alcoholic drugs are taken, wandering the streets or roaming shopping centers. We can say in general that the free time of the delinquent youth is poorly structured and that behind the many excesses in their behavior is the need to overcome boredom, or to put in another way, to fill in excess time (often “stolen” from duties) with activities that they can “manage” within their narrow outlook. A young delinquent led through the environment of his family often derives his value from the strength with which he knows how to assert his interests towards his near and more remote social surroundings, from the number of material resources he obtains outside of work for his self-objectification, from the depth of his not bowing to authority and from avoiding duties.

One serious moment in the life of a child from a non-stimulating family environment is his arrival at a pre-school facility or at school itself. It is generally at this moment that the differences in the preparation of children for the school environment first appear quite markedly. Non-stimulating and “otherwise stimulating” upbringing and dismal educational situations in the family undoubtedly slow down the development of a child, whose backwardness relative to his age and the new school situation is thereafter distinctly manifested in the comparison with his peers. What is more, the values and standards conditioned by his family are often at odds with the values and standards of teachers and school mates alike.

In this regard it is important to point to one important circumstance that often remains in the background of the harsh conflict between a pupil and his school environment, which at the first stage is represented mainly by the teacher or instructor. The teacher, although often theoretically prepared in a standard way at faculties of education, has almost no practical experience of the realities of the family life of the group of pupils we have described, objectively speaking a non-homogenous group given its diversity. In their teaching practice, regular teachers only come across the “curious” result of socialization and educational

encroachments of the orientational families of their pupils, but know almost nothing of the mechanisms which led to the creation of the norms and values through which the pupil currently presents himself, often as a surprise to them. During his own socialization and education the regular teacher consistently comes face-to-face with a social background which is from the perspective of quantitative and qualitative indicators in most areas of his life diametrically different to the social background of “naughty” pupils that act “incomprehensibly”. This problem is accelerated in particular when the pupils come not only from a different social stratum in majority society but when they have also a different ethnic, religious or national context. And so the teacher often is not aware that as much as the pupil’s behavior seems incomprehensible to him, the behavior of the teacher seems strange to the pupil as well, different to his experience to date and often unfriendly towards him.

This statement obviously has far-reaching consequences for the relationship of a child shaped in this way to school and pre-school facilities. From the very beginning of his time there his conduct and action place him among those children not to excel in anything positive, who are not praised and held up as examples. Their drawings are not put on display, their answers to questions are considered inappropriate or even cheeky, their memories are not trained well enough, their reactions are slow and cause delays, their attempts at cooperation are seen as a nuisance, their personal hygiene is found lacking etc. etc. What is more, these children are not up to the teaching tempo, are not concentrated and not persistent, are easily worn out and, something of considerable importance, are without additional and adequate help and support at home.

The consequences of this situation are described very illustratively in the core criminological theory of the Labeling Approach⁶⁵, which claims (inter alia) that an individual has the tendency to internalize the image of himself that is signaled to him by his social surroundings and subsequently actually acts in line with this image. If we take into consideration another core theory put forward by classic psychotherapy author Alfred Adler, who claimed that the life objective of a person is to incorporate himself into society and to apply or assert himself in that society, then it is little wonder that an unsuccessful pupil looks for surroundings equal to him given his lack of success in the school environment, for surroundings which he understands (and which understand him), in which he can incorporate himself and in which he can even excel under certain circumstances (unfortunately often in an asocial direction). This situation then logically leads to friendship with similarly

⁶⁵ Giddens, Anthony: *Sociologie*. 1st issue, Prague: Argo 1999.

excommunicated individuals. Of course this situation sometimes leads the individual to social isolation, which often leads to psychological and even psychiatric abnormalities. On the perimeter of this statement it must be said that we regularly find in the personal or family case histories of delinquent youths a statistically significant number of people with psychiatric problems such as suicide, self-mutilation, increased aggression and other types of psychiatric diagnosis.

If we are aware of the problems which afflict the life of a modal pre-delinquent in the family and school environment, then free time activities take on all the stronger importance. We have already shown that the sphere of interests of delinquents and pre-delinquents is fundamentally very limited, primarily from the perspective of what the majority society expects. Their lifestyle does not fit in with the areas of interest on offer. There are currently plenty of free time activities in society, but almost all of them attempt to achieve goals that are foreign to a young person affected by asocial or even antisocial attitudes and use means that are difficult for this type of youth to grasp. Regular organized free time activities demand certain qualities of their participants and adherence to a certain order; in other words, organizations look for members that could achieve the best results in the given area of interest. Most regular organizations therefore understandably choose those potential members who are able to observe a certain order, who accept certain ways of behavior, who pay the set fees, who show endeavor and zeal for the matter at hand, who have the prerequisites for a certain activity, who can be relied on and, last but not least, who are accepted by the other members that are involved in the free-time activity undertaken at the given club, group or organization. The young people we are talking about here, however, do not usually have the traits with which to find themselves a stable position in such organizations. They do not adhere to the rules of the organization, their attendance is irregular, they disrupt, are cheeky and unruly, they do not pay their membership fees, they have no respect for the symbols of the organization, they have shortcomings in personal hygiene, their verbal expression is poor and full of vulgarity, their abilities in the main area of interest are undeveloped (for the reasons indicated above) and they are therefore considered average or below-average. It is little wonder that the life of an organization without such individuals is considerably easier and that there is no need to ruminate over the reasons for forcing “disruptive elements” out of the structures of the organization. Removing them is not much work and there are always plenty of convincing arguments for bringing their activity to an end. Few, however, ask the question: where will displaced, unaccepted young people go and what will they do with their free time?

This question is from our perspective all the more pressing when we realize that this type of young person usually has negligible interest in organized free time activity. Delinquents and pre-delinquents have the tendency to live their free time without outside control. They form asocial groups, come together in gangs whose program of events often slides towards detrimental forms of activity. The typical motivation for criminality among young people arises in a considerable number of cases from “inspiration through the moment”, from momentary impulse which is, among other things, designed to momentarily stave off the ever intruding boredom. The opportunity to use a certain situation to obtain fast material profit, physical or mental control over a victim or the instrument of sexual satisfaction becomes a strong impulse for these young people and one they are unable to resist. It is often this way because their socialization process to date has not formed in them functional inner defenses, because their “standard” conduct is weakly secured or supported only by a feeling of certain outside control, something they are able to rid themselves of or resist more quickly and more resourcefully with age. Young offenders are all the more exposed to this temptation of delinquency the larger is the circle of active admirers of these acts.

It is a well-known criminological fact that tribalism has an accelerating importance to the life of young delinquents, that many delinquent acts would probably not be committed if there were no status-forming elements of consolidating position within the group involved or no attempts to attract the attention of mainly people of the opposite sex. After all, the actual profit from criminal activity is sometimes negligible with regard to the damage that a young offender causes by his actions. The risk involved points to the need to show oneself off, since the aim of risky behavior is often fundamentally unimportant (the value of profit is negligible). Similarly, purposeless acts of vandalism often only make subjective sense when there are people watching; bullying without an audience of one’s peers loses its intensity. It would appear that the dominant element is often primarily self-objectification, proving one’s own possibilities and courage to oneself and one’s reference group.

Young people long for something to happen so that their beaten-to-death everydayness is interrupted by some sort of adventure, by something entertaining, by a competitive act, something to make them more visible. They long for such an activity to arouse, perhaps negatively, the attention of their narrower and wider social surroundings. On the other side of the coin, they aim to create their own concealed youth subculture, which in their case, due to a lack of positive creativity, is mainly directed at asocial activity and at imitating examples

(often diverse virtual examples). They long to belong “somewhere”, to be able to incorporate themselves in some sort of program of their similarly afflicted peers (from an objective perspective) that is acceptable to them. And so it is that groups which focus on various things are created that to a lesser or greater degree get involved in troublesome activities. We might, purely at random, recall groups of young people with a xenophobic program, with leftist or rightist extreme tendencies, groups looking for kicks among the hooligans, groups who experiment with drugs etc. etc.

After outlining the basic problems of the causes and prerequisites of delinquency, then, we can turn our attention to the questions of preventing delinquent development. It can be said in general that criminological surveys and rational consideration testify to the fact that preventing crime is a more appropriate path to a satisfied life in society than subsequent repression. After all, the very term “prevention” is taken from the Latin “*praevenio, prevenire, preveni, preventum*”, which means to move forward, to anticipate, to avert, to obstruct, and consequently the prevention of crime and the undesirable phenomena associated with it means averting evil acts (or crimes) or omission, the obstruction or diversion of their occurrence or possible future effect. By contrast, the term “repression” is derived from the Latin term “*reprimo, repressi*” and can be translated as suppress; this is therefore a subsequent action after asocial or antisocial acts or omissions have asserted themselves. As Giordano Bruno noted quite truthfully in another context, “a small mistake at the beginning becomes a big one at the end”.

Human will and the acts associated with it can be paralyzed for a certain limited time using thorough control or repression. Nonetheless, this manner of asserting certain values and standards only lasts as long as serious repression does not slacken or as long as a creative or “smart” person being controlled does not find a way of getting around control. Morality, in the broadest sense of the word, which is based on fear (or intimidation) is sometimes just latently slumbering immorality that is simply waiting for its moment. The primary aim of prevention is therefore in our opinion to achieve the internalization of the norms and values of society in the mind of a member of society to such a degree that he is able to try and face up to the temptation to become asocial, antisocial or delinquent.

The prevention of crime and the negative phenomena associated with it must therefore be considered to be a certain focused effort to modify the life path of a person in time and in a suitable manner. In its most general form, the human individual is exposed to primary preventative action that is aimed at the entire population and which has the aim of introducing

the person influenced to the principles of the norms and values on which the given culture stands. Well directed and carried out primary social prevention informs all members of society of the parameters of coexistence, which ways of acting are within these and which are outside the boundaries of the actual tolerance level of the normal, for what the participants in the given culture are praised and for which expressions they will be ostracized by the majority society. They pass on generally formulated information that is sometimes supplemented for greater comprehensibility among those being instructed by case-based reasoning (fairytales, discussing the consequences of certain acts, learning from one's own mistakes and those of others). Primary social preventative action is therefore specific in nature (leads to an intentional lesson on values and norms in a certain area of social life) or unspecific, which is provided by a wide range of means, from simply observing the life of people in a narrower or broader circle in the given cultural territory or through individual cultural agents (television, radio, Internet, reading, verbal culture etc.).

Situational or victimological primary prevention also has a similar signaling and educational role. This shows the members of the given society at a general level what to protect and how, what sort of criminogenous situations they should beware of to protect their lives and health and not give rise to stimuli for property delinquency, from where the danger of an "attack" can be expected and how to cope with such dangers. People learn from a young age that certain values have to be cared for, that possible problems have to be forecast and risks of certain types should be avoided. People learn what needs to be locked, checked and insured, what to pay attention to, where not to go and by contrast in which environments they can feel relatively safe, whom to believe, whose help can be expected in the case of need and who to keep an eye on etc. etc.

If, therefore, from the perspective of the broader norm, a mentally healthy young person moves around a relatively healthy social environment, he is given his bearings by his narrower or extended family background in the rough outline of "how life goes", and in many other skills, and is therefore intentionally taught or spontaneously picks up examples of behavior and conduct which are understandable and acceptable for other members of society. For these norms and values to be internalized, systems of reward and punishment are also used to reinforce the imprinting of this knowledge on the mind of the person being taught.

Education at school from the perspective of primary crime prevention takes on a more systematic form, the fragments of childhood knowledge become sharper, take on a certain interconnection and are (or should be) formed into a certain general system of principles.

These principles (conscience, the bearing moral code in society) should thereafter be applicable in the variable world of human coexistence. Here, of course, we come face-to-face with one general difficulty. To be able to prevent something, we need to know fairly accurately what it is that we want to prevent. We will have to think about this urgent need seriously and in depth; after all, if we want to appropriately teach ethical education at schools - as should have been the case since September 2010 according to the Ministry of Education, Youth and Sport - we cannot resist the question of what should be taught in this subject and how should it be taught? And that, in the post-modern period, is not an easy question to answer. On the contrary, its practical comprehension requires philosophical consideration that gets to the roots of the concept of morality.

The claim that a moral system of society, its values and norms develop so quickly that it is impossible to grasp any normality as certain is just as incorrect as saying that no social values or norms change. Systematically handled preventative work aimed at asocial and anti-social behavior in society should state as its primary aim to identify elements of permanency in the transformations of the world, to find the axioms of human coexistence, without which no society can survive for long, even if they can be wantonly trampled on for a certain amount of time. Whatever we think about it, it is certain that coexistence in society requires some concept of morality that should ideally rest on rational (not merely ideologically tinted) reasons for the usefulness (not the pragmatics) of accepted norms and values.

The above is very important from the perspective of further interpretation given that the more accurately we know which acts or attitudes are still acceptable within the broader concept of social tolerance, the more accurately we will be able to recognize the signs of asocial behavior in time and come up with suitable means of secondary or tertiary prevention appropriate to the situation and the age. Means of primary prevention are only sufficient to deviate the delinquent path of a young person if all (or at least the decisive) educational agents are directed at creating a comprehensive system of values and standards accepted in society for the person being educated. Teaching and imitated educational structures may not themselves be socially incompetent or even socially pathologically orientated and may not be highly “toxic” from the perspective of the proper development of a young person. If educational examples are not in order, it is highly likely that the educational result will not be in order either.

This fact leads to a consideration that the state should have at its disposal considerably larger means of effective screening to find those who need help from the view of society,

whether for the reason that a young person moves around a diversely structured asocial environment (delinquency, addiction, negative relationship to work or education, promiscuous lifestyle etc.) or that applied educational interventions, in themselves positive, do not for some reason meet with the expected response in him (inappropriate upbringing style of the parents with regard to the needs of the child, lack of understanding toward an adopted child etc.). Here it is not, as it might appear, about inappropriate interference with the due and responsible socialization process, but about the timely and qualified recognition of the signs of erroneous development in the person being educated (in contrast to possible transitional developmental problems) and finding the causes of and prerequisites for this defective process and the subsequent and immediate launch of “rehabilitation operations”. It is therefore necessary to attempt the targeted collection of signals testifying to the arrival of a negative life path in a child or young person.

Based on criminological experience in this area, we suppose that the application of secondary and tertiary prevention should have precisely set procedures. There should be statutory support for this activity, best of all a separate law on prevention that would ensure a statutory systematic approach to carrying out prevention on the one hand and set aside the required personnel, material and technical resources for this activity and ensure standards for this difficult activity on the other. Preventative work cannot be left to random development; it must be worked into a certain system of rights and duties (and therefore based on the principle of responsibility for monitoring and modification) and a network of professional, specially trained prevention workers must be built at the state, regional and community level for the application of these attributes of the system of prevention, workers who will work within the system of the delegated competence of the state (i.e. they will not be dependent on momentary results of elections and their activity will be directed at systematic preventative work over the long-term). These workers must know precisely who can collect information about whom, when and under what conditions (they must therefore know the boundaries between defending human rights and the need to make a timely intervention). There must be an unambiguous, thought-out, non-ideological answer to the question of who should and may confront these phenomena. Ideally there should be no waiting until foreseeable mistakes present themselves in the socialization process; on the contrary, it should be tested whether the malfunctions in the socialization process identified for the client or in his social surroundings - in particular crisis malfunctions - can be handled by the extended family on its own or whether that family needs outside intervention.

Prevention workers should be equipped by law with such powers so that all the relevant information about negative phenomena in the area of their scope of activity get to them (or are offered to them). We cannot settle for the current situation, in which a prevention worker at regional or community level has had to ask, mostly submissively, to get hold of the information he needs for his conceptual preventative work. This information is needed in order to recognize who is the bearer of negative phenomena, how serious a problem it is and where the roots of the problem are.

It is not enough, however, to know which young people need targeted preventative help; it is important to have the means of actually providing this help in a qualified way. The old slogan that prevention is cheaper than repression (since the rehabilitation of damage caused by delinquency vastly outstrips the costs of prevention) must also be accompanied by the thesis that not even prevention is free, given that “whatever costs nothing is worth nothing”. Preventative work is a long-term matter which requires qualified, empathetic workers who are able to properly understand the problems of their clients and offer them methods for their own rehabilitation without pushing it on them. Preventative care carried out in the Czech Republic to date sometimes has the tendency to confuse actual personal social work with clients and their families with creating the conditions for working with them. No matter how good the facilities at clubs, playing fields, workshops etc., no matter how well organized the talks, no matter how valuable a free-time activity is in itself and no matter how well organized situational prevention, it will not replace the need for the thorough and understanding friendly intervention of workers in the role of social assistants.

We can point out with regard to free-time activities that they have the advantage of attracting their young consumers to the things that they subjectively consider suitable for themselves, that they are willing to do voluntarily and that to a certain extent capture their spontaneous attention. Certain qualities or abilities that a youth at risk sometimes acquires by accident as part of his joyless socialization or educational process can be asserted given the right choice of activities – for example, hardiness, physical strength, adeptness, the courage to risk, the ability to cope with stress, the art of looking after oneself, often a certain social sentiment, the ability to care for siblings or the ability to do things that stand in for their non-functional parents. Free-time activities can therefore become not only the time of asociality but also a significant period of re-socialization work.

What young people on the slippery slope lack the most is a valuable relationship with someone who is waiting for them, who knows how to get them to think about their lives, who

is then able to advise them without mentoring and who can be trusted and confided in as a result. Having someone and belonging somewhere are basic needs, without which it is difficult to expect a change in the attitude to life. And when we are able to find the lost value of clients, discover for them a positive sense in life, then we will be able to talk of success of preventative work.

The Perpetrators of Crimes, Criminal Recidivism And Prediction

The topic of criminal offenders has long been dealt with in this country and abroad, but this does not mean that attempts at a synthetic view of the issue at hand are a simple matter. The more we know about offenders, the greater the problems we have in attempting any sort of simplification. This is particularly true at times of radical social upheaval accompanied by radical changes in the view of a person, his psychological and physiological essence and the processes that form his personality, in particular the influence of socialization, the effectiveness of punishments and rewards and approaches to education, the binding nature of social norms for the individual members of society etc. Only one thing is certain: that a compact notion of an offender as a conglomerate of negative human qualities, of a person who radically differs from a normal, law-abiding person, is mistaken.

The very content of the term *perpetrator of a crime* is dependent on the profession of the person who is talking about it and on many other variable circumstances; for example the times and the country in which the content of the term is defined etc. Criminology does not just understand the term offender/perpetrator as being a person who has committed an act indicated by the law⁶⁶ as a crime, but often as being a person in whom the bodies active in criminal proceedings are not interested or whom they do not criminally prosecute. It therefore focuses attention on individuals whose age (children) or state of awareness (insanity) go beyond the boundaries defined by criminal law. It also deals with people who have already served a sentence for having committed a crime and people indicated as potential perpetrators of crimes. It is also interested in individuals that are distinguished by so-called socio-pathological behavior (for example those addicted to drugs etc., prostitutes, socially-excluded people, extremists and their sympathisers, problem children, people with diagnosed dissocial mental disorders etc.).

Just as is the case with the content of the term perpetrator of a crime/offender, the content of the term personality of a perpetrator/offender is also subject to discussion. Here criminology sticks to the basic knowledge and opinions used in psychology and together with

⁶⁶ In the context of criminal law, the term offender denotes a person whose action corresponds to the characteristics of a crime or its attempt or preparation. (Sec 22 (1) of the Criminal Code).

forensic psychology mediates these to other disciplines that deal with offenders and criminality as social phenomena (sociology, penology, criminal law etc.). Contemporary psychology most commonly understands the personality of the offender as being an organised, dynamic and inter-individually different whole of psycho-physical tendencies that determine the course and expressions of mental processes (reactions), reflected in behavior and action.⁶⁷ In other words, each and every one of us has a personality that is a unique (different to that of other people) functional set of qualities and feelings expressed outwardly by certain behavior and action. Inner feelings and outward action and behavior have a certain permanency and peculiarity arising from the uniqueness of personalities and given psycho-physical characteristics, but they do at the same time change (develop) continuously. These changes are primarily reactions to changes to which an individual is exposed in his surroundings, including his social surroundings. Recognizing the personality of a perpetrator of a crime therefore takes in the study of the mental specifics of that particular perpetrator and the conditions which shaped his personality and at the same time the study of the differences and similarities of his personality (or the individual personality qualities) in comparison with the personalities (personality qualities) of other delinquent and non-delinquent individuals and groups of people.

A picture of the offender, in particular *a description of his personality, is an essential source for an understanding and explanation of his criminal action, the prediction of his future life and how he handles it, with the aim of eliminating the repeat of criminal behavior (recidivism).*

Forensic psychology, for which the personality of an offender is a fundamental matter of interest, devotes greater attention to the following characteristics of the personality of offenders: 1) the effort to immediately satisfy needs and therefore evident *lack of self-restraint in the action of the offender*; 2) the inclination to relativize legal and moral standards, which is related to the egocentrism of the individual and to disorders in the decision-making process, i.e. his *insufficient inner inhibitions*; 3) attention in recent times has also focused on the study of so-called cognitive distortions (distortions in thought and memory), criminal styles of thinking that work as certain defense mechanisms (persuasion). These allow the offender to “vindicate” criminal behavior to himself, help him maintain mental stability and protect his self-concept (for example, “surely I have the right to do what I want ...”).

⁶⁷ Nakonečný, M.: Základy psychologie osobnosti (Foundations of personality psychology). Prague: Management Press, 1993, p. 12

Of significant, if not decisive, importance in considering the personality of an offender is the identified *motivation for his criminal behavior* – the direct set of reasons for committing a specific offence. A connection, where one exists, between criminal behavior and a certain personality disorder, most commonly termed a *specific personality disorder* (also a dissocial, asocial, antisocial or psychopathic personality disorder), is often projected in motivation.

Mental particularities are always part of considering the personalities of offenders. These are principally a variety of abnormalities, including abnormal intellect, sexual deviations, mental illnesses and disorders, diminished sanity, the existence of dependence on addictive substances, including alcohol etc.

The significant characteristics suitable for a distinguishing and specifying description of the personality of an offender include classic personality traits such as temperament, general level of intelligence, character and volition. The social conditions of his development and manifestations, including the family and upbringing environment, broader incorporation in society, ways of spending free time, education, choice of occupation, ongoing course of employment, ways of subsistence and behavior under interrogation, conduct in prison, way of life after release from imprisonment and so on are all central characteristics of the personality of a specific offender.

The concept of the criminal career of an offender is again coming to the forefront in discussions to concern the personality of the offender, especially under the influence of longitudinal research. Issues are examined relating to why and how offenders begin their criminal behavior, why and how they continue it (the endurance of their criminal activities) and why and if at all criminal behavior gradually intensifies among offenders. Whether the seriousness of the crimes they commit rises with the passing of time, whether they become more “specialized” or broaden the sphere of their criminal interests over time, becoming “universal” as it were. If and how they turn into offenders/individualists with age and why and when offenders bring their criminal careers to an end (described as the process of so-called desistance). The influence of important life events in the continuation of the criminal career of an individual or group of offenders is examined (for example the impact of individual types of sentence, the formal and informal effect of imprisonment and the effect of the special treatment of prisoners during a prison sentence, the influence of normal human ageing, marriage, the relationship to one’s own children, the consequences of an injury etc.), events which might support or interrupt the continuation of a criminal career.

Criminological research has been and still is aimed at obtaining knowledge of the offender as an individual and at the same time knowledge of offenders as a social group and

their anticipated difference from individuals and groups among whom criminal behavior does not appear.

Criminological research into the personality of the offender generally examines the following: the motivation for the action of the offender, including criminal, his personal, familial and criminal case history, the course and developmental problems of his socialization, the level of his adaptation to the surrounding social environment, the lifestyle he lives and the influence of potential and previously-served punishments on his future; attention is also paid to the *prediction of his future behavior and an estimate of potential recidivism in his criminal behavior.*

The knowledge gained from criminological research can be and sometimes is used where general problems of the following types are being resolved in relation to criminal offenders:

First of all: “Is a person born a criminal or does he become one?”; i.e. where science clarifies the influence of the “innate” biological side of a person and the “acquired” social side of criminal behavior in offenders.

Secondly: where it is ascertained whether the personalities of offenders are specific personalities, whether they have particular characteristics or a special combination of otherwise common traits which differentiate them from people never to have committed a crime or otherwise distinguish them in the population.

Thirdly: whether it is possible to influence an offender using punishment, education or treatment so that he does not repeat his criminal activity.

Fourthly: when identifying (during the investigation and the criminal judicial hearing of specific cases) which factors were involved in the origins and course of the crime of a specific offender or group of offenders. Whether criminal behavior was provoked by the frustration of needs of the offender or whether criminal behavior was provoked or facilitated by an opportune situation. How decision-making on criminal behavior was influenced by external barriers (the size of the potential punishment, technical obstacles, legislative measures) and the level of inner (moral) inhibitions of the offender. What role was played by the personality of the offender in committing a certain type of crime and/or whether criminality was the product of the existence of group interests, the failure of social directions, poor social standards etc.

Fifthly: when predicting the onward direction of the lives of individual offenders (so-called prediction), the possibilities of changing their lifestyle (discontinuing the criminal

career), when looking for effective preventative measures against criminal phenomena in general and the application of preventative procedures for a specific individual.

Most research in the Czech Republic was *research into the perpetrators of crimes* done in the recent past (in the 1970s and 1980s)⁶⁸ focusing on identifying personality traits and the specific characteristics of offenders, the causes of their criminal activity, an examination of the level of their legal awareness, the factors of their lifestyles, the effects of serving a prison sentence and the effect of the prison environment on the personalities of imprisoned offenders. Predictions of the future behavior of the offenders under examination were also compiled. This research was most often carried out on individual, pre-determined groups of offenders (for example youths, women, recidivists). Part of the research done on larger samples of people serving prison sentences in prison facilities was conducted with the aim of dividing offenders into different groups (as part of so-called internal differentiation of serving a prison sentence), the intention being to broaden and improve the quality of using various measures to deal with offenders in criminal practice.

In 1986 a group of authors (Dobešová, Netík, Neumann, Suchý, Urbanová and Voňková) published a monograph entitled “Osobnost pachatele”⁶⁹ (The personality of the offender), which summarizes the theoretical conception of the personality of the offender available at that time (including western provenance) and the results of research carried out in Czechoslovakia; it is the attempt of the authors to come up with a psychological typology of criminal offenders. The basis of the typology was research into the personalities of male inmates in the Czech Republic at that time, first-time offenders and recidivists.

Four *personality traits of an imprisoned offender* were examined: emotional tuning, level of structuring of the system of internal behavior directives, social reactivation and assertiveness. Eight types of offender personality were identified in a cluster analysis: 1. socialized offender, 2. unsocialized offender, 3. conformist mormon (a person of subnormal intellect), 4. unrestrained, 5. neurotic, 6. hostile (aggressive), 7. submissive and 8. anxious (nervous) manipulator.

This was the only Czech typology of offenders to be created at that time. New ways of treating inmates could have been added to the new, original types of offenders, which would have often signaled a change in the orientation of the Czechoslovak prison system at that time

⁶⁸ Research into the perpetrators of crimes was mainly carried out by the Criminology Research Institute at the General Prosecution Office of the Czechoslovak Social Republic (now the Institute of Criminology and Social Prevention) and the Penology Research Institute at the Ministry of Justice of the Czech Socialistic Republic, whose activity came to an end in 1980.

⁶⁹ Osobnost pachatele (The personality of the offender), Parts I. and II. Prague: VÚK 1986.

and led to an accentuation of the resocialization objectives of imprisonment. This, however, was forgotten.

Most of the research carried out in the Czech Republic at that time proved differences in the ascertained values and signs between the group under consideration and control groups of offenders (or other persons). The abstract personality of the perpetrator of a crime was even created, characterized by distinctive mental attributes.

No similar research into imprisoned perpetrators of crimes and their personalities was carried out in the Czech Republic after 1990, but smaller-scale research mapping out the characteristic features of certain types of offenders and describing their personalities was done by the Institute for Criminology and Social Prevention. This research looked at the issue of prisoners given amnesty in 1990 (Marešová, Syrovátková 1991), offenders involved in tax and customs crime (Marešová 1999), perpetrators of crimes categorized as extremist (Marešová, Holas, Novák 1999), imprisoned offenders – users of addictive substances (Marešová, Sochůrek 2000, Marešová, Sluková, Sochůrek, Zeman 2003), young offenders (Marešová, Tamchyna 2001), offenders sentenced to long-term imprisonment (Karabec et al 2004), young offenders (Večerka, Holas, Štěchová, Neumann 2004, Večerka, Holas, Tomášek, Diblíková, Blatníková 2008), foreign nationals in Czech prisons (Scheinost, Jarkovská, Luptáková 2004), perpetrators of serious violent crimes (Marešová 2004), men and women imprisoned for the first time (Marešová, Kotulan, Martinková 2004 and 2008), female perpetrators of serious crimes (Blatníková, Netík 2007) and research into offenders to have committed commercial sexual violence against children (Blatníková 2009).

The results published as part of this research brought a great deal of new information about delinquents and inmates and about their personalities, but did not confirm the validity of the opinion that offenders are part of an independent, specific group of people that are distinctly different from other (non-criminal) members of the population in terms of their mental attributes, personality structure etc.

A considerable part of the research carried out at the Institute for Criminology and Social Prevention concentrated on a consideration of female inmates. Research carried out between 2005 and 2007 focused on considering female perpetrators of serious crimes (Blatníková, Netík 2007) and the persons and personalities of first-time female inmates (Marešová, Kotulan, Martinková 2008). The latter research followed on from similar research carried out on men. In comparison with research into first-time male inmates from 2002 to 2004, for example, female inmates proved to be less aggressive and more dependent on authority. They were more often of lower average intelligence and appeared to be more

“demoralized” by being sentenced to imprisonment. The make-up of the criminal activity for which they were imprisoned did not differ between the sexes. As far as frequency is concerned, property crimes came first, followed by economic crimes and violent crimes. There were considerable differences in the fact that most burglaries committed by women were (in contrast to the men examined) committed with a joint perpetrator, in that the joint perpetrator(s) was/were a man/men. The situation was the same for certain murders. Some homicidal attacks committed by women were directed at their own children and against a repeatedly aggressive partner. Such cases did not appear at all among the men examined.

As for the personality traits of convicted women (Blatníková, Netík 2007), female perpetrators of serious crimes were more suspicious than the “unconvicted population”, less trusting and emotionally shallow (their interpersonal relations were superficial and they did not generally get very emotionally involved). They expressed feelings of insufficiency, low self-esteem and self-respect and the female perpetrators of violent crimes were moreover egocentric with a tendency towards manipulation (in comparison with the female perpetrators of non-violent serious crimes).

One of the final pieces of research concentrating on offenders, specifically on *perpetrators of commercial sexual abuse of children in the Czech Republic*, was carried out by the Institute for Criminology and Social Prevention fairly recently. The character of criminal behavior defined as commercial sexual abuse of children had to be “underpinned” as part of individual elements of crimes in the Criminal Code. People whose cases had been dealt with by the courts over the past four years were earmarked for consideration. Most of the offenders examined (77 % = 300 people) were convicted for criminal behavior and crimes to concern child prostitution. Smaller was the group of offenders considered by the court in relation to child pornography (46 people, i.e., 12 %). A similar number of offenders was found in relation to trading in children (11 %, i.e., 43 people). Forty-two percent of the entire group were experiencing their first court hearing (information ascertained from copies of entries in the criminal records). One-fifth of offenders (i.e., 19 %) had been convicted once before. Female offenders were in the minority here, as might be expected. The average age of offenders at the time of committing the act was 35 years (the youngest offender was 15 and the oldest 76). The average difference between the age of the victim and that of the perpetrator of commercial sexual abuse was 21 years (the age difference ranged from 1 year – the offender was one year older than the victim – to 54 years). The average age of the victim of commercial sexual abuse was 14 years. The personality traits of the convicted/inmate perpetrators of commercial sexual abuse under examination were in line with the “classic”

signs of our inmate population. Antisocial personality characteristics were identified in the sense of rejecting authority. Problem confrontation with authority was also proven, mainly in situations in which the convict had to conform, and passive resistance to various demands (for example putting off until “another time”). The tendency to blame others for their difficulties, the inclination to experience rather negative feelings, the inclination towards pessimism, low levels of efficiency and the tendency towards somatic complaints identified also corresponded to the results ascertained for the Czech prison population. There was also an effort to manipulate others, self-centeredness and a lesser ability to accept the consequences of one’s own action. A conviction among the inmates examined that other people generally lie was also very common. The vast majority of them expressed indifference to the events of the outside world and their temperamental response in the course of the survey was calm to phlegmatic.

Research into the personality of the offender at the Institute for Criminology and Social Prevention is now continuing with research into male offenders/re-offenders (Marešová, Blatníková, Kotulan, Martinková, Štěchová and Tamchyna). The results of this research will be published next year.

The Czech criminological and forensic-psychological approach to the examination of the personality of the offender is not currently based on the concept of there being a fundamental difference between the delinquent and non-delinquent population precisely because recent criminological research has not managed to prove the existence of typical mental attributes to unambiguously predetermine an individual for criminal behavior. The current Czech criminal population is not a homogenous group as far as the essence of criminalized types of behavior is concerned, but is very diverse from the personality side of affairs and it is therefore a problem to compare groups of offenders and “non-offenders”. Certain personality traits, such as aggressiveness, lower intelligence or a lesser ability to empathize, which were previously ascribed exclusively to delinquents, are evenly dispersed throughout the entire population. Coming to the forefront of research in this country is the presumption that individual categories of offenders can be designated using a certain specific complex of personality traits which distinguishes them from other categories of offenders. Therefore, instead of questions of whether offenders differ from the law-abiding population, researchers are asking the question of how and in what respect offenders or groups of offenders differ among themselves. The findings generally lead to typological considerations, i.e. they lead to an effort to create abstract types of offenders from the characteristic traits identified for certain groups of offenders.

All of the reports published at the Institute for Criminology and Social Prevention on research into offenders are invariably accompanied by an *analysis of statistical data* emanating from the Czech bodies active in criminal proceedings on known, criminally prosecuted persons, convicted persons and prison inmates. This information is essential to be able to obtain an overview of the numerical representation that perpetrators of crimes have among the population of the Czech Republic, their make-up and the percentages of individual categories of offenders among offenders and in order to generate an idea of the share of the sample tested in the group of offenders as a whole. In particular, this is information about the representation of offenders by sex and basic age category.

There exists a relation between the sex and age of an offender and certain types of criminal behavior. This is based on the one hand on physiological differences and on the other on the effect of the social environment, which differs depending on the sex and the age of a person. Personality also changes at each age level of a person's development. Ensuing from this is a diversity of response to the same specific life situations among people of different sex and age. This is seen, inter alia, in the prevailing criminal activity of men and women for different age categories of offender. For example, group criminal activity predominates among children and youths. Criminal activity associated with drugs is evident when pursued by addicts, with the aim of getting drugs, in this case mainly by young people, and when drugs are a source of profit stemming from organizing the production and distribution of drugs and money laundering, in this case by adults. Organized crime and economic crime is the domain of the middle aged, mainly men. Different types of sexual crimes are specific for younger people, older people etc.

The greatest level of attention is consistently devoted to the *age category of children and youths*, i.e. people aged between 6 and 7 and 18 years of age, mainly for the reason that the “most prospective” criminal careers begin at precisely this stage. It is also most appropriate and most socially desirable to make inroads on the still immature personality during this period. It is also a preventative measure against later criminality among these people and against recidivist criminal activity in general (Večerka et al 2004, 2008).

Analyses of criminality among children and young people carried out by the Institute for Criminology and Social Prevention for the needs of the area of interest confirm the opinion that criminality among young people (at least as far as the number of registered crimes and offences is concerned) increases with age. (Culminating at the “young adult” stage.) In absolute figures, the number of twelve-year old delinquents is roughly two times lower than the number of fourteen-year old delinquents. In terms of the overall incidence of minors,

every year more than one-quarter of offenders are younger than 12 at the time of committing a crime and three-quarters are older than 12.

The make-up of criminal activity from the perspective of representation of individual crimes committed by young people has remained invariable for years, with theft (simple theft and burglary) dominating.

The make-up of criminal measures imposed supports the opinion that courts are relatively tolerant in their approach to young delinquents. The occurrence of young people in Czech prisons also corresponds to this approach. The number of registered (cleared up) crimes (otherwise criminal acts and offences) committed by offenders under the age of 18 has been falling every year in this century. The number of known delinquents in this age category is also falling. The total drop in criminality among young people is mainly influenced by a drop in registered property crime committed by them, principally theft.

However, whether there has actually been a drop in criminality among children and young people is an unanswered question. It would seem rather that manipulation of criminal legislation and changes in reporting and statistics have seen us reach a stage at which it will be difficult for us now and in the near future to provide a serious answer. The criminalization of certain types of action and behavior and the decriminalization of others is done more or less at random and is mainly motivated by political pressures without consideration for the majority of clearly given consequences.

In the case of criminality among women, criminology offers two possible interpretations of the reasons for their having a low share: "It is either that women genuinely do act in a less criminal manner, even when nobody is watching them. Or it is that they secretly act just as criminally as men, but are less criminalized, meaning less detected and convicted, by the bodies of criminal justice."⁷⁰ The usual conclusion of our research is as follows: "Both contentions are correct to a certain extent". Quite a lot of research principally devoted to female inmates, meanwhile, has been carried out by the Institute for Criminology and Social Prevention (compare research into first-time female inmates and imprisoned female perpetrators of serious crimes).

There was an increase in the percentage of women among convicted persons in the Czech Republic in general after 1990, from approximately 9 % at the beginning of the 1990s to 14.3 % in 2006. However, the female share had again fallen to 13 % by 2009.

⁷⁰ Šmausová, G.: Trestní právo a kriminalita žen (The criminal law and female crime). Právník, 1992, No. 3-4, pp. 264-280.

The lowest levels of attention in criminology were and are devoted to older people, who make up a numerically negligible share of offenders (less than 1 % of the delinquent population). At the same time, the make-up of criminal activity among people from 60 years upwards differs significantly from the criminality of other age groups with its predominance of violent crimes (verbal and physical, intentional and through negligence) over crimes against property, which by contrast predominate among all other age categories of offenders. Nonetheless, one study at the Institute for Criminology and Social Prevention was dedicated to this topic (Martinková 2009).

The use of criminological knowledge about offenders (including the knowledge presented here) in Czech criminal law, both substantive and procedural, is common, but should be even more frequent, in particular:

- When dealing with problems and compiling the general objectives of penal policy. For example, the final decision when determining the lower age limit of criminal liability, in discussions of the criminalization of handling drugs and on the formulation of what actually constitutes a particular crime, in the statutory regulation of the institute of insanity, in introducing new types of punishment and protective measures or in the reform of existing punitive sanctions should be preceded by an empirical investigation of the effect of measures applied thus far and an experimental check of newly-proposed measures.
- In individual decision-making (in the course of individual criminal proceedings, in the onward treatment of a particular offender) when identifying the intent of the offender to commit a crime, in identifying the motivation (motives) of the offender and in deciding on punishment (as part of the individualization of punishment) and on conditional discharge.

The basic information obtained from the delinquent himself, from material and documentary evidence, from expert opinions and other evidence, confronted with modern criminological knowledge, should thereafter determine the onward treatment of an offender, the choice of sentence and protective measures, influence the length of imprisonment imposed and the choice of prison etc.

In the case of imprisonment, this knowledge would determine the onward treatment of the prisoner, how to have an educational effect on him and subsequent incorporation in society after being released from prison.

- When determining special approaches to certain categories of offenders (in particular young people, drug addicts, persons having a psychiatric issue, recidivists, persons with

a mental defect), at which time the representatives of criminal law must cooperate with other scientific disciplines, whose scientific knowledge is essential for the effectiveness of criminal proceedings in relation to a specific offender, when compiling programs of treatment for convicts in prison facilities and when dealing with a range of other issues.

Discussion of the offender's view of his onward direction in life, his view of the future, is an integral part of considering the topic of perpetrators of crimes. After all, an estimate of the content of his future life - whether he will continue in his criminal career or whether there is hope that he will radically or less-radically discontinue this career after having served the sentence for the crime committed - is often used to impose a specific sentence on an offender or is taken into consideration in acknowledging mitigating circumstances in his criminal behavior. That is why discussion of *prediction of an offender's future behavior, including prediction of his possible recidivism* (the regressiveness of criminal behavior) is directly part of a chapter on the perpetrators of crimes.

Recognizing the personality of a recidivist, its structure and dynamics, its development and motivation of behavior, is key to understanding the behavior and action of the recidivist, including the reasons for his criminal action, and should subsequently be used to prevent any repetition of such behavior. A deeper understanding of the personalities of recidivists (repeat perpetrators of the same and different crimes) usually provides important knowledge of the traits that create the right conditions in the individual for the breaking of social norms. It can also be expected that such traits are probably easier to uncover among the re-offending population of offenders than for people whose criminality is clearly of an episodic nature, if it is not the result of a random constellation of conditions or exceptional personal failure. Criminal recidivists are the "hardcore" criminals mainly because they are evidently resistant to the efforts of society to achieve their re-incorporation into normal, i.e. non-criminal, life. Such efforts have for years been predominantly restricted to sanctions, even though it is known that a punishment only blocks undesirable behavior, but does not generate suitable alternatives. Programs for dealing with criminal recidivists ought to primarily focus on creating positive motivation for change and their constituent parts should comprise techniques aimed at breaking down the mechanisms that allow recidivists to maintain a positive self-image in spite of the repeated rejection of their behavior by society.

Recidivism in the sense of criminal law is understood to be the commitment of a new crime (willful or negligent) after the offender has been finally and conclusively convicted of a previous crime. The criminological concept is, as is usually the case, broader and recidivism is understood to be the repeated commitment of a crime irrespective of whether the offender

was convicted or even prosecuted of/for a previous crime (or crimes), with emphasis placed on the intent to commit a crime.

One further difference between the criminal law and criminological concept of recidivism is based on the fact that, in the legal sense of the word, it is not recidivism if, as far as previous conviction is concerned, an offender is considered as not having been convicted, which is irrelevant to the criminological concept of recidivism.

However, the penological (penitentiary) concept of recidivism is met if the same person serves a prison sentence at least a second time.

A qualified estimate of the future behavior (action) of an offender, in particular consideration of the likelihood that he will commit a crime again in the future (i.e., whether he is a recidivist), is termed *individual prediction*.

At the base of “predictive considerations” is the assumption on a certain number of *risk variables*⁷¹ (*factors or predictors*) *having a direct relationship to criminal behavior and therefore to its repetition – recidivism*. Such considerations come from expert literature that focuses on examining the causes of criminality, in which theoretical and empirical knowledge is discussed, in particular the results of longitudinal research studies. We are still looking for variables that would distinguish between “chronic” offenders (for whom criminality is part of their lifestyles and who commit crimes “regularly”) and those for whom committing a crime is merely “drifting” from an otherwise problem-free life (just an extraordinary episode due to, for example, “youthful imprudence”) – i.e. just a random act. Research and statistical analyses therefore help distinguish factors which are mere symptoms from factors which can be directly or indirectly incorporated into the causes of criminal behavior by an individual. The occurrence of risk (criminogenous) factors thereafter signals the likelihood of problem (criminal) behavior in the life of the individual. These factors are currently relatively well identified (and documented by empirical knowledge), but their mutual relations are not sufficiently clear.

The risk factors that are used for the prediction of criminal behavior might be of a static nature, i.e. they are constant or only change in one direction; for example, the age of an offender can only rise and the number of crimes which he has committed can only rise. Such signs and probable indicators of the future criminal behavior of the person under consideration are significant, but cannot be influenced by the majority of outside encroachments. By contrast, intervention is to a certain extent possible for so-called dynamic

⁷¹ The term of criminogenous or risk factors is used to denote the risk factors (whether causes or conditions) which bring about, facilitate or support the criminal behavior of an individual.

risk factors (also termed criminogenous needs); they can be modified and can therefore be the target of the corrective treatment of an offender. These are traits or characteristics of the actual life situation and environment of the offender, such as existing ties, communication and contacts with/to partners in crime, the loss of employment, the abuse of addictive substances or a pro-criminal (asocial) attitude, values or the irrational styles of thinking of the offender.

The use of only static variables or a combination of both types in models of assessing the risk of recidivism of an offender depends on the purpose at which action is directed. Predictions used by the judiciary for decision-making about the types and size of sanctions will take another form, as will predictions whose purpose it is to optimize the treatment of the convict while he serves his sentence.

The methods used in individual prediction are as follows: statistical (for example prediction tables), clinical (expertise) and intuitive.

The statistical method of individual prediction builds on special sociological predictive methods of forecasting the future development of the phenomenon under consideration. In the case of criminality, knowledge draws on the situation and causes of current criminality and on the persons of the offenders, including knowledge of criminological analyses and research into criminally prosecuted and imprisoned persons.

The basis of such predictions is the application of knowledge of an aggregate of risk factors that were ascertained as significant accompanying signs of the origin of individual criminal behavior. Certain criminologists put together so-called prediction tables using such factors.

The clinical method is usually applied as part of examining the personality of an offender in compiling expert opinions for criminal proceedings and is mainly used for the decision-making of the court as regards sentences and protective measures. It most commonly depends on the fact that the experts investigating the mental condition of the convict simultaneously comment on the question of whether it is dangerous for him to remain free (Section 99 of the Criminal Code) and considers the risk of his recidivism in the future. Intuition is also applied here to a certain extent, but is only one of the factors in the assessment process (for example the expert report of a psychiatrist, psychologist etc.).

The intuitive method is used as an individual appraisal of the future behavior (criminal behavior) of a person being investigated by the police, of a defendant, a convict, an inmate or a person receiving treatment carried out by an experienced expert (for example a judge, psychiatrist, police or prison psychologist) when determining the type of punishment and its size, other measures and the methods of onward treatment of the offender (for example in

prison in proposing the interruption or premature termination of a prison sentence, when individualizing imprisonment and selecting medical treatment procedures). This manner of consideration is based on an “insight into the personality of the offender”, on knowledge of his life conditions, on the degree of empathy of the assessor and on the experiences the offender has had with the assessor to date.

The prediction of future development in the criminal career of an offender can be unambiguously positive; i.e. that in all likelihood an offender will give up his criminal behavior; or can be unambiguously negative (recidivism will occur) or can be indefinite – ambiguous. The risk of a mistaken prediction rises in the last case and the assessor decides whether his prediction will be falsely positive (he terms the offender as now being “harmless”, even though he remains dangerous) or falsely negative (he terms the offender dangerous and in actual fact he is not dangerous). Even when using what is currently the most complete method, it is impossible to unambiguously formulate a “good or bad” forecast, but it is possible to make a statement on the probability of future development in the behavior of the offender (for example, on the recidivism of the person under consideration after being released from prison). No universal forecast systems exist.

Consideration of the possible recidivism of an offender and the instruments suited for this purpose have been long in development. The first instruments were purely clinical in nature and placed the emphasis on an expertly and professionally led interview with the offender using a series of questions that were on the whole not standardized. Typical of the second stage of the development of predictive instruments, whose blossoming roughly dates back to the 1970s (in the world and in this country), was an endeavor to use only precise and invariable facts. Basic risk factors were identified as relating to criminal behavior and as corresponding to the statistical knowledge gained using analyses of materials concerning offenders (for example, information from the criminal case history of the offender; age at the time of committing the first crime; number of previous convictions; type of crime; number of unsuspended sentences (imprisonment); numbers of and reasons for conditional discharge or breach of imposed suspended prison sentence and conditional discharge). So-called dynamic (variable) risk factors, termed the criminal needs and criminal attitudes of the offender, were incorporated in the static consideration of criminogenous factors during the 1990s. The advantage of knowledge obtained from analyses of dynamic factors was their usefulness in determining ways of future treatment of (primarily) imprisoned offenders and in considering the possible risk of their recidivism. It is important to add that a certain degree of “subjective clinical opinion” still forms an inherent part of the application of these modern approaches.

Predictive instruments for assessing the risk of the recidivism of an offender have recently been given greater attention in this country, mainly in corrective treatment of an offender when serving a prison sentence, with the aim of making this treatment more effective. Employees of the prison service, probation and mediation officers require clearly formulated and defined variables for their work so as to be able to put together a specific program of treatment for individual offenders and groups of offenders. This is also the intent of instruments that are now being used in pilot operation in the Czech prison system. The aim is the possibility of determining a program of dealing with a specific inmate at the time of the initial assessment and then later, during imprisonment, the possibility of reviewing and, as the case may be, altering the treatment program.

However, the objectivity of prediction instruments still depends on theoretical-criminological foundations, mainly on research into individual risk factors, and also on changes in the make-up of the criminal population (the make-up of the prison population) for which they were compiled and tested and on the situation in which they were used and what purpose the prediction instrument is to serve.

Individual predictions invariably draw on the personality characteristics of offenders, the peculiarities of their social development and learning, their lifestyle and social environment etc. Negative development of the individual (associated with the occurrence of his future criminal behavior) is usually expected when identifying the following risk factors: the criminality of predecessors, problem primary social environment, poor school results and behavior at school, the occurrence of asocial behavior in childhood, an early start to criminal activity, incomplete education, problem adolescence, lack of qualification, a poor relationship to work, an inappropriate way of sustenance, a socio-pathological way of spending free time, mental retardation, the occurrence of mental disorders and behavioral disorders, drug addiction, compulsive gambling, social inflexibility (maladaptation), recidivism of criminal activity and repeated imprisonment, bad incorporation in society after release from prison etc.

A points approach is usually applied when considering such or similar findings in which individual risk factors are considered and their number or percentage is used to make a judgment on the likely re-occurrence of criminal activity in the person under examination.

One piece of research at the Institute for Criminology and Social Prevention (Blatníková, Netík 2008) focused on the creation of a prediction instrument with which to consider the risk of repeat conviction (recidivism). The criteria for such an instrument included the availability of data for the user of the presented instrument (prison workers, for judicial proceedings), simple administration and evaluation and unambiguously formulated

results. Static risk factors were chosen, and therefore the sort of data that is available to judiciary workers in the course of criminal proceedings (official records of a criminal career represented by data from a copy of an entry in the criminal records). Of the original list of twenty variables, a five-item version of the instrument was created with which to predict the risk of the repeat conviction of an offender. The predictors mentioned included: “criminal multi-recidivism”, defined as three and more convictions in the criminal records of an offender, information about the first conviction of an offender before his 18th birthday, “breach of duty”, which was defined as conviction for the crime of frustrating the serving of an official sentence (now Section 337 of the Criminal Code) in the criminal case history etc. An important predictor that is also stated in foreign research was age at the time of the offender's first conviction. In the body of research on which the instrument was provisionally tested, “age at the time of first conviction” correlated with practically all characteristics examined – of high significance from the statistical perspective, for example, with the overall number of convictions, recidivism of criminal behavior after release, especially for violent criminality.

More or less every decision on a punishment or protective measures is associated with the determination of individual prediction. This requirement stems from statutory regulation in the application of punishments in the Czech Republic, in particular from Section 39 of the Criminal Code, according to which the court, when determining the type of sentence and its size, takes into consideration the possibility of reforming the offender. The most common method applied in determining individual prediction is the intuitive method, which is common and irreplaceable in our day-to-day judicial and prison practice and which mainly draws on the professional experience of judges and other personnel. This situation is without doubt unsatisfactory. A contribution towards its improvement could be made by increasing the criminological education of the specialists working in the sphere of criminal justice and by compiling new prediction instruments to build on the current level of knowledge, which could be a valuable aid, but which obviously cannot replace a comprehensive analysis of each case.

The clinical method, which can offer very good results, should also be applied more extensively in the Czech Republic. Among its disadvantages, however, are its laboriousness, the time demands involved and its costliness. However, it should evidently be obligatorily applied in decision-making on conditional discharge from life imprisonment.

Its rigid or mechanical application, which does not take into consideration the fact that the accuracy of the forecast depends on the knowledge of complete and accurate information

about the persons under consideration, which is difficult to get hold of for most people and whose completeness is almost unattainable, should be warned against in individual prediction.

So-called programs of handling inmates should also be compiled in the Czech Republic based on individual prediction. According to Section 40 of Act No. 169/1999 Coll., on the imprisonment, prisons as a rule determine for each and every convicted inmate a treatment program as the basic form of purposeful and comprehensive action on him. This program is compiled on the basis of a comprehensive report on the convicted person with regard to the length of the sentence, the characteristics of his personality and the causes of his criminal activity (Section 41). Abroad, such individual programs are sometimes even compiled for persons sentenced to alternative punishments. The effective reintegration of offenders is one of the conditions of preventing recidivism.

The topic of security detention, much discussed in this country at the moment, is closely linked to recidivism and to the "danger of an offender". It is one of the criteria to define the group of people on whom security detention may be imposed. (*"... Criminal activity committed shall have the character of crime and particularly serious crime and it is dangerous for the offender to remain free given the high likelihood of his recidivism."*)⁷² Forensic expert opinions and expert reports should help in offering an answer to questions of a predictive nature – whether it is dangerous for an offender to remain free as a result of his mental state – and therefore consider the medical and social perspective. From the psychiatric perspective, dangerous offenders to have committed crimes and for whom the following have been identified should be put into security detention: mental disorder (psychotics), intellect deficit (mental retardation diagnosed), sexual deviance diagnosed, serious personality disorder (in particular dissocial personality disorder) and abusers of addictive substances who have committed particularly serious crimes and who have been labeled as recidivists. In other words, murderers and sexual deviants for whom protective court-ordered medical treatment has repeatedly failed should be placed under security detention.⁷³

It is clear that evaluating the personality of the offender and his mental state is an important topic. From this stems the opportunity to differentiate cases in which it is appropriate to impose "only" protective institutional medical treatment and those in which such protective treatment would not lead to sufficient protection of society and when security

⁷² Act No. 129/2008 Coll. on Protective detention.

⁷³ The measure has been in force since January 2009 and five inmates, as these offenders are known, were placed in the Protective Detention Institute in the middle of 2010. In total, courts have decided to impose protective detention (or to change institutional protective medical treatment to detention) in fifteen cases and the offenders will be placed under detention until such time as they have, for example, served their prison sentence, a considerable period of time (for two in particular, who have been sentenced to life).

detention would be apt. These measures have their own specific nature for the offender based on the indefiniteness of the length of detention because security detention lasts as long as required to protect society.

The issue of the perpetrators of crimes cannot be exhausted in a single paper, but that was not the aim in any case. The subtitle of our piece indeed places emphasis on the fact that it is an attempt, unfortunately the only one in the Czech Republic so far, and is therefore imperfect. A more comprehensive view of the issue of offenders is, after all, conditional on the results of discussions with other forensic psychologists or criminologists to concern the empirical knowledge they have collected on the persons and personalities of offenders.

The Victims of Crime in Current Contexts

According to respectable research carried out in the Czech Republic in 2006, almost two-thirds (63.5 %) of the roughly three thousand respondents asked, citizens of the Czech Republic, were victims of at least one of the ten offences monitored by the survey during the five years under analysis. Almost 40 % of those questioned were affected by more than one of these ten offences during the period in question (Martinková, 2007).

What can we take from these statistics? Among other things that criminal activity in the Czech Republic essentially affects many of us and that whether we are the actual victims of crime or we are told about criminality second-hand, we do also respond somehow to its existence and consequences at an individual level. Many of us are afraid of crime (Zapletal, 2002) and usually adjust our individual activities in life to deal with this, and not just our current life activities. Crime and the phenomena associated with it are becoming more and more a part of our lives. Some of the people living with us in society now take crime as a common risk that life brings with it.

It is evident that society's attention has gradually come to focus more on the perpetrators of this socially undesirable phenomenon throughout its development. The victims, and therefore those affected by crime, remain on the sidelines (see below for a definition of the concept of "victim"). This situation is now changing a little, but certainly not fast enough and to the required extent. However, it is the case as far as the victims of crime in the Czech Republic are concerned that the need for rehabilitation of the position of a victim is heard more and more, in particular in relation to the offender and that the state becomes just as responsible for providing assistance to victims as for punishing offenders.

There are many factors affecting the shift in the development of the situation to concern the victims of crimes in this country and elsewhere. Here we can usually include the pressure that is mainly placed by non-profit organizations which focus on assisting the victims of crime, the response of mainly politicians and constituent parts of government to this and other stimuli, the overall mood of society, a variety of serious, "drastic" events that retrospectively create pressure to solve volatile situations, the influence of the media, rising

crime and consequently the rising numbers of victims that need to be dealt with⁷⁴. Last but not least there is the development of science, and therefore also criminology and victimology, the streams of thought that ensue from them, the knowledge that they bring and the ability to assert and use this knowledge in practice.

Efforts have been made in various countries in recent years, mainly in non-governmental organizations that concentrate on the victims of crime, to ensure that the dismal situation around victims is finally dealt with more effectively than has been the case until now. The stimuli to come out of such institutions, sometimes international institutions, are mainly directed at protecting victims and assisting them. The various recommendations offered by the organizations in question try to assert these in law so that they subsequently have a serious impact in practice. In this way they attempt to influence national and international events in this area, even if we are talking about the territory of the European states in particular. The initiatives of such organizations, dealing with the victims of crime, are partly to thank for the fact that various documents have now been accepted by the bodies of the European Union and the Council of Europe, some of which have made it into the legal orders of European countries⁷⁵.

The multinational Victim Support Europe (founded in 1990 and acting until 2008 under the name of European Forum for Victim Services), which brings together almost 30 mainly non-governmental national European organizations involved in helping victims (the Czech “Bílý kruh bezpečí” has been a member since 1996), is one such organization active in this field in Europe, focusing on the issue of the victims of crime. This organization, which was set up to support the rights of the victims of crime in Europe, champions the idea that the rights of victims in criminal proceedings must be balanced and must have the same priority as the rights of the accused. The scope of activity of the organization as far as the victims of crime are concerned is relatively broadly directed and expertly oriented (see www.victimsupporteurope.eu for more details). This European organization has also come up with several important recommendations to concern the victims of crime⁷⁶, something also reflected in later international events in the area of law.

⁷⁴ For example, in the Czech Republic alone in the past six years the police annually register around 50 thousand people directly afflicted by criminal activity (see Martinková in Marešová et al., 2009).

⁷⁵ For example, the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Council Directive of 29 April 2004 relating to compensation to crime victims, Recommendation of the Council of Europe of 14 June 2006 on assistance to crime victims.

⁷⁶ Victim Support Europe, as part of cooperation among international organizations involved in assisting the victims of crime, has compiled, for example, Statement on the rights of victims in criminal proceedings (1997), Statement on the social rights of the victims of crimes (1998), Statement on the rights of victims to

It is also important to point out that extensive research was carried out with the support of members of Victim Support Europe on how the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings⁷⁷, a significant document adopted by the EU Council and one that can be considered central as far as the approach to the victims of crime is concerned, is being performed by EU Member States. The findings, which were sometimes not exactly satisfying, were published in 2009 (see Victims in Europe, 2009, for more details).

There has also been a shift in development on academic soil in recent years as far as activity focusing on the victims of criminal activity is concerned. This is reflected, as Jaishankar (2008) points out, *inter alia* in the fact that victimology, as a discipline which deals with the victims of criminal activity⁷⁸, and its place among the sciences are issues that are being discussed more and more. The shift in its development and importance is also seen in practice in that, for example, two science institutions specially focusing on the study of victims of crime have been set up in the fairly recent past. One is the International Victimology Institute in Tilburg, the Netherlands (INTERVICT), which supports and carries out interdisciplinary research that should also contribute to the overall equalization of rights of the victims of crime and violence in society based on findings and to the support of such victims. Its aim is also to examine victimization from various perspectives. An institute with special orientation on the issue of the victims of criminal activity was also set up in Japan (Tokiwa International Victimology Institute - TIVI). Neither should we ignore in this regard the staging of several international victimology symposiums or the existence of The World Society of Victimology (founded in 1979), a non-governmental organization that has special consultative status at the UN and the Council of Europe. It is also necessary to state the existence of several national victimology societies, while the International Victimology Website (founded in 1999) is also on hand to provide various information and knowledge. A number of specialized magazines look at the issues involved in victimology.

According to some authors (victimology being predominantly considered a part of criminology until now), in spite of the fact that we can talk of its gradual development,

standard services (1999), Statement on the position of the victim in the process of mediation (2004) and others (see also The Rights of Victims of Crime, 2005, for more details).

⁷⁷ This document attempts to introduce the same standards in dealing with the victims of criminal activity in all EU Member States.

⁷⁸ According to Kirchhoff (in Jaishankar, 2008, p. 1), victimology can now be characterized as: "... the social science of victims, victimizations and the reactions towards both – with reactions and interactions comprising the most important field: reactions of victims, informal reactions of the social environment leading to secondary victimization on one side, to the criminal justice reaction as one important reaction of the formal system of control on the other side".

victimology is struggling with some serious problems at the moment. For example, according to the previously-mentioned Jaishankar (2008), who tried to put names to these problems and comment on them, it is about the following: in his opinion, victimology is battling with having a lack of its own distinctive theoretical orientation. It is waiting for the creation of generally valid theories with a broad field of impact. The author in question goes on to say that a large part of victimology, as with criminology, has thus far been based mainly on sociological theories. He states that certain authors have attempted victimology models, but that these were not accepted (he mentions an attempt by Fattah, 2000, Scheider, 2001, in Jaishankar, 2008). He also claims that even though certain features of victimology theory have been created, they only cover a small part of the subject-range of victimology.

Jaishankar also says that greater emphasis in victimology studies and investigations is currently placed on the rights of victims and on helping them than is placed on theoretical problems. In his opinion victimology is focused more on application and little on research and few studies are carried out into, for example, the causality of victimization, the victim-offender relationship, victimogenesis and so on. According to the author in question, scientists should concentrate more on the theoretical questions surrounding victimization because in his opinion non-profit organizations and government institutions are involved in practical areas (assistance, the rights of victims). He names, for example, Elias (1994) and Fattah (2000) (in Jaishankar, 2008), who consider that victimology has lost its scientific rigour. According to the first of them it happened because of humanistic influences, whilst the second claims that social and political influences have appeared.

Another problem of contemporary victimology is according to Jaishankar (2008) the fact that it is not taught much at universities, which results in the fact that no basic conditions have been created for splitting this scientific discipline from criminology and for its onward, independent development as a branch of science.

He goes on to say that victimology, even though it might not appear so, is not well recognized as a discipline by the wider international community and if it is not taught at universities to a sufficient extent, it generally requires more distinctive support. He considers that victimology is only accepted in certain European and Commonwealth countries. National victimology societies have only been set up in certain countries of the world and if they do exist, there is not enough national awareness of them. In his opinion, victimology is currently developing mainly in the official environment (because government officials must respond somehow to criminality and its impacts and must therefore also take an interest in the victims so that they can be paid compensation, for example). Nonetheless, responsibility for the

development of victimology as an independent academic discipline and the conducting of main victimology research lies in the hands of the scientists according to the cited author.

The final major problem of victimology, claims the author mentioned above, is in the current broadening of its scope of activity because contemporary victimology is in his opinion seen from an atomistic view and not from a holistic perspective (he feels a lack of view of, for example, victimization in the case of genocide, riot or terrorism victimization) and that the discipline is lacking interdisciplinary research in conjunction with political sciences and sociology. It is within this context that, according to Jaishankar, the boundaries of victimology are currently being debated (see, for example, Groenhuijsen (2006), Dijk, Groenhuijsen, Winkel (2007) in Jaishankar, 2008). He comments that certain researchers would like to include the victimization of animals and the environment in the discipline (Simon, 2007, in Jaishankar, 2008). There are also those, however, who view victimology from a narrower perspective, namely forensic one. They argue the need for a new discipline, forensic victimology, which would be free of various political and ideological influences or a range of preconceptions about victims (Turvey, Petherick (2008) in Jaishankar, 2008).

It is clear from this that the onward journey of the development of victimology, the science of the victims of crime, not just as an independent discipline of science, will probably be very complicated. It can be anticipated, nonetheless, that it will perhaps progress more quickly than until now both with regard to the practical importance of the topics which it concerns and with regard to the rising interest of society in the victims of criminality as such.

In victimology, as in every other branch of science, special terms are used that relate to the subject-matter of its interest. You will come across definitions of these terms (and consequently the subject-matter of the study of victimology), especially the basic terms, in almost all publications focusing on criminology and simultaneously devoting attention to the victims of criminal activity (in this country, for example, Válková in Kuchta et al., 2005, Musil in Novotný, Zapletal et al., 2004, Tomášek, 2010). Discussion, however, is still ongoing on the definition of some of these. Among the basic terms used in victimology are the victim of crime, victimization, types of victimization, susceptibility to being a victim, victimogenic factors, victimogenesis, typology of the victims of crime and so on. Among other terms that victimology works with and which are able to indicate the possible breadth and diversity of everything that victimology might contain more specifically are, for example, the multiple victim, the especially vulnerable victim, the career of a victim, the role of victim, the Stockholm syndrome, learned helplessness, the self-destructive reaction of the victim, the escape syndrome, the “labeling” of the victim, fear of crime, the victim-offender relationship,

the victim as a legal entity (various institutions, groups, for example the army, church etc.), the category of “victim” sorted according to the needs of practice or according to criminological perspectives (not a typology of victims) etc. Paradoxically, certain problems are caused by the definition of the basic term of victimology itself; the term of the victim of crime. Sometimes the definition is narrower, other times broader; it depends on the purpose of use. At the same time, as Tomášek says (2010, p. 153), “... neither victim nor crime ... are universally valid terms, but concepts conditional on the culture and the time.”

If we return to practice from our considerations of the terms used, according to one important European document of recent times⁷⁹, we can consider a victim of crime to be an “individual” who suffers injury, including physical and mental injury, emotional distress or economic loss caused by actions or their omission which are at odds with the criminal law in a Member State. Where appropriate, the term victim also relates to the closest family or persons dependent on the direct victim. A victim of crime is generally understood in the Czech Republic to be “... a specific individual who as a result of a crime has been killed or injured or who has suffered a threat to life or health or who has suffered damage to property or moral damage, who has been restricted in freedom or other rights, independent of whether he is subsequently ascribed the status of “injured person” in a special procedural decision⁸⁰” (Marešová, Martinková, 2009, p. 42). The bodies responsible for criminal proceedings in this country often use the term “injured person” synonymously with the term victim of a crime.

It is clear from events surrounding criminality in the Czech Republic that not everyone has sufficiently taken on-board that the victims of crime are an inherent part of the system of criminal proceedings, that recognition of the issue of victims in the broadest social and psychological context plays a role in helping the victims themselves and in the preparation and carrying-out of preventative measures against crime and that knowledge of the victims of crime and knowledge obtained from the victims (for example, in the form of information from victimology research) can play a part in shaping the penal policy of the state.

In the given circumstances it is therefore necessary to mention in more detail at least the most important roles of the victims of crime. Among these are primarily that victims: 1. have an influence on the occurrence and course of criminal action⁸¹; 2. are the bearers of criminalist trails, are the source of information about offenders and about the potential

⁷⁹ Recommendation of the Council of Europe on assistance to crime victims, approved on 14 June 2006.

⁸⁰ The content of the term “injured party” can be found in p. 43 of the Criminal Code valid in the Czech Republic. According to this provision, “injured party” is “whoever suffers harm to health, damage to property, moral damage or other damage as a result of crime”.

⁸¹ At the same time the relationship between the offender and the victim (if one exists) influences the occurrence and course of a crime and the effectiveness of all other basic procedures of criminal proceedings.

motivation for an attack and are witnesses in criminal proceedings; 3. are active participants in the investigation of a crime and the course of criminal proceedings; 4. are a source of information in finding out the real impact on society of a crime, are a source of information in identifying the scope of latent criminality and are a source of information in monitoring the success rate of preventative measures taken against criminal activity (this is usually ascertained as part of the abovementioned victimology research⁸²) (see Marešová, Martinková, 2009, for more details), 5. the victims of crime registered by the police are a specific aspect of the criminality registered in a country; they show from a certain angle a view of the impact of the crimes committed and registered by the police on the individual and on society; 6. the victimization of the victims of certain types of criminal activity (for example, hate crimes – see below for more) can in certain cases play an important role in destabilizing society (also see below).

It is clear that countless questions relate to most of the above-mentioned roles of the victims of crime, which from the practical perspective might be seen and resolved differently and that might currently be found at different stages of understanding and processing at a theoretical level. Nonetheless, some of these issues are more current than others in this country from the practical impact perspective. I shall only touch on two such problematic spheres, whose importance perhaps cannot be neglected in connection with the victims of criminal activity with respect to the current status and development of Czech society and to which more attention will have to be paid than until now. I will talk of the issue of victimization caused by so-called hate crimes and of the issue of repeat victimization.

I will pay attention to certain findings on *repeat victimization* because it is one phenomenon relating to the prevention of criminality and to the manner of carrying out analyses of data about criminality which has not been entirely appreciated in practice. Last but not least, it is significantly related to effectively helping the victims of criminal activity. I concentrate on victimization caused by hate/bias crime⁸³ because we will come across it in

⁸² This is evident, for example, in Great Britain, where repeat victimology researches are regularly carried out on large representative groups of respondents. The data obtained is also used by the competent state bodies at a national level and at a local level (the preventative activities of the police in the area of criminality included). In addition to this, information from repeated international victimology studies (ICVS) is beginning to come into use in comparing the development of levels of criminality in different countries (see, for example, discussion on the paper *Why are crime rates falling?*, 2010).

⁸³ The term “hate crime” is under constant discussion in professional circles, with a better expression for such acts being sought, a term that would better encapsulate that the emphasis is on hostility (animosity, hatred) - Hate-crime, 2009. As Moulisová says (in Zapletal et al. 2009), sometimes the term “bias” crime is used in certain contexts. As far as criminal activity based on race hate is concerned, the term “race (racial) hate crime” is used. The term “hate crime” is usually considered a more general and broader term than that of “race (racial) hate crime”.

the Czech Republic sooner rather than later. Given that it is usually argued that the effects of victimization in hate crimes (in particular ideologically motivated) are more destructive for society than is the case for so-called “common” crime, I will pay attention to certain important existing findings on this phenomenon.

As far as victimization in hate crime is concerned, we can assume that there are quite a few victims of such offences in the Czech Republic (characteristic of this type of incident is its lower report rate and clearance rate than for so-called common crime; it is therefore characterized by considerable latency (see also Hate-crime, 2009)). With only a few exceptions, the victims of this criminal activity remain outside of the centre of greater interest, even in the Czech Republic. Media attention is mainly devoted to the most serious cases (usually murders, more serious physical harm, often associated with a racist subtext).

According to British sources (Hate-crime, 2009), hate crimes can also be considered crimes and incidents in which the attacker's hostility (hatred, aggression) or prejudice against an identified group of people is the determining factor in who is victimized. The victim, however, need not be a member of a group. Practically anyone can become the victim of a hate crime.

Hate crimes take in a wide range of offences, from harassment, vandalism and intimidation to violent extremism. The victims are often foreigners, asylum seekers, homosexuals, the homeless and members of other population groups. The latter suggests that also in our society, where aggressive and hostile behavior among people is getting more common, practically anyone (from mothers with small, noisy children⁸⁴ to old age pensioners) can become the target of hate of people with intolerant attitudes and of events that stem from this, possibly classifiable as crimes.

Čírtková (2008) states the difference between victimization in hate crimes and victimization in so-called common criminality and summarizes certain findings of victimology from professional work and research into this subject gathered to date. She stresses in advance that hate crimes are non-relational offences, which means that they do not usually arise from personal bonds and contacts between the offender and the victim. The victim is usually attacked simply because he exists; action is taken against his identity. This considerably reduces the chance of preventing victimization. In terms of the fundamental differences between victimization through the types of crime mentioned above, Čírtková (2008) goes on to say that the first trigger of an attack in a hate crime is essentially the

⁸⁴ See certain discussion contributions in the article “Řve vám dítě v tramvaji? Tak si vystupte a neobtěžujte!” (Your child is screaming in a tram? So get off and don’t disturb!) - www.centrum.cz, 27.4.2010.

invariable characteristics of the victim and not the motives of the offender in the classic sense of criminal motivation⁸⁵. Victims are the target of an attack mainly because of their being different. The basis of attack is the difference between the offender and the victim in cultural, social and racial aspects, lifestyle, view of the world (including religious belief), attitude to life etc. An attack on a victim has a common progress dynamic in the sense that physical attack is usually preceded by mental intimidation. What is more, these types of crime are marked by the de-individualization of the victim, but this does not involve only ideological hate crime (which is according to Čírtková really a special psychological category of crime). The author continues that the victim means nothing to the offender and that the offender is convinced that the victim deserves to be victimized. The second fundamental difference between the victimization in a hate crime and that in a “common” crime is, as already stated, the breadth of its impact. Victimization in a hate crime, according to the author mentioned above, also has a symbolic dimension, meaning it has a wider scope of victimization effects than so-called “common” crime (usually “only” the actual victim is affected by victimization in a “common” crime). This makes hate crime all the more dangerous. It essentially has triple impact. According to Čírtková (2008), the victim and his or her relatives and friends are affected, as are other members of the group to which the victim belongs and eventually society as a whole has to deal with this victimization given its effects. The author in question therefore points to the destabilizing influence of hate crime on society, to the possibility of serious disruption of relations between groups of the population. In her opinion, hate crime also has a group background and can bring about group conflicts. In this regard she points to the danger of victimization ecstasy in a group (reveling in violence/victimization). The author also says that it is impossible to expect the perpetrators of hate crimes to spontaneously correct themselves and emphasizes that state hesitancy in striking at this crime will certainly not lead to the self-correction of offenders.

Particularly the latter possible impacts of victimization in hate crimes should be a topic for experts, politicians and the bodies responsible for criminal proceedings to gain a better understanding of the issue of this victimization, not just the one motivated by ideology, and its effects. Neither should practical questions regarding the prevention of offences and crimes based on hate, intolerance and prejudice remain in the background of general interest.

⁸⁵ Moulisová (in Zapletal et al., 2009), for example, discusses categories of motivation among the perpetrators of hate crimes. According to McDevitt et al., they are divided into so-called thrill motivation, defensive motivation, retaliatory motivation and mission motivation.

It ensues from various documents that many states come up against victimization of people as part of hate crimes (see, for example, the data in Hate Crimes in OSCE Region report, 2009), including our own. One of the traditionally more active countries in terms of this phenomenon as far as prevention and intervention are concerned has been Great Britain. There a national action plan entitled Hate Crime – The Cross-Government Action Plan was recently announced to run alongside other existing programs⁸⁶. This plan is aimed at further improving recourse and at limiting hate-based crime and offences (including the reduction of repeat victimization). As part of this action plan the Brits want to significantly improve cooperation with the victims of this crime at a nationwide level. The aim is to make sure that those afflicted are more willing to report that they have become the victims of a hate offence and to get as many perpetrators of this crime as possible before the courts and have them genuinely punished for this. In addition to other plans targeted at prevention and intervention, mainly at the local level, another aim in Britain is to obtain more and more up-to-date information about the nature, character and real extent of hate crime among their population. They plan to concentrate more on research and learning about the so-called intersectionality⁸⁷ of hate crime. They are also focusing more on preventing the incitement of hatred over the Internet (Internet hate crime action plan) – for more see Hate-crime, 2009.

Given the commonly low levels of reporting the criminal activity in question among victims and the low clearance rate of incidents in this area, the question to what extent it will be possible to improve the detection of this type of victimization in the near future, even though in Britain they are working on not forcing victims to report a hate offence to the police directly, but instead through someone else, perhaps even anonymously (for example through the community or by using a form at the post office or on the Internet)⁸⁸.

The second problematic sphere associated with the victims of criminality which we will briefly touch on in this paper and which will possibly rise in practical importance in the future is repeat victimization. This does occur in relation to the victimization in hate crimes

⁸⁶ See, for example, the Victim Support project, which focused on identifying the needs of victims of hate crimes with different motivations (see Zločin a předsudek, 2008, for more details).

⁸⁷ An examination of intersectionality relates to the fact that the identity of each individual is formed by a complex of interactions of different characteristics such as race, faith or beliefs, handicaps, age and sex (whether transgender or otherwise sexually oriented). The interaction of the above factors (race, sex, age etc.) creates the way in which people are seen by others. It is considered that certain incidents and hate crimes are motivated by hostility based on more than one of the recognized elements which are considered to primarily instigate hate crimes (race etc. - see factors mentioned above). Hate crimes can therefore be motivated by a number of factors at the same time; for example the victim is of a certain ethnicity, is homosexual and is physically handicapped (Hate-crime, 2009)

⁸⁸ The victim of a hate offence (and other any other crime) in the Czech Republic need not report it to the police only, but may go through any body active in criminal proceedings (public prosecution office, court).

mentioned above, but here our aim is to consider repeat victimization at a more general level. This we will do because this phenomenon⁸⁹, far from being exceptional, is not universally perceived as sufficiently important from the perspective of detecting and preventing crime. The information taken from work to focus on repeat victimization⁹⁰ is for the time being used more intensively in practice in preventing criminality in only a few countries, with Great Britain being one of these exceptions.

As far as the Czech Republic is concerned, cases of repeat victimization among certain groups of people are kept on record with the police⁹¹. However, these records are not further used for direct work with victims at an individual level as is the case in the aforementioned Great Britain. The police in this country do not collect data on repeat victimization for the needs of increasing the protection of individual victims, but to better find and strike at the perpetrators of crimes. The police collect data about repeat victimization of people for their own needs only. Annual police reports on the total number of victims of crime on record in this country do not take the repeat victimization of individuals/victims of crime into consideration.

But what exactly is repeat victimization? The most commonly quoted and perhaps most respected definition of repeat victimization can be considered the definition provided by Bridgeman and Hobbs (in Pease, 1998). They consider as repeat victimization when the same person or same place is exposed to more than one incident in the course of a certain period of time. Nonetheless, not even this definition has been able to eliminate further possible questions in practice in defining repeat victimization⁹².

⁸⁹ Evidence might come from the results of research carried out here. For example, respectable victimology research in the Czech Republic from 2006 showed repeat victimization (i.e. a person became a victim more than once in the year under investigation) for around one-fifth of the victims of personal property theft (20.2 %), for example, for around a quarter of the victims of breaking and entering (23.4 %) and for around a tenth of the victims of violent robbery (9.1 %) (Martinková, 2007).

⁹⁰ For an overview of certain studies into repeat victimization see, for example Farell et al., 2000.

⁹¹ A register of police statistics focusing on “objects of attack – persons” is compiled in the Czech Republic to obtain knowledge of the repeat victimization of certain groups of people. This shows the people for which repeat victimization is specially recorded. These are those involved in road traffic, people with reduced opportunities for defense, certain possible victims of sexual attacks (for example homosexuals, prostitutes, people with various sexual deviations), people whose condition or activity makes attack easier (for example the handicapped, people doing a certain type of job), immature people and people sorted from the perspective of social position (for example professional firemen, rescue workers, police officers, gas station attendants, doctors, public transport drivers etc.). (See also, for example, Martinková, 2009, for more details of the system of police records of victims of criminality).

⁹² When defining this phenomenon, it is possible at the practical level to deal with the question of what to consider the object of repeat victimization (the same people, the same environment or both?); what period of time is used to count repeats; what types of crimes are counted in repeats (one type of crime against the same person (car theft) or more than one type (car theft, domestic violence); how do we find out about previous criminal activity against the victim (by asking the victim or by using official records, perhaps

Certain empirical knowledge summarized by Pease (1998), considered fundamental in this area, is very often mentioned in relation to repeat victimization and to the reasons why to look at it from the theoretical and practical perspective. Some of the main findings are found in the following summarization of the characteristics of repeat victimization offered by Pemberton (2003). In relation to repeat victimization: 1. the victimization of a person is the best predictor of his further victimization (a mechanism described in more detail by, for example, Čírtková, 2000); 2. a small number of victims of crime are affected by a disproportionately high number of crimes⁹³; 3. the probability of repeat victimization is directly proportionate to how many times a person has already been victimized; 4. the risk of repeat victimization is highest just after previous victimization; 5. the information presented in point 4 applies to nearly all types of crime, whether directed at persons or property; 6. the willingness of victims to report a crime to the police falls with each further victimization; 7. the trust of the victim in the police falls with each further victimization; 8. the feelings of insecurity and danger experienced by the victim rise with each further victimization; 9. the likelihood of mental problems among people affected by the crime rises with each victimization; 10. precisely those tactics which are based on the concept of repeat victimization are effective in the fight against crime.

According to Pease (1998), the phenomenon of repeat victimization is useful, *inter alia*, because it allows attention to focus on people at increased risk of crime based on the fact that they have already been victims of this socially undesirable activity several times before (it consequently concentrates on the individuals most at risk of further victimization in the future) and because according to what we know to date it is sometimes best to get to perpetrators of crimes that are usually more seriously involved in a criminal career via repeat victimization. It also improves the identification of selected criminal activity because it often allows us to look at the criminal activity as a whole rather than as individual actions taken by offenders independent of each other.

Models of repeat incidents have been found for many types of criminal activity (burglary, car theft, robbery, brawling, rape etc.). Plans to prevent victimization also stem from these. It is claimed that we can distinguish between repeat victimization of persons, buildings and places. It is also considered that given the fact that many crimes are not reported

police records); how should attempted crimes be qualified and should they be counted as repeat victimization etc.? For more details see, for example, Pease, 1998.

⁹³ British victimology studies clearly showed that there is an increased occurrence of criminality in certain places not because more people become the victims of crime, but because there is greater victimization of the same people (Pease, 1998).

at all, the extent and occurrence of repeat victimization also remains in large part hidden. And even if repeat victimization is reported to the police, according to experience to date it is not always recorded and has consequently been underestimated until now (see Victim Support UK, 2002, for more details).

Pease (according to the source previously stated) says that to prevent the escalation of repeat victimization we need a clear statement from the relevant authorities that repeat victimization is truly an important phenomenon and why. The author further stresses, *inter alia*, that there is a need to incorporate the topic of repeat victimization and the issues relating to concentration of criminality in police research and in the training of people who analyze criminality and data about it. He also makes reference to the need to broaden computer software to capture the occurrence of repeat victimization in the police information system and the need to improve the quality of police record systems so that it is possible to record repeat victimization. He goes on to mention the need to improve the provision of information on the occurrence of repeat victimization (including information on the entire history of a case) to the police by organizations helping the victims of criminality. Last but not least Pease demands the incorporation of the issue of repeat victimization into the criminal law.

Although studies of repeat victimization have been done since the 1980s, for example the work of Farrell et al (2000) shows that the use of these findings in practice and the beginnings of police work in Great Britain in this area were far from easy. An important positive shift here came after focusing on reducing repeat victimization (in the areas of breaking and entering and domestic violence) began to be considered one of many indicators of the quality of police work according to which police authorities began assessing the performance of police units.

The considerable practical importance of knowledge of repeat victimization is also seen in the fact that delegates at the European Symposium on Repeat Victimization in 2002 announced that they were in favor of the issue of repeat victimization becoming part of government policy across the European Union. They pointed, among other things, to the need in many countries to improve police recording of crimes and details of the victims of crime (Victim Support UK, 2002).

From the above, then, it is clear that knowledge on the issues of the victims of crimes can contribute towards resolving many practical problems at the individual level and in society as a whole. From this perspective the topic of victims of criminal activity should not be neglected in this country and further learning on the subject should continue intensively. Events and development in society, reflected in the Czech Republic also in the increasing

occurrence of socio-pathological phenomena, including criminality, logically contribute towards a rise in the number of people affected by violence and criminality. Their victimization must not only be dealt with, but attempts must be made to prevent it. It is also necessary to try and make sure that the needs and rights of these people (of whom, as is stated at the beginning of this paper, there are plenty in the Czech Republic) are not neglected even in the course of the events that usually come after actually becoming a victim of crime.

What do we know about organized crime?

The phrase “organized crime” is used relatively often, appearing as it does in both the media and specialist literature. We usually do not mull over its meaning much and take it for a generally understood term.

But is this truly so? Is the exact meaning of this term clear to us, to the experts, let alone to the general public? And do we all really understand it in the same way? And what does it actually designate?

These are not merely academic questions. The existence of organized crime and the need to confront it are usually used to justify the requests of the authorities responsible for criminal proceedings for extended jurisdiction, for the possibility of using more effective tools to help expose and investigate it, for better equipment, for more funds etc. For the media, publishing information about organized crime and the threat that it represents may be an excellent means of increasing readers’ interest and thus profits. Even researchers may use it to justify their indispensability and some extra funding. After all, as some criminologists have pointed out⁹⁴, stressing the danger of organized crime and the consequent necessity for more effective control may lead, as in the case of terrorism, to the reinforcement of the state’s “Big Brother” role and its opportunity to further penetrate into the private lives of its citizens.

Thus, is the danger of organized crime unintentionally or intentionally exaggerated or is it real? Is organized crime truly a modern-day threat, as cited by UN documents⁹⁵, or is this a case of invoking gloomy visions of an international force similarly to the claims in the past of conspiracies involving the Freemasons or the Elders of Zion?

If we start with the term itself, it is a not too fortunate journalistic (not wanting to underestimate the quality of our media), rather than specialist term. It is somewhat similar to that other term coined by the media - “tunneling”- that found its way from media jargon to specialized terminology and is now used routinely.

⁹⁴ E.g. Van Duyne, P. C.: paper presented at the 4th International Colloquium on cross-border criminality. Ljubljana 2002; G.Meško, dtto

⁹⁵ Adamoli, S., DiNicola, A., Savona, E., Zoffi, P.: Organized Crime Around the World. Helsinki: HEUNI 1998. In: Organizovaný zločin a odpověď mezinárodního společenství (Organized crime and the response of the international community). Prague: IKSP 1999.

Tunneling is a figurative term of speech for a certain *modus operandi* used in economic or financial criminality. The term “organized crime” on the other hand lacks such metaphorical characteristics. It could have also been translated as “organized criminality” into Czech. But in contrast to “organized criminality”, the term “organized crime” is clearly more emotionally provocative, referring to something that is especially reprehensible. Crime in everyday language (at least in the Czech language) is perceived as something much more serious than the more general term criminality, as something that justifies a greater degree of danger and fear. From this aspect, it is interesting to note that the reaction of citizens to organized crime is to a certain degree paradoxical: the average citizen does not usually come into contact with organized crime and if so, then he or she may only presume that this could be a case of organized crime. Without getting ahead of ourselves, it may be said that organized crime tends to involve larger wholes, markets, states and that its impact on individual citizens is either through intermediaries or hidden. Nonetheless, organized crime remains a significant source of fear among people, as shown by public opinion polls. Whether this is due to factual knowledge of reality, to the influence of the media or to some extent to the aforementioned connotation of the term remains unclear.

The term organized crime itself contains an appraising approach and greater condemnation of this type of criminal activity. It seems that the extensive use of the term organized crime in everyday as well as specialized language is related to such an appraising attitude to this criminal phenomenon and on the first sight expresses its greater severity and threat.

What criminal activity, though, are we concretely supposed to imagine hidden behind this term? What is its true character and extent and why is it dangerous? Specification of this term is thus the key issue. Somewhat sarcastically it could be said that we shall have as much organized crime as we shall include criminal phenomena in its definition, given its broadness and generality. Again, this is not an academic question, as the range of phenomena defined as organized crime quite often forms a basis for applying exceptional investigational means.

To answer that it signifies a criminal activity that is organized would only bring us back to square one. We must thus attempt to specify the character of criminal activities that we think could be defined as organized crime. We do so fully aware that in view of the character of these activities, we are somewhat on thin ice: as the well-known saying goes, exposed organized crime is badly organized crime. To this end, we may quote the director of UNODC, A.M. Costa who at the 19th UN session on the crime prevention and criminal justice stated that we suffer from a serious lack of information regarding organized crime and as

a consequence we cannot assess whether our efforts to suppress and control it are having any success.⁹⁶

Organized crime may be defined using the tools of criminal law, the language of international documents or from the aspect of criminology. According to Czech criminal law, organized crime is classified under the term “criminal organization” (see Section 129 of Criminal Code No. 40/2009 Coll.; previously termed criminal conspiracy, Section 89 (17) of Criminal Code No. 140/1961 Coll.). A criminal organization is defined as an association of several persons with an internally organized structure, with division of functions and activities, directed at the systematic commission of crimes. The basic international document, i.e. the UN Convention on Transnational Organized Crime, also fails to define organized crime per se, but sets out what an organized crime group is, i.e., it proceeds similarly as does our Criminal Code. According to the Convention, an organized crime group denotes a structured group of three or more persons, existing for a certain period of time and acting in mutual accord with the purpose of committing one or more serious crimes or crimes set out in the Convention and with the aim of directly or indirectly acquiring financial or other material gains. The Convention also goes to state that a serious crime is one carrying a potential sentence of imprisonment for a duration of at least four years or even stricter sanctions. A structured group is a group that has not formed accidentally with the purpose of immediately committing a crime and which need not have formally defined member functions and membership continuity or a developed structure.⁹⁷

The definition of the UN document is very close to the definition in the Czech Criminal Law. It differs only in that its requirements for signs of a structured group are looser compared to our version. On the one hand, this quite extends the spectrum of groups and activities that may be characterized as organized crime. On the other hand, the UN definition tightens the field as it sets out that this activity involves serious crimes, which it then defines (the definition according to our criminal law speaks only of intentional criminal activity). The field is thus narrowed by restricting the purpose of an organized crime group to financial or other material gain (in our country, the sign of material profit was omitted in the amendment that entered into force from January 1, 2002, which theoretically concedes the possibility of including within organized crime even those activities that were non-profit primarily, at least in the material sense, e.g. terrorism).

⁹⁶ Costa, A. M.: The costs of non-justice. 19th Session of the UN committee on the crime prevention and criminal justice. Vienna, May 17, 2010

⁹⁷ UN Convention and other documents relating to organized crime. Prague: IKSP 2001.

What can we add, as criminologists (keeping in mind that the criminological concept could be adopted only with difficulty in the wording of the criminal law, but that it could serve as an inspiration and stimulus for adequate formulation of legal regulations)?

It is true that criminologists offer many varied approaches and views that sometimes differ significantly. We do not have the time and space to deal with these in detail. But to answer the question as to the extent of the phenomena and activities included, we may quote P.C. van Duyne who when specifying or defining organized crime stated that determining the boundary between organized and other crime is a decision that must always be operationalized. This operationalization depends on the conditions in a concrete country, especially on the market settings (*for products and services provided by organized crime*). In some places, these conditions require a greater degree of organization, elsewhere a smaller degree suffices (e.g. in the case of different degrees of restriction regarding drug availability).⁹⁸ We could thus state that apart from the general definition of the term organized crime, it is necessary to take into consideration the concrete conditions in the given country or part of the world and amend accordingly the extent of the phenomena included under this term (this naturally has an impact on the potential to apply exceptional investigative means and sanctions, i.e., on concrete criminal policy).

This does not mean that criminologists should give up their attempts at a general definition of the term organized crime. We must recognize this as a warning that organized crime is to a great degree bound to concrete conditions and concrete markets for the services and goods that it supplies. This is reflected in its forms, degrees and organization, which must be taken into account when approaching this phenomenon.

What should we then consider to be the principal, constitutive signs of the phenomenon termed organized crime from a criminological aspect?

Since time immemorial in human societies, people have cooperated within mutually connected factions or groups in order to earn their living. It is natural to expect a maximum return on the work/outlays invested while expending the minimal effort/costs and cooperation with others as part of a certain division of labor (on whose basis functional differentiation takes place) is the simplest means of achieving this end. In a society which adheres to the laws, this endeavor is the basic reason for organizing business and coordinating specific activities in order to achieve the greatest level of production, product application, management effectiveness etc. The same motives (the most effective means of achieving the

⁹⁸ Van Duyne, P. C.: paper at the 4th International Colloquium on cross-border crime. Ljubljana 2002.

goal and the highest returns of the effort expended) are also the key to understanding organization in the field of crime.⁹⁹ Crime also organizes itself in the sense of cooperation between perpetrators, continuity and organization of individual activities in order to achieve the highest returns of the effort expended. This is then followed by the organization of activities that are not necessary in the case of actions that respect the law, i.e. fronts that serve as protection against discovery and punishment. Criminals are organized in the sense that they “organize themselves”- this is not a state but a process.¹⁰⁰ It is a dynamic phenomenon and its diversity and flexibility must be kept in mind when studying it.

Thus, a typical sign of organized crime is that for reasons of consummating the crime, which is of key importance from the aspect of the final profits, a whole chain of criminal activities (organized sequence of criminal and attendant actions) is perpetrated. The essence of organized crime lies in the deliberate, purposeful and systematic attainment of maximum profit regardless of the means used and in the selection of those areas of interest that promise to bring such maximum profit. It focuses on those areas where the opportunity to reap profits presents itself. From this aspect, organized crime may be characterized as a specific form of business based on illegal activities¹⁰¹, or as a higher form of criminality based on a more advanced division of labor, functional differentiation and more developed organization combining both legal and illegal activities.

The business of organized crime usually becomes part of the supply and demand structure within society. Organized crime meets the demand for illegal goods or services or the demand for legal goods and services that are supplied and provided in an illegal manner. It thus becomes an addition to the legal market, because the legal market excludes those interested in a certain type of goods or services. It may also be its substitute, if the organization of the legal market does not meet the demands of all interested parties or all levels of demand; see e.g. the demand for cheap textiles and other goods met by stall keepers offering cheap goods of dubious origin. Organized crime also profits from its symbiosis with the customers purchasing the offered goods and services (customers interested in illegal migration, drugs, sexual services, pornography, cheaper cars, works of art etc.). The social entrenchment of organized crime and the difficulties of fighting it are thus due not only to its (unscrupulous) fronting and security activities or its penetration into legal structures, but also

⁹⁹ See Vold, G. K., Bernard, T. J.: *Theoretical Criminology*. Oxford: Oxford University Press 1986.

¹⁰⁰ Van Duyne, P. C.: paper at the 4th International Colloquium on across border criminality. Ljubljana 2002.

¹⁰¹ Scheinost, M., Cejp, M., Musil, J., Brabcová, I., Budka, I.: *Výzkum struktury, forem a možností postihu organizovaného zločinu v České republice*. (Research of the structure, forms and possible sanctions of organized crime in the Czech Republic). Prague: IKSP 1997.

to the acceptance of the goods and services that it offers by a section of the public, which finds use of them.¹⁰² The customers purchasing the goods and services provided by organized crime are not in the typical position of victims, but in the position of “clients”, though they usually are in a dependent and disadvantaged situation. Nonetheless, the fundamental sign of this relationship remains the personal active interest of the “customer-client” in acquiring the given service or goods provided by organized crime.¹⁰³ We could also simply say that in the case of traditional criminality - offences against property, violent crime, vice, to a certain degree economic crime - the target is the immediate victim of such acts who has not been offered anything, while in the case of organized crime, the target is the client being offered something - goods or services - in which the “client” is for some reason interested.

This “market-economic” conception of organized crime appears to be viable, as it explains certain of its basic characteristics. Nonetheless, we feel that it does not answer all the questions and it cannot be said that these questions are not important.

Firstly, there exist forms of organized crime that offer services which under normal circumstances no one would be interested in. A typical case is so-called racketeering, i.e. collecting fees for so-called protection. This is an example of an artificially created demand, a service that is imposed (not that artificially created and artificially stimulated demand do not exist in the legal sphere, see the demand for vaccines against certain epidemics presented as mass threats).

Including certain forms of economic or financial criminality in organized crime is a more complex issue.

If we accept the “market” specification of organized crime, it is possible to find both differences and common characteristics with economic crime. The basic distinguishing sign between organized crime and economic crime may be set as the fact that organized crime supplements the legal economy, addressing primarily the client, while economic criminality directly attacks and damages the economy. It attacks market subjects, usually lacks “a client” to whom it would offer whatsoever. A typical *modus operandi* of economic criminality is fraud or eventually embezzlement (in contrast to organized crime, which to some extent does offer the client something he/she is interested in). It could also be said that organized crime supplements the legal economy “from outside”, while economic criminality attacks “from

¹⁰² Scheinost, M.: Pojetí organizovaného zločinu a jeho vztah k dalším kategoriím kriminality. (The concept of organized crime and its relationship to other categories of criminality) *Kriminalistika* 4/2004, pp. 257-272.

¹⁰³ See Albanese, J.: Where Organized and White Collar Crime Meet: Predicting The Infiltration of Legitimate Business. In: Albanese, J. (ed.): *Contemporary Issues in Organized Crime*. New York: Criminal Justice Press, Monsey 1995, p. 55.

within” the legal economy. Organized crime also damages the legal economy, but rather indirectly: the interests of legal economic subjects are damaged by “unfair competition”, by the assertion of comparative advantages consequent to the supply of attractive goods, by using illegal methods of supply and delivery, by failing to pay taxes and fees, by accumulating illegally acquired and easily accessible capital that may be invested once its illegal origin has been hidden or disguised.

It is true though that except for these differences, we also find many significant identical characteristics. Most importantly, the fact that some of the perpetrators of economic crimes also organize their activities in the sense of a functional and deliberate arrangement of individual steps directed at acquiring maximal profit together with the setting up of cover activities as protection from exposure and punishment. The perpetrators of economic crime need not always form criminal organizations to this end. They may use legitimate subjects, even those set up expediently, where they hold positions that enable them to manage and control the enterprise. They move within legitimate structures and use legitimate economic tools, but for illegal purposes. The perpetrators may act individually or they may cooperate on the basis of “mutual benefit” or corruption, without needing to form stable organized criminal groups or criminal organizations. Nonetheless their activities are premeditated and organized.

Naturally, both organized crime and economic criminality may merge or eventually they may grow one into the other. Criminal organizations may begin investing in the legitimate sphere and turn their attention to apparently legitimate business. In contrast, perpetrators of economic crimes may for various reasons begin forming criminal organizations. From the aspect of typological differences, we could conclude that both forms of criminality involve conformity in the organization of activities and conformity in the use of profitable, covering and preventive activities. In contrast, we may find a difference in the fact that economic criminality does not necessarily require the existence of an organized criminal group as a precondition and that it does not offer any goods or services but attacks the victims directly. There is conformity, though, in the extent and severity of the damage induced.

Thus, organized crime and serious economic crime are not typologically identical criminal activities and we should - from a criminological aspect - distinguish between them. If we take into consideration, though, the definition of an organized crime group according to the UN convention, we see that it enables to a great degree the inclusion of economic criminality in this category. We may also take into consideration van Duyne’s view that delineating organized and other crime is always a decision based on the conditions in the given country. It is also clear that serious economic criminal activity -at least some part of it-

is also organized and includes both profit-generating and cover-up activities that aim to impede the exposure and investigation of the perpetrators' criminal activities and thus avoid punishment. If we also take into account the extent of the damage caused by serious economic crime, we must admit that despite the typological differences between economic criminal activity and organized crime according to the concept above, the use of investigative means designed for uncovering and investigating organized crime also in the case of economic crime is justified.

The global development of markets, communications and technologies has also contributed to the greater mutual interaction between organized crime and economic or financial criminality. Organized crime has adapted to multinational rather than national changes. These attempts at modernization of organized crime have led to two consequences. On the one hand, there is diversification of activities into new areas and on the other there is modification of the traditional structures of criminal organizations. The monolithic and rigid hierarchical structures of criminal organizations have been identified to a great extent and have shown themselves to be easier targets of repression. Experts usually agree that criminal organizations are changing into more flexible and more decentralized structures. Smaller organization units and networks built on mutual cooperation and agreements are more effective and safer; they promise greater profit and faster re-organization of activities according to needs and they make greater use of specialists and external collaborators. The attempt of developed and qualified criminal organizations to expand their activities into new areas (both geographically and in terms of content) is associated with the need for new specialist knowledge, which leads to the greater hiring of professionals to work in the service industry of organized crime (e.g. namely in the expansion into economic and financial criminality).¹⁰⁴ It could be said that the Mafioso with the dark shades and black hat, the sawn-off shotgun hidden in his jacket, obedient in accordance with the family principles of honor and respect to his godfather who rules the whole "family" with an iron fist down to the lowest echelons is no longer the symbol of modern organized crime. Rather, his place has been usurped by the manager working according to the principles of modern management, running a network of his activities primarily through economic tools. Of course, this does not mean that when necessary an "enforcer" of the first type will not be hired and used.

If we have specified and demarcated what is organized crime or organized criminality in the wider sense (meaning organized criminal activity), we may return to our initial

¹⁰⁴ Adamoli, S., DiNicola, A., Savona, E., Zoffi, P.: *Organized Crime Around the World*. Helsinki: HEUNI 1998. In: *Organizovaný zločin a odpověď mezinárodního společenství*. Prague: IKSP 1999.

question, whether there truly exist criminal phenomena that may be designated as organized crime and that represent a true rather than fictitious threat. Here we should naturally turn to experience.

We will not deal with the issue of organized crime abroad. For now, we are interested mainly in the situation in the Czech Republic.

It would certainly be pleasant to conclude that in our country there is no incidence of the problem or manifestations of organized crime. Unfortunately, whether we adhere to any of the concepts available, i.e., as per the definition in our Criminal Code, the UN Convention or the criminological specification, we must admit to the existence of organized crime in the Czech Republic, regardless of whether its manifestations were prosecuted or judged in court as such by the official criminal procedures.

Our research shows on concrete cases the existence of criminal organizations involved in the drug trade, in the organization of illegal migration, in the theft and smuggling of vehicles, in the trafficking in women and organized prostitution etc. Except for the analysis of concrete cases that were prosecuted and sentences were passed, we can also rely on our expert surveys that we have repeatedly conducted for a number of years.

Apart from this classical form of organized crime (as specified above), we also naturally encounter cases of economic criminality committed in an organized manner. One example may be the well-known so-called light fuel oils case that reached enormous proportions, incurred great losses to the state and brought the perpetrators enormous profits (even if we take a sober view of current estimates). The light fuel oils case demonstrated important features of organization such as the division of tasks, organization and planning of activities, development of a network of suppliers and customers, international connections, use of corruption, competitor disputes, settling of accounts. We could also mention the cases involving the tunneling of so-called cooperative mutual saving banks or some newer ones.

As to economic and financial criminality, we must keep two things in mind. Organization in the case of economic criminality is established and prosecuted only exceptionally and great damage in the order of many millions of Czech crowns may be perpetrated even in a relatively primitive manner. When we speak of the perpetrators, though, it has been demonstrated that the perpetrators of economic crimes include intelligent people, with a trend to be better educated (some forms of these crimes are typical for “white collar” crime), at the same time economic criminality, at least in our environment, is not by far the domain of such perpetrators. A substantial number of them have gained their knowledge and know-how not through formal economic qualifications, but rather through their own business

experience. At the same time, it has been shown that even perpetrators with a lower level of education are capable of causing enormous damage.¹⁰⁵

Empirical information from the research of organized crime, which we have been studying at the Institute for Criminology and Social Prevention since 1993, demonstrates on the basis of the analysis of concrete cases the existence of forms of organized criminal activity, the similarity of concrete group structures and the characteristics of the prosecuted perpetrators. This is why we may attempt to summarize these to some extent.

It may be assumed that organized crime in the Czech Republic does not consist to a greater extent of large and numerous groups arranged in a monolithic, pyramidal organization. Rather, it involves smaller organizations that are more flexible and that operate either independently or on the basis of cooperation in certain structures. Their links abroad are apparent, clearly so e.g. in the case of groups involved in the drug trade or in organizing illegal migration. These groups are involved in international networks, even when they consist of Czech perpetrators only. This does not mean that Czech groups are directly run from abroad. Rather, their connection with the international network functions on an economic basis (the supply and further sale of goods, the securing of a certain link on the route etc.). Stronger links abroad may be presumed in the case of groups consisting predominantly of foreigners (Russian, Chinese groups). Yet even here the question arises, whether this is a case of direct subordination to centers abroad or not.

As when researching organized crime it is not possible to rely on statistical data, or only to a limited extent, we depend when assessing general developmental trends to a great degree on expert surveys.

We have been conducting these expert surveys since 1993. We mostly address experienced employees of the Czech Police special units involved in the fight against organized crime.

If we consider the information value of expert surveys, we must remember that such tools are predominantly qualitative types of surveys. The experts usually formulate their opinions, standpoints and arguments – i.e. they express themselves verbally. If in our case we also process the experts' answers quantitatively, the result is always a summary of opinions and overall trends, where the numbers cannot be taken as absolute values, but as a means of detecting the structure and developmental trend. Expert surveys do not provide so-called hard

¹⁰⁵ Scheinost, M., Baloun, V., Kadeřábková, D., Krejčová, S., Nečada, V., Trdlicová, K.: Výzkum ekonomické kriminality (Research of economic crime). Prague: IKSP 2004.

data, but they may be used to determine the more general features and trends of the issue studied.

Data from the Police Presidium may serve as a basis for estimating the number of members of organized criminal groups. According to the “Report on the situation in the area of internal security and public order in the Czech Republic in 2007”, around 75 groups with around 2000 members¹⁰⁶ were operating on the territory of the Czech Republic. From the aspect of the degree of organization, according to the experts until 2000, between 1995 and 1999, about one third of the groups were completely developed. After 2000, between 40 to 50% of the groups were completely developed. Completely developed groups are those with the evident existence of higher control segments. On the other hand, more than one half of those considered by experts to represent organized crime consists of groups with lower levels of organization. Such groups usually do not meet the criteria of criminal conspiracy (criminal organization) required by the Criminal Code and their inclusion in organized crime depends on the criminological angle. This is why we should be careful when including them in the field of organized crime and we should base such steps on concrete criminological analysis. It is difficult, *inter alia*, to prove in the case of such groups that they truly involve a criminal conspiracy (criminal organization), if they do not manifest the required signs to the full extent.

Expert surveys as well as empirical findings document the important role of so-called externists, i.e. the collaborators hired by criminal groups to perform concrete tasks. According to expert estimates, these externists represent more than one half of the perpetrators participating in the activities of criminal groups. External collaborators provide various services (motor-car mechanics, arms dealers, chemists, false document purveyors, lodging providers, haulers, dealers, drivers) or they find out information, provide contacts or perform special tasks (tipsters, informants, negotiators and extortionists collecting ransom or debts, persons planted to conduct illegal financial operations, specialists in overcoming security and alarm equipment). Hired externists also include persons who facilitate contact with the authorities. Externists often act as “white horses”. They conduct fictitious operations, they are used in fictitious companies, they are the fictitious users of objects used in criminal activities, and they sign invoices and file tax returns. Externists may also be used as persons planted to perform illegal financial operations. In a more demanding form, externists act as legal or

¹⁰⁶ Zpráva o situaci v oblasti vnitřní bezpečnosti a veřejného pořádku na území České republiky v roce 2007 (Report on the situation in the area of internal security and public order in the Czech Republic in 2007). Czech Police 2008.

economic consultants. They are used to ensure contact with state administration employees and other elements of the state or private sector. They are persons that hold a certain position or perform “specialized activities related to certain knowledge and abilities or occupations, for example in banks, the state administration, self-government, in politics. These persons are not direct members of organized criminal groups, but they provide the required information and influence the course of events in return for a particular sum or reciprocal service (..).“Based on the actions of such persons, “ intervention” in personnel decisions regarding key positions in the state administration or “manipulation of the rulings made by the executive and judicial powers to benefit organized crime”, “assisting in the escape of perpetrators” may occur.¹⁰⁷ The use of external collaborators is profitable for organized crime. Such collaborators may also be hired only for a single, relevant and specific task. They have no knowledge of the group’s structure or focus. They nearly do not know anyone and usually do not even know the purpose of the operation that they are undertaking. If caught, they cannot betray anyone or anything. Apart from this, the leaders of the groups take advantage of the fact that these collaborators are involved in organized crime and thus use them ruthlessly.

According to estimates, women are involved in 15 % of organized crime. The participation of women is significant in three areas. The first involves organized prostitution, procurement and trafficking in women. The second involves the provision of facilities for criminal activities (bookkeeping for criminal groups, cover up of criminal activities, legal protection, consultancy, supervision, securing money collection in blackmailing groups and from persons using illegal goods or services, acquiring information, providing sensitive data from the state administration or municipal administrations, recruitment, transportation, providing accommodation, hiding stolen goods, representation on the board of companies used for criminal activity). The third involves economic crime and property crime (participation in financial, tax, banking and loan/credit fraud, misuse of credit cards, money laundering, setting up of fictitious companies). Women are also involved in drug smuggling and distribution (often in the role of dealers), corruption, the organization of illegal migration and as part of the organizing and production of child and adult pornography.

According to the expert surveys, foreigners are involved in one half of the organized crime on the territory of the Czech Republic. The largest groups include Ukrainians, Russians, Vietnamese, Albanians and Chinese. The second strongest group includes Bulgarians - whose share is falling- and Romanians - whose share is rising.

¹⁰⁷ XVI. expertiza mezi policisty specializovaných policejních útvarů za rok 2009. (Expert survey among policemen from specialised police units in 2009)

These are followed by Arabs (mainly from Iraq, Iran and Lebanon) and then to a smaller extent by the citizens of other states. Empirical studies confirm the trend towards greater representation of foreigners among organized crime perpetrators. The analysis of indictments made in accordance with Sec 163a – participation in a criminal conspiracy – in the years 1999 to 2004 has shown that among the 330 defendants indicted in accordance with Sec 163a, a total of 97 were foreigners, i.e. 29.7 %. This percentage significantly exceeds the proportion of foreigners among the total number of known and prosecuted perpetrators. However, it corresponds with the basic hypothesis regarding the international links and international overlap of organized crime activities. Moreover, we must take into consideration that, especially in the case of contact persons - foreign link intermediaries, foreign supplier or customer contacts - it has not been usually possible to identify and apprehend these persons.¹⁰⁸

Systematic research on the most widespread activities of organized crime groups enables the comparison of developments between 1993 and 2006. The most widespread activities continually include car theft, organized prostitution and since 1994 drug production, smuggling and distribution. From almost forty other activities one or another sometimes comes close to these three in importance, for a temporary or more permanent period. Thus, between 1993 and 1998, the most widespread activities included art theft. In the years 1996 and 1997, 2002 and 2005, they included tax, credit, insurance and exchange fraud, with corruption sometimes appearing closely behind, but fluctuating significantly. Between 1998 and 2004, illegal migration rose sharply among the most widespread activities of organized criminal groups. Its proportion began decreasing from 2005 onwards and it ranked 10th in 2006. Certain changes occurred in 2006, with money laundering and forgery of documents, banknotes and coins ranking among the widespread activities and there was also a significant rise in computer crime. Since 2005, illegal alcohol or cigarette production has also been on the rise.

Since 2000, we have been regularly monitoring the particular activities in which individual foreign groups are involved. Tens and more forms of activities occur, especially in the case of large groups. We will list here only those that are most typical for the given nationality. Blackmail and extortion of ransom, prostitution, procurement and trafficking in women, violent crime including murder are characteristic of the Ukrainians. They are also involved in car theft and the organized employment of their compatriots in the Czech

¹⁰⁸ Scheinost, M., Diblíková, S.: Zločinné spolčení – právní rámec, definice, postih, pachatelé (Criminal conspiracy - legal framework, definition, sanctions, perpetrators). *Kriminalistika* 2/2009, pp. 81-99.

Republic, often illegally and always for high provisions. They are also involved in arms dealing. The Russians, similarly to the Ukrainians, focus on extortion, murder and other violent crime and prostitution. They participate in drugs, arms and human trafficking. In contrast to the Ukrainians, they also engage in more sophisticated economic criminality: money laundering, corruption, setting up of fictitious companies, financial fraud. The Vietnamese focus on drug smuggling; counterfeiting of software, electronics, textile, cosmetics; the production of alcohol and cigarettes; prostitution and trafficking in women. Money laundering, violent crime, illegal migration, customs and tax fraud and human trafficking and forced labor also appear in their repertoire. The Chinese have long focused on illegal migration. To a smaller extent, they are involved in activities similar to those conducted by the Vietnamese: tax fraud, money laundering, customs fraud, forgery of CDs/videos, forgery of trademarks, smuggling of goods, smuggling of cigarettes. To some extent, they also participate in human trafficking and forced labor, drug smuggling and extortion. The Albanian groups mainly participate in drug smuggling and distribution, prostitution and trafficking in women. They are also involved in arms smuggling, money laundering and violent crime. Bulgarian groups typically participate in prostitution and trafficking in women as well as in car theft. They are also involved in the drugs trade, credit card theft and counterfeiting of cheques and currency. Theft predominates in the case of the Romanians. Apart from this, they are also involved in cheque and currency counterfeiting, the drugs trade and human trafficking and forced labor.

In the expert studies, we also focused on the gradual qualitative changes in the character and structure of organized crime.

In 2007, the experts addressed compare the current character of organized crime on the territory of the Czech Republic with the situation in the mid 1990s.¹⁰⁹

Almost one fifth of the respondents characterized the situation in the 1990s and today as being basically the same. According to them, organized crime was already firmly established on the territory of the Czech Republic in the 1990s. “Basically, the demographical distribution of crime perpetrators from the aspects of nationality has been the same; organized crime penetrates into the same structures within politics, the judiciary and state administration. Organized crime is ridding itself of gross violence, using higher, hidden forms

¹⁰⁹ XIV. expertiza mezi policisty specializovaných policejních útvarů za rok 2007. (Expert survey among policemen from specialised police units in 2007)

- the strife for legalization, taking advantage of loopholes in legislature, cooperation with attorneys”.¹¹⁰

The trends in the development of organized crime in the Czech Republic since the 1990s may be characterized as follows:

Organized crime has stabilized, extended and now penetrates into many more areas. It involves less violent manifestations and more economic criminal activities, fraud and more corruption. The market has been divided. Organized crime is more elaborate, more effective and uses more sophisticated technical means, including the internet. Today, organized crime is much more dangerous, as those who control it are more anonymous and do not manage the crimes directly. The perpetrators are using more and more sophisticated means of thwarting their possible exposure. The groups have grown significantly wealthier. The profits from illegal activities are being legalized through legitimate business. Thus, organized crime is causing more damage now and has a worse impact on the economy. Today, organized crime already has at its disposal sufficient contacts, it is established and has a strong base. It is penetrating more significantly into the state administration; it is exerting more efforts in the economic sphere. It is developing contacts among the police force and other security organizations. According to experts, it has built itself a “service base” within the judiciary involving a certain group of lawyers who evidently provide know-how, especially in cases of economic crime. The influence of organized crime on the media cannot be ruled out either.

What changes do the experts expect in the future development of the character of organized crime?

From a quantitative aspect, 1/3 of the experts expected between 1994 and 2000 a swift rise in organized crime on the territory of the Czech Republic. Two thirds expected a mild rise. All thus presumed a rise. In 2000, the hypothesis of a drastic rise was somewhat tempered. By 2005, 70 % of the experts expected a rise and 30 % expected stability.

As to the qualitative character of organized crime on the territory of the Czech Republic by 2015, one third of the experts were of the opinion that there will be no significant changes while two thirds expected the following changes:¹¹¹

It is expected that the radius of action of organized groups will extend to include other criminal activities. There will especially be a significant rise in computer crime and in crime perpetrated using computer technology. There will be a rise in criminal activities in the

¹¹⁰ XIV. expertiza mezi policisty specializovaných policejních útvarů za rok 2007. (Expert survey among policemen from specialised police units in 2007)

¹¹¹ XIV. expertiza mezi policisty specializovaných policejních útvarů za rok 2007. (Expert survey among policemen from specialised police units in 2007)

economic sphere, which represents high profits and revenues. Organized crime will invest much more into the legitimate economy. “It may be expected that persons who currently commit crimes will rise in the hierarchy and will become so-called respected businessman, investors etc.”¹¹² Extensive bank fraud, tunneling of government and European Union subsidies may be expected. Currency speculations by organized crime once the Czech Republic introduces the Euro may be presumed. Currency and document forgeries will improve. There will also be a rise in bank robberies. More sophisticated fraud in the area of tax crime may also be expected, including chains of companies running stores offering valueless goods, ending with the fictitious export and price increments including VAT refunds, as well as fraud involving the failure to pay consumer tax on fuel, alcohol and tobacco. All in association with increased corruptive pressure applied on the employees of the relevant state authorities (tax offices, customs officers, and the police).

All structures will be perfected and better organized, the professionalism of those involved will increase and there will be greater use of various technologies. Naturally, internet communication will be used and communication means will generally improve. Revenues and profits will increase. Some experts also expect a rise in brutality. The rise in the wealth, power and influence of organized criminal groups, their endeavor to establish themselves in legitimate business, their endeavor to influence and sponsor political parties and to focus more on the IT and internet sphere will be the characteristic features.

The expansion of single-minded penetration into state structures may be expected, as well as the endeavor to influence the workings of courts, state prosecutors and the police and to have a say in appointments within the state administration. Organized criminal groups will also be interested in suppressing the activities of specialized police units. Organized crime is also expected to increasingly operate within communal politics, especially in the area of large public tenders.

Continuing internationalization will be the trend. In the international context, a more or less traceable movement of goods, capital and persons may be expected; as well as the influx of persons from China and Africa, the expansion of Asian communities and their penetration into the economy, a rise in organized criminality of the citizens of certain Balkan states. The tension between various Asian groups will increase.

The increase of the share of organized crime on the territory of the Czech Republic will be followed by its stagnation. On the one hand, it is possible that criminal activities will

¹¹² XIV. expertiza mezi policisty specializovaných policejních útvarů za rok 2007. (Expert survey among policemen from specialised police units in 2007)

shift into more developed EU countries. On the other hand, another reason for this stagnation of organized crime influence could represent a generational change within society. People with higher levels of education and more awareness of the risks and threats of organized crime, be they citizens or state administration representatives, should be able to better confront the pressures and manifestations of organized crime. “The cited negative phenomena and the influence of organized crime on developments in society and on the economy will induce opposition in society and will face opposition abroad. Suppression of corruption and favoritism will begin and the state’s repressive bodies will begin fulfilling their independent role in the state, in accordance with their mission. Profit-seeking people, imposters, corrupted individuals installed thanks to favoritism - the generation that grew up in the era of so-called wild privatization will be slowly pushed out from leading posts in state institutions.”¹¹³

Thus, the opinions of experts regarding the future possible development of organized crime in the Czech Republic are not too optimistic. Naturally, these are only probability estimates, which cannot be seen as representing certitude with regards to future development. Predictions of this type are based on the current, actual situation and do not address other alternatives. They must be perceived as warnings, how organized crime could look if sufficiently effective measures are not taken and applied against it.

Such measures have been gradually taken since the mid 1990s. The risks that organized crime represents came to be understood at that time already and it was also understood that the Czech Republic would not avoid this threat.

In this sense, the situation changed fundamentally after 1989. Until then, organized crime represented something that one could see in Italian movies. That was not completely true, because even during the era of “real socialism” there existed in our country criminal phenomena that showed signs of organized crime (illegal exchange of foreign currency, organized prostitution etc.), but they were not perceived as such and they even could not have been. The fundamental social, political and economic transformation changed the conditions to such a degree that their side-effect and unintentional consequence consisted of creating space for the existence and manifestation of organized crime, which had not been possible under prior conditions (e.g. namely organized illegal migration, involvement in the international drugs trade, theft and smuggling of historic works of art and cars, certain forms of economic crime etc.).

¹¹³ XIV. expertiza mezi policisty specializovaných policejních útvarů za rok 2007. (Expert survey among policemen from specialised police units in 2007)

People in the front line of the fight against crime, i.e. members of the police, were the first to realize the initial manifestations of organized crime and the arising risks. The media played an important role in formulating awareness of the threat of organized crime, although often at the cost of sensationalist information and grandiose headlines. Criminological research also contributed, whereby in the first phase we attempted mainly to analyze the character of the phenomenon of organized crime as such and to describe its emerging forms. Information from abroad and a certain pressure applied on the Czech Republic for it to become involved in international cooperation also played a role.

Initially, organized crime was considered to be predominantly a phenomenon imported from abroad. Only later and gradually, did the realization dawn that home-grown activities of organized crime are being formed in the Czech Republic. This was most probably the reason why certain cases from the sphere of financial crime such as fraud involving light heating fuels that occurred in our country in the 1990s were not presented as organized crime, though the organized character of their perpetration was clear.

As organized crime was initially viewed predominantly as a phenomenon penetrating from abroad, the measures taken at the beginning focused mainly on preventing this penetration. Nonetheless, measures against organized crime in general have been taken since 1995, both on the legislative and organizational level. By way of example, let us cite only the first government concept of the fight against organized crime, which was passed in 1996 and subsequently amended. Certain special units were set up within the Czech Police Force. The Criminal Law was amended to include new institutions such as, e.g., participation in a criminal conspiracy, provisions regarding effective remorse, immunity for hidden agents, the possibility of sentencing perpetrators of a crime benefiting a criminal conspiracy, and especially the definition of criminal conspiracy. The Criminal Procedure Code was also amended so as to enhance the protection of persons involved in the prosecution of organized crime, including Act No. 61/1996 regarding certain other measures against the legalization of proceeds from criminal activities and Act No. 137/2001 on witness protection. The amended Criminal Procedure Code, effective from 1 January 2002, has incorporated certain provisions that facilitate the use of information acquired using police operative means as evidence in criminal procedures and prosecutions (under set conditions). The amendment of the Criminal Law introduced specific elements of the offense of money laundering, i.e. the criminal act of legalizing the proceeds from criminal activities etc.

The current state of measures and tools available for the fight against organized crime in the Czech Republic has reached a level comparable to that in other European countries,

especially from the aspect of legislation. Fundamental changes in the focus of the approach to the fight against organized crime, though, probably cannot be expected. The current state basically corresponds to European standards. It is a fact, though, that so far the concept of the fight against organized crime in the Czech Republic has mainly focused on repressive measures, especially on preparing and passing the necessary institutes in the Criminal Law and Criminal Procedure Code and in police work. It will clearly be necessary in the future to focus rather on widening the spectrum of these tools and means because criminal law and repression per se represent only one direction that the fight against organized crime may follow. Future measures should thus be more of a preventive and control character and should focus on the economic and administrative sphere. The extent of such measures though is a matter of debate in view of the need to maintain personal data and protect privacy. It is true, however, that without such otherwise exceptional means and tools it is not possible to effectively fight organized crime. For example, the option of using wiretapping has been the subject of much discussion and undoubtedly its use should be limited and controlled. Without such an option, though, as case studies demonstrate, only a fraction of cases could be prosecuted and judged in court as involving organized crime.

Worldwide, it is the disruption of criminal markets, confiscation of proceeds from crime and restriction of the possibilities to reinvest these proceeds that are deemed to represent the most effective means of crushing organized crime. Nonetheless, this is a very difficult route to follow and to date the results have been none too encouraging. Therefore, a wide-ranging international consensus regarding the means of fighting organized crime and effective international cooperation are all the more important. It is a pity that to a certain extent the Czech Republic is missing out on the possibility of using international cooperation more extensively, as ratification of two key international documents has so far not taken place: The UN Convention against Transnational Organized Crime and the UN Convention against Corruption. Perhaps the situation will soon change in this regard.

Foreign Migrant Workers in the Czech Republic – the Current Situation and Memories of the Past

Geopolitical changes in Central and Eastern Europe at the turn of the 1980s and 1990s and the subsequent transformation of Czech society into an advanced, democratic, pluralist, parliamentary society based on free market economy also brought changes in the sphere of the international movement of population. The migratory situation in Czech society has changed quite radically. The Czech Republic has changed from a country which is a donor of international migration processes (our country has filled this role for the past two hundred years of its history) into a country which acts as a buffer zone between Western Europe and the eastern part of Eurasia and one which is a target destination from the perspective of the migratory aspirations of foreign nationals. The Czech Republic is becoming attractive to foreign migrant workers in spite of the many problems which the country has faced in the process of systematic political and economic transformation, mainly due to its abilities to resist, in contrast to other post-communist countries, a generally massive drop in living standards among its population. The favorable social and economic conditions in particular and the situation on the labor market in the Czech Republic at the beginning of the 1990s manifested themselves as the decisive “push” factors for foreign migrant workers.

The period since the creation of the independent Czech Republic can be divided into three stages of approach towards migration, in particular for work.

The aim of the state policy in the sphere of employing foreigners between 1993 and 1996 was to bring in temporary migrating labor according to the needs of the Czech labor market at that time. As in the EU countries, the principle of national preference of the labor market was applied: foreigners applying for a work permit were mainly hired in positions rejected by domestic job seekers. The permanent settlement and integration of temporarily employed foreigners was not the aim of the state policy at that time and was not even under consideration. The involvement of the state in the process of migration control was minimal, this task essentially handled through laws in the area of employment, the entry and residence of foreign nationals and state bodies performing state administration in the application of

these laws and to a limited extent activities in the sphere of inter-state cooperation (in 1994, for example, a bilateral international agreement was signed on the mutual employment of citizens of the Czech Republic and Vietnam; alongside this there was an entirely specific agreement between the Czech Republic and the Slovak Republic on the mutual employment of citizens signed in 1992 etc.). It is also important to point out that the Czech Republic at that time still applied a bilateral agreement on the waiver of visa obligations arranged before 1989 with the states of the so-called Soviet bloc. It was quite naturally in consequence of this visa policy that in 1996 there were five foreign states whose citizens were represented most in international work migration to the Czech Republic (Ukraine, Slovakia, Vietnam, Russia and Poland) and the composition of this leading five has remained practically unaltered to this day¹¹⁴.

The years 1997 and 1998 can be seen as the beginning of the transformation from a liberal to a restrictive migration policy in the area of employing foreigners. The reason for the slump in labor migration was the situation on the labor market, in particular the rising level of unemployment. However, the restrictive policy in employing foreign nationals was not accompanied from the perspective of the state by adequate changes in the area of permitting the entry and residence of foreigners. The law in force at that time was Act No. 132/1992 Coll. on the residence of foreign nationals on the territory of the Czechoslovak Federal Republic and the fact that it allowed foreigners to obtain a long-term residence permit in this country (and not at a Czech embassy or consulate abroad) stimulated a massive overspill of foreigners from the regime of employment to the regime of self-employment/doing business. These were “quasi-traders”, who apart from their own labor power for carrying out a trade did not have any equipment and who used technical facilities which were usually owned by Czech companies for which they did work in carrying out contractual assignments.

The third period began in 1999 and has more or less continued to this day, a period that can be termed one of controlled and managed migration. The fundamental objectives of the migration policy in the Czech Republic have not changed during this period, but heightened emphasis is placed on reducing the security risks primarily ensuing from illegal migration and on the creation of instruments in the migration policy to strengthen economic prosperity, competition and flexibility of the labor market. Preparation for the accession of the Czech Republic to the European Union also played a significant role here.

¹¹⁴ Leontiyeva, Y., Vojtková, M.: Zdroje dat o cizincích v ČR (Data sources on foreigners in the Czech Republic). SDA info, volume VIII, November 2006, p. 4.

One of the most fundamental acts of this period was the adoption of a new law on the residence of foreign nationals (Act No. 326/1999 Coll.), which laid down the duty to apply for a residence permit for the Czech Republic at a Czech embassy or consulate abroad. This fact (together with the introduction of a visa regime for certain countries of the former Soviet Union – Ukraine, Russia, Moldova and Belarus) temporarily reduced the growth dynamic of the number of foreigners with temporary residence¹¹⁵, since every foreign national that intended to travel to the Czech Republic for work had to have a work permit arranged in advance and visa valid over 90 days issued on the basis of it for the purposes of employment. Gradually, however, there has been a rise in the number of foreign nationals with permanent residence permits given that the law has to a certain extent broadened the circle of people authorized to apply for this type of residence. At the practical level, then, the Czech Republic has moved towards the migratory policy of those countries which support the integration of legally settled foreigners in the majority society. The legislative changes made were also intended to limit the illegal employment of foreigners. In practice, however, these legislative changes had no significant impact on illegal employment. It is still the case that a considerable number of foreigners come to the Czech Republic within short-term residence arrangements and are employed without the relevant permits. It has not been possible to limit this negative phenomenon significantly due to low level of punishment meted out to employers who illegally employ foreign nationals¹¹⁶.

A characteristic trend for the current Czech policy, which is directed at the controlled development of immigration, is drawn from forecasts of demographic development and the situation on the labor market to 2030. The Czech Republic, in the same way as other EU Member States, is affected by a perceptible lack of highly qualified experts in certain branches of industry, whereby long-term analyses of the demographic situation reach the

¹¹⁵ It is important to emphasise that from the perspective of year-on-year increases in the number of migrants, the Czech Republic is one of the most dynamic countries in the world. The “migration record” in the Czech Republic was achieved at the end of 2006, when more than 437 thousand foreign nationals resided legally in this country (with permanent residence or other types of residence). The number of foreigners was higher in the Czech Republic than in the other member states of the Visegrad Four put together (Slovakia, Poland, Hungary) (See “Loni přišlo do Česka za prací 44 300 cizinců”. *Právo*, 13 January 2009, p. 8).

¹¹⁶ Independent experts estimate the number of illegally residing foreign “guest workers” in the Czech Republic at between 17 000 and 300 000 over the long-term. One of what would appear to be the most realistic versions talks of there being the same number of illegal migrants in the Czech Republic as legal ones. This estimate of the number of illegal migrants in the Czech Republic has its “raison d’être”, in that it relates to the economic structure and the advancement of the Czech Republic, with the relatively liberal migration policy of the country in the 1990s and the membership of the Czech Republic in the so-called Schengen Area. Those charged with handling a research project entitled “International migration and the illegal activity of migrants in the Czech Republic in the broader European context” (no. 13057/05-DP1), whose results were published in the book Drbohlav, D. (ed.): *Nelegální ekonomické aktivity migrantů (Česko v evropském kontextu)*, Prague: UK 2008, make reference to possible approaches to estimating illegal migrants in the Czech Republic, one of the most difficult tasks in migration research.

conclusion that the permanent deepening of the lack of workers will gradually rise to reach terrible dimensions by 2030. According to certain forecasts, the Czech Republic will be lacking more than 420 thousand workers in 2030. One catastrophic scenario even counts on a deficit of 1.5 – 2 million workers given a more considerable degree of economic growth whilst maintaining the current living standard of the older generation. This could lead, for example, to a radical fall in the prices of property; the devaluation of the savings of the population (it will be impossible to buy the required goods and services for the money saved because there will not be enough workers to produce them); to the complete collapse of the pension system, to a dramatic rise in the age of retirement or to an explosion of socio-pathological phenomena. The way out of this situation is not universal, but major importance for the onward development of European societies is placed on reinforcing controlled migration and the integration of foreigners¹¹⁷.

This trend is seen in Resolution of the Government of the Czech Republic No. 689 of 7 July 1999, which has become part of government policy and which is expressed in 15 basic “Fundamentals of the concept of integrating foreign nationals on the territory of the Czech Republic”, whereby emphasis is placed on the social aspect of integrating foreigners. Responsibility for the implementation and coordination of the Concept for the Integration of Foreign Nationals was returned from the Ministry of Labor and Social Affairs to the Ministry of the Interior on 1 August 2008 and the department for integrating foreigners is being merged with the migration department at the Ministry of Labor and Social Affairs. The Czech government has adopted a number of laws aimed at simplifying the administrative demands

¹¹⁷ A lower population increase than in the founding states of the EU and considerably faster ageing of the population is predicted for the countries of Central and Eastern Europe for the next 50 years. That is why, for example, it is forecast that sometime around 2050 the Czech Republic will be one of the countries with the highest percentage of pensioners in the age structure of the population of Europe. It is also expected that up to 2/3 of the population of the Czech Republic will be older than 60 and around 1 million people will be older than 80. Apart from this, around 400 thousand people will be absolutely dependent on external help as a result of their medical condition. It is a demographic axiom that the longer the timescale, the less reliable the forecast. The Czech Republic has at its disposal a forecast from 1999, which in three versions – low, medium, high – anticipates the development of the population until 2030. The low version hints at a decrease in the population of around 11 %, whereas the high version considers the perspective of migration important: in the case that the immigration balance is significantly positive, at least 16 000 immigrants a year, then the decrease in population in 2030 will be around 1 %. There are, however, other estimates – see, for example, L. Rabušic, A. Burjanek: *Imigrace a imigrační politika jako prvek řešení české demografické situace?* Prague: VUPSV 2003 – according to which it is estimated that by 2050, in comparison with the current number of people in the Czech Republic, there will be a fall of 18 % of the population (for the sake of comparison, the decrease in population in this period in Estonia will reach 46 %, in Bulgaria 43 %, in Ukraine 40 %, in Italy 25 %, in Germany 14 % etc.). A situation will arise as a result of the uncontrollable ageing of the population in Europe on which the evolution of humankind did not count and which it tried to prevent with all available means: the majority of society will consist of a group of individuals incapable of further reproduction whose biological purpose has long been fulfilled. For this reason a principle new task is to define human ageing as a very specific achievement of civilisation, something which will be exceedingly complicated in the conditions of the dominating cult of eternal youth in Europe.

on employing foreign nationals. Recently, for example, we saw the ratification of an amendment to Act No. 435/2004 Coll., on employment (Act No. 306/2008 Coll.), effective from 1 January 2009, which allowed a work permit to be awarded or its validity prolonged for up to two years (the existing regulation only allowed for a permit lasting a maximum of 1 year). Apart from this prolongation of the length of a work permit to up to two years, the amendment to Act No. 435/2004 Coll., on employment, means that confirmation by a doctor of the medical condition of a foreign national is no longer required for an application for a work permit. This amendment also simplifies employing foreigners to have obtained secondary or university education in the Czech Republic, who do not require a work permit. The amendment also brings simplification in terms of the regime of posting foreign employees to work outside of the place of work stated on the work permit. In order to simplify the employment of foreign nationals, the amendment at issue also revoked the institution of permission to recruit workers from abroad, which considerably reduces the administrative burden on those employing foreigners. There has also been amendment to Act No. 326/1999 Coll., on the residence of foreign nationals on the territory of the Czech Republic, which allows foreigners whose employment comes to an end by no fault of their own before the expiry of a work permit to remain in the Czech Republic (if they meet the set conditions) and use a protective period of 60 days to find a new job. Following on from the introduction of the institute of a protective period is the duty of the employer to inform the labor office of the reasons for terminating employment in the case a foreigner loses his job by no fault of his own. Information sources on the integration of foreigners and for foreign nationals in this country have also been created as part of a government initiative. The Ministry of Labor and Social Affairs and the Ministry of the Interior have also shared in the content of the relevant websites ever since the transfer of the coordination of the Concept of Integrating Foreign Nationals. Of exceptional importance is the provision of information regarding the entry of foreign nationals to the Czech labor market by the labor office in a variety of languages.

And of key significance from the perspective of reinforcing the processes of the controlled migration and integration of foreign nationals was the five-year pilot project conducted by the Ministry of Labor and Social Affairs entitled “Selection of qualified employees”, which began in 2003. This was first opened to 11 states, with other subsequently being added. However, this project did not change the parameters of how migrants could come to the Czech Republic, meaning that the vast majority of its foreign participants did not join from their country of origin, but from the Czech Republic. The mechanism the purpose of

which was to attract foreign experts has not proved well due to legislative restriction. It was subsequently opened to Ukraine in 2007 after much hesitation. A flood was expected, but in the end nothing much happened (only around 200 to 300 Ukrainians took part and more than one thousand people in total). It was shown that it is necessary to change the basic rules, which in practice means “opening the floodgates”. Interest in the project waned when people discovered that only those that already have work in the Czech Republic could take part. The success of the program was hampered by the procedure of obtaining visas, the exclusion of foreign graduates of Czech secondary schools and universities from the program and the limited number of countries taking part, mostly from the former Soviet bloc¹¹⁸.

The impulse for change did not come from non-governmental organizations dealing with human rights that are particularly active in the sphere of integrating foreigners within the structure of Czech society, but from the Ministry of Industry and Trade. Business entities that are affected by a lack of workers have paid the highest price for the current practice. The ministry proposed a project of so-called “green cards”, which would be awarded to qualified migrants with the expectation of occupying a vacant position on the domestic labor market. The government approved the “Green Cards” project at the end of 2007, with responsibility for the project moving from the Ministry of Industry and Trade to the Ministry of Labor and Social Affairs in January 2008. “Green Cards” are to serve as work permits and residence permits for foreigners. The aim of the project is to significantly reduce the length of time required to handle a residence permit from the original 180 days to 30. A green card will be valid for a maximum of three years, with the chance of extension. If a foreign national resides legally in the Czech Republic, he will be able to apply for a visa in the Czech Republic itself in the set cases. Until now it had only been possible to make the relevant application at a Czech embassy or consulate abroad.

The “Green Cards” program is intended rather for workers with lower qualifications who work in key sectors of the Czech economy, such as the car industry¹¹⁹.

¹¹⁸ Daniel, M.: Svěží zelenou kartu pro migranty (A fresh Green Card for migrants). In: A2, kulturní týdeník (41/3) 10 October 2007, p. 19.

¹¹⁹ Green Cards – proposed parametric model for the Czech Republic. Proposal (adjusted according to comments arising from government debate) approved in a government resolution of 22 October 2007 to simplify the conditions for employing qualified foreign workers – Ministry of Industry and Trade of the Czech Republic 2007. The falling level of unemployment imparts broader legitimacy and credibility to neo-liberal discourse at the Czech government following parliamentary elections in 2006. The government is continuing in plans to introduce stricter and more effective punishment for illegal work by migrants, but is also emphatically promoting the opening of the domestic market to cheap and flexible labor power from abroad. (Baršová, A.: Potírání neoprávněných ekonomických aktivit migrantů v Česku – právní a politický rámec. In: Nelegální ekonomické aktivity cizinců (Česko v evropském kontextu). Drbohlav, D. (ed.): Prague: UK 2008, p. 84.

The green card system, which began its operation at the beginning of 2009 against the backdrop of the world economic crisis and fast-deteriorating indicators of the Czech economy – and this is now clear – will bring no significant help to Czech factories¹²⁰.

It simply is not worth it for companies to directly employ foreigners. There are tens and hundreds of people and a huge financial burden on companies. They would have to pay for their own major machinery, pay tax and all levies on behalf of workers and pay expensive overtime hours. What is more, a core worker is not easy to dismiss. Foreign nationals are supplied by agency go-betweens who hire them out to factories (this often involves slavish and unlawful practices), even for a few days, and this is a significant argument at a time of crisis in production¹²¹.

The readiness of migrants to do essentially any type of work explains why it can be expected that the flow of migrants from poorer countries heading into richer economies, including the Czech Republic, will not stop, even when faced with the strong repercussions of the economic crisis.

The migration policy in the Czech Republic has become more and more active throughout its development and indicates a purposeful attempt to find a systematic approach, under pressure from EU standards; nonetheless, the existing form of this policy is still considered unsatisfactory in expert and academic circles. Many aspects of the migration policy in the Czech Republic are subject to criticism. For example, the low effectiveness of the regulation of international migration, which is also manifested in the inability of the Czech state (we can, however, say the same of other European countries, too) to harmonize its migration policy and economic needs in the work of foreign migrants, as a result of which large groups of migrants become illegal migrants for whom jobs in the host nation do realistically exist, but the legislation in force does not always allow them to obtain these positions legally. Statistical data about migrants is also subject to criticism. Currently the most reliable source of data about foreigners in the Czech Republic comes in the form of official statistics, the processing of which is regulated by the “Concept of the selection and processing of statistical data associated with migration and integration of foreigners in the Czech Republic” that was compiled by the government in 2002. The main reason for preparing the concept was the improvement of data, consisting of the elimination of three fundamental

¹²⁰ Pokažené plány (Spoiled plans). Respekt N4, 19 – 25 January 2009, p. 36.

¹²¹ Zájem o zelené karty bude mizivý (Interest in Green Cards will be negligible). Hospodářské noviny. 5- 7 December 2008, p. 18. In times of prosperity, one foreigner can earn around 25 000 crowns a month for agencies. Agencies are therefore looking for work for their people at all costs in these times of economic crisis, even going as far as corruption (Komenyiová, Z.: Policie vyšetřuje korupci na úřadech práce (The Police investigate corruption at labor offices). Hospodářské noviny, 7 June 2010, p. 4.)

shortcomings in previous statistics: inconsistency, unavailability and incompleteness. Apart from this it was an effort to harmonize data with international requirements and recommendations formulated, for example, by the UN and Eurostat. Six government departments currently keep records of foreigners: the Ministry of the Interior, the Ministry of Labor and Social Affairs, the Ministry of Industry and Trade, the Ministry of Education, Youth and Sport, the Ministry of Health and the Ministry of Justice. The most important source of regular information about the number of foreign nationals is the Ministry of the Interior, followed by the Czech Foreign and Border Police. Other Ministries provide information concerning foreign employees, entrepreneurs, students, those using the services of the Czech health service and those who come into conflict with the law.

One other body which regularly collects, processes and publishes official statistics about foreign nationals is the Czech Statistical Office. Irrespective of the efforts of the authorities mentioned, official statistics regarding migrants in the Czech Republic are insufficient. For example, records at the Foreign and Border Police allow for a sectional identification of the exact number of residence permits issued to foreigners in the Czech Republic, but some foreigners have multiple purposes for residence here, which complicates the use of data from the Foreign and Border Police database. It is also problematic that there is no basic register in the Czech Republic from which it would be possible to get the majority of information about foreign nationals in the Czech Republic¹²².

The fundamental shortcoming of the migration policy in the Czech Republic, however, is the fact that it is lacking an overall vision, doctrine and target. That is why we are witnesses to a paradoxical situation in essentially all advanced countries of the world: the frequency and importance of international migration for the functioning of modern societies are rising dynamically and uncontrollably, but the bodies that are obliged to ensure the regulation of

¹²² It is also important to subject the researchers dealing with the issue of migration to critical reflection given that they are exposed to the risk of succumbing to the temptation of being all-knowing experts. Looking at such a specific group of people in the Czech Republic as foreign nationals requires an awareness of the modest possibilities of drawing a general conclusion from research. Most quantitative surveys of foreigners in the Czech Republic apply the method of selective questionnaire surveys. The biggest limitation of qualitative selective surveys of migrants in the Czech Republic (as is the case in other countries) is their lack of representativeness, caused mainly by the absence of support for selection and the practical impossibility of ensuring a random selection of individual respondents, as a consequence of which the social environment of foreign work migrants remains forever an “epistemological black box” for science research. True research penetration of the environment of foreign work migrants also assumes some understanding of the peripetia, hopes and tragedies of the life fates of migrants, of which world-renowned American researcher D. Massey laconically says in his book devoted to the migration of Mexicans to the USA: “Once Mexican women wept that their men were leaving their homes to work in the United States and now the same women weep when their men stay at home instead of going abroad to work and improve the material situations of their families.” (D. Massey, R. Abarcon, J. Durand, H. Gonzales, *Return to Aztlan: The Social Processes of International Migration from Western Mexico*. – Berkley, L. Angeles, London: Univ. of California Press 1987).

migration processes (national states, regional and global organizations) often act incompetently in this area or even just improvise. The specific form of this paradoxical situation under the conditions in this country is very aptly analyzed by L. Sládková, director of the Czech branch of the International Organization for Migration. There is an ongoing dispute concerning foreign nationals in Europe with respect to demographic development and the requirements on different types of qualification. So we have to ask what the Czech Republic wants to offer foreigners. In recent years we have become a new and attractive country for immigrants. During several plentiful years following 2005, however, we left it to employment agencies to bring in foreigners for work without having functional integration programs. It was a business with profits that ran into the thousands of millions that needed the strong lobbying of employers and which the authorities were unable to and perhaps did not even want to contain. The media and non-profit organizations have recently been putting considerable pressure on the state, checks of employment agencies have come and the responsible ministries have started to act, but this in itself does not bring about a concept. Many foreigners who lost their jobs in the Czech Republic as a result of the current global economic crisis are trying to deal with the situation by obtaining trade licenses, which in turn allow them to get a residence permit that is not bound to a specific job but to doing business. This is again evidence of certain confusion. These foreign nationals are actually legally circumventing other laws, on the basis of which they got into the Czech Republic in the first place, and this is evidently sometimes possible thanks to the extremely benevolent stance of the authorities that award trade licenses to foreigners.

We need clear and simple rules for the regulation of residence for foreigners and we should be absolutely certain of the requirements we are going to ask. For example, we might want foreign nationals that are qualified in a certain way and that want to settle in the country for a longer time or even for good. We might also be interested in unqualified laborers who do not want long-term residence and simply want to earn some decent money. Nonetheless, we should also provide these foreign nationals with all rights or make their lives as simple as possible¹²³ – they are currently faced with the chaotic labyrinth of the law. The situation to have arisen is also a result of the fact that scientific knowledge of migration processes has yet to become the mandatory basis for decision-making by the relevant institutions in the sphere of regulating international migration.

¹²³ Začíná boj o cizince (The fight for the foreigners begins). S Lucií Sládkovou o současné i budoucí imigrační politice. Respekt 52-53/2009, p. 8.

The international migration of the population is a sophisticated social phenomenon which has been examined by many social sciences, whereby each of them considers a certain aspect of the issue. Demographics, for example, examines the influence of migration on the size and structure of the population; economics analyses the importance of migration for the development of production; sociology looks at the significance of the social interaction that stems from the process of regulating migration; and history reflects on migration experience of the past. Most of these theoretical approaches have already been successfully verified in examining migration processes in the Czech Republic. What currently remains outside of the interest of researchers is a historical approach to interpreting current migration processes in this country – this refers to the fact that the issue of migration to the Czech Republic is entirely new and has no historic precedence in this country. However, the experience of the first Czechoslovak Republic is neglected in this regard.

Swedish author T. Hammar¹²⁴ and, for example, prominent scientific authority in the sphere of research into international migration, A. Zolberg¹²⁵, stress that international migration is linked to crossing one or more state borders and to a change in the legal status of migrants. Since the individual expressions of international migration of the population usually meet the criteria of several types of international migration at the same time, the creation of their typology cannot be unambiguous and definitive for objective reasons. Indeed the needs of practice (the regulation of the legal status of migrants through the relevant state legislation) forced the use of a criterion which is considered key in managing a specific situation from the perspective of the creation of a typology of international migration.

Various criteria are used that characterise international migration; for example we talk of cyclical (reversible migration), work migration, economic migration, illegal (unregulated) migration, study migration, family migration, ethnic migration, transit migration etc.

In order to understand the migration processes during the 1st Czechoslovak Republic (1918-1938), it is very important to differentiate between the status of emigrant and immigrant¹²⁶.

¹²⁴ Hammar, T.: *International Migration, Immobility and Development. Multidisciplinary Perspective*. Oxford 1997, p. 316.

¹²⁵ Zolberg, A.: *International Migrations in Political Perspective* In: M. Kitz, C. Kely, S. Tomasi, (Eds.): *Global Trends in Migration: Theory and Research on International Population Movement*. Staten Island: Center for Migration Studies 1981, pp. 3-27.

¹²⁶ The words “emigrant” and “immigrant” come from classic Latin and there are characteristic tones in their semantic fields in addition to the difference in meaning. *Immigro* means to move in, but also to “become one’s own master and begin a new life“. *Emigro* means to move out, to leave one’s country. Emigration and immigration are mainly psychological states, a certain personal orientation. This orientation may change during life for various reasons, but at each given moment is relatively pronounced. An immigrant tries to find a new country even though he maintains a good and nostalgically tinted relationship to the old one. He

Following the victory of the Bolshevik revolution in Russia in 1917, up to 25 000 emigrants from the ranks of opponents to the Soviet regime (of a total of around 1 million emigrants who were forced to leave Soviet Russia at that time) gradually arrived in the newly-founded Czechoslovakia, as was the case of other democratic countries of the world¹²⁷. The influx of Russians to Czechoslovakia was part of a government program commenced in 1919, known in history as the “Russian Aid Operation”. The implementation of this operation, whose extent was famed throughout the entire Russian diaspora, was marked by a dispute over a basic question: what role would Russian emigration play in the event of the fall of the Bolshevik regime? The protagonists in this dispute were T. G. Masaryk and E. Beneš on the one hand and K. Kramář on the other. Karel Kramář was a proponent of the Russophile line of Czech and Slovak political thought. The relationships to Russia were the foundation stone of his ideological concept of the Czechoslovak state and its foreign policy. He drew on the assumption that a free Russia would be a Slavic Russia, on which other Slavic states would prop themselves in the fight against Germanic expansion. He saw the future Russia as having a renascent monarchistic regime at its head and considered monarchists as natural allies¹²⁸. Beneš and Masaryk agreed with Kramář that the Bolshevik regime was a transitional era in the history of Russia, but considered Kramář’s vision to be unrealistic. Their foreign concept, in contrast to Kramář, was to orientate the republic towards western allies. Efforts to fight a battle against Bolshevism under the pretence of Slavism would therefore be harmful. It was from these fundamental postulations that Beneš and Masaryk also derived the mission of Russian emigration – to contribute to the cultural coming-together of nations, in that the decisive load of this task, as with the resurgence and building of non-Bolshevik Russia, should not fall on Russian monarchists, but on the representatives of moderate leftist parties

organizes compatriot clubs and loves the folk songs of the old country. However, he sees his own future and that of his children in the new country. An emigrant has only one country – the old one. He considers his stay abroad to be temporary and tries to make sure it is such. He is not interested in becoming a citizen of the accepting country because he wants to return to his country as a full-fledged citizen and not as a foreigner. His love of his country is far more intensive than that of an immigrant. It is active love. It is, however, somewhat schizophrenic love: on the one hand he loves his country and on the other hates the conditions that dominate there. He becomes an emigrant because the forces of evil have taken over his country, whether it be religious oppression, oppression of nationality or politically based oppression (Savický, I.: *Osudová setkání. Češi v Rusku a Rusové v Čechách 1914-1938*. Prague 1999, p. 23).

¹²⁷ Sládek, Z.: *České prostředí a ruská emigrace (Czech environment and Russian emigration) (1918-1938)*. In: *Duchovní proudy ruské a ukrajinské emigrace v Československé republice 1919-1939*. Prague 1999, pp. 15-16.

¹²⁸ Sládek, Z.: *České prostředí a ruská emigrace (Czech environment and Russian emigration) (1918-1938)*. In: *Duchovní proudy ruské a ukrajinské emigrace v Československé republice 1919-1939*. Prague 1999, pp. 15-16.

of a social democratic type, in pre-revolution Russia the Socialist Revolutionary Party and the Constitutional Democratic Party¹²⁹.

The government therefore created certain barriers to the influx of émigrés to Czechoslovakia. This had nothing to do with a lack of compassion or sympathy, but it was an endeavor to actively regulate the influx of Russian emigrants in accordance with an overall plan. Czechoslovakia's relationship to Russian émigrés was driven not only by humanitarian considerations, but by the strategic political objectives of the state. From this perspective Czechoslovakia favored only certain categories of émigrés (students, scientists, writers, farmers etc., and preferably those close to the thought of the Socialist Revolutionary Party and the Constitutional Democratic Party). For this reason the government did not restrict itself to the "filtering" of émigrés spontaneously heading from Czechoslovakia, but itself actively helped relocate the qualified groups in question from other European states. This approach by the Czechoslovak government to émigrés gave its efforts special significance that went considerably beyond local importance and assumed all-emigrant and, as a result, all-Russian significance.

Prague became one of the most prominent cultural centers of Russian emigration¹³⁰ of all because the Russian Aid Operation also included an extensive education program. Prague

¹²⁹ The foresight of the political orientation of T. G. Masaryk in relation to the Socialist Revolutionary Party was confirmed by the anti-Bolshevik uprising in Kronstadt in March 1921 that was led by the Socialist Revolutionary Party. The uprising fundamentally shook Soviet power and fundamentally contributed towards the introduction of the New Economic Policy. Masaryk therefore was right from the perspective of "migration policy" – only a "third force" could influence development in Russia, most definitely the Socialist Revolutionary Party and not the white monarchist generals or even the Bolsheviks themselves. Eventually the strategic foresight of T. G. Masaryk was confirmed by the actual break-up of the system of the Soviet regime, the detonator being the political thought of the Gorbachev redevelopments that built on the ideological tradition of the Socialist Revolutionary Party. The lesson from the first Czechoslovak Republic is clear: the state, as the main actor, must have a well thought-out vision for its migration policy (must unambiguously draw up its objectives and show through which social groups it wants to achieve these objectives). Today's economic recession, however, has uncovered an important fact: deformations on the Czech labor market reinforced by the processes of international work migration. A menace is going around the Czech Republic. It is called the "assembly shops of Europe". We have a high percentage of employees in industry and construction in comparison with the average in the 27 EU Member States (40.3 % as opposed to 24.8 %). This share fell before 2000, but the trend was halted by the arrival of foreign investors using the opportunity of getting relatively cheap labor, recruited more and more often from the ranks of foreign work migrants. This situation is neither flattering nor prospective for the Czech Republic. Apart from that, at the moment at which the state is dependent only on foreign multinationals and on the import of workers from abroad, it will lose its own identity and self-confidence. The threat is therefore real of a situation in which it is more and more the multinational companies, with their own company culture (often strange to our national nature), and not the Czech state that primarily formulate the principles of migration policy. If we become a country in which occasionally something is assembled or some service is used, we will become just hirelings and nothing more (see Soumrak řemesel v Česku (The twilight of trades in Czechia). Ekonom no. 31/6, August 2008, p. 31)

¹³⁰ Russian white movement emigration was also present in Germany, France, Bulgaria, Serbia, Belgium, Poland, Great Britain, China, Turkey, Estonia, the USA and in other countries of the world (V. T. Pašuto: *Russkije istoriki-emigranty v Jevropě*. Moscow 1992, p. 210-215)

was referred to as the Russian Oxford as a result of the diversified network of numerous education institutions intended for the needs of Russian emigrants that was successfully created in the capital city over time, mainly with the financial support of the Czechoslovak state. These Russian schools provided post-high-school courses and postgraduate education for adults: the Russian Institute of Agricultural Cooperative Systems, the Russian Automobile and Tractor School, the Russian Faculty of Law, the Russian Transport Technology Training College, the Russian Business Academy and the J. A. Komenský Russian Teaching Institute. These education institutes lasted for between 2 and 9 years, with some 1039 students graduating¹³¹.

The “Russian Oxford” in Prague was mainly created in the interest of preparing experts for the needs of future non-Bolshevik Russia (and in this sense the financial selflessness of the host country is quite unique in the history of all emigration) because a strong, democratic Russia was of vital interest to Czechoslovakia. The “Russian Oxford” was not supposed to have (nor did it have) such importance for the development of Prague, even though many Russian emigrants made a significant mark in their own fields in Czechoslovakia¹³².

What is thought-provoking is another parameter of the migration policy that was formed at the time of the Russian Aid Operation programs. Émigrés from Russia who reached Czechoslovakia faced a dilemma that was characteristic of the entire Russian diaspora at that time: count on a quick return to Russia or consider your sanctuary your new home? At the beginning, most émigrés expected the situation in Russia to change – the Bolshevik regime would fall – and that they would go back to their homes.

The émigrés’ wait for a change in relations in Russia, which did not come, slowed down the adaptation process until it became clear that it would not happen in the foreseeable

¹³¹ Savický, I.: *Osudová setkání. Češi v Rusku a Rusové v Čechách* (Fateful encounters: Czechs in Russia and Russians in Czechia). 1914-1938. Prague 1999, p. 199.

¹³² For example, the Penzijní ústav building in Žižkov (now Dům odborů) was built by Ing. Jiří Prokopenko; the Bílá labuť department store and the Broadway cinema at Na Příkopěch was built by Ing. Eugen Tumanov; and the Jiraskův and former Švermův bridges were built in line with the designs of Ing. Michail Kovalevský. The rich spiritual and intellectual leavening in the environment of Russian emigration during the 1920s and 1930s is also seen in the study: Luptáková, M.: “V poiskach Bratstva Svjatoj Sofii (po archivnym materijalam)” In: *Duchovní proudy ruské a ukrajinské emigrace v Československé republice 1919-1939*. Prague: Institute of Slavonic Studies at the ASCR, 1999, pp. 312-339.

One possible optimistic development scenario supposes that after the current economic recession has died down, there will be a new era of re-industrializing of European economies, the pillar of which, as has been shown, cannot be services and banking, but sectors that again value traditional technical skills; and for that reason targeted expert preparation in which foreign work migrants must be involved due to unfavorable demographic trends could become a comparative advantage for the Czech economy. Recalling the experiences of the first Czechoslovak Republic in the area of increasing the qualifications of migrants can undoubtedly be an inspiration to the present day.

future. And so, over time, the emigrants became immigrants. Emigration gave preference to hermetic reclusiveness in the new surroundings. The social life facilitated this. Numerous clubs and organizations and mainly the church organized countless events that took up a whole year. Clubs, salons, restaurants and canteens were opened in Prague and its close surroundings (Zbraslav, Černošice, Všenory, Mokropsy and Řevnice) and assorted literature published. This rich social and common life protected them from the outside environment, which often did not understand the emigrants just as they did not understand that environment¹³³.

Many emigrants did not settle in, given their dream of returning to Russia, and satisfied themselves with emergency accommodation. Others were unable to get used to the way of life led by those representing the majority society. The dissatisfaction of the emigrants with their status in Czechoslovakia was mainly based on the lower social level they had in comparison with their status in Russia. Only a few university lecturers gained a professorship in Czechoslovakia. This fall in social and societal level affected many emigrant social groups, for example the Cossacks, who worked in Czechoslovakia as farm laborers, the officer classes, entrepreneurs, the aristocracy etc.

In comparison with Paris, which was the Promised Land for the emigrants, the Russian emigrants were better looked after in Czechoslovakia. Of course most of the emigrants back then did not adapt to the new conditions¹³⁴.

There were, however, certain special professions of Russian emigrants who adapted and integrated: Russian engineers, agronomists, builders, doctors and officers. Full assimilation only began with the new generations that were born in Czechoslovakia and for whom the Czech environment was a matter of course.

¹³³ The representatives of Russian emigration, who came from the intelligentsia and the aristocracy, brought intensive interest in club life from the times of pre-revolution Russia, which was distinguished by the existence of various unincorporated associations. Diverse clubs and organizations of emigrants offered a positive platform for their dialogue with the bodies of Czechoslovak state power. In contrast to this, Russian and Ukrainian farm workers expressed only minimal interest in any form of organized club life at that time. In this respect they were very similar to today's work migrants from Russia and Ukraine. Demonstrative lack of interest in participating in organized political life is a result of the mentality of individual farmers who are forced to rely entirely on themselves (this mentality is aptly described in Ukrainian and Russian literature by N. V. Gogol). This way of life forms a so-called parochial type of political culture, with interest solely in local issues (according to the typology of American political scientists G. Almond and S. Verbr) and is fertile ground for clientelist relations that precede the formation of a legal state and anarchy (see Kasjanova, A.J.: *O ruskom nacional'nom charaktere*. Moscow 1994, p. 112-117).

¹³⁴ Sládek, Z.: *České prostředí a ruská emigrace (Czech environment and Russian emigration) (1918-1938)*. In: *Duchovní proudy ruské a ukrajinské emigrace v Československé republice (1919-1939)*. Prague: Institute of Slavonic Studies at the ASCR, 1999, pp. 31-32.

Drugs, Crime, Repression – Communicating Vessels or Vicious Circle?

Drugs¹³⁵ and crime are often considered together as two sides of a single problem - in scientific studies, official analytical or conceptual materials or in the media (serious journalism, documentaries or the entertainment industry). Drug use and the offending are perceived as mutually related social pathological phenomena and means of resolving, controlling and fighting them are sought continuously. Seeing how these phenomena are perceived together, it is very possible to get the impression that the most serious negative aspect of drug use by far is its association with crime. Such a simplified view contributes for example to the fact that discussions in the media on drug issues represent to a larger extent a confrontation between the proponents of two extreme positions— legalization of all or at least certain types of drugs on the one hand and zero tolerance of drug use enforced using especially repressive means on the other. The representatives of these two attitudes are usually the loudest and most visible, giving the erroneous impression that when approaching the drug issue, the choice lies only in one of these two options. In fact, these are extreme positions that currently practically do not exist in their pure form within the anti-drug policies of individual countries. Thus, recognizing the true character of the relationship between drug use and crime and the optimal role of the criminal justice system and its individual bodies¹³⁶ represents an important prerequisite for formulating an effective and comprehensive drug strategy as well as an enormous challenge for research.

The history of consciousness altering substance use dates far back into the past. For instance, information about opium consumption dates as far back as Sumer, approx. 5000 years B.C.¹³⁷ The early beginnings of so-called psychedelic drugs consumption were

¹³⁵ Unless stated otherwise, the term “drugs” refers to so-called illegal drugs, i.e. narcotic and psychotropic substances subject to the international UN anti-drug conventions (see below).

¹³⁶ The term „bodies of criminal justice system“ refers not only to so called judicial authorities, i.e. public prosecutors and courts, but also to all other state authorities, operating in the criminal justice system, like the police, the prison service, the probation service or similiar institutions.

¹³⁷ See e.g.. Szasz, T.: *Drogy: Historie jedné hysterie*. (Drugs, the history of a hysteria). Olomouc: Votobia 1997.

associated with ritual purposes.¹³⁸ In individual cultures, rules that forbade the consumption of certain drugs developed gradually. Historical examples include the crusade against the use of psychedelic plants as part of the fight against sorcery in the Middle Ages, Mohammad's ban of alcohol consumption, the ban on growing and masticating coca in South America introduced by the Spanish colonizers etc.

Thus, historically in various cultures and societies, a section of the population always used and continues to use substances influencing the psyche, albeit the motivation to do so varied in different periods, geographic regions and population groups. Moreover, individual societies for various reasons (medical, religious, economic etc.) may decide which of these substances should be subject to a certain form and degree of regulation that may lead to an absolute ban of any handling of certain substances.

Specialist literature differentiates three periods of drug use in modern history (i.e. from the 19th century onwards)¹³⁹:

- Until the 1960s – drugs were perceived predominantly as a professional problem and the concern of a narrow spectrum of specialists;
- The 1960s, 1970s and 1980s– drugs became a problem, especially in developed countries, affecting a number of social classes and groups;
- Since 1990 – the drug problem is perceived to be a global one.

In the 20th century, the opinion that production, distribution and use of certain substances represent a serious worldwide problem with medical, social, economic as well as security aspects that cannot be effectively resolved only on the level of individual countries gradually prevailed on the international scene. This position led to the development of international documents introducing a transnational system of control and regulation of the handling of selected substances whose use and distribution was considered to be especially harmful. First, this involved the so-called international opium conventions¹⁴⁰, which were

¹³⁸ For a history of drug use see e.g. Kudrle, S.: Historie užívání a zneužívání psychotropních látek (A history of the use and abuse of psychotropic substances). In: Kalina, K. et al.: Drogy a drogové závislosti. Mezioborový přístup (Drugs and drug addiction - an inter-disciplinary approach), Part 1. Prague: Czech Cabinet Office 2003, pp. 83 – 89.

¹³⁹ Kalina, K.: Úvod do drogové problematiky: základní principy, pojmy, přístupy a problémy. (Introduction to the drug issue: basic principles, approaches and problems) In: Kalina, K. et al.: Drogy a drogové závislosti. Mezioborový přístup. 1. díl. Prague: Úřad vlády (Drugs and drug addiction. Inter-disciplinary approach). Part 1. Prague: Czech Cabinet Office, 2003, pp. 15 – 24.

¹⁴⁰ Especially the 1912 Hague International Opium Convention (International Convention No.159/1922 Coll.), the 1925 Geneva International Opium Convention (Convention No. 147/1927 Coll.), the 1931 Geneva International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (Convention No. 173/1933 Coll.), and the 1936 Geneva Convention for the Suppression of Illicit Traffic in Dangerous Drugs.

gradually amended by the protocols¹⁴¹ and subsequently replaced by the international UN drug conventions¹⁴².

The current global approach to the drug issue based on the international UN drug conventions is usually labeled prohibitive¹⁴³ - simply put one based on the ban of certain forms of the handling of a defined range of substances. This ban is enforced by the threat of various sanctions, including criminal sanctions, and their imposition. Although the individual States parties to these conventions formulate the goals of their anti-drug policies differently and the approach to the drug issue often differs diametrically between them, anti-drug conventions represent the basic framework within which the individual states must maneuver, if they are to meet their international legal commitments. In such a context, legal repression¹⁴⁴ is a natural part of the anti-drug policy and the system of criminal justice with its bodies is its natural component.

It should not be forgotten, though, that the primary goal of introducing the current arrangement governed by international anti-drug conventions was not to eradicate drugs as such, but to protect public health. This is the main purpose and its monitoring is required of the States parties by the international anti-drug conventions.¹⁴⁵

If we are dealing with the relationship between crime and drugs, it is necessary first to clarify what may be considered to be a drug-related crime. The Goldstein classification¹⁴⁶ is often used in specialist literature when specifying this term. This classification was originally proposed to describe the factors linking drugs (heroin and cocaine) and violence. According

¹⁴¹ The 1946 Lake Success Protocol, the 1948 Paris Protocol, the 1953 New York Protocol.

¹⁴² The 1961 Single Convention on Narcotic Drugs (Foreign Minister Ordinance No. 47/1965 Coll.) as amended by the 1972 Protocol Amending the Single Conventions on Narcotic Drugs (Foreign Ministry Notification No. 458/1991 Coll.); the 1971 Convention on Psychotropic Substances (Foreign Minister Ordinance No. 62/1989 Coll.); the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Foreign Ministry Notification No. 462/1991 Coll.).

¹⁴³ See e.g. Cohen, P.: Re-thinking drug control policy: Historical perspectives and conceptual tools. Lecture at the „The crisis of social development in 1990's“ symposium held by UNRISD in Geneva on July 7-8 1993. Available at <http://www.cedro-uva.org/lib/cohen.rethinking.html#noot1>.

¹⁴⁴ Although currently official conceptual documents rather than of repression speak of “reducing the supply” or “reducing the accessibility” of drugs; see e.g. the National strategy of the drug policy for the years 2010 – 2018. Prague: Czech Cabinet Office 2010; http://www.vlada.cz/assets/ppov/protidrogova-politika/dokumenty/Narodni_strategie_protidrogove_politiky_2010-2018_pro_jednani_vlady.pdf

¹⁴⁵ “The Parties, concerned with the health and welfare of mankind, recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes, recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind, ...” (The 1961 Single Convention on Narcotic Drugs, preamble); “The parties, being concerned with the health and welfare of mankind, noting with concern the public health and social problems resulting from the abuse of certain psychotropic substances, ...recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted, ...” (The 1971 Convention on Psychotropic Substances, preamble).

¹⁴⁶ Goldstein, P.: The drugs-violence nexus; a tripartite framework. *Journal of Drug Issues*, Autumn 1985, pp. 493-506.

to this classification, it is possible to differentiate psycho-pharmacological, economic and systemic factors. The definition proposed by the European Monitoring Centre for Drugs and Drug Addiction, EMCDDA, is based on the Goldstein classification and uses the term drug-related crime to designate four types of crime¹⁴⁷:

- Psychopharmacological offences. These involve offences committed under the influence of psychoactive substances as a consequence of acute or chronic use. Psychoactive substances have pharmacological properties that affect mood, perception and thus also affect criminal behavior.¹⁴⁸ Its effects include anxiety, fear, irritability, sedation, disorders of perception and judgment. It has been demonstrated that long-term use of these drugs induces extensive changes in areas of the brain associated with cognitive functions that may affect criminal behavior.¹⁴⁹ Research indicates that in this sense there exist differences between individual types of drugs. Apparently, the strongest link with psycho-pharmacological crime (especially violent crime) is found in the case of the legal drug-alcohol. Stimulants (cocaine, crack, amphetamines) are also included in this group while opiates, tranquilizers and cannabinoids rather tend to decrease aggressiveness. Nonetheless, in the case of the latter, one cannot underestimate the irritability associated with the abstinence syndrome or manifestations of mental disorders that may also lead to violence.¹⁵⁰
- Economic-compulsive offences. This refers to offences committed with the aim of obtaining funds for acquiring drugs (or obtaining the drugs themselves). This category includes not only property crime, but also any criminal activity that aims to increase the perpetrator's income (e.g. drug sales, robberies, sharing assets coming from criminal activity, procuring person to practice prostitution or even more sophisticated economic crime). Based on research findings, it is often inferred that drug addicts are forced to commit crimes in order to feed their habit.¹⁵¹ This is in contrast to other findings that criminal behavior in the perpetrator's career often precedes the beginnings of drug use¹⁵², or rather that the link between property crime and drug use may also work in the opposite direction, whereby the perpetrator increases his/her income through crime and this subsequently allows him/her to use drugs.¹⁵³ At the same time, drug users have other means of obtaining funds for drugs. Some use their legal income and adapt their pattern

¹⁴⁷ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16. Lisbon: EMCDDA 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

¹⁴⁸ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug Related Crime: an overview of the global evidence. Report 5. Witley: Beckley Foundation 2005; <http://www.beckleyfoundation.org/pdf/reportfive.pdf>.

¹⁴⁹ Sinha, R., Easton, C.: Substance abuse and criminality. Journal of the American Academy of Psychiatry and the Law, 4/1999, pp. 513 – 526.

¹⁵⁰ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16, EMCDDA, Lisbon 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

¹⁵¹ E.g. Parker, H., Newcombe, R.: Heroin use and acquisitive crime in an English community. British Journal of Sociology, 1987, str. 331-350.

¹⁵² Pudney, S.: The road to ruin? Sequences of initiation into drug use and offending by young people in Britain. London: Home Office 2002.

¹⁵³ Burr, A.: Chasing the Dragon: Heroin Misuse, Dependency and Crime in the Context of South London Culture. The British Journal of Criminology, 4/1987, str. 333-357.

of drug use, others attempt to supplement their legal income (a second job, sale of assets) or minimize their other expenses (room and board at their parents).

- Systemic offences. They include offences committed within the system of illegal drug markets, involving activities consisting of the supply, distribution and drug use (typical violent crime, extortion etc.). In view of the fact that the drug market is illegal, those who wish to control it are forced to use means such as violence and corruption.¹⁵⁴ It must be recognized that groups involved in the drug trade compete for enormous profits without being able to apply the formal mechanisms of non-violent resolution of disputes commonly used in the world of legitimate business. The violence that we witness in the drug markets is thus the natural consequence of such a state.¹⁵⁵ The consequences of systemic crime are especially noticeable in producing and transit countries afflicted by civil conflict and a related weakened legal environment (Afghanistan, Columbia, Mexico). In these countries, such type of criminal activity in the form of corruption in government, banking or business institutions or in the form of violent acts with elements of crimes against humanity seriously disrupt the functioning of the country or region as a whole.¹⁵⁶ In general, though, no research has thus far answered the question of whether drug use and the drug trade lead to systemic crime or vice versa, or whether they are merely the components of a common and shared lifestyle.¹⁵⁷
- Drug law offences. This refers to offences involving the violation of drug related legislation. They are also called primary drug offences or drug offences in the narrow sense.¹⁵⁸ According to Czech criminal law, these are offences listed in Sections 283 - 287 of the new Penal Code No. 40/2009 Coll. (in former Penal Code No. 140/1961 Coll. these offences were listed in Sec 187 - 188a). Sometimes also crimes consisting of the illicit handling of precursors (if, in contrast to the Czech law, these are defined separately alongside the illicit handling of narcotic and psychotropic drugs) or laundering of money originating from the drug trade are included in this group. The specific aspect of this type of crime is that drugs in this case are not the trigger or motive for the criminal behavior, which is anyhow punishable even under different circumstances and regardless of its association with drugs. Rather, this criminal activity results from the character of the drugs themselves as substances prohibited or severely restricted by the state. Research in the field of drug-related crime has often overlooked primary drug offences. One reason

¹⁵⁴ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug Related Crime: an overview of the global evidence. Report 5. Witley: Beckley Foundation 2005; <http://www.beckleyfoundation.org/pdf/reportfive.pdf>.

¹⁵⁵ Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review. Vancouver: International Centre for Science in Drug Policy 2010; <http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf>.

¹⁵⁶ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug Related Crime: an overview of the global evidence. Report 5. Witley: Beckley Foundation 2005; <http://www.beckleyfoundation.org/pdf/reportfive.pdf>.

¹⁵⁷ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16. Lisabon: EMCDDA 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

¹⁵⁸ E.g. Marešová, A. et al.: Drogy a vězeňská populace v kontextu drogové scény a trestněprávní legislativy. Prague: IKSP 2003, pp. 19, 20. (Drugs and the prison population in the context of the drug scene and criminal justice).

for this may be the fact that the link between drugs and crime is of a different character in this case – the link between drug use and crime is given by the law rather than by the mutual influence of these phenomena.¹⁵⁹

The existence of a relationship between drug use and the offending has been described relatively abundantly in literature.¹⁶⁰ Nonetheless, the nature of this relationship is not as clear as it seems. To say the least, it is impossible to unequivocally conclude on the basis of current findings that drug use directly leads to the offending.¹⁶¹ The causality between these two phenomena has not been proved. Their mutual relationship rather follows from the fact that they are both associated with similar factors, including e.g. social and economic deprivation¹⁶². Risk factors may be either indicators (symptoms) of antisocial behavior or its possible causes. In other words, certain types of behavior may either reflect antisocial tendencies or they may be their cause or both. In this sense, drugs may symbolize a type of lifestyle (and thus be indicative) or drug use may induce antisocial behavior once an individual is under their influence (and thus be causative).¹⁶³ Criminal activity and drug use may thus mutually reinforce one another in the sense that persons from a deviant criminal environment are more at risk of developing a drug problem and persons with a drug problem on the other hand are at a higher risk of getting involved in crime.¹⁶⁴

Attempts to define the extent of drug-related crime are problematic. The relatively easiest way could involve determining the proportion of primary drug offences out of crime as a whole. For example, in the Czech Republic, primary drug offences represent over the long term approx. 1 % of all offences registered by the police. The proportion of persons convicted in the Czech Republic for primary drug offences out of the total number of convicted persons has for the past several years been approx. 2 %. The index of the number of persons convicted

¹⁵⁹ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16. Lisbon: EMCDDA 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

¹⁶⁰ For a summary see e.g., Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16. Lisbon: EMCDDA 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

¹⁶¹ Compare e.g. with. Seddon, T.: Explaining the drug-crime link: theoretical, policy and research issues. Journal of Social Policy, Vol. 29, No. 1, 2000, str. 95-107; Buchanan, J., Young, L.: The War on Drugs - a war on drug users? Drugs: Education, Prevention and Policy, Vol. 7, No. 4, 2000, pp. 409-422.

¹⁶² See e.g. Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug-Related Crime: an overview of the global evidence. Report 5, Witley: The Beckley Foundation Drug Policy Programme 2005; McSweeney, Hough, M.: Drugs and alcohol. In: Tilley, N. (ed.): Handbook of Crime Prevention and Community Safety. Cullompton: Willan Publishing 2005, pp. 563 – 594.

¹⁶³ Soothill, K., Fitzpatrick, C., Francis, B.: Understanding Criminal Careers. Cullompton: Willan Publishing 2009, p. 143.

¹⁶⁴ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16. Lisbon: EMCDDA 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

for all primary drug-offences per 100 000 inhabitants has stabilized over the past several years at 13.¹⁶⁵

Various methods are used to estimate the extent of other drug-related crime. These mainly include extrapolation of data on drug use among apprehended perpetrators or on the contrary of data on the offending of registered drug users, or research conducted on the prison population.¹⁶⁶ Expert estimates are also used. In the Czech Republic, estimation of secondary drug crime is the domain of the National Monitoring Centre for Drugs and Drug Addiction in cooperation with the National Drug Agency of the Czech Police. The latest study covered the period of 2007 and the first half of 2008. It involved an expert retrospective estimate by representatives from district police directorates of the proportion of drug users in the total number of selected crime perpetrators (especially property crimes) exposed in the given period and in the individual districts. This study reached the estimate that approx. 29 % of the registered selected offences could be attributed to drug users in the Czech Republic.¹⁶⁷

Though these methods are capable of inter-connecting data on drug use and the offending in a certain population, they provide little information about what proportion of the registered crime may be truly “attributed” to drugs. This may be, for example, because many perpetrators begin their criminal careers before their drug careers and they sometimes continue in their criminal activities even once they have stopped using drugs for various reasons.¹⁶⁸ At other times, the difference between the studied sample and the overall relevant population is the problem (e.g. the usual findings that a high proportion of prisoners used or uses drugs and had more serious problems with them cannot be applied to perpetrators in general).

However, the conclusions regarding the extent of drug-related crime are principally complicated by the issue of latency. If we take into consideration the findings on the latency of crime¹⁶⁹ and the fact that in the case of data regarding the number of drug users we find ourselves in the same situation, then the attempts to measure drug-related criminality on a

¹⁶⁵ Comp. Statistics of the Czech Police (<http://aplikace.mvcr.cz/archiv2008/statistiky/kriminalita.html>; <http://www.policie.cz/web-informacni-servis-statistiky.aspx>; Pocket Yearbook of Crime in the Czech Republic for the corresponding years. Czech Police Presidium and the Czech Ministry of Justice (Statistical Yearbook of Crime for the corresponding year; <http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=399>).

¹⁶⁶ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug-Related Crime: an overview of the global evidence. Report 5. Witley: The Beckley Foundation Drug Policy Programme 2005.

¹⁶⁷ Mravčík, V. et al.: Annual report on the drug situation in the Czech Republic for 2008. Prague. Czech Government Office 2009, p. 75.

¹⁶⁸ Nurco, D. W.: Drug addiction and crime: A complicated issue. *British Journal of Addictions*, 1987, pp. 7 – 9.

¹⁶⁹ E.g. Tomášek, J.: Úvod do kriminologie. Jak studovat zločin. Havlíčkův Brod: Grada Publishing 2010, pp.72-78. (Introduction to Criminology. How to Study a Crime).

larger scale lose much of their credibility. Moreover, it must be realized that the research available was conducted in developed countries with an adequate infrastructure (statistical systems etc.) and focused primarily on common or street criminality that is statistically most frequent, while the most serious forms of criminal activities such as extensive corruption or crimes against humanity have not been studied in this respect.¹⁷⁰ The use of data based on such shaky foundations has sometimes been criticized as „voodoo criminology“.¹⁷¹

As mentioned above, legal repression in the form of suppression of the drug supply is in the long term one of the basic components of the approach to the drug issue. The concrete form and extent of involvement of criminal justice, though, remains the subject of much discussion among experts, politicians as well as laymen and depends on a number of factors in every country such as the given country's political and economic situation, legal tradition and culture, the sensitivity of the population to drug associated problems and many others. For the same reason, it is not possible to determine the “only right” or the “best” form of criminal justice activities within the anti-drug policy, as the circumstances governing these activities as well as the circumstances governing the whole anti-drug policy differ in various countries.

When defining the role of criminal justice in the anti-drug policy, two types of questions must first be clarified. The primary question is what may be achieved and influenced with the means available to criminal justice. If we will take measures in the field of criminal justice with the vision that these will resolve a problem lying outside its sphere of influence, we will be permanently disappointed. Secondly, we must decide what results do we truly wish to achieve through the activities of criminal justice. This is not merely the case of which result is desirable and which is not. It is also the case of whether the use of such measures is effective and adequate. Economic aspects must be taken into consideration and the principle of subsidiarity of penal repression must remain the principal criterion.

The law enforcement bodies in criminal procedures usually proceed *ex officio*. It follows that in their activities they deal in the legally set manner with conduct designated as an offence by the valid criminal law. Their role is thus limited and this state of affairs also applies to the area of the anti-drug policy. In other words, in order to duly discharge their responsibilities, they expose, prosecute and punish any conduct designated as a drug-related crime by the legislators. At the same time, they are not in a position to assess whether it is

¹⁷⁰ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug-Related Crime: an overview of the global evidence. Report 5, Witley: The Beckley Foundation Drug Policy Programme 2005.

¹⁷¹ Young, J.: Voodoo criminology and the numbers game. In: Ferrell, J., Hayward, K., Morrison, W., Presdee, M. (eds.): Cultural Criminology Unleashed. London: Glasshouse Press 2004.

proper to prosecute a certain type of conduct using the means at the disposal of criminal law. Possible assessment of the material elements of a crime, i.e. the existence of a sufficient degree of social harmfulness or danger, if required by the given legal system, relates only to a concrete case, when all its circumstances are taken into consideration; the dangerousness of a certain type of conduct is already expressed by the fact that it is designated an offence by law.

It is clear that even within the anti-drug policy, the role of criminal justice can hardly be expected to involve anything else than primarily the detection of drug-related offences (as defined by the criminal law) and the prosecution and punishment of their perpetrators, all under the conditions set by law. The way in which criminal justice actually influences the drug issue is based on the one hand on how the legal framework of its competences is defined and on the other on how the individual bodies of the criminal justice system work within the given framework. For example, the number of convicted drug offenders is affected both by the legal definition of drug offences and by the work of law enforcement authorities when detecting and prosecuting such offences.

In general, it may be concluded that the system of criminal justice may within the framework of the anti-drug policy punish the perpetrators of drug offenders, remove drugs from the drug scene and possibly also act preventively.

Detection of drug offences, identification and punishment of its perpetrators may influence the drug issue in several ways. For one, it may temporarily remove perpetrators from the drug scene once those condemned to imprisonment begin serving their prison sentences. At the same time, this may weaken the perpetrators' links with the drug and criminal subculture. It is recognized that a prison sentence may be handed down only when it is not sufficient to hand down a lighter sentence allowing the perpetrator to remain free. It should thus be considered especially in the case of serious forms of drug-related crime, when the perpetrator is disturbed to such a degree that the situation requires intervention in the form of an unconditional prison sentence. Apart from this, stressing the severity of the punishment should not prevail over the effort to quickly and thoroughly punish the perpetrator. The generally accepted thesis states that the rapidity with which the perpetrator of a crime is exposed and punished is a significant factor of the effectiveness of criminal procedures and the subsequent punishment, whereby the inevitability of punishment is usually considered to be a more significant element for evaluating the effectiveness of punishment than the severity of the punishment itself.¹⁷²

¹⁷² Novotný, O. et al.: *Trestní právo hmotné – I. Obecná část.* (Substantive Criminal Law - I. General Part) Prague: Aspi Publishing 2003, p. 275.

Another possible means of influencing the drug issue via criminal justice involves the re-socialization of perpetrators. The possibility of reforming a perpetrator or of having an influence on him/her using the tools of criminal law (not only in the form of punishment) is the subject of relatively intense discussion. In general, this is a case of overcoming criminogenic deformations consisting of the perpetrator's personality and his/her social alliances. In most cases, the perpetrator's personality defects can hardly be permanently negated by mere repression. They can frequently be overcome by developing the positive elements of the perpetrator's personality and his/her useful social alliances; by reinforcing his/her positive traits and habits.¹⁷³ In the case of perpetrators from among the ranks of drug users, the situation is further complicated by another factor, namely their drug consumption.

No matter what positive influence the criminal procedure may have on the perpetrator, the main tools in the hands of criminal justice to this end remain punishment and protective measures or eventually other measures such as supervision by a probation officer, adequate restrictions and obligations imposed in relation to the sentence in the case of conditional discharge or conditional release from imprisonment. Positively influencing the perpetrators in the prison environment is relatively problematic and in the case of drug addicts this applies twofold. Research findings relating to the drug issue in prisons¹⁷⁴ indicate that the prison environment (whether during imprisonment or pre-trial detention) in general does not contribute to any positive changes in the behavior and attitude of convicted persons towards drugs and crime.

The possibilities presented by alternative sanctions and measures appear promising at first sight. They undoubtedly represent a higher potential from the aspect of changing the perpetrator's criminogenic lifestyle. The question remains, though, to what extent this potential is being exploited. Findings from foreign studies dealing with this issue indicate that punishment may be effective in the sense of at least partially eliminating the perpetrator's criminogenic habits especially if it is part of a wider program for dealing with the given perpetrator that includes not only the criminal justice system bodies but also institutions from

¹⁷³ Novotný, O. et al.: *Trestní právo hmotné – I. Obecná část.* (Substantive Criminal Law - I. General Part) Prague: Aspi Publishing 2003, p. 275.

¹⁷⁴ E.g. Tonry, M.: *Punishments and politics: Evidence and emulation in the making of English crime control policy.* Cullompton: Willan Publishing 2004; Gendreau, P., Goggin, C., Cullen, F.T.: *The Effects of Prison Sentences on Recidivism.* Ottawa: Solicitor General Canada 1999; Currie, E.: *Crime and punishment in America.* New York: Metropolitan Books 1998.

the fields of education, healthcare, social care as well as the family and close social contacts of the perpetrator.¹⁷⁵

Influencing the perpetrator through the compulsory treatment imposed as a consequence his/her criminal behavior, either as an alternative to punishment (most often a prison sentence) or concomitantly with it, is a chapter all to itself. Expert studies indicate that undergoing treatment for drug addiction leads to a decrease in criminal activity¹⁷⁶ and that the economic benefits exceed treatment costs. In some countries (Australia, Ireland, Canada, USA), a system of drug courts has developed, which in appropriate cases shift perpetrators - drug users - from the common criminal procedure into the system of addiction treatment. The findings relating to the effectiveness of compulsory treatment from the aspect of re-offending by the treated perpetrators are not unequivocally positive, though,¹⁷⁷ and the functioning of the system of compulsory treatment is associated with problems in the individual countries (e.g. the negative consequences of the compulsorily treated perpetrators mixing with addicts who are undergoing treatment voluntarily; the insufficiently addressed rights and obligations of the perpetrators undergoing treatment etc.)¹⁷⁸.

In punishing the drug offenders, criminal justice may also influence the situation on the drug scene by draining the profits from this criminal activity. It is acknowledged that ridding the perpetrator of the profits from crime represents a fundamental tool of justice, as profits represent the principal motive of most crimes.¹⁷⁹ The 1988 UN Convention Against Illicit Traffic in Narcotic and Psychotropic Substances includes in Article V the commitments of the State parties in the area of confiscating the proceeds from drug criminality. In the past years, a number of legislative measures were passed in the Czech Republic. Nonetheless in practice, such a course is not applied too frequently and tracing the assets of the perpetrator, identification of their origin from crime and their subsequent confiscation in the form of forfeiture of property, goods or other assets or in the form of seizure of goods is more pronounced and visible in political proclamations than in the criminal procedure itself. Albeit

¹⁷⁵ See e.g. Goldblatt, P., Lewis, Ch. (eds.): Reducing offending: an assessment of research evidence on ways of dealing with offending behavior. London: Home Office Research Study 187, 1998, p. 83.

¹⁷⁶ Prendergast, M.L., Podus, D., Chang, E., Urada, D.: The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug and Alcohol Dependence*, 1/2002, pp. 53 – 72.

¹⁷⁷ Spicer, K., Glicksman, A.: Adult reconviction: results from the 2001 cohort. Home Office Online Report 59/04, London: Home Office 2004.

¹⁷⁸ Stevens, A., Berto, D., Heckmann, W., Kersch, V., Oeuvray, K., van Ooyen, M., Steffan, E., Uchtenhagen, A.: Quasi-Compulsory Treatment of Drug Dependent Offenders: An International Literature Review. *Substance Use & Misuse*, 2005, pp. 269 – 283.

¹⁷⁹ 11.kongres OSN o prevenci kriminality a trestní justici, Bangkok 18. – 25. dubna 2005. Základní dokumenty předložené delegátům. Prague: IKSP 2006, p.66 (Eleventh United Nations Congress on crime Prevention and Criminal Justice, Bangkok 18. – 25. April 2005. Basic documents submitted to the delegates).

in this case collaboration with subjects outside the criminal justice system is also necessary (the tax office, land registry etc.), the potential of criminal justice to this end is significant, but so are its reserves.

The bodies of the criminal justice system may also influence the situation on the drug scene by intercepting drugs and removing them from the drug scene. This option is realistic and undeniable, but it is clear that the proportion of intercepted drugs out of their total volume is relatively low. Most experience from the Czech Republic and abroad demonstrates that the drug market is usually quite flexible and capable of replacing drug losses from other sources in a relatively short period of time.¹⁸⁰ Examples showing that it was possible to truly and considerably restrict the flow of drugs into a country are relatively rare and were associated with certain negative effects. For example, the heroin shortage in Australia in the years 2000-2002 was associated with an increase in the price of heroin, a rise in the consumption of amphetamines and a rise in criminality.¹⁸¹ Criminal justice may practically contribute towards diminishing the drug supply among the population through the detection and confiscation of drugs. Nonetheless, it must be kept in mind that this will always involve only a partial and temporary correction that may moreover lead to unforeseen negative consequences.

Even though the principal mission of the criminal justice system lies in the field of repression, its preventive role is also acknowledged¹⁸², in the case of both general and individual prevention. The threat of criminal sanctions and especially of the rapid and comprehensive punishment of crime and potential confiscation of proceeds from crime may help criminal justice deter potential perpetrators or deter from re-offending those persons who have already committed offence. The high latency of drug-related crime and a certain degree of inconsistency when applying all potential means and tools against perpetrators nonetheless contribute towards the fact that this deterrent effect is not apparently that strong.

The criminal justice system may also have a formative effect by drawing the attention of citizens to the dangers and contemptibility of certain conduct.¹⁸³

The bodies of the criminal justice system, especially the police, also participate in formulating and implementing measures of situational prevention that hinder the commission of a certain type of crime at certain locations or in certain situations. Also, this type of

¹⁸⁰ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug-Related Crime: an overview of the global evidence. Report 5, Witley: The Beckley Foundation Drug Policy Programme 2005.

¹⁸¹ Bush, W., Roberts, M., Trace, M.: Upheavals in the Australian drug market: heroin drought, stimulant flood. London: DrugScope a Beckley Foundation 2004.

¹⁸² See e.g. Novotný, O., Zapletal, J. et al.: Kriminologie (Criminology). Prague: Eurolex Bohemia 2001, p. 157 and subseq.

¹⁸³ Novotný, O. et al.: Trestní právo hmotné – I. Obecná část. (Substantive Criminal Law- I. General Part) Prague: Aspi Publishing 2003, p. 273.

prevention by criminal justice has its limits that have already been described in specialist literature (the possible displacement of crime, the cost, the temporary nature of such measures etc.).¹⁸⁴

“Educative” activities by the bodies of the criminal justice system in relation the media, wider public, children and other groups at risk etc. may also have a preventative effect. A certain danger in this regard is the possibility that such actions, though well-intended, may degenerate into unilateral intimidation or mentoring or into the distortion of facts. This may then eliminate the preventative effect and on the contrary induce negative effects. The creation of appropriate preventative measures of this type should be a task mainly for experts on the given target groups and not for employees of the criminal justice system bodies whose main mission, as cited above, involves a different area.

Recently, new attempts have been made to define more exactly the role of criminal justice within the anti-drug policy. The UK Drug Policy Commission (UKDPC) has conducted a study that among others formulates the principles of the effective enforcement of anti-drug legislation.¹⁸⁵ According to this, law enforcement bodies should focus more on reducing the damage that the drug market causes to society. As the damage caused by the various drug markets is not the same, the extent of the damage they induce should be analyzed in detail and the means at the disposal of the authorities should focus on the most harmful of these. The project of the International Drug Policy Consortium termed “*Effective Drug Law Enforcement*” formulates recommendations in a similar vein.¹⁸⁶ Its authors conclude that despite the wide range of activities focused on decreasing the drug supply, it must be admitted that although successful operations may temporarily change the site and character of drug production and distribution, the overall extent of the drug market is very resistant to attempts at its restriction. They propose that law enforcement activities continue to focus primarily on four areas: the fight against organized crime, decreasing the level of violence in the drug markets, referral addicts to treatment and promoting public health protection programs.

It was already intimated in the previous text that the approach to the drug issue accentuating the enforcement of drug-related legislation (legal repression) leads to certain significant consequences. The United Nations Office on Drugs and Crime (UNODC) in its

¹⁸⁴ Comp. e.g. Goldblatt, P., Lewis, Ch. (eds.): Reducing offending: an assessment of research evidence on ways of dealing with offending behavior. London: Home Office Research Study 187 1998, p. 36 and subsq.

¹⁸⁵ UKDPC: Refocusing Drug-Related Law Enforcement to Address Harms. London: UKDPC 2009; see also http://www.ukdpc.org.uk/resources/Refocusing_Enforcement_Full.pdf.

¹⁸⁶ http://www.idpc.net/sites/default/files/library/IDPC_Project_Law_Enforcement.pdf.

annual World Drug Report for 2008¹⁸⁷ concludes that the current control system and its application have led to serious unintended consequences such as:

- The creation of a black (illegal) drug market operated by criminal structures;
- A “policy displacement” – the development of the black market requires the concentration of a larger part of the already restricted resources for law enforcement activities, which decreases the resources that can be used in other areas such as treatment or prevention;
- A “geographical displacement” – the successful suppression of the drug market in one place leads to its establishment or increase in another (so-called “balloon effect”);
- A “substance displacement” – if the supply of one drug is successfully decreased, the suppliers and users turn their attention to another drug with similar effects;
- The social exclusion and marginalization of users who enter the criminal justice system.

The International Centre for Science in Drug Policy (ICS DP) conducted a systematic analysis of English language specialist literature relating to the issue of the relationship between enforcement of the anti-drug policy and violence in the drug markets.¹⁸⁸ The findings from the analyzed studies indicate that emphasis on measures in the area of law enforcement with the aim of disrupting the drug markets most often does not lead to a decrease in the level of violence involving drug gangs. Instead, the available results strongly indicate that criminal repression in this area contributes towards armed violence and a high rate of drug-related murder and that the continually increasing sophistication of the methods used to disrupt organizations involved in drug distribution may unintentionally increase the level of violence.

Research findings suggest that activities in the area of law enforcement (legal repression, supply reduction) that receive the most resources and that attract the greatest political attention within the anti-drug policy have a relatively small impact on the overall level of drug related crimes. This is due to two reasons. The first involves motivation in the form of substantial revenues and profits from the drug trafficking, which ensures that once an organization or network within the drug market is eliminated, others hurry to fill the vacated space. The second lies in the fact that there is no reduction of supply, and thus addicts continue to commit crimes as long as they can afford their drug. It is ironic that according to

¹⁸⁷ UNODC: World Drug Report 2008. UNODC, Vienna 2008; <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2008.html>.

¹⁸⁸ Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review. International Centre for Science in Drug Policy, Vancouver 2010; <http://www.icsdp.org/docs/ICS DP-1%20-%20FINAL.pdf>.

certain studies, in places where law enforcement bodies succeed in restricting the supply of a certain drug in a certain territory, drug users merely commit a greater level of procurement-associated crimes in order to pay the higher prices.¹⁸⁹

Statistical data regarding drug production and consumption worldwide moreover indicate that after roughly fifty years of the existence of the current system of control and regulation of narcotic and psychotropic substances, no significant success has been achieved in meeting the principal goals of this system, namely a significant reduction in drug production and drug use, restriction of drug markets and reduction of the negative consequences of drug use in society. Therefore, deliberations regarding a revision of the system based on UN anti-drug conventions have gradually appeared on the scene. Recently, this development has been reflected, albeit very carefully, even in official documents of UNODC or the International Narcotic Control Board (INCB). The UNODC annual World Drug Report for 2009¹⁹⁰ for example indicates certain possibilities of improving current practice when enforcing anti-drug laws, including:

- To focus on restricting the extent of drug markets rather than on the high arrest figures;
- To hand over drug users, especially addicts, for treatment and to use imprisonment against them only in exceptional cases;
- To make the population of drug addicts a priority as they represent most of the demand for drugs;
- To try to close open drug markets using the tools of situational prevention and police activities directed at these issues.

A number of non-governmental organizations and specialist associations dealing with the drug issue are also participating in the discussion regarding the suitable future approach to the drug issue, both on the global¹⁹¹ level or on the level of individual countries¹⁹².

One may also encounter even more radical proposals based on the conviction that the negative phenomena associated with drug use are to a great extent caused by the prohibitive character of the system of drug control and the advocates of such views demand the

¹⁸⁹ Stevens, A., Trace, M., Bewley-Taylor, D.: Reducing Drug-Related Crime: an overview of the global evidence. Report 5, Witley: The Beckley Foundation Drug Policy Programme 2005.

¹⁹⁰ UNODC: World Drug Report 2009. UNODC, Vienna 2009; <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2009.html>

¹⁹¹ E.g. Roberts, M., Bewley-Taylor, D., Trace, M.: Facing the Future: The Challenge for National and International Drug Policy. Report 6, The Beckley Foundation Drug Policy Programme 2005; http://www.beckleyfoundation.org/pdf/Report_06.pdf

¹⁹² E.g. IDPC: Drug Policy Guide. Edition 1, IDPC, March 2010; http://www.idpc.net/sites/default/files/library/IDPC%20Drug%20Policy%20Guide_Version%201.pdf.

liberalization of the arrangement as a whole or even outright “legalization” of currently “banned” drugs (with the potential introduction of regulation of their circulation and sales taxes as in the case of “legal” addictive substances such as alcohol and tobacco).¹⁹³ These thoughts do not originate only from various activist groups but also from respected experts in various fields (economy, sociology, philosophy etc.).

Similar proposals almost exclusively originate in developed countries, a fact that is no accident. In this context, it should be remembered that the drug issue is global in character and what may appear as an attractive alternative in the developed part of the world could lead to much damage in less developed countries.¹⁹⁴ Also important in this context is the distribution of individual countries according to their role in the drug trade chain. Producing countries face different types of problems compared to transit countries, or countries, where the drugs usually reach the consumer. If the approach of the international community to the drug issue is to avoid degenerating into the promotion of the particular interests of individual countries (or groups of countries) regardless of the consequences for the rest of the world, apparently the only remaining option is that potential fundamental changes of the system negotiated in transnational anti-drug conventions be again discussed and approved on the basis of a wide-ranging consensus at UN level. For example, information from the 52nd meeting of the Commission on Narcotic Drugs (CND) held in March 2009 in Vienna¹⁹⁵ indicates that for a part of the member states such deliberations regarding the possible revision of the anti-drug arrangement are nonetheless currently unacceptable.

Be this as it may, criminal justice will always play a role in resolving the drug issue. Drug use is a criminogenic factor, albeit in the case of individual types of drugs the intensity and character of this link differs. It is necessary though to differentiate the causality between drug use and offending throughout the course of an individual’s life and the causality related only to the concrete situation during which the crime is committed. Understanding the connection between drugs and criminality is not merely a theoretical question, but is also important for public policies as it determines the way society reacts to drug-related crime.¹⁹⁶

The criminal justice system has at its disposal means and tools with which it can effectively influence the drug issue, not only in the area of drug offences but the drug scene as

¹⁹³ E.g. Gray, J.: The case for legalising all drugs is unanswerable. The Observer, 13 September 2009, downloaded from <http://www.guardian.co.uk> on 14 September 2009.

¹⁹⁴ UNODC: World Drug Report 2009. UNODC, Vienna 2009, p. 164; <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2009.html>.

¹⁹⁵ See <http://www.unodc.org/unodc/en/commissions/CND/session/52.html>

¹⁹⁶ Carpentier, C.: Drugs and crime – a complex relationship. Drugs in Focus 16, EMCDDA, Lisbon 2007; <http://www.emcdda.europa.eu/html.cfm/index36331EN.html>.

a whole. Its activities are rightly considered to be an integral component of the anti-drug policy. The options of criminal justice nonetheless have their considerable limitations and attempts to overestimate its role and to use its means and tools to solve problems that could be influenced by other components of this policy may be counterproductive from the aspect of results and debatable from the aspect of the fundamental principles of criminal law (especially the principles of subsidiarity of penal repression and protection of human rights). As mentioned above, certain specialist studies have reached the conclusion that more intensive repression in reaction to drug-related crime may paradoxically lead to a rise in crime.

It is clear that even if the measures in the field of drug supply reduction are extremely successful, the drug market will remain in existence as long as the demand for drugs remains. Reducing demand is a task reserved especially for the area of prevention, which in this sense should represent the fundamental principle for approaching the drug issue. Activities involving supply reduction together with measures pertaining to treatment and re-socialization or harm reduction then focus on resolving cases where prevention has failed. At the same time, research indicates that the cited segments of the anti-drug policy have greater potential if their activities are appropriately coordinated. If it is possible to speak in this field of the success or effectiveness of certain measures, then these always involve multi-institutional measures using the capabilities and assets of the individual components of the anti-drug policy.

Drugs as a Criminogenic Factor

*Drugs*¹⁹⁷ are one of the themes that are either avoided or discussed to an extreme extent in our society. Drug use, the specificities of the Czech drug scene, drug-related crime and other problems that are associated with this phenomenon were quite attractive in the 1990s. This was mainly due to the fact that the Czech Republic witnessed many important social changes over the past twenty-five years that naturally also affected its drug scene.

Drug abuse, especially among the young, the elusive high profits from illegal drug production and distribution, money laundering as well as the fact that drug addicts no longer perform their social roles and sooner or later require financial resources for treatment or other needs, all these only increase society's interest in being protected against drugs.

The drug issue as well as our reaction to it are changing continually. The culturally historical attitude of society to drugs, its stances and norms, the economic standard, the availability of drugs and their spread within the population as well as the degree of social stress and the perception of the danger faced by society and related to criminality in general and drug abuse in particular, the pattern of values and beliefs and the preferred lifestyle, the extent of democracy - all these and other factors limit the options for regulating and socially controlling these addictive substances.

The phenomenon of drug abuse acquires various levels and characteristics in individual countries, which may also be said of the social and legal systems of prevention, control and treatment of *drug addicts*¹⁹⁸. Efforts focusing on the drug issue have led to the approval of a number of international conventions amending legal control, the handling and movement of narcotic and psychotropic substances and taking measures aimed at dealing with the illegal drugs trade. The goal of international agreements is cooperation between individual

¹⁹⁷ A drug may be defined as a natural or synthetic substance that significantly affects the human psyche and whose regular use leads to addiction, mental or somatic dependence and other medical and social disorders. The most frequently abused substances are classified as alcohol, barbiturates, benzodiazepines, cocaine, opiates (codeine, heroin, morphine, pentazocine), cannabinoids (marihuana, hashish), stimulating amines (pervitin – methamphetamine), hallucinogens and very frequently a combination of addictive substances. Drugs subject to control in accordance with international agreements are defined in the Czech Republic by Act No. 167/1998 Coll.

¹⁹⁸ Drug addict – a person using drugs or addicted to drugs In: Vokurka, M., Hugo, J.: Velký lékařský slovník. (Great Medical Dictionary) Maxdore Jesenius: Prague 2001, p. 838. The text includes the term drug addict or abuser without differentiation.

states in this area and at the same time restriction of the international illegal trade and production of these substances, whereby anti-drug policies and measures are unified, taking into consideration the territorial integrity and sovereignty of individual states. The methods by which European states are attempting to deal with the tendency of some of its citizens to abuse drugs reveal fundamental philosophical and cultural differences between these states.¹⁹⁹ The anti-drug strategy in European countries is quite diverse. The policies of criminal justice towards the illegal production and international trade in drugs worldwide are significantly repressive in character and are directed at tough punishments for such perpetrators, as the exceptional gains and profits associated with the illegal drugs trade are acquired at the cost of serious damage to the lives and health of people. Alongside the ratification of corresponding international agreements, further escalation of sanctions and punishment in most European legislation is applied if the facts of a given case may be qualified as meeting the legal criteria of organized crime. The approach to drug use and drug possession for one's own use is differentiated. Illegal drug consumption is in most European states *de jure* or *de facto* decriminalized. Drug consumption is indirectly penalized in the same way as procurement and possession of drugs for one's own use. As to possession of drugs for one's own use, most states in practice are very tolerant of this fact. It may be concluded that the public prosecutors and judges are given a free hand when prosecuting and punishing "trivial" drug offences. The legislative activity elicited by the recognition of international conventions and a whole range of criminal justice concepts in individual states demonstrates that attempts at restricting drug use are on the rise. Apart from repression, these activities even include impartial factors such as prevention, social control, therapy and re-socialization of drug addicts.

The motives leading to drug *abuse*²⁰⁰ vary, but it is always the case of the mutual interaction and influence of a wide spectrum of personal and situational effects, a process that cannot be described in any simple way.

In the Czech Republic, drug consumers may be divided into two large groups:

- The first group includes a predominance of middle or older aged persons using the legal and in our country traditional number one drug, alcohol

¹⁹⁹ See e.g.: Cotič, D.: *Drogy a trest. (Drugs and punishment)* Prague: IKSP 1991. Trávníčková, I., Gawlik, L., Kotulan, P.: *Právní úprava drogové problematiky. (The legal amendment of the drug issue)* Prague: IKSP 1992. *Obchodování s drogami v Evropě. (The drug trade in Europe)* DEA, IKSP 1997.

²⁰⁰ Abuse – excessive use, misuse, most frequently the excessive use of drugs or their use at an unsuitable time (at work, in pregnancy). This may involve a one-off, less frequent or continuous and regular state. Apart from drugs in the common sense of the word, abuse also relates to alcohol, caffeine, tobacco, certain medications (e.g. sleeping pills) etc., M. Hugo, J. et al.: *Velký lékařský slovník (Great Medical Dictionary)* Prague: Maxdorf Jessenius 2002.

- The second group includes minors, youths and younger adults who prefer the abuse of non-alcohol drugs (marihuana, pervitin, heroin, ecstasy...)

Persons interested in using drugs may be divided according to the frequency of such interest as follows:²⁰¹

- One-off – tries once and has had enough
- Experimenter – experiments, in contrast to the one-off user repeatedly, with one or several types of narcotic and psychotropic substances
- Occasional²⁰² - seeks the opportunity, associates drug use with certain activities or people
- Regular – or problematic (according to the EMCDA definition) or addicted. The drug user uses narcotic and psychotropic substances regardless of place, time or environment.

It may be concluded from the available epidemiological data and other sources²⁰³ that there exists a significant disproportion between the number of those who try a drug as a one-off experience, those who repeatedly experiment with drugs, those who seek opportunities to use drugs and those who regularly use drugs and who become problematic users or drug addicts.

According to the EMCDDA definition, problematic drug use is defined as intravenous drug use and/or long-term or regular opiate and/or amphetamine and/or cocaine use.

The “problematic user” category then usually represents the regular use of drugs with variously expressed medical or social problems but not necessarily involving addiction. In the Czech Republic, most of the problematic drug users are represented by pervitin and heroin users. Abuse of opiates that are the components of certain medication is not too frequent in the Czech Republic, similarly to the seasonal use of home-made opiates from poppy. Similarly, cocaine use in the Czech Republic is also less frequent and for the time being it is not even part of the definition of problematic use.

²⁰¹ See Trávníčková, I., Zeman, P.: Možnosti trestní justice v protidrogové politice (The options of criminal justice in the anti-drug policy). Prague: IKSP 2007.

²⁰² Sometimes, the term recreational is used. This, though, could invoke a situation whereby the person is regenerating his/her strength or one of relaxed, problem-free use.

²⁰³ See: Epidemiological studies relating to the whole Czech population for the individual calendar years presented as part of the annual report of the Public Health Station, Prague. The annual reports on the state of the issue of drugs presented for the individual calendar years by the Czech National Monitoring Centre for Drugs and Drug Addiction

The “*dependent user*” category does not differ from regular or problematic users in frequency, but in the consequences of drug use, which from a medical aspect are classified as a disease.

As follows from long-term epidemiological studies, the frequency and extent of drug use is highest in large towns and cities, but we must always keep in mind that there exists a relatively large “hidden” population of drug users who are not in contact with any medical or social institution. Thus, this population is not accessible to any intervention and represents a significant social risk (medical complications, transmission of infectious diseases, criminality).

The adverse effects of excessive drug use are associated not only with serious health complications, but also with the fact that they become the determining factors of the given individual’s coexistence with other members of society and thus the social consequences cannot be ignored either.

The consequences of drug abuse for individuals manifest especially as:

- A change in perception of the surrounding world – reality
- A change in perception of one’s own personality - identity
- A change in resistance to stress
- A change in the freedom of decision-making
- A change in the options of self-realization
- A change in interaction with one’s own social surroundings

The consequences in relation to society include:

- The danger threatening other members of society (resulting for example from driving under the influence of drugs, from aggression that is enhanced following the use of certain drugs, from working under the influence of drugs)
- The necessary treatment-related expenditure faced by society
- The decrease or even loss of responsibility - towards one’s family, work or studies
- The danger that follows from the incitement of others to abuse drugs

Both groups of consequences are mutually dependent and intertwined, which also manifests as the gradual accumulation of changes of social nature. As the changes in a drug addict’s behavior occur both during intoxication and the period of abstinence, it is very difficult to determine or anticipate which period is most dangerous to the addict or his/her surroundings.

The manifestations of intoxication with various drugs differ both in view of the chemical actions of the substance administered and of the reaction of a particular individual in a specific situation. Excessive consumption (abuse) of drugs is usually signaled by the inability to adapt to the external as well as internal conditions of a given person, i.e. to adapt to life's demands. Decreased adaptability to the surrounding environment manifests as the restricted ability to accept appropriate roles as well as social status. Other activities or interests are neglected in favor of drugs and the amount of time needed for their procurement, use or recuperation from their effect increases. It may be said that the addict gradually reduces or completely drops important social, work and relaxation activities and devotes a greater part of the day to obtaining drugs or resources for obtaining them using illegal (so-called procurement criminality) or unwanted means, most often prostitution in the case of women.

Drug addicts are often characterized by preferring the present to the future, by increased impulsiveness that may lead to aggression. At the same time, they are usually less capable of anticipating the consequences of their actions and they deal with stressful situations usually in a less integrated manner. They also usually feel less responsible for their behavior and its impact on their surroundings. Their different, socially unacceptable lifestyle pushes them towards the edges of society and they usually associate with persons of similar values, which again increases the divide between them and society.

An individual assesses the world around him/her to a large degree on the basis not only of his/her own experience, but also on the basis of the views of the social groups in which he/she moves. The informal group (gang) significantly models his/her forms of behavior, as in the gang you do "what is in", regardless of the benefit. This dangerous trend plays an important role in the spread of drug abuse. It is a well known fact that drug abuse most often occurs through the mechanism of imitation or direct seduction within the informal group. The gang becomes a place that tolerates even socially unpleasant behavior by the drug addict and satisfies the need for social acceptance and a sense of belonging. The gang is the place to satisfy one's need to be different and retrospectively strongly promotes this satisfaction.

The social insecurity of drug addicts is related to their passivity and reluctance towards social activities. Addicts probably suffer not only from a lack of important social relationships but also from discontentment arising from the situations that they must face. They complicate their insecure social status by the fact that they usually do not integrate within society and sometimes act against it. A sort of distinctive drug addict philosophy or even "subculture" arises, which is very difficult to influence because of its isolation.

The general elements of this subculture life²⁰⁴ are also associated with the lifestyle of drug addicts who often fail to be aware of these elements or on the contrary feel the need to exaggerate them. The drug addict subculture may be classified alongside those alternative groups that deliberately differ in their daily lifestyle and in their deliberate self-delineation and systematic refusal of the majority's lifestyle or that even predetermine its members to adopt extreme standpoints towards society. This is a specific form of social identification denial with an imposed form of social existence. The uncertainty arising from a lack of anchor in the wider social structure leaves drug addicts in relative isolation and leads them to form their own societies. Drug addicts, as a typical group seeking to escape reality, form in a certain sense of the word their own subculture. They form their own substitute world, which is comprehensible to the drug addict and at the same time protects him/her from the outside world. Values that alter in direct proportion to the type of applied substance, their own slang relating to drug labeling and manipulation, their own communication and exchange or business channels - all these create a specific world, a paranormal reality perceived together or individually. The drug addict subculture may even be characterized by its specific visual, literary and music creations that arise under the influence of various types of drugs. Nonetheless, the group spends most of its time looking for drugs.

The different lifestyle and different system of values associated with drug use induce predominantly negative reactions in the social surroundings, because "... The average citizen is naturally horrified, especially when faced with expressively rich and extreme forms of subcultures and reacts with irritation. Mental auto-regulation and the habit of moving within the given reality of one's own social life do not allow the average citizen to truly confront such a subculture; instead he/she confronts it only under the influence of information presented by the media."²⁰⁵

The majority society is predominantly capable of accepting so-called primary problems associated with drugs (i.e. their effect on the user's health) that are common to all excessive consumption, especially that of tobacco and alcohol. Secondary problems (specific types of criminality, the fact that drug addicts do not work and are moreover immune in their hallucinogenic worlds to targeted propaganda etc.) are often associated with manifest attempts of the majority to move drug addicts to the edge of society, to exclude them and if possible

²⁰⁴ See Trávníčková, I.: Sociálně patologické aspekty zneužívání drog u pražské mládeže. (The socially pathological aspects of drug abuse among the young in Prague) Prague: IKSP 1999.

²⁰⁵ Subkulturní životní styl jako alternativa (The subculture lifestyle as an alternative) A kontra magazine 5-6,7/1994.

remove them. These views are seeping into society's sub-consciousness together with the policy of prohibition.

The frequent reason for abusing drugs is an individual's rebellion against the so-called "consumer lifestyle". This may be classified as those forms and manifestations of life, where the striving for maximal growth of material assets and their demonstration impoverishes the gratifications of life. Though the consumer society did not invent drug abuse, it did create very suitable conditions for it.

The social acceptance of a consumer style of life also manifests in the abuse of so-called *social drugs* i.e. nicotine, caffeine and socially consumable doses of alcohol and medication. The social norm in these cases reacts flexibly and if the individual does not become too conspicuous, then he/she remains tolerated. This does not apply to the abuse of narcotic and psychotropic substances, which deviates from the social normative requirements.

"Regular"²⁰⁶ and systematic alcohol abuse is usually tolerated for a long time by others, especially in the case of persons with a low socio-cultural level and modest social aspirations. Such persons are termed alcoholics only when serious mental and somatic changes occur or in the case of criminal activities. The drug addict is usually branded as soon as this fact is known. This means that our society has according to various thresholds of social tolerance a significantly less conformist attitude to the abuse on non-alcohol drugs than to alcohol abuse. Public opinion often confuses the older term "hooligan" with the term "junkie". The social sanctions of this term manifest not only as a certain social distancing, but at the same time as a connection with a deviant career that is directly associated with these individuals. Social sanctions also often serve to block the access routes of these individuals back to the social fold. The social reaction to the behavior of the abuser whom it ascribes the personality of a deviant may stabilize the abuser's deviant development".

It must be stressed that drugs do not exist as an independent problem. In reality, they are merely the catalysts of processes taking place around us.

Drug addict subcultures are only rarely static and they usually change over time. While the central values and principal roles (seller, buyer, user) remain relatively constant, situational behavior such as the reaction to social pressure exerted by the majority culture, to pressure exerted by legal institutions, the fashion affecting the choice of drug and the availability of the drug on the black market may change significantly. Moreover, novelties in

²⁰⁶ Trávníčková, I.: Alkohol a drogová závislost u dětí a mládeže (Alcohol and drug addiction of children and adolescents) In: Tři studie o sociálně patologických jevech (Three studies of social pathological phenomena). Prague: IKSP 1996, pp. 53-54.

the range of available drugs are very popular in most drug addict subcultures. New drugs are procured and tested and new slang terms appear and the old terms disappear. Also, the time and place of drug use change. Changes in the drug addict subculture are also affected by the individual members of the reference drug group who participate in the formation of subculture activities.

It is difficult to verify the theory of the drug subculture, as the decisive independent variables, i.e. behavioral standards, are nearly inaccessible to direct measurement and quantification. Mostly, we evaluate and assess these based on the behavior that is to be elucidated (consumption of hashish, hallucinogens, heroin). Another problem lies in the fact that we do not know exactly why and how drug subcultures form and why they change.

It may be concluded that a certain drawback of theories, conceptual models as well as original empirical research consists in the fact that the person being studied is approached only as an abstract unit or model who is to be an example or prototype of the entry into the process of drug consumerism and rising participation in behavioral norms, roles, rituals and slang. In reality, though, we must keep in mind that the given individual carries a multitude of social roles.

Taking into consideration the aforementioned findings, it must be stressed that the social danger of drug abuse lies in the fact that the immediate causal relationship between the impulse and consequence (disruption of social relationships and activities) is not clear and manifests only once various changes accumulate over a longer period of time. The seriousness of this problem also increases because drug abuse discourages the user from developing adequate means of resolving the varied problems and concerns of everyday life. From a social aspect, it is important that the basic sign of drug abuse is a certain degree of social degradation and social isolation that, in the case of women, further intensifies and affects more significantly the woman's surroundings, especially her children.²⁰⁷

The person dependent on drugs is primarily a changed person with a different system of values and altered personal relationships. Such a person lacks the sense of belonging and has his/her own system and criteria for evaluating people and their mutual relationships that defy usual standpoints. Such a person has more difficulty submitting to social and legal standards, loses contact with normal society, develops an increasing communication block that leads to a certain stereotype and social isolation.

²⁰⁷ At the same time, we must realize that drug abuse always represents a health risk for those who use drugs. Pregnant drug addicts also endanger the healthy development of the fetus (see viz: Trávníčková, I.: *Specifické aspekty zneužívání drog u žen* (Specific aspects of drug abuse by women). Prague: IKSP 2001.)

This is an individual with altered mental capabilities. Nonetheless, this person remains a part of the same social structures that naturally do not accept such an individual.

Long-term drug abuse leads not only to the individual's continual failure within social structures to which he/she belongs, but also to the ineffectiveness of social mechanisms acting on this person.

Drug addicts lose interest in their surroundings and often in their own person with this even leading to suicidal behavior. Early contact with psychiatric services or the police are noted in the case of most drug addicts. The drug addict as a person with an altered personality has more difficulty adapting socially than was the case previously. His/her interaction within society may lead to permanent or repeated unsuitable results.

Drug abuse modifies the drug addict in such a way that it is often difficult to determine his/her personality before abuse began, as healthcare institutions or the judiciary come into contact with such persons once they are already mentally altered. Thus, the question arises regarding the extent to which the personality traits of the drug addict are the cause or the result of drug abuse. In most drug addicts (abusers), the problems have less to do with the drug itself than with the circumstances under which these drugs are consumed. Drug abuse exposes and emphasizes those personality traits that also increase the probability of social failure on the criminal level. The extensive record of psycho-pathological manifestations of drug abuse as well as the accentuation of negative personality traits of drug users may also be reflected in the commission of crime.

Certain types of crime are committed as the result of psychiatric disorders induced by chronic intoxication (i.e. hallucination, paranoid phobia, idée fixe, disproportionate and unfounded irritability etc.).

Drug abuse as the source of crime is often associated with the same causes that promote crime in general; namely, a low level of legal knowledge and internal moral restraints, anti-social behavior and conduct as well as an overall insufficient socio-cultural development of the personality.

This is why we encounter dependence on various drugs more frequently in the case of criminal offenders than in the rest of the population, regardless of the fact of whether they are in prison or not.

Crime is a sort of extreme consequence of an individual's -drug addict's - lack of social adaptability and at the same time it represents a very important obstacle to his/her social integration.

Findings to date show that there exists a certain relationship between drug abuse and various types of deviant behavior that nonetheless cannot be studied on a general level from the aspect of a direct causal connection, but only as one of the factors that may accelerate the commission of crimes and that becomes a criminogenic factor in relation to the individual personality traits of the perpetrator and the factors of the socio-cultural environment. At the same time, it must be stressed that the behavior of drug users cannot be currently considered to be the problem of certain marginal groups or certain disordered personalities. Rather, it represents the risk of living in a modern “performance and consumerism” oriented society and nearly anyone can succumb to this risk.

Homelessness as an extreme form of social exclusion

Homelessness is considered to be the final phase of the process of social exclusion²⁰⁸, whereby a person gradually loses the ability to secure for oneself the basic requirements of life. On the social scale, they can fall no deeper. Typically, such a road leads from a dysfunctional or non-existing family, through insufficient education, problems with finding employment and inability to acquire and finance housing. This road is usually predetermined and accompanied by various social pathological phenomena, including delinquent behavior and an increased risk of victimization. Such socially handicapped persons are excluded from the option of participating in civil life and especially from entering the job market. Determination by unfavorable circumstances is naturally not absolute and thus it is interesting to attempt to discover in which cases and under what conditions can such an unfavorable living situation be managed.

Thus, the aim of this paper is to consider the following themes:

- Why certain negative circumstances of life lead someone to the very bottom of human society and on the contrary why certain individuals are capable of coping with similar unfavorable situations that to others are fatal and lead to the persistence of their unfavorable state of affairs
- How is it possible to help people in extreme social situations, i.e., what are the possibilities of social prevention in this sphere

Many researchers have been pursuing this issue in the field of social sciences as well as in other contexts (e.g. delinquents, drug addicts, gamblers). We will attempt to apply

²⁰⁸ Social exclusion is a state whereby people are pushed to the edge of society and they cannot, in view of their poverty, insufficient access to education or in view of their discrimination fully participate in society. This further distances them from the chance at employment, income, education as well as social activities and networks. They have nearly no access to decision making and often feel powerless and unable to influence those decision processes that imminently determine their lives. See: Pěnkava, P., Kocmáňková, D.: *Expertíza o situaci osob bez přístřeší a ostatních zranitelných skupin v hl. m. Praze* (Expert opinion regarding the situation of homeless persons and other vulnerable groups in Prague), monitoring of National action plan for social integration 2006 – 2008.
<http://www.neziskovky.cz/Files/Soubory/projekty/STOP/expertizaPrague.pdf>

selected expert findings to illustrate the given theme on the case of the homeless whose problem has been touched upon in our research in recent years.²⁰⁹

From a historical aspect, homelessness is certainly not a new problem. Over time, society's approach to this phenomenon has changed, though. It could be said that in developed countries today - in contrast to the past - its incompatibility is perceived more sharply and significantly as a social-pathological phenomenon. In the past, this was not always the case and even today in some countries this phenomenon is perceived almost as something common and normal, although not too desirable (e.g. India and certain South American countries). In the latter countries, though, there exists no form of public help for such persons, or any program that would lead to the elimination of this phenomenon. The change in approach to homelessness in European democratic countries may be related to the fact that "the right to receive help for the provision of basic living conditions" has gradually seeped into society's sub-consciousness (and later into legal norms and standards such as, e.g., the Charter of Fundamental Rights and Basic Freedoms). Currently, the homeless in Czech society are perceived as indignation-arousing persons that live in parks, train stations and other public open spaces; beg and arouse the public's aversion.

The existence of people without a home is thus a problem which in our relatively rich society induces aversion and is difficult to get accustomed to. After long years of totalitarian rule, during which this problem was not allowed to be apparent, it has again become visible and current. A certain section of homeless people began appearing on the streets of larger cities to a greater extent after 1989. The reactions of people to their existence have usually been negative: aversion, contempt as well as remorse as a reaction to an unpleasant confrontation with human poverty. A section of the public at the same time has felt pity and compassion towards them. And many people fear them, associating this group of persons with negative social phenomena, including criminality and the threat of transmissible diseases etc.²¹⁰

The hidden homelessness of persons living in asylums for the homeless and various hostels is then much less perceived by public opinion. Potential homelessness, i.e., the one threatening people in social distress, debt, at risk of default etc., is unfortunately also overlooked.

²⁰⁹ See Štěchová, M., Luptáková, M., Kopoldová, B.: *Bezdomovectví a bezdomovci z pohledu kriminologie* (Homelessness and the homeless from the aspect of criminology). Prague: ICSP 2008.

²¹⁰ For more see e.g. Kosová, P., Omelková, L., Sedláček, P.: *Bezdomovectví v hlavním městě Praze* (Homelessness in Prague). Prague: MCSSP 2004, p. 5 ff, or older research by the CVVM from 2000, The Institute of Sociology, Czech Academy of Sciences.

The existence of homeless people elicits various questions. The first is where do these people actually come from and how is it possible that they have allowed things to go so far. It was determined that in our conditions these people come mainly from the following groups²¹¹:

- They spent their childhood or adolescence in a children's home;
- They passed through detention centers, medical or social institutions and on discharge found that they had nowhere to return to;
- Foreigners who failed to adapt to their new environment;
- Persons with problems with alcohol, gambling or other addictions;
- Physically and mentally handicapped persons;
- Persons who led a normal life for a long time and then suddenly found themselves without a job and/or without a family.

It may be added that long-term hospitalized persons may suffer a similar fate.

It is difficult to calculate how many such persons live in our society. Apparently, there are many of them among us. One thing remains fundamentally important: by far not all persons from the aforementioned categories end up at the bottom of human society, undoubtedly represented by life on the streets or in train stations. Some manage to find employment and housing, to establish functional and functioning social links or eventually re-establish links from the past. Thus, the question is what differences we can find between the variously handicapped persons who became and remained homeless and those who managed to find their way back (leaving aside the fact that these groups intermingle, i.e., cross from one to the other, according to circumstances), i.e. how do these two groups differ from each other.

In the research conducted by the ICSP recently, we attempted among others things to determine the mechanisms, social as well as personality-related, that play a role in the none too frequent cases of individuals who succeed in returning from the trap of homelessness to normal life. We chose this topic on having examined the available literature that is devoted to a great degree to the causes of homelessness rather than to the circumstances of re-integration in society.

When studying this theme, it is possible to use as a basis the fact that homelessness is on the one hand a manifestation of failure in the sphere of socialization, in this case in the socialization of personality traits. Here, it must be remembered that we have in mind long-term homelessness and situations when the individual is trying to find his/her way back. On

²¹¹ For more see: Králová, J.: Společenská rizika související s bezdomovectvím (Social risks associated with homelessness). <http://www.upol.cz/fakulta/lf/struktura/pracoviste/ustav-socialniho-lekarstvi-a-zdravotni-politiky/phdr-jaroslava-kralova/>

the other hand, homelessness is a manifestation of a certain failure by society that was unable to prevent the development of homelessness and is unable to provide qualified help in cases when the problem has already occurred and progressed. Advocates of these opinions have at their disposal different and variously strong arguments. We will mention some of these in the following text.

Literary sources describe certain personality characteristics of socially excluded persons such as a lack of responsibility towards their surroundings and towards themselves, the gradual loss of independent qualities, the lack of self-control, the inability to learn from experience and the clinging to one's non-functional behavior²¹². Some authors consider these to be also typical of other persons with manifestations of deviant behavior among which they include homeless people. The question often remains whether these characteristics lead to homelessness or whether these are only the consequences of such a lifestyle.

It is probable that living on the streets strengthens those traits that were already present previously. Personality characteristics are completed and cultivated especially in an orientational family. In this respect, we found that the background of most homeless careers includes unsatisfactory relationships within the original family, excessive critical (mostly) fathers, lukewarm relations with the mother or siblings. Prevention of (not only) homelessness should begin in the family. This is a well-known fact. It is also well-known that it is very difficult to "look into" the relationships within a family and that it is even more difficult to influence a family.

All the following case reports come from anamnestic interviews conducted as part of the research of criminological aspects of homelessness at the ICSP between 2005-2007.

A man, 39 years old, is the oldest of three children. His father died recently and he is now living with a friend, also a repeat offender. The client is not in contact with his mother or his siblings. When he was 8 years old, his parents placed him in a children's home. He claims that he never found out why. His two younger siblings lived with the family. His parents came for him during the summer holidays, but he only spent at most 2-3 days at home and the rest with his grandfather. He tried to return once to his mother - on being released from jail - but was again refused.

A thirty year old woman was born in a complete family that included five siblings. Her parents divorced when she was 10 years old, with her mother taking care of the children in the past five years alone. Her mother then found a boyfriend and left all the children with

²¹² See Vágnerová, M.: Osobnost bezdomovce. In: Psychopatologie pro pomáhající profese (The homeless person's personality in Psychopathology for assisting professions). Prague: Portál 2004.

their grandmother. Until the age of 10 years - until the father left the family definitely - they allegedly led a wonderful family life. After her mother moved in with her boyfriend, she sold the house, abandoned the children and started taking drugs. At the time, the father - who had previously shown no interest in the children - suddenly showed up, maligned the mother in front of the children but did not help them in any way.

The selected case reports are sufficiently eloquent. A good start in life, orientation in a complex world and a balanced personality can hardly be expected of people growing up in similar families. Moreover, it can hardly be expected that such a family will provide support when problems arise.

The social curator, Pavel Pěnkava, has been dealing with the psyche of the homeless from the position of his long-term practical experience. He analyzed in his work²¹³ their internal and external handicaps, among which he includes e.g. “the inability to adequately communicate, low self-esteem, pathological lying (*pseudologia fantastica*), inadequate emotional reactions in a given situation (hyper-motivation), absence of feeling of responsibility, problems with accepting authority, social stigmata of certain social disadvantages (especially a criminal record and homelessness) and a whole range of other psycho-social disorders and diseases”. He considers *external* disadvantages to include the increasing demands placed on job applicants, the fear that an employee with social problems will not give a high quality performance, the negative attitude to people living at the edge of society etc. The author concludes that “similarly to medically handicapped people, socially handicapped people are not capable of changing their situation of their own volition”. Later²¹⁴, he adds that: the key factor that fundamentally affects the development and duration of homelessness is the lack of emotional intelligence, which is understood to be the ability to deal with one’s own emotions and the art of using these for meaningful goals, as well as of the ability to empathize (to feel for others) and to correctly deal with interpersonal relationships. Thus, according to the author, the emotional level of the individual fundamentally affects the social skills embedded in the social environment.

The following true life story indicates disturbed emotional intelligence within an otherwise presumed overall high intelligence (this is the case of a former homeless person with a university education).

²¹³ Pěnkava, P.: Možné způsoby přístupů k osobám ohroženým sociální exkluzí. (Possible means of approaching persons at risk of social exclusion). Seminar work. Hradec Králové University, 2005.

²¹⁴ Pěnkava, P.: Výchovně vzdělávací prvek v sociální práci s cílovou skupinou osob bez přístřeší (Educational elements in social work involving the target group of homeless people) PhD Thesis. Prague 2010.

A man found himself suddenly and unexpectedly without a roof over his head at the age of 55. He returned from work to find that his brother who had previously lived abroad for many years refused to let him into their parent's house, where he had been living alone and before that with his parents. What happened: following the death of his parents whom he had taken care of (they were both over 70 at the time) and whose house he had maintained, no usual inheritance proceedings allegedly took place, as the parents had deeded as a gift all their property and assets to his older brother before their death and he had not known about this. The client voiced the opinion that his brother had acquired the donation agreement from his parents by force. His mother had allegedly always preferred this older sibling, and he the younger was always punished... Later, his marriage broke up because his wife found another partner. He was often away on business, sometimes for longer periods of time abroad. His wife did not work, he earned enough. He grew alienated from his children and they were "incited" against him by their mother. After the divorce, he did not have any significant relationship. He helped for a long time (4 years) the wife of his friend who had died with care of her children but she eventually found a boyfriend and no longer needed him. This is allegedly why she could not help him when he lost his home, even though he did ask her for help. He has no true friends and contacts in the Czech Republic and speaks only of two friends who live abroad, though. Acquaintances whom he turned to when in acute need failed to help him.

In this true-life story, we can observe unsatisfactory interpersonal relationships from early childhood until adulthood. First, rejection by the mother, then enmity with his brother, divorce, problems with his children, no help from the widow he had previously helped quite a lot and mainly the complete absence of friendly contacts. On first sight, it appears as the adversity of fate or coincidence. But "fate" is usually determined to a significant degree by one's own behavior and one's ability to learn from one's mistakes. A lack of emotional intelligence is thus often a great handicap in life.

This case may also be related to other findings²¹⁵: homeless persons have greater trouble orienting themselves in the world of relationships because certain of their other abilities are usually also diminished. They fail in more complex situations, they deal with stress specifically using a so-called palliative strategy, i.e. a strategy that does not resolve the problem but merely limits its negative impacts. In many cases, they lack sufficiently developed volitive characteristics and are unable to control themselves. They require help in

²¹⁵ E.g. Vágnerová, M.: Psychopatologie pro pomáhající profese. (Psycho-pathology for assisting professions) Prague: Portál 2004, in: Psychologie dnes (Psychology Today) 2005, No.1

everyday situations (dealing with the authorities etc.), but they are not always capable of accepting it and their problems persist.

A 40-year old man living in an asylum for the homeless denies that he is homeless and stresses that he does not feel as a victim. On the contrary, he resists such a role vehemently. He maintains that he has “everything firmly under control, but that the authorities and other institutions are thwarting his efforts”. He is not resigned. After all he is doing his best, but he continually complains about various institutions and their dealings with clients, especially about the labor office. Because his permanent residence is officially listed as being in Ostrava, he must make the trip to the labor office in Ostrava twice a month. He claims that no one is helping him or has ever helped him. He also complains about the Salvation Army, where he is housed. (The employees of the asylum have a different view: the client himself is complicating the situation as he is unable to put his affairs in order – e.g. arranging for a change in his permanent residence - and he does not respect the recommendations of social workers). “As long as I don’t have a job, I don’t have the money to travel to Ostrava”.

This man and many other homeless apparently live under the illusion that fate in the form of institutions is placing obstacles in their way and they cannot do anything about it. This is why they do not plan anything, do not expect anything and do not think of the future much, probably living only for the present. This is a form of protection against further stress and fears that the future cannot bring anything positive. They attempt to maintain their self-respect by failing to blame themselves for their failure and rather blaming others in their wider surroundings, the authorities etc. Many needs of the homeless thus naturally remain unsatisfied.

The psychological state and needs of the homeless are also different. Mainly they lack (or have a severely suppressed) need for self-realization. Their social failure is of such an extent, that it often deprives them of all hope of improving their situation. This leads to a low level of self-esteem and self-confidence. The identity of a homeless person manifests in his/her negative perception of him/herself.

One may object that certain people with the aforementioned characteristics live among us and yet they have never ended up on the street, nor have they ever had problems with the law. They are most probably those people who did not lack a specific ability to maintain family relationships and friendships, qualifications and employment level despite their unfavorable personality traits. This is also related with the findings of other authors^{216,217} who

²¹⁶ See. Baumruková, P. et al.: *Obce, města, regiony a sociální služby* (Towns, cities, regions and social services). Prague: Socioklub 1997.

consider the main cause of homelessness to be the fact that certain groups of people lack social abilities and skills that would enable them to live in a marriage, with a family, in a flat; that would enable them to get and keep a job and that would allow them to have an overall ability to have conflict-free relations within society.

The same 40-year old man has rather casual social links (a girlfriend from the same asylum for the homeless), or very weak links (2 friends from the pub). He has zero links with his family and does not keep systematically in touch with his mother or siblings ("he has closed the door on the past"). His ex-wife is preventing him from contacting his children. The courts are allegedly failing to deal with the complaint he lodged against his ex-wife.

Another frequently determined characteristic of personas at the edge of society is their refusal of personal responsibility for anything that happens to them in life. They are convinced that things happen independently of them, that they have no means of influencing them. They were "enticed" to commit all sort of bad things. They no longer consider why they allowed themselves to be enticed to commit a burglary and not to study languages. They do not realize that their actions are their own choice, admittedly not always a completely free one.

A fifty year-old man, widower with a primary education on partial disability feels helpless in all key moments of his life. He cites and stresses that he failed to get an education because of the unsuitable political involvement of his parents (during the totalitarian regime). He irreversibly damaged his health at work. He ended up on the street because his wife died and he did not know how to live on his own. He tried drugs (and was also prosecuted for dealing) because they were available and he concluded that "there must be something about them if people are willing to seek and buy them)." In another case, he was prosecuted because he had been provoked by a friend. This is related to his conviction that he will be saved by something "from outside", preferably by a woman, whom he badly needs in his life - as he claims. (After some time, he did find a woman through an ad and started living "normally" again).

This man is a typical example of a "victim" of circumstances as described by Theodore Dalrymple²¹⁸, an English psychiatrist working in a hospital in an underprivileged neighborhood. The author writes that these people persistently feel that they are the victims of

²¹⁷ See also Varga, L.: Bezdomovství z hlediska kvantifikovatelnosti získaných dat (Homelessness from the aspect of acquired data quantification). In: Sborník příspěvků ze semináře sekce sociální patologie MČSS (Anthology of the seminar held by the MČSS social pathology section). Prague 2005. pp. 100-104.

²¹⁸ Dalrymple, T.: Život na dně. Světový názor, který vytváří spodinu společnosti. (Life at the bottom. The worldview that makes the underclass). Prague: Academia 2005.

external situations and they have come to the conclusion and are convinced that “there is nothing to be gained by individual efforts, because the world has been created unfair”. It therefore makes no sense to exert oneself and strive for anything. One must thus do every second of one’s life only those things that one enjoys so that one is not bored. It makes no sense to make an effort because “we live for the moment”, after all.

Dalrymple also notes that many homeless are born sensation seekers, hate boredom, routine and being controlled by others. They explain their behavior by coincidence: they are the helpless victims of extensive social, psychological or economic forces. The author describes concrete cases from his medical practice in an underprivileged environment: the reason why the perpetrator repeatedly beat up his partner was that he “had a fit” or that she provoked him. Another one injected heroin because “heroin is everywhere” and one cannot escape it, etc. The author concludes: the problems of people living “at the bottom” are the results of their self-delusion. It is that vision that someone else or various circumstances are to blame. Only the individual him/herself is never to blame for anything and only he/she is the victim. The author discusses in detail the roots of this self-delusion and finds them in various aspects of public and private life, especially in the dysfunctional system of values transmitted from one generation to another.

It may be added that Dalrymple’s approach represents one of the most distinctive and unambiguous opinions stressing predominantly the responsibility of the individual for his/her social failure, which could be expressed as: these people have only themselves to blame, the cause lies in their personal irresponsibility.

It may be added that the approach described as “it’s not my fault, I’m not responsible for anything” may also be found among a considerable number of persons with an inclination towards other types of deviant behavior. It is a certain character trait common to those people who explain the world around them as enemy territory full of pitfalls and ill will, which they have to fight or try to outwit. From a different aspect, it is an overall effective protection for the ego: if it’s not my fault, then I’m not responsible for anything and I adapt my behavior to this fact.

On the other end of the opinion spectrum, we find attitudes such as: everyone can become homeless because everyone can somehow lose their job, house or health.

This point of view regarding the issue of socially excluded groups is taken for example by the social worker, Jiří Peiger²¹⁹, who seeks the causes of social exclusion predominantly in

²¹⁹ Peiger, J.: Společenské příčiny sociální exkluze a jejich podíl na genezi sociálně patologických jevů - několik úvah. (The social causes of social exclusion and their role in the genesis of socially pathological

the social environment. According to him, today's society "includes within it significantly antisocial characteristics" that directly induce antisocial behavior and it is these that the author considers to lie at the root of social exclusion. He justifies this by citing the approach of employees to the work force, which they do not perceive as human beings but rather merely as a source of profit. He also mentions the school system, which "does not educate a person as a personality but rather as a potential worker." He criticizes family upbringing, which as a consequence of the overall crisis of values and the family itself is no longer capable of transmitting to the next generation moral values and the ability to orientate oneself within these. Even in otherwise functioning families, the author finds "unclear goals and methods of education towards moral values. The secularized society lacks the influence of tradition as a collective experience on the value orientation of its members." He is convinced that the syndrome of social exclusion is a serious health problem of the individual and has its roots in the pathological development of personality under the influence of social factors. This fact leads to "the inability of the individual to resolve his/her life problems in a socially acceptable way".

The author is undoubtedly right that today's society demonstrates a certain degree of hardness in relation to the labor force, which is approached as an object and assessed according to whether it is useful and needed or whether it is redundant and unnecessary. One could argue against the author's critical claim that the first exclusion starts at school, whereby certain children are excluded from the prestigious educational group and later have more difficulty making it socially, and subsequently cannot afford housing. After all, not all children can or want to continue in their studies and differentiation among pupils is one of the school's task. Also, the needs of the labor market are differentiated. The fact remains, though, that successful employment of individuals with lower levels of education is difficult these days.

Looking at this critical approach in relation to the social situation, with which one can only agree in many points, one must remember that man is not a mere puppet in the hands of social circumstances and that an adult legally capable of managing his/her affairs should be responsible for his/her behavior.

It seems that both sides are correct to a certain degree. Nonetheless, they fail to take into consideration in the first case the negative circumstances that significantly impede the individual and in the second case the very possibility to choose on the basis of a person's

phenomena, a few considerations: Anthology of the seminar held by the MČSS social pathology section Prague 2007, pp. 110-118.

decision and will. It is possible and responsible to anticipate certain unfavorable situations in life and to try and prepare for them as much as possible. For example, insurance, savings and an overall psychological equilibrium. In the case of a shortage of jobs, for example, it is not necessary to only accept qualified work or it is possible to re-qualify etc. It is possible to move in search of a job, although this is very difficult in many cases and may endanger e.g. family relations. Above all, a person should strive to maintain a functional social network, i.e. good relations with family and friends who in the direst situations may provide help at the beginning.

This approach today represents the minority view. Nonetheless, in the past it was strongly promoted. For example, in the 19th century, medicine as well as legal science identified vagrancy and homelessness with “defects and vices of the human personality” and perceived tramps as lazy and socially dangerous people. Of course, on accentuating the undesirable personality traits as described above and which we repeatedly encounter in persons socially excluded for a longer period of time, it is possible to consider this to be a case of a personality disorder with all its consequences. Such persons occur among the homeless to a greater extent - as do other manifestations of social pathology. Most probably, though, they are not the determinant factor in the sense homeless person = mentally ill person. This opinion held in the past was surpassed and most experts today maintain a multifactorial approach to the issue. Mental illness, especially one that has not been diagnosed or treated, may undoubtedly contribute to an individual’s social exclusion.

As shown by the research probe conducted by the ICSP in asylums for the homeless and involving 157 clients, psychologically or psychiatrically ill individuals represented, number-wise, a significant group among the clients. The probe highlighted that up to 44,6 % of the clients had received in the past or were undergoing at the present psychiatric treatment, either in the outpatient or inpatient setting. This is further illustrated by findings from the same source that 16 % of the individuals studied had attempted suicide, many of them repeatedly.

The problem of mentally ill homeless persons has been repeatedly highlighted by the psychiatrist, Ivan David. On his web pages²²⁰, he criticizes the fact that “in the Czech Republic no one is interested in mentally ill homeless persons. It is actually presumed that they do not exist. Despite this, we have the same proportion of them as in the “most developed” countries, i.e. between 25 and 40 %. This includes only patients with

²²⁰ <http://www.ivandavid.cz/2010/02/vrazd-ze-systemoveho-selhani-pece-o.html>, cit. 13 May 2010

schizophrenia, mania and depression and psychotic manifestations. If we were to add to these all those dependent on alcohol and addictive substances with no prior history of psychosis, the proportion of such persons among the homeless would rise to 80-95 %. This means that only in Prague there are around 1000 schizophrenics among the homeless. Social care institutions do not want them, there is no space for them in psychiatric wards and there is no one to place them there. They are unable to keep their flat and there is no one who would take care of them at home.”

David also cites the case of Mr. Szamseli, a long-term homeless person, who became a media star after he discovered a living baby in a dumpster. The municipal authorities offered him “out of gratitude” for saving a human life housing and employment. No one noticed that this man felt persecuted by unspecified “homeless persons” and that he “heard voices” that advised him. Under their influence, he wanted to run away from the hostel and hurt his ankle after jumping from a window. He was transferred to an orthopedics unit where he attacked an orthopedist that he considered to be part of the conspiracy against him. He was transferred to the psychiatry clinic in Bohnice, where he stated that he had last been treated at the psychiatric sanatorium in Opava in 1988. He stopped taking his medication and following re-structuralization and privatization, he lost his job. His stepfather threw him out of the flat. He had been homeless since and “heard voices”. The famous case ended tragically several months later when Mr. Szamseli committed suicide.

Certain foreign works also deal with the links between mentally ill patients and homelessness, for example an extensive study of North American origin²²¹. The mutual relationship between a significantly economically motivated decrease in the capacity of psychiatric sanatoria and the subsequent rise (among others) in the number of homeless persons was studied in 81 American cities. In this context, it was concluded that there exists a relationship between the number of mentally ill patients and an increase in the crime rate. Last but not least, it was determined that the number of persons who moved from healthcare institutions to social care institutions also increased.

The connection between homelessness and mental problems appears to be clear. And again it must be added that when family bonds are maintained, not even a mentally ill person will probably find him/herself on the street. David²²² nonetheless explains that severely mentally ill persons usually become ill in adulthood, when their parents presume that they

²²¹ Markowitz, F. E.: Psychiatric Hospital Capacity, Homelessness, and Crime and Arrest Rates. In: *Criminology: An Interdisciplinary Journal*. 44, 2006, No. 1, pp. 45-72.

²²² See Note 217

should fend for themselves and for this reason fail to help them. When these patients are no longer capable of earning a living, they may or may not be awarded a disability pension. Some of them are not entitled to such a pension or fail to apply for it. They thus remain completely penniless, usually on the streets, homeless.

The longer people remain without a home, the more they reinforce their socially undesirable positions and habits. This is associated with a difficult possibility of re-integration back into society. In our probe, we found that the duration of homelessness ranged in 64 % of the studied cases from five months to five years. Social workers consider this group to still have prospects in the sense that motivated individuals have a chance of returning to normal life. If homelessness lasts for a longer period of time, then these people are too adapted to the homeless lifestyle and their return becomes more or less improbable.

The stages of homelessness in relation to the duration of homelessness were studied by Janebová²²³ and her differentiation of individual types could be inspirational for prevention. She sees social degradation in the gradual exclusion of individuals from the majority society (“dislocation”), passing through “isolation”, where the individual finds him/herself outside the control of social networks and institutions and renounces the norms of society’s mainstream and leading to gradual identification with the homeless community. The individual begins living with a concrete group and subsequently identifies with it.

The unwillingness and inability to change one’s situation manifest in this phase of homelessness. It is an unwillingness (or lack of energy and will) to learn something new, get rid of one’s various imperfections and bad habits, to undergo treatment for one’s addiction etc. In other words, the longer a person leads such a life, the harder it is for that person to give it up. It is also objectively difficult. For example, explaining long-term joblessness to potential employers is difficult. Moreover, these people often have problems communicating and are inept at dealing with the authorities and this may even lead to social phobia. These people additionally suffer from low self-esteem, which is certainly not helped by their lifestyle.

A 50-year old widower lived in a homeless community at the Main Train Station in Prague. He had a great amount of debt from previous criminal activities and he thus tried to sell the Nový prostor (Czech version of the Big Issue) magazine. This contact probably prevented him from identifying with the group of homeless among whom he found himself at the time. His situation changed on the basis of his presentation of himself on the internet

²²³ Janebová, R.: Proces vzniku a stadia bezdomovectví. (The process of origination and stages of homelessness) Sociální práce 1999, No.4, pp. 27-28.

pages of Nový prostor. He was approached by the workers of the asylum for the homeless and he managed to take the first step: to acquire a temporary roof over his head but mainly to extricate himself from the hopelessness of living at the train station. He described in a very interesting and detailed way his situation at the time: several rival groups of homeless lived at the station at the time. The groups had a demarcated territory where they sought to cover their needs (by begging, stealing etc.), and did not allow anyone from a different group to access this territory. These barriers had to be respected, as any infringement could mean death. One group feared the other. In those territories where the barriers were respected, the group survived. Every individual foraged for food and drink for the whole group and shared with the others.

This man did not adopt the standards of behavior of the homeless community, although he was close to doing so: apart from his criminal activities he had become a pervitin addict and thus lost all his social links from the past. It seems that help came in time in this case. He underwent successful treatment for his addiction, met a woman through an ad and is now living with his partner.

The year 2010 was declared by the European Union as the year of the fight against poverty and social exclusion. (The National Plan of the Fight against Poverty and Social Exclusion was passed in 2007, after the accession of our country to the European Union). The material²²⁴ concludes that “the Czech Republic ranks among the countries with the lowest level of poverty - according to the EU methodology, this was 10 % in 2007 while the average for the EU countries was 16 %. Similarly to other countries, the unemployed, incomplete families and families with 3 or more children are most at risk of poverty.”

The homeless most often come from the group of unemployed persons and the slowdown of economic growth as well as the economic crisis does not promise them the best of futures either. In the cited report, we find that 48 % of the unemployed are immediately at risk of poverty and thus of homelessness in the most extreme cases.

In the European Union countries, there exist a number of national as well as local programs and strategies that endeavor to help people without a home and to prevent the occurrence of this phenomenon. Preventative strategies attempt to take into consideration the specifics of a given country and location. In general - even under our conditions - it appears that focusing preventative activities in the field of homelessness in two directions is most helpful:

²²⁴ National program of the European year of the fight against poverty and social exclusion, Czech Republic

First, restriction of the factors that lead to homelessness (as part of primary and secondary prevention). This mainly involves selecting risk groups and engaging in corresponding social work with these groups:

- Persons who fail to pay their rent and other housing fees repeatedly or in the long-term
- Persons leaving various state institutions: children homes, psychiatric sanatoria, jail
- Long-term unemployed individuals and families, especially those that are incomplete
- Persons that have to mentally and socially adapt to fundamental changes in their lives (divorce, death of one's partner, serious illness in the family, abuse in the family etc.)
- Older lonely individuals with no family and other social contacts (friends)

Second, integration of existing homeless persons back into society (tertiary prevention). In the field of tertiary prevention, the rapid reaction and response of the appropriate authorities is very important. As already mentioned, the duration of homelessness is directly proportional to the subsequent difficulties during re-integration. Therefore, high quality exchange of information between the relevant institutions should be ensured, so that it leads to the rapid identification of "new" homeless persons and to adequate decisions regarding how to proceed in their re-integration.

Greater help and activity on the part of the municipality or other organizations in cases of "temporary" loss of housing could also contribute towards the prevention of homelessness. This involves e.g. cases when the citizen (and often his whole family) is provided with a smaller flat as a shelter, but at the same time his assets are seized in order to cover his debts. This occurs even in the case of municipal housing. If the amount due is deducted from the wages, pensions and often social allowances, such a family is unable to pay the rent in the new flat either and thus a new debt is incurred and the threat of eviction returns. If this new eviction notice is given, such a family definitely loses the option of living under normal conditions. In such cases (especially when a family with small children and a single income or social allowances is involved), there should exist the possibility of postponing the installments of the original debt until the family's situation has stabilized and until it is capable of paying normal rent as well as the debt.

Also, there should be a greater possibility of acquiring social housing from the municipality for those of the homeless permanently residing in the given municipality (incl. Prague), who have a permanent job or another form of income and who meet the criteria for

being allocated social housing. Otherwise, these clients living to date in asylums for the homeless will find normal housing only with great difficulty.

A related problem is that in the Czech Republic, the housing market cannot offer for now an adequate alternative to low-income groups. These groups will require the building of flats in the form of subsidized housing, including all the necessary services. Low-category flats for rent dodgers are not an ideal solution, as they only lead to the formation of excluded ghettos.

Specifically, this means the creation of such a system of tertiary prevention of homelessness that would be capable of providing immediate “first aid”, i.e. saturate the basic needs of homeless persons (accommodation, food, basic hygiene). This help should be followed by a multi-level and variable program that would motivate these people to change their current situation. This is not an easy task. The system should at least register the maximum number of homeless persons and on providing basic help should gradually motivate them and induce them to change their lives also through their own contribution. In view of the fact that homelessness is caused by various factors, it should first be diagnosed how a given person turned up on the streets and the most suitable form of help should be selected according to this. Care must also be taken that secondary aspects of homelessness do not begin to accumulate. In fact, efforts should be made to eliminate the primary problem as long as it is isolated.

Let us turn our attention now to the role of society, both in the form of the state, municipality, community and family and in the form of civic activities. The indisputable fact that socially handicapped people are mostly incapable of changing their situation alone with no external help must be stressed again. The existence and form of the help offered plays an important role in such cases (as does on the other hand the willingness and ability of these persons to accept such help). Help may be offered (and refused) for various reasons. If help is offered by the family: in such cases there must be very serious reasons for the individual to refuse it. Various past wrongs, grievances and misunderstandings may play a role in these situations. Nonetheless, such help is mostly accepted. Help may come from friends. In such cases, if these are not “problematic” friends, such help may represent a suitable launching pad for regaining self-confidence and striving to extricate oneself from the situation.

During our interviews with homeless persons, we also recorded a case where the breaking point came with the approach of the criminal court judge who unexpectedly expressed confidence in a repeat offender by believing his declared attempts at redressing himself and did not sentence him to an unconditional prison sentence.

The 40-year old man found himself on the street for the first time at the age of 16. This started his parallel careers of homelessness and crime.

He was convicted 13 times and spent more than 15 years in prison. All his convictions were for property crimes. He thus lived alternatively in prison and on the street. In answer to our question as to the reason for interrupting this “career”, he stated that someone showed confidence in him for the very first time in his life and this became the key moment that marked his return. During his last court process, the presiding judge of the District Court believed him when he stated he wished to redress himself and although he was a repeat offender, she did not send him to jail but rather gave him an alternative sentence. He did not want to disappoint her and since then he has never stolen anything again. His words were confirmed by workers of the asylum for the homeless where he was living and since then (2002) he has had no criminal record. His life took a turn for the better very radically: he married shortly after, he has a job and he and his wife are bringing up their child.

There undoubtedly exist groups of homeless persons whom current social services cannot help and for whom no solution is in sight. These especially include persons addicted to alcohol and other addictive substances. From the aspect of social care providers, it is understandable that they will not provide accommodation to an acutely intoxicated person. After all, a homeless person who cannot go without drink does not even seek accommodation. Another problematic group is represented by the relatively large number of dog owners for whom the animal usually represents the creature they care most for and with which they will never part. Therefore, they also have no chance of finding accommodation. Childless couples are also a problem, as any kind of accommodation is usually beyond their means.

Moreover, new problems keep arising in this field. Recently, there have been increasing reports of excluded Vietnamese groups, with individuals as well as whole families falling victim to middlemen in their home country offering jobs in the Czech Republic. They often use up all their savings to buy airline tickets to the Czech Republic and pay off the middlemen. If they fail to find work in the Czech Republic, they remain with large debts in a foreign environment and their community cannot help all of them. The possibility of returning to their home country is very complicated for financial reasons.

Currently, the basic problem in preventing homelessness lies in the unsystematic approach to resolving problems. This involves several facts. Primarily – the homeless are often perceived and dealt with - even by state bodies - as a homogenous group of persons with more or less negative characteristics. They are thus approached accordingly. Solutions are sought only once an emergency situation arises, i.e., freezing weather arrives. Most financial

resources are then directed at a sort of “first aid” effort, which represents mere sleep over facilities.

The system that should be created should have multiple levels and the levels should be penetrable from both sides. A more uniform distribution of financial resources, i.e. more money directed not only at the aforementioned “first aid”, would also be helpful. Reception centers would at the next level continue in the form, e.g., of day care institutions, followed by asylums for the homeless, “halfway” homes and protected housing often termed training housing in this context. In suitable, carefully selected cases, the next level would involve the aforementioned social housing. Clients could, according to their abilities, gradually move along these levels.

One of the goals of this deliberation was to consider whether people who have lost their home are in some way socially inferior or mentally ill or whether society itself is ill and thus it reproduces a certain amount of such people. This question remains open. It is clear that both schools of thought can come up with strong arguments. If we climb down from theoretical heights to the concrete individual, we usually discover that factors from both sides of the spectrum play a role. Personality-wise, such persons are handicapped in some way, but their family, immediate surroundings as well as society as a whole “have left their mark on them” due to their demands, norms and institutions.

A person excluded by society was pre-determined in a certain way by genetic as well as social factors. These factors (upbringing at home, in school, peer groups, or possibly jobs) affected such a person in some way and this resulted among others things in a decreased resilience to the threatening social environment. At the personality level, this involves decreased motivation and will to maintain “normal” (common) social links, family bonds, friendships and last but not least employment contacts. The homeless are in many aspects socially defective and society often does not know how to help them.

The problem remains that human behavior is not completely predictable and it can be assumed only with a degree of probability that the mental given facts observed in the homeless may be both the cause as well as the consequence of their specific lifestyle. In other words, it is not always clear what is the cause and what is the consequence. Nonetheless it is possible during the development of homelessness to trace various factors, each of which may play a determining role in a concrete case. Of course, subsequently, if the homeless lifestyle stabilizes, stress factors may accumulate and thus decrease the possibility of integration. An example: someone remains on the street because he/she has lost his/her job that came with a flat. It is probable that this person’s social relationships (relatives, former colleagues etc.) will

disintegrate and in the long-term a deterioration of this person's mental state or rather its adaptation to homelessness may be expected.

In other words, several mutually distinct roads lead to homelessness, but the result is in the worst case the acceptance of the social status of homelessness, which represents to a large extent a cohesive framework of social and mental characteristics. These gradually wrap themselves around the primary cause. *The slide into this situation can sometimes be prevented by high-quality and strong informal social relationships, especially within families and relatives.* (This hypothesis may explain the small number of Roma thus far among the homeless, even though many Roma are poor and unemployed). One of the goals of this deliberation was to consider why certain negative circumstances lead certain individuals to the bottom of human society while others manage to overcome these adverse conditions. An answer or rather a hypothesis deserving further study could be the fact that good social bonds are capable of "holding up" a person in many situations and of preventing many life failures.

Many people living at the edge of society have in common feelings of grievance: they are the ones who had a worse fate and therefore nothing is their fault. Someone else, society, circumstances or perhaps their unfortunate temperament are responsible for everything that has happened to them and they are helpless in the face of all this. And even if they started doing something against such "fate", this would be pointless anyway. Though they are right to a great extent, if they are unable or unwilling to begin searching within themselves, they will lose the chance for a better life and no one will be able to help them much. Those who got off the streets, manifested especially at the very beginning a will to do so.

Rectification of this highly complex issue as highlighted above requires primarily good diagnostics and determination of the problem's intensity. The thoughts and reflections outlined above clearly show that a recipe for restricting homelessness is not available to date. It is clear though that when attempting to suppress this phenomenon, all existing potentials must be applied and all actions should be based on the following generally valid and applicable principles:

- Diagnosing the problems
- Differentiating between the persons concerned
- Selecting a suitable form of help
- Providing help in a timely and targeted manner
- Suitable and sufficient coordination of this help
- Trying to ensure that these persons will no longer need such help, i.e. not conserving their situation.

Radical Political Subcultures in the Czech Republic – Looking Back at 20 Years of Development

The Communist regime ruling in the Czech Republic in the 1980s was from some uniform totalitarianism of Maoist fashion, as might be sometimes incorrectly indicated in memories and documents which strive to give the young generation some understanding about life during the Communist era. Under a veil – by that time worn quite thin – of voluntary work and commitments within the “young communists association”, under the layer of commercial pop culture (whose bearers did not have to be afraid any more to show off their “western” lifestyle), many subcultures were thriving. Ranging from people studying and practicing Eastern religion, through tramps spending their time hunting for any pieces of apparel bearing the insignia of US Army, up to whole peer groups professing non-traditional musical styles. From time to time all these groups had to face more or less intense bullying campaigns by the Communist power but on the whole the regime already losing strength under the influence of Gorbachev-style reforms.

Certain semi-legal nature, in which the subcultures manifesting new and “western” attitudes had to exist, made them extremely attractive. One of the most distinct (literally) was the punk subculture, which had existed in then Czechoslovakia since the early 1980s. Like their Western models, our punkers’ main goal was to shock their environment and demonstrate their contempt of societal norms. Under the Communist regime, or “real socialism” as it preferred to call itself, however, this was much more risky – they could face in particular charges of “jeopardizing socialist morale”, they were constantly under threat of being prosecuted for “avoiding the obligation to work” (so-called “parasitism”) and for trying to avoid the compulsory military service. Since Communism (or the regime that pretended to be Communist) represented the fundamental enemy for the punkers, Czechoslovak punk could not embrace leftist views, as was common in the West. To the contrary, besides strong anticommunism, in a not insignificant part of the punk scene quite critical views of the Roma minority prevailed²²⁵. Indeed, the “condensation nuclei” of Czech punk community were

²²⁵ It can be demonstrated on the lyrics of some punk-rock bands like HNF, Šanov, Zóna A.

often located in places with high concentration of this minority (Teplice, Pilsen, Písek and the like).

Around 1988 several personalities started to appear on the Czech punk scene, denying in their outward appearance the eccentric, colorful and disorderly punk. Shaved head, green military jacket and jeans tucked into boots – these were the first skinheads, a subculture imported to Europe from the British Isles. The first skinhead that the author of this piece became aware of was a student of Prague musical school Daniel Landa, then about 20 years old, appearing often in the pub “U městské knihovny” in Prague 1, and in the evenings in the wine tavern called “Orlík”. It gave the name to his first band that started to promote a style hitherto virtually unknown. It did not differ from punk in the musical style but the lyrics contained nationalistic ideas (mainly in the form of admiration to the Hussite war machine – e.g. in the song called *Vozová hradba* – Barriers of wagons), “definition” of skinheads as such (song *Skinhead*), as well as racist songs (*White League*). For the reasons explained in the previous paragraph this kind of hardness and aggressiveness was liked by many punkers who either directly entered the nascent skinhead scene or visited concerts of Orlík, which would even play together with punk bands. It is not surprising as there was no other skinhead group then; Orlík got close in particular to the relatively new band *Three Sisters*. During 1988 – 1990 there was certain coexistence: not only the skinheads and punks went to the same concerts, after the Velvet Revolution they also participated together in the first bigger racist conflicts with the Vietnamese, Arabs (at the Wenceslas Square in Prague) and Roma.

The skinhead subculture (it would be untimely to refer to a “movement” back then) was growing rapidly and getting more radical under the conditions of total restructuring of society, appearance of new problems (mainly social) and the situation surrounding the Roma minority, neglected for years by the Communists, becoming acute. The growth of the number of sympathizers is certainly related to the rising popularity of the Orlík band, which conquered Czechoslovak music charts with their first record of 1990. Strong beer talk, emphasis on nationalism devoid of the class struggle, strong anticommunism and obviously frustration from the official ineptitude to deal with the Roma question – these were the motives, attractive enough for the teenagers of that time. In 1991 came the logical split between the skinheads (admiring patriotism, order, cleanliness and showing aversion to drugs) and the nihilistic and self-destructive punkers. Many violent conflicts ensued, provoked by the ever more self-confident skinheads, like the attack at the punkers’ beer pub *U Pepíčka* in Prague 10, assault on the participants of a concert of the punk band “*Exploited*” and in May 1991 the big fight (victorious for the skinheads) at the concert “*Branická žízeň*”, where

besides punk bands played Orlík and a new, radically right-wing and racist band Braník. The most famous in the media is the fight in front of the Prague Exhibition grounds where skinheads attacked an anarchists' demonstration.

That could still be seen as a normal skirmishing between two “street” subcultures but the skinheads became soon distinguished as an extremely right-wing subculture, with inclinations to authoritarian and antidemocratic ideologies. Why is it that this subculture acquired such “brown” tinge? A short historical review is in order. At the beginning of the 1980s in Britain a half-forgotten skinhead style from the turn of the 1960s and 1970s became fashionable again; in contrast to the originally totally apolitical approach of the subculture, part of the skinheads now began moving towards the radical right. The reasons probably had to do with worsening economic situation and rising unemployment, which affected mostly young men with low education. Some citizens blamed it on migration, “stealing” work from native Britons. At the same time, certain political groupings endorsing extreme right-wing views took notice of the potential existing in physically strong and patriotically disposed skinheads. Racist, Antisemitic and outright neo-fascist ideas penetrated more and more into the nascent movement. Around 1982 some English rock bands started to revert to a classical musical form of pub songs, so-called oi music (oi is a colloquial greeting used by London working class). A whole scene gradually developed based on a hard rock version of simple, rhythmical songs with joint choruses and lyrics depicting life on a periphery. Some groups with connections to nationalistic and fascist-like circles started to build patriotic songs upon this musical base which spread the myth of the “noble white world” that must be protected by the Aryan knights against enemy schemes. Such extremely right-wing and racist offshoot of the rock scene would later become known as “White Power Music” (indeed, the name is still in use).

Together with the wave of nationalistic feelings grew the number of crimes against foreigners; most of the perpetrators came from among the skinheads. The ultra-right branch of the movement, which took stand especially against migration (but also against homosexuals), quickly captured the attention of the media and skinheads came soon to be unequivocally condemned by society. The still existing non-political skinheads distanced themselves from this faction, but for them the climate deteriorated because most uninformed people under the influence of simplistic media reports took them for skinheads while at the same time they faced hatred by the real skinheads. At this time (in the early 1980s) the skinhead movement came to the Continent and took roots quickly, in particular in Germany and Italy but also in other countries. It was the fascist-like current which unfortunately became dominant (in

Germany due to certain tradition it even reached neo-Nazi positions). Similar development occurred in other countries (Italy, Spain, Belgium, France, Scandinavia). A strong Europe-wide community emerged, based on a blend of ideology (neo-Nazism, neo-fascism), style of the subculture (uniform image, symbols, aggressiveness) and music (white rock). The movement soon spread to the US where ultra-right racist thinking has had strong roots in some areas.

At this moment the Iron Curtain fell and together with many other influences also the skinhead ideas penetrated our country; in our case they came almost exclusively from the German part of Europe, rather than England. It is mainly for this reason that the traditional non-political and non-racist version of the skinhead cult is almost unknown in our region. However, it does not mean that there were no attempts to organize the “movement” that was gaining strength. The first efforts of this kind were led, *inter alia*, even by some Prague intellectuals like the musician, artist and lawyer Vladimír Franz and journalist Jiří X. Doležal (but nowadays they do not acknowledge very much their efforts from that time to turn skinheads into a kind of “boy scouts militia”). Under the influence of the Orlík band so-called Calixtine movement emerged, attempting to define a purely original Czech version of the skinhead movement; there were groups like Jednota kalicha (Chalice United), Bratrské vlastenecké hnutí (Brotherly Patriotic Movement) or the best known Vlastenecká liga (Patriotic League). The Calixtines distinguished themselves, besides their emphasis on Hussite traditions and law and order, also by anti-German (and anti-fascist) rhetoric and efforts at moderation in their statements regarding the Roma²²⁶. Although neither this one nor other organizations at this period declared themselves as expressly skinhead (the Patriotic League actually directly refused that), the membership was almost exclusively composed of members of this subculture.

But at the same time the Calixtine emerged some skinheads were looking to other models than the Hussites. Already in the early 1990s some Prague skinheads tried to revive the pre-war National Fascist Community; the revered figure for them was general Gajda and ideological models were found in authoritarian regimes of Mussolini or Franco. In contrast, in northern Bohemia groups were formed that considered themselves “Sudeten Germans”²²⁷ and already back then were inclined towards (neo) Nazism of the German brand. Another of the

²²⁶ Nevertheless, they were listed as an extremist organization by the Ministry of the Interior in 1995, a move they vehemently opposed. The publication of that list was infested with problems anyway, as it lumped together with the skinheads and anarchists also some environmentalists like Hnutí Duha (Rainbow Movement).

²²⁷ In view of the transfer of the Germans from Czechoslovakia after the WWII, it is not entirely clear the descendants of which “Sudeten Germans” they considered themselves to be.

extreme right-wing groups was the National Castist Front, among whose founders were said to be adherents of a very fringe group of so-called Nazi punks, or extremely right-wing punkers. Already in the early 1990s some groups made no secret of their neo-Nazi orientation; a good example may be the European National Socialist Movement, which openly used Nazi symbols in its promotion materials.

An important role came to be played by the Patriotic Front, originating from Brno: it was the first registered organization of its kind and its significance consists in documenting the existence of close contacts within the Czech extreme right, the most interesting of which are probably the ties between Czech fascists and theorists of Judeo-Masonic conspiracy, coming from ultra-conservative Catholic community. The Patriotic Front was (in contrast to the Calixtines) relatively positively accepted by open neo-Nazis.

At least two other events from the first years after the revolution are worth mentioning. In the spring of 1991 a group of aggressive young skins were on the way from a restaurant in Prague 4, attacking passers-by who rebuked them for using the Nazi salute (this provocative gesture is used very often by ultra-right skinheads, especially in drunken state). Sculptor Opočenský, having recently returned from exile, came to help the attacked, in the ensuing fight used his knife and of the skinheads died. Aleš Martinů, the victim, became the first martyr of the Czech extreme right. The second event is probably the largest mass fight to date between right-wing skins and anarchists. It took place on May Day in the Letna Park in Prague. On each side several hundred persons took part in the fighting, with superiority (unlike in previous conflicts) on the side of the anarchists. They were also better organized, trained for street fighting by their German colleagues and equipped with Molotov cocktails. Only a (belated) police intervention saved the skins from a really bloody defeat.

It is appropriate to mention here briefly the development of the anarchist, or anarchist-autonomous movement in our country after 1989. Non-communist, anti-totalitarian left-wing thinking was present also within the dissident community during the so-called “normalization” era after 1968, but the restoration of anarchism as such occurred only very shortly before the revolution of November 1989. Czechoslovak Anarchist Association (Československé anarchistické sdružení, ČAS) was established, which started its activity immediately after the regime change. It focused on publishing of its own magazine A - kontra, follower of an underground magazine Kontra. A - kontra reached circulation of up to 1000 and was distributed even by the official main distributor, Poštovní novinová služba. The editor-in-chief was Jakub Polák, who was also a leading charismatic personality of the Czech anarchist movement (and also a “commander” in the fight described in the previous

paragraph). From the ČAS later split the Anarchist Federation (AF); its emphasis was even more strongly on anarcho-communism.

Besides these two most important organizations there were a number of smaller groups (e.g. the Anarcho-syndicalist Initiative); some others were probably only the product of a few individuals (similarly to the skinhead groups on the other side) and did not last long. In their program declarations, published in A – kontra, some of them even went as far as to indicate willingness to move into open confrontation with the state power; most attention in this respect was given to the declaration of the so-called Revolutionary Partisan Autonomy from 1992. An actually functioning anarchist federation can be traced to 1995, as the anarchists themselves confirm, when the Czech Anarchistic Federation was founded (after Slovak anarchists joined in 1997 it was renamed to Czechoslovak - ČSAF), which has existed until today.

Here a small terminological diversion is in order. Some radical left-wing groups resisted the label anarchistic, citing different ideological points of departure. At the same time, in many protest activities different individuals and groups participated, for which not purely political but rather “applied” demands were a priority, for instance environmentalist movements. For the broad ideological current held together by a critical view of the economic and political model of the West and of the way of life emanating from it, the term “autonomous” or “alternative” scene was coined at the turn of the 1970s and 1980s. Adherents of this school of political thought (in particular those who actually strive to live an alternative lifestyle) are called autonomous. A typical example of anarcho-autonomous ideas merging with alternative lifestyle and culture is squatting.

To squat means to occupy illegally, i.e., without the permission of the owner, a building by a community of mostly young people. This way of social protest has spread at the turn of the 1970s and 1980s in different Western European cities, with a recognized hub in West Berlin and in particular in the Kreuzberg district. At the height of its fame several hundred buildings were occupied; their owners often failed to use them for speculative reasons. Squat inhabitants were not only the young unemployed, the homeless, immigrants and the like, but also intellectually minded youth for whom this lifestyle meant a chance to break away from their parents and implement in practice their ideas of an alternative lifestyle. Some squats have however become a haven of drug addicts, asocial or downright criminal elements. Obviously many problems were associated with squatting – the home owners naturally tried to regain control of their property and with the help of the judiciary or the police expel the unwanted inhabitants. It has sometimes led to sharp confrontations; the

biggest conflict took place in Berlin in the fall of 1990. Then when the police came to evacuate several squats there was widespread fighting with their inhabitants, supported by activists of the autonomous scene. After such experience the authorities have tried to find a compromise way of negotiating with the squatters; this is called legalization of squat, i.e., conditions are set under which living in the building is permitted and zero or only minimum rental is required.

In the Czech Republic squats emerged mostly in Prague. One of the most important ones, which housed also the editorial staff of A-kontra, was in Prague – Holešovice. The building Ladronka in Prague 6 was significant for the alternative cultural scene; there concerts were held, the premises were used to paint graffiti, organize workshops, theater performances and exhibitions. Since 1994 there were disputes about eviction (the owner is the City of Prague); through protest demonstrations and submission of own proposals for use (even the Ladronka Foundation was established) the squatters managed to divert several attempts at eviction. In 2000 the City Hall finally decided to vacate the place and the squatters were evacuated under dramatic circumstances²²⁸. The last of Prague squats was Milada, which was closed down after 10 years of existence in the summer of 2009. It is evident that not only in our country but in Western Europe, too, squatting is past its zenith.

The 1990s were dotted with violent actions by skinhead storm troops. While no more mass fighting occurred like at the beginning of the decade, drunken “punitive raids” left injured and dead in their path. The best known cases included one in Písek (where a group of skinheads chased young Roma men into the river and one of them, T. Daniel, drowned), and in Žďár nad Sázavou, where the Roma T. Berki (by the way, totally peaceful) was beaten to death in his own home. At the end of 1997 in Prague the Sudanese student H. Abdelradi was killed; his death sparked (for the first time in our country) several anti-racist demonstrations attended also by some politicians. They spared no promise to ban the skinhead “movement”, which, of course, turned out to be impossible due to the amorphous nature of this group. But the police was activated, annual detailed Reports on extremism in the territory of the Czech Republic began to be compiled; also the activity of legally registered movements with inclinations to the extreme right was investigated²²⁹.

But most sympathizers of the extreme right understood already in the early 1990s that they could not associate in officially existing organizations. The most militant skinheads

²²⁸ By the way, the Ladronka phenomenon has lived on, some of the former “inhabitants” of the squat organize mainly punk concerts under the Ladrogang Agency.

²²⁹ The Patriotic Front had to adapt its program a bit as a consequence of these actions: they had to leave out xenophobic passages.

established a branch of the American (later international) organization Hammerskin Nation, which was to become a “fighting elite” of the movement, using conspirative methods to work. The emphasis on diligent screening of members, body building, training with weapons etc. made Bohemia Hammer Skinheads (BHS) into the first potentially dangerous subversive ultra-right group in our country. The neo-Nazi ideology of hammer skins was (due to the American origin) less focused on the German Third Reich, but it was built upon extreme Antisemitism, anticommunism, racism and conviction of the necessity to fight for the “white man supremacy”. Thus it has brought into the Czech environment many elements and notions which were to become an integral part of the ideological makeup of all subsequent national-socialist organizations and associations²³⁰. Czech hammer skins continued (at least in Prague) in the footsteps of the National Fascist Community and were actively publishing their own periodicals and organized musical performances (see below), because some foreign extreme right music groups were connected to this international organization. The members participated also in violent actions and in keeping with their doctrine about the necessity to wage war for the survivor of the white race collected weapons (after all, almost fetishist relationship to arms of any kind is characteristic of the neo-Nazis). For instance, BHS cooperated also with the Czech branch (which did not last for long) of the Ku-Klux-Klan.

In the latter 1990s the branch of another international skinhead organization was established in our country, this time the British-originated Blood & Honour²³¹. This important distribution network of neo-Nazi music carriers was founded in 1987 by the guru of the British Nazi skins Ian Stuart Donaldson. In the Czech Republic they published several periodicals, but mainly organized concerts, about 20 over three years. This group provoked virtually no violent events, fully concentrating on the distribution of music, magazines and other ideological materials. In 1999 the organization was paralyzed and basically broken by a police intervention.

The Prague branch of Blood & Honour lived on in terms of personnel and ideology in the organization National Resistance (Národní odpor), constituted at the end of the 1990s. This militant group at first chose to present itself in two ways – by organizing demonstrations and marches at different occasions, in other words by certain “visible P.R.”, and secondly by violent attacks on their ideological opponents. Some of their activists probably found important satisfaction in this “street fight”. National Resistance tried to establish close

²³⁰ For instance the term RAHOWA (Racial Holy War) or 14 Words (“We must secure the existence of our people and a future for white children” – a quote of a leading American racist activist David Lane)

²³¹ Blood & Honour Division Bohemia

contacts with the German neo-Nazi scene from the beginning, including an attempt to establish (and legally register) in our country the organization Junge Nationaldemokraten (Young National Democrats, modeled after the German youth organization associated with the extremely right-wing NPD). At the helm stood informally F. Vávra, then already well known and active neo-Nazi. Around 2000 National Resistance tried a more political line by incorporation into then established National Social Block (Národně sociální blok)²³², but it did not last long. Over the years National Resistance adopted the tactics of “free nationalism” (see below) and has remained a key structure of the Czech ultra-right scene.

The most important channels through which information flowed to the adherents and young adepts of the extreme right in the 1990s were amateur magazines, called fanzines²³³. They were published in large numbers during the first decade after the revolution; some of them were extremely short-lived, while others gained a certain reputation within that community. They were of disparate quality in terms of content, graphic design and language; ideologically they all moved along the axis racism – Antisemitism – aversion of liberal democracy. Contact addresses were in PO Boxes, which secured the creators certain level of protection from police attention for a relatively long time. Distribution also occurred at concerts and other large-scale meetings of the right. Just for illustration some titles of the more important fanzines: Árijský boj (Aryan Struggle), Poslední legion (The Last Legion), Rahowa, Hammer News, Národní boj (National Struggle), Nový řád (New Order)...

Besides “samizdat” magazines spreading racial hatred, xenophobia and intolerance, it was musical concerts that dominated among promotion tools for the ideology. Rock bands, akin to these movements in their thinking, have been of different quality in terms of musical expression, but they have one thing in common – their lyrics have a goal to arouse “white pride” in the listeners and a desire to fight for their race and nation. Concerts where usually several kindred bands perform²³⁴ are events of climactic importance in the lives of the radicals and serve usually a twofold purpose: the song lyrics and overall atmosphere represent an important indoctrination tool in particular in relation to new members and new contacts are established there (including abroad), facilitating exchange of information on current and planned activities and, therefore, a general strengthening of the movement’s organization. Last but not least, this was a place for the distribution of magazines, records, t-shirts and other

²³² We purposely do not deal with the genesis and activity of political parties and movements of extreme rightist or nationalistic type in this paper.

²³³ The same model was naturally also used by other subcultures, including the anarchists.

²³⁴ The most valued are performances in which besides local groups at least one international “star” of the genre plays; over time many bands valued by extremists have visited the Czech Republic.

promotional items²³⁵. Concerts are generally a welcome source of income for extreme right-wing associations, from which they can finance their activity (besides promotion, leaflets and the like, also support to jailed members). As it is usually the case with money, however, the question to what extent the profits were used to purposes “beneficial to the movement”, has been subject of disputes among the activists.

In practice these musical-ideological productions have been organized according to the same model since the 1990s. They are private events and only persons with invitation or accompanied by a “guarantor” are let into a rented building. It is therefore very difficult to monitor the actual course of the event and the role of the police is limited to monitoring public order before and after the event. It is true that there is evidence of breaches of the law at the concerts, in particular of Section 261 of the Criminal Code (in particular by performing the Nazi salute), but the bodies responsible for criminal proceedings did not have (especially in the past) enough evidence (and sometimes perhaps they even lacked the initiative to get it). Nowadays the typical course of action (in case of concerts of which the security bodies become aware in advance) is that all participants are screened before the event and the concert is closed down by the police immediately after it has finished. The best known Czech and Slovak bands playing in the “white power” style were: Buldok, Diktátor, Vlajka (The Flag), Excalibur, Krátky proces (today Juden Mord), Hlas krve (Voice of Blood) and others.

The activity of both the extreme left and right have necessitated changes in the organization of police work. Since the mid-1990s specialist positions on extremism were established at police offices; the experts have been intensively educated, mainly in the areas of symbolism of extreme right-wing movements, possible course of action when public events are organized by extremists and so on. Methodical guidance and manuals have been published. Interest in these matters has boomed also in other departments: state prosecutors, judges, social workers, curators, educational advisors in schools and other professionals are also being trained.

Such interesting and novel topic has naturally also sparked the interest of social sciences. The Institute of criminology and social prevention has been one of the first institutions to deal with this subject; in 1995 - 1996 it carried out a large research project, using a number of methods, with the final report published under the title Youth Extremism in the Czech Republic. The subject has been quickly taken up also by the chair of Political Sciences of the Masaryk University in Brno where Mr. M. Mazel made right-wing extremism

²³⁵ Thanks to heightened activity of the police, which monitors incoming cars before the event, the sale has now been muted.

the subject of his Bachelor's thesis²³⁶. At the same workplace a collection of articles on Political Extremism and Radicalism in the Czech Republic was published in 1998. One of its co-authors, Dr. M. Mareš, has gradually become the main authority in "extremist studies" in our country; his treatise on Right-wing Extremism and Radicalism in the Czech Republic has been the most extensive and best publication on this topic to date. The author has also become sworn expert in the field of criminology, specializing on the radical political manifestations.

Many students' theses in different branches of study, ranging from law faculties to journalism, have also been devoted to the topic. In particular journalism is often drawing on this "rewarding" topic, not only for newspaper reporting (which comes especially after neo-Nazi violent manifestations), but also for larger magazine articles. For instance the Týden weekly devoted its front page to the subject in the spring of 1998 under the title "Czech Fascists Attack"; there was evident connection to the racist murder of the Sudanese student a few months before.

Also many citizens associations have been active in the fight against extremists (mostly or almost exclusively against the right-wing ones). The association called Movement of civil solidarity and cooperation (Hnutí občanské solidarity a spolupráce, HOST), led by a former dissident S. Penc, played an essential role in the 1990s. In the following decade the association Tolerance a občanská společnost (Tolerance and civil society) dominated among the NGOs fighting neo-Nazi activities; represented by K. Kalibová and O. Čákl, this association focuses in particular on consistent monitoring of neo-Nazi activities²³⁷. Other active groups include for instance the Czech Helsinki Committee or the humanitarian organization Člověk v tísni (People in need).

On the left in the late 1990s several key events occurred. The first can be seen in the police intervention at the club Propast in Prague, where mostly punkers, anti-fascists and non-fascist skinheads used to meet. The police action was very fierce and neither the reasons for it, nor the excesses accompanying it have ever been sufficiently clarified. So-called "street parties", especially the Global Street Party in Prague in 1998, had even bigger influence on the radicalization of part of the autonomous scene. This model of non-traditional demonstration combining music, dance, entertainment and street occupation with a political message (anti-capitalist, anti-globalization), has been taken over by our anarchist organizations from the West. Several thousand young people, including the radical core of

²³⁶ After finishing his studies this expert has become senior official at the Ministry of the Interior, specializing in this very field.

²³⁷ It ought to be mentioned that these activities require a lot of commitment and personal courage.

Prague anarcho-autonomists, took part in the Street Party²³⁸. It was the latter group that was probably responsible for street riots at the end of the march (damaging outlets of international fast-food chains). The police responded belatedly, but all the more aggressively – many people who had not taken part in the vandalism, were attacked by the police, often beaten etc. More violence by the police followed in temporary detention. Also in this case no policeman was reprimanded, which further worsened the reputation of the police among alternative youth.

Anarcho-autonomous groups have been organizing annual celebrations on May Day and the mass ones took place mostly before the end of the millennium. Probably the most violent May Day celebration (except the one in 1992, as already mentioned) was in 1999 – the radical right has reserved in time (and naturally as intentional provocation) for their demonstration the Střelecký Island in Prague, traditional place of May Day celebrations of the left. During the defiant march of the rightists, elements of the radical left tried to attack them and were prevented by the present police force. Enraged by this, the autonomous were attacking the police and at the National Theater police cars were overthrown and set on fire. This course of events was typical for many other street riots in other cities: someone from the extreme right²³⁹ announces a demonstration or march in due form, citing some unobjectionable reason (for instance against drug abuse or for law and order); the event turns out to be a manifestation of right-wing radicals with expressly neo-Nazi participants, and the extreme left convenes a counter-demonstration well in advance. In the obvious concern that violence could erupt in case of confrontation between both groups, the police steps in dividing them, and the anti-fascist become the scapegoat, ridiculed by the neo-Nazi from behind the safety of the police cordon. Then in the public discourse this course of events is sometimes interpreted as “the police protects the fascists”, which again significantly contributed to loss of prestige of the police in the eyes of the alternative youth.

This brief enumeration of certain “milestones” cannot bypass the events accompanying the Prague summit of the International Monetary fund in 2000. Prague then became the center stage not only of the world finances but also of anti-globalization protests, which in the end probably dominated the media reporting. Massive fights with the police force (which had to be hastily reinforced), property damage (although often exaggerated), good organization of the protests and well thought-through tactics: all that was a novelty here.

²³⁸ In this case, as in other similar ones, the anarchists later tried to put the blame on alleged police provocateurs.

²³⁹ Earlier some organizations were announcing, after 2000 it has almost exclusively been a natural person.

The importance of these events for Czech (not only) criminology, however, is limited because these events were driven mostly by experienced anti-globalization activists from abroad. It was confirmed two years later, as during a NATO conference (the police and media barrage before the event almost smacked of the declaration of a state of emergency) where no foreign experienced activists participated, no significant problems occurred.

At similar time as the neo-Nazi National resistance, also on the extreme left a militant and relatively efficient group was established, which has been active to date. The Anti-fascist Action, or AFA or Antifa, was originally not an organization but rather a functional approach to fighting the right-wing radicals. It originated in Germany as an attempt to respond to violent riots of the neo-Nazis using the same methods. By the nature of its activity Antifa is trying to destroy the prevalent picture of the anti-fascists as aloof intellectuals or drugged punkers who cannot stand up to the skinheads (or generally the extreme right) in street fights. In the Czech environment it based its tactics on attacking adherents of the extreme right (at demonstrations but also e.g. in their places of residence), and also on uncovering and publishing their identities. Thus the activities of Antifa include besides street violence (“confrontation” of neo-Nazis or those who are considered as such by the storm groups) mainly “internet espionage”, usually hacking e-mails, closed forums and the like, with one of the goals being to bring discord into the NS scene. This is why Antifa is accused by the extreme right of collaboration with the security forces, the “Jewish media” and so on.

Around 2000 there was a significant shift in the method of promotion of political ideas on both sides of the spectrum. It is a shift from promotion through the paper media (fanzines) to the Internet, driven (especially in case of the right) by the effort to avoid criminal prosecution for the “support and promotion” of extreme movements (servers of providers of these web pages are located outside of our territory). It is because an amendment to the Criminal Code in 2000 has better specified e.g. Section 260, precluding certain expedient arguments of the defense (for instance that spreading hatred against the Roma was not racist because from the anthropological point of view they belong to the same race)²⁴⁰. New elements of offence were also introduced, outlawing (as it is in other European countries) the denial of totalitarian genocides²⁴¹.

²⁴⁰ Section 260: “Who supports or enlists support for a movement which demonstrably aims at suppressing the rights and freedoms of citizens or spreads national, racist, religious or class hatred or hatred against a different group of people, shall be punished by imprisonment from one up to five years.”

²⁴¹ Section 261a: “Who publicly denies, questions, approves of or tries to justify Nazi or Communist genocide or other crimes against humanity by Nazis or Communists, shall be punished by imprisonment from six months up to three years.”

In 2002 another amendment entered into force, which extended or made stricter the elements of certain other criminal offenses so that protection by criminal law would be granted from serious attacks motivated by ethnic origin. The most important, however, was the stipulation of a stricter penalty for murder according to Sec 219 (2), making it possible to impose even the exceptional penalty for murder committed because of ethnic origin of the victim.

Two trends characterize the second half of the first decade of this century, as far as the extreme right is concerned. On the one hand an existing party (the Workers Party, *Dělnická strana*) was in fact ideologically taken over by the neo-Nazis and used as a legal platform for spreading their attitudes and as a front for organizing street actions. On the other hand the extreme right has strongly moved from creating hierarchical organizations towards the tactics of “leaderless resistance”, i.e., activity decentralized into local cells, which are difficult to detect by the security forces. This so-called “autonomous nationalism” (also known as “free nationalism”) is paradoxically taking over many functional elements from the ultra-left scene. They include, besides strong shift away from the skinhead image (existing for a longer time)²⁴², in particular the embrace of a strategy called “Black block”, i.e., uniform clothing of the participants of all events in black, with caps and sunglasses, with the aim of making their identification more difficult.

Autonomous nationalists²⁴³ are strongly inspired by modern style and want to visibly differentiate themselves from the rest of the extreme right, mainly from political parties and the skinhead scene. They declare that “it does not matter what kind of music one listens to, what kind of haircut or pants he wears”. This is why they also try to use current (sub)cultural styles like hip hop, graffiti or hardcore.

Besides similar style of clothing and strategy, the autonomous nationalists are akin to the autonomous leftists also in their rhetoric: some of the right-wing extremists reproach them for adopting “leftist” terminology. The ideology of Autonomous nationalists is based on defending the left wing of national socialism, in keeping with the slogan “new, free, national and social form of society”. They are against parliamentary democracy, against the State and the West. Their Antisemitism is masked by the criticism of the State of Israel for its “abuse of

²⁴² New fashion brands are becoming important for neo-Nazis, created directly by their sympathizers: for instance from among international brands Thor Steiner, from local ones Graesel, Nibelung. The Czech Helsinki Committee made a research on this topic in 2007 called “Do you know what you wear?”

²⁴³ At the same time it is the name of a “combat tactics” and an existing association of right-wing radicals, who are using e.g. their own web pages.

Palestinian human rights” – here also they dovetail with the thinking of the extreme left. They use concepts like the freedom of expression, dissent, political police and ideological crimes.

There is some connecting between some of the “old skins” and right-wing hooligans with new ideologues (fairly educated, speaking English) and young national-socialist radicals with no roots in the subculture. But outside of big cities there are still skinheads on the ultra-right scene, sometimes called “agro-skins”, a demeaning title originally coined by Antifa. At the same time the National Resistance (which has important cells in particular in the Vysočina region, Brno and Prague) initiated Anti-antifa storm groups, intended for attacks on ideological opponents. Their aim is to reverse a trend of the first decade of this century that granted the anti-fascist militants gradual dominance in the “fight for the streets”. Activists of National Resistance often collaborate in these groups with racist hooligans²⁴⁴.

Then another wave of street manifestations came which were not always tolerated by the police and municipal authorities any more: May Day 2007 in Brno, so-called Crystal Night 2007 in Prague. When announcing such events, the organizers make expedient use of the liberal wording of the Assembly Act and any prohibitions against extremists’ events are challenged by court actions²⁴⁵. The state bodies try to respond in particular by amending the Assembly Act with a stricter wording (which, however, sometimes drew criticism from human rights organizations). For instance the participants of the marches would often cover their faces so as to make their identification impossible. They were only obliged to uncover their faces when the police intervened against them. The amendment of 2008 stipulated that participants of a meeting may not cover their faces in a way which makes their identification difficult or impossible for the duration of the event. If they fail to abide by the obligation, the meeting may be dissolved.²⁴⁶

A climax of mass street events took place in Janov in 2008: under the veil of the Workers Party the neo-Nazis (led by National Resistance and Autonomous nationalists) tried to attack the Roma ghetto. Besides heavy fighting between the demonstrating participants and the security forces (which used to be the domain of anarcho-autonomous radicals), support of the demonstration by the local non-Roma inhabitants of the town came as a surprise for the

²⁴⁴ They have always been a loose part of the extreme right scene, but because of their sometimes uncontrollable aggressiveness they are criticized also by some neo-Nazis. In some cases however the members of the hooligan groups are also members of neo-Nazi crews (typically in Brno).

²⁴⁵ On 19 January 2008 a march of right-wing extremists “for the freedom of association and of expression” was to take place in Pilsen. It was banned by the Mayor of Pilsen but by the decision of the regional court, which found the ban illegal, the march took place in the end at a different date.

²⁴⁶ But as already mentioned, extremists try to circumvent this provision by wearing uniform black clothing and sunglasses.

State. Attempts to repeat such events – for instance in Krupka in 2009 – have not been successful.

These events represented another impetus for the State to amend the Assembly Act. The Security Policy Section of the Ministry of the Interior issued a manual for municipalities in 2009²⁴⁷, instructing them what to do if a “problematic” public event is announced in their territory, including the possible grounds for a ban. An important element is in particular “diversion from originally announced purpose of the meeting”. The police have finally ceased to act as a “tacit ally” (as they themselves may have felt) of the right-wing radicals in the last few years. It is in the context of this development that the Workers Party was banned (on a second take) and lastly a major police round-up of the “ideologues” of the extreme right took place in 2009/2010. After many scandals which uncovered the presence of right-wing radicals in the army²⁴⁸ an amendment of the relevant law was enacted, punishing the “convicted” sympathizer by leaving the army without retirement supplements. An important moment was the clarification of the facts of the “Vítkov case”: this brachial, non-provoked attack resulting in a severe injury of a small child had a very negative impact on the perception of the extreme right by the public.

The question is which course of action should be taken in the future. Slovak experience with the “anti-extremist law” introduced in the neighborly country is not much encouraging. In Germany the already strict legislation was made even stricter after 2000, now focusing directly on right-wing extremist organizations. The courts may impose tougher sanctions and also the definition of the crime of inciting to violence and racial hatred has been expanded to include statements defaming whole groups and minorities. In spite of this the popularity of these groups does not seem to have been significantly reduced. Another way may represent “awareness” campaigns in the media and in schools, paid for by public funds (for instance Neo_nácek, a TV spot ridiculing the neo-Nazis); critics point out, however, that their effect is disputable. Nonetheless targeting the young generation, in particular in school education, will probably remain the basic method of fight against extreme ideologies of any color. But the State must also bear in mind that overlooking or inefficient solution of some issues, mainly social ones, provides a steady flow of arguments for the extremists’ demagoguery.

²⁴⁷ Also the organization People in need compiled a booklet called “Unwanted guests” for the municipalities dealing with the same topic.

²⁴⁸ The presence of persons with extreme rightist views in professional armies has been an unsurprising fact known for a long time.

The Public and Crime

The opinions and attitudes of the public towards crime and criminal policy is one of the most common topics of criminological research in most advanced countries of the world. There are many reasons for this, but one does appear entirely fundamental – the citizens in a democratic society themselves play a central role from the perspective of the functioning of a system of crime control. If they do not report offences of which they are the victims or which they witness or do not cooperate when crimes are investigated and proven, the entire running of the criminal justice system is practically impossible. It is therefore necessary for at least basic trust to reign in the public's relationship with the bodies responsible for criminal proceedings and for the principles on which the criminal justice system is built not to be at marked odds with how the common people imagine the enforcement of justice²⁴⁹. Criminologists are often those who, using various research methods, attempt to capture and mediate a picture of public opinion. The knowledge that comes from their studies is highly contradictory. It does, however, almost invariably reflect the fact fittingly put by well-known Finnish criminologist K. Aromaa, according to whom criminality is an area for which awareness and knowledge is typically weak, whilst attitudes and opinions are strong²⁵⁰.

The research carried out by the Institute for Criminology and Social Prevention in recent years confirms this statement in many ways. On more than one occasion respondents honestly admitted not having enough information on the state or structure of crime, on the specific work content of the individual constituent parts of the judicial system, on the actual size of punishments handed down in this country for crimes or on the practical aspects of serving the sentences. At the same time, however, the majority were essentially convinced that criminality rises dramatically from year to year, that serious violent crimes dominate the make-up of crime, that the bodies responsible for criminal proceedings do not do their jobs sufficiently, that the system of sanctions is too lenient and that serving the strictest sentence, imprisonment, is in this country much akin to staying at a pleasant recreational facility that

²⁴⁹ Compare Wood, J., Gannon, T.: Public opinion and criminal justice. Cullompton: Willan Publishing 2009, p. 33.

²⁵⁰ Paper given at the Stockholm Criminology Symposium, 22nd June 2009.

offers free-of-charge tasty meals, medical care and a rich cultural life. It is apt to point out, of course, that Czechs are no different in these opinions to the people of other countries, as the almost identical results of foreign research have proven²⁵¹.

The first impression we get about the public based on studies of this type is unambiguous: people necessarily seem very punitively-minded, given that a visible element in many a research report is their imploring calls for an overall toughening of criminal suppression. A considerable number would even welcome the return of the strictest possible penalty of all, the death penalty. Surveys by the Centre for Public Opinion Research that continually monitors this topic indicate that two-thirds of the population have been in favor of the ultimate penalty for some considerable time. The same source provides us with information that 55 % of Czechs consider the punishments for general crime too low, 64 % for economic crime and 83 % for violent crime.²⁵²

There are undoubtedly a number of reasons as to why the people think this way about crime and its control. One of the most fundamental of these might be the low levels of awareness already mentioned. If the majority of the public assumes that criminality rises dangerously in this country from year to year and is moreover characterized by a high percentage of violent crimes, then one of the main reasons for this situation can be seen as the sluggish approach of the responsible institutions to its resolution. It is generally known that a relatively high number of people have fairly unrealistic views of the direct relation between the strictness of punishment and the level of crime. In other words, the public's faith in the effect of deterring potential offenders using the threat of heavy sentences is in sharp contrast with what the majority of criminological research and general knowledge from practice have to say on the effectiveness of general prevention. It paradoxically applies that not even a tangible toughening of penalties is likely to please the public. They often have no idea of the relevant reforms, since it has been shown that the critical approach to the size of punishments continues in countries which have gone the road of heightened repression (for example the USA or Great Britain)²⁵³.

The public dissatisfaction with judicial practice might also be based to a certain extent on the fact that they do not have certain basic principles or fundamentals in common with the bodies responsible for criminal proceedings. This evidently applies the most in relation to the

²⁵¹ For an overview of some of them see, for example: Roberts, J., Hough, M.: Understanding public attitudes to criminal justice. Maidenhead: Open University Press 2005.

²⁵² See press release of the Public Opinion Research Centre: Občané o policii a výši trestů (The citizens on the police and the size of punishments). Prague: Public Opinion Research Centre of the Institute of Sociology of the Academy of Sciences of the Czech Republic, 2005.

²⁵³ Compare Roberts, J. cited work.

need to respect not only the rights of the aggrieved, but also those of the offenders. Certain studies confirm that any obstacles in the way of the immediate punishment of a potential culprit are considered by a number of people to be an expression of the weakness of the entire system. Dowds' study in the mid 1990s²⁵⁴ graphically showed that in contrast to lawyers, the majority of the public are not bothered by the risk of judicial errors based on the conviction of someone innocent as much as by the threat that someone who has committed a crime is released as a result of an oversight. The procedural processes which the bodies responsible for criminal proceedings stick to in dealing with criminal offences are seen by many people as being unfairly in favor of criminals at the expense of their fast and just punishment.

A large part of the public lacks in personal experience with the institutions that deal with controlling crime. This too can play a role in evaluating the area in question. The bodies responsible for criminal proceedings are somewhat disqualified if we compare the trust put in them by the population with the trust shown in institutions in other areas of social life, for example education and health. Many people are often critical of the way they are run in general and talk of various kinds of shortcomings to affect them, but the opinion and attitude of respondents can be positively influenced by personal experience with the doctor they visit or with a teacher who devotes attention to their children. It is rare, however, for people to have similar contact with police officers, public prosecutors or judges. If they do, such contact is often accompanied by the negative emotions associated with the investigation and hearing of a crime.

The lack of personal experience is exacerbated by the fact that the media plays a considerable role in forming the opinions and attitudes of the population to crime and the fight against it. It is from there that the vast majority of the public gets its information about crime. At the same time, it is known and has been documented by many criminological studies that the picture of crime that the media offers is considerably distorted from reality. Journalists are preferentially interested in offences which tick the boxes attractive to the public and which are therefore newsworthy. In spite of the fact that less serious crimes against property predominate the overall structure of crime, attention in the media is devoted more to violent crimes. The study carried out by J. Ditton and J. Duffy at the beginning of the 1980s, which dealt with regional crime news reporting in Scotland²⁵⁵, is now considered something of a classic. In agreement with the facts presented above, the authors demonstrated that although

²⁵⁴ Dowds, L.: The long-eyed view of law and order: a decade of British social attitudes survey results. London: Home Office, 1995.

²⁵⁵ Ditton, J., Duffy, J.: Bias in newspaper reporting of crime news. In: British Journal of Criminology. 1983, Volume 23, No. 1, pp. 159-165.

serious violent crime only accounted for 2.4 % in the statistics during the period under consideration, the media devoted 45.8 % of all time set aside for information about crime to it. Police statistics and news reporting in Chicago, USA, were similarly compared²⁵⁶. It was discovered that in spite of the fact that murders accounted for 0.2 % of the overall structure of crime, every fourth crime report in the popular Chicago Tribune was about homicide. By contrast, easily negligible four percent of crime news was all that remained for crimes against property, which made up the majority of registered crimes.

Apart from the actual type of crime, of course, journalists are also interested in certain significant characteristics of the offenders and victims. Crimes concerning children and young people or famous people are more likely to make the news and crimes that will shock the public given their absence of rational motive on the part of the offender, with a sexual subtext or with features of randomness from which you might get the impression that something similar might happen to anyone of us²⁵⁷. A number of people therefore imagine the typical offender to be a dangerous, irrational “stranger”, even though the most serious acts such as murder or rape are often characterized by a previous relationship between the victim and the offender. What is more, crime news is intentionally full of emotion and colorful images as this offers a guarantee of increased interest among the public. This fact is subsequently reflected in society-wide discussion of crime, since - as D. Indermaur rightly points out²⁵⁸ - whoever does not want his voice to disappear in this debate has to prepare him self for this emotional tone, if not tune himself to it. Certain politicians are also aware of this and we are therefore very often witnesses to the fact that they do not talk about crime and appropriate responses to it matter-of-factly and in the spirit of rational and tried-and-trusted measures of existing crime policy, but rather with emotion and immediate outrage. They sense that precisely this sort of performance gives them the chance to attract the attention of potential voters and win their support.

Criminologists, therefore, find themselves in a difficult situation. They cannot compete with the media in terms of the interest factor of the information they offer the public on the basis of their research. The empirical studies on which they build offer pure facts and numbers and the multi-factor view of the causes of crimes which criminology takes as the only view possible complicates the picture of crime rather than offering the public a simple

²⁵⁶ Compare Jones, S.: *Criminology*. Oxford: Oxford University Press 2006.

²⁵⁷ For more on the factors that influence crime news see, for example: Y. Jewkes: *Media and crime*. London: Sage 2004.

²⁵⁸ Indermaur, D., Hough, M.: *Strategies for changing public attitudes to punishment*. In Roberts, J. et al.: *Changing attitudes to punishment: public opinion around the Globe*. Cullompton: Willan Publishing 2002.

and attractive solution. This is one of the reasons we often face a relatively skeptical view among criminologists of the application of their own knowledge in practice. This is particularly symptomatic of certain colleagues from the United States of America. Criminology does have a very strong position there at many universities and enjoys enviable popularity among students, but the crime policy that has been applied in the USA in recent years is in a number of aspects at odds with basic criminological knowledge in terms of what works in crime control and what does not²⁵⁹.

Nonetheless, the lack of faith in being able to address the public with their knowledge is not entirely apt. If we begin looking in more depth at the issue of public opinion on crime, we soon discover that the purely punitive inclination of the population is only a myth. It arises from a number of studies that while people do demand strict and uncompromising punishments for those that commit the most serious offences, many are open to ideas that are very close to contemporary criminology. Most people are also willing and able to think comprehensively about crime and appropriate responses to it and to consider aspects such as the interests and needs of the victims or the rehabilitation of the offenders²⁶⁰. A simplified, black-and-white view of crime and criminals among the population is more evident if we ask simplified, black-and-white questions.

Many surveys of public opinion on crime and crime policy unfortunately have a superficial approach to the problem at hand. Respondents are asked general questions that do not in the slightest reflect the fact that it is precisely the constituent parts and ideas that are the most important in the discussion of crime and its control. The studies mentioned above, into the possibility of reintroducing the death penalty, are a classic example. This is a problem that has many aspects to it. Even its most radical of proponents generally ponder for which type of offenders and under what circumstances its use would come into consideration. A simple question to find out only “for” or “against” tells us nothing of these problems, which are fundamental from the perspective of mapping out the attitudes and opinions of the population. Neither can we ignore the fact that a number of people do not have a clear-cut opinion on this issue (10 – 20 % of respondents regularly choose the "don't know" option in surveys here)²⁶¹. It has already been empirically confirmed that we can influence the answer to the question of allowing the ultimate punishment to a certain extent using the wording of the question itself.

²⁵⁹ For discussion of this see, for example: Christie, N.: A suitable amount of crime. New York: Sage 2004.

²⁶⁰ Maruna, S. et al: Public opinion and community penalties. In Bottoms, A., Rex, S., Robinson, G.: Alternatives to prison: options for an insecure society. Cullompton: Willan Publishing 2004, pp. 83-112.

²⁶¹ See, for example, press release of the Public Opinion Research Centre: Postoj občanů k trestu smrti (Citizens' Attitude towards the Death Penalty). Prague: Public Opinion Research Centre of the Institute of Sociology of the Academy of Sciences of the Czech Republic, 2007.

If, for example, respondents are asked at the beginning whether they have a clear opinion on the introduction of capital punishment and are then asked to express it, the number of people that opt for “don’t know” rises strikingly²⁶².

The dependence of the results of research on the methodology used has also been confirmed in the sphere of public opinion on criminality in this country. If we compare certain studies that identify the idea respondents have of the structure of crime, we discover that the results are often inconsistent. According to a survey carried out by the Centre for Public Opinion Surveys in 2003²⁶³, the people of this country think that murder accounts for 9 % of all crime (in fact it accounts for around 0.05 %). By contrast, in two studies carried out by our Institute we found out that people have the tendency to underestimate the actual extent of this crime rather than overestimate it²⁶⁴. How is this possible? Everything evidently stems from the question put to the respondents. The challenge in the survey at the Centre for Public Opinion Surveys was to state a percentage estimate of murders in relation to all crimes that the Czech Police investigate in a year, which could offer the impression that this figure is in whole percentage and not in tenths and hundredths, as is the reality. By contrast, our surveys were built on an attempt to find a precise estimate of the number of murders in the past year without giving any, albeit orientational, clues. Although some of those asked came out with proportionately high data in this case too (several thousand), the more common situation was that the respondent offered a number lower than the real figure.

A suitable methodology, the right wording of questions and a sufficient number of answering options take on special importance in topics associated with the ideas people have about a suitable response to crimes committed. A considerable part of the research that deals with public opinion of crime is unfortunately far from perfect in this respect. Respondents are mostly only asked whether sentences are sufficiently harsh (see above) or questionnaires only concentrate on the classic response to crime and therefore to imprisonment and the conditions of serving a prison sentence. At the same time, studies to have gone beyond this traditional and very general framework clearly show that a number of people, in accordance with

²⁶² Compare Jones, P.: It’s not what you ask, it’s the way that you ask it: question form and public opinion on the death penalty. In: *Prison Journal*. 1994, No. 73, pp. 32-50.

²⁶³ Press release: *Kriminalita a úspěšnost policie v očích české veřejnosti* (Crime and success-rate of the police as judged by Czech public). Prague: Public Opinion Research Centre of the Institute of Sociology of the Academy of Sciences of the Czech Republic, 2003.

²⁶⁴ See Večerka, K., Holas, J., Tomášek, J. et al: *Občané o kriminalitě a prevenci: závěrečná zpráva z výzkumu veřejného mínění* (The citizens on criminality and prevention: final report from a public opinion poll). Prague: IKSP 2007. And Karabec, Z., Diblíková, S., Nečada, V. et al: *Trestní politika a její realizace v oblasti trestní justice* (Criminal policy and its implementation in the field of criminal justice). Prague: IKSP 2008.

criminological knowledge, are aware of, for example, the importance and role of the prevention of crime, and neither are they against various alternative measures and procedures. Research carried out by the Institute for Criminology and Social Prevention also provides evidence here. According to one study, 53 % of Czechs are convinced that a better way of preventing delinquency among young people than thoroughly punishing them is to prevent the risks associated with it (for example involving young people in sporting activities or programs with which to gain work qualifications)²⁶⁵. It became apparent in another study that the public fundamentally identify with the principles of restorative justice and consent to the fact that appropriate cases are resolved using mediation - more than half of a representative sample of the population of the Czech Republic even expressed the opinion that mediation could come into consideration for any crime if the victim agrees. Approximately the same number of respondents would accept mediation if they were to become the victims of crime themselves. Less than one-fifth of those asked strictly ruled it out under such circumstances.²⁶⁶

On the other hand, the latter study revealed that real awareness of the existence of certain alternative measures and of the possibilities of their application has been so far very weak here. Even though the Probation and Mediation Service began its work back in 2001, more than two-thirds of the people in the study in question admitted that they had no idea about it. Only 8 % of those questioned had enough information, with the remainder indicating some, albeit vague knowledge. It is a good idea to learn from this example as well – if a criminologist wants to examine the opinions and stances of the public on different types of punishments or measures, he must be certain that the respondents have at least a basic idea of these and of the conditions of their serving. If not, they must first be informed of these and only then is it possible to find out what stance they adopt²⁶⁷.

As J. Roberts²⁶⁸ documents in one of his studies, the amount of information a respondent has on a phenomenon could be precisely that from which his overall opinion comes. The aim of the survey was to identify the opinions of people on the institute of conditional release with supervision. This is a measure with which not everyone agrees, since we can come across the assertion that an offender should always serve a full sentence (a survey of public opinion that our institute carried out in 2009 and its results were being prepared for publication at the time of preparing this paper, with 40 % of respondents

²⁶⁵ See Večerka, K. et al., cited work from 2007.

²⁶⁶ Compare Rozum, J. et al.: Uplatnění mediace v systému trestní justice I (Application of mediation in the system of criminal justice). Prague: IKSP 2009.

²⁶⁷ The cited study into mediation also proceeded in this way, when a brief description of what mediation is and what its basic principles are was presented in relation to questions on the possibility of its use.

²⁶⁸ Compare Roberts, J. et al., work cited above.

principally against the option of early release). The quoted author divided respondents into two groups. The first responded to a very briefly worded question; whether they agree with an offender who has served a third of his sentence for burglary being conditionally released, under the supervision of a probation officer. The second group was first given a detailed explanation of the institute of parole – mention was made of the condition that the decision to release is taken by a board of experts which must recognize that the individual in question is no longer a danger to society and of the rules that the individual must observe in cooperation with the probation officer so that he is not forced to serve the remainder of his prison sentence. It was shown that whereas three-quarters of the group that was provided with more detailed information agreed with release, less than half agreed in the other group.

It is therefore worth considering whether having enough adequate information is able to influence assessment of the work of the bodies responsible for criminal proceedings. As is known, if people are asked for a statement on this in public opinion surveys, the results are not usually too positive. One example is the study by Večerka that we have already mentioned, in which the average marks (expressed as school grades) for the police were 2.97, 3.14 for the public prosecutor's office and 3.44 for the courts. All the same, it is interesting that similar results are found practically everywhere in the world in spite of the fact that we should expect regional differences in the work of the relevant institutions. This again forces the explanation that some of the trends discussed above are reflected in the universality of these opinions and attitudes – in particular the idea generally shared and often claimed by the media that crime is continually on the rise and that the main reasons for this increase include the sluggish approach of the judiciary and insufficiently harsh sanctions. Evidence is offered by a recent study from Great Britain, which indicated that if we offer respondents a more realistic picture of crime and the existing system of punishments before asking the questions, they subsequently respond far more positively to the work of the police, public prosecutors and the courts²⁶⁹.

One of the ways of finding out the opinions of the population on the control of crime in public opinion surveys is deciding on suitable punishments in specific described cases. Some authors even consider this to be a distinctly more appropriate method than questions asked at a broader level²⁷⁰. If the respondent considers more detailed information about an offender or the nature of his acts, he comes closer to the actual decision-making that judges

²⁶⁹ Salisbury, H.: Public attitudes to the criminal justice system: the impact of providing information to British Crime Survey respondents. London: Home Office online report 64, 2004.

²⁷⁰ Compare Roberts, J. et al. work quoted above.

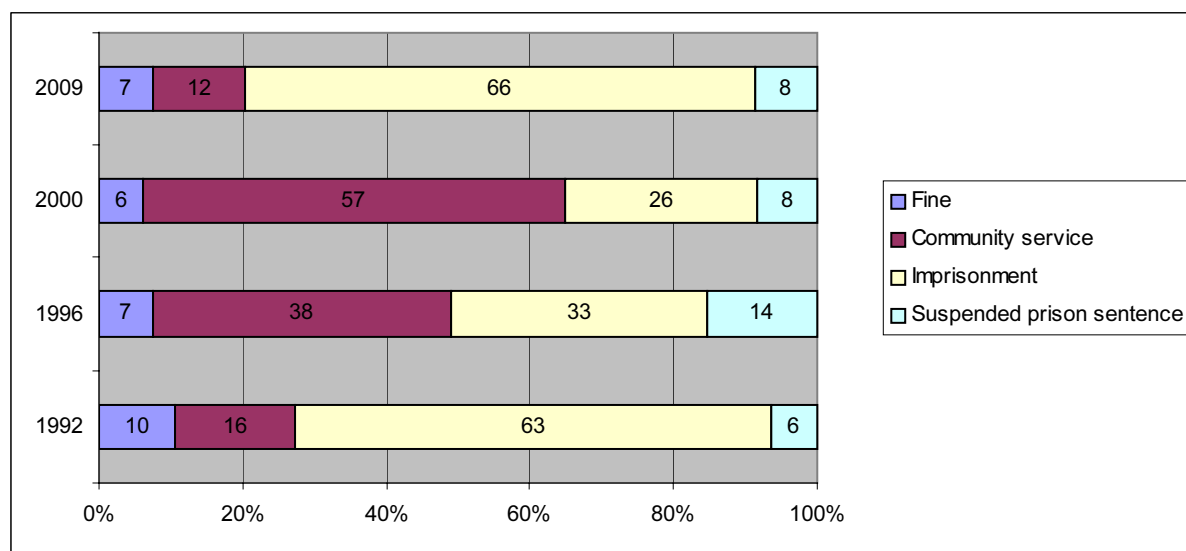
deal with in criminal cases. Their task is not to assess the sentences of all offenders or criminals and murders at the same time, but to go on the specific facts of entirely specific cases. It has been confirmed in some surveys that when using this method, respondents are distinctly less punitive than when given questions of a more general nature. The explanation offers itself that if researchers ask only at a general level (for example, questions on the overall hardness of sentences), the majority of respondents answer based on their own images of the most serious crimes or the most serious and uncorrectable offenders. It is news of these crimes and offenders that disturbs us the most and that most contributes to the feeling that society must fight hard against it. A specific case, for which the respondent is to decide on an appropriate punishment, brings about other ideas and thoughts. The anonymous image of an extremely dangerous deviant offender disappears and considerations of the seriousness of the relevant case and the possible reasons for it happening and of suitable measures to ensure that the given individual does not repeat that behavior are necessarily forced upon the respondent. This opens considerably broader space for various alternatives. It cannot be ignored that the effect of specifically described cases also works among respondents who have personal experience of crime. As M. Maguire²⁷¹ described in his study, the victims of burglary were in favor of very hard punishments for this type of crime at a general level. As soon as the subject-matter switched to their own case and an adequate sentence for the offender who caused them personal damage, a number of them showed a tendency to talk of alternative punishments or rehabilitative measures.

A classic example of the question posed in this spirit is found in the International Crime Victims Survey. The primary aim of this is to find out the experience people have of crime and to compare this at an international level; however, as is typical of victimological surveys in recent years, the thematic area is gradually broadened, the opinions and attitudes of respondents to crime and crime control it becoming a visible part. The great advantage of the ICVS is that it has been done repeatedly, making it possible to monitor whether the opinions of respondents have changed over time. The question at issue concerns a twenty-one year old offender who has been convicted of burglary for a second time. This time he stole a television. Respondents are confronted with the task of choosing a suitable form of punishment, having the option of choosing a fine, community service, a suspended prison sentence, imprisonment (of up to 1 year, of between 1 and 3 years, of between 3 and 5 years and of more than 5 years) or another sentence proposed by the respondent.

²⁷¹ Maguire, M., Bennet, T.: *Burglary in a dwelling: the offence, the offender and the victim*. London: Heinemann 1982.

The Czech Republic involved itself in the ICVS project in 1992, 1996 and 2000 (the first two investigations took a national sample, the third a sample in Prague only). We also decided to include the same question in a public opinion survey which our institute carried out in 2009 (see above). This means we are able compare how the Czech people considered the case in question over the past twenty years. The result is very surprising. As is evident from the following graph, the results of the 2009 investigation are entirely against the expected development. Whereas during the 1990s there were gradually fewer and fewer respondents who would sentence the criminal to imprisonment and a rising number who considered community service to be a suitable response (almost six out of ten respondents chose this in 2000), the data from 2009 is shocking in terms of its two-thirds in favor of imprisonment. Nothing here changes the fact that most respondents opted for imprisonment of a lower term (of up to one year or up to three years). If we restrict the results to the inhabitants of Prague alone (the survey in 2000 was only carried out in the capital - see above), it stands that 57 % were in favor of a prison sentence in 2009, which is less than the national average, but still more than in 2000).

Comparison of public opinion in 1992, 1996, 2000 and 2009 (respondents in %)*



*The values for “Don’t know” and “Other punishment” bring the total up to 100 %, but are not shown.

The results shown are not only exceptional from the historical perspective. The high number of responses promoting imprisonment means that the people in this country have surpassed the international perspective. If we draw on research from 2005 that was carried out

in 32 countries of the world, only 33 % of those asked would have put the perpetrator of the same crime behind bars²⁷². This figure was even lower in most European countries (for example, 12 % in Switzerland, 13 % in France and Austria and 15 % in Finland), with a far more frequent choice here being community service. The Czech Republic therefore distanced itself from its geographical neighbors in terms of the punitive leaning of its inhabitants and was closer to countries such as Mexico (where 70 % of respondents would choose imprisonment), Hong Kong (58 %), Japan (55 %) and Turkey (53 %).

The question is how to explain this significant shift in opinion. It is evident from the graph and from the almost identical share of the vote for suspended sentences and fines in 2000 and 2009 that the position of community service was seriously weakened (from 57 % to 12 %). This development is an even greater paradox in that it was then that the Probation and Mediation Service was set up in this country, meaning the ever more abundant application of alternative punishments. What is more, the people of this country know about the punishment of community service very well, given that in 2009, as part of the same survey, 48 % spontaneously mentioned this as a sentence which our law includes and which they are able to name themselves (96 % of the remaining respondents had at least heard of it). We should therefore jointly ask whether this alternative to a prison sentence has not lost trust in their eyes, perhaps in part due to the often critical view of the media on certain practical problems that accompany its application.

It might appear that the results of the latest survey conducted by our institute on the issue of public opinion make everything considered above relative, at least to a certain extent. If the aim was to show that the punitive nature of the public is something of a myth and that we gain a different picture by using a more appropriate methodology that allows for a more detailed view of the problem, then the massive support for imprisonment identified by the exemplary question tried and tested in international surveys is all the more at odds here. Of course it would be a mistake to succumb to excessive skepticism. Other studies carried out in recent years and mentioned in this chapter are far more optimistic in nature. We should take the historical and international exceptionality of the data at issue rather as the call for further empirical studies to either confirm the shift in opinions held by the people of this country or to refute it and primarily to uncover what lies behind the more permanent trends. There is nothing for it but for criminologists to continue working on and improving their own research methodology. It is also worth considering whether there might be more space for the broader

²⁷² Van Dijk, J. et al.: Criminal victimization in international perspective: key findings from the 2004-2005 ICVS and EU ICS. Tilburg: Tilburg University 2007.

use of methods of a more qualitative nature alongside the quantitative methods usually employed. It is, after all, incredibly important when considering topics associated with crime and punishment how people understand it all, what significance they ascribe to it and what personal or other experiences form their opinions on it. If we succeed in uncovering and describing these matters, the incomprehensible and shocking might just become the comprehensible and expected.

SUMMARY

CRIME THROUGH THE EYES OF CRIMINOLOGISTS

In 2010, the Institute of Criminology and Social Prevention (“ICSP”) celebrated its 50th anniversary as an organization. A collective of authors made up of institute workers prepared an essay for the occasion entitled “Crime through the Eyes of Criminologists”. As the name suggests, the objective of this publication was to introduce to the general technical public selected criminology topics, compiled with a certain generalizing overview. So it is not a summary of results from experiential criminological research projects undertaken by the Institute; the effort of the authors was rather to examine crime from various professional angles with an accent on phenomenology of crime and crime prevention possibilities in the Czech Republic.

The roots of *criminology in the Czech Republic* may be found (Chap. 1) at the turn of the twentieth century. This does not mean that criminology existed at that time as an independently developed science. But knowledge of criminological thinking had appeared in Europe at the time, when criminology had already formed as a science of its own. In the 1920s, the term “criminology” in the Czech environment was already regularly used to denote the scientific study of crime, whereas two approaches were still differentiated: the study of the personality of the offender and study of social aspects of crime.

It could be assumed that criminology arising from the environment of jurisprudence will be closer to the former of these approaches, i.e. the problematic of the offender and his sanction, but in reality Czech lawyers standing at the roots of Czech criminological science expressed a distinct sense for a wider view of crime as a social phenomenon.

The creation of the criminology research institute in 1960 (and also the origin of the Cabinet for Criminology at the Department of Criminal Law as a joint work station of the Law Faculty of Charles University and the Institute of State and Law of the Czechoslovak Academy of Sciences) at the time did not mean founding criminology as a science “on a green meadow”, but rather a basic opportunity for developing approaches to criminology.

During the so-called “normalization” period after 1970, ideological pressure grew, where the institute was accused of non-Marxist deviation. Certain research workers were

forced to leave the institute. Despite this, at that time basic works were published including the first Czech criminology textbook, though tributary to the period of its creation and ideological limitation.

Deep social changes after 1989 newly paved the way for criminological research. The need for valid criminological knowledge seemed undeniable, mainly in the situation where a quantum leap in the growth of registered crime occurred and when crime came to the forefront of phenomena considered a source of fear for citizens. After a long period, the ideological barriers came down. Czech criminology began to quickly digest experiences from worldwide criminology, and to establish international contacts.

The method of criminological work was dictated in this period by a specific situation characterized by this overall growth in crime and some of its new manifestations. So logically the work of criminologists in the institute, which underwent a change in personnel and renaming to the Institute of Criminology and Social Prevention, mainly focused on current experiential research.

Among the key areas in criminological considerations are *social factors influencing the development of crime* (Chap. 2), since crime is not an isolated phenomenon, but plays out in a certain social framework. Criminology accepts these facts. Aside from gaining experiences on the state, structure and development of crime, on offenders and victims, from an analysis of the effectiveness of legal remedies and preventative and further measures and perhaps also from predicting possible variations of further development, it also deals with social and individual criminogenic factors. Criminogenic factors are understood as risk factors that evoke, facilitate or support perpetration of crimes.

By international measure, the most important criminogenic factor is the process of globalization, paradoxically occurring concurrently with the deepening of differences between advanced and stagnating countries. The open systems of today's world without borders enable criminal structures the relatively free movement of illegal goods, money derived from criminal activity, weapons, criminals and their victims.

In the area of internal policy, it is necessary to search for criminogenic factors on the general level of the political system, if the political representation is not capable of submitting a well through-out conception from which viable strategies of how to effectively confront crime are derived. In recent years, attempts have been undertaken to form a strategy in the fight against organized crime and corruption, an anti-drug policy exists, and a system of crime prevention has been elaborated.

So it is a matter of society correctly formulating and defining its *criminal policy and purpose of punishment* (Chap. 3), because every nation declares by its criminal policy mainly the level of protection of basic human and civil rights and freedoms, which it is willing and capable of realistically providing. Criminal policy of the state is specified mainly in its criminal legislation, substantive and process law, in the system and arrangement of bodies and institutions providing enforcement of criminal law standards and in practical activity of these entities.

The method by which a nation punishes an offender for crimes, i.e. what punishments it imposes and how it handles convicted persons, is very closely related to the character of the political and social arrangement of the given society, to respecting human and civil rights, and speaks of the concept of the entire legal system. Upon imposing and performance of criminal sanctions, the criminal policy of the nation is directly manifested.

One of the possibilities of sanction policy is formed of *new and alternative forms of punishment in the Czech Republic after 1989* (Chap. 4), which should react to the fact that the high number of offenders given unconditional prison sentences overfills the capacity of prison facilities and inhibits the social rehabilitation of prisoners.

The issue of alternative punishments and alternative methods of proceedings has therefore become one of the key questions of criminal policy; the range of alternative punishments was expanded and new alternative methods of procedures were introduced. Upon practical implementation of alternative procedures, the need was created for effective involvement of qualified workers - probation officials - who would secure a responsible selection of cases suitable for negotiation in a certain type of alternative proceedings, who would be responsible for assembling the necessary experiences and information for decisions by the court on imposing an alternative punishment, or would see to performance of alternative punishments.

These tasks have been fulfilled in the Czech Republic by probation and mediation officials since 2001. Probation and mediation services in their work are derived from the principles of restorative justice, where the crime is understood as a social event, which has interfered with the lives of persons of the applicable community and upon resolving its results, it is necessary to take into consideration the interests and needs of the offender, and victim of society.

Entering the forefront is the *task of prevention in controlling crime mainly in relation to youth* (Chap. 5). In terms of crime amongst young persons, this is actually a matter of failure, failure of the individual in his human and social dimension. Every person living in society

simply must socialize. The problem though is whether he socializes (or is socialized) well, or badly or better stated, mainly well or mainly badly in regards to the society in which he grows up. For creating concepts and life principles, it is very important for impulses encountered by the person, mainly during his early stage, to have a consistent character, and not be incongruently conflicting and unpredictable.

The results of criminological research has shown that juvenile delinquents are frequently born into abnormal upbringing conditions, which obviously have a strongly adverse effect on preventative work, and also make such work crucial. It seems that the most important delinquent factors that lead a young person along an asocial path must be found in the family orientation. The person to later become an offender is often born into – in terms of child-rearing – a poorly prepared family environment. Parents of delinquent children or youth make many parenting mistakes.

It is necessary to perceive prevention of crime and the negative phenomena associated with it as a certain focused effort to modify the life's path of the person in time and in an appropriate manner.

The topics of *offenders of crimes, criminal recidivism and prediction* (Chap. 6), are a traditional subject of criminological studies. Criminology understands the term offender to be not just persons who committed acts determined by law to be crimes, but frequently also persons who do not pose an interest to authorities involved in criminal proceedings or whom such authorities are not prosecuting. Attention is also focused on individuals by whose age (children) or state of mind (insanity) fall outside the limits of criminal law. Criminology also deals with those persons who have already served a punishment for a committed crime, as well as persons indicated as potential offenders of a crime. It even deals with individuals who are known for sociopathic behavior (ex. persons with drug and other dependencies, prostitutes, socially excluded persons, extremists and their sympathizers, problem children, persons with diagnosed Antisocial Personality Disorder, etc.).

Criminological research focused on the personality of the offender therefore generally examines: the motivation of the offender's behavior including criminal behavior, his personal, family and criminal anamnesis, the course and developmental problems in his socialization, the level of his adaptation to the surrounding social environment, the life style lived, the influence of potential and previously served punishment on his future, predictions are made regarding his further behavior and an estimate of possible recidivism of his criminal behavior.

The seriousness of the topic *victims of crime in current contexts* (Chap.7) arises from the fact that according to representative research performed in the Czech Republic in 2006, nearly

two-thirds of the roughly three thousand respondents interviewed had become victims of at least one of the ten research-monitored offenses (63.5 %) over the five analyzed years. Nearly 40 % of those interviewed suffered damage by one of these ten offenses during the mentioned period. Crime and phenomena related thereto are thus becoming more and more a part of our lives. Some citizens may regard crime as a normal risk that is a fact of life.

For offenders of hate crimes, the victims are often, for example, foreigners, asylum seekers, homosexuals, homeless persons and members of other widely varied population groups. Victims are often attacked just because they exist, their identity is attacked. Their possibility of prevention is thus significantly decreased, and repeated victimization becomes a problem.

The question *What do we know about organized crime?* (Chap. 8) is not just an academic question. What criminal activity are we to imagine under this term specifically, what is its true form and scope, and wherein lies its danger? Organized crime may be defined by means of criminal law, the language of international documents or from the aspect of criminology. Pursuant to Sec 129 of the Criminal Code no. 40/2009 Coll., organized crime falls under the concept of a “criminal organization”. A criminal organization is defined as an association of multiple persons with an internal organized structure, with differentiation of functions and share of activities, which is aimed at systematic perpetration of intentional criminal activity. The basic international document, i.e. the United Nations Convention against Transnational Organized Crime also does not define organized crime as such, but states what is a group of organized crime; in other words it proceeds in the same manner as our Criminal Code.

The criminological approach accents that the basis and sense of organized crime is intentional, purposeful and systematic achieving of the maximum profit regardless of the means used and with the choice of these interest areas, which promise to bring this maximum profit. It focuses on areas where the opportunity for profit appears. Organized crime from this aspect may be characterized as a specific form of enterprising founded upon illegal activities. Organized crime enterprising is regularly becoming a part society’s offer and demand structure.

If we accept the “market” definition of organized crime, it is possible to find both differences and similar characteristics with economic crime. One may state as a basic differing characteristic between organized crime and economic crime that organized crime augments the legal economy, turning mainly to the customer, whereas economic crime directly attacks and damages the economy. The typical *modus operandi* of economic crime is

fraud, or embezzlement (as opposed to organized crime, which is only providing the client something of his interest).

Research performed by ICSP proves in specific cases the existence of criminal organizations in dealing drugs, in organizing illegal migration, in stealing and smuggling automobiles, in human trafficking and organizing prostitution, etc. Aside from the analysis of specific prosecuted and adjudged cases, it is possible to refer to expert examinations, which the Institute has performed every year since 1993. Those questions are generally experiences workers of special units of the Police of the Czech Republic aimed at the fight against organized crime.

Chapter 9 is aimed at *foreign working migrants in the Czech Republic – current status and historic reminiscence*. The migrant situation in Czech society has radically changed. The Czech Republic has transformed from a country that fed processes of international migration (it fulfilled this role over the last two centuries of its existence), on one hand into a country found in the buffer zone separating Western Europe from the eastern part of Eurasia, and on the other hand into a target country in terms of migration aspirations of foreigners. The Czech Republic has become attractive for foreign working migrants mainly because of its capability of resisting – as opposed to other post-communist nations - a decline in the standard of living of its population. Mainly the favorable socioeconomic conditions, including the existing situation on the labor market in the Czech Republic at the start of the 1990s, have appeared as the decisive “push” factors for foreign working migrants.

This chapter, as a historical reminiscence, also describes the situation of around 25,000 emigrants from Russia, who gained political asylum in Czechoslovakia after the Bolshevik Revolution of 1917.

Chapter 10, entitled *Drugs, crime, repression – an integral set or vicious circle*, is derived from experiences that in various cultures and societies historically always a part of the population has used and continue to use substances influencing the psyche of the user, although motivation for use differs in varying periods, geographical areas and groups of population. And individual societies also for various reasons (health, religious, economic, etc.) decide which of these substances they will impose a certain form and a certain degree of regulation, which may culminate in the absolute ban on handling some of them.

In the 20th century, the opinion gradually prevailed that production, distribution and use of certain substances represent a serious worldwide problem with health, social, economic and safety aspects, which cannot be effectively resolved only at the level of individual countries. This position led to the origin of international conventions introducing a supranational system

of control and regulation of handling selected substances, the use and spread of which was determined to be especially damaging. The first were the so-called international opium conventions, which were gradually augmented by the League of Nations Protocols, consequently replaced by so-called UN transnational anti-drug conventions.

It is possible to classify four basic groups of crimes that relate to drug issues (drug-related crimes): psychopharmacologically conditional crimes, economically motivated crimes, systemic crimes, crimes in violation of drug laws. It is generally possible to state that the criminal justice system may, within the framework of an anti-drug policy, prosecute the offender's drug crimes, draw away drugs from the drug scene and possibly even act preventatively.

Drugs as a criminogenic factor (Chap. 11) are a serious problem. Persons dependent upon drugs are often characterized by putting the present in front of the future in terms of importance, and by increased impulsiveness that may even culminate in aggression. At the same time, they have a diminished capability of foreseeing the consequences of their behavior, and most resolve stressful situations in a less integrated way. They also have decreased responsibility for their behavior and its effects on the surroundings. By their divergent, for society mostly unacceptable life style, they become marginalized in society and mostly only meet with people of the same values, further lending to a distancing from society.

The social danger of drug abuse is found in the fact that the immediate causal relationship between the stimulus and the effect (disruption of social relationships and activities) it is not clear and only appears by an accumulation of changes over a longer time period. The seriousness of this problem also increases by the fact that drug abuse deters the user from developing reasonable ways of resolving the most diverse problems and worries of everyday life. From the social aspect, it is important that a basic sign of drug abuse is a certain social degradation and social isolation, which, when the person in question is female, deepens ever more and more strongly affects her surroundings, especially children.

Homelessness as an extreme form of social exclusion (Chap. 12) is the result of a process where a person gradually loses the capacity to secure for himself the basic living needs. By a social measure, there is no deeper chasm in which to fall. This path usually leads from a nonfunctioning or nonexistent family through insufficient education, problems acquiring work, and the incapacity for gaining and financing a place to live. Various sociopathic expressions mostly predetermine and accompany this path, including delinquent behavior and increased probability of victimization. Persons socially handicapped in this way are excluded from the possibility of engaging in civic life, and mainly of entering the job

market. Determination of unfavorable circumstances of course is not absolute; it is thus interesting to try to ascertain in which cases and under what conditions it is possible to handle an adverse life situation. Casuistic studies of specific cases of homelessness provide for this a sufficient material basis.

Chapter 13 is aimed at *Radical political subcultures in the CR – a look at twenty years of development*. This chapter contains a detailed description of various subcultures, within the framework of which young people during the period of so-called real socialism expressed their desire for an autonomous life style and resistance to communist ideology. This concerned for example people studying and practicing eastern religious education, tramps searching for all types of clothing with the label US Army, and those following nontraditional music styles. A certain semi-legality, in which subcultures manifesting new and generally “western” life opinions had to maneuver, made them extremely attractive. One of the most distinct was the punk sub-culture, existing since the first half of the 1980s. Just like their western predecessors, the main aim of punks was to shock their surroundings and demonstrate their disdain for social norms. After 1990, the skinhead culture quickly grew, characterized by extreme nationalistic rhetoric and racial intolerance. In 1991 there occurred a rather logical division between skinheads (hailing patriotism, order, cleanliness and demonstrating resistance to drugs) and the nihilistic and self-destructive punks.

Also developing were leftist anarchy movements with political ambitions, and the Czechoslovak Anarchist Federation was founded in 1995. Certain radical leftist groups tried to keep themselves from being labeled as anarchists, arguing that they have differing points of opinion. Squatting is a typical example where anarcho-autonomous thinking blends in with an alternative life style and culture. Squat means an illegally, i.e. without consent of the owner, inhabited building, occupied by a community of most often young people. This method of social protest became most popular at the turn of the 1980s in various cities in Western Europe.

Opinions and positions taken by the public towards crime and criminal policy are contained in Chapter 14, entitled *The Public and Crime*. The media plays a major task in forming opinions and positions of citizens towards crime and the fight against it. The absolute majority of the public gets its information on crime directly from the media. It is also known and supported by numerous criminological studies that the crime picture offered by the media is notably distorted from reality. Journalists show preferential interest in offenses fulfilling the demands of being interesting to the public, thus becoming news-worthy information. Those crimes that concern children and youth or well-known persons have a greater chance of

appearing on the news, just like those that will shock the public by the absence of any rational motive on the part of the offender, sexual overtones or features of randomness, where it is possible to gain the impression that anybody could meet up with a similar incident.

At the conclusion of the summary in the chapter *Epilogue*, thoughts are shared regarding *Criminology in the post-modern period*. Also considered a weak point of criminology and a cause for its unpopularity is the fact that its work doesn't manifest itself in some straightforward, guaranteed recipe for easily and quickly removing crime. Mainly politicians, whose operational timetables are mostly limited to the length of their term of office, would like to hear expert opinions and instructions on immediate solutions if possible. If a reputable criminologist does not offer them such a simple solution and if they moreover emphasize that the actual solution requires much effort and minor tasks that cannot be isolated and attributed to a single ideology or political program, it is no wonder that such an eccentric and bookworm does not encounter any enthusiastic acceptance in political circles.

Despite this claim, which may sound perhaps a bit pessimistic, one may say that the work of criminologists today comes to doubtless fruition – in legislation, in social work, in police activities, national representation, justice, prisons and post-penitentiary care.

Of course it is also necessary to admit that in many areas, the benefits of criminology are not so apparent – but this was not caused by lack of interest or competence of criminologists, rather by the insufficiency of their research capacity, influenced again mainly by deficit material and financial resources.

Translated by: Marvel s.r.o.

Epilogue

Criminology and Postmodernism

The collection of criminological papers which you have just finished reading serves a rather specific purpose. It is not only to commemorate the 50th anniversary of the Institute for Criminology and Social Prevention but also to point to a wide range of issues dealt with by current Czech criminology, thus documenting its methodological and theoretical level. I believe that the authors and editors of this work have been successful: the professional public receives a complete and concentrated picture about current state of scientific criminological knowledge in the Czech Republic.

The Institute for Criminology and Social Prevention is the largest and (unfortunately) almost only center of Czech criminology; the few other academics who cultivate it on Czech universities (the Police Academy of the Czech Republic and faculties of law) could be counted on the fingers of one hand, as the saying goes. In comparison with other countries this research staff base is very small. Even today criminology does not enjoy much support and favor and there are from time to time even proposals to further reduce its material resources and cut staff – of course under the proven banner of cost savings, nowadays emphasized very much.

It begs the question why save on science of all things: the current society likes presenting itself as *knowledge society* and verbally keeps proclaiming that science is one of the largest and most dynamic sources of progress and development of civilization. However, reality is sometimes a bit different; in particular the social sciences often do not enjoy so much favor because their “market value” is not thought to be very high

There may certainly be many reasons for this; in the case of criminology I believe that the fact that it is the proverbial “*bearer of bad news*” plays a specific role. These bearers have never been very popular and some rulers used to reward their faithful services with imprisonment or even decapitation.

Criminology describes the reverse, less nice face of society, which is detested by people who don't care for looking in a mirror. The diagnosis of societal diseases as such is sometimes repulsive and many would prefer never to hear about it. In particular the social and political systems which take pride in their success and outstanding qualities because they

think that they represent the pinnacle of all progress are not very interested in someone who would show in a too striking way that among us, decent citizens, there are too many deviants, violent people, drug addicts, thieves and murderers. Also annoying is if some graceless criminologists indiscreetly keep reminding that even in that part of society which likes calling itself the elite, wearing white collars and perfectly fitting suits by Hugo Boss, there is a remarkable number of crooks, corruptionists, usurers and cheaters.

Another sin of criminologists and reason for their low popularity is their persistent claim that there are many causes of crime which are to a large degree attributable to ourselves, including those of us who consider themselves decent citizens. Our exalted selfishness, greed, coveting of consumer goods, lack of solidarity, unwillingness to grant dignified existential conditions to the weak, old and handicapped, unwillingness and inability to properly attend to the upbringing of own children and also deep social injustice, which acquires extreme to pathological forms: these are just some of the criminogenic factors in the origination and maintenance of which almost all of us participate.

Another fact which is considered a weakness of criminology and reason for its low popularity is that it does not provide any simple and foolproof recipes how to deal with crime easily and fast. Especially politicians whose operating time schedule is usually limited by the duration of their term would like to hear expert advice and recipes for as far as possible instant solutions. If a serious criminologist offers no such solutions and emphasizes on top of it that genuine solutions require much effort and detailed work, which cannot be locked in a straightjacket of one ideology or one political program, it is little wonder that such odd bookworm does not get enthusiastic reception in political circles.

In spite of these, perhaps rather pessimistic, notes I believe that the work of criminologists is extremely useful and that it bears fruit already: in legislation, social work, police activity, work of the prosecution, the judiciary, the prison service and post-penitentiary care. While it might seem sometimes that the voice of the criminologist is the voice calling in the wilderness, this is not true. Many valuable findings uncovered by Czech criminology found its way through professional publications, the media, lectures at universities, conferences and seminars and other scientific activities where they were needed: to the ears of politicians, legislators, policemen, judges and members of other relevant professions. A lot of new legal institutes have been radically influenced by the findings of criminology; we might recall by way of example how the legal standing of victims of crime has improved significantly over the last years, what kind of radical transformation have seen forms of criminal proceedings (e.g. by introducing so-called diversions), how the structure of imposed

penalties has changed (so-called alternative punishments at the expense of imprisonment). All these are certainly to the credit of – among others - criminology.

It has to be admitted, though, that in many other fields the contribution of criminology has not been as obvious; but it is not the consequence of lack of interest or ineptitude of criminologists but rather of their insufficient research capacity, influenced again mainly by the material and financial deficits.

There is no concealing the fact that social sciences, including criminology, haven't reached so far such theoretical, methodological and institutional base as to fully guarantee truthful gaining of knowledge and efficiency in applying the findings in practice. Criminology often gropes in the dark, turns into dead-ends and brings erroneous information. Current criminological doctrine is usually aware of these limitations, errors and mistakes, is self-critical and does not suffer from excessive satisfaction; rather it is typical by its skepticism, which may be sometimes excessive.

However, what I find most important for the future development of criminology is the ability to find *new topics and new solutions* for the future in this bustling social development. It is indeed an undisputable fact that the last decades – approximately since the last decades of the 20th century – have been marked by exceeding dynamics and that an essential shift of social paradigms is taking place. More and more voices are saying that neither the current criminal policy, nor legislation, police and judicial practice or criminological theory are able to adequately respond to these new phenomena found in the state and dynamic of crime. Current crime control is said to be ineffective and toothless and in a *crisis*. There is much talk about a crisis of criminal law, of justice, of criminal law theory and of criminology.

The advent of new conditions is so radical that many authors speak about the dawning of a new era, sometimes called *postmodernism*. As controversial, ambiguous and vague as the term might remain, so that some authors treat it with contempt and consider its use a sign of coquetry, popular within the “academic fashion industry”²⁷³, there is no denying that those speaking about postmodernism prove its existence by many new undisputable facts. So we can even hear the claim that at the turn of the century came the era of postmodern criminal law and postmodern criminal policy, distinguished in comparison with the previous period by some totally new traits. If it is indeed so, and I think this is the case, then also postmodern criminology must respond to this new phenomenon and provide the necessary empirical basis to criminal policy and criminal law.

²⁷³ See Kaiser, G.: Moderne und postmoderne Kriminalpolitik. In: Arnold, J. et al. (Hrsg.): Menschengerechtes Strafrecht. Festschrift für Albin Eser. München : C. H. Beck, 2005, p. 1361

Without any claim to completeness I am going to mention just briefly some of these new phenomena. First of all there are *new types of crime* – either totally original, hitherto unknown, or at least acquiring new, more dangerous attributes. Under these new or innovative crime categories might be mentioned for instance organized crime, international environmental crime, computer crime, economic, financial and tax crime. Many of these new forms are related to economic trends of globalization: for instance criminal attacks profiting from the policy of grants and subsidies of the European Union and other multinational organizations, illegal cross-border flows of capital, goods and labor, tax evasion to “tax havens”, trade in forbidden commodities, illegal migration connected with modern form of human trafficking, illegal activities in the field of prostitution and pornographic industry etc. Drug crime has shown strong innovation capacity as well as resilience against any regulatory interventions, profiting both from progress in technologies and communication and of fashionable lifestyle trends, especially of young people. Even such “traditional” forms of social ills like corruption prove to be very flexible and resilient against repressive and controlling interventions by the state, so that fighting them is like fighting a dragon with thousand heads, whose cut heads keep growing back. The phenomenon of terrorism has acquired fully new quality.

Also in case of less serious, sometimes even banal or negligible types of crime, significant social concern is related to its mass occurrence with little success of reduction.

We don’t know what to do with these (and many other) pathological phenomena, they are spinning out of control. The police and judiciary has no efficient methods to fight and control them, or don’t know how to use them, which results in high crime latency and protraction or failure of pending criminal proceedings. Fear of crime on the part of the citizens grows in proportion to this, as does their lack of trust in the police and judiciary; the authority of the law and the state falls.

I believe that new great tasks stand before criminology in this new situation:

First of all it must bring proofs as to whether the indicated aspects in the phenomenology of crime really exist and if so, in what quantity and quality. There are namely many indications that verbal claims about their existence are exaggerated and not necessarily in line with reality; they might be just the fruit of media manipulation, aimed at diverting attention from other, perhaps even more pressing social needs. It has been shown, for

instance, that the intensity of the growth of *fear of crime* is not in proportion to the real crime conditions.²⁷⁴

Conclusive evidence on the actual state of crime could have far-reaching impact on criminal policy and legislation and could prove if e.g. the growing calls for *stricter criminal repression* (“three times and enough”, zero tolerance strategy, lowering the age limit for juvenile criminal responsibility, increasing rates of criminal punishment etc.) are based on reality or whether they are just a product of “emotional and populist criminal policy”, as Heinz thinks, among others.²⁷⁵

Reflection of these sometimes contradictory trends in criminal policy can be found in criminal law and criminal procedure legislative as well as in criminal law doctrine. In the field of material criminal law, controversial discussion is being led for instance about the necessity of so-called *forwarding of criminal responsibility* (criminalization of early preparatory acts, e.g. the crime of unauthorized fabrication and keeping of a state seal and official stamp pursuant to Section 349 of the Criminal Code), criminalization of abstract endangering offenses (e.g. the crime of endangering under the influence of an addictive substance pursuant to Section 274 of the Criminal Code), negligent property and economic crime (e.g. the crime of negligent breach of obligations when administering foreign property pursuant to Section 221 of the Criminal Code).²⁷⁶

Even more controversies sparked by these phenomena can be found in the field of legislation relating to criminal procedure and police. Under the banner of making the police and judiciary more efficient, following institutes are being proposed and introduced: the crown witness, provocation to criminal act, hidden agent, pretended transfer, exchange of consignment, monitored consignment, surveillance of persons and items, intercepting and recording of communication, wiretapping in apartments and other premises, secret photographing and videotaping, electronic raster search in databases and other means of so-called *operative technology*.

²⁷⁴ Kury, H., Obergfell-Fuchs, J.: Kriminalitätsfurcht und ihre Ursachen. Der Bürger im Staat, 53, Nr. 1/2003, p. 9-18; Zapletal, J.: Strach ze zločinu a jeho některé souvislosti (Fear of crime and some related issues). In: Musil, J., Vanduchová, M. (eds.): Pocta Otovi Novotnému k 70. narozeninám, Prague: Kodex Bohemia, 1998, p. 330 ff.

²⁷⁵ Heinz, W.: Kriminalpolitik an der Wende zum 21. Jahrhundert : Taugt die Kriminalpolitik des ausgehenden 20. Jahrhunderts für das 21. Jahrhundert? Bewährungshilfe 47 (2000), p. 131-157

²⁷⁶ Cf. Novotný, O.: Stop zaviněným úpadkům (Stopping intentional bankruptcies). Ekonom, No. 33/1997, p. 37; more on the concept of “forwarding of criminal responsibility” see Fürst, M.: Grundlagen und Grenzen der §§ 129, 129a StGB. Zu Umfang und Notwendigkeit der Vorverlagerung des Strafrechtsschutzes bei der Bekämpfung krimineller und terroristischer Vereinigungen. Frankfurt am Main : Lang, 1989.; Schwitters, J. H.: Die Vorverlagerung der Strafbarkeit beim unerlaubten Handeltreiben im Betäubungsmittelstrafrecht Konstanz : Hartung-Gorre, 1998.

It is an important feature of these new methods that they are deployed already *at the forefront of crime*, even before an attempt or consummation of a criminal act, with the view of detecting the offence already during its earliest phase of preparation. The police implement these methods already before criminal prosecution begins and the information thus acquired is to be usable as evidence after the criminal prosecution has started. We hear about *proactive methods*, in contrast to “traditional” reactive methods only deployed after a consummated offence (or an attempt) has been detected. Some critics see great danger in this trend: they warn of possible abuse of such means, speaking about erosion of the principles of the rule of law, brutalization and “policing” (“*Verpolizeilichung*”) of the criminal process²⁷⁷ or even symptoms of a police state.²⁷⁸ In spite of this, some of these methods (and many others) have asserted themselves not only in police law but also in criminal procedure law and they seem to have firmly “taken root” there and have been partly accepted as unavoidable even by the public.²⁷⁹

Another legislative response to mass increase of crime which is responsible, among other things, for protraction of proceedings, are efforts to “unload” the burden from the judiciary by various *simplified forms of criminal proceedings*. Some of these forms, in particular so-called *diversions*, have proved to be very suitable and beneficial and their implementation managed to preserve the basic guarantees of a fair process and principles of the rule of law. However, there are also other novelties which cause big qualms and negative reaction on the part of both the professionals and the public. They include for instance various types of so-called consensual criminal procedures, in particular *agreements on guilt and punishment*, which are being transferred to the European continent through the influence of elements of Anglo-Saxon procedures (*plea bargaining, guilty plea*). The criminal process under the influence of these institutes is slowly leaving the principle of material truth and embarks on a path approaching the principle of formal truth, typical for civil contradictory

²⁷⁷ Kaiser, G.: Moderne und postmoderne Kriminalpolitik. In: Arnold, J. et al. (Hrsg.): *Menschengerechtes Strafrecht. Festschrift für Albin Eser*. München : C. H. Beck, 2005, p. 1367

²⁷⁸ See, e.g., Busch, H.: Die Debatte um Organisierte Kriminalität in der BRD. *Bürgerrechte & Polizei* 39, 1992, pp. 6-15; Neumann, U.: Zum Entwurf eines Verbrechensbekämpfungsgesetzes. *Strafverteidiger*, 1994, Nr. 5, pp. 273-276; Hassemer, W.: Warum man den „Großen Lauschangriff“ nicht führen sollte. *Deutsche Richterzeitung*, 1992, No. 9, pp. 357-358; Hassemer, W.: Aktuelle Perspektiven der Kriminalpolitik. *Strafverteidiger*, 1994, No. 6, pp. 333-337; Frommel, M.: Zum Abbau der Bürgerrechte in der Strafprozessreform der Bundesrepublik Deutschland. *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, 1990, No. 3-4, pp. 279-286

²⁷⁹ For more details see Musil, J.: *Některé prostředky trestního práva procesního a policejního práva v boji proti organizované kriminalitě v mezinárodním srovnání* (Some measures of procedural criminal law and police law in the fight against organized crime in international comparison). Prague: The Police Academy of the Czech Republic, 1995; Karabec, Z., Musil, J.: *Účinnost právních prostředků proti organizovanému zločinu* (Efficiency of legal measures against organized crime). Prague: Institut pro kriminologii a sociální prevenci, 1999.

procedure. Many authors see here a trend aiming at finding, instead of the material truth, only the “judicial truth” (*justizielle Wahrheit*²⁸⁰) or “procedural justice” (*Verfahrensgerechtigkeit*, within the meaning of the theory by John Rawls²⁸¹). I consider such direction taken by European continental criminal process, as does Schünemann²⁸², to be incorrect in principle; the risk of total deformation of the criminal procedure and unjust results is extremely high in this model and it cannot be justified by dubious advantages offered by consensual procedure.²⁸³

It seems that the tragic terrorist events of 11 September 2011 have brought a new dimension into the discussion on the form of “postmodern” criminal law. Under their influence the conviction started to openly assert itself that “classical” criminal law is unsuitable to combat terrorism and perhaps other events of a similar catastrophic nature. Even such principled adherent of the rule of law as the former judge of the German Federal Constitutional Court, Winfried Hassemer, is of the opinion that the reality of today’s *risk society*, gravity of today’s threats and fear of the people of uncertain future are so high that the already started transformation of the reactive criminal law into a “*danger averting law*” (*Gefahrenabwehrrecht*) is unavoidable. This trend, so Hassemer, is a response to normative disorientation, fear of crime and calls for risk control. His conclusion is not very optimistic: even if this new focus of criminal law to provide security is fulfilled, criminal law cannot provide security anyway – therefore, we have no choice but to “live with risk”.²⁸⁴

Some authors go even further and, expressing their strong skepticism about the possibilities of a state governed by the rule of law to combat terrorism by current legal means, suggest that the current criminal law should be replaced by something else, a specific law “tailor made” to respond to terrorism. So a few years ago a new concept was born, of so-called “*enemy criminal law*” (“*Feindstrafrecht*”). The author and promoter of the concept is

²⁸⁰ Duttge, G.: Möglichkeiten eines Konsensualprozesses nach deutschem Strafprozeßrecht. Zeitschrift für die gesamte Strafrechtswissenschaft No. 3/2003, p. 544

²⁸¹ On the concept of procedural justice see Rawls, J.: *Teorie spravedlnosti* (The theory of justice). Prague: Victoria Publishing, 1995, p. 61 ff.

²⁸² Schünemann, B.: Die Absprachen im Strafverfahren. In: Hanack, E.-W. [Hrsg.]: *Festschrift für Peter Rieß*. Berlin : de Gruyter, 2002 , p. 535

²⁸³ For more details see Musil, J.: Dohody o vině a trestu jako forma konsenzuálního trestního řízení (Agreements on guilt and punishment as a form of consensual criminal procedure). *Kriminalistika* No. 1/2008, pp. 3-25

²⁸⁴ Hassemer, W.: Sicherheit durch Strafrecht. Höchstrichterlichen Rechtsprechung im Strafrecht – HRR.Heft 4/2006, p. 143 (<http://www.hrr-strafrecht.de/hrr/archiv/06-04/index.php?seite=6>)

considered to be Professor of criminal law and legal philosophy Günther Jakobs from Bonn²⁸⁵, who is trying to provide a philosophical and criminological justification for it.

Adherents of the concept of enemy criminal law have yet to produce specific ideas how the legislative form of these institutes should look like. But one can infer from their general statements what could be expected of such legal arrangement: in material law draconian punishments, void of any dependence on the level of guilt, and further protective measures in the form of detention of unlimited duration. In the procedural law it would entail suspension of the presumption of innocence, unlimited use of criminal custody, jurisdiction of military courts also for civilians, admissibility of certain kinds of torture. It seems that some countries have already started to act in practice in the way Jakobs is hinting at – evidence might be seen e.g. in the practice of so-called *light torture* or *torture via detention*, used by US intelligence services and military units outside of their territory (Guantánamo, Abu Ghraib); the American administration is using the term *unlawful enemy combatant* for this new type of dangerous offenders.²⁸⁶

It should be noted that these conclusions and opinion has earned Günther Jakobs, otherwise a recognized representative of the science of criminal law and legal philosopher, isolation – at least on the European continent – and sparked sharp rejection. However, there is no doubt that such discussions are bound to continue in the future.²⁸⁷

I am of the opinion that the great future task of criminology in the postmodern era should be clarification of the impact of large conceptual shifts relating to the changes in the *role of the state* in providing for security of its citizens and controlling and fighting crime. Under the influence of the triumphal march of *neoliberal* ideology, economic aspects have prevailed also in the area of crime control and they have begun to be implemented in the field of criminal legislation and activities of the police, the judiciary and the prisons service. These state bodies have come to be seen more and more as economic entities subject to the rules of

²⁸⁵ Jakobs, G.: Kriminalisierung im Vorfeld einer Rechtsgutsverletzung. In: Zeitschrift für die gesamte Strafrechtswissenschaft 97 (1985), pp. 751–785; Jakobs, G.: Selbstverständnis der Strafrechtswissenschaft (Kommentar). In: Eser, A., Burkhardt, B. (Hrsg.): Die deutsche Strafrechtswissenschaft vor der Jahrtausendwende. München : C. H. Beck, 2000, pp. 47-56; Jakobs, G.: Terroristen als Personen im Recht? Zeitschrift für die gesamte Strafrechtswissenschaft, 117 (2006), No. 4, pp. 839–851; Jakobs, G.: Bürgerstrafrecht und Feindstrafrecht. Höchststrichterlichen Rechtsprechung im Strafrecht – HRR. Heft 3/2004, pp. 88-95

²⁸⁶ Bruha, T.: Folter und Völkerrecht. Das Parlament. Beilage Aus Politik und Zeitgeschichte. Nr. 36 / 04.09.2006. <http://www.das-parlament.de/2006/36/Beilage/003.html>; Bielefeldt, H.: Zur Unvereinbarkeit von Folter und Rechtsstaatlichkeit. Das Parlament. Beilage Aus Politik und Zeitgeschichte. Nr. 36 / 04.09.2006. <http://www.das-parlament.de/2006/36/Beilage/001.html>; Nowak, M.: Das System Guantánamo. Das Parlament. Beilage Aus Politik und Zeitgeschichte. Nr. 36. 04.09.2006. <http://www.das-parlament.de/2006/36/Beilage/004.html>

²⁸⁷ For more details see Musil, J.: Trestní právo určené pro nepřátele (Enemy criminal law). In: Mikule, V., Suchánek, R. (eds.): Pocta Zdeňku Jičínskému k 80. narozeninám. Prague : ASPI, 2009, pp. 244-256

the “management culture” and economic and technological correction (*technocorrection*)²⁸⁸. The *cost-benefits approach* prevails as one of the most important criteria when it comes to crime control both in the area of legislation and in the police, judiciary and prison system.

Privatization of security has been the uncontested trend of the last decades. What used to be understood as an exclusive domain of the state is to an ever growing extent being given over to private entities as their sphere of business. It is in the area of private security services and prisons that this trend has become the most widespread²⁸⁹, but one can find signs of its penetration also into the judiciary and the criminal procedure as a whole.²⁹⁰

I could go on enumerating these new phenomena, trends and concepts on many more pages. Each of the many other key words pronounced in criminology today as signs of the postmodern era, like the words *Europeanization and globalization of criminality and criminal law*²⁹¹, *risk society*²⁹², *control society*²⁹³ and the like deserve separate profound attention. One can state that our time is one of constant and epochal changes and the same is true also for criminal law and criminology. The path from classical criminal law, its modern foundations on the European continent having been laid by Franz von Liszt²⁹⁴, to current and future criminal law is still open and its development continues; it would be an irrecoverable mistake if the ethos of reform would be lost on the way and the fundamental humanistic principles would give way to elusive consumer substitutes.

I believe that even in the 21st century Czech criminology will be able to offer criminal policy, legislation, criminal law and thus society as a whole good and efficient ideas and true facts on the state and causes of crime. Perhaps she would be able to convince society that no future solution to the issues of safety and crime can rest either on expulsion of socially

²⁸⁸ Cf. Coyle, A.: Technocorrections. A vision of the post-modern prison. Prison Service Journal 134 (2001), pp. 2-4

²⁸⁹ See Glavic, J. (Hrsg.): Handbuch des privaten Sicherheitsgewerbes. Stuttgart : Boorberg, 1995; Pitschas, R., Stober, R. (Hrsg.): Quo vadis Sicherheitsgewerberecht? Köln : Heymann, 1998; Pitschas, R.: Polizei und Sicherheitsgewerbe: Rechtsgutachten zu verfassungs- und verwaltungsrechtlichen Aspekten der Aufgabenverteilung zwischen Polizei und privaten Sicherheitsunternehmen. Wiesbaden : Bundeskriminalamt, 2000

²⁹⁰ Pipek, J.: Oficiální nebo dalekosáhlé privatizované trestní řízení (Official or extensively privatized criminal proceedings). Právník (139) No. 12/2000, pp. 1144-1181; Sack, F.: Ökonomisierungsprozesse in der Kriminalpolitik. Machtlogik für staatliche Strafen? In: Reindl, R. (Hrsg.): Effektivität, Effizienz und Ethik in der Straffälligenhilfe und Kriminalpolitik. 1998, pp. 87-110

²⁹¹ See Eser, A., „Menchengerechte“ Strafjustiz im Zeitalter von Europäisierung und Globalisierung. In: Czapska, J. et al. (eds.): Zasady procesu karnego wobec wyzwań współczesności : księga ku czci profesora Stanisława Waltosia. Warszawa : Wyd. Prawnicze PWN, 2000, pp. 169-188

²⁹² See e.g. Beck, U.: Risikogesellschaft. Auf dem Weg in eine andere Moderne. 2. Aufl. Frankfurt am Main : Suhrkamp, 1987; Prittwitz, C.: Strafrecht und Risiko. Untersuchungen zur Krise von Strafrecht und Kriminalpolitik in der Risikogesellschaft. Frankfurt am Main : Klostermann, 1993

²⁹³ See Frehsee, D.: Der Rechtsstaat verschwindet : Strafrechtliche Kontrolle im gesellschaftlichen Wandel von der Moderne zur Postmoderne. Berlin : Duncker & Humblot, 2003

²⁹⁴ Liszt, Franz von: Vergeltungsstrafe, Rechtsstrafe, Schutzstrafe. Heidelberg : Winter, 1906

excluded groups of fellow citizens to modern ghettos at the periphery of our cities, or on fitting luxurious residential neighborhoods with high fences and armed bodyguards.

Fifty years of the activity of the Institute for Criminology and Social Prevention and the content of this collection of papers have persuaded me that Czech criminology has enough resources to meet this mission.

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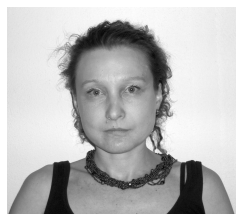
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