

INSTITUTE OF CRIMINOLOGY AND SOCIAL PREVENTION

**SELECTED RESULTS
OF RESEARCH ACTIVITIES
OF ICSP IN THE YEARS 2008-2011**

This publication contains basic information on selected research projects
of the Institute of Criminology and Social Prevention completed
in the years 2008-2011

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CONTENTS

Introduction	5
A/ Research Tasks	8
The possibilities and problems involved in the resocialisation of inmates and the effectiveness of treatment programmes <i>Biedermanová, Eva – Petras, Michal</i>	9
Offenders of commercial sexual exploitation of child <i>Blaníková, Šárka</i>	13
Sexual exploitation as a serious form of organised crime <i>Blatníková, Šárka</i>	17
The issue of security detention <i>Blatníková, Šárka</i>	23
The development of organised crime on the Territory of the Czech Republic <i>Cejp, Martin</i>	29
The effectiveness of legal instruments in combating organised crime (undercover agent) <i>Karabec, Zdeněk</i>	45
Criminal recidivism and recidivists <i>Marešová, Alena et al.</i>	53
Juvenile probation programmes <i>Rozum, Jan et al.</i>	61
The application of mediation in the criminal justice system I. <i>Rozum, Jan et al.</i>	67
The application of mediation in the criminal justice system II. <i>Rozum, Jan et al.</i>	71
Czech organised crime in an international context <i>Scheinost, Miroslav – Netík, Karel</i>	79
The criminal career of drug offenders <i>Trávníčková, Ivana – Zeman, Petr</i>	91
Endangered youth between prevention and repression <i>Večerka, Kazimír et al.</i>	103

Alternatives to custody in criminal proceedings <i>Zeman, Petr et al.</i>	111
Penal policy: opinions and attitudes of citizens <i>Zeman, Petr et al.</i>	123
Practice in ordering and institucional education and imposing a protective young offender education <i>Zeman, Petr et al.</i>	133
Selected aspects of the drug issue from the citizens' point of view <i>Zeman, Petr – Trávníčková, Ivana – Štefunková, Michaela</i>	149
The public and the penal policy <i>Zeman, Petr et al.</i>	159
B/ Methodological Series	168
The application of research methods and techniques in criminology. General Section <i>Cejp, Martin</i>	169
Departmental statistics – basic sources of information on crime in the Czech Republic <i>Marešová, Alena</i>	177
Psychological testing and criminology research <i>Blatníková, Šárka</i>	181

INTRODUCTION

The Institute of Criminology and Social Prevention (ICSP) is pleased to submit to the international community of professionals its fourth overview of results of its research activity, for the period 2008-2011 (the previous overviews, published in 2003, 2005 and 2009, contained the results of the Institute's research activities for the years 1992-2002, 2003-2004 and 2004-2007)

The Institute of Criminology and Social Prevention was established in 1960 as an expert body of the former public prosecutor's office, justice and interior ministries. Shortly after its foundation it was called The Research Institute of Criminology. The present name accepted in 1990 stresses prevention as an effective tool of crime control and interconnection between criminological research and application of its results in prevention and criminal policy. Since 1994 the Institute of Criminology and Social Prevention is a research organization of the **justice ministry**. Its activity is based on research, study and analytical work in the area of law, justice, citizens' security, crime and its control and penal system. The Institute's founder is The Ministry of Justice, which approves Institute's research tasks plan. The Institute is an organizational part of the state and is financed primarily from the State budget allocated to The Ministry of Justice.

The **recipients** of the Institute's researches are primarily justice ministry organizations and institutions (The Czech Republic Ministry of Justice, justice bodies, Prison Service, Probation and Mediation Service, Justice Academy), interior ministry, especially bodies and services of the CR Police and CR Police Academy, inter-ministry bodies, namely The National Committee for Crime Prevention and through its mediation, the local authorities and state administration of towns and municipalities taking part in implementing The Crime Prevention Strategy, other advisory governmental bodies and also education, labour and social affairs ministries. Researches results are available also to The CR Parliament and Government of the CR. Apart from that ICSP is being charged to develop documents, information and reports concerning crime development, crime policy, etc., required from the CR by UN bodies, European Union and Council of Europe, or by other inter-governmental and non-governmental organizations. ICSP is a member of international professional organizations

(International Society of Criminology, International Society for Criminal Law, ISPAC, European Network of Crime Prevention) and co-operates with other international professional societies (European Society of Criminology, CEP, PRI, etc.).

ICSP participates in **educating** the staff of justice bodies in co-operation with Justice Academy, further co-operates with law faculties, the CR Police Academy, Faculty of Arts and Faculty of Social Sciences of Charles University in Prague, the CR Ministry of Labour and Social Sciences, the CR Ministry of Education, professional schools of higher education, etc.

The Ministry of Justice charged ICSP by research tasks on the basis of **The Intermediate Plan of Research Activity for years 2008 – 2011**. This plan included the research programme called “Society, Sanction Policy, Crime”, approved by the CR Governmental Council for Research and Development. This project was in progress during 2008 – 2011. The Intermediate Plan has been realized by means of the following individual research tasks:

- A. Tasks processed in the framework of “Society, Sanction Policy, Crime” programme
 - 1. Research on Mediation in Criminal Justice Enforcement
 - 2. Probation and Mediation Activity According to the Law Number 218/2003 of the Criminal Code on Juvenile Liability for Unlawful Actions and on Juvenile Court
 - 3. Children’s and Juveniles’ Criminal Behaviour
 - 4. Crime Trends Analysis and Latent Crime Development
- B. Other individual research tasks defined by governmental resolutions or other approved documents
 - 5. Practice in the Area of Courts Decision-making Concerning Institutional and Preventive Care Regulation
 - 6. Substitution for Custody within Criminal Proceedings
 - 7. Research Concerning Causes of Commercial Sexual Abuse of Children
 - 8. Serious Crime Forms Research and Analysis
- C. Further tasks for justice ministry requests
 - 9. Criminal Policy and the Community
 - 10. Research Concerning Penology

D. Beyond The Intermediate Plan were in 2010 and 2011 addressed other research tasks:

11. Selected aspects of drug problems from the perspective of citizens
12. Present situation in the area of extremist movements in the CR with the emphasis on their potential support of juveniles and on propagation of extremist ideological contents on Internet
13. The application of the most used research methods and techniques in criminology. Its output is an edition series „Selected Methods of Criminological Research“.

The internal series of ICSP is **published** in about 190 copies of individual titles (in Czech, with summaries in English). Users of ICSP's research activities, particularly justice and interior ministries organizations, professional libraries and selected universities and scientific institutions libraries, are provided by these publications. In the series "Studies" there have been published ICSP's research results. In the series "Sources" there have been published translations of foreign legal standards, international documents and other important legal and criminological materials, in the series "Selected Methods of Criminological Research" is evaluated the application of research methods in criminology. Research findings have regularly been published in professional periodicals (Criminal-law Revue, Criminalistics, Criminal Law, Legal Practice), in proceedings, etc.

The ICSP employs 18 research workers. Research projects are carried out by research teams headed by responsible researchers.

In this publication there are presented English summaries of eighteen studies as results of tasks dealing with research subjects, and three summaries from studies focused on methodological evaluation of criminological researches. Summaries of research tasks content theoretical basis, used methodology and the summary of basic results. The summary of methodological edition series briefly informs of all addressed methodological approaches. Publications are in full version – including English summaries – available on www.kriminologie.cz

Prague, March, 2012

Editor

A/ Research Tasks

The Possibilities and Problems Involved in the Resocialisation of Inmates and the Effectiveness of Treatment Programmes

Researcher responsible: Eva Biedermanová

Co-researcher: Michal Petras

The study entitled “*The possibilities and problems involved in the resocialisation of inmates and the effectiveness of treatment programmes*”, which concentrates on the sphere of penological research aimed at questions of the resocialisation of inmates and the effectiveness of treatment programmes, was carried out as part of the Medium-term Research Activity Plan at the Institute for Criminology and Social Prevention between 2008 and 2010.

Following methods used at research realization :

Case history questionnaire completed by selected sample of convicted persons

Analysis of convicted persons concluding reports

Case analysis of selected persons

Analysis of Prison information system compositions.

The standardised programme called *Stop, Think and Change* (the “3Z” programme), which has already produced some results, was chosen for research purposes. The investigation considered two groups of inmates (of 148 respondents each) from 14 prisons (Světlá nad Sázavou, Kuřim, Jiřice, Pardubice, Rýnovice, Znojmo, Vinařice, Horní Slavkov, Příbram, Heřmanice, Nové Sedlo, Kynšperk, Ostrov, Karviná), of which one group passed through the 3Z treatment programme before their release/conditional discharge at the beginning of 2010 and the second did not. The aim of the research was mainly to examine the effectiveness of the selected programme by considering the recidivism of both groups of inmates in the criminological sense; in other words, a return to criminal behaviour following release (whether they found themselves in custody or repeatedly served a prison sentence); with the use of data taken from the Prison Information Service.

The 3Z cognitive-behavioural programme for inmates is intended for convicted men and women who repeatedly serve a sentence for predominantly crimes against property before the time limit of conditional discharge or before the end of their prison sentence. The aim is to lead convicts to create an adequate view of crime and to realise and accept the specific consequences that arise from committing it. The programme should encourage convicts to change the attitudes and thinking that leads to criminal conduct and motivate them to acquire new social skills and lead a crime-free, self-sufficient life after being released.

The programme is divided into eleven sessions (including an introductory familiarisation session and a closing session) and covers three months. Each session is planned according to need at 1.5 to 2 hours, with one 15-minute break. It is a group programme and works under a group dynamic that can help along the process of changing individual convicts or put the brakes on it. For this reason the 3Z programme requires a well-coordinated team of two trainers (instructors), who run it together.

All those who pass through the 3Z programme are presented with an anamnestic questionnaire by the instructors, with the questions aimed at collecting

- basic information about convicts (age, marital status, number of children, education, employment before conviction etc.);
- information for a criminal case history (for example criminal activity within the family, previous criminal activity, current criminal activity);
- information on the course of imprisonment.

Most data was collected in the first half of 2010. The anamnestic questionnaire was also completed by the group that did not undergo the programme. However, questions to concern participation in and an evaluation of the 3Z programme were omitted from their questionnaires. Evaluation of the questionnaire showed that the selected groups of inmates do not differ drastically, with a few minor variations, and that the next part of the research would not be affected by any major diversity.

It was discovered from the prison information system after 6-8 months had passed from the release of respondents from their prison sentence or conditional discharge that around 57 % of the respondents who underwent the 3Z programme were free, but that the situation was similar for the group not having undergone the 3Z programme, in which around 62 % were free.

It was found that **10.6 % of the people having undergone the 3Z programme reoffended around six months after their release. Meanwhile, 6.5 % of our respondents not having undergone the programme had reoffended.** Paradoxically, the group that did not undergo the resocialisation programme showed lower levels of recidivism. Unfortunately, then, our findings disprove the theory that simply undergoing the 3Z resocialisation programme results in lower recidivism levels after release.

The reasons affecting the results are many. The main one is probably the short time span between the release of our respondents (around 6 to 8 months) together with the fact that around 40 % of convicts were still in prison at the time of the research (reduction of research population).

Another reason for the opposite effect of the 3Z programme to that originally intended could be the make-up of the respondents from the perspective of their motivation. Efforts are made in the group that underwent the programme to select motivated convicts that are interested in undergoing the programme on the basis of set criteria (which is understandable given the demands on personnel and time of the 3Z programme). At work here, at least jointly, is the logical desire of convicts to obtain a good evaluation for the needs of court decisions on their conditional discharge or a transfer to a less strict type of prison.

Of course, other factors could also have played their part in the result, for example the readiness of a social background following release or financial obligations.

The success of the 3Z programme depends to a certain extent on the convicts themselves and whether they are able to integrate into society after serving their sentence without breaking the law again.

If there is not change to thinking and actual conditions for life after release from prison, any efforts to correct convicts will lose their effect.

Translated by: Presto

Biedermanová, Eva – Petras, Michal: Možnosti a problémy resocializace vězňů, účinnost programů zacházení. Praha: IKSP 2011. – 98 p. ISBN 978-80-7338-115-8.

Offenders of Commercial Sexual Exploitation of Child

Researcher responsible: Šárka Blatníková

The research Offenders of commercial sexual exploitation of child was executed in line with the Medium-term plan of research tasks of IKSP (Institute for Criminology and Social Prevention), which was approved by the Minister of Justice on 7 May 2008 (Ref. No. 5/2008-OANA-SP/13). The research task was assigned to IKSP by the Plan of fight against commercial sexual exploitation of child for 2006-2008 (“To prepare and initiate research focused on typology of offenders of commercial sexual exploitation of children”). The works started in 2007 when the project was presented; the main partial tasks of the set schedule were carried out in 2008-2009. The final report was published at the end of 2009. The solver in charge of the research task was Ms. Šárka Blatníková, PhD.

The subject matter of interest was the sphere of sexual violence against children (CSEC - commercial sexual exploitation children) and the personality of offenders of commercial sexual child exploitation. The target was to map the problems of commercial sexual exploitation of children in the Czech Republic while using official statistical data, make a knowledge (theoretic) basis, collect and analyse data on the typology of offenders of CSEC. The implemented research investigation had an explorative character- i.e. it was aimed at a description and orientation in the problems (quantitative mapping research); it did not concern testing of hypotheses. The focus of the research plan was a description of phenomena. The final report was rather a socially psychological commentary to the problems and the study is determined for interested entities, experts within the system of criminal environment where this criminal behaviour may be encountered, and for experts from assisting professions that primarily focus on aid to victims.

For the needs of the study we used an internationally applicable definition adopted at the so-called Stockholm Congress in 1996. Commercial sexual exploitation of children (CSEC) is “any use of a child for sexual purposes in exchange for money or remuneration in kind; it

is an exchange in which one or more parties gain benefit. The decisive criterion that profiles sexual abuse as commercial is the mercenary motive of sexual abuse. Exploitation, abuse, molestation or “economic use” of children for sexual purposes is criminal behaviour that reduces, humiliates and endangers physical, mental and social integrity of children.

Based on this definition sexual abuse of children includes: child prostitution, child pornography and child trafficking. The Czech criminal law does not contain the term commercial sexual exploitation; the character of criminal behaviour can only be registered within particular bodies of crime.

The introductory part of the text includes information about methodology and course of solution of the problem; it defines the basic terms and criteria, data on the research file and information about the limits encountered throughout the research. In the research we used methods and techniques such as an analysis of documents (specialist criminological and psychological publications, resort documents, statistical lists of the Ministry of Justice and the Czech Police), techniques of descriptive statistics and standardised psycho-diagnostic methods (MMPI-2 and PSSI).

Commercial sexual exploitation of child falls under the complex area of child abuse and therefore it cannot be separated from the problems of child sexual abuse (CSA) and child battering, abuse and neglect (CAN). Therefore the general introduction (theoretical input) briefly refers to these phenomena. The next part defines CSEC, adds notes on the currently discussed causes of growth of this phenomenon and introduces names of the key international documents and links to data sources.

The chapter devoted to statistical data (crimes and offenders (convicted or investigated) persons CSEC) in the Czech Republic draws on the records of the Czech Police, Ministry of Justice or data of the General Directorate of Prison Service. In the examined period (2005 until the first half of 2009) we identified 389 persons who had been convicted in relation to commercial sexual child exploitation (within this period courts sent criminal lists in respect of convicted persons that contained selected crimes corresponding with the definition of commercial sexual abuse).

The next chapter presents existing typologies, arguments and various concepts of offenders of child sexual abuse and typologies of offenders of commercial child sexual abuse/exploitation. Child sex exploiters differ from offenders of child sexual abuse in that the act of abuse is realised by a third person (i.e. another offender) or based on an “agreement” with the child who provides his/her sexual services in return for payment.

The following chapters provide information on particular forms of CSEC – child pornography (any image of a child participating in a real or pretended explicit sexual activity regardless of the nature of the image; and any image of sexual organs of a child primarily determined for sexual purposes), child prostitution (exploitation of children for sexual activities in return for payment or another consideration) and child trafficking (any transaction based on which a child is handed by a person or a group of persons over to another person or a group of persons in return for payment or another consideration). The chapter contains a brief input from a document analysis (criminal judicial files of CSEC offenders or statistical criminal lists).

The last chapter provides information on the field survey, which was focused on mapping of personality traits of exploiters that had been unconditionally committed to prison. We performed a psycho-diagnostic examination (research file n=31 persons), used personality questionnaires MMPI-2 and PSSI and interpreted the results in the text. We identified anti-social features of personality, i.e. CSEC offenders expect that other people lie, reject authority, blame other people for their own problems, manipulate and are egocentric. We also identified insufficient control of behaviour by means of reality (based on a feedback), submissiveness in interpersonal relations and low social responsibility. We further identified a disposition to have generally negative feelings, tendency to pessimism, low performance and tendency to somatic complaints. CSEC offenders within our research file had the ability to adequately control their hostility. We traced the so-called critical style of personality and negativistic (passive-aggressive) personality disorder that refers to an uncritical approach, passive resistance to various requirements (e.g. putting off to “another time”, lingering, “forgetting”) and negativistic symptoms – such as negative understanding of well-intentioned advice. There is a problematic confrontation with authority especially when the concerned persons should subordinate; they have a calm or even phlegmatic temperament. In their behaviour they give the impression of indifference to the events of the external world. Passive-aggressive or negativistic disorder: the person is generally passive, even in situations

when we usually expect an activity (e.g. instruction of superiors). The appendices present additional texts, such as the wording of selected crimes that were profiled as child commercial sexual exploitation and a list of crimes that are to come to force with the new Criminal Code in January 2010.

Translated by: I.T.C. Jan Žižka

Blatníková, Šárka: Pachatelé komerčního sexuálního zneužívání dětí. Praha : IKSP 2009. – 140 p. ISBN 978-80-7338-091-5.

Sexual Exploitation as a Serious Form of Organised Crime

Researcher responsible: Šárka Blatníková

Organised crime undoubtedly belongs amongst the most serious problems of our times. It affects many spheres of society in many ways and in varying levels, and thus threatens not only the rights of individuals, but is also a risk for the state and the democratic system. It is especially successful and develops effectively in areas where legislation and public power are not functioning effectively. The Czech republic, through its legislations and cooperation with a range of international organisations (the UN Security Council, the European Union), is gradually becoming a worthy opponent to organised crime, even though, in contrast to the state, organised crime groups have the advantage of employing illegal activities and resources, whilst though the state does have a range of resources available, these must always be in accordance to democratic legal principles respecting fundamental human rights and freedoms.

This study brings out the issue of one form of organised crime activity. The subject is an organised (criminal) group that undertakes criminal activities in the field of sexual violence (specifically upon persons of under 18 years of age). The aim has been to map, describe, and analyse cases of commercial sexual exploitation as a form of organised crime committed by organised groups of offenders, or criminal conspiracy.

In accordance with criminological definition, organised crime here refers to repeated (ongoing) enactment of deliberate, coordinated serious criminal activity (and activities which support this), the subject of which are criminal groups or organisations (typically with a many-tiered, vertical organisational structure) whose main aim is attaining the maximum illegal profit with minimal risk. Commercial sexual exploitation of children is defined as: “each usage of a child for sexual purposes in exchange for money or remuneration in kind between the child, customer, intermediary, or agent, and others who profit from the trade of children for these purposes”. This includes the trafficking of children, child prostitution, and child pornography. These actions are linked to serious violation of fundamental human rights

and personal dignity, and involve such practices as exploitation and deception of persons using violence, threats, pressure and slavery connected to debt. Abuse includes at the least the abuse of prostitution by others, other forms of sexual abuse, forced labour or providing of services, slavery, or practices similar to slavery, servitude or the harvesting of organs. The difference between sexual abuse and commercial sexual abuse/exploitation lies in the element of commerce, not in any difference in sexual behaviour. However it is possible to discern some characteristics which differentiate the two.

The combining of organised crime with commercial sexual exploitation represents only another type of activity carried out by organised criminal groups. The trafficking of people is one of the most profitable forms of organised crime, which brings profits comparable to illegal trade in drugs and weapons to the criminals. Compared to the other aforementioned types of criminal activity, however, this is a less risky activity for the offenders.

The image presented by the media of the “typical offender” depicts a middle aged man, who is unknown to his victim, who deceives the victim and then sells them into prostitution. In reality however, the offender in this kind of criminal behaviour is distinctly different. The risk of such an image can be that potential victims are less prudent in their contact with people/offenders, who do not fit the stereotype of a “human trafficker”, which they know from television for example. Information not only about victims but also about offenders, are extremely important in cases of organised crime and organised criminal groups. There is no doubt about the fact that specific and reliable information about crimes, offenders (and victims) connected with human trafficking (of children), child prostitution or child pornography are the basis for, for example, effective programs, accepted measures or legislation. Without such information it is not possible to gauge the extent or the actual nature of the problem of human trafficking, or to understand it in its entire complexity. Documentation of the roles individuals play in the chain of human trafficking can help when investigating the structure of criminal hierarchies. We can also determine whether investigation and screening affects little, moderately, or highly important offenders within the hierarchy of the group connected with human trafficking. Accumulation this information helps in determining whether an entire criminal network has been discovered and prosecuted, or if the investigation is focused on the “periphery” or criminal “business”. This information also helps in the analysis of methods related to the profile of offenders in human trafficking.

Linking this indicator with the country of residence can, for example, reveal the methods of trafficking in relation to the place of residence of the “boss” of the organisation dealing with the trafficking of people. It can also provide profiles and roles of individuals in the context of the human trafficking chain. Observing the hierarchy in the group may not give an immediate answer to the question of the kind of activities the group is undertaking, but it can to a certain extent give a manual and fairly useful guide to how these activities can be discovered and revealed.

Most studies into human trafficking focus particularly on the victims, and perhaps on the process of recruiting trafficked persons. The source of data with information about offenders, and about the characteristics of the whole group, is not currently accessible. There are already developed methods for recording data on offenders, but the question remains as to when, under what conditions (if at all) they will be made use of and not abused. During study and analysis it is possible to work from not only criminal or investigation files, but also from information from other persons who can provide information about the case.

Statistics of criminality pertaining to the crime of human trafficking show that in 2009, 11 crimes were clarified and the number of persons prosecuted and investigated rose to 32. Out of 10 confirmed crimes of human trafficking, 2 were committed in connection to an organised crime group acting across several countries. There was an increase in the number of accused persons (in total 26 accused persons), and one person was legally sentenced for one crime of human trafficking. When compared to the number of yearly investigated and prosecuted persons, and also compared with the expenditure of human and financial resources in the battle with organised crime and human trafficking, this figure is dissatisfactory. Screening this type of criminal activity is connected with a vast amount of operational tasks, since in dealing with organised criminal activity the character of the problem often requires close international cooperation. Tasks in criminal proceedings seeking to establish the facts of these crimes do not always have to end in the commencement of the criminal prosecution and in particular cases may result in so called “need of proof”, often already at the beginning stages of the preliminary proceedings.

With regard to the difficulties connected with proving the fulfilment of the nature of the criminal act of human trafficking, it is not possible to conclusively prove in all cases, and it is often reclassified as another type of crime – commonly the crime of pimping. In 2009, 82

persons were sentenced for this crime, and it was committed upon 66 individuals – 53 women and 13 children. In cases of child prostitution and child pornography, including operating in these through the means of the internet, they were known but not assessed as having been committed by an organised group, or potentially a criminal organisation. For the crime of child trafficking (according to par. 216a penal code), there has only been one crime to qualify in our court practice (three offenders) in 2006, and their activities were not classed as the acts of an organised group or criminal organisation. According to official statistics, in the longterm this kind of criminal activity occurs only very rarely in the Czech Republic. Of course it is debatable and up for hypothesis what the reality of this highly latent criminal activity is. In assessing the success of accepted measures and setting new priorities and procedures, it is not therefore possible to rely solely on quantitative data, but it is necessary to take into account also qualitative research, and take on board information collected in the field.

Statistical data pertaining to the crime of taking part in a criminal organisation (according to par. 163a penal code) shows that among the number of the prosecuted and accused, and the number of sentenced persons, there is an obvious imbalance. There is an approximate downward trend in prosecuted and accused persons, as well as in the annual comparison of ascertained and clarified facts.

In the context of analysis of criminal files, we have identified 187 offenders out of the selected nineteen organised criminal groups. Two thirds (67 %) were made up of men, one third women. A higher share of women in this type of criminal behaviour corresponds with the general tendency referred to in specialised publications. Three fifths of the offenders file were Czech nationals. Out of the rest almost a third consisted of offenders of Vietnamese nationality. Half of the offenders (53 %, or 99 individuals) in our research sample has not yet been dealt with in court (meaning with no record in the copy of criminal records), and they had begun on their criminal path (on average) in “older” age – 33 years. Nearly one third (31 %, 58 individuals) of offenders had already had experience of the criminal justice system (meaning they had a record in the copy of criminal records), in 16 % we were unable to acquire this information. One prior conviction (recorded in the copy of criminal records) was an average of the whole file. The average size of the group of offenders in our sample was 10 members. The average age of offenders at the time of starting to commit criminal activities within an organised group, which had to do with sexual exploitation, was 33 years (32.8 years), ranging from 17 to 61 years of age. The average time over which the criminal

group was active, and proved to be so, covered a period of around 3 years. The shortest documented timeframe of criminal activity or a group was 7 months, and the longest a group was criminal active for exceeded 8 years (106 months). With regard to the goal of the research and criteria for selection, the criminal activities dealt with in terms of the group of offenders, were the crimes of pimping and human trafficking. Among other condemned acts there were also crimes associated with possession, the holding of and distribution of addictive substances (in two thirds of 6 groups), falsifying documents, unauthorised armament or blackmail. This pallet of acts corresponded with the character of the criminal activities of organised groups.

In almost two thirds of organised groups (discussed in this criminal case) in our file, there was in the text the sentence given to offenders the punishment of unconditional imprisonment. In four groups the court accepted conditionally differed imprisonment as the “maximum” sanction to offenders in the group. In two instances the case had not yet gained legal power, it has not been decided on. The maximum length of an unconditional prison sentence reached 120 months (10 years); this offender was judged not only for the crime of human trafficking but also for murder. In the cases where members of the group were given conditional sentences of imprisonment (this was true of 4 groups), their length was at most 36 months. Not one of our selected groups was primarily “focused” at persons younger than 18 years of age; underage victims were together with adults. None of the crimes related to child pornography.

It is possible to assume that organised crime and its activities will continue to be an active component of criminality worldwide and within our borders. We argue that mapping and analysis of individual cases continues to be a rewarding source of data, and can fill in and illustrate criminal statistics, which are here made up of one, sometimes two, digit figures.

Translated by: Marvel

Blatníková, Šárka: Sexuální vykořisťování jako forma závažné organizované kriminality. Praha: IKSP 2010. – 126 p. ISBN 978-80-7338-103-5.

The Issue of Security Detention

Researcher responsible: Šárka Blatníková

Security (custodial) detention is a type of protective measure intended for perpetrators of serious criminal activity. Courts in the Czech Republic have been able to impose this on offenders since January 2009. The actual serving of security detention is now embedded in the law, as are the rights and duties of the people on whom it is imposed. The idea of introducing this type of protective measure is based on many years of criticism of the insufficient conditions for institutional protective in-patient treatment of problem/dangerous persons carried out in psychiatric institutions. This applies in particular to dangerous aggressors or sexual deviants who, in light of examinations of their mental state, can be expected to commit serious criminal acts again in the future. Security detention is a protective measure that tries to deal with difficulties with patients that are dangerous, that do not cooperate or that sabotage, aggressive patients and patients that are practically unaffected by treatment. Psychiatric diagnoses that allude to serious personality disorders or paraphilia will in all likelihood appear for such persons, in that such persons are often diagnosed with a number of disorders at the same time (for example antisocial personality disorder, low intellect and sexual deviance). Health workers at psychiatric institutions have often made reference to the fact that, thanks to progressive humanisation and liberalisation, medical facilities are not fit to deal with such patients, something that is witnessed in serious cases in which patients have attacked the attending staff and in the repeat escape of dangerous sexual deviants and aggressors and their dangerous- criminal activity on the run.

In spite of the fact that the nature of security detention means that it is closest to protective in-patient treatment, its purpose is slightly different – in this case the safety and protection of society is given precedence over treatment. It is the task of security detention to protect society from offenders to have committed serious crimes and whose mental state permanently or temporarily caused the committal of these crimes. The fundamental condition for imposing security detention is its subsidiarity to protective in-patient treatment. Detention is imposed on an offender in the event that protective in-patient treatment has either failed or

had no chance of success – there was not any great likelihood that typical protective in-patient treatment would be effective but, by contrast, a high probability of reoffending.

Courts impose security detention on offenders only in the event that it cannot be expected that protective in-patient treatment would fulfil its purpose given the circumstances in question, meaning that it would not protect society to the required extent. Although the condition of ineffective protective in-patient treatment is enough, this must be substantiated with an evaluation of all important circumstances, in particular the nature of the mental disorder, the likelihood of having an influence on the offender and his attitude towards protective in-patient treatment. Naturally, long-term stays in security detention are not able to fully prevent the committal of serious offences again after release, even though all risk factors are carefully assessed. However, experts have it that the rate of reoffending by such delinquents is considerably lower.

In this study we attempted to map out the situation in imposing protective measures / security detention and to describe the set of offenders on whom security detention has been imposed since January 2009. The opening section briefly outlines the reasons leading to discussion and the subsequent incorporation of security detention in the Criminal Act. One of the conditions that an offender must meet is that he is stated as being dangerous. For this reason we included the criminologist perspective on the concept of dangerousness in the opening chapter. The next part of the paper is devoted to protective in-patient treatment and security detention as these institutes are determined in the Criminal Act. Courts impose security detention for the same reasons as they impose protective in-patient treatment if, however, the offender commits a wilful crime with a maximum sentence of over 5 years, whose remaining free is dangerous and for whom protective in-patient treatment would not protect society to a sufficient extent (according to the nature of the mental disorder and the likelihood of actually having an influence on the offender). Courts impose security detention on offenders only in the event that it cannot be expected that protective treatment would fulfil its purpose given the circumstances in question, meaning that it would not protect society to the required extent. The fundamental condition for the imposition of security detention is therefore its subsidiarity to protective in-patient treatment in all cases in which the court must impose security detention and in cases in which it may impose it. Security detention is an extreme solution used when other measures, including protective in-patient treatment, no longer come into consideration and society cannot be protected using means other than

security detention in institutional conditions. The dangerousness of the offender and the nature of his mental disorder are both assessed. The court considers this based on an expert report (expert witness), concentrating mainly on what illness is the cause of the mental disorder that was evident when committing the crime, whether this was a regular or isolated manifestation of such an illness and so on. All these circumstances are invariably considered with regard to the nature and seriousness of the crime (or extremely serious crime) committed. Recommending the imposition of security detention would appear to be a little problematic for forensic experts/psychiatrists when the criterion for security detention is not predominantly the judicial-medical perspective (as with protective in-patient treatment), but the legal perspective (the offender must have acted in a manner that matches the elements of an “extremely serious crime”).

In such cases the court considers the likelihood of having an influence on the offender, again based on an expert report. This is aimed at identifying whether protective in-patient treatment had any effect on the offender in the past, how he behaved under such treatment, whether he complied with requirements or whether, by contrast, he frustrated or refused treatment. It is also important why the offender was again involved in criminal activity in spite of the imposition of such protective in-patient treatment. The condition of ineffective protective treatment must be substantiated with an evaluation of all important circumstances, in particular the nature of the mental disorder, the likelihood of actually having an influence on the offender and his attitude towards protective treatment. Nonetheless, the previous imposition of protective in-patient treatment and the failure of the offender in such previous treatment are not actually conditions for the imposition of security detention.

Security detention is employed in the event of an offender who committed a crime in a state of diminished sanity or in a state brought about by mental disorder and it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. The court also imposes security detention on an offender who because of not being of sound mind is not criminally liable and who committed an offence which matches the elements of an extremely serious crime, if his remaining free is dangerous and if it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. The category of offenders on

whom the court may impose security detention includes persons who committed a crime in a state brought about by mental disorder whose remaining free is considered dangerous and for whom it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. In contrast to previous legislation, the Criminal Code broadens the circle of people on whom security detention may be imposed to include reoffenders who repeatedly commit crimes and abuse addictive substances – therefore, if an offender indulging in the abuse of addictive substances again commits a very serious crime, even though he has already been sentenced to an unconditional sentence of imprisonment of a minimum 2 years for an extremely serious crime committed under the influence of an addictive substance or in relation to the abuse of such a substance and it cannot be expected that society would be sufficiently protected by the imposition of protective in-patient treatment with regard to the attitude previously shown by the offender to protective in-patient treatment. A separate chapter in this study is also devoted to the actual carrying out, duration and ending of security detention, with information provided about the Institute for the Enforcement of Security Detention (Ústav pro výkon zabezpečovací detence).

The section that follows concentrates on the terms that are significant in this area from the forensic perspective: not of sound mind, diminished sanity, cognitive and control abilities and mental disorder, which is newly-defined in the Criminal Code (the key point being the use of the term “disorder” and not “illness”). For this reason we also look at forensically significant disorders, such as personality disorders, disorders of sexual preference or paranoid schizophrenia. An evaluation of the mental state of an offender in an expert report for the court and an evaluation of the dangerousness of the offender when free are among the most important tasks here.

We endeavoured to outline the group of people for whom detention is intended from the perspective of law, medicine (psychiatry) and society / the public. We also delved into official statistics and records, where we were able to find information about offenders and the number of measures imposed since January 2009. The final part of this study therefore offers a view of a group of 23 offenders on whom security detention was imposed in the Czech Republic. At the time of writing the paper eight persons (inmates) were placed in the Institute for the Enforcement of Security Detention in Brno and 15 offenders were serving a prison sentence

for the time being. It comes as no surprise to learn that featuring prominently among the crimes committed by these offenders are rape and murder.

Protective measures - security detention – are undoubtedly a necessary and long-expected positive step, particularly with regard to the priority interest of protecting society. It has become a hope for solving problems involved in the enforcement of institutional protective in-patient treatment for certain groups of highly dangerous persons. Security detention is designed to protect society from persons to have committed serious crimes whose mental state causes them to act as such and who it can be considered will commit serious crimes again in the future. The circle of offenders on whom security detention is imposed is united by the assessment of such people as highly dangerous to society. The type and diagnosis of the offender (an offender not of sound mind or a person with a serious mental disorder, a sexual aggressor, a drug addict, a reoffender) should not matter as much as how dangerous he is and his incapacity to undergo treatment. Security detention is not yet used as much as perhaps the legal public might have expected given the intensity of pushing through this measure by sexologists and psychiatrists. However, this takes nothing away from its significance and necessity. Such measures are of great importance, for example, in the case of sexual delinquents who are not capable of (or willing to provide) proper cooperation in protective sexuological treatment.

Translated by: Presto

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The Development of Organised Crime on the Territory of the Czech Republic

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Systematic research into organised crime, which represents one of the greatest security risks in the modern world, and has also been active from the start of the 1990s on the territory of the Czech Republic, began in 1993. Apart from the Institute for Criminology and Social Prevention, a study – focused mainly on organised crime abroad – was also carried out by the Institute of Internal Relations Prague and, after the year 2000, by the International Institute of Political Science of Masaryk University in Brno. Findings concerning the cases under investigation were gathered at the Police Academy of the Czech Republic.

When researching organised crime, we at the Institute for Criminology and Social Prevention focused on a relatively wide range of topics: from theoretical definitions and specific methodological approaches, to the formation of likely structural models for criminal groups and the analysis of their illegal and ancillary activities. We regularly assess the effectiveness of specific legal mechanisms that have been stipulated and applied in the fight against organised crime. At the end of the 1990s, we analysed the issues surrounding organised crime in a wider social context. We sought, in the societal environment, criminogenic factors that could allow organised criminal groups to realise their activities and find accomplices or clients for illegal goods and services. While attempting a prognosis for selected types of criminality, we stipulated problem-related and developmental facts that could be applied within the next few years in the fight against organised crime. Between 2004-07 we researched organised crime in conjunction with economic crimes, corruption and terrorism as serious forms of criminal activity. We focussed chiefly on the threat posed to society by organised crime and on measures that can be used by society against organised crime. At the same time we drew up likely scenarios for the development of criminality. These scenarios were based on problem analyses and represented hypothetical models of situations that could occur if these problems were either resolved successfully or remained unresolved.

The part-work *The Development of Organised Crime on the Territory of the Czech Republic* – composed between 2008 and 2010 – formed part of the main work *Study and Analysis of Serious Forms of Criminal Activity*, the aim of which was to recapitulate current developmental trends from the beginning of the 1990s concerning the nature of organised criminal groups and the incidence of illegal activities and to predict the main quantitative and qualitative changes and to identify the possible future development of indicators followed.

As far as the application of research methods and techniques is concerned, research into organised crime is limited in that it is not possible to use methods and techniques that would bring the researcher into direct contact with the environment under study. We attempted to utilise observations from specialist publications and sources, analysed official documents of international organisations – chiefly the UN, European Council and EU – and documents of the Government of the Czech Republic, and individual governmental departments. A major limitation in this approach is the fact that, in the case of organised crime, statistics are not a significant source of information. The mere dozens of concrete, closed cases represent only the small fraction of organised crime that has been uncovered. The greater part of our knowledge of organised crime is taken from expert estimates taken from the questioning of experienced employees of those departments of the Police Force of the Czech Republic that specialise in organised crime. We are aware that the results of expert investigations cannot be presented as an illustration of the true state of affairs, but only as the opinion of a precisely defined group of experts. The observations gained have been supplemented by two omnibus investigations of public opinion, realised in the years 2008 and 2010.

As far as the long-term trend is concerned, it should be noted that, prior to the year 1989, organised crime was not present on the territory of the former Czechoslovakia to a significant extent or in a more developed form. 1990 saw the beginning of the free movement of goods, investment and capital as well as the conditions for travel. There was a reform of banking and financial institutions, and this economic transformation was linked to extensive transfers of property. Together with this there was an increase in movement of illegal goods, capital, services and persons. In the case of the Czech Republic, the options for the abuse of open borders were increased by the country's advantageous geographic position, and the Czech Republic became a major transit country. There was an increase in the numbers of people illegally present on the territory of the Czech Republic and various international

groups settled here. Aside from international groups, many citizens of the Czech Republic started to become involved in organised crime after 1990.

Basic quantitative data concerning the structure of criminal groups active on the territory of the Czech Republic includes data on the numbers of groups and their members, numbers of persons prosecuted, accused and convicted for criminal association, data on who becomes involved in criminal activity or the support thereof and why, on the level of development, on the extent of participation of permanent members and external associates, on the participation of women or persons younger than 15 years. In view of the supranational nature of organised crime, one of the most important parts of this research is the extent and nature of participation by foreigners. Quantitative, expert estimates are also available of the most widespread activities of criminal groups in a given year, which were less widespread, which were embryonic, which were newly-discovered and which were gradually losing significance. The activities of individual nationalities were also monitored.

There are, according to qualified estimates, around 75 groups active on the territory of the Czech Republic, with a total of about **2000 members**. From the point of view of **level of organisation**, around a third of groups were, according to experts, fully developed in the years 1995-99. This figure stood at around 40 % in 2000, and since 2003 around half of groups were fully developed, in 2007 more than half of groups were recorded as being fully developed, and in 2009 over half of groups were again recorded as having a fully-developed structure. According to expert estimates, **external associates** formed more than half of members of all criminal groups between 1993 and 2008. A somewhat lower proportion was recorded in 2009. Experts have estimated that external associates made up 41 % and permanent members 59 % of the total. Externals carry out a wide range of services for criminal groups, arranging material facilities or basic services. In recent years it has been common for them to carry out dummy operations, run front companies, are the dummy users of items used for criminal activities, sign invoices and submit tax declarations. External associates may also be used as front men to carry out illegal financial operations. A frequent activity of external associates is to seek out locations for attack by their accomplices. External associates are taking an ever greater role in the securing of contacts with official bodies, with a focus on employees of state administration, local government, the courts, police force and employees of various institutions and companies. Mostly they attempt to influence these employees, through corruption and bribery, to act in the interests of criminal groups.

Women are also present in organised crime groups on the territory of the Czech Republic, to an estimated **proportion** of 11-16 % in the period from 2000-09. The lowest figure, 11 %, was recorded in 2009. Women are most frequently active in the trafficking of women, procurement and the trafficking of humans for the purpose of sexual exploitation. The second area in which women are active in organised crime is the arrangement of facilities and the management of criminal groups. This includes financial operations, accounting, logistics, transport, the concealment of goods, weapons, finance, the handling of stolen goods, transfer of financial resources, legalisation and the fraudulent registration of stolen vehicles. Women utilise their contacts for the acquisition and provision of confidential information. The third area in which women are specifically active is illegal migration. Women also fulfil a specific role in the trade in narcotic and psychotropic substances, where they are most frequently employed as dealers or in the recruitment of couriers. Women are involved in money laundering, tax, banking, interest, insurance and customs fraud, corruption, credit-card fraud and the setting-up of front companies. Property is often signed into their name.

Where the **nationality** of the perpetrators of organised crime is concerned, foreigners slightly predominate over Czechs. Concretely, experts estimated in 2009 that 55 % of participants in organised crime groups are foreigners and 45 % are Czechs. Aside from this we can make the distinction, based on nationality, that around half of groups are of mixed nationality, nearly 1/3 are purely international and around 1/4 are purely Czech in make-up. Within the mixed groups, groups led by foreigners, with Czech fulfilling a subsidiary role, are slightly more common. According to **individual nationality**, Ukrainians and Russians are represented most heavily in organised crime on the territory of the Czech Republic. After the year 2000, these also included Vietnamese and Albanians, the proportion of whom continues to rise. The representation of Chinese has dropped somewhat since 1998. The middle is taken up by Romanians (whose representation is rising) and Bulgarians (falling). The year 2008 saw a rise in the proportion of Chechens, Nigerians and Dagestanis. The middle-ranked group also includes Poles and Croatians. After the year 2000 there was a strong representation of Slovaks, but in 2008 there was no more significant record of them. On the other hand, in 2009, Slovaks came to head the middle-ranked group of Bulgarians, Romanians and Chechens. The third group then includes representatives of fifteen nationalities: Palestinians, Israelis, Serbs, Moldovans, the newly-recorded Hungarians, Armenians, Arabs, Macedonians, Turks, Mongols, Georgians and also Italians, Dutch, Germans, Lithuanians, and in recent years Latvians, Estonians and Iraqis.

Since 1993, an experimental estimate has been made every year of the **most widespread forms of activities** in organised crime on the territory of the Czech Republic. The most widespread include, on a permanent basis, vehicle theft, the organisation of prostitution, and, since 1994, the production, smuggling and distribution of drugs. The frequency of these activities has been sometimes been approached – for a greater or lesser period – by another activity out of the forty or so others. Thus in the period from 1993-98 art theft was amongst the most widespread activities, and in the years 1996-97, 2002 and 2005 tax, credit, insurance and exchange fraud, and occasionally highly varying levels of corruption have appeared close behind the most widespread activities. Illegal migration was amongst the most widespread activities of criminal groups in the years 1998-2004; this figure started to fall from the year 2005. Money laundering and the forging of documents, money and coins were represented amongst the most widespread activities in 2006, with IT-based criminality also showing a major increase. Since 2005 there has been a significant incidence of the illegal production and smuggling of alcohol and cigarettes. 2009 saw a further increase in activities connected with financial crime. Activities such as the legalisation of revenues from criminal activities, corruption, tax, credit, insurance and exchange fraud, bank fraud, founding of fraudulent and front companies and credit-card fraud have started to compete with the traditional most widespread activities, such as vehicle theft and the production, smuggling and distribution of drugs. The misuse of computers for criminal activity also became fairly widespread. There was a relative decrease in the hitherto very widespread organisation of prostitution, including trafficking in women, the decrease in the theft of artworks continues, there is a slow decrease in illegal migration, a sharp drop in extortion and ‘protection’ rackets. The incidence of murder bordered on 50 %, meaning that murder was given as widespread by less than half of experts. Criminal activity against information and communications technology, international trade in arms and explosives were below the 50 % mark in 2009. The illegal import and export of dangerous waste was insignificant and trade in human organs was negligible.

Some changes indicate that organised criminal groups exchange forms of activity that are a source of high revenues at a certain time for forms of activity that are more attractive from that point of view. For example, the theft of artworks was – probably in connection to the fairly well-developed network in place before 1989 – one of the most widespread activities, together with vehicle theft, of criminal groups in the first half of the 1990s. Similarly, there was a reduction in illegal migration after 2005, and the incidence of violent crime in connection with organised criminal groups on the territory of the Czech Republic,

either in relation to each other or to society at large, is not particularly high either. Organised groups are evidently able to find easier routes to high revenues, via contacts, corruption, negotiation and – apart from the settling of accounts within groups – evidently do not need to resort to crude violence at all. On the contrary, we have, in recent years, recorded a sharp rise in the illegal production and smuggling of alcohol and criminality connected to IT systems.

Apart from following the ranking of organised criminal activities as a whole, we have also, since 2000 ascertained **which activities** are carried out by **individual ethnic groups**.

Vietnamese groups focus on the production, transport and smuggling of drugs, forging of documents and counterfeiting of CDs, electronic, textiles, cosmetics, illegal production of alcohol and cigarettes, illegal migration, tax fraud, money laundering, human trafficking for the purpose of forced labour and customs fraud. The organisation of prostitution and procurement, violent crime, collection of ransom money, founding of front companies and real-estate fraud are also occasionally registered. **Ukrainian** groups are typically engaged in extortion and ransom collection, prostitution, procurement and the trafficking of women and violent crime, including murder and robbery. They have also, in recent years, engaged in vehicle theft and the trafficking of humans for the purpose of forced labour, arms dealing and real-estate fraud. Similarly to Ukrainian groups, **Russian** groups focus on extortion and the ransom collection, murder and other violent crime and prostitution, and are involved in arms trading and human trafficking. In contrast to the Ukrainians, they are also active in more sophisticated financial crime: money laundering, corruption, front companies and financial fraud. Drugs, debt collection, vehicle theft, robbery, robbery with violence, fraudulent companies and real-estate fraud are also sometimes recorded. **Albanian** groups are active chiefly in the smuggling and distribution of drugs, and also in international arms dealing and violent crime, including murder. **Chinese** groups have concentrated on illegal migration for many years. The same activities are represented as with Vietnamese groups, albeit to a lesser extent: tax fraud, money laundering, customs fraud, counterfeiting of CDs/videos and trademarks and the smuggling of goods and cigarettes. To a certain extent they also participate in the trafficking of humans for the purpose of forced labour, drug smuggling and extortion. Drug-related activity was recorded for Chinese groups in **2009**.

Romanians are chiefly involved in theft. Apart from this, Romanians are also involved in prostitution, vehicle theft, illegal migration and the trafficking of humans for the purpose of forced labour. In 2009 there was a high incidence amongst Romanians of credit-card fraud

and the forging of payment means. Typical activities for **Bulgarian** groups include involvement in prostitution and the trafficking of women and vehicle theft. Drug dealing and, in recent years, the trafficking of humans for the purpose of forced labour have also been recorded. There was high incidence of the following amongst Bulgarians in 2009: forging of money, cheques, documents and the forging and theft of credit cards. Up until 2009, **Slovaks** were only sporadically recorded as being involved in organised crime on the territory of the Czech Republic. Due to Slovakia's geographical proximity, activities were focussed mainly on illegal migration. There was a rather high incidence of violent crime, and isolated cases of: arms dealing, theft, extortion, robbery, drugs, prostitution and property- and IT-related crime. The share of Slovaks in organised crime overall showed a marked rise in 2009. We recorded: drugs, financial fraud, real-estate fraud, organisation of prostitution, burglary, credit fraud, forging of documents and property-related crime. The following was recorded for **Chechens**: extortion and collection of ransom, contract killings and other forms of violent crime and arms dealing. **Nigerians** concentrated primarily on drugs. There were also instances of illegal migration, founding of front companies, financial fraud, IT-related crime and violent crime, as well as the new incidence of prostitution. **Dagestanis** focussed mainly on extortion and 'protection' rackets and violent crime, including contract killings. There was also incidence of illegal migration, human trafficking, arms dealing, illegal debt collection, prostitution and procurement. After the year, 2000, **Poles** were engaged chiefly in drug dealing. Apart from this they were also involved in vehicle theft, but to a far lesser extent than in the mid-1990s. Involvement in organised dealing in alcohol, the illegal production and smuggling of cigarettes, goods smuggling, forging of documents and money and customs and tax fraud were also recorded for this group. Instances were discovered in **2009** of **Palestinians** being involved in real-estate fraud (1), credit fraud (1) and the forging of documents (1).

Most recorded cases involving groups from **Serbia** after 2000 involved drugs-related crime. Apart from this there were also instances of violent crime, including murder, arms dealing, prostitution, extortion, founding of front companies, the forging of money and protected trademarks and stamps, smuggling of cigarettes and credit-card fraud. **Israelis** have hitherto focussed on gambling and fraud (bank, tax, credit, exchange), money laundering and corruption. Cases were recorded in 2009 of real-estate fraud, credit fraud and the forging of documents. **Moldovans** were recorded as being involved in extortion, vehicle theft, forgery, drugs, prostitution, robbery and murder. **Armenians** were recorded as being involved in extortion and debt collection, tax fraud and violent crime, arms dealing, murder, robbery,

illegal migration, prostitution, smuggling of alcohol/cigarettes, trafficking of human beings for the purpose of forced labour and gambling. **Arabs, Macedonians, Turks, Georgians and the Dutch** were chiefly involved in drug-related crime. **Mongols** were involved, in 2008, in: illegal migration, corruption, the trafficking of humans for the purpose of forced labour, violent crime, and in 2009 in illegal migration and fraud. **Germans** were involved, after 2005, in art theft, organisation of prostitution, illegal export of dangerous waste, arms dealing, drugs and human trafficking. **Italians** were involved in financial crime, money laundering, drugs, arms dealing, smuggling of gold and leather and illegal trade in movable items of cultural value. The following was recorded for **Lithuanians**: robbery/burglary, debt collection and money forging. Illegal migration, money laundering and the handling of stolen goods were recorded for **Iraqis** in 2009.

From the **qualitative point of view** it is possible to put group changes that have come about since the 1990s into three categories. The first group concerns changes in internal structure. Organised crime stabilised, expanded and institutionalised itself. The organisation of crime became more elaborate, more efficient and more wide-ranging. Organised crime also enjoys better technical facilities, with more use being made of the Internet. There was a major increase in the wealth of groups. Individual groups divided the market in illegal goods and services. Organised crime is much more dangerous than in the 1990s, as those directing it can hide in greater anonymity and criminal activities are not managed directly. Offenders use ever more refined means to ensure they are not uncovered. The second group concerns changes to the means by which crime is committed. In this respect, the activities of organised criminal groups show less instances of violence and more economic crime, fraud and corruption. The active radius is expanding and incorporates more fields. New phenomena include, for example, the illegal production and smuggling of alcohol and cigarettes, forgery of CD data carriers and IT-related crime. There is also a threat from the illegal import and export of harmful waste, trafficking of humans for the purpose of forced labour and the embezzlement of European Union money. The third change is related to the expansion of organised crime into societal structures, where organised crime currently has sufficient contacts, is established and has a base. It is increasingly infiltrating state administrative structures and developing more activities in the economic field. Contacts are being forged in the police force and other security forces. The profits from illegal activities are being legalised in legal businesses. The fact that those who commit these offences (which frequently go undiscovered) are already in high-ranking posts in business, have connections in the police force, authorities, media etc.

not only hinders the exposure of crime, but means that organised criminals can, thanks to their contacts, publicly discredit the organs trying to uncover these crimes and convict offenders and their contact. Organised crime has influence in the media.

Apart from activities carried out for the purpose of achieving maximum profit, organised crime groups also carry out a number of **activities of a security nature**. We investigated three ancillary activities in more detail: bribery and corruption, use of contacts and threats or, sometimes, violence. Organised crime uses considerable means, supplemented by criminal activity, to infiltrate politics, economics, the legal system, state administration and the media, in an effort to control the actions of these institutions, acquire confidential information, influence the creation of regulations, influence public opinion and gain lucrative orders in the legal economy. If required, court actions can be frustrated, witnesses influenced, victims accused and offenders aided in their escape.

Based on their **personal contacts** with politicians, representatives of public authorities, the judiciary, police, communications media and in commercial circles, the representatives of criminal groups can acquire information or protection, while providing reciprocal services. The perpetrators of criminal acts thus gain a certain feeling of superiority.

The criminal world chiefly uses **corruption** to gain necessary information, create networks of contacts and ensure that they escape punishment. Organised crime uses corruption to compromise official institutions, thereby reducing the authority of government, the judiciary, police, ministries, local authorities and the media. If the business sphere is destabilised by corruption, untaxed money originating in criminal activity becomes the main factor in decision-making. Organised crime uses corruption as the first step of pressure to seriously threaten civil servants or public officials. Through our omnibus representative investigation of 2008, we discovered that only a third of people attributed the initiative to public officials, almost half to both sides and almost a fifth attributed the activity to members of the public.

One of the key features identifying organised crime is the **use of violence**. Violence is frequently used within criminal groups, where it serves towards maintaining order and discipline. Where possible, current organised criminal groups try to either totally avoid, or restrict to the lowest possible level, violence between competing groups. Problems are resolved much more efficiently via corruption and relevant contacts. Violence can sometimes

be used against those who could be an immediate threat to organised criminal groups, chiefly the police and judicial bodies. Violence can be used against public officials chiefly in instances where the public official is resisting corrupting pressures or efforts to forge confidential contacts. The threat of violence can also create the appropriate atmosphere during public tenders. Criminal groups do not target violence towards the public at large.

Organised criminal groups are a **threat** to the whole world, **harm** the private and public sectors and can be, to a certain extent, an immediate threat to the public safety. In order to eliminate this threat, it is necessary to analyse criminogenic elements and seek effective measures against them. In an **international** context, organised crime abuses chiefly the differences between developed countries and poorer, backward regions for human trafficking and goods smuggling: drugs, alcohol, cigarettes, electronics, faked designer clothing, works of art, weapons, stolen vehicles, dangerous waste and sexual services. The situation is also advantageous due to the ever-more porous boundaries between countries and continents in a globalised world.

In the context of the **internal security** of the Czech Republic, organised crime endeavours to influence prominent persons who could be of benefit; to influence strategic decision-making, acquire important information and, as far as possible, to escape punishment. One criminogenic factor is the frequently low professionalism of employees. A further error is the poor definition of rules and regulations, which would protect not only the system as a whole, but also public officials, by delineating the limits of their actions and responsibilities. One risk factor is also the overcentralised system and inconsistent checks. The **economic system** is harmed by organised crime creating a market for illegal services and goods. Those who have successfully ‘laundered’ money gained through illegal activities can gain a competitive advantage in economic competition with legal businesses. The founding of front companies frequently also serves towards tax evasion. The interconnection of politics and the economy legalises suspicious companies and deals. The introduction of criminal practices into the economic system leads to the creation of an unstable and untrustworthy environment that can nullify attempts to conduct business legally or discourage foreign investors. Organised crime attempts to infiltrate the **judicial system** chiefly in the pursuit of risk elimination, attempting to influence it already at the legislative stage in order to set laws so that risk is either not created, or is minimal. In the interests of risk reduction, it attempts to frustrate trials, influence witnesses or facilitate the escape of wanted or convicted persons. It suits

organised criminal groups that the prosecution process is drawn-out and overcomplicated, and in some cases, the decision of the court is not respected. The confiscation process for the proceeds of criminal activity is also inefficient, and legal regulations do not aid the elimination of corruption. Inadequate witness protection means that it is difficult to prove organised criminal activity in particular. Trust in justice and the capacity of the law is on the wane. Organised crime distorts the **social structure**. The bosses of criminal groups endeavour to either themselves belong to the elite that makes the rules, or to have good contacts with this elite. The perpetrators of organised criminal activity have a certain feeling of superiority, relying on the fact that, due to their position on the social ladder and the support they receive from influential persons, they are untouchable. The fact that organised crime offers narcotic and psychotropic substances, smuggled goods, cigarettes, textiles, electronics, stolen goods, erotic services, loans and so on introduces **pathological elements** into their lives. Organised crime attempts to influence **communication media**. Criminal groups try to influence public opinion in the interests of things that are advantageous to them, trying to covertly promote drugs and prostitution and support opinions questioning the efforts of legislators, state representatives, the police and judges. The media can unconsciously glorify wrongdoing and emphasise lifestyles bordering on the unethical or illegal.

Limiting factors, monitored over the long-term, were updated in our specialist study of 2010. This study came to the conclusion that overall societal instability, economic destabilisation and widespread migration will be in play **between 2010-15**. The internal problems of the Czech Republic will be, to a significant extent, related to world problems. A negative effect will be felt chiefly from the economic crisis. In the event of acceptance of the Euro, an enormous rise in the amount of forged money can be expected. It can be expected that an ever greater flow of undesirable foreigners, perpetrating criminal acts, will enter the Czech Republic. The financial crisis will result in insufficient funds for the police and judiciary to carry out their work. We can foresee the infiltration of state administration, corruption, lobbying, attempts to influence public tenders and European funds, the influencing of legislative processes, pressure on bodies engaged in prosecution and connection to politics. This will result in a loss of trust in the state and its institutions. Such a situation can result in the increased influence of extreme right- or left-wing opinions. Overall regression and demoralisation in the Czech Republic can also come into play in the next five years. A generation brought up in an environment of unbridled privatisation will be, in relation to the building of careers, easily manipulable by the forces of organised crime.

A starting-point for **effective counter-measures** is a concept for the fight against organised crime. The concept should be based on analysis and a clear vision of the desired target state and should contain proposals for strategic steps, stipulate participants and divide their tasks, stipulate mechanisms to protect the system and its workers and set rules for procedures in the event of attempts to disrupt the system. It is important to raise the level of political culture. Criminal activity against the economic system must be prosecuted. Barriers must be constructed against the use in the legal economy of finances originating in criminal activity. The chief measure that can effectively guard against the presence of organised crime in state administration is the quality of employees. It is important that general levels of qualification for positions are raised, as well as specific knowledge and practical experience regarding the control of serious forms of criminal activity. It is a mark of professionalism that basic procedures are clearly defined, management structures are clearly and hierarchically organised, the system of authorisations is fixed and that relations to other institutions and the public are clearly delineated. As far as the police force is concerned, it is necessary to stabilise the police at their optimum numbers, increase specialist knowledge, ensure sufficient funding, ensure optimum numbers and improve the equipment of special forces. It would be desirable to set up a DNA database. The Police Force of the Czech Republic must gradually transform itself into a modern, qualified and efficient system with perfectly functioning technology, information systems, analytical activity and communication between bodies active in the fight against organised crime and the criminal police at all levels. The uncovering and documentation of organised crime must be founded on a long-term process of the concentration and evaluation of information with the goal of exposing a whole group up to its highest organisational unit. In the legal field, use must be made of the institution of the crown witness and there must be an obligation to prove the origin of financial resources and property. It would be less complicated and more effective to employ undercover agents. The funding system for political parties should be better monitored and consistently checked. Related laws for the financial sector should be updated. More effective control should be exerted on property-based relationships through changes to legislation. It is necessary to introduce legislative controls on corruption, stricter legislative control of conflicts of interest, greater penalties for organised extortion and murder, hinder the transfer of property acquired through criminal activity to family members and to establish the institution of the crown witness. There should be greater penalties for public officials who knowingly cooperate with organised crime. The public must be informed of the danger posed by organised crime to society as a whole. In the interest of the fight against organised crime, the mass media should

be utilised to inform the public of the danger posed by organised crime and also to act effectively against it.

During our study, carried out from 2008-10, we gathered the **opinions of experts and the public on the infiltration of organised crime into some spheres of public life**. According to the experts, the economy and state administration are under the greatest threat, and then politics, and to a lesser extent the police and judiciary, and least of all local government and the media. According to the public it is the police, politics and the economy that are most under threat, state administration and the judiciary to a lesser extent, and least of all local government and the media.

We submitted a questionnaire to the general public to determine **the extent to which people understand cooperation** between politicians, civil servants or other officials as a failing originating in self-interest or naivety (2/3 of those asked chose this option) or as a matter than can threaten them or destroy their career (1/3 chose this option).

When researching organised crime, we constantly try to **foresee possible future developments**. This was a complex prognosis only in exceptional cases; nonetheless the probes we conducted in 2010 had already been carried out twice over the previous 17 years of research, allowing us to compare the prediction of the time with later, actual development.

In 2010, 70 % of experts expected a rise, 27 % stability and 3 % a fall in organised crime **up to the year 2015**. Amongst the **reasons given for a rise**, experts frequently pointed to external societal factors. Generally a rise was anticipated in organised crime connected with an overall breakdown in Western society, a growth in extremism, the overall bad state of the economy and social situation in the world, the economic crisis, growth in unemployment, immigration and the expansion of the EU. Experts stated in 2010 that the world and European economic situation will also be reflected within the next few years in the Czech Republic, so it can be expected that this can have some influence on the rise of organised crime. Experts frequently pointed to the growth in unemployment and illegal migration. Some factors are related to the nature of organised criminal groups and their internal structure. Organised crime structures already in place are being perfected, external associates within criminal structures shall increasingly infiltrate companies and organisations, and there will be a growth in technical awareness, knowledge, specialist knowledge, technical and financial facilities and deviousness.

The international situation also plays a significant role for those who expect the situation to remain **stable** up to 2015. It could be said that it is chiefly pressure from international organisations for solutions to the issues of organised crime and corruption that has halted further growth. Stability can also be expected due to the improvement in information systems leading to the faster transfer of information between judicial bodies and the improvement of police cooperation. Some factors that should play a stabilising role in the next few years are related to the nature and internal structure of criminal groups. A certain stabilisation has taken place, this being territorial, as well as in terms of division of activities. Organised crime is perfecting itself, thereby becoming latent.

In 2010 we asked the experts what **changes** they anticipate – as far as the nature of organised crime on the territory of the Czech Republic is concerned – **up to the years 2015**. A third of them expressed the view that there would be no changes, while two-thirds expected the following changes. It is anticipated that the action radius of organised groups shall expand to encompass further criminal activities. Organised criminal groups will, more than ever before, utilise information technology. There will chiefly be a sharp rise in IT-related crime and crime committed with the aid of computer technology. The greater focus on the IT sphere and the Internet could gradually lead to threats to information systems and communication technologies. There will be further growth in the abuse of credit cards and document forgery. There will be a growth in crime in the economic sphere, which brings high revenues. Organised crime will invest more in the legal economy. Wide-ranging, fraudulent bank transactions and the embezzlement of state and European Union grants can be expected. It can be assumed that organised crime groups will speculate on the entry of the Czech Republic to the Euro. There will be, in relation to increased migration and cross-border crime, a perfection of currency and document forgeries. There will also be an increase in bank robberies. Also anticipated are sophisticated scams in the area of tax-related crime, chains of companies trading in worthless goods, at the end of which is dummy export and increased prices increased through VAT; frauds with the non-deduction of duty on fuels, spirits and cigarettes. It is anticipated that there will be a rise in real-estate fraud. Crimes that were more economic in nature will shift into the sphere of organised crime.

One characteristic feature will be the further growth in the wealth, power and influence of organised crime groups and effort to establish themselves in legitimate business. The growth in wealth will be accompanied by a growth in conspiracy, securing, activity and

thoroughness of criminal groups, who will use ever-more sophisticated and refined methods. The use of internet-based communication will be a given, with qualified associates being gained for cooperation.

There will be a continuing trend towards internationalisation. In an international context, we can expect the greater movement of goods, capital and people, with less chance of monitoring them; the inflow of people from China and Africa, expansion of Asian communities and their infiltration of the economy and a dramatic growth in criminal activity by citizens of Romania and Bulgaria. There will be an increase in tension between groups originating in Asia. The chief perpetrators of organised criminal activity will not be located on the territory of the Czech Republic – criminal activities will be directed from outside the country.

It is anticipated that there will be greater interconnection between organised crime and state, and sometimes local, administration and greater influencing of legislation and the executive, all of this in connection with the corruption of members of the relevant state bodies. The activities of crime organisations will also spread to the sphere of community politics, and chiefly in the granting of large public tenders; these will be manipulated chiefly through corrupt acts and patronage. There will also be efforts to influence and sponsor political parties; to influence court processes, the state prosecution service and the police force; to influence the choice of those filling state administrative posts, the abuse of protection, and corruption. Organised criminal groups will also pursue the stifling of specialist police units.

Some experts do not anticipate growth, but **stagnation**. On the one hand, it is possible that criminal activities will be transferred to more developed countries of the European Union and a further reason for the stagnation in the growth of influence of organised crime could be the generational change in society: people with a higher level of education, be they citizens or representatives of state bodies, will be capable of acting more effectively against organised crime.

Expert estimates also concerned forecasts of the incidence of the **most widespread organised criminal activities**. Experts estimated in 2010 that the most widespread activities of organised crime in **2015** will be corruption, the production, smuggling and distribution of drugs, human trafficking, IT-related crime, money laundering, vehicle theft and tax fraud.

These should be followed by theft, credit-card fraud, extortion and ransom collection, economic crime, arms dealing and, in only thirteenth place, the organisation of prostitution.

The long-term development and current state of basic indicators of organised crime have been regularly monitored since the start of the 1990s. These concentrate on the structure of organised criminal groups, on their illegal and ancillary activities, and also follow criminogenic factors, threats and countermeasures. In studying the structure of groups, we monitor the number of groups and offenders, the proportion of developed groups, involvement of external associates and participation of women and foreigners. In studying activities we monitor the spread of almost thirty illegal activities and six to eight ancillary activities. This list is supplemented by new, nascent forms of criminal activity, and we have excluded those that have lost in significance. We also monitor in detail the form of activities of ca. 25 foreign groups. Within the field of international relations we monitor the influence of criminogenic factors in the genesis and activities of organised crime, on the participation of perpetrators within it and on the use of its goods and services by the general populace, and internal factors in the fields of politics, the economy, the legal system, state and local administration, social structure and culture, including the media. This is accompanied by the analysis of possible threats, and we research options for effective defence against them. We have also been attempting prognoses since the end of the 1990s. This concept of long-term research thus forms a kind of basic framework that can be built on through specifically focussed research work. The basic schema must, however, be permanently supplemented by new, up-to-date data; in this regard, the continuity of this type of data is essential. In the next few years we wish to, depending on resources, expand the range of research methods and techniques and, in those areas where we will continue with export reports, we wish to create new circles of experts in all social areas monitored.

Translated by: Marvel

Cejp, Martin: Vývoj organizovaného zločinu na území České republiky. Praha: IKSP 2010. – 102 p. ISBN 978-80-7338-105-9.

The Effectiveness of Legal Instruments in Combating Organised Crime (Undercover Agent)

Researcher responsible: Zdeněk Karabec

The effectiveness of legal instruments in combating organised crime and the ways by which they can be improved are key political problems in crime and also form the subject of criminological research.¹

Over the long term and in the present day, organised crime has represented a significant risk for society and the assurance of citizens' rights and freedoms. The dangers that organised crime represents are heightened by its transnational character and its infiltration of countries' political, economic, administrative and ruling structures.

The culmination of efforts taken to improve the effectiveness of measures against this dangerous form of crime on an international scale has been the adoption of the UN Convention against International Organised Crime (approved by the UN General Assembly 15 November 2000) and the related protocols. The Czech Republic signed the Convention but has yet to ratify it.

In 2009 at its 18th International Congress in Istanbul, the International Association for Criminal Law (Association Internationale de Droit Pénal – AIDP) emphasised that the criminal law reaction to international crime and other forms of serious crime must be the preserve purely of criminal justice bodies and that no other administrative measures may be permitted in this area which would replace the justice system. Every digression from the principles of due criminal procedure in prosecuting organised crime, particularly as concerns the use of special operational measures, must respect the principle of adequacy. Even in cases

¹ The study derives from research conducted by the ICSP, which concentrated on the legal regulation of operationally appropriate measures and the conditions of their use under Section 158 b-f of the criminal code (Act No. 141/1961 Coll. as amended), with special regard to the institute of using an agent according to Section 158e of the criminal code. Due to the theme and focus of the research task cooperation with police bodies was essential. The aim of the research was to ascertain the effectiveness of the stated legal measures and to indicate the possibilities by which their application can be made more effective.

of public safety it is necessary to proceed by legal process in a manner respecting the rule of law. No charge or imprisonment may be founded on anonymous testimony or an illegal use of special operational measures. Persons suspected of involvement in the activities of an organised criminal group who decide to cooperate with judicial bodies cannot receive immunity from prosecution but only a milder sentence.

In *pre-trial proceedings for investigations* into organised crime the fundamental human rights of the suspected and prosecuted persons must be respected. The involvement of the intelligence services, electronic monitoring, interception and similar measures which violate rights to privacy and infringe other human and civil rights should always be under the control of judiciary bodies. The term “fair trial” relates to all stages of criminal proceedings, not only to proceedings before the court. When using special operational measures and investigative techniques the principle of presumption of innocence and the right not to testify must be adhered to. The defendant’s rights should not be prejudiced. A so-called *proactive* investigation should be considered rather as exceptional procedures taken by the police bodies.

The European Convention on Human Rights is the core international document that has a direct influence on the legal regulation of such sensitive areas as the various activities of police bodies in combating organised crime in the various signatory countries.

The Czech Republic declared that it considered itself bound by the European Convention on Human Rights and its protocols (hereinafter the Convention) from 1 January 1993. On 30 June 1993 the Council of Europe’s Committee of Ministers adopted the decision that the Czech Republic is regarded as a party to the Convention with effect from the said date of 1 January 1993. The Convention explicitly states certain rights and freedoms that cannot be derogated and which form an absolute border for legislative, executive and judicial power in each state that joined the Convention and accepts it as the essence of the rule of law. This refers to the right to life (Article 2 of the Convention), the right to respecting personal integrity and human dignity (Article 3) and the principle of the rule of law and a prohibition on the retroactivity of the criminal code (Article 7).

These rights and liberties may often be affected by the use of operational means and devices and various special intelligence methods and techniques in order to prevent, detect and criminally prosecute organised crime. Even from the Convention’s perspective, a secret

agent acting according to Section 158e of the Criminal Code of the Czech Republic, may find that his involvement and actions lead him into legally complicated situations.

Guarantees of a fair criminal trial cannot be forfeited for a person who himself has violated human rights; it is therefore necessary to reject the argument that such person should not make use of the Convention's benefaction. It may be inferred that even in cases where operationally appropriate measures are used to detect and prosecute organised crime and in the activities of an agent planted in a criminal environment it is not acceptable to exceed the guarantees of rights and freedoms stated in the Convention by referring to the criminal behaviour of the persons monitored or the criminal aspects of their personalities.

It is nevertheless clear that when detecting serious forms of crime the police bodies must in a democratic society also use secret methods and measures; in doing so, however, there is a risk that civil rights and freedoms may be unjustifiably affected and it is therefore necessary to safeguard effective judicial procedure by reducing this scope of pre-trial police activities and ensuring that the relevant methods and procedures will be in line with acts laid down by the criminal code. If this is the case then the evidence ascertained by methods and procedures supported by the criminal code can be used in all stages of criminal proceedings.

In the Czech Republic certain police methods and procedures have been designated together as operationally investigative measures, incorporated in the criminal code by its amendment No.265/2001 Coll. as amended, from 1 January 2002. Under Section 158b of the criminal code operationally investigative measures are understood to mean a sham transfer, monitoring of people and things, use of an agent. *The use of an agent is thus an act in criminal proceedings.* The criminal code (Section 158e) states the conditions for using an agent as follows: *(1) If criminal proceedings are initiated for a particularly serious crime, for a crime committed on behalf of an organised crime group, for the crime of receiving a bribe (Section 331 of the criminal code), for the crime of corruption (Section 332 of the criminal code), for the crime of indirect bribery (Section 333 of the criminal code) or for another intentional crime whose prosecution falls under the declaration of an international treaty which is binding for the Czech Republic, a police body, if this is a department of the Czech Republic police force, is authorised to use an agent.*

The use of an undercover agent is authorised by a High Court judge upon application by the prosecuting attorney of the High Prosecuting Attorney in the area in which the judge has

jurisdiction. The prosecuting attorney is authorised to ask the police body for information necessary to determine whether reasons exist to use an agent and whether his activity is in accordance with the law; in this respect the police body is authorised to submit a record of use of the agent to the prosecuting attorney. If the prosecuting attorney finds that the reasons for using an agent have passed, he shall instruct the police body to dispense with the agent's use forthwith. This measure is clearly understandable as regards the due supervision of an agent's activity; on the other hand, however, it should be borne in mind that an agent's penetration of the world of organised crime and his efforts to obtain trust and knowledge in this area essential to develop operationally appropriate activity may be an extremely long-term affair.

Only a member of the Czech Police may act as an agent. The agent's tasks may not be conducted by another person, not even if that person is a civilian employee of the Ministry of the Interior, or a police officer who fulfils tasks within the Ministry of the Interior, or a soldier on active service authorised to fulfil the tasks of the police. On the other hand, an agent may be a member of a foreign security force.

When using an undercover agent it is necessary to assign certain material, financial and concealment measures for his activity. This applies especially to ensuring means of communication, transport means, various actions to conceal the agent's activities etc. When concealing his identity the agent is authorised to create a different personal identity and to enter details of this alternative identity in information systems, to conduct financial transactions for which special authorisation, permission or registration is required, and to conceal his membership of the Czech Republic Police Force.

In the provisions to Section 102a the criminal code provides heightened protection to conceal the true identity of an agent who is due to be examined as a witness before a court. The examination of an agent as a witness should only be used as an extreme means of evidence in cases where the facts required for a judicial decision cannot be proven by other material or written proof, records from the use of operationally appropriate measures etc.

A number of specialist articles have been published on the theme of police provocation. The prohibition on provocation should be understood as a prohibition on the behaviour by an agent that would cause someone else to decide to commit a crime. The specialist opinion prevails that police provocation is at odds with the principles of the rule of law and is a sign of disrespect for the rights and freedoms of the person and citizen. The impermissibility of police

provocation also concerns the judiciary, particularly in reference to the decision by the European Court of Human Rights and by the related decision of the Constitutional Court of the Czech Republic. In 1999, the Constitutional Court for example stated (Senate judgement III. ÚS 597/1999) that part of the body of a crime, indeed of the whole succession of acts which comprises a crime (e.g. provocation or initiation of a crime, its completion etc.) constitute an impermissible violation of Article 39 of the Charter of Basic Rights and Freedoms and Article 7 paragraph 1 of the Convention on Human Rights and Fundamental Freedoms (in other words the actions of the state/police).

The use of an undercover agent as the initiator or provocateur of a crime is in a certain sense permissible, for example in the USA. There it concerns police activities which constitute the initiation of a crime for the purpose of its subsequent detection and the punishment of the culprit. Police operations of this type are considered to be an effective measure for suppressing criminal activity which is secret and is perpetrated with the consent of the persons involved, such as drug crime, people trafficking, disseminating child pornography and other forms of crime corrupting morals. The crimes thus indicated take place under police control, which makes it possible to obtain evidence for the criminal prosecution of the persons involved in such crime. Police provocation is also considered a measure to deter criminal activity because the potential culprit cannot be certain that in any given situation he or she is not falling into a trap set by the police. On the other hand, police operations which make it possible for a crime to be committed can violate the police's obligation to protect the rights of third parties.

In the Slovak Republic a certain degree of police provocation is permissible. Under Slovak legal regulations, as laid down in Section 30 of Act No. 300/2005 Z. z., the Criminal Code, and in Section 10 paragraphs 19 and 21 and in Section 117 of Act No. 301/2005 Z. z., Criminal Order, an agent's actions must be proportionate to the illegality committed and which the agent undertakes to detect, ascertain or prove. The agent shall not initiate the commission of a crime; however, this will not apply if the case involves an act of corruption by a public official or foreign public official and the facts ascertained indicate that the offender would have committed this crime even if an instruction to use an agent had not been made.

In the Czech Republic the introduction of the so-called "*anti-corruption agent*" marks a government bill on anti-corruption measures which consists of the intended amendments to

certain laws whose adoption should significantly affect the legislative conditions to combat corruption and serious crime related thereto. The bill seeks to ensure that an agent should be authorised to simulate interest in taking part in a crime and that this should not be considered police provocation. This is conditional upon the facts identified in the relevant case indicating that the person would commit the crime of corruption himself (i.e. even without the agent's participation). Such action by the agent shall not incite a person to commit a crime. The law as it stands does not expressly contain these conditions and practice has identified the need for the law to clearly enshrine the boundaries by which police officers can act proactively in these situations. Police activities must however primarily concentrate on documenting crimes, supplying evidence and preventing the consequences.

Stipulating a certain degree of immunity from prosecution and defining its limits and conditions is undoubtedly an essential legal prerequisite for the successful activities of a secret agent working against organised crime. The knowledge of a certain immunity from prosecution, even if strictly limited, is also an essential psychological prerequisite for such activity. An agent who moves in a criminal environment and who conceals the actual purpose of his activity must have a certain legal space and personal freedom in deciding how to resolve many unforeseeable situations which could threaten his personal safety and the fulfilment of his professional missions.

Under Section 361 paragraphs 1, 2 of the Criminal Code a member of the Czech Police Force shall not be culpable of the crime of participating in an organised criminal group or supporting an organised criminal group if he committed such crime in order to detect the perpetrator of a crime committed to benefit an organised criminal group (Section 363 paragraph 1 of the Criminal Code).

Another exemption from criminal responsibility is afforded to a police officer who performs the tasks of an undercover agent, Section 363 paragraph 2 of the Criminal Code, which comprehensively states in all 42 various crimes for which the agent will not be prosecuted on condition that he committed one of the mentioned crimes in order to detect the perpetrator of a crime committed to benefit an organised criminal group. This exemption will not be accorded if the agent founded or engineered the organised criminal group or organised group.

According to the practical experience of police bodies the legal regulation covering an agent's immunity from prosecution remains a current and unresolved problem. The extent of an agent's immunity from prosecution would evidently be better to solve not by a full list of crimes stated in Section 363 paragraphs 1, 2 of the Criminal Code but by expanding the circumstances excluding illegality which are stated in the provisions of Sections 13, 14 and 15 of the Criminal Code.

In January 2010 the Czech Ministry of the Interior submitted a proposal for measures which if implemented should increase the effectiveness of the measures aimed at combating corruption and organised crime. These are:

- introducing the institute of “crown witness”,
- amending the institute of “using an undercover agent”,
- amending the conditions for using telecommunications interceptions,
- amending the conditions of confidentiality according to tax rules.

The research requested that the national departments of the Criminal Police and Investigation Service (hereinafter SKVP) collect the opinions of experts – police officers who are involved in combating organised crime on the current legal regulation of the institute governing the use of an agent and on the practical possibilities of improving the effectiveness of this institute.

The following departments were addressed: the SKPV Special Operations Department (hereinafter the ÚSČ), which is empowered as the sole police body with the legal and organisational safeguarding of the institute of using an agent; the SKPV Department for the Detection of an Organised Crime (hereinafter the ÚOOZ), and the SKPV National Anti-Drug Headquarters (hereinafter the NPC). These are the police bodies that have most frequent recourse to the use of an agent in detecting and proving serious criminal activity.

To these departments was distributed a list of questions covering the main problems concerning the practical use of the institute of using an agent; the list was accompanied by a request that questionnaires and controlled interviews be used with police officers employed in the stated departments in order to collect and summarize their expert opinions and findings with regard to the use of an agent in operational activities.

Even though for understandable reasons this study did not address the effectiveness of the real use of an agent in concrete criminal cases or the frequency or character of the cases in which the use of an agent was applied, the information proceeding from the experts questioned makes it possible to conclude that the agent, as an often irreplaceable operationally appropriate and procedurally useful instrument, should be used more often when combating serious crimes. The existing legal arrangement of the institute for the use of an agent (or other operationally investigative instruments) is of a relatively high quality, and is considered in principle to be satisfactory from the perspective of the police's executive departments.

Translated by: Marvel

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Criminal Recidivism and Recidivists

Researcher responsible: Alena Marešová

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This study by a team of authors: Marešová, Blatníková, Kotulan, Martinková, Štěchová and Tamchyna “Criminal Recidivism and Recidivists (characteristics, displays, options for criminal justice)” attempts to concentrate a considerable amount of inhomogeneous findings into one whole. It contains information on criminal recidivism accessible both in Czech and foreign literature. Furthermore it contains data on the scope and development of recidivism compiled from statistics on criminality in the Czech Republic, alongside the results of their own research of imprisoned Czech recidivists, including comparison of the results gained with the results of all authors of known research of criminal recidivists conducted over the past approx. 50 years in the territory of the Czech Republic.

Specifically: The first capital of the study is devoted to the topic of recidivism in criminology and criminological research. Herein is an explanation of what the terms criminal recidivism and recidivists used in the study comprise and there is also reference to previous research of criminal recidivists performed in the Czech Republic. A special subchapter introduces the reader with how criminal recidivism is approached abroad and with the results of research into the criminal career as described in foreign literature.

The second chapter contains information on contemporary recidivism and criminally prosecuted recidivists gleaned from statistics of the Ministry of the Interior of the Czech Republic (Police of the Czech Republic) and statistics of the Ministry of Justice of the Czech Republic. This data is supplemented by some data from the period before the year 1990.

The third chapter provides basic information concerning this particular research, the number of respondents, place where the basic data on the respondents was collected and on

psychological examination made of them. There is also reference to the profuse obstacles encountered during implementation of the research.

The fourth and fifth chapters contain a summary of the results found in the research. They are compiled in numerous charts and supplemented by detailed commentary, including excerpts from separate court rulings and case studies. The fourth chapter is devoted to an analysis of data regarding recidivism of 126 imprisoned respondents gained from court rulings. It also contains information on legal regulations regarding recidivism from the origins of the Czechoslovak state until the new Criminal Code entered into effect, i.e. until 2010. The fifth chapter summarises the results of research of 31 imprisoned criminal recidivists/perpetrators of property-related crimes and of 32 imprisoned criminal recidivists/perpetrators of violent crimes and demonstrates an overall view of both groups of recidivists researched.

The sixth chapter deals with other findings gained in the course of the psychological examination of selected samples of recidivists. It also contains a comparison of the results of the present research with those gained in older research and study of recidivists in the Czech Republic.

The final chapter summarises the most important findings both of this research and of comparisons made with the results of previous research. It addresses several of the wider socially psychological aspects of research of contemporary “neo-recidivists”, in particular of the differences found in the case histories and characters of contemporary recidivists and recidivists studied before the year 1990. Their family situations, marital status, level of education, psychopathology, addictions, aggressiveness, neurotic symptoms, temperamental characteristics and intelligence.

The following basic findings issue from the research performed by the authors:

- Although legislation relating to recidivism has undergone certain development over the years, it has always contained provisions for a special approach to recidivists, in particular stricter punishment.
- In recent years, the number and proportion of unconditional penalties of imprisonment imposed on recidivists.

- Special recidivism as a legal attribute to a crime was expressed in the legal qualification for one third of recidivists in our sample, in all cases concerning the perpetrator of the crime of theft.
- Only four convicts of those researched by us (3 % of 126 persons) were declared by the courts to be exceptionally dangerous recidivists.
- Their criminal history was taken into account in the selection of type of prison for serving their sentence. Several (10) recidivists from the sample of 126 persons were transferred to a lower-security type of prison in the course of their sentence.
- Almost one half of the criminal cases of recidivists were completed with legal finality within one year the crime being committed.
- According to the number criminal records, the majority of inmates investigated were, from a criminological point of view, significant recidivists – almost 70% had 6 and previous convictions. More than one half of had earlier served more than three unconditional prison sentences, while for half of them the courts had decided on conditional discharge from some of their previous unconditional prison sentences, for some persons repeatedly.
- Most frequent reoffending arose in persons whose first conviction had occurred between 15 and 18 years of age.
- First-time offenders were given sentences not involving imprisonment (approx. 80 %). For approx. 40 % of those, who were sentenced to penalties not involving imprisonment, failure to comply with conditions meant this penalty was changed to unconditional imprisonment.
- The second case of conviction occurred most often within 3 years from the first.
- Approximately 40 % of recidivists investigated were sentenced to imprisonment for a period of one year.

The results of detailed analysis based mainly on the results of psychological examination of two groups of recidivist – perpetrators of property-related and violent crime (while the respondents in both groups were selected from the total sample of 126 persons) showed the findings below.

*At the very start we must supply some fundamental information which, in our opinion, significantly influenced the data presented here. This includes the **obligation imposed over***

the past few years on researchers to gain the convicts' written consent to being studied. Study is then restricted to a special group of inmates – those who are communicative and who have a positive approach to people “on the other side of the bars” etc., i.e. the type of inmate who are more similar to the ordinary Czech population which must certainly have an effect on the results of the study which come closer to the norm than we would expect from those prisoners refusing the researchers. For this reason we later added findings from similar studies performed by the prison psychologist on a non-sorted, random sample of prisoners (appearing in chapter 6).

The results gained in our research, in view of the fact that a statistically significant difference between recidivists/perpetrators of property-related crime and recidivists/perpetrators of violent crime was not found, can be presented as common for both groups of respondent:

- Most of the recidivists come from originally complete families, but from disharmonious, later disintegrating and changing over the course of the years both in number and in composition of its members. Frequent is the occurrence of criminal infection within the wider family – in the case of almost two thirds of the respondents/perpetrators of violent crime, less in the case of property-related crime.*
- School education is low – only roughly half of the recidivists completed primary education. Data on vocational education cannot be differentiated from data on apprenticeship, when apprenticeship could have been gained while serving their previous prison sentence. More than half of the respondents researched demonstrate a negative attitude to school and education in general.*
- Single (unmarried) recidivists, or those living in a relationship with a partner, significantly predominate. Usually they live with her, otherwise living with parents predominates. If they have a child (almost in half of cases), they take no interest in it and do not contribute to their support.*
- If the recidivists have a job, then it is only casual, part-time and their job is not their prevalent source of income.*
- Addiction to psychotropic substances was found in 40 % of respondents – this does not include consumption of marihuana. Approx. 90 % of respondents are smokers (mostly heavy smokers), more than half of the researched recidivists admit to consumption of excessive amounts of alcohol.*

- *Property-related crime is often not directly dependent on the perpetrators' unenviable financial status.*
- *The criminal career of the recidivists in question is mostly of a long-term – the interval between the first and last registered crime is usually longer than 10 years.*
- *As far as the period between serving their sentence for their previous crime and new conviction is concerned, this was shorter than one year in the case of roughly half of the recidivists studied. For 40 % of them, reoffending occurred within half a year of their first conviction.*
- *Motivation of recidivists in property-related crime is not at all complicated and relates to the need to gain funds for repayment of debts, providing for their families, but also primarily for satisfying their own needs, including a need to buy drugs or alcohol.*
- *The intellectual capacity of the respondents (according to the non-verbal section) is average to slightly above-average.*
- *Extraverts predominate, with choleric temperament and extreme neurotic tension.*
- *A common characteristic of recidivists is their incapability and unwillingness to bear the consequences of their own actions, i.e. irresponsibility and thoughtlessness.*
- *Most of the recidivists studied can be identified as asocial delinquents – i.e. they do not recognise the structure of values and norms of society as a whole.*
- *The results of the research also suggest a predetermination in the studied recidivists for lifetime failing influenced mainly by a preponderance of choleric temperament, mental instability, neuroticism, professional and personal unsettled and asocial stance.*

From further comparison performed in the study it is evident that criminal recidivists with a criminal career stretching back into the preceding period (pre-1990) – the “old recidivists”, were actually different in many ways to today’s neo-recidivists whose criminal career began in the period after 1990.

Unfortunately, it is apparent both from investigation of their case-history and from the psychological examination that the findings regarding the character of our neo-recidivists are closer to the normal population – the findings place them between the recidivists from preceding years and contemporary Czech population, the same ordinary population upon

whom the norms of a large part of the methods used in the study were standardised to establish personality traits. In the past, recidivists displayed lower intelligence (below the norm), more psychopathological symptoms, were more aggressive, came from worse family situations etc. Today's recidivists are also in many respects below the norm for the normal population of the Czech Republic, but not at all significantly. The reasons for this are diverse – for instance, even though almost all recidivists have tried drugs, the same applies for the contemporary population – part of the normal population commit socially pathological acts more often than was the case in the past and so this approaches behaviour that used to be characteristic only for the criminal population. Also the neurotic symptoms of the recidivists under our scrutiny do not reach the striking values of the former criminal population and, together with a low incidence (in comparison with the old-recidivists) of pathological aggression in them, the contemporary population of recidivists is closer to the norms of the normal population and is moving away from the values of the criminal population before 1990.

As for comparison of behaviour of recidivists while serving their unconditional prison sentences in Czech prisons, i.e. of contemporary prisoners with prisoners from years past, the following differences can be observed. Involuntary, enforced, mechanical obedience and discipline was characteristic for the external conduct of the vast majority of the imprisoned recidivists of the 1970s and 80s under the conditions of the past social system (during socialism). This outer obedience was accompanied by an inner disinterest, coldness, hostility, often secret hate. Their resistance to the demands of the prison staff was passive resistance, manifesting itself on the surface as reluctance, inertia, passivity, lack of interest, single, literal performance only of an expressly imposed task, intentional ignorance of other activities (performance of which the prison staff did not supervise), destruction of prison property, formal performance of tasks and duties, i.e. manifestations of indirect aggression and negativism, typical for the criminal population in general were characteristic for them. Under the conditions of collective imprisonment, the prisoners behaved as a group of people with mutual solidarity or at least conformity in common opposition to the prison staff.

Recidivists (neo-recidivists) committing crimes at the turn of the 1990s and the first decade of the twenty-first century during capitalism under the conditions of contemporary society and serving sentences under the liberal conditions of the contemporary prison system while maintaining a series of types of behaviour described in this study differ fundamentally

from the preceding criminal population in many aspects. Under the conditions of collective imprisonment which for various reasons continues in a modified fashion in the present, prisoners are significantly more individualist and less tolerant of each other and do not demonstrate such solidarity, bound together less. Contemporary recidivists do not hold back in their outer behaviour between one another and in relation to the authorities; they are markedly sensitive to type of treatment they receive, undisciplined, outspoken, cheeky, freely ventilating their own uncontrollable patterns of behaviour and actions. It is possibly due to such formerly unthinkable and not tolerated cases of overt self-expression, which is today not only possible, but completely common, that under the current conditions of a liberalised prison system, the formerly commonly diagnosed symptoms of pathological aggression do not arise so often during psychological examination. Contemporary recidivists (including recidivists/perpetrators of violent crimes) do not consider themselves to be aggressive, regardless of commonly arising mutual aggression, and this is surprisingly confirmed over the long term in psychological examinations (in comparison with their predecessors) by a low level of hostility and aggression.

The study is supplemented by 10 examples of case studies of recidivists from the research: five from the property-related crime perpetrator group and 5 from the group of perpetrators of violent crime.

Translated by: Presto

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Juvenile Probation Programmes

Researcher responsible: Jan Rozum

Co-researchers: Petr Kotulan, Jan Tomášek, Michal Špejra

Research into the juvenile probation programmes was carried out by the Institute of Criminology and Social Prevention over the years 2009-2011. The subject of this research was the efficacy of juvenile probation programmes from a point of view of criminal reoffending of young offenders and the practical experience of those implementing them and the supervising probation officers.

Restorative justice lays an emphasis on a balanced and fair reaction by society to the youth crime. By discussing the juveniles' illegal acts, it is ensured that measures are employed which act effectively towards the juvenile refraining from criminal activity and finds a position of benefit for society, corresponding to his/her abilities and intellectual development. Also for the juvenile to help to rectify damage caused by his/her crime according to his/her strength and skills.

The purpose of Act No. 218/2003 Coll., on juvenile justice (JJA) is to achieve positive results in the field of limiting subsequent delinquency of the juvenile using positively active methods. An emphasis is placed on choosing a suitable measure which would lead to desired social development of the adolescent, thereby reducing the risk on him/her continuing in a criminal career. One type of measure which can be imposed under the act is educational measures. Through these measures it is then possible to react most effectively to the current living conditions of the juvenile, to the circumstances shaping his/her personality and the causes of the crime for which he/she has been convicted. The purpose of educational measures is to create an environment for subsequent healthy development of the juvenile offenders.

Probation programmes rank among some of the most significant educational measures. A juvenile probation programme, i.e. a programme in accordance with Section 17 of the JJA, means: "a social training programme, psychological consultancy, therapeutic programme,

a programme including community service, educational, requalification or other suitable programme developing social skills and the juvenile's personality with differing degrees of limitation in the everyday life, leading to the juvenile avoiding behaviour which is in breach of the law and for supporting his/her social conditions and for reconciling the relationship between him and the aggrieved party.” Act No. 218/2003 Coll. also states that a probation officer shall be appointed by the public prosecutor in preparatory proceedings for supervision of implementation of the juvenile probation programme. The guarantee that the services of the providers of probation programmes are qualified is their approval by the minister of justice. Such approval is preceded by an application by the programme provider for registration of the programme into the list and an accreditation procedure performed by a committee of experts. In the interests of society, it is essential for the probation programme to react to the causes of criminal behaviour and to lead the juvenile to overcome them and to behave in accordance with valid legal norms – i.e. for the programme to contribute to the full protection of society against the juvenile's reoffending. The efficacy of the programme is a matter of long-term supervision of the juveniles involved in the programmes, especially in the area of reoffending.

Development of probation programmes in work with juvenile offenders in this country reflects current trends across the world. This stems from the assumption that there is sense in working with problematic individuals. When basing our conclusions on what our programmes are focused upon and what methods and techniques they employ, here too we have reached a consensus on what seems to be effective according to experience abroad – i.e. mainly a cognitive behavioural approach concerned with the development of social and communication skills of the client, training of suitable forms of behaviour, the ability of looking objectively at their own behaviour etc.

Unfortunately one of the conditions for these measures to be used cannot yet be achieved. That is, for suitable programmes to be available in all counties of the Czech Republic. We have established that almost half of the court counties over the years 2008 and 2009 did not have one probation programme at their disposal. This fact can be seen as a good argument that one of the main tasks standing before the institutions responsible regarding implementation of probation programmes is to ensure a sufficient range of them in all parts of the Republic. The range of programmes is not even very varied according to the various types of juvenile delinquent. The opportunity of charging the juveniles with the obligation to

undergo the necessary probation programme only exists through the rulings of those juvenile courts, or public prosecutors, in whose district a provider of a programme operates and so where it is possible to operate. Therefore the decision making possibilities of the relevant authorities are, in relation to this measure, limited. .

According to the data of the Ministry of Justice of the Czech Republic, in the period 2005 – 2010, the obligation juvenile courts ruled that 168 juveniles, 15 of whom were girls, were obliged to undergo a probation programme. In the first year, imposition of this type of educational measure was ruled upon in the case of 8 juveniles and after a gradual increase this figure stabilised at between 31 and 38 programmes imposed annually.

During research we found that not nearly all juveniles who entered the probation programme had had it imposed upon them as educational measure. When talking of a probation programme as an educational measure, only those juveniles for whom this measure has been imposed as an educational measure can be included into accredited juvenile programmes, in other words as a type of sanction against the juveniles. The commentary to the Juvenile Justice Act No. 218/2003 Coll. assumes that the measure represents a particularly severe impact on the everyday life of the juvenile and so the act of imposing it should be ruled upon only by the relevant authorities, i.e. a juvenile court or a public prosecutor.

We are aware of the situation in the Czech Republic where there is an exceedingly narrow range of quality re-socialisation probation programmes. If an accredited probation programme is implemented for juveniles, but was not imposed upon them as an educational measure, this cannot be included in implementation records for juvenile probation programmes; these reports should give information only on probation programmes imposed as educational measures. This situation then leads to certain dualism of the whole system. When working with juvenile delinquents, the decision on whether to make use of accredited probation programmes which are not imposed by the relevant authorities as educational measure is problematic.

Our investigation indicated that the practice in the area of implementation of probation programmes is accompanied by other problems too. Programme providers pointed mainly to the questions relating to financing programmes. According to some respondents, it is not possible to provide the programme from the subsidies assigned to them by the Ministry of Justice. Critical voices were also to be heard regarding the financing system itself which

makes it impossible to perform continual work of several years. The programme providers are also hampered by insufficient numbers of clients. A positive finding, on the other hand, is the fact that only a small portion of the providers and probation officers questioned encounter a negative approach of the clients to participation in the programme. Also, mutual cooperation between the provider and the Probation and Mediation Service (PMS) was seen as positive.

The main section of our study was an analysis of data from the Criminal Register, concerning a sample group of 326 juveniles who, according to Probation and Mediation Service records, took part in the probation programme in 2006. For a fairly large proportion of these juveniles it is not possible to establish from the Criminal Register if the probation programme was imposed. In that year, in the case of 61 % (199) of the juveniles there was no record of it, although according to the probation officers, they certainly entered the programme. We also established that the probation programme is more often imposed on boys, while the sample group included only one tenth girls. Only one tenth of juveniles had previous experience with crime (i.e. had a criminal record). The crimes which led to implementation of the probation programme were most often, as expected, property crimes, being mostly the offence of theft. As concerns the efficacy of the programmes, the degree of success of their completion is important. The programme was completed in full by 69 % of juveniles, which means that the number of drop-outs was about one third.

One of the most commonly used criteria for assessing the efficacy of a certain measure of criminal justice is recorded criminal reoffending. We investigated data on reoffending for about 4 years after the juvenile's participation in the probation programme. The overall findings are not encouraging. 51.8 % of the juveniles had a further record in the Criminal Register, in other words more than half of our sample group. The difference between the juveniles participating in the separate programmes is fairly striking. Similarly to the results of foreign studies, we found that more reoffending occurred in the case of those who failed to complete the programme than with those who successfully completed one. We also registered a lower degree of reoffending in people who underwent the programme after their first offence against the law. It is hard, though, to express a clear conclusion on whether less reoffending of successful participants is the effect of the programme itself or if the drop-outs are problem individuals who not only have a greater tendency to commit a further crime, but also that their personality is such that they also have less motivation to attend and complete probation programmes properly.

The information gained from the criminal files which were lent to us by county (district) courts from all regions of the Czech Republic mainly confirmed the findings of our analysis of the Criminal Register. Not even this sample of criminal files matched the PMS data on probation programmes imposed by a legally enforceable ruling of the juvenile courts (difference of 34.8 %). The obligation of undergoing the probation programme was imposed by those courts in rulings on the case itself, next to sentences or withheld sentences, often also in accumulation with other educational measures. In pronouncements of court rulings only occasional shortcomings lying in the fact that the obligation to undergo the probation programme was imposed as an educational obligation (Section 18(1)(g) of the JJA) and furthermore that neither the type of probation programme nor the duration of its imposition was specified in the ruling.

Our study represents only a first attempt at evaluating the efficacy of probation programmes while working with juveniles. Its conclusions can certainly not be overestimated, especially in view of the relatively short time which has passed since the introduction of the educational measures in question. For more perfect assessment of the efficacy of probation programmes it will be necessary also to look for different ways and methods of research. It may be advisable to compare reoffending of the juveniles who undergo these programmes, with the reoffending of comparable offenders who had different measures imposed upon them (e.g. supervision without participation in a programme, community service or a suspended sentence). We consider such a task to be one of the challenges for further focus of criminological research in this country.

The Probation and Mediation Service itself should also devote its attention to evaluation of the programmes. At present, however, a united system does not exist for evaluation of probation programmes, nor does a relevant procedure which might monitor the efficacy of the separate programmes. The granting of subsidies is dependent only on the opinion of the heads of branches and relevant committees on applications submitted by the providers. It would, therefore, be sensible to create a clear and well-organised system of criteria or indicators according to which the efficacy of the programmes could be assessed and evaluated.

Translated by: Presto

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The Application of Mediation in Criminal Justice System I.

Researcher responsible: Jan Rozum

Co-researchers: Petr Kotulan, Marina Luptáková, Miroslav Scheinost,

Jan Tomášek

The research **The Application of Mediation in criminal justice system** is handled in line with the Medium-term plan of research activities of the Institute of Criminology and Social Prevention for 2008-2010. The research was assigned by the Council for Probation and Mediation and was implemented in 2008-2010. The research was carried out in close cooperation with the Probation and Mediation Service of the Czech Republic.

The research focused on the evaluation of contribution and efficiency of mediation for offenders, victims and the society, and on how mediation helps to fulfil the general tasks of the Probation and Mediation Service, i.e. integration of offenders, participation of victims and protection of the society. One of the tasks was to find out to which criminal institutes the courts and prosecuting attorneys apply mediation, to what character of cases mediation procedures are applied and what is their effectiveness from the point of view of the society, offender and victim.

Since one part of the research – opinion poll (public opinion concerning mediation) – was executed in November 2008, we divided the presentation of results of the research to two parts in order for the results to be as current as possible. Apart from a brief introduction in the issues of mediation and statistical data concerning mediation, this first part (in 2009) summarises the results of the aforementioned poll.

With regard to mediation in criminal matters in the Czech Republic we may say that the development of mediation procedures in the Czech Republic is closely related to the establishment of the Probation and Mediation Service, which was implemented by Act No. 257/2000 Coll. and came to effect as of 1 January 2001.

The legal definition of mediation is stipulated in the provision of Section 2 (2) of Act No. 257/2000 Coll. on Probation and Mediation Service: “For the purposes hereof mediation is out-of-court mediation for the purpose of solution of a conflict between the accused person and the victim and an activity leading to settlement of the conflict situation carried out in relation to criminal proceedings. Mediation can only be performed with the express agreement of the accused person and the aggrieved party.” The principles of mediation in the Czech Republic follow the principles generally acknowledged in Europe. The mediation procedure provides both parties with the opportunity to express their feelings, expectations and needs that had been formed in relation to crime. It also makes it possible for the parties to agree on a fast and acceptable manner of remedy. The participation in mediation is voluntary for both parties. Mediation may lead to a common agreement on settlement of the conflict and remedy. The prosecuting attorney or judge may consider the results of mediation when making their decision. They may e.g. discontinue criminal proceedings or propose or approve another alternative measure or sanction.

Since 2005 there have been statistical records that make it possible to monitor data on persons or cases with mediation. In 2005 to 2007 the total of 1,878 offenders went through mediation, of which 1,608 were men (85.6 %) and 270 women (14.4 %). The majority of cases were recorded in 2005 (950); there was a roughly 50 % decrease in the following years. The average age of accused persons who went through mediation was 30.3 years; modus 17 years (7.8 % of all persons).

An agreement was reached in 1,498 out of the total number of 1,878 cases. In 361 cases no agreement was reached during mediation. With respect to age, younger accused persons were more positively motivated to reach an agreement through mediation (however, the statistical percentage was not significantly high); with older age the willingness of accused persons to settle decreases.

In 2005 to 2007 mediation helped to solve cases that had been committed under Chapter VII – offences against life and body, and Chapter IX – offences against the right of property. These cases made 82.7 % of all cases. With regard to particular crimes the clearly dominating group was bodily injuries under Sections 221, 223 (especially bodily injuries committed in road transport) and the offence of theft under Section 247.

The statistical database of the Probation and Mediation Service of the Czech Republic made it possible for us to analyse termination of a criminal case for majority of cases (1,482 – 79 %; for the remaining 21 % - 396 cases the Probation and Mediation Service unfortunately failed to receive this feedback from the court or the prosecuting attorney's office). From the point of view of criminal justice, in majority of cases mediation between the accused person and the injured party was terminated (total cases 979 – 66.1 %, in 2005 – 508, 2006 – 254, 2007 – 217) with the institute of conditional discontinuation of criminal proceedings pursuant to Section 307 of the Rules of Criminal Procedure.

The prerequisite for mediation to become one of the possible solutions of crimes and their consequences is its general social acceptance and support. One part of the research project was making a poll to find out how the public perceives and evaluates the mission of the Probation and Mediation Service within the justice system, for what types of crime and offenders the public sees victim-offender mediation as a suitable solution instrument and how the public evaluates the overall possible contribution of mediation. The target group was Czech citizens aged 15-69 years; the research sample was selected by the method of a quota selection according to classification criteria comprising sex, age, education, size of the city/town of residence and region. The size of the selected group was 1,014 respondents.

Only 25 % of respondents are at least partially informed about the existence of the Probation and Mediation Service. 67 % of respondents admit that mediation has a social benefit; 69 % of respondents see mediation as a suitable instrument to solve crime. On the other hand, 30 % of respondents perceive mediation as useless and inefficient. Despite low awareness of mediation and the Probation and Mediation Service the attitude of the public to mediation is prevalingly positive. The benefit of mediation is perceived mainly for the justice system (lower burden of courts and accelerated process of solution); the corrective effect on the offender and remedy for victims is perceived to be secondary. 53 % of respondents would be willing to accept mediation if it concerned themselves (40 % would rather not accept or definitely not accept mediation); this leads to the conclusion that the generally rather positive relation to mediation does not quite correspond with the willingness to accept mediation if it concerned the respondent him/herself.

Based on the prevailing opinion mediation should be applied especially to less serious crimes (libel, disturbance, petty crimes against property, vandalism, offences in road

transport). Mediation is expressly rejected in case of violent and serious crime against property and in case of offenders acting under the influence of alcohol or drugs, and also in case of persistent offenders.

The sex of respondents or the fact whether or not they have themselves been victimised in the last three years does not have a significant influence on the opinions and attitudes of respondents. The only exception is that victims of crimes see mediation as more convenient for offenders than those who had never been victims of a crime. With regard to opinions concerning the usefulness and social benefit of mediation we can conclude based on the results of the research probe that the concept of mediation is rejected by a minority of the public.

Citizens usually deem it is likewise important to punish the offender and compensate the damage caused to the victim. Therefore the effectiveness of the judicial system should be measured by the number of satisfied victims as well as the number of prosecuted and convicted persons. In this context, however, the impact of mediation is assessed quite inconsistently, i.e. the public admits that there are benefits either only for offenders or for both sides (less often the public sees benefits only for the victim or no benefits at all).

Translated by: I.T.C.- Jan Žižka

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The Application of Mediation in Criminal Justice System II.

Researcher responsible: Jan Rozum

*Co-researchers: Petr Kotulan, Marina Luptáková, Miroslav Scheinost,
Jan Tomášek, Michal Špejra*

The research of **The Application of Mediation in the Criminal Justice System II** took place in accordance with The Institute of Criminology and Social Prevention's medium-term research plan for the years 2008-2010. Research focused on evaluating the benefits and effectiveness of mediation procedures for the offender, for the victim and for society, and on how mediation meets the planned general goals of the Probation and Mediation Service, i.e. integration of the offender, participation of the victim and the protection of society. One of the goals was to find out in which criminal justice institutions mediation is utilized by courts and public prosecutors, in what area and type of cases mediation procedures are applied, and their effectiveness from the perspective of society, the offender and the victim. This second part of the research (in 2010) primarily presents empirical findings.

From the methodological point of view, following research methods and technics were used:

- the analysis of statistical data from the Ministry of Justice and the Probation and Mediation Service of the Czech Republic,
- questionnaire survey focused on the experience of institutions providing the probation programmes and the experience of probation officers with this measure,
- analysis of a sample of court files where the obligation to participate in probation programme was imposed,
- analysis of data from the Criminal Register.

The introductory study based on criminological literature from the Czech Republic and abroad was also an important part of the research.

According to available research from abroad, the most important reasons why victims decide to participate in mediation include a desire to find out more about the criminal act

itself and about everything that led to it, the need to convey one's feelings to the offender, the wish to help him "change", to make him take responsibility for his own actions, to be eligible for financial compensation for damages, to avoid court proceedings, and to see for oneself that the offender is sufficiently punished. Most studies that focus on the experiences of victims with mediation bring positive results.

Our questionnaire survey between the offenders and victims that participated in mediation was also influenced by research from abroad. Its goal was to map their practical experiences with this measure. The Probation and Mediation Service of the Czech Republic was closely involved in its preparation. Thanks to its staff, it was possible to contact 94 victims and 93 offenders, who were then sent questionnaires. Of these, 89 were returned properly filled in, 50 from victims (a rate of return in this group of 53.2 %) and 39 from offenders (a 41.9 % rate of return). The research was anonymous, and so it was impossible to compare the offender's answers with those of the victim in the same case.

Reasons why victims most often decided to participate in mediation primarily included the desire to find out the offender's motives for his actions, to avoid lengthy court proceedings, to receive a clear apology from the offender, to contribute to his rehabilitation through one's own participation, and to receive compensation for damages. On the other hand, only rarely did the wish to find out more about the offender play a role, as to prove to one self that a personal encounter with him would not be a problem. For offenders, the dominant motive was the ability to come to an agreement with the victim, to redress damages, to speed up the entire case and to achieve a lesser penalty for the committed crime. Over half of the offenders had a strong need to apologize to the victim in person, or to inform him that they were sorry for what they had done. In comparison, the need to explain to him the circumstances that led to the crime was relatively rare.

Roughly two thirds of victims received the impression during the mediation that the offender truly regrets his actions, that it is not easy for him to meet face to face, and that he has a true desire to remedy what he caused with his actions. At the same time, it was revealed that according to 59 % of the victims, the offender participated in the mediation only formally, out of a desire to avoid harsher punishment. Meanwhile, impressions that victims got of the offender and his behaviour during mediation were often influenced by feelings, experiences and attitudes they brought with them to the mediation. Thus those who felt a great

deal of anger prior to the mediation were less inclined to believe the offender's intent to atone for his actions, and similarly those who had been the victims of a violent crime were more inclined to suspect the offender's approach of being a formal one. Offenders ascribed victims with a pragmatic approach to mediation – 71 % thought that the victim's only reason for participating was to receive financial compensation. A relatively large number of offenders (40 %) also gained the impression that the victim had behaved arrogantly toward them during the mediation. Both of these feelings were expressed significantly more often by those who were not first-time offenders.

The vast majority of both victims and offenders assessed the mediator's work as either very or quite good (96 % of victims and 97 % of offenders). A similarly positive agreement existed for the question as to whether the mediator had succeeded in creating a safe atmosphere, and whether under his aegis both parties had sufficient space to express their personal needs, opinions and positions. On the other hand, almost a fifth of the victims and a third of the offenders got the impression that the mediator had attempted to force on them his own notion of how the case should be resolved. Most of them, however, evidently saw it as a welcome initiative on the mediator's part, as this fact did not have any sort influence on their overall favourable assessment of his work. Nine out of ten victims as well as offenders stated that they were satisfied with the results of the mediation, with a further positive finding being that 84 % of victims and 95 % of offenders would agree to it again. The vast majority of offenders (90 %) stated that they would also agree to mediations if they were in the victim's place. The same fraction of victims answered yes to the question if they would recommend mediation to similar victims. Only one offender stated that he had committed another offence following the mediation.

When asked about their overall impression and assessment of the mediation, less than one tenth of victims regretted their participation. Eight out of ten victims conceded to a greater or lesser degree that they felt better about the given case after the mediation than prior to it. For roughly three quarters of victims, it was also important that they were capable of talking to the offender openly about the entire matter. The vast majority of offenders were also satisfied with their participation, with the mediation being an unpleasant experience for only one tenth of them. Nine out of ten appreciated the fact that the mediation encounter allowed them to express themselves regarding the resolution of the offence. The results of the survey thus basically agree with the results of comparable foreign studies. A great majority of

mediation participants are satisfied with this measure, and say it is a positive experience. The key role of aspects such as the offender's sincere apology, explanation of the reasons for the offence or his real interest in putting things right was confirmed. If the victim expects such elements from mediation, he is likely to be satisfied with his participation – unsatisfied victims tended to be those who had a priori doubts regarding the sense of meeting the offender, and the aforementioned aspects were not that important to them. In some cases, the other party's unsuitable behaviour (for example the offender's formal attitude or the victim's arrogant behaviour) was a barrier to overall satisfaction from the mediation. Almost everyone was essentially satisfied with the mediator's performance.

Another area of research was the analysis of data from the Criminal Register, which offers details of registered recidivism, especially its quantity, nature and development. Information was gathered on 311 individuals who in 2005 had participated in mediation in cases of deliberately committed offences. As far as the offenders' ages are concerned, we monitored this data not only with regards to the time of the mediation, but also the age when the first criminal conviction occurred. The average age of charged individuals in the mediation process was 26.3. The average age they were first convicted of a criminal offence was 23.6. Offenders with no previous convictions were in the clear majority, with a total of 247 (79.4 % of the sample). Another 24 of the offenders (7.7 %) had one recorded conviction. Only 40 individuals (12.9 %) were found to have multiple convictions prior to the use of mediation. Statistical analysis confirmed that the age at which an offender is first convicted is related to his total number of convictions in the Criminal Register. The average age of first offence for those with one conviction on record in the Register was 22.4, for those with 2-3 convictions 21.2, for those with 4-6 convictions 19.9, and for those with seven or more conviction 18.5. For those that had no prior conviction in the Register, the average age was 24.2.

In our sample of cases where a deliberate criminal offence was committed, an agreement was reached in 75.5 % of the cases. Men were more open to reaching an agreement, as were younger people. As far as types of criminal activities go, theft in accordance with Section 247 of the Criminal Code (54.2 %) and bodily harm in accordance with Section 221 of the Criminal Code (31.5 %) formed the clear majority of cases. As far as the completion of mediated cases is concerned, almost two thirds of the offenders (189 individuals) had their prosecution conditionally suspended by either the court or the prosecutor. This option was

most frequently utilized by the court or prosecutor for young offenders (65 cases of the 189 terminated by conditional suspension of prosecution). As far as repeat offences are concerned, of the 311 individuals, another 79 had another record in the Criminal Register (roughly four years after mediation), which represents a fourth of our sample (25.4 %). Over 75 % of them had already committed their next offence two years after mediation.

In our research, we also focussed on obtaining practical information regarding mediation during criminal proceedings. We examined court records as regards the course and results of mediation, cooperation of PMS centres with the justice system and the police, and the influence of mediation on court decisions. We also paid attention to the personal data of the subjects of mediation proceedings and the nature of the offences committed. We had at our disposal a sample of 52 files on cases where mediation had occurred in 2007 (regardless of the results) and where prosecution was terminated by a final verdict or other court decision. These cases featured a total of 60 offenders and 81 victims. The majority were property-related offences, most often theft, which were often committed as ongoing or along with other offences.

The offenders who participated in the mediation process included 56 men and only 4 women. Young offenders always committed their offences as an accomplice. For mediation, primarily first offenders were selected, where it could be reasonably expected not only that an agreement on compensation for damages would be reached, but also the high likelihood of the effectiveness of a court verdict outside of the main trial, disciplinary punishments or disciplinary measures. Primarily younger offenders participated in this manner of dispute resolution, with 75 % of them being below 30. The damage caused by the offenders' criminal activity was primarily damage to property (67.9 %) followed by harm to health in roughly one fourth of the cases.

In suitable cases, conditions for the possible application of alternative types of proceedings and for cooperation with individual PMS centres were already created during preliminary proceedings. Offenders were informed of the options of diversion of criminal proceedings, in cases where the law requires it their agreement with such a procedure was obtained, young offenders were informed of the option of imposition of disciplinary measures, and some offenders were also informed of the possibility of working with the PMS. Probation and Mediation Service centres paid proper attention to investigating possibilities for

mediation, and in each criminal case, both subjects of the mediation proceedings took part in a number of (even repeated) individual consultations, which in the case of young offenders also included their legal guardians.

The main criterion for success of the mediation proceedings can be considered the achievement of an agreement to settle the conflict and provide compensation for damages caused. An agreement was reached in 88.9 % of mediations. During the mediation proceedings, requirements of 44.4 % of victims for compensation for damages were completely satisfied, and in 34.6 % of victims agreed to receive compensation in instalments. All mediation proceedings were completed by PMS centres prior to court proceedings, and their results were available to be used in reaching a verdict. Three fourths of mediation proceedings were completed within six weeks, and the average term of proceedings was 44 days. This is a very good result of the work of PMS centres, which has a positive effect on the overall length of criminal prosecution.

In cases where an agreement between the offender and victim was reached, the courts decided to diversify the criminal proceedings 67.8 % of the time, with the remaining offenders always receiving a suspended sentence, in four cases along with the suspension of their drivers license. The diversion involved primarily the suspension of prosecution. For young offenders, the number of diversions and sentences was almost identical.

The conclusion of the study provides information on an investigation into the practical experiences of probation officials – mediators. They were primarily asked what they see as the greatest problem in mediation between the offender and the victim, with motivation being the most frequent answer given. In this context, mediators commented both on unwillingness and disinterest in meeting face to face (this applies especially to victims, where apprehension or fear is sometimes also involved) as well as on motivation in the sense of what is expected from mediation. For offenders, this is primarily their effort to ensure for themselves a better position on which the court's or prosecutor's is then based. As far as victims are concerned, in some cases their primary motivation is the desire to maximize financial compensation for damages. The overall level and quality of cooperation with the justice system and police was also assessed as being problematic. According to mediators' experiences, these authorities represent a system of criminal proceedings that emphasizes other procedures rather than the timely commencement of conflict resolution. Another barrier is the low awareness of the

general public of PMS activities (especially in the area of preliminary proceedings), which then results in an initial lack of trust when offered this option.

Our research has confirmed that mediation can be very successful, as it offers the possibility to differentiate and individualize not only the imposition of sanctions, but also the procedure of dealing with the offence itself. It is a method that significantly supports, among other things, the idea of offender rehabilitation. A personal encounter with the victim offers them a unique opportunity to realize the harmfulness of their actions and to attempt to correct their consequences. Even despite certain methodological restrictions on our research, it can be said that the information gained proved the benefits of combining mediation proceedings with regular court cases. Aside from settling conflicts between offenders and victims, reaching agreements on compensation for damages and elimination of other harmful consequences of criminal activity, mediation proceedings created qualified and usable prerequisites for the resolution of criminal cases outside criminal proceedings (via diversion) or for the imposition of disciplinary punishments and measures that do not involve incarceration. Probation workers must be praised for a quick and high-quality mediation process, for helping clients (victims and offenders) find ways to achieve a positive resolution to their conflicts and achieve agreements on reconciling damaged relationships, and regarding compensation for damages caused by criminal activity. Significant is their share in creating conditions for out-of-court case settlement, and thus for the speed of court proceedings. Direct participants also assessed mediation as a suitable and effective measure from the perspective of their own needs being satisfied.

Translated by: Marvel

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Czech Organised Crime in an International Context

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From the performed research, it is not possible to derive conclusions on the complex form of all organized crime in the Czech Republic. The author's effort was foremost to perform an analysis on the existing experiential material, i.e. data on cases that have been tried as organized crime. Thus the study was significantly limited in scope and character of application of special legal institution created for prosecuting organizing crime, i.e. provision on participation in criminal conspiracy (according to the Penal Code effective as of 01.01.2010 participation in an organized criminal group). Due to the character of such tried cases, the performed analysis rather speaks of how the given institution is applied in practice, and against what type of organized criminal activity. Even as such, one may say that the results of the analysis may be useful for both employees of bodies responsible for criminal proceedings and possibly also for legislation, if possible amendments to this provision are considered.

Due to the relatively low frequency of application of the provision on participation in criminal conspiracy, and thereby to the limited scope of experiential material, questionnaire examination was also performed amongst employees of bodies responsible for criminal proceedings, specifically police and public prosecutors, with the stipulation that this mainly concerned employees whose professional work brings them in contact with organized crime matters. The objective of this examination was to find out in part the opinions of those employees on enforcing the provision on criminal conspiracy and possible problems related thereto, and in part to ascertain their experiences on the appearance and character of organized crime in the Czech Republic with special focus on Czech offenders.

To augment the findings on offenders convicted of participating in criminal conspiracy, an analysis was also performed on anonymized data from the Penal Register providing information on the criminal careers of offenders to date. Data was analyzed on perpetrators

convicted by application of the provision of participation in criminal conspiracy in comparison with data on a sample of offenders convicted for serious criminal activity committed in an organized group.

To gain a more complex image of the personality of the organized crime offender, a psychological examination was performed of selected incarcerated members of organized groups, and a control sample was created of the prison population not convicted of organized criminal activity.

For the purposes of the analysis, a total of nineteen files were requested on the basis of judicial statistics regarding cases of charged criminal conspiracy in 2000-2008. A total of seventeen were sent with the fact that after assessment, a total of thirteen files were found to be relevant. A finding ascertained from previous research was confirmed, where an analysis was performed on indictments filed by public prosecutors on cases of criminal conspiracy in the years 1999-2004. From the analyzed thirty-four indictments, a total of 76 % of indictments, or twenty-six cases², were filed at the time as the crime of organizing and facilitating illegal crossing of state borders pursuant to Sec § 171(a) Penal Code. In this research from analyzed adjudicated cases of criminal conspiracy, eight cases, or i.e. 61 %, were filed at the time as organized crimes and facilitating illegal crossing of state borders pursuant to Sec § 171(a) Penal Code.

It is clear that the provision on criminal conspiracy is thus in a strong majority of cases applied to cases of organizing and facilitating unauthorized crossing of state borders. It is generally the case both on the basis of the number of filed indictments ascertained in the previous research, and the number of adjudicated cases, that the provision on participation in criminal conspiracy is used only seldom and is mostly enforced against one specific type of organized criminal activity, i.e. organized illegal migration. The rest of the cases were formed by various types of criminal activity (illegal business, fraud and evasion, illegal production and possession of narcotic and psychotropic substances and poisons, pandering and extortion); no other crime aside from organized illegal migration was found on a more frequent basis in the adjudicated cases. So it is seen that application of the institution of criminality by participation in criminal conspiracy, which was introduced for the purposes of

² Scheinost, M., Diblíková, S.: Criminal conspiracy – legal framework, definitions, sanction, offenders. 2. Prague: ICSP 2009, pages 81-99.

effective sanction of organized crime, is relatively infrequent, and is mostly applied on a single specific type of organized crime.

The opinions of questioned experts as to the causes of infrequent use of this institution, both police officers and public prosecutors, basically concur. Both groups can be considered as competent in the given problem, since they are mostly employees who deal with organized crime or serious economic crimes in their practice.

The police and prosecutors mostly agree that the provision on punishability of criminal conspiracy is only partially applied in practice or insufficiently. This corresponds with the statement of respondents from both these groups that in their practice, they have met with cases, which would possibly be qualified as criminal conspiracy, but nevertheless were not charged as such. Police officers state this more frequently than public prosecutors, and this corresponds to the findings of researched performed so far on organized crime, where police officers assess the situation in relation to organized crime as more serious than public prosecutors do (and they find it more serious than judges do).³

Causes of this low application of the applicable provision are found, based on respondents, in part in the difficulty in solving and proving this form of criminal activity, mainly in proving legally established elements of criminal conspiracy and the low probability that the court will accept such qualification. But a problem is also seen – which is a relatively frequent answer – in reserves inside the work of police, and only then in legislation and in outer influences. In this regard, the most complaints come from police officers regarding the unwilling stance of public prosecutors and judges.

So it may be generally possible to say that the fundamental problem is rooted in the hidden and sophisticated character of organized criminal behavior or organized crime as a phenomenon, and in the difficulty in obtaining convincing proof on the existence of legal elements of criminal conspiracy. Based on this and previous research, one may express the opinion that regarding just these groups dealing in organization of illegal migration, they lack any truly high level of sophistication, and there is a greater possibility of proving these

³ See for example Scheinost, M. et al.: Research on economic crime. Prague: ICSP 2004.

elements. Of course it would be difficult and marginally unreliable to estimate how many cases bearing elements of criminal conspiracy that would be prosecuted “only” as an organized group for the stated reasons.

It is interesting that despite the prevailing opinion on the difficulty in proving elements of criminal conspiracy, the majority of respondents from both groups agree that the legal definition of criminal conspiracy more or less fits. In accordance with this, ideas for its amendment are rather rare, and mainly lead towards a more flexible determination of what so far have been strictly formulated elements of an internal organizational structure and sharing of activity with the stipulation that these elements should be formulated rather as alternative, and not cumulative. Proposals of public prosecutors also lead towards simplification of the elements of criminal conspiracy, mainly in the wording of omission or replacement of the element of a systematic manner used during commitment a crime.

One may also consider as noteworthy the opinion expressed by several public prosecutors, where the difference in definition between criminal conspiracy and an organized group is insufficient. Let us remember that the Penal Code contains no definition of an organized group whatsoever (even the new Penal Code neglected to amend anything regarding this). On one hand this can of course be considered a formal comment from the aspect that what is important is that it is possible to prosecute organized forms of crime anyway, but on the other hand the core of the comment should be understood that this problem may diminish the effectiveness of the provision, for which the objective of legislators was to create a more effective weapon in the fight against organized crime.

In terms of criminal prosecution, it is not possible in analyzed cases to consider its length as unreasonable. The period from the start of an investigation until the filing of an indictment ranged in most cases between six months and one year, court proceedings from filing of the indictment until a verdict had been reached was longer (between six months and six and a half years), which however was mainly influenced by filed appeals, in some cases repeatedly. It is possible to consider the length of proceedings as reasonable in light of the complexity and scope of the cases.

The link is indeed imposed in most cases, but only towards a relatively small part of offenders. The key types of evidence are testimony by witnesses, information from

eavesdropping (wiretapping) and expert judgments. There was almost zero usage of expeditious investigative means in monitored cases, which of course is given to the character of the crime committed, where use of such exceptional means was not necessary. On the other hand, it is true that without information gained through eavesdropping, proving elements of criminal conspiracy would be more than difficult.

The fact that just a small part of those charged actually confess and normally only partial confessions are forthcoming, just as only a small part is willing to testify, corresponds to the character and internal standards of behavior of organized criminal groups, although of course in analyzed cases, this method of behavior does not achieve the level of so-called “Omertà” (“Code of Silence”).

In relation to these crimes, it is found that on the basis of convictions pursuant to Sec 163(a) in relation to the overall number of accused, there are more foreigners than Czech citizens, and they are more often sentenced to unconditional punishments (almost in 90% of convictions). But this cannot be considered as an uneven approach of courts towards foreign nationals; the higher conviction rate and stricter punishments arise from their role in the hierarchy of the group, where they are often found in positions of organizers, or brokers for foreign connections.

For Czech offenders, suspended sentences are slightly more common, which again may be explained by the fundamentally wider representation of persons standing at the performance level and external coworkers. Suspended sentences clearly prevail amongst convicted women.

Prevailing amongst the non-conditional punishments are sentences of one to three years imprisonment. Unconditional punishments over five years of imprisonment are handed down only in exceptional cases and are given to offenders with multiple convictions, or more serious previous criminal activity. The number of conditional releases is at the same time relatively high. The representation of punishments by fine is not insignificant; this punishment was given out in twenty-nine cases, of which five cases involved foreigners. But this punishment is ordinarily ordered in an amount not exceeding CZK 200,000, which in regards to profits from crime definitely does not seem excessive. Often the punishment of forfeiture of property is applied, and amongst foreigners also expulsion.

So it is not possible to consider the tendency in handing down punishments in cases of criminal conspiracy as excessively harsh. This approach of course corresponds to the prevailing character of crime, which is mainly found in organizing illegal migration.

Organizing illegal migration could appear in the light of previous findings as a less serious form of organized crime. But this is not the case in terms of protecting national interests. It is also not possible to say that the activities of groups engaged in organizing illegal migration do not fulfill the elements of organized crime, not just from the aspect of the definition of criminal conspiracy, but also from a criminological standpoint. This is also the case for groups that have developed a different type of organized crime.

Findings from the performed analysis of cases give testimony amongst all groups – thus not just groups dealing with organization of illegal migration – to the existence of elements of organized crime, such as ongoing crime, central control of the group in which sharing exists of activities and tasks, and which is sometimes very large, and large profit, which is achieved even in a relatively short period of criminal activity. This criminal activity is constantly ongoing, and is never a one-off matter.

Analysis also proves unified leadership and international affiliations amongst most groups, whereas it is nearly a rule that foreign collaborators remain undiscovered. The overlap of activities into other nations was found in eleven of thirteen cases.

In terms of the composition of groups, there are mostly mixed groups, i.e. those where representation of a foreign element exists alongside a more numerous Czech contingent. There were only three cases in thirteen where groups were comprised exclusively of Czech citizens. There was just one group comprised entirely of foreigners.

It is characteristic to see specialization of groups in a specific type of crime.

Groups definitely have a hierarchal structure. This hierarchy is usually formed of one main “boss” (nine cases), around whom there is often formed a small group of his closest workers (which are sometimes his siblings, relatives and partners). In most groups, working under the boss and these possible closest workers are organizers of individual partial activities, or specialists (producers of documents, etc.), and “performance” members are on the lowest level (drivers, smugglers, transporters, bouncers, etc.), or external coworkers hired for individual events. From this aspect, for most groups it is possible to find multiple-level

management (leaders – medium-rung member/organizers of partial activity – performance and external coworkers).

Even the relatively narrow sample of analyzed cases thus proves that organized crime in the CR shows a sharing of activities and functions, use of external coworkers and even use of fronting legal companies, and more rare but nonetheless existing cooperation with members of the Police of the Czech Republic and municipal police officers. Another characteristic for organized crime is the finding that in the circle of convicted groups, persons were involved who took part in criminal activity or enabled its perpetration and were not prosecuted, or charged, in the given cases. There were also persons found from the entrepreneurial-trade circle, who provided services for remuneration (accommodations, board, transportation, etc.).

These are generally considered to be elements of developed - or at least developing – organized crime.

The analyzed cases, prosecuted and tried on the basis of Sec 163(a), prove the existence of groups whose character and activity correspond to the definition of criminal conspiracy. But despite the relative abundance of certain groups, it is not possible to speak of vast organizations developing long-term activity.

On the other hand, there are findings proving a smaller level of development that indicate a relatively short duration of criminal activity until its discovery, that indicate that in groups these same people may perform, based on need, multiple functions, or activities, that there is importance of family contacts upon forming the core of the group (on the other hand it is of course necessary to state that where possible to ascertain the character of ties amongst members of a group, the vast majority were expediency ties, i.e. ties bound to the purpose of joint commitment of crimes). It was also not proven that the attained profit, whatever its size, was intentionally invested into expanding criminal activity, to development of criminal business dealings. But for a few exceptions, profit is generally divided amongst members of the group and determined for personal consumption.

So it is possible to state that findings from this research, although it was limited to a relatively low number of cases of cases charged and convicted as criminal conspiracy, prove the existence of forms of criminality, which may be labeled in legal and criminological terms as organized crime. The analyzed cases however correspond rather to the classification of

a lower level of development of organized crime. Of course it is true that amongst them, no case of a crime appeared requiring higher qualification and more sophisticated procedures. So on the basis of this analysis – with regard also to the opinions of questioned employees of bodies responsible for criminal proceedings – it is not possible to exclude the possible existence of such more developed and sophisticated forms of organized crime.⁴

Regarding offenders, it is possible to collectively state that they mostly lie within the ages of twenty-six and thirty-five. This is also the case for women; amongst foreigners this age category is even more prevalent. The proportion of women to the total number of convicted offenders is 10.5 %. Nobody under eighteen years of age was convicted. It has been determined that crime committed in criminal conspiracy is a matter mainly of medium-aged groups of offenders.

Members of groups prosecuted on the basis of the provision of participation in criminal conspiracy are almost never recruited from amongst so-called white-collar individuals or person with higher education level or social status. The files did not contain data on attained level of education, but from other characteristics it was found that university education is absolutely an exception and not even secondary education prevails. The most frequently listed profession was indeed a private entrepreneur, but this is not possible in this case to be understood as an indicator of such a higher status. But as already stated in other matters, it does correspond to the character of crime and the degree of development of an organized nature for such prosecuted cases.

Data on previous crimes are not conclusive amongst foreigners, because punishments are only known if adjudicated in the CR, but even so, the proportion of those already punished individuals amongst foreigners was one third. Amongst Czech citizens, most were convicted at some point in the past. There were thirty-seven repeat offenders of a total of forty-seven, i.e. 79 % (in the wording of criminological recidivism) who were convicted pursuant to Sec 163(a). Only ten persons were thus first-time offenders at the time of being convicted pursuant to Sec 163(a).

Around a third of all convicted offenders had been convicted already three times and more in the past. The offender – a Czech convicted for a crime committed in criminal

⁴ At the time of resolving this project, two cases popular in the media (case of Berdych and the case of Berka) charged and tried as criminal conspiracy had not yet been adjudicated.

conspiracy is in greater measure a repeat offender, whose criminal career began at a relatively young age, and in whose criminal career to date there have been mostly property and less serious crimes committed. Violent crime (aside from bodily harm, which with a certain amount of probability could be attributed to fights) appears only seldom in the crimes to date. It is generally the case that the most serious crimes appear rarely: burglary and illegal possession of arms were found only once in the previous criminal career of members involved of criminal conspiracies; there were three cases of drug-related crimes, and murder did not appear. Thus persons convicted for participating in criminal conspiracy may not be labeled as the violent offender type.

It would seem that participation in criminal conspiracy amongst these offenders is a kind of further developmental step in their criminal career (amongst the majority of repeat offenders, in total amongst thirty-three were convicted on the basis of Sec 163 (a) at their last recorded conviction to date), but with regard to the exceeding character of crime committed in criminal conspiracy, it has been found rather that this does not concern some major qualitative shift in crimes, and definitely not towards higher level of qualification of crime or greater engagement in violence. It was not found that some of the offenders were convicted repeatedly for participation in a criminal conspiracy.

In the comparative sample of offenders convicted or charged with serious crime committed in an organized group, the representation of violent crime is higher than for offenders convicted on the basis of Sec163 (a). In terms of methodology, this comparative group however may not be considered a control group, and comparison only provides a basis for orientation.

Despite this, in the criminal career to date amongst members of the comparative sample, there is a significant representation of the crime of burglary, which may be considered to be characteristic for this group; but there is much higher representation of theft, fraud, illegal possession of arms and partially also illegal production and possession of narcotics and psychotropic substances and poisons, and extortion. So this group of offenders definitely appears to be more dangerous. Their relatively faster criminal career, marked in the past by serious crime, culminates in the most serious crimes. In any event, it is seen that for groups against who the provision on criminal conspiracy has been applied, expressions of violence are more rare than dominant.

Personality psychological examination of incarcerated persons convicted of a crime committed in an organized manner (thus not just in criminal conspiracy) in comparison with persons incarcerated for a comparable crime, but not committed in an organized manner, has not found any major differences. Both compared groups are most probably derived from the same basic group - a group of persons with criminal orientation, or with a criminal life style.

The personality of a person convicted of some organized crime may be briefly described by egocentricity and demoralization. This means disregard towards others and standards, increased interest in oneself, of one's own interests and problems, and negative emotional disposition, a kind of "central" dissatisfaction. They only differ clearly from those not convicted of some organized crime but similar crime in an unorganized manner in that they more easily come to terms with the situation of long-term imprisonment, they do not experience depression and are more sociable. Increased sociability is apparently what facilitates their conspiracy within criminally organized groups.

Opinions of employees of bodies responsible for criminal prosecution agree on the fact that organizing illegal migration is not considered to be the dominant form of organized crime. The various forms of fraud or economic crime are considered to be dominant, but are only seldom prosecuted as criminal conspiracy. Thus it has been repeatedly confirmed that as opposed to other forms of organized criminal activity, for cases of organizing illegal migration, the elements of criminal conspiracy are relatively easier to prove. Respondents also pointed out the fact that current criminal organizations are known for a looser character of organization, which further confounds the proving of elements of criminal conspiracy.

A large number of forms have been found of crimes perpetrated by Czech offenders of organized crime, which would indicate that Czech organized crime has already developed to a significant size. It is a surprise to a certain extent that in this context, police officers have ranked drug-related crime even behind economic, property or violent crime. Public prosecutors consider serious economic and financial crime along with drug-related crime as the most frequent forms of organized crime amongst Czech offenders.

In an additional research probe, police officers stated that the reason for more frequent prosecution of organizing illegal migration as criminal conspiracy, and on the contrary the small number of such prosecuted cases of drug-related crime they see are mainly found in the character of those forms of criminal activity. Organized drug-related crime represents a more

complex, more conspiratorial form of organization that is harder to uncover and against which it is much more complicated to prove lawfully determined elements of criminal conspiracy. A small part of those questioned attempted to find reasons in legislation and in the practice of bodies responsible for criminal proceedings.

According to respondents, Czech offenders differ from offenders who are foreigners mainly in their lower level of applied violence and aggression, but also in their looser organizational structure, less strict hierarchy and larger probability of gaining their testimony. It is necessary to note the opinion of respondents that Czech offenders try harder to influence official structures of state administration and public authority.

In the proposals for actions leading to increasing effectiveness of the possibilities of using the provision of criminal conspiracy, rather than amendment of its definition, amendments are drafted that concern the possibility of clarifying and proving cases of criminal conspiracy. Mainly proposed is the relaxation of the possibility of implementing expeditious investigative means, mainly eavesdropping, at a time prior to commencement of actions of criminal proceedings. Several times the subject has been brought up of introducing the institution of a target witness, of facilitating the activities of an agent-provocateur and of greater tolerance of potential commitment of a crime by an agent while uncovering the activity of criminal conspiracy.

One thought to consider should be the majority opinion that a clear definition of an organized group as opposed to criminal conspiracy or as opposed to an organized criminal group, would be beneficial. Certain inspiration towards considerations in this direction could be found in the definition of an organized group used by the UN Convention Against Transnational Organized Crime.⁵

Translate by: Marvel

Scheinost, Miroslav – Netík, Karel: Český organizovaný zločin v mezinárodním kontextu. Praha: IKSP 2010. – 102 p. ISBN 978-80-7338-104-2.

⁵ UN Convention and further documents on organized crime. Prague: ICSP 2001.

The Criminal Career of Drug Offenders

Researcher responsible: Ivana Trávníčková

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The submitted study “*The Criminal Career of Drug Offenders*” forms a part of the main task, Research and Analysis of Serious Forms of Crime, included in the Medium-term Plan of Research Activity of the Institute of Criminology and Social Prevention for the Years 2008 – 2010, approved by the Minister of Justice on 07 May 2008. It was incorporated into the plan on the basis of Government Decree no. 64/2008 on the Conception of the Fight Against Organized Crime.

The research aimed at persons convicted by a court for committing the selected drug-related offences, and thus whose records are found in official statistics held on convicted criminals. The research concentrated separately on perpetrators of an offence pursuant to Sec 187 of the Criminal Code, which was undoubtedly the most frequented drug-related offence (6,768 persons were convicted in 2002-2007) and included mainly production and distribution of narcotic and psychotropic **substances (“NPS”)**, including international drug trafficking, and an offence pursuant to Sec 187(a) Criminal Code (675 persons were convicted in 2003-2007), which included possession of NPS in a quantity larger than small without a proven intention to provide the drug to a third person. An offence pursuant to Sec 188 of the Criminal Code (manufacture and handling material used for manufacture of drugs) was as a main offence much less frequent and rather was committed in concurrence with an offence pursuant to Sec 187 of the Criminal Code. The offence of propagation of drug use pursuant to Sec 188(a) of the Criminal Code was statistically the least frequent drug-related offence, and was highly specific as opposed to the others (included various forms of proliferation of using not just narcotic and psychotropic **substances, but all addictive substances except for alcohol**). Therefore the research aimed at the perpetrators of offences pursuant to Sec 187 and 187(a) of the Criminal Code.

The subject of research were the Czech citizens who were convicted in the Czech Republic in 2002-2003 for the offence of unauthorized manufacture and possession of narcotic and psychotropic substances and poisons pursuant to Sec 187 and Sec 187(a) of the Criminal Code. This time span was chosen in relation to the development of legislation concerning drug-related offences so as to be able to cover roughly the same and sufficiently lengthy period both before (from 1999, when amendment of the Criminal Code introducing the offence pursuant to Sec 187(a) took effect), and after (to the time of gaining information from the Penal Register).

The proportion of foreign citizens amongst persons convicted of a drug-related crime in the CR has been fluctuating around 5 % for the past few years. At the same time, data that can be gathered regarding these offenders from official statistics and registers (criminal career to date, socioeconomic characteristics), is usually very fragmented and incomplete, because it concerns the previous life of the offender abroad, thus they do not appear in Czech records but in foreign ones, to which the authorities involved in criminal proceedings do not have access, or such access is complicated, and the offenders do not tend to be willing to provide complete and truthful information in this respect. Therefore research has focused on offenders from the ranks of Czech citizens. Details on the composition of both research groups are listed in the applicable chapters, summarizing the results of the analysis of data from the Penal Register. We received information on the offenders, which is filed in the Penal Register, to September 12, 2008.

The main benefit of the research should be found in the assembly and detailed analysis of the data on the criminal career of a wide sample of offenders of drug-related crime, gained mainly from the Penal Register. There are no similar findings in the CR because the methods used up till now for attaining information on the criminal career of offenders concern just a small sample of offenders (analysis of court files), or provide just basic and general information (analysis of data from police and judicial statistics).

During research, the following methods and techniques were applied:

Study and analysis of specialized literature and other specialized resources (research reports, annual reports...) - for attaining a current overview on the attained status of knowledge of the subject of research examination.

Analysis of statistical data of judicial bodies on offenders of drug-related crime – for attaining an overview of the development of registered crime and the number of offenders

Analysis of data from the Penal Register – as the key technique, it enabled mapping of previous and consequent criminal career of perpetrators of drug-related offences, aimed specifically at:

- Data on Czech offenders convicted of an offence pursuant to Sec 187 of the Criminal Code in the years 2002 and 2003 – from a total of 2,373 persons, data on 889 persons was gained by random sampling in cooperation with the Penal Register,
- Data on Czech offenders convicted of an offence pursuant to Sec 187(a) of the Criminal Code in the years 2002 and 2003 – entire group, i.e. complete sample of 324 persons,

The data attained was elaborated with the help of the statistics program SPSS. If the text points to statistically important differences, it means the differences at a significance level of 95 % ($p < 0.05$). Data from the Penal Register was obtained in an anonymized form, and while elaborating such data it was handled in accordance with legal regulations concerning protection of personal data.

Analysis of selected sample of court files – files were requested on the basis of data from the Penal Register for the years 2002 and 2003 for selected persons from a sample, so that the information from the Penal Register could be augmented with data of a socio-demographic character and other more detailed information.

Aside from the methodological issue, it is necessary to also see certain *determinants*, in which elaboration of the stated problematic moves:

- frequent drug abuse remains hidden for a relatively long time from the closest social circle (family, school), but also from physicians, the same as a crime perpetrated in conjunction with a drug problem,
- we do not have available empirical data from research directly focused on the relationship between drug abuse and crime,
- therefore we must especially keep in mind that what we sometimes call data, experiences, etc., cannot be judged in isolated fashion, but always in relation to a certain sphere of human behavior and to demands placed on the level of decision-making,

- data from the Penal Register expresses the final convictions of individual offenders. It thus does not provide a picture of all crimes that the offender has committed, but only those that were ascertained and for which he was convicted. One must constantly keep this in mind when interpreting the results.

The definition of the term drug has, like many other terms, different variations used by experts and the general public. In legal terminology, the actual term drug itself is not used directly. Legislation list substances to which certain limiting measures apply that regulate the handling of these substances and the methods and rules of their control. An Addictive Substances Act no. 167/1988 Coll reflects non-criminal obligations that arise for the Czech Republic in consequence of ratifying UN Drug Conventions. In relation to crime, the Criminal Code introduces on the general level two basic terms - the wider term addictive substance, and in accordance with the definition of the World Health Organization and international agreements in this area, it establishes the term narcotic and psychotropic substances. Substances found amongst narcotic and psychotropic substances are established in appendices no. 1 through 7 of the Addictive Substances Act. Lists of these substances are also binding from the aspect of criminal law protection against drug abuse. The law also establishes what is considered to be preparations containing a narcotic or psychotropic substance and precursors used for illegal manufacture of narcotic or psychotropic substances. The most widespread drug in our society – alcohol, is categorized as an addictive substance, by which the Criminal Code further understands narcotic and psychotropic substances and other substances, which are prone to negatively influence the psyche of a person or his/her control or cognitive capabilities or social behavior.

Although drug abuse mainly brings serious health consequences, it is not possible either to dismiss its social consequences. The undesirable effects of drug abuse are given not only by their effect on an individual, but also by the fact that they become the determining factor in coexistence of the individual with other members of society. Changes in the abuser's behavior occur both during intoxication and when he is abstaining. It is very difficult to establish or predict which period is the most dangerous for the abuser (drug user) or his surroundings. The expressions of intoxication vary between drugs, both in regards to the chemical affects of the used substance, and to the reaction of a certain individual in a specific situation. The drug user is less apt to subordinate to social and legal norms, his contacts with ordinary society are diminished, and a communicative block grows leading to a certain stereotype all the way to

social isolation. But as an individual with changes in mental activity, he is still a part of the same social structures, which of course are not expecting such a changed individual. The result of this long-term drug abuse is therefore not only the failing functions of the individual in society, but also the ineffectiveness of normal social mechanisms affecting this individual. *The social danger of drug abuse is found in the fact that the immediate causal relationship between the stimulus and effect (disruption of social relationships) is not clear and only appears by an accumulation of changes over a longer time period.*

With regard to the stated findings, *it is possible to define a drug from a criminological aspect* as a substance:

- whose application should influence the psychological condition of the individual and is abused without regard to the possibility of causing health complications. Its use may cause a habit leading to dependency (psychological, physical or both),
- its systematic use determines the coexistence of the individual with society and is in conflict with socially acceptable conventions and set of values,
- its abuse causes breakdowns of social relationships in micro, mezzo and macro-structural levels and the degree of disintegration of social relationships appears in the form:
 - a) simple – school or work failures, loss of feeling of solidarity with his closest people,
 - b) asocial - socially unhealthy behavior, which still is not punishable in the wording of the Criminal Code,
 - c) antisocial – crime.

Drug-related crime was penalized in the CR until the end of 2009 according to four provisions of Criminal Code no. 140/1961 Coll., as the offences of unauthorized manufacture and possession of narcotic and psychotropic substances and poisons pursuant to Sec 187, Sec 187(a) and Sec 188 of the Criminal Code, and as the offence of propagation of drug use pursuant to Sec 188(a) of the Criminal Code. The new Criminal Code no. 40/2009 Coll., effective as of 01 January 2010, has brought new provisions on drug-related offences, which are derived to a certain extent from former definitions; nevertheless they also contain important changes. Our research takes up career criminal offenders lawfully convicted of offences pursuant to Sec 187 and Sec 187(a) of the Criminal Code in the years 2002 and 2003, whereas the data on their criminal career was attained in September 2008. For this reason and for our purposes, we left out the new penal legislation, because the examined part

of the criminal career of the offenders that we selected played out under the Criminal Code no. 140/1961 Coll.

Drug-related offences represent in the long term around 1 % of all offences registered by Czech police. The proportion of persons convicted in the CR for drug-related crimes to the entire number of convicted persons over the past eight years amounts to 2 %, and it was even lower in years prior to that. Despite this, it is not possible to trivialize the issue of drug-related crime. A characteristic feature of drug-related crime, as a so-called “victimless” crime, is high latency. One may assume that drug-related offences registered in official statistics are but a small part of the actually perpetrated drug-related crime. Aside from this, the drug-related offences pursuant to Sec 187, Sec 187(a), Sec 188 and Sec 188(a) of the Criminal Code represent just a small part of criminal activities relating to the basic problem, which is illegal drug use. In this context, one should consider no small number of offences committed under the influence of NPS (violent, sexual, property crime) and chiefly acquisitive offences. And finally drug-related crime is only one of a series of mutually relating socio-pathological phenomena that accompany illegal drug use (organized crime, truancy, domestic violence, prostitution, spreading the HIV virus and hepatitis, etc.). In these contexts it is not possible to underestimate even a relatively low number of registered cases.

Worldwide, illegal trafficking in NPS is one of the most profitable forms of illegal activity. Due to significant profits that come from distributing drugs, this activity brings with it also other forms of crime, either as an accompanying phenomenon (violent crime, money laundering...), or as a result of use of such accumulated funds (corruption, trafficking in weapons), whereas these phenomena blend in together. New groups of drug-related offenders appear, and these offenders also use new means and methods. Drug crime, mainly illegal trafficking of NPS, is one of the most serious and widespread crimes even within the framework of organized crime itself.

The concept of a criminal career is used for describing the beginning, continuation and end of criminal activities of the repeat offender. The need is emphasized to research problems relating to the fact of why and when persons begin committing crimes, why and how they continue committing crimes, why and if at all commitment of crimes is occurring more frequently or in a more specialized way, as well as why and when persons stop committing crimes. In the concept of the criminal career, important events also have their place in the life

of the individual and their effects, which may appear between the beginning and final phases of the criminal career and possibly interrupt its progress (ex. serving a punishment, marriage, aging of the offender, etc.). The term criminal career contains aspects of the development of individual crimes, thus anticipates the beginning, duration and possible end of committing crimes, attention is given to changes of criminal activity of the individual in time, which consequently enables aggregation of this data for groups of offenders. Research of the criminal careers concerns not just the criminal activity of individuals, but also groups, such as families, gangs, and communities.

The existence of a relationship between drug use and commitment of crimes is relatively richly described in professional literature. The character of this relationship however is far from being so clear. At the very least, it is not possible on the basis of existing findings to state absolutely that drug use would lead directly to committing a crime. Causality amongst the listed phenomena has not been proven. Their correlation rather comes from the fact that both depend on similar factors including socio-economic deprivation. Risk factors may be either indicators (symptoms) of antisocial behavior or its possible causes. That is, certain types of behavior may either reflect an anti-social tendency or be its cause or both. Drugs in this sense may symbolize a life style (and thus be indicative) or drug use may evoke antisocial behavior under its influence (and thus be causative). Criminal activity and drug use thus may enhance each other in the sense that persons from a deviant criminal environment are at elevated risk of developing drug problems, and persons with drug problems are on the contrary exposed to a higher risk of engaging in criminal activity.

Research from the area of criminal activity relating to drugs overlooks drug-related crime itself in a more narrow sense. The reason is the fact that the link between drugs and crime has a differing nature in this case – the context between drug use and crime here arises rather from the law than on a mutual influence of these phenomena.

The subject of the presented research was the criminal career of offenders, who in the years 2002 or 2003 were convicted for drug-related offences pursuant Sec 187 or Sec 187(a) of the Criminal Code. Both groups were researched separately and their consequent comparison was performed. We obtained anonymized records from the Penal Register on a total of 1,213 drug offenders. From this, the examined sample of 889 persons gained by random sampling formed over two-thirds of offenders convicted in the years 2002 and 2003

for an offence pursuant to Sec 187 of the Criminal Code. A complete group of all offenders, citizens of the CR convicted in the years 2002 and 2003 of an offence pursuant to Sec 187(a) of the Criminal Code was represented by 324 persons.

The criminal career of offenders convicted in the years 2002 or 2003 for an offence pursuant to Sec 187 of the Criminal Code ("Sec 187 Group") may be briefly characterized according to the analysis of data in the Penal Register as follows:

- Approximately 28 % of the sample they were convicted for the first time between 15 and 17 years of age, 63 % by 20 years of age and 96 % by 30 years of age.
- Amongst men, there was significantly higher portion of those convicted for the first time between 15 and 17 years of age (29 %); between women of those convicted for the first time between 21 and 30 years of age (44 %).
- A total of 68 % of offenders were not even once convicted as a juvenile; significantly more of such offenders were between women (80 %).
- One third of the sample had the only one criminal record. On the contrary, about 44 % of the sample can be labelled as a multiple re-offenders (at least 4 convictions).
- There were significantly more women amongst persons convicted only once in a criminal career.
- At least once over the course of their criminal career, 56 % of offenders were convicted of a property offence (significantly more men), 22 % of a violent offence (significantly more men), and 3 % of a sexual offence.
- Amongst sentences imposed to individual offenders during the course of the entire criminal career to date, the largest proportion was a suspended sentence, which was imposed at least once to 84 % of offenders, followed by a prison sentence (47 %) and community service (33 %).
- Amongst offenders, 47 % had the experience of serving time in prison, of whom 43 % experienced this once and 83 % had at most three such experiences.
- Compulsory treatment was imposed at least once to around 10 % of offenders.
- Approximately 3/4 (three quarters) of the sample were convicted for drug offence just once; on the other hand only 3 % of the sample were convicted for drug offence more than 3 times. So we cannot speak about the widespread type of multiple special re-offender, at least in terms of reconvictions.

- Nearly a third of the offenders were convicted in their criminal careers only for drug-related offences, of whom 91 % only once.
- There was a significantly higher proportion of women amongst persons convicted exclusively of a drug-related offence.
- Between those with convictions exclusively for drug offences there were significantly higher proportion of people, who were for the first time convicted between 21 and 30 years of age (45 %), on the other hand between offenders committing different offences there was significantly higher proportion of those with first conviction in the lowest age category of 15 to 17 years (juveniles) – 34 %.
- 20 % of the sample have conviction for the drug offence as a first conviction of their criminal career that has subsequently continued.
- Approximately one half of the sample was convicted for drug offence for the first time between 21 and 30 years of age. There is also quite high portion of those convicted for drug offence for the first time in an early age – 34 % by 20 years.

The criminal career of offenders convicted in the years 2002 or 2003 for an offence pursuant to Sec 187(a) of the Criminal Code (“Sec 187(a) Group”) may be briefly characterized according to the analysis of data in the Penal Register as follows:

- Nearly half of the offenders in the sample commenced their criminal activity by the age of 20 and 94 % of all offenders commenced their criminal career by the time they were 30. A full fifth of offenders were first convicted as juveniles.
- Nearly three-quarters of offenders were convicted of a drug-related offence only once. The proportion of offenders in whose criminal career there appeared a higher number of convictions for drug-related crime (5 – 10 x) did not even reach 5 % altogether.
- Offenders who were also convicted for other than drug-related crime had a statistically much longer criminal career – they were a large majority in the group of offenders whose period between the first and most recent conviction was longer than 5 years.
- In the criminal careers of 103 offenders (32 %), there were no convictions for other than drug-related crime. For nearly half of the offenders (47 %) who were convicted also for other than drug-related activity, the most frequent crime outside of drug-related crime was theft. The crime of obstructing the execution of an official decision pursuant to Sec 171 of the Criminal Code was the most frequent crime outside of

drug-related offences for 7 % of offenders, and the crime of bodily harm pursuant to Sec 221 of the Criminal Code for 4 % of offenders.

- A statistically significant difference as opposed to other offenders in the sample was found amongst those offenders who within the framework of their basic conviction were convicted as juveniles. These offenders over their criminal career to date also committed other than drug-related crimes much more frequently.
- The most frequent punishment in a criminal career of over half of the offenders was a suspended sentence. A quarter of offenders most frequently received as punishment a prison sentence. Another punishment that was the most frequently imposed sentence for a noticeable proportion of offenders (12%) is the sentence of community service.
- Roughly 30 % of offenders in the sample were to the date of gaining information convicted in their criminal career only once. Over half of the offenders (55 %) were convicted at the most three times. Recidivists with a number from 4 to 10 convictions formed 34 % of all offenders.
- Nearly a half of the examined offenders were convicted for a first time by the age of 20, and 94 % by the age of 30. A full fifth of offenders were convicted for a first time as juveniles (15-17 years of age). Over half the offenders were most recently convicted at an age of between 21 and 30, and another quarter of offenders finished their criminal career at an age of between 31 and 40.
- As for the period since the last conviction or release from imprisonment until the date of gaining information, only 5 % of offenders had this period longer than 5 years. On the other hand, a relatively significant number of offenders (around 20 %) continued in criminal activity until the end of the monitored period (i.e. the period since the last conviction or release from imprisonment reached a maximum of 2 years).

Within the framework of compiling results of the analysis of data extracted from the Penal Register, we also performed comparison of both examined groups (Sec 187 Group and Sec 187(a) Group) from the viewpoint of certain aspects of the criminal career. For comparing both research groups, no major differences were ascertained that would justify a claim that these two groups of offenders differ fundamentally from each other in terms of the course and structure of the criminal career. Nevertheless, certain statistically significant differences were found:

- In the Sec 187(a) Group there were significantly more offenders who during the course of their criminal career to date were not convicted even once as juveniles.
- Between offenders of Sec 187 Group there were significantly more of those who were convicted for the drug offence for the first time in low age - between 15 – 17 years (11 % - 4 %) and between 18 – 20 years (23 % - 16 %).
- As for the age of the first conviction there were significantly more of those convicted for the first time in low age 15-17 let (28 % - 20 %) a 18-20 let (35 % - 28 %) between offenders of Sec 187 Group, while between offenders of Sec 187(a) Group, there were significantly more of those convicted for the first time between 21 and 30 years (45% - 33 %).
- In the Sec 187 Group, there were significantly more offenders for whom a long period has passed since the last conviction or release from imprisonment (from over 5 and up to 7 years) to the date the information was obtained from the Penal Register.
- One interesting finding is that in the Sec 187(a) Group, there were significantly more offenders who had multiple experiences serving time in prison. In this group, there were 9 % of offenders serving time in prison 6x – 10x, whereas in the Sec 187 Group, only 2 % of offenders have the same frequency of experiences with imprisonment.

The Penal Register does not contain more detailed qualitative data on offenders. In consequence of this, it is possible to extract from it more a description of the history of the reaction of the criminal justice system to offences committed by individual offenders rather than a complete picture of their criminal careers, which would include possible explanation of their criminal behaviour. For this reason, we tried gaining additional information from court files. Of course these too regularly lack more detailed and reliable information on the life and circumstances of the accused. From the aspect of studying the criminal career of the offender, these are generally a usable source of qualitative information on the life of the perpetrator if they contain an expert opinion, which records the family and personal anamnesis and discusses the mental state of the offender.

Overall, we had the opportunity to examine 45 court files on 31 offenders, including 26 files on 17 offenders from the Sec 187 Group, and 19 files on 14 offenders from the Sec 187(a) Group. More detailed information on offenders in the form of expert opinions contained files concerning 8 offenders from the Sec 187 Group and also 8 offenders from the Sec 187(a) Group.

In regards to the small frequencies of analyzed information, it is possible to rather indicate certain more general conclusions – as it is listed in the applicable chapter. While conscious of this significant limitation, it is possible to state in unison with the findings gained by the analysis of data in the Penal Register that drug offenders, if they are not explicitly persons whose criminal act was just an exception, also commit frequent property crimes. And if the offender is characterized as a “drug re-offender” (i.e. a person who has committed drug-related offences repeatedly), both forms of monitored drug offences are mostly found in his/her criminal career, i.e. an offence pursuant to Sec 187 of the Criminal Code and an offence pursuant to Sec 187(a) of the Criminal Code.

The presented results indicate that as regards the course and structure of the criminal career, there are no fundamental differences between perpetrators of an offence pursuant to Sec 187 of the Criminal Code and perpetrators of an offence pursuant to Sec 187(a) of the Criminal Code. For instance, it cannot be concluded that offenders of Sec 187 Group are more dangerous (from a point of view of the course and structure of their criminal career) than those of Sec 187(a) Group, although these two sections of Criminal Code have criminalized different and differently serious types of behaviour (as indicated also by punishment rates, stated for these two offences by the Criminal Code).

The findings of our research rather provide support to the theory that committing drug offences, although their definitions are contained in different provisions of the Criminal Code, is simply a part of the wider social phenomenon, which is unauthorized handling of narcotic and psychotropic substances. Thus one cannot be surprised that in the criminal career of offenders, it is often possible to encounter both offences.

This conclusion also to a large extent dispels fears, relating to re-criminalization of possession of drugs “for personal use”, that the provision of Sec 187(a) of the Criminal Code will be regularly used to criminalize users, who would otherwise not come into contact with the criminal justice system.

Translated by: Marvel

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Endangered Youth between Prevention and Repression

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The publication ENDANGERED YOUTH BETWEEN PREVENTION AND REPRESSION attempts to ponder from different angles upon the lingering criminological question, analysed in various different ways: why is there so little success in curbing asocial conduct in young people? Research efforts by criminological staff have focused on tackling this matter on the basis of a commission arising from CR Government Resolution No. 1150/2007.

The introduction shows that on the basis of different criminological theories analysis there does not exist any integrative or synthetic theory explaining causes of crime origins as such or rather on the basis of which could be definitely predicted a delinquent development of a particular individual. It certainly is possible to find some causal links among individual elements of socialization system, among biological, psychological and social determinants but the human life is influenced by so many different phenomena that the resulting „product“ is possible to estimate only with a greater or smaller probability. Of course it is necessary not to give up but to try to find factors whose existence or mutual combination can cause the development of criminal behaviour with greater or smaller probability. The form of this behaviour often depends on randomness, so called „criminal opportunity“ and on present individual predispositions of the subject committing criminal act.

At the present time, Act No. 218/2003 Coll. has for some time been applied within juvenile jurisprudence. This act contains – as against the past – a whole range of modern elements for dealing with juvenile delinquents. This law has eliminated several legislative shortcomings, amongst other things it has expanded the all too narrow range of possible legal measures, emphasised the principle of the auxiliary role of punitive repression and mainly

provided the opportunity of enhancing individualisation those measures. One of the aims of the research which is reported upon in this publication was to find out to what extent application in practice by the authorities operating in accordance with Act No. 218/2003 Coll. is currently achieving the intended ideals and goals of the act, whether problems arising over the initial years of its being in force have endured or whether a solution has been found, either by accepted practice or by means of separate amendments.

The empirical investigation among judges and prosecutors was conducted by a questionnaire method. The questionnaire was divided into thematic circles which corresponded on the one hand with given problems and on the other hand with other areas connected to young crime offenders treatment. A questionnaire investigation can be considered as representative because 86 district public prosecutions and also 86 judicial districts were questioned. The return was very high specially responses from public prosecutions – 98 %, from judges we got a very positive response – 84 %.

It emerged that at present there are basically no problems on public prosecutions and law courts with creating a system of specialization on juvenile criminal activity according to the demands of the law 218/2003 of Collection of Laws. It is stated generally in the publication that the juvenile justice act achieves the declared goals in terms of its correctional effect on youths. From a whole range of findings, we should point out that the respondents value the high-quality cooperation with the Probation and Mediation Service, but also there is considerable dissatisfaction with the continuing lack of probation programmes and probation-type programmes. The respondents generally express agreement with retaining the current age of criminal liability at 15, although more than half of them are unhappy with the provisions for custody of juveniles. The biggest difference between the opinions of judges and state prosecutors was found in the question as to whether criminal and non-criminal matters should be a combined for the attention of the same youth specialist. Combination of agendas has considerably greater support of state prosecutors than with judges.

The practical effect of the law no. 218/2003 is possible to evaluate by a number of research methods. In this research the empirical data concerning reaching of turning away of juveniles from further criminal activity committing by application of probation officer supervision we have been investigating using the criminal files analysis. Juvenile offenders punished by supervision were compared with checking sample of juvenile offenders who

were sentenced – also for a theft – to criminal measure of conditionally suspended sentence without an application of supervision of a probation officer (according to §24 letter g).

This research probe has shown amongst other things that although the juveniles who were imposed supervision reoffended only slightly less than the juvenile delinquents without supervision, nevertheless respondents with probation supervision subsequently committed less serious crimes (of a nature of a certain degree of excess) and committed rather fewer offences other than property-related. A more considerable difference was found in the interval of recidivism, in the sense that the juveniles who had been sentenced to suspended prison sentences for a probation period without probation supervision were more often reoffend within one year, while juveniles with supervision were more likely to reoffend after longer intervals. Comparison of both sample groups showed, however, that approximately three-quarters of youth offenders – regardless of application or non-application of supervision – reoffended during the three years subsequent to sentence being passed.

So, we have at our disposal an advanced legislative instrument for work with delinquent youth – a juvenile justice act which must be fundamentally evaluated positively. The possibility of actual application of the measures contained within it, however, is at an alarmingly unsatisfactory level. The common denominator is a lack of experts. Insufficient staff levels at the Probation and Mediation Service means mainly that supervision, one of the most important instruments for controlling the behaviour of a young delinquent, can be applied only more or less formally. This situation is worse than if supervision was not imposed at all, because this like is saying to the young person, who already has a problem with respect for authority, that the state does not have sufficient powers to enforce its own verdicts. Judges and state prosecutors evidently fairly clearly realise this, because they utilise this instrument relatively rarely (certainly less than the authors of the act had intended).

Even more serious is the situation in the area of probation programmes which should be another pillar in diverting young people away from an asocial course in life. Accredited probation programmes are few and are located unevenly around the country. This does not facilitate actual access to them for children who come generally from underprivileged social strata. Not even the content of these programmes can cover the whole range of activities and processes necessary for re-socialisation of endangered youths. A lack of experts is also evident at an earlier stage – in terrain social work which amongst other things should catch

the first signals of defective behaviour in an individual or an unsatisfactory situation for being brought up in his/her family. Active screening remains as a topic only of specialist conferences and the wishes of people involved in preventative work.

After such considerations, two separate tasks concerning preventative activities were introduced into the research plan. The first of them concentrated on the work of non-profit organisations in social prevention, the second focused on the question of why in some cases preventative efforts failed and the child ended up on a deviant course in life.

Investigating non-profit sphere there have been used questionnaire methods distributed by electronic mail to selected sample of NGO. This sample contained organizations which were in our former research action (2010) marked by regional experts as well functioning and beneficial. The sample was intentionally designed as selection of preferably very good subjects from an infinite number of existing NGO.

It has become clear that, from a prevention point of view, the most successful organisations tend to be branches of diversified organisations which therefore have well-developed knowhow, methods and control mechanisms. Such organisations have been operating in the field for longer and without interruption, have a more stable number of staff and with good qualification preconditions for preventative work. Successful organisations have fairly strict conditions on qualifications for staff joining them; also (in accordance with the Social Services Act) their staff undergo further training. Their operation is also regularly reviewed, in the vast majority of cases by an external supervisor. Part of their work lies also in evaluative processes (although here there is certain room for improvement). All size categories of successful preventative organisations use the work of volunteers. It is generally the case, however, that those which are not the branch of a larger entity has fewer permanent staff, often none (all working on a part-time basis).

Organisations direct their efforts evenly between leisure activities (primary prevention) and work with youths already socially malfunctioning to some extent (secondary prevention). The highest praise tends to go to those NGOs which work in the area of drug abuse prevention or with drug addicts themselves (tertiary prevention), in addition to those working with minorities and those providing psychosocial advice.

Half of the NGOs researched operate on a plan for several years in advance, others, more than a third, plan for a year in advance; only a small proportion has only a framework plan of operations and react to momentary demand for services. The greatest source of funds for operation is direct subsidy from state institutions, regional subsidies taking second place. Financing almost always comes from several sources, an organisation's stability ensured most often from municipal funds which bridge the periods between separate subsidies from other sources. Almost a half of the respondents consider support from the municipality as on the increase or at least stable; almost a third, however, mentioned fluctuation of favour of municipal bodies connected with changes in leadership.

It is the professional quality of staff working under quality leadership, in a stable team, personally motivated towards work in the social work, which is decisive for the success of the activities of an organisation; in addition to this, quality communication and cooperation with the municipality, respect for the needs of the clients and their trust. The service which an NGO offers must be actually necessary for the local community and sufficiently flexible to changes in the social field. A great advantage is free provision and accessibility of services which supplement those offered by other organisations in the area, thus creating a quality and comprehensive social system of prevention at local level.

Complementarily to this fact-finding on the functioning and applicability of organisations providing valuable preventative services, we addressed the question as to why some young people are insufficiently reached by preventative activities. For this purpose, a survey was performed among inmates of the diagnostic institute for youths (DÚM). Research methods here have been structured interview, test methods and studying of documents relating to client's career.

The survey confirmed the findings that the social background of the clients is in a vast majority of cases somehow unsettled (many and various more or less obvious sociopathological phenomena). Over the course of their lives, juveniles have lacked a firm (i.e. relatively invariable) family foundation, often not being precisely aware at present of who belongs to their family and who does not. The chaos in their family gives the endangered juveniles a sense of insecurity, their reactions to this often leading to asocial activities.

The social background of clients is not solid in the area of schooling; their poor performance often results from – amongst other reasons – incorrect placement in a certain type of school and a lax attitude of the client's family to the child's school activities. School for endangered children therefore becomes a place which they associate with failure, humiliation and derision, a place which is to be avoided at all costs or to actively fight against. Here we find the roots of problems with discipline (directed against teachers, classmates and the institution of school as such) or of a tendency to run away (truancy) and seeking solace in a group of similarly unsuccessful peers or older asocials.

In the respondents' case histories, we also find symptoms of a breakdown in positive friendships and extracurricular interests which are often disrupted by unfavourable life situations encroaching on the lives of endangered children. Serious family disruptions are accompanied by changes of those into whose care the child is entrusted, moving house, deterioration of financial situation affecting extracurricular activities, removal from activities of a positive nature, etc. The research demonstrated that participation in organised activities of the young people under scrutiny is, for one thing, at a low level, and for another, very few of them last out in any of these activities – for subjective and objective reasons – for a long period of time.

It is evident that a fundamental mistake in the fight against development of asocial or even antisocial behaviour in the juvenile respondents lay in the fact that some well-developed preventative system did not notice in time problematic developments in them. The children's problems are often identified too late; by the time action is taken by a youth-care authority or other specialised body, the sociopathology is often of a serious nature. The problems of endangered children are often discovered by chance and unsystematically. We see here that it is essential to develop a methodology combined with a "System of Timely Intervention" which should prevent necessary re-socialisation support being provided to the child too late. This system is based on the idea that it is necessary to identify the endangered individual in good time, submit information concerning his/her endangered situation to the competent bodies and most importantly to make haste with application of effective preventative and corrective measures. These must be focused otherwise than just on leisure time activities, but on gradual change of the child's personality structures in the modified environment of his/her family by using all possible available means acceptable to the child.

The last piece research contained in the publication attempts to map personality traits of juveniles who are currently serving prison sentences. Psychological examination – despite its many limitations caused by the impossibility of creating a more representative sample group – has come to the conclusion that the vast majority of imprisoned youths are simplex personalities of reduced intellect and limited, undeveloped social and communicative attributes with a poor range of vocabulary, low level of education and with an inclination to take risks.

So, the results of the publication show that we have a modern legal norm at our disposal for dealing with the problem of juvenile delinquency, the adequate use of which is, however, dependant on the real options of alternative treatment of endangered youths – more precisely on high quality, well-staffed and materially assured, functional and informal performance of probation supervision and on varied and available accredited probation programmes. Permanent reduction of the numbers of delinquent youths is, however, linked primarily with timely and adequate preventative work to positively influence proper socialisation of a child in all spheres of his/her social life. For restricting criminality in young children it is necessary to carefully monitor the appropriate development of a child using sensitive screening resources with an aim to make appropriate intervention into the child's life and his/her social background (family, school, extracurricular areas including peer relationships) at the moment when normal socialisation resources have long ceased to perform their role. In such a situation, an important role is played not only by socio-legal protection authorities but mainly by non-government, non-profit organisations active in the area of social prevention. Preventative work should be given a firmer and more comprehensively thought-out framework which would – ideally by means guaranteed by a special law on prevention – ensure systematic access to it, from the principles of broad-based preventative work at a primary level (including creation of an anti-delinquent social climate) through focused secondary prevention of those currently endangered to specialised activities at the level of correctional tertiary prevention. Only in this way can we arrive at a situation where it becomes the exception that young people end up serving a prison sentence, where it may be possible to divert them from a delinquent lifestyle, pointing them towards a happy life without conflict with social norms.

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Alternatives to Custody in Criminal Proceedings

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The Government of the Czech Republic, in its resolution no. 1151 of 15 October 2007, appointed the Minister of Justice with ensuring the carrying out of tasks, resulting from the “Assessment of the Care of Children at Risk System”. Among the tasks listed in the referenced text for the Ministry of Justice is to *“Analyse the possibilities of increased use of alternative measures to custody than under the current legislation, in particular with respect to the possibility of using the electronic monitoring as an alternative to remand juveniles in custody.”* This task was included in the medium-term plan of research activities of the Institute of Criminology and Social Prevention for the period of 2008-2010, with a deadline for finalising the first part of research by the 31 December 2010.

On this basis, in 2009 and 2010, a research project has been realised entitled *“Alternatives to custody in criminal proceedings”*. The object of the research was the legal provisions on alternative measures to custody in criminal proceedings and their practical applications in the Czech criminal procedure. The aim of the research was attaining detailed knowledge about making use of alternative measures to custody in criminal proceedings and exploring their potential use in larger extent. A secondary goal was primary assessment of the potential to employ electronic monitoring within the framework of these measures, and likewise with a view to replace the custody in the cases involving accused juveniles.

In solving the research task the following methods were employed:

- *analysis of the Czech legislation, including the relevant decisions of courts*
- *analysis of the statistical data of the Ministry of Justice, Probation and Mediation Service of the Czech Republic and Prison Service of the Czech Republic*
- *study of specialist literature and official documents*
- *an expert questionnaire survey among judges, prosecutors, and probation officers*

- *analysis of selected court files concerning cases in which alternative measures were taken instead of remand in custody.*

Custody can be defined as an institution of criminal proceedings, by the use of which the accused is temporarily rid of his/her personal freedom, on the basis of a decision reached by an appropriate body, in order to prevent him/her to avoid prosecution or punishment by fleeing or hiding, to obstruct or impede the clarification of the case through unacceptable influence upon the sources of evidence, or to continue in criminal activity. The purpose of custody is therefore securing the accused for the purposes of criminal proceedings and the execution of sentence, preventing the accused from obstructing or impeding the finding of evidence or from avoiding the criminal proceedings or punishment, and potentially preventing him/her from completing his/her offence or committing a new offence.

Legal conditions of remand in custody and relevant proceedings in the Czech Republic are primarily outlined in the first section of the fourth title of part one of the Act no. 141/1961 Coll., on the criminal proceedings (Code of Criminal Procedure), in articles 67- 74a. These provisions closely follow the provisions on fundamental rights and freedoms, anchored in article 8 of the Charter of Fundamental Rights and Freedoms. Czech legal conditions of remand in custody also significantly reflect important international documents, including the Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

Custody is an optional, subsidiary measure, and it is for this reason that modern criminal justice systems include various less intrusive measures, which can replace remand in custody. These measures ensure the presence of the accused persons at court, and prevent them from undertaking actions, which would threaten the criminal proceeding. The chosen alternative measure must give the required effect with minimal intervention in the personal freedom of the suspect or the accused, which must be considered innocent during this phase. Calls for the widest possible range of use for alternative measures instead of taking individuals into custody are the focus of a whole range of international documents (eg. United Nations Standard Minimum Rules for Non-custodial Measures, Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Adopted by the Committee of Ministers on 27 September 2006, etc.).

The Czech criminal code contains provisions on alternative measures to custody in arts. 73 and 73a. They include:

1. a guarantee either of a civil society organization or trustworthy person capable of positively influencing the behaviour of the accused
2. a written oath from the accused
3. supervision of the accused by a probation officer
4. monetary security (bail)

In the case of a juvenile offender, the Juvenile Justice Act recognizes in addition to the above mentioned measures also the alternative consisting in the placement of the juvenile offender into the care of a trustworthy person (art. 50).

In conjunction with the introduction of house arrest, the new criminal code also introduces the institution of electronic monitoring into the law, the use of which within the criminal justice system has a relatively long history throughout the world. In European countries, electronic monitoring is used in the framework of criminal justice in varied ways, which differ across individual countries. In some countries electronically monitored house arrest represents an independent form of punishment, and elsewhere it is a component of conditions of conditional sentence or some community sanctions. Electronic monitoring is used in carrying out sentences involving imprisonment, as well as in cases of conditional release from prison. Finally, in some countries this measure serves as an alternative to remand in custody, either as the independent alternative or as a control element in the framework of some alternative to custody, which the given law permits. It is possible then, with a certain measure of simplification, to claim that electronic monitoring has become a component of sanction systems of criminal justice within European countries, and is used even when custody has been replaced by other measures.

To the end of gaining an overview for the state and trends of the use of alternative measures to custody in criminal proceedings, analysis was conducted upon the available statistical data pertaining to the agenda under research. Attention was also given to the state and trends in the use of remand in custody and to the statistical information about the use of custody in cases involving juveniles. The fact that official statistical evidence does not contain complex quantitative information about the use of alternative measures to custody proved to be a fundamental problem. This poses a problem for using statistical analysis to investigate

the state and trends in the reviewed issue. Therefore at least a summary was made of the available information about alternative measures to custody in criminal proceedings from various sources.

Quarterly court reports concerning custody show, among other things, that the numbers of accused persons released from custody on probation or on bail are low in the long term, both in the total figures and in comparison to the total number of releases from custody. The number of cases of the accused being release from custody on probation was, in the observed period, between 80 (2005) and 37 (2008), and the number of cases of the accused being released from custody on bail between 25 (2005) and 15 (2007). The percentage of both types of case combined within all cases of release from custody within singular years was around 1 %. As for juveniles, the release from custody on probation has occurred very rarely, and the release on bail has in this period never occurred, according to the registered data.

Attention can also be drawn to the fact that making use of the possibility for release on probation is evidently favoured in some judicial regions in the long term, whilst in other regions the opposite holds; courts are reluctant to employ this institution. It is however important to bear in mind the low overall figures of these cases, which allow for the resulting interpretation to be easily biased.

Court reports about custody contain information only about cases of release from custody on probation or on bail. Cases in which the court decided about the potential remand the accused in custody in a way that let him/her free and placed him/her under the supervision by a probation officer or on bail, remain unlisted. In order to gain more complex data, at least for the institution of replacing custody with supervision by a probation officer, it is possible to make use of the statistics from the Probation and Mediation Service (PMS). These reveal the number of new cases of custody replaced by supervision of a probation officer, both in the event of release from custody, as well as if the accused had remained free.

The overall figures of cases of replacing custody with supervision by a probation officer have fluctuated between approx. 400-300 new cases per year, in past few years, during which in 2008 there was a decrease to 316. The proportion of these cases to the total agenda of the PMS in the observed period fluctuated between approx. 1.5 % - 1 %. In juvenile cases the figures were once again relatively low, no more than three dozen, and the proportion of these

cases to the total agenda of the PMS relating to juvenile clients was even lower, namely the one percent. Cases, in which supervision was ruled during release of the accused from custody, made up approximately 20 % - 10 % of all cases of custody replaced by supervision in the last four years.

The research involved an expert questionnaire survey among judges, prosecutors and probation officers. The aim was to attain the opinions of these experts on the legislation relating to alternatives to custody, to become familiar with their experience from the practical implementation of this legislation and to ascertain their stance on the potential usage of electronic monitoring within the framework of replacing custody with other options. The responses from 80 judges, 78 prosecutors and 43 probation officers were obtained.

The questionnaire survey was met with a significant response from judges, prosecutors and probation officers, expressed through a high response rate of questionnaires and through extensive additional answers, comments, and suggestions. We can deduce from this that this is a topic of great relevance to representatives of these professions. The responses expressed common satisfaction with the range of alternatives to custody, which the Code of Criminal Procedure provides. Despite different occupational groups, they agreed upon adding to this range with the electronic monitoring system (following its expected implementation in the Czech Republic), and for it to be used for the purposes of supervising the fulfilling of conditions given for the existing alternatives, and also as an independent alternative measure to custody.

As for the existing alternatives to custody, the fulfilling of purpose was evaluated highest in the case of bail and supervision by a probation officer. Apparently due to the simplicity of implementation, the written oath from the accused was also positively evaluated, although there was considerable scepticism among the responses as to the honesty of the accused. When it comes to a guarantee either of a civil society organization or trustworthy person, the view is that this is a purely formal institution, and is untrustworthy and hardly useful for this particular purpose. The same holds true for the placement of juvenile offender in the care of trustworthy person, in the area of juvenile justice. In these latter mentioned alternatives the responses often mentioned a lack of a person in the offender's surroundings, which could be identified as trustworthy and capable of having a positive influence on the accused.

This is indeed a stumbling block, however if we accept the claim that trustworthy persons in the surroundings of the accused are an exception, the more important it becomes for the body deciding upon custody, in cooperation with other subjects, to conduct an investigation into this issue, and so avoid the possibility that such an exceptional person will not be found.

Almost a quarter of responses from judges did not consider the benefit of alternatives to custody, consisting in reducing numbers of people in custody, as significant. Instead, they considered the greatest benefit to be in maintaining the social ties of the accused. Prosecutors, on the other hand, identified the reduced costs of criminal proceedings in particular as a benefit. The most beneficial measure in replacing custody, according to judges and prosecutors, was undoubtedly the bail. In the second place for what appeals as beneficial, according to judges, was the supervision of a probation officer, whilst the prosecutors leaned more towards the written oath of the accused. Even despite relatively positive assessment of the written oath, both the prosecutors and judges expressed concerns about this measure. In the additional comments they indicated as a main weakness of the written oath that it is often considered as a mere formality by offenders, and that they are willing to make whatever promises, but the actual impact on their further behaviour tends to be negligible.

As to the possibility of using electronic monitoring when replacing custody in criminal proceedings, the responses from the judge group expressed agreement. Their positive standpoint mainly lay in the fact that there would be some guaranteed constant level of control over the behaviour of the accused, whereas the written oath or any of the other measures alone do not allow for this level of constant supervision. The judges similarly spoke for the responsibility of the accused, were they to be found guilty, to reimburse the costs resulting from the usage of the electronic monitoring system during the replacement of their custody. Before deciding upon this method of replacing custody, some responses suggested the accused persons ought to be informed of their liability to pay these expenses.

A vast majority of responses from prosecutors also expressed agreement with the use of the electronic monitoring when replacing custody. They saw benefits in the increased control over replaced custody and the broadening of possibilities in imposing obligations and restrictions, and supervising their compliance. The total of 94 % of polled prosecutors,

similarly to responses from judges, agreed with the reimbursement of costs arising from the use of electronic monitoring.

The questionnaire given to probation officers referred to the replacement of custody with supervision by a probation officer and the possibility of deploying electronic monitoring during the replacement of custody. A vast majority of responses stated that the supervision by a probation officer as an alternative to custody fulfils practically its role, which is the achievement of goals for custody without the need to detain the accused in custody.

In the responses given comments were made as to the low possibility of supervising the accused, and also the fact that the court often does not react immediately in cases of non-fulfilment of conditions of probation. The accused has a broad field of options in which to manipulate information, which it is not possible for the PMS to monitor. There is then a greater room for them to behave in a way, which can be considered reason for custody, for example influencing witnesses, or completing the offence. Probation alone cannot prevent the continued criminal activities of the client. The cooperation between the PMS and bodies involved in criminal proceedings tends to be effective above all in those cases where the PMS operates with the approval of these bodies even in the phase of preparing an official opinion toward the potential replacement of custody by probation, assesses with the accused his or her needs and risks, and proposes appropriate measures within the framework of replacing custody with probation.

A vast majority of polled probation officers agreed with the possibility of using electronic monitoring in replacing custody. The main reasons supporting the implementation of electronic monitoring as an alternative to custody included a greater supervision and monitoring of the clients. Awareness of electronic monitoring ought to significantly help lower the risk of re-offending on the part of the accused. Using electronic monitoring may also contribute to giving the necessary respect to the institution of alternatives to custody. A clear stance was taken by probation officers towards the responsibility of the accused persons, should they be found guilty, to reimburse the costs arising as a result of the use of electronic monitoring when replacing custody; aside from one exception all participants were in favour. It is however important to consider the effectiveness of recovery, so that the expenses do not exceed an acquired reimbursement, i. e. not to charge those who are unable to pay.

For the purpose of gaining complimentary information about the practical usage of alternatives to custody in criminal proceedings, the research included analysis of selected court files relating cases where custody was replaced by some other measure. Analysis ought to have been aimed at the reasoning of decisions, the issue of whether the alternative to custody in the given case ensured the fulfilment of the purpose of custody, whether the accused complied with conditions of the alternative measure, etc. Owing to the fact that detailed and comprehensive information about making use of alternatives to custody is lacking in official statistics, it was only possible to acquire the appropriate sample of files pertaining to cases in which custody was replaced by bail (and this only in cases where the bail was posted in connection with the release of the accused from custody), or for supervision by a probation officer. A total of 21 files were studied, out of which 17 cases involved the replacement of custody by supervision of a probation officer, and in 4 cases custody was replaced for bail. Analysis proceeded according to data sheets, which were divided into several themed blocks: decisions decreeing supervision, and respectively setting bail; the criminal activity according to the indictment; the final decision on merits; the personality of the accused.

A total of 17 court files were examined on cases from 2007 and 2008 where custody was replaced by the supervision of a probation officer. The relevant cases related to offences of a wide variety; violent crime, property crime, drug-related crime, sexual and other offences were recorded. In all analysed cases the accused was found guilty. The most common sentence (10x) was a conditional sentence. A sentence of imprisonment was imposed in five cases, three of which were for a term of 12 to 24 months, one for 6 months, and one for term exceeding 24months. In two cases the imposed sentence was a community service. In 14 cases the accused were male, and in 3 female. These persons typically fell between the ages of 20-29 (7 cases).

The average duration of the criminal proceedings in the analysed cases was 431 days. The average duration of custody in cases where the accused was remanded in custody during the proceedings (in total there were 10 such cases) was 126 days, out of which the shortest term of custody was 25 days and the longest 364 days. In preliminary proceedings, during which 7 of the accused were held in custody, the custody lasted for an average of 66 days in the analysed cases, out of which the shortest was 25 days and the longest 120 days. In the trial, during which 8 of the accused were held in custody, the custody lasted for an average of

100 days, out of which the shortest was 16 days and the longest 243 days. The average time in which the accused was placed under the supervision of a probation officer instead of custody lasted 217 days, where the shortest time for replacing custody with supervision by a probation officer was 35 days and the longest 574 days.

Out of seventeen examined criminal cases, those where the order was given that custody was to be replaced with supervision by a probation officer, this decision was in 9 cases made by the judge in preliminary proceedings, in 7 cases by the court during trial, and only in one case by the prosecutor. The accused was placed under supervision after release from custody (in 9 cases), after release from arrest (in 6 cases), and in one case the accused was left at liberty without any prior custody. In eleven cases the decision was taken by the appropriate body to replace custody with supervision by a probation officer without it having been suggested. In five cases this decision was taken upon the request of the accused or their defence lawyer. In the remaining case the impulse for the decision could not be found in the file.

In five cases the body deciding about the replacement of custody with supervision by a probation officer decreed that the accused be obliged to undergo further conditions, aside from the legal obligation to visit the probation officer at given times, and changing their address only with the officer's agreement. The extent of these extra conditions varies in individual cases, where in some cases there was a particular attempt on the part of the body responsible for custody to respond to the circumstances, which contributed to the offence committed, and in others these conditions were formulated in a more general manner. The reasoning of decision on replacing custody with the supervision by a probation officer differed both in content and in extent. In some cases the responsible body just quoted the relevant provisions of the Code of Criminal Procedure, and stated the conditions that had been found to allow such a procedure, whilst in other cases the concrete circumstances of the cases were specifically explained.

The files also revealed the manner in which the supervision of the accused was conducted. This information could be found namely in the reports on the course of supervision, which the probation officer must send to the court. Probation officers gave a clear overview of the course of the supervision in their reports, including the current situation of the accused, and focused on the question whether the accused is behaving in accordance to the conditions placed upon them as a part of the supervision.

In two cases the court, after having replaced custody with supervision by a probation officer, took the accused back into custody as a result of a failure to fulfil conditions.

A further four criminal files were studied pertaining to cases where, in 2007 and 2008, custody was replaced by bail. Two of the investigated cases involved drug-related offence, one was a case of burglary, and one was a case of embezzlement. In one case the accused was acquitted, and in the remaining three cases the offenders were found guilty. Out of these one was given a prison sentence of 3.5 years, and two were given conditional sentences. One of the offenders was also referred into obligatory in-patient drug treatment. All four were male, and two fell under the age category of 20-29, one 30-39, and one 40-49 years of age.

The length of the proceedings in the examined cases took place between 233 days and 1715 days. In all cases the accused were in custody during the criminal proceedings and the average time of custody was 227 days. During the preliminary proceedings, where 3 of the accused were in custody, the custody lasted for an average of 149 days. In the trial, where 2 of the accused were in custody, the custody lasted for an average of 230 days. The average time for which the custody in examined cases was replaced by bail lasted 292 days.

In two cases the judge made a decision to replace custody with bail in the preliminary proceedings, and in the remaining two cases the court did so in the trial. In all cases the situation was such that the accused was released from custody on bail, and this was done based on a request by the accused or their defence lawyer. In one case supervision by a probation officer was also mandated to the accused, and in another case the court accepted not only the bail posted but also a guaranty from the accused person's partner and parents for his future behaviour, and a written oath by the accused. The amount of bail in individual cases was 20,000 CZK, 120,000 CZK, 200,000 CZK and 250,000 CZK. In one of the examined cases the bail was posted by the accused themselves. In two other cases bail was posted by the mother of the accused, and in one case by the partner. The reasoning of decision on replacing custody with bail was given to a different level of detail in different cases where dealing with reasons that lead the court to accept this possibility or setting the specific sum for the bail. Not one case involved a decision to forfeit the bail for the benefit of the state, to revoke a bail, or to change the amount of the bail, and the accused were in none of the cases remanded back into custody after the posting of bail.

Remand into custody is a very serious interference with the rights and freedoms of the accused. The law, therefore, allows for the use of this measure only if permitting the accused to remain at liberty would threaten the process and outcome of the criminal proceedings. Even in such cases it is possible, however, to achieve the goals of custody through use of alternative measures not related to the restriction of liberty of the accused.

For these alternative measures to be a real alternative to custody, several conditions must be fulfilled. Firstly the body deciding upon custody must have access to a sufficient number of alternatives, adequately set in law. There exist many such measures with different characteristics in different countries. Furthermore it is necessary to create practical conditions for the application of alternative measures. Some of them can simply be set into the law and it is possible to apply them without any further requirements (e.g. the written oath of the accused), others require a supporting infrastructure (supervision of the accused, bail, electronic monitoring). If this infrastructure is not in place, or in a sufficient quality and range, it is not possible to use these alternatives to custody in an effective way.

Finally, there is a need for qualified and active stakeholders. First and foremost bodies deciding on custody (judges, prosecutors) must consider the possibility of replacing custody any time custody is being decided on. At the same time however, considerations of using alternative measures must come only after the relevant body comes to the conclusion that custody is needed, and this is in order to prevent the negative effect known as “net widening”. Apart from this the bodies deciding upon custody must carefully evaluate the circumstances of the case, and the personality and situation of the accused, to be able to select a measure appropriate to the given case. Opinions of other persons involved also have great significance, such as probation officers, persons working in social care system for children and youth, members of the police or defence lawyers, who can contribute to the effective use of alternatives to custody in suitable cases.

The primary source of information about the current situation in the area of the analysed measures is statistical data. In our research we found that the official judicial statistics don't collect data about using alternatives to custody in a comprehensive and detailed way, and rather contain only partial data about some of these. If the issue of remand in custody is to continue to be one of the priorities in the area of criminal justice, it is time to consider

whether it would be appropriate to add the statistical system with the aforementioned data, at the very least where it comes to the extent of use of custody alternatives.

Alternatives to custody in criminal proceedings must fulfil the primary function of custody, that is to secure the accused persons for the purposes of the criminal proceedings and prevent them from further criminal activities or hampering the criminal proceeding. An indicator of the success of using alternatives to custody can not be, for example, the number of cases in which the alternatives were used, but rather the fact whether or not those people who are in custody are indeed such that there is no other way to reach the goals of custody in their cases.

The results of the research revealed a series of problematic areas, foremost in the area of practical application of alternatives to custody and conditions for them. It cannot be said with certainty that removing these problems would result in more frequent use of alternatives. However if one of the aims of the institution of replacing custody in criminal proceedings is to achieve a situation when taking suspects into custody occurs truly only in absolutely necessary cases and for a necessary length of time, then it is necessary for the conditions of using alternatives to be the best they can, and for them not to involve practical stumbling blocks in their application.

Translated by: Marvel

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Penal Policy: Opinions and Attitudes of Citizens

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The main objective of activities of the Institute of Criminology and Social Prevention (ICSP) is to contribute to providing legal certainty of citizens, functioning of the justice system, creating quality legislation and forming punitive policy aimed at more efficient control of crime. ICSP has been continually dealing with the problems of development, expression and impacts of penal policy. The public in the general sense of the word is the primary receiver of penal policy and the evaluator of its efficiency. Therefore, penal policy should correspond with the needs of the public and be formulated in a manner understandable to the public; citizens should have enough reliable information in order to be able to understand and evaluate penal policy. The Medium-term plan of the research activities of ICSP for 2008-2011 includes a research task entitled “Penal policy and the public” for the research period 2009-2011. Based on the Medium-term plan the task concerns the survey of opinions and attitudes of the public with respect to crime, rate of punitiveness and tolerance, attitudes to sentencing and the existing legislation, and moral and legal awareness of citizens. These data are very desired in order to establish penal policy and its presentation to the public. The task is also justified by the long-term inconsistency between penal policy practice and the expectations of the public, as well as low awareness of citizens with regard to penal policy plans and measures in the Czech society.

The subject matter of the survey was the public opinion of the key aspects in penal policy. The survey was aimed at the opinions of the Czech public regarding the crime rate and trends, rate of punitiveness or tolerance among citizens, their opinions of the function and activity of the criminal justice system and its bodies, knowledge concerning the state of relevant legislation and the perceived awareness of the public with regard to these issues.

The objective of the survey was to present new and expand the existing pieces of information about the opinions and attitudes of the public to particular aspects of penal policy in the Czech Republic through a representative public opinion poll.

A public opinion poll is a specific type of sociological research, which does not examine social phenomena, relations and procedures in the entire breadth and depth but is limited to reflecting opinions and attitudes of some population - public. The aim of the surveys is to present information about the opinions of citizens regarding various issues of social life. They also make it possible to recognise the strength of a certain opinion in the given population and the social composition of its supporters and objectors.

No social act can be noticed by mere observation; we must use tools that boost our natural capabilities. The question is how to find out what a person deems, what are his/her intentions, desires etc. Social sciences seek answers to these questions by means of a survey. However, there is a difference between the observed public opinion and actual behaviour. The problem may be in who is the respondent of the public opinion poll. When an addressed person takes part in a poll, they may not tell what they actually think in order not to admit their publicly unacceptable attitudes. Another difficulty is that some people reject to take part in the poll.

The quality of the observed results is conditioned by two factors:

- Correctly raised questions (must also be correctly interpreted)
- A well arranged group of respondents, i.e. those who answer the questions.

We shall also emphasise that the accuracy of the presented results may not always be well controlled; there are cases where there is no comparison because the results gathered by the poll are the only available.

At present the most frequently used techniques of the public opinion poll are omnibus polls and qualitative polls realised by the technique of focus groups.

If the public opinion polls are duly realised, they become the prerequisite of qualified decisions in a number of socially significant areas. Both politics and mass communication media rely on public opinion polls.

If we examine the relationship of the public to penal policy, we shall first define the term penal policy and specify the space in which the poll shall take place. Any government uses its penal policy to declare the level of protection of the fundamental rights and freedoms, which it is willing and able to realistically secure. Penal policy at the national level is concretised in substantive and procedural criminal legislation, system and arrangement of bodies and institutions ensuring enforcement of criminal standards and practical activities of these entities.

Penal policy can be distinguished in the broader and narrow conception. The broader conception of penal policy includes all activities and measures applied by legislative and executive bodies, government and non-governmental organisations and economic entities, as well as civil activities that are focused on crime control, suppression and prevention. The narrow definition of penal policy includes primarily penal legislation and activities and measures of bodies in charge of criminal proceedings; activities of other entities are included only as far as they are directly aimed at control of crime or at criminal sphere in general. Apart from the term “penal policy”, specialised literature and practice uses the terms criminal or sanction policy. The relationship between these terms may be characterised as follows: criminal policy includes all measures against crime; penal policy includes measures that use criminal law; sanction policy is the tool to determine the purpose of punishment, system of criminal sanctions and their enforcement.

In a democratic country with rule of law, the penal policy and the public are in a continual interaction. Citizens should have enough correct information in order to have a realistic notion of the crime rate (and the related socially pathological phenomena) in the country (region, community) and of the reaction of the government bodies to it. Detraction of problems with crime can make citizens underestimate the issue of safety in everyday life, which creates opportunities to criminal activity. On the other hand, overestimating the rate and seriousness of crime leads to excessive negative manifestation of the so-called “fear of crime”, unjustified changes in behaviour of citizens, their growing dissatisfaction with the criminal justice system and the representatives of public authority in general.

Appropriate knowledge of the actual needs of citizens in the area of internal safety and public order, their true opinions of the crime and its prosecution, as well as their attitudes to

various forms of socially unconformable behaviour is the indispensable prerequisite of formulation of an efficient, comprehensible and respected penal policy.

Last but not least, penal policy intentions and measures, as well as reasons for them must be comprehensibly communicated to the public. Only a clear and clearly formulated intention reflecting the actual needs of the public will find the appropriate support in the society; and to a large extent such support is decisive for the efficiency of any measure in the given area.

Foreign surveys related to opinions and attitudes of the public to penal policy and crime in general lead to an unambiguous piece of knowledge: citizens are interested in the topic, but at the same time their knowledge of it is on a very low level. This paradox is typically manifested when evaluating crime trends. Most of the public is permanently convinced of the growing rate of crime in spite of the fact that criminal statistics and crime victims surveys of the recent years in most economically developed countries confirm a decrease in crime. Similarly, people have quite unreal notions of the overall structure of crime; they often overestimate the occurrence of violent offences (murder, bodily harm, rape etc.) and tend to underestimate the extent of offences from the area of property crime.

Criminology literature often discusses the influence of broadcast reporting in this context. Media are the source from which most citizens obtain their knowledge or awareness of crime. The space the media devote to crime has been strikingly growing in time. Media staff knows very well that the theme of crime will reliably address the audience. It is well known that the problems of crime are what people will choose among other pieces of news or information.

In view of the above it is not striking that public opinion polls continuously mark crime as a problem, which is highly worrying for citizens and is considered the key priority the society should be engaged in. The public also repeatedly expresses the opinion that the existing justice system is too lenient to offenders and the penalties are too mild. Dissatisfaction with sentences and their length persists even in countries that had previously made penal policy more severe (e.g. the USA or UK). Many citizens know nothing about these reforms and tend to underestimate the real length of sentences. Citizens often lack a deeper notion of the actual work of bodies in charge of criminal proceedings. Most people

have no personal experience with particular bodies of the justice system, which might to a certain degree revise the image offered by media and often influenced by the interest of journalists in shocking cases of the failure of the entire system.

The methodology itself, which is used in public opinion polls concerning penal policy, is of considerable significance. When the interviewer asks questions on a general level, respondents show more punitive attitudes than when they are to express their view of a specifically described case. The superficial approach, which is typical for a large number of surveys, may lead to distorted conclusions in the area of evaluation of particular bodies of the justice system or the confidence of citizens in them.

We should not neglect the fact that certain dissatisfaction of the public with the work of the justice system is caused by diverse views of citizens on some principles or rules that are typical for criminal practice (respect to fundamental rights of an accused person in criminal proceedings etc.). Similarly, many citizens create their own theories on which measures to reduce crime are efficient and which are not.

The main part of the survey was an extensive original public opinion poll concerning the problems of crime and criminal justice. In order to preserve the up-to-date character of its results the output of the survey “Penal policy and the public” was divided in two parts. The first part summarises and analyses the results of the public opinion poll enriched by a brief introduction in the problems. The second part will contain a literature study of the issues of public opinion, its relation to penal policy and approaches to its survey, and a secondary analysis of the results of the existing public opinion polls regarding penal policy in the Czech Republic, which shall enable a more comprehensive approach to interpretation of the pieces of information gathered within the realised public opinion poll.

The following survey methods and techniques were used to solve the research task:

- *Research and analysis of relevant literature* – were used especially in the introductory literature study about the issues of public opinion, its relation to penal policy and approaches to its survey;
- *Secondary analysis of the results of existing public opinion polls concerning the issues of penal policy* – it provided a summary of existing survey information regarding the examined problems in the Czech Republic;

- *Public opinion poll* – it was the main part of the research and served to obtain new information about opinions of the public with regard to particular aspects of penal policy.

For the purposes of the survey the research team developed a questionnaire that – apart from questions concerning the person of the respondent – contained 34 questions of which some were divided in two or more partial questions. The questions were divided in several (even if mutually interacting) topics:

- Crime rate and trends in the Czech Republic;
- Rate of tolerance and punitiveness;
- Role and functioning of the criminal justice system and its bodies;
- State of relevant legislation;
- Perceived awareness of the examined issues.

Prior the field stage of the survey the questionnaire was subjected to a pilot test made on a selected sample of persons in order to test its applicability and then it was modified and finalised.

The field stage of the survey was performed by Factum Invenio, s.r.o., a private company involved in public opinion polls. The survey was conducted by face-to-face questioning on a representative selective group of 1,692 respondents aged 15+ years. Respondents were selected by a quota method; the used quota marks were sex, age, education and region. The questioning took place at the turn of July and August 2009. The methodology of processing the data from the survey corresponded with the standards of SIMAR and ESOMAR. The collected data were checked and then processed and evaluated in the statistical software SPSS. The results of the survey indicate the following information:

1. Citizens are interested in the problems of crime and criminal justice

Crime and functioning of the criminal justice system are topics that enjoy growing interest among citizens. When directly asked in the survey, almost one half of the sample said they were interested in these problems. However, active interest is only one of many indicators of its attractiveness or urgency. In order to obtain additional information, the company in charge of the field stage of the survey provided the so-called report of the course of questioning, which summarises information about the course of the field stage gathered

from particular interviewers. The report suggests that in spite of the time-demanding and long nature of the questionnaire respondents were willing to answer questions and interested in the topic; the respondents often wished to know the correct answers to questions they were unsure about and expressed emotions – most often anger – about phenomena they were questioned about. The survey proved that penal policy issues are certainly not excluded from the interests of the society.

2. Citizens often fail to obtain a true image of crime and reaction of the government to it from available information

The results of the survey also indicate a seemingly surprising connection that, however, is quite frequent in foreign surveys. Respondents who – as they say – are more interested in the problems of crime have generally poorer knowledge of the actual crime rate and are more disturbed by the extent and structure of crime; however, they have rather false estimate of it (they are convinced that crime has been growing while the reverse is true, they tend to overestimate the share of violent and sexual crime and underestimate the share of property crime etc.). They either receive incorrect, distorted or incomprehensible information or their declared interest in the problems is a manifestation of the perceived urgency of the problem to which they had taken a clear (rather negative or sceptical) attitude and they have little ambition to receive additional information that might revise or refine their attitudes.

A group of respondents who declared greater interest than other citizens in the problems of crime and penal policy manifested sound knowledge of relevant legal regulations.

In any case these findings serve as a signal for relevant bodies of the criminal justice system and government as a whole (relevant central bodies of state administration) to pay higher attention to the extent and quality of information about crime and reaction of criminal justice system to crime that is provided to the public. Citizens call for this information; however, they fail to create a precise image from the information that is provided to them.

3. Citizens support more punitive attitudes

The attitudes of citizens to the severity when assessing certain types of behaviour and possible punishment (punitivity and tolerance in the public) are not extreme and can be compared to the results of similar surveys conducted in other developed countries. They may be summarised as rather more punitive with a slightly prevailing confidence in the efficiency

of a severe law and tough penalties; there is also a major belief that the relevant bodies of the criminal justice system fail to take sufficiently firm measures when prosecuting crime. The criminal justice system should also be aware of the obviously growing scepticism among citizens in respect of non-custodial sentences.

4. Secondary victimisation is perceived as a problem and protection of the government against it as insufficient

The results of the survey show that the public is aware of the problems suffered by victims of crime in the form of the so-called secondary victimisation. Citizens believe that the measures of the government for protection of victims against these problems are still insufficient.

5. More obvious differences among respondents from various groups were manifested when classified by region, age and education

The most obvious differences among particular groups of respondents in all topics were when classified by regions. However, we must say that it is difficult to trace some unifying element when examining the differences based on the realised analysis. The differences are of such a nature that they certainly deserve more detailed examination, perhaps with the use of other demographic data about particular regions; such examination would exceed the purpose of this study.

Age and education were the classifying criteria where the answers indicated certain general differences. Respondents of the youngest age categories showed lower interest in and knowledge of the issue and more often they were not able (or willing) to answer questions concerning their knowledge of the issue at all, even if the question was in areas specifically related to their age group (age limit of criminal liability, existence of a juvenile justice system). On the other hand, the oldest age categories of citizens expressed more serious dissatisfaction with procedures of relevant bodies in respect of crime and supported more punitive attitudes. Respondents with higher education – as expected – proved better knowledge of the issue and in some respects they manifested less punitive attitudes (higher support for non-custodial sanctions, higher acceptance of the possibility of conditional release).

Measures to control crime have always run up against the problem of limited available funds and now this problem becomes even more serious. There must be a careful choice of approaches and interventions in the area, because incorrect, groundless or unprepared decisions will become ever more costly. In relation to citizens the government in general should know (not just in the case of penal policy, but any policy) what the citizens see to be major problems, seek suitable solutions of such problems and be able to comprehensibly and in sufficient extent explain the chosen approach. Support of the public is an important – even if not the only one – prerequisite of smooth introduction of efficient measures to control crime.

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Practice in Ordering an Institutional Education and Imposing a Protective Young Offender Education

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The Czech Government in its decree No. 1151 of 15. 10. 2007 on the document “Assessing the system of care for children at risk” ordered the Ministry of Justice, among other things, to guarantee the fulfilment of the task “through the ICSP to prepare an analysis of decision-making practice of the courts in imposing a protective young offender education and an analysis of the reasons that give rise to subsequent measures”. The task was developed from certain conclusions of the cited document, which, among other things, indicate that the courts when making decisions to impose a protective young offender education proceed rather formally and unsystematically, and that the institute of a protective young offender education is not adequately employed. With reference to these facts the Medium-term Plan for Research Activity of the Institute for Criminology and Social Prevention (ICSP) for 2008 – 2011 set the research task “Practice in Ordering an Institutional Education and Imposing a Protective Young Offender Education”.

The subject of the research was thus the application of judicial practice in imposing a protective young offender education and ordering an institutional education in the Czech Republic. The research aim was to gain a detailed overview of the sources of information (evidence) that courts employ when deciding on the stated measures, the quality of these sources, whether it is possible to consider them suitable for the court to be able to decide responsibly on the fulfilment of statutory conditions for ordering an institutional education or imposing a protective young offender education, and how the courts work with these sources in reality.

The following methods were used to fulfil the research task:

- description and analysis of legislation;
- analysis of the available data from judicial statistics of the Czech Ministry of Justice and the Supreme Prosecutor's Office;
- analysis of court files in matters where a protective young offender education has been imposed or an institutional education ordered.

Ordering an institutional education

The legislation for the institute of an institutional education is not concentrated in a single law. However, the core law regulating an institutional education is a Family Act No. 94/1963 Coll. From a procedural point of view decisions on ordering an institutional education are regulated chiefly in Section 176 et seq. of Act No. 99/1963 Coll., the Civil Procedure Code, as amended, in the provision on a court's care for minors. The performance of an institutional education is also regulated by several legal norms of a statutory and subordinate character.

Based on an analysis of the **statistical data** published by the Czech Ministry of Justice it is possible to say that the total number of cases where an institutional education has been ordered registered a slight increase in the monitored period. An exception to this can be seen in the data for 2005, when a year-on-year fall of almost 3 % was recorded. As regards the territorial distribution the leading examples of ordering an institutional education in 2004 to 2007 were the regions of North Moravia and North Bohemia, which regularly alternate with each other in the first two places.

In the pivotal part of the research, dedicated to the decision-making practice of courts when ordering an institutional education, an **analysis of court files** concerning 94 minors was performed. The sample contained 36 cases of an institutional education being ordered for a child aged 13-15 for improper conduct, 28 cases of treatment being ordered for a child over the age of 15 for improper conduct, and 30 cases of treatment being ordered for other cases (i.e. when the reason was the family's unsatisfactory social situation, shortcomings in the educational environment, the fact that the child found itself entirely without any care etc.). When analysing these records we focused especially on the type, number and content of the

sources of information that courts consider when deciding to order an institutional education, and on the method by which the courts proceed in these matters.

In the first place we researched the personal relations of the minors. The number of boys and girls in the sample was relatively equal, with just a slight preponderance of boys. With regard to age at the time a decision was issued to order an institutional education, children older than 12 were significantly more numerous, representing almost 80 % of the research sample. Apart from two cases all the children held Czech citizenship. Almost 70 % of the sample comprised children attending (even if often only sporadically) elementary and a special elementary school. A large number of children from our research sample had one or more siblings. The records of 30 children gave information on the educational problems of their siblings. Of the total number of 61 children who had siblings and whose records allowed us to obtain such information this represented practically one half. When a court launched action in a case, which ultimately led to treatment in a special institution being ordered the majority of children from our research lived only with the mother in the home. Almost one fifth of children however lived in a whole family and only a somewhat smaller number of children lived with the mother and her partner or husband, who wasn't the child's father.

Also covered by our research was the educational environment in which the child was brought up, the conditions in which it lived and the material needs that were met. These facts could be found primarily from reports made by employees of the bodies involved in the socio-legal protection of children (OSPOD), or from the statements of the child's parents, or other persons with whom the child lived. The courts also considered them in the large majority of cases, albeit with a differing degree of punctuality and thoroughness.

Documents used by a court to assess a personality of a child were in the great majority (approx. 75 %) reports by OSPOD employees, or the child's guardian. Courts very often also had access to an assessment of the child from the school that it attended. The child's statutory representatives also generally commented on its character in their statements or written submissions. A written expert opinion concerning the child's character formed the basis for a court's decision to order an institutional education only in exceptional cases. In our sample this only happened in two cases. Further sources of information were obtained in more than half of cases from the reports or comments of doctors, health or social institutions which dealt with the children in the past, the reports of children's diagnostic institutions, educational care

centres or other facilities in which the children were placed on the basis of a emergency ruling etc. An extremely useful source of information on children has proven to be the comprehensive reports from the diagnostic institutions for children (DDU), which as a rule provided the most thorough information for an assessment of a child's current development and prospects.

The files unfortunately only contained basic information on the child's statutory representatives. There were various sources of this information – statements from the statutory representatives or witnesses, an employer's report on earnings, OSPOD reports, reports from employment offices or other similar institutions, but also the content of past records on care for the relevant minor.

The first signals of educational problems in the relevant child could be found, with some exceptions, in the reports or comments of the OSPOD, or other documentary evidence or the statements of parties to the proceedings. In just under half of cases (43; 46 %) proceedings on ordering an institutional education were preceded by educational measures under Section 43 of the Family Act. This generally meant providing for supervision of a minor. To a lesser extent it also meant imposing an admonition.

If the court obtains possession of facts justifying the launch of proceedings to order an institutional education it usually also considers the possibility of ordering a preliminary measure so that the due care of the child, as well as protection of his/her life and favourable development is ensured until the final decision in the case. In our sample of files the court issued a preliminary measure relating to proceedings in which an institutional education was eventually ordered in approximately 70 % of cases.

In more than half of cases the reason for launching proceedings to order an institutional education was the improper behaviour of the minor. Other reasons for launching proceedings happened more rarely. In almost 60 % of cases proceedings were launched by a court without a motion and generally on the basis of a prior proposal from OSPOD, or after a preliminary measure had been ordered. Almost three quarters of monitored cases were completed by a final and conclusive decision within six months of proceedings being launched. Proceedings at court were public in every case for the entire period (i.e. the public was not excluded even

for part of the proceedings) and the proceedings were decided in accordance with the Civil Procedure Code by a single judge.

In only about 10 % of cases the child for whom a possible educational measure had been proposed attended judicial proceedings. In these cases the child was always duly and appropriately heard according to his or her age and circumstances. The court failed to duly gain the child's opinions and information in more than 60 % of cases.

Documentary evidence predominated among other forms of evidence. These related to the relevant submissions in the case, OSPOD reports, the guardian's comments, reports from the school that the child attended, reports from diagnostic institution for children where the child was placed by virtue of a preliminary measure, relevant doctor's reports or comments, documentary material maintained by the court concerning the care of a minor in the past, expert opinions etc. In more than 80 % of cases the court also heard at least one participant, or witness.

As far as a decision of a court of first instance is concerned, it's possible to say that the court overwhelmingly (in 93 cases) decided by judgement only to order an institutional education. In the statement to the judgement the courts ordered an institutional education and decided on compensation of the costs of proceedings. In the majority of cases they also changed earlier decisions on care of a minor, or also decided on child support and maintenance. In some cases, when following the announcement of a judgement the parties waived an appeal against it, the courts, in accordance with Section 157 (4) of the Civil Procedure Code, prepared a judgement in an abridged form, whose written reasons contained the subject of the proceedings, the conclusion on the facts of the case and a brief legal assessment of the case. Judgements also contained due instruction on the time limit and place to submit an appeal, usually also stating the required number of copies of the appeal. In some cases the instruction also contained a notice on the possibility of the decision's execution, or on the fact that the right to an appeal does not apply to someone who has expressly waived it. With regard to form and content it is therefore not possible to have any more serious objections against the analysed judgements.

An appeal against a judgement of first instance was only lodged in four cases. The low number of lodged appeals evidently testifies to the fact that in some cases, where parents had

disagreed with the order of an institutional education during proceedings, they had become resigned to this fact after the decision was issued. Their attempt to have the child returned to the family environment in many cases was apparent subsequently, when after some time they suggested that the institutional education be cancelled.

Based on information that we obtained when analysing the decision-making practice of the courts in ordering an institutional education, it is possible also to formulate several suggestions on how to possibly improve the current situation, namely:

- when deciding to order a preliminary measure courts should always consistently distinguish between preliminary measures under Section 76 (1) b) of the Civil Procedure Code and preliminary measures under Section 76a of the Civil Procedure Code, which should reflect the due specifications of the type of preliminary measure in the execution of a resolution by stating the relevant provision of the Civil Procedure Code and its conformity with the statement and justification of the decision;
- during proceedings on ordering an institutional education courts could dedicate more time to obtaining the opinions and information of the children affected (taking into account their age and intellectual maturity, particularly by examining them during the proceedings, which conforms to the provision of Section 47 (2) of the Family Act and article 12 of the Convention on the Rights of the Child;
- reports from bodies involved in the socio – legal protection of children which are used as bases for the court deciding whether to order an institutional education should, as an essential element, expressly contain data on the results of research into the possibility of ensuring the child's education by substitute family care or family care in a facility for children requiring immediate help, which under Section 46 (2) of the Family Act have priority over institutional treatment; in the opposite case the courts should request that the report be supplemented so that they can research this possibility imposed by the cited provision and duly settle this in the decision's justification;
- in the judgement ordering an institutional education courts should always take into account a prior decision on the upbringing and maintenance of a minor, if such decision was issued in the past;
- in cases ordering an institutional education courts should always pay due attention to a related decision on maintenance and support of a minor for parents or other persons responsible for the minor's maintenance (Section 103 of the Family Act), therefore research their ability, possibility and property owned and proceed according to the criteria

for deciding on support and maintenance under the Family Act just as consistently as in deciding on the extent of the child support and maintenance in other circumstances than placing the child into the institution by virtue of an institutional education;

- in proceedings on ordering an institutional education (or in cases of care for minors generally) the courts should carefully research and assess the current approach and position of the parents and look at the question whether it is not appropriate to consider limiting or withdrawing parental responsibility, or suspending its performance.

Imposing a protective young offender education

A separate **criminal law for juveniles and a specialised justice system** were renewed in the Czech Republic after more than fifty years by Act No. 218/2003 Coll., on the responsibility of juveniles for unlawful acts and on the juvenile justice (Juvenile Justice Act), as amended, which came into effect as of 1. 1. 2004. Proceedings in cases of children under the age of fifteen are regulated separately in Chapter three of the Act, and changes to the former legislation are substantial. The question of juvenile criminal responsibility, including the conditions for imposing a protective young offender education, is dealt with chiefly in Chapter two of the Juvenile Justice Act.

From the available **statistical data** it emerges that in the monitored period from 2004 to 2007, when cases of juveniles under the new Act are dealt with by courts for juveniles, the number of orders for protective young offender education and the number of cases where proceedings ended with measures being dropped. The frequency of cases where the protective young offender education was imposed to a juvenile under Section 22 of the Juvenile Justice Act did not change during the monitored years, with numbers ranging from 26 to 41 cases annually.

The research task contained an analysis of 59 court files entered in the Rod register, which was lent to us by district courts, and where in 2007 it was decided by final judgement to **order a protective young offender education for 60 minors**. We thus researched almost all court files and from all judicial regions in the Czech Republic.

Separate proceedings under Chapter three of the Juvenile Justice Act belong among non-contentious civil proceedings and the court for juveniles proceeds in them according to the relevant provisions of the Juvenile Justice Act, unless this stipulates otherwise. These proceedings are preceded by pre-court proceedings conducted by specialised police bodies and the Public Prosecutor's Office under the relevant provisions of the Criminal Procedure Code. In the analysed cases during the proceedings evidence was produced which adequately clarified all material circumstances of the case, proved the commission of offences by minors under the age of criminal responsibility and verified the conditions for ordering the appropriate measure so that it was sufficient for the Public Prosecutor's Offices to submit a motion for proceedings to be launched and for the main part also for juvenile courts to make a decision.

In the analysed cases the proceedings under Chapter three of the Juvenile Justice Act were always launched at the suggestion of the Public Prosecutor's Office. In all, 117 written suggestions were submitted and if several suggestions were submitted concerning a single minor the courts for juveniles were brought together to hold joint proceedings. The written suggestions from the Public Prosecutor's Office met the statutory requirements with regard to content, including a concluding proposal for the measure to be ordered. As a source of doubt it is necessary to point out the failure to state all parties to the proceedings in the written suggestions, in particular the frequent omission of the facility where minors were being treated in a special institution, and in one case also omitting the OSPOD.

In its annual reports the Supreme Prosecutor's Office especially perceived a legislative shortcoming in the existing obligatory state of the suggested activity and the consequent inadmissibility of replacing the submission of a suggestion with their own decision. In their opinion this involves a formal construction which does not bring the expected reformatory effect, increases the costs for proceedings and influences the effectiveness of suggestions by the prosecuting attorney's office. From the records we found that this obligatory state led in some cases to the submission of suggestions by the Public Prosecutor's Office where it had been quite clear from the beginning that they were not fit for purpose and were also unrealisable, without any hope of success.

Proceedings before courts for juveniles were conducted in accordance with the relevant provisions of the Civil Procedure Code. Procedural faults detected consisted of the

institutional facilities where minors were placed by virtue of the institutional education not being involved as parties to proceedings and not taking part in court proceedings, or these were held in the guardian's absence; this formed the grounds for cancelling decisions by appeal courts. These courts proceeded in the same way to the relatively frequent failure to fulfil the statutory obligation to ascertain the opinion of the minor and his attitude to delinquent actions, behaviour and the suggested measure in cases when this was not included in their examination.

Before the court for juveniles evidence was chiefly used, which had been examined and produced by a statutory method in the pre-trial stage of proceedings. At court proceedings this evidence was supplemented by witness examinations, expert opinions and professional comments, documentary evidence on the personal relations of minors and their parents, which in long-running proceedings changed quickly. Cases were also found where the appellate courts supplemented evidentiary proceedings.

Due to the evidence produced, the courts for juveniles of first instance or appellate courts passed orders always of an optional protective young offender education (Section 93 (3) of the Juvenile Justice Act) on a total of 60 minors who had been proven to have committed crimes. Unlawful actions against property represented more than half of all crimes, with theft predominating. The second most numerous group comprised crimes against freedom and human dignity, where the dominant position was held by robbery without serious health consequences and high material damage. Cases that we rank as crimes against morality (sexual abuse and above all rape) were relatively serious, as well as cases of the abuse of drugs and toxic substances.

There was a high success rate for lodged appeals and the decisions of appellate courts contributed not only to the correctness of decisions made in concrete cases concerning minors but also to directing judicial practice in appellate court districts. In the analysed cases the length of proceedings complied with the statistical records of the Czech Ministry of Justice, with the mass of cases being completed at courts within one year of proceedings being launched. A third of cases were completed at courts of first instance in one hearing and another third in two hearings.

Minors mostly in age categories, which approached the limit of their criminal responsibility, committed antisocial behaviour; more than half of minors were aged between 14 and 15. Girls formed a quarter of the total number of minors to whom a protective young offender education was ordered. The family environment was often unstable; more than half of minors lived in a broken family, and more than a third lived only with their mother, who was not capable to look after their upbringing on her own. The physical presence of fathers in families generally did not have a positive influence on their upbringing; instead their behaviour gave a poor personal example. Parental neglect of their children's upbringing often led to their facing criminal sanctions. All minors had siblings, and many of them came from large families. Minors grew up in social work families, with the majority dependent on the social care of the state in unsatisfactory housing conditions.

All minors were found to have a disturbed relationship with school and a lax to negative relationship to education. A third of minors visited a special school or school with a special program in educational institutions. Minors had a very weak to inadequate welfare, undisciplined behaviour and a large problem with truancy. More than half of minors were placed by court decision in institutional care. According to the educational employees of these institutions the behaviour of minors was assessed negatively in practically all cases; its typical manifestations were escaping from the institution and having escaped committing a crime. Cases also occurred of the abuse of narcotic and psychotropic substances, smoking, violence committed on fellow pupils and educational employees, destruction of property etc.

Court decisions to order a protective young offender education were preceded by educational measures by authorities involved in the socio –legal protection of children, the ordering of an institutional education, and almost half of minors were dealt with according to Chapter three of the Juvenile Justice Act before the order for a protective young offender education. These measures did not lead to the rehabilitation of minors, at least in the sense that they would no longer commit criminal acts. In the monitored cases the courts for juveniles thus had no option but to impose the protective young offender education and chose the ultimate solution when no other real possibilities were able to ensure the proper education of minors.

In 2007, **the protective young offender education** under Section 22 of the Act on the Juvenile Justice Act was lawfully imposed in all judicial regions, apart from the district of the

Regional Court in Pilsen. For our research an analysis was conducted of a total of 24 records. In 2007 these contained final judgements on the imposition of protective young offender education for 26 juveniles.

A protective young offender education was most often imposed for the 16 – 17 age category, in which half of juveniles fell. The oldest offenders between 17 and 18 years of age received orders in approximately a third of decisions. As concerns the level of education, the sample contained a majority of apprentices, followed by students at special schools and the unemployed.

At the time decisions were made to impose a protective young offender education, the majority of juveniles were in educational facilities following a prior order for an institutional education, or very often had escaped from them. In our sample, the escapes recorded in the reports of educational facilities corresponded with the number of persons who had been in institutional reformatory care – i.e., every juvenile escaped at least once from a special institution. The rest lived in a broken family environment, or alone; one was in pre-trial custody.

The depressing state of the original family relations is evidenced by the fact that 22 juveniles out of a total of 26 were ordered to receive an institutional education. The social situation and cultural level of the family was often extremely low and the parents' relationship disharmonious. The classic model of the family only functioned in 18 % of cases (husband and wife), while 35 % of cases involved a common law husband or common law wife; in most cases the juvenile grew up in a broken family, or family that was supplemented/repeatedly added to. In ten cases we registered problems with the abuse of narcotic or psychotropic substances (from sniffing toluene to the intravenous application of pervitin) and/or alcohol abuse to a greater or lesser extent.

The juveniles' assessments by educational facilities provided for needs of criminal proceedings is generally unfavourable with regard to juveniles; among the negatives there is a particular emphasis on arrogance and vulgarity of the juvenile, problems in respecting the authorities, a lack of interest basically in anything, experimenting with addictive substances and committing crimes both in institutions and in escaping from them. Relatively positive prognoses occur to a lesser extent. Reports from schools or teaching disciplines particularly

point out unjustified hours, a lack of respect for the authorities, (violence) conflicts with fellow students, average or inadequate welfare, laxity and truancy. There are larger problems with behaviour, even when a juvenile manages school satisfactorily.

Among the types of wrongdoings in the research sample property crime predominates absolutely (88 %), which reflects the predominance of this type of crime in overall crime committed by juveniles. A disturbing element is the significant occurrence (38 %) of robbery, when violence is directed chiefly towards children and old people; in some cases knives and knuckledusters are used in robbery (in the monitored example for the time being only as a threat of imminent violence). However, the most common factor is theft – for almost half of juveniles. The most serious wrongdoing was the intentional causing of aggravated bodily harm resulting in death.

In all monitored cases a protective young offender education was imposed for a juvenile alongside a criminal measure; in 85 % for the criminal measure of imprisonment with conditional suspension of sentence for a probation period, including once with supervision. A protective young offender education for a juvenile was imposed most frequently (almost for half of offenders) according to the provisions of Section 22 (1)b, i.e. due to neglect of the juvenile's treatment.

The justification for ordering a protective young offender education, which was a part of the written reasons of the judgement (if a simplified written judgement had not been prepared which contains a written reasons according to Section 314d (3) of the Criminal Procedure Code), could be considered universally as cautious and not arousing doubts. Nevertheless, in certain cases it is necessary to consider whether the purpose of this protective treatment measure (in the sense of Section 9 (1) of the Juvenile Justice Act) will be fulfilled. This particularly concerns cases where a protective young offender education is ordered to be performed after the execution of the criminal measure of imprisonment, or if the protective young offender education is imposed in a period when only a short time remain before the juvenile reaches the age of eighteen and an extension of this measure is not considered until the age of nineteen. The point is that it is necessary to ensure continual reformatory treatment and the provision of an adequate space for a positive influence on the mental, moral and social development of the juvenile.

The repeated imposition of conditional criminal measures for imprisonment of various lengths of time, in whose probation periods instead of a proper life the juvenile continues to commit crimes, does not lead in many cases quite evidently to the offender's rehabilitation. The high number of other convictions, which happened in the research sample of 26 juveniles after the imposing a protective young offender education, unfortunately illustrates the low effectiveness of the measures imposed and the significant level of recidivism. This also was the case for 19 juveniles, which are three quarters, while in this matter we did not have information on everyone and the period from imposing a protective young offender education to the moment at which we researched the relevant records was quite short.

Based on the information ascertained it is possible to recommend that the following suggestions be considered for the jurisdiction of the competent bodies in deciding whether to impose a protective young offender education:

In the practical activity of the Public Prosecutor's Offices and courts for juveniles

- consistent examination of the legal force of the police decisions on suspension of cases on grounds of the inadmissibility of the criminal prosecution;
- in Public Prosecutor's Offices' proposals for the launch of proceedings according to Chapter three of the Juvenile Justice Act to consistently state all parties to the proceedings and in the proceedings before courts to permit the participation of all parties stated in the Juvenile Justice Act;
- in proceedings before courts for juveniles to respect the provisions of Section 92 (1), second sentence, of the Juvenile Justice Act, and in cases where a juvenile has been discharged from an interrogation not to be satisfied with his comments before a police body which is not sufficient to fulfil the statutory requirement;
- in the statistical records kept by the Czech Ministry of Justice to ensure that these correspond to the actual situation as concerns the number of final judicial judgements on imposing a protective young offender education and the legal grounds for their ordering stated in the provisions of Section 93 (2) and (3) of the Juvenile Justice Act;
- to produce an opinion on the unification of judicial practice in cases where decisions are taken on several lodged proposals for the launch of proceedings for a single minor;
- in the verdict part of the judgement, by which a protective young offender education is imposed to the minor, to precisely specify the statutory provision under which this

measure is imposed by stating the relevant written provision of (Section 22 (1) of the Juvenile Justice Act.

In the legislative area

- use statutory legislation to allow minors to receive the obligatory expert legal aid in pre-trial stage of proceedings before a police body and the Public Prosecutor's Office as for juveniles before the launch of a criminal prosecution;
- to strengthen the status of the public prosecutor in proceedings according to Chapter three of the Juvenile Justice Act by relinquishing the obligatory need for written proposals for the launch of proceedings according to Section 90 (1) of the Juvenile Justice Act, in particular for proposals according to Section 93 (3) of the stated Act, and to permit him to take his own decisions;
- to permit the public prosecutor in a written proposal for the launch of proceedings under Section 90 (1) of the Juvenile Justice Act to propose refraining from sentencing under Section 93 (7) of the said Act in cases where it will be apparent at the time a proposal is lodged that the measure does not need to be imposed and that all statutory conditions have been met for abandoning its imposition.

In the research we have had the possibility to research the vast majority of cases in which a protective young offender education was imposed in the Czech Republic in 2007, and an adequate sample of cases in which an institutional education was ordered. Based on an analysis of the submitted court files it is possible to state that overall we have, in the decision-making practice of the courts when ordering an institutional education, not found serious shortcomings which could be indicated as systematic. The sole exception in this sense could be said to be the fact that, when ordering an institutional education or imposing a protective young offender education for a minor, in the large majority of cases courts did not properly gain the child's opinion. In individual cases there was partial doubt or inaccuracies of a formal or organisation nature, which however did not have important results for the relevant case or for the overall view of courts' application practice. In their activity the courts respected the provisions of legal regulations. In proceedings there were generally no unjustified delays. The volume and content of material, which the courts used to reach a decision in a case corresponded to the character of the fact that the courts are obliged in this activity to research and assess. For this purpose the courts also communicated adequately with bodies involved in the socio-legal protection of children and with interested reformatory,

educational and health institutions. Although we understandably did not assess the material accuracy of court decisions to order an institutional education or impose a protective young offender education we can declare that these decisions did not arouse any major doubts.

Translated by: Marvel

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Selected Aspects of the Drug Issue from the Citizens’ Point of View

Researcher responsible: Petr Zeman

Co-researchers: Ivana Trávníčková, Michaela Štefanková

In 2010, the Institute of Criminology and Social Prevention (ICSP) prepared and conducted survey into public opinion on selected questions on the subject of drugs. The **subject of research**, whose results are summarised in the monograph submitted, was public opinion on selected aspects of use of addictive substances and on drugs policy. The research concentrated specifically on the fundamental knowledge of the citizens of the Czech Republic on the development of penal legislation in the area of drug offences, on how citizens perceive the problem of drugs in a broader context and how they react to it, on how well informed they feel about the drugs scene and about separate elements of drug policy, and on their opinions and stances regarding various current issues such as support of a healthy lifestyle and also the possibility of using the cannabis plant for therapeutic purposes. **The aim of research** was, by means of a representative public opinion survey and using other methods, mainly to gain new insight into the public’s knowledge, opinions and stances on the significant aspects of the problem of use of addictive substances in the context of the situation and development of use of legal and illegal drugs in the Czech Republic.

The research methodology included study and analysis of expert literature and relevant legislation, analysis of data on the situation and development of use of addictive substances in the Czech Republic, secondary analysis of results of research performed to date of public opinion on matters relating to the issue of use of addictive substances, and especially public opinion survey IKSP_D2010, which represents a major part of this research. The field phase of survey IKSP_D2010 was performed by an external provider (Factum Invenio, s.r.o.) by means of its interviewer network using a personal interviewing (face-to-face) method with

a representative sample of 2044 respondents, aged 15 years and over. The respondents were chosen by quota sampling, where the quota criteria used were sex, age, education, size of place of residence and region.

The theoretical part of the study contains a summarisation of recent findings on the topics on which public opinion survey IKSP_D2010 concentrated.

The comprehensive instrument for *monitoring the situation in drug matters* in the Czech Republic, especially in the area of illegal drug use and its consequences, is the Drug Information System (DIS), which represents a compendium of the activities of institutions, and organisations that operate in the area of monitoring the use of drugs and its consequences. Since 1995, the Hygiene Centre of the City of Prague has been collecting and compiling information on drug users demanding treatment consultation or social service in any of the treatment or contact centres for the first time in their lives, which include medical and non-medical facilities providing these services. Since 2002, this system has been enlarged to include information also on clients undergoing long-term or repeated treatment at the treatment or contact centres. The national action plan of the Drug Information System for the year 2011 and 2012 is also planning collection and analysis of data on alcohol, tobacco and other legal addictive substances. Basic information on the scope and figures of drug use in society, on perception of the medical, social and other risks connected with drug use in the Czech Republic is provided by data from surveys of the general and the school-age population too, as well as a study targeted at the dance scene.

Drug-related crime is a phenomenon covering a fairly wide range on criminal acts. *Legislation concerning drug offences*, i.e. offences consisting in an unlawful handling of illegal drugs, or various forms of their propagation for use, was contained for almost 50 years in the criminal act no. 140/1961 Coll. The new Criminal Code No. 40/2009 Coll., effective as of 1st January 2010, has brought new legislation that, although to a certain extent based on the definitions of drug offences to date, also contains some significant changes. The main (conceptual) differences as against the preceding legislation can be seen in three aspects. Firstly, the Criminal Code lays down varying severity of sentences for unlawful possession of drugs for personal use of an amount greater than small in the case of cannabis-based drugs on the one hand and other narcotic or psychotropic substances (NPS) on the other. Secondly, it introduces new crimes such as illegal cultivation of plants

containing narcotic or psychotropic substances for personal use of an amount greater than small, where the extent of sentence differentiates between cultivation of cannabis and cultivation of other plants containing NPSs. And finally it empowers the government to specify by decree what constitutes an amount greater than a small in the case of narcotic or psychotropic substances and products containing them. The government is also supposed to stipulate by decree plants or mushrooms, which shall be considered to be plants or mushrooms containing narcotic or psychotropic substances and what amount is greater than a small in this case. However, the complete change in concept of substantive criminal law brought by the Criminal Code, whose essence lies in the shift from a material concept of a crime to a formal concept, also has significant implications for the area of punishment of drug offences.

The way in which people *perceive drugs issues* depends not only on personal experience, but also to a certain extent on the opinions of the social groups to which they belong. Evaluative stances may be relative, depending on who is assessing the problem and from which viewpoint. Each problem seems greater if we are in direct contact with it, while it depends on the degree and spread of the phenomenon in question (i.e. there is growing discussion on the influence of drug-related public nuisance upon the stance of citizens and their quality of life). With the increase of illegal drug abuse, even Czech society has begun to address this matter more. Drug abuse had been seen as more of a social phenomenon for a long time, but as the lifestyle of drug users has turned into common inflexible to antisocial behaviour, it has gained the status of a legal problem. As is the case with the majority of socio-pathological phenomena, the media plays a significant role in formulation of public opinion and stances, because it is from the media that the vast majority of citizens gains information concerning the issue of drugs. The issue of drugs has also become a component of political rivalry.

Separate states and international organisations react to problems related with drug use through formulation of their *drug policy*. Complex information on the drugs issue within the Czech Republic is brought every year in the Annual Report on the Drug Situation in the Czech Republic, issued by the Czech National Monitoring Centre for Drugs and Drug Addiction, which is an organisational component of the Government Council for Drug Policy Coordination. The founding conceptual document, defining the main foundations, principles and approaches of drug policy, is the National Drug Policy Strategy. Its aims are specified

in connected Action Plans. The drug policy of the Czech Republic in the long term rests on four fundamental pillars – primary prevention, treatment and social inclusion, harm reduction, and reduction of availability of drugs. The present strategy for the period 2010 - 2018 was approved by a government resolution in May 2010. Alongside the National Strategy, individual regions also form their own drug strategy documents, with regard to the local situation. Regional drug coordinators are responsible for coordination at a regional level. They use a network of local drug coordinators working at council offices of municipalities.

The potential of *use of the cannabis plant for therapeutic purposes* has already been widely described in literature, in spite of which this topic still bears a hint of controversy. Some of the areas for possible use of cannabis for therapeutic purposes claimed by specialist sources most often include elimination of nausea and vomiting from chemotherapy of cancer, treatment of HIV/AIDS and other illnesses, treatment of glaucoma, multiple sclerosis, epilepsy, Parkinson's disease and other neurodegenerative illnesses, pains and inflammations. The fundamental framework for handling of cannabis, including its possible use for therapeutic purposes, is created at an international level by the UN drug conventions. The Conventions do not preclude the use of cannabis or its active ingredients for therapeutic purposes or the cultivation of cannabis for such a purpose. They do, however, require that signatory states apply a licensing system under very strict state control. The legislation applied to the handling of cannabis in the Czech Republic is Act No. 167/1998 Coll., on Addictive Substances, as amended. This Act at present contains two general bans, which practically preclude the use of cannabis from domestic sources for therapeutic purposes. These are a ban on extraction of cannabis resin and tetrahydrocannabinols of the plant and a ban on cultivation of genera and species of the cannabis plant which may contain more than 0.3 % of tetrahydrocannabinols.

A separate part of the study presents a *summary of results of some previous research* on the stance and opinions of the citizens of the Czech Republic in the area of drugs issues performed by ICSP and other bodies. It contains an overview of the results of ten public opinion surveys on topics divided into several sections – the perception of drugs as a problem, the risks connected with using addictive substances, the acceptability of using addictive substances, the punishment of drug users, the attitudes to users of addictive substances, the drug addiction and the matter of legalisation.

The practical part of the study summarises the results of *survey IKSP_D2010*, which has been divided into several mutually related areas:

- changes in penal legislation for drug criminality;
- perception of the open drug scene;
- supporting life without drugs and care for the users;
- perceived awareness of the drugs issues;
- ways of solving the individual's problems with drugs;
- possibility of using cannabis for therapeutic purposes.

Approximately half of the citizens asked have heard of the change in penal legislation concerning drug offences, which occurred in connection with the adoption of the new Criminal Code. Approximately three quarters of respondents stated correctly that a list of narcotic and psychotropic substances is laid down in law. According to another 10 % of respondents, the list of NPSs is strictly specified by bodies of criminal justice system, specifically by the police (5 %), by the courts (4 %) or by the public prosecutor (1 %). Approximately the same portion of respondents (11 %) was unable or unwilling to answer the question and approximately 4 % of citizens assume that the group of NPSs is not stipulated at all. The next question was directed at how, at present, cultivation of cannabis plants for personal use is classified. Some media interpretations could evoke the mistaken supposition that the new legislation brings with it legalisation of such actions. This opinion was held by 6 % of respondents. The correct answer, that this is a misdemeanour or a criminal offence, depending on the numbers of plants cultivated, was given by 41 % of those asked. It is safe to say, however, that although the public is aware that growing cannabis plants is not completely legal and is sanctioned in some way, it does not have a clear idea of the nature of this penalty. This is illustrated by the fairly large proportion of people asked, in whose opinion such an offence is a misdemeanour (15 %), eventually either a misdemeanour or a criminal offence depending on the concentration of the active ingredient (THC) in the plants (18 %), as well as a fifth of citizens who failed to give an answer whatsoever.

A total of 38 % of those asked noticed over the past year that somebody in their near vicinity uses drugs in public and 17 % of respondents in the same period noticed sale of drugs. The survey also investigated if consumption or distribution of drugs in public worries citizens. A third of those asked said that they had not been exposed to drug use

in public, however this phenomenon worries almost a half of those asked (49 %). However, exposure to drug use in public does not instil a feeling of worry for 15 % of citizens. Of respondents who had already noticed public consumption of drugs and who answered the question, whole three-quarters (76 %) felt worried by such an experience. A full 40 % of citizens are worried by exposure to sale of drugs, although it should be borne in mind that almost half (48 %) of those asked had not yet noticed sale of drugs in public. In the case of respondents who have already however experienced this, the results showed that 79 % of them felt worried by aforementioned phenomenon. Only 10 % of respondents are not worried by the sale of drugs in public.

As their age increases, the attention of respondents clearly declines regarding use and sale of drugs in public; at the other end of the scale, respondents from a younger age group are significantly more tolerant about such phenomena, especially with regard to drug use in public. In this respect, two groups of respondents stood out: one of persons of up to 30 years of age on the one hand and persons over 50 years of age on the other.

In the opinion of almost one fifth of respondents (18 %), care provided to users of illegal drug in its region is at a wholly satisfactory level and almost one quarter (25 %) assess it as fairly satisfactory. Prevailing satisfaction with regional care of drug users was expressed by 43 % of respondents. On the contrary, more than a quarter of those asked think that the care provided to users is unsatisfactory (9 %) or fairly unsatisfactory (18 %). Almost one third of the respondents (30 %) did not take any stance on the matter. As concerns the nationwide level of measures in the area of prevention of drug use, not quite half of respondents (44 %) estimate the level of encouragement of a healthy lifestyle without drugs in the Czech as being positive. An identical proportion of respondents have the opposite opinion to the level of encouragement of a healthy lifestyle (44 %). In this case, 13 % of those asked failed to answer the question posed.

In order to be able to interpret the public's opinions on selected aspects of drugs issues obtained, it is important to know how well-informed the public feels in this area. The survey, therefore, also mapped their feeling of awareness on various topics regarding the consequences of drug use, the drug scene and drug prevention measures implemented. More than three-quarters (78 %) of those asked have the feeling that they have enough information *on the medical risks connected with drug use*, and the same proportion

of respondents feel sufficiently informed *on the negative social impacts of drug use*. About a half of those asked have, in their opinion, a sufficient knowledge of *what drugs are used in the Czech Republic*, and less than a half feel that they are sufficiently aware about *how widespread drug use in the Czech Republic is*. Almost half of the respondents also declared that they have enough information *on the legal consequences of unauthorised production, possession and distribution of drugs*. 42 % of those asked have, in their opinion, information *on treatment of drug addiction* of a sufficient level. Approximately a third of the respondents (35 %) assume that they have enough information at their disposal *on measures intended to prevent people from using drugs*. Not even one third of respondents feel they have sufficient information *on advisory services for drug users*, or *on field services for drug users*. The respondents feel that they have the least information *on the activities of regional and local drug prevention coordinators*; less than one fifth of respondents claim that they are sufficiently aware of the coordinators' activities.

Another subject of the survey was the potential reaction of citizens in a situation where they might find out that a person close to them uses drugs him/herself. The largest proportion (35 %) of those asked would try to resolve the situation themselves, possibly a quarter with the help of the drugs advisory service. A fairly high large proportion of respondents (14 %) would not know what to do at all, and 8 % of those asked would deliberately not do anything. 8 % of those asked would seek the help of a general medical practitioner, 6 % would turn to the police and 3 % would inform the user's school or place of work. The potential reaction of citizens to a situation in which somebody close to them wanted to stop using drugs and turned to them to request advice or help was investigated similarly. The vast majority of those asked (92 %) would try to help this person and only 8 % would not know where to turn for help. Only 8 % of respondents would refuse to provide any help. About a third would recommend the help of a drugs advisory service, almost a fifth of respondents would suggest seeking help with a specialist doctor, and around the 10 % level there appeared suggestions of contact centres and specialised non-government, non-profit organisations. The results of the survey nevertheless show that citizens often have only minimal information on specific options for helping drug users locally. Only 24 % of all of those asked know of a concrete facility in their surroundings where drug users can turn for help.

The final part of the survey addressed the topical matter of using cannabis for therapeutic purposes. A significant majority of citizens (87 %) have already heard that use of cannabis plants can have therapeutic effects. Czechs are fairly open to the possibility of using cannabis plants for therapeutic purposes. Almost 70 % of those asked would allow this possibility (27 % without needing further research in this area and 42 % under condition that research confirmed sufficiently the therapeutic effects of cannabis plants). Approximately 14 % of citizens refused the possibility of using cannabis plants for therapeutic purposes. A fairly large (17 %) group of those asked have not formed an opinion on this matter.

As far as actual knowledge of the aspects of the drugs issue under scrutiny are concerned, in addition to the expected influence of education (the greatest knowledge was demonstrated by people with university education and secondary school graduates), the survey showed that citizens between the ages of 20 and 50 years old and those from high-income households oriented themselves better in the topic in question. On the other hand, respondents over the age of 60 and juveniles demonstrated markedly more limited knowledge. On the whole, however, the citizens' knowledge regarding the selected matters was barely average. Answers to questions relating to the perceived (subjective) awareness of the respondents suggest that they are aware of their deficit of information and are willing to admit the fact. Respondents who have used some illegal drug during the past year feel more aware than the rest of the population; answers to questions of a knowledge type did not, however, confirm their impression entirely.

The survey proved indirectly that the drugs issue is fairly attractive for citizens, although it is almost an unpleasant topic for members of the older generation. The stance of citizens to the use and users of illegal drugs (unlike alcohol and tobacco) are, however, unaffected by their own experience or knowledge of the issue. For a significant part of the population this is a topic of no great priority that does not affect them directly. For this reason the population is more willing to accept superficial and simplified information and more likely in the form of secondary information alongside mainstream areas. The result is that the opinions and stances of the Czech public in the area of drug use are formed from one-sided information aimed at the negative and shocking (and therefore attractive) aspects of this complicated and complex issue.

The implications of survey IKSP_D2010 for the formulation and implementation of the drug policy of the Czech Republic lie mainly in the area of provision of information on the drugs issue to citizens, while it can be summed up as follows: provide information to those who are interested in it in a amenable form, of sufficient scope and quality, corresponding to the latest scientific findings, and provide an essential minimum of information (prevention, harm reduction) to citizens who are not interested in this issue, and create among them an awareness of where to find this type of information if they need it.

Translated by: Presto

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The Public and the Penal Policy

Researcher responsible: Petr Zeman

*Co-researchers: Simona Diblíková, Zdeněk Karabec, Jan Tomášek,
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The Institute of Criminology and Social Prevention (ICSP) is devoted in the long term to the matter of creation, implementation and impact of penal policy. For this reason, in 2009 it performed a wide-reaching, original public opinion survey IKSP_TP2009 on the topic of crime and criminal justice, whose results form the empirical basis for this monograph, supplemented by a detailed theoretic study of the matter in question and by secondary analysis of several pieces of recent research in the same field conducted in the Czech Republic both by ICSP and by other bodies. **The subject of research** was public opinion on fundamental aspects of penal policy. The research concentrated primarily on the opinions of the Czech public on the situation of and developments in crime, the degree of punitivism or tolerance among citizens, their opinions on the role and operation of the criminal justice system and its bodies, opinions on the state of relevant legislation, as well as the perceived awareness of the public on the matter in question. The **aim of research** was to produce new findings and enhance those already established on the opinions and stances of the public to separate aspects of penal policy in the Czech Republic, by means of a representative public opinion survey.

The methodology of the research included analysis of specialised literature and relevant documents, secondary analysis of the results of research on public opinion performed to date on issues related with penal policy, and mainly the public opinion survey IKSP_TP2009. An external provider (Factum Invenio, s.r.o) performed the field phase of the survey by a personal interviewing (face-to-face) method with a representative sample of 1692 respondents, aged 15 years and over. The respondents were chosen by quota sampling, where the quota criteria used were sex, age, education, size of place of residence and region.

The theoretical part of the monograph contains a wide-ranging literary study on the issue of penal policy, on stances of the public to crime and the functioning of the criminal justice system, as well as on research of public opinion in the field in question.

Penal policy is reflected in a set of measures of a criminal law nature with which society reacts to criminality with an aim of controlling, limiting and suppressing this unwelcome phenomenon. The state penal policy manifests itself mainly in both its substantive and procedural penal legislation, in the system and organisation of bodies and institutions involved in implementation of criminal law regulations and in the practical operation of such bodies. The nature of penal policy in every society is dictated primarily by their values and principles embedded in their constitutional order, by the targets to which the state mechanism is aspiring and by the ideals accepted by the given society. The current theoretical definition of punishment includes these characteristics: punishment involves inflicting harm; this harm is inflicted intentionally by an authority authorized to do so; punishment is imposed for breach of the law; such breach must be based on fault; punishment is imposed for a justifiable reason.

In recent years, the endeavour to criminalise various types of activity which exploit the opportunities and discrepancies resulting from the current globalisation of society and which lead to new, serious forms of criminality has been expanding. This concerns mainly international terrorism, transnational organised crime, cybercrime, trafficking in migrants, women, human organs, weapons and drugs. This attempt at criminalisation is an expression of the effort by individual countries and the whole of international society to halt these serious criminal activities. This, however, brings with it the risk of enfeebling the principle of legality and the rule of law and can lead to breaches of fundamental freedoms and human rights.

The penal policy of a state should be constant in the long term, which is also a fundamental precondition for the stability of a legal order. The new reality of life at present also sheds a different light on some traditional principles of criminal justice. It may possibly be necessary to look upon justice not as an ideal, a moral and philosophical postulate, but as a personal feeling. Punishment in this sense should be understood mainly as a means of making the offender realise the harmfulness of his actions, thereby motivating him to rectify or mitigate the consequences of the crime committed. Penal policy should be more expressly

oriented towards both compensation of the damage caused to and the satisfaction of the victim of the crime and to protection of society.

Stances can be generally described as critical relationships integrating in themselves both the cognitive aspects of the psyche (knowledge of various objects) and emotive aspects (experiencing their significance). The term “opinion” represents an evaluation expressed in words. By “belief” we mostly understand an evaluation firmly forged and fixed. Social psychologists differentiate three basic elements of stance: cognitive, emotive (affective) and conative (striving). A fundamental characteristic of a stance is its intensity. Neutral stances tend to concern insignificant objects about which the subject knows little. Extremely positive or negative stances are, conversely, the strongest, and relate to an individual’s personality so much that they serve a certain integrative function. We can understand stances as products of learning. The origin of their formation lies mainly in individual experiences.

While trying to understand *public opinion regarding criminality*, it is important to establish how people remember information of various types and how they link and interpret it. People employ two basic strategies in forming a stance. The first of these is systematic processing, consisting of careful evaluation, integration and interpretation of all available facts. The second strategy, which can be identified as heuristic processing, is, in contrast, based on the use of one significant piece of information gained by a person regarding a certain issue.

The rather discouraging conclusions reached by public opinion surveys on crime and criminal justice lead the governments of many countries to deliberation on how to change their citizens’ opinions so that their confidence in the existing system might grow. A key factor in this is the significance and intensity of the stance. The most influential element leading to a change of stances is direct personal experience. In addition to these experiences, more or less targeted persuasion can work on the individual. Crime, as a serious phenomenon, affects significant individual and social values, and so it must be expected that a fundamental place in the stances taken towards it by citizens will be occupied by an emotional component.

There is a whole range of factors, which form the public’s stances towards criminality. Some are fairly obvious and have a direct influence, others are harder to pinpoint and tend to act indirectly. At the very centre of these influences are the mass media. This is where most

citizens gain their knowledge of crime over and above the sphere of their own experiences or experiences passed on by people in their close vicinity. The basic problem, which should be considered in relation to the media and their informing about criminality, is the bias they apply in relation to the real situation. Amongst other areas, this consists of overestimating violent and, on the contrary, underestimating property crime. By means of their focus and style, how they process information on individual offences and present it to the public, the media contribute also to the emotional timbre of most open discussion about criminality.

In addition to the influence of the mass media, it is necessary to consider other factors too, which may play a significant role in relation to the stances of the public towards criminality and penal policy. These can include the respondent's personal experiences with crime, especially the sufferings of a victim of a crime. A related topic is secondary victimisation and its effect on evaluation of the work of bodies of criminal justice system or on the stance towards them. Another unique experience, which can influence the opinions and stances towards criminal justice, is personal participation in court proceedings. It is a well-known fact that the stances of respondents change depending on their knowledge of the field in question. If respondents are aware of the state of crime, the system of sanctions, the rate of re-offending or the most frequently imposed sanctions, they evaluate the work of bodies of criminal justice system more favourably. Differences between respondents also usually become apparent in relation to some fundamental demographic characteristics such as age, sex or education.

A very expedient procedure for gaining a detailed and vivid picture of the respondents' stances in the field of criminality and penal policy are qualitative methods, in particular an in-depth interview with open questions. The disadvantage of this method is its considerable demands on time and effort not only for the researcher, but also for the respondents themselves. For this reason too, quantitative methods are employed in research of public opinion much more frequently. Research of public opinion must come to terms with several basic methodological problems. This generally means the creation of a reliable instrument for measuring stances, selection of statistical methods for subsequent processing and evaluation of the data obtained and for ensuring objectivity, reliability and validity of the figures. A fundamental aspect in preparation of a survey of public opinion is also an adequately chosen method of selecting the people who are to be questioned: either a random or quota selection governed by pre-designated criteria.

In a separate section, the study brings a *summary of results of some preceding research* of opinions and stances of the Czech public addressing various aspects of penal policy conducted by ICSP and other bodies. The research whose results are examined in this section of the study dealt with topics such as perception of criminality as a problem and a sense of safety amongst citizens, confidence in the bodies of the criminal justice system and awareness of its activities, tolerance of the public to various types of behaviour and to groups of the population, penalties and sentencing in the Czech Republic, causes of criminal behaviour, prevention of criminality and others.

The empirical section of the study summarises the results of *survey IKSP_TP2009* which investigated public opinion in several areas:

- the state and development of crime in the Czech Republic;
- the degree of tolerance and punitivism;
- the role and operation of the criminal justice system and its bodies;
- the situation of relevant legislation;
- perceived awareness of the matter in question.

In addition to the basic evaluation of the survey, this part of the monograph also contains the results of secondary statistical analysis of findings using multivariate techniques.

The results of the survey showed that approximately half of the population takes an interest in the issue of criminality and the functioning of the criminal justice system. The citizens themselves feel that they do not have sufficient information regarding the various aspects of penal policy. The research confirmed that their knowledge is at a rather average level in this area, although it seems that they rather underestimated their knowledge. They feel best informed on the state and the structure of crime; in reality they have better knowledge of criminal legislation. Conversely, citizens' knowledge of the activities of the criminal justice system is fairly weak and citizens feel an information deficit most markedly in this area. According to the results of the survey, the public seems to share the opinion that the media informs about the matter of crime and criminal justice selectively, i.e. that it chooses primarily the unusual or shocking cases which therefore get more room than would correspond to their exceptional nature.

To the question on what the lower age criminal responsibility is, 61 % of respondents gave the correct answer. The awareness of citizens on the culpability of various types of criminal acts is overall fairly average. When the respondents had to spontaneously name types of alternatives to imprisonment, most often (in 66 % of cases) they named a financial penalty (a fine), and quite often they named community service (48 %). Approximately one fifth of respondents mentioned a suspended sentence, i.e. a sentence of imprisonment with conditional postponement of its enforcement for a probationary period (22 %), confiscation of property or thing (21 %), and deportation or prohibition of residence (19 %). Over 15 % of respondents remembered the penalty of a prohibition to undertake certain activities. Almost half (47 %) of those asked could name the longest possible sentence of imprisonment (other than life).

Three quarters of citizens suppose that crime rate in the Czech Republic has grown since the year 2000, although official statistics suggest rather the opposite. Those, who, in their own words, take an interest in the issue of criminality, are more convinced of the growth in crime. As far as the structure of criminality is concerned, citizens underestimate the proportion of property crime in the total number of registered offences, while they considerably overestimate the proportion of violent and sexual criminality. Likewise, in comparison to police statistics, they overestimate the proportion of youths and foreigners involved in the overall total of crimes.

The survey IKSP_TP2009 confirmed the findings of previous research on this topic: that the majority of the public consider the sentences stipulated in the Criminal Code to be too lenient and also regard the sentences imposed in practice by Czech courts as being too lenient. According to the stances expressed regarding the role of penalties and sentencing, the public can be divided into three groups: a) retributivists, according to whom the present way of prosecution of crime in the Czech Republic is not sufficiently functional and that it would be desirable to toughen the approach to offenders and to defend the interests of the victims; b) institutionalists, professing the standpoint that the reaction to crime and treatment of the offenders should be the sovereign affair of the state and its institutions, however, the practical implementation of this power in the Czech Republic is not exceedingly effective; and c) nihilists, who do not trust to anything in the area of sanctions and sentencing. The proportion of retributivists and institutionalists in society is approximately the same, with

a slight preponderance of retributivists; the nihilist group is smaller and accounts for approximately one fifth of citizens.

The results of the survey made it possible to identify three groups of citizens also according to how they value the bodies of the criminal justice system from a point of view of fulfilling their basic tasks. One group with a mainly positive evaluation accounts for a quarter of citizens, and a group with a more negative evaluation, one fifth of citizens. More than a half of the public can be labelled as members of a group of reticent inhabitants who do not express a particularly extreme stance in evaluating the operation of the criminal justice system bodies.

The Czech public sees the status of the victims of crime as a great problem, at least in the sense of protecting them against negative phenomena, which can be provoked by their involvement in criminal proceedings. Protection of the victims by the state against secondary victimisation is, according to the citizens, very feeble, regarding possible revenge or intimidation on the part of the offenders, unwelcome media attention or unauthorised publicity of information on the victim.

Some of the sorting criteria, where certain differences facilitating generalisation emerged in the answers, included age and education. Respondents from the lowest age groups expressed less interest in the issue in question and were more frequently unable (or unwilling) to answer a knowledge-based question at all, even in areas, which specifically related to their age group (minimum age of criminal responsibility, the existence of a juvenile justice system). At the other end of the range, the highest age group of citizens expressed greater dissatisfaction with the steps of the relevant bodies towards criminality and advocated a more punitive stance. As expected, respondents with higher education demonstrated overall better knowledge of the issue and in some respects in their case it was possible to encounter a less punitive stance (greater amenability to alternative sanctions, greater acceptance of the possibility of conditional release from imprisonment).

The most significant findings of the survey IKSP_TP2009 can be seen as those concerning the citizens' interest in the issue and their awareness of it, either perceived or actual awareness. Research in this area indicated significant shortcomings. It can therefore be recommended that, as part of preparation and implementation of national penal policy, public

awareness should be given greater attention both from the point of view of the extent and structure of information provided and, with regard to its form, lucidity and comprehensibility.

Translated by: Presto

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B/ Methodological Series

The Application of Research Methods and Techniques in Criminology. General Section

Researcher responsible: Martin Cejp

Through criminological research we are able to collect knowledge concerning the nature, structure and development of criminality, about perpetrators and their victims, both individual and social causes, criminogenic factors, and about the possibilities for effective defence against threats. Through this research we not only collect specific data, but also learn about opinions, attitudes, arguments and consider proposals for solutions. On the basis of the data and statements obtained we seek to discover the wider and deeper context and to formulate principles that should be of general validity. We should refute inaccurate and fixed prejudices, provide warnings concerning tendencies that could become threatening to individuals and for society, we should be looking for optimal solutions to problems.

At the Institute for Criminology and Social Prevention we have tried to evaluate research methods and techniques in terms of the extent to which these tools are reliable and of general validity, whether or are not they are able to encapsulate reality, to what extent their use is functional, what lack of precision or possible bias they may include. We focused on the research that has taken place in the Czech Republic subsequent to the year 1990. When research of similar topics in the Czech Republic was not available we referred to comparable examples from foreign studies or to those international investigations that had been carried out with Czechoslovak participation. Most of this research was carried out by the Institute for Criminology and Social Prevention, in some cases we also took into account studies that the researchers had discussed in the workshops of the Section for Social Pathology of the Masaryk Czech Sociological Association. When there were other interesting and more unusual approaches, we consulted rarely discussed of theses by students of the Faculty of Social Sciences of Charles University.

In the original text there is not simply a generalised list of the methods and techniques currently in use. It seeks primarily to be a reflection of what has been examined recently –

and how – in the field of criminological research. From the methodological point of view, we sought to evaluate the effectiveness of the research methods utilised and to seek for fresh improvement that could lead to greater flexibility, accuracy and reliability and, on the basis of the results found to broaden the range of their applicability.

This publication constitutes a general introduction to the series that is dedicated to the methodology of criminological research. It is divided into three sections.

The first section includes a definition of what criminological research is concerned with and of what the practical applicability is of this focus. Additionally there are illustrative examples of how criminological research is carried out, what types of qualitative and quantitative data it determines and what general principles can be derived from them. Also mentioned at the same time are the limitations associated with criminological research. These include: environments that are frequently difficult to reach, restricted access and limited options for using data of persons, latency, the complexity of communication with offenders and victims. Also mentioned in the introductory section is the division between method and technique. In regard to the specific stages of research activity, the importance of a thorough preparatory phase is highlighted. Primarily essential is the theoretical background: a precise definition of the field to which the phenomena being examined belong, the definition of the complex and of its individual stages and their precise boundaries, and/or an outline model of likely related factors and the formulation of hypotheses. There are also other important elements such as operationalisation, prior research and piloting. Great attention is paid in this section to selected files and to their representativeness in relation to the main file.

The second section deals with methods. Defined as methods are research procedures, in the course of which we generalise and categorise specific data in a context that is determined according to the research techniques utilised. In the study we dealt first in accordance with the historical method. This we understood primarily as an analysis of social changes and their correspondence with changes in criminality. In a narrower sense, we have provided examples of analyses of criminal groups and individuals. We also referred to the analysis of statistical data that can be considered as a method when it compares recorded data within the context of development over time or in terms of structural changes. Utilising a monographic method we analysed the past, present and future of the behaviour

and conduct of specific individuals or of small groups, including the external influences that influence them. Using a typological methodology we created abstract theoretical models from the identified data and we sought for typical patterns of behaviour in the conduct and activities of offenders, victims, groups, social units and various criminogenic situations. Based on the knowledge obtained, by using a topographical method, we create maps on which we can demonstrate, on a global, national or regional scale, the occurrence of phenomena, the prevalence rate of some activity, or transit routes or areas facing threats. Just as all research should start by analysing the past, it should be concluded by utilising forecasting methods to attempt to predict the future development of the phenomenon under investigation. The prognosis should consist of a comprehensive analysis of potential variants that could occur in the future, defined in the context of the facts examined.

In the third section we focused on research techniques. Techniques were considered as research tools, the use which we employ in accordance with the specific circumstances, exploring, summarising and evaluating both quantitative data and qualitative statements. In the study we first discuss observation and experiment, which – incidentally – have not been applied so frequently during recent years. In contrast, widely used was document analysis. This technique has been used in almost all the research of the Institute for Criminology and Social Prevention. Mainly analysed were international documents such as resolutions, action plans, conventions the regulations of the UN, the CoE, the EU and relevant governmental and departmental documents, such as evaluation reports, conceptual proposals, guidelines, analyses, in addition to documents of civic associations, foundations, community organisations, church initiatives and others. Also extensively utilised were court records, additional and investigative files, anonymous criminal records, the personal files of convicted and imprisoned individuals and expert opinions. Recordings of psychological examinations can also be used in the form of documents. A frequently-used source is an analysis of the relevant legislation. Also included in the analysis of documents also is the use of information from the media, including the Internet. In some cases analysis of the press or of the printed material pertaining to a certain group and autobiographies may also be used.

Surveys are often utilised in research that is undertaken either through questionnaires or in the manner of a controlled interview. Using these methods attitudes, beliefs, knowledge and information can be identified; during the interviews the interviewee also evaluates the facts researched. In criminology non-standardised, individual and narrative interviews are

frequently also used. Using questioning also enables us to seek the expertise of professionals who have knowledge and practical experience in the specific area. In criminology frequently specific groups of respondents are interviewed, especially those whose professional life is related to crime control. Using questionnaires we can also contact the institutions that maintain records concerning the phenomenon being observed.

We can also make use of opinion polls as a material source. The findings of public opinion can be monitored both in areas directly related to crime and in regard to socio-pathological phenomena. Usable data can also be searched for in the broader social context. Factual information concerning criminality is also made available in internationally implemented victimological research, bringing data concerning the victims of crime. Also monitored by these investigations is the level of reporting of crimes to police, the worry-level concerning crime, methods for protecting homes and property. Criminality is also a feature of research into public attitudes concerning penal policies. Within this context general attitudes toward punishment and punitiveness are measured while views concerning capital punishment are regularly investigated, as is frequently a reduction in the age of criminal responsibility. Polls also seek out opinions concerning crime prevention, while attitudes towards drugs are also monitored and the level of alcohol consumption and certain additional socio-pathological phenomena are studied. Additionally investigated are the public attitudes of various national and ethnic groups towards migration.

In terms of the broader social context it appears from public opinion polls that criminality is related to the level of satisfaction with the political and economic situation and with living standards and unemployment. In determining the most urgent problems to be solved over the past twenty years the areas most frequently referred to have been crime, including organised crime and corruption. Significant explanatory power can also be provided by the investigation of confidence in those institutions that are the key players in the fight against crime, especially the police and the courts, but also in certain other institutions, such as the media.

A specific technique employed in criminology, is crime-prediction, by means of which the future conduct of a delinquent individual can be predicted. Selfreport can also be considered as specific tool, by means of which a person involved in an investigation – either a victim or the perpetrator of a crime – testifies in the manner of a self-evaluation or self-

assessment in regard to his/her own criminal activity or concerning an injury that occurred as the result of a crime. The results can usefully complement other data, however identifying the crime incidence rate in this manner is not recommended. Sociometry is applied in criminology to the analysis of relationships for groups of convicted persons, or for discovering the optimal composition of police teams. The conclusion is that the groups should not be too large, nor gathered in one place, and by their nature should be sustainable over a longer period.

Primarily implemented in criminology is research of the criminal environment to which, usually, techniques that would permit direct surveillance are not applicable. This restriction can be overcome through expert investigation in the course of which expert opinions are expressed by individuals who are involved in relevant fields and who frequently possess information that is not accessible on a regular basis. During the last twenty years the Delphi method, the Roundtable and the focus-group techniques have been used, in addition to brainstorming and brainwriting. Very widespread, above all, is the interviewing of experts. Unlike the questionnaires that are focused on issues of a general nature, this manner of questioning is focused on specific information that the expert interviewed communicates on the basis of his/her individual, frequently otherwise inaccessible, experience.

Extrapolation of the time lines generates a curve of the possible development of a phenomenon observed under unchanging conditions. Due to the fact that conditions are changing constantly, this should be used only as the initial starting point for broader analyses. Scenarios can suggest a more complex pattern of future developments. These, however, do not constitute a complete forecast, in which all the circumstances are taken into account; they rather focus on one specific problem and suggest the alternatives that might manifest in the event of its solution or lack thereof, or of a poor or otherwise faulty solution.

In the course of the criminological research undertaken during the last twenty years in the Czech Republic, roughly twenty research methods and techniques have been utilised to a lesser or greater extent. In most cases the research results were achieved through the use of a combination of several different research methods. Almost without exception, the results of the analyses of all the documents available were combined with surveys of the opinions of those individuals who were active participants in the processes under examination. Also the other procedures were then grouped in accordance with the two principal directions.

Combination leads to a more all-embracing point of view. If a problem is examined from multiple angles, the image of it becomes more plastic. Some processes can permit the inclusion of specific details, thereby making the view more precise. An important reason for combining methods should be that the results can thereby be refined. If there are some general findings available, using additional research procedures we can deepen them, elaborate on them, and make them more precise. Also useful is the challenging of results with different results. Most important then is the confrontation between them. The result obtained by means of a certain procedure is either confirmed or not confirmed when using alternative research methods. If it is not confirmed, or if it is only partially confirmed, this is a significant finding. We thereby receive the signal that either the issue examined is more complicated than we had originally anticipated, or that the research methods were not used correctly.

Combining research methods may not always lead to the positive results mentioned. Each research method has some shortcomings and each has a somewhat restricted explanatory effectiveness. This deficiency can be multiplied by the combining of errors. We should therefore not become subject to the impression that by linking several research procedures the results obtained will automatically be more accurate. The purpose of the methodology is to verify the explanatory power not only of each individual method, but also of combined procedures.

This study is part of a series in which we wish to sequentially recall additional details in regard to the research methods and techniques that are currently in use in the field of criminology. This series is intended primarily for researchers – both beginners and those who, though active in this field for a long time, but due to their narrower specialisation in a more specific area, can find this broader context useful to them. Due to the fact that in criminology researchers from different disciplines make representations, i.e. lawyers, psychologists, sociologists, economists, political scientists, and each of these has a somewhat different experience in terms of the specific research practices of their relevant discipline, the publications prepared as a part of this series should provide them with a summary of the evaluation and practical application of methods and techniques in the field of criminology. These publications could provide students with access to detailed information, numerous examples of practical use and assessment on a larger scale from the methodological point of view than is commonly available in dictionaries and textbooks. These publications could be useful also for the staff of operational units. From them they could obtain some idea

of the rules that are applicable to serious research, how results are obtained and what the degree of their validity is and to what extent they provide an objective view. They would then be able to effectively make use of these results, without either underestimating or overestimating them.

Translated by: Presto

Cejp, Martin: Aplikace výzkumných metod a technik v kriminologii. Obecná část. (Vybrané metody kriminologického výzkumu. Sv.1). Praha: IKSP 2011. – 133 p. ISBN 978-80-7338-108-0.

Departmental Statistics - Basic Sources of Information on Crime in the Czech Republic

Researcher responsible: Alena Marešová

As a rule, two departments present departmental statistics on crime in the Czech Republic ("CR") and guarantee their accuracy: 1) the Ministry of the Interior of the CR, specifically the Police of the CR and 2) the Ministry of Justice, specifically state prosecutors and courts. Within both departments, there exist separate systems for data collection, compilation and use for internal activity with the objective of providing information on crime in the broader relationship. Each year, the information systems of both departments provide to state administration, by means of the MI CR, a Report on Public Order and Internal Security in the Czech Republic. This situation is mainly assessed based on statistical data on crime provided by the aforementioned departments for the elapsed year in comparison with the year prior to that, and based on an assessment of the overall development of the status and structure of crime in the CR within roughly the past five years. However, both departments describe a status, structure and dynamics of crime in the assessed period only on the basis of the data available to them, i.e. the situation in the CR is only described by statistical data on crime by registered departmental statistics and on natural persons, perpetrators of crimes, who were investigated, criminally prosecuted, accused, convicted, i.e. identified as perpetrators by agencies active in criminal proceedings.

One of the objectives of the presented work is to make accessible to police and to other agencies active in criminal proceedings and students of the State Police Academy and other interested parties, a deeper, mainly criminological (and critical) view of the data on crime, presented at this time by individual agencies active in criminal proceedings. It further provides an analytical view of information on crime in the CR published officially for over 100 years (except during the occupation). It is also an overview of the historical development of compiling statistical data on crime and its interpretation.

It asks whether the basic arguments used in official documents, and which are derived solely from statistical data compiled by the police and criminal justice authorities on their registered crimes, are correct, or have they forgotten to state other circumstances that may alter the generally recognized view on crime trends in recent years? Is other information missing amongst all information, as an argument of the utilized numbers, on crime, on changes to its content and structure, on general laws affecting its level and development, or on characteristics of its perpetrators? What information has the statistical data compiled in the departments MI and MJ actually provided in full? Does its explanatory value change over time or is it comparable? What true explanatory value does the data have regarding a phenomenon, for which it is chiefly used for interpretation? Do departmental statistics have any explanatory value for comparing the level of crime in the CR with that of other countries?

The first chapter contains a list of basic terms used for assessing crime, such as status, structure, and dynamics of crime. What a crime index is, etc.

The second chapter expresses in detail the results of an analysis of available materials on crime from the end of the Austro-Hungarian Monarchy, through the period of the First Republic, and the period after 1946 up to 1974.

The third chapter describes and analyzes crime statistics compiled in the department Ministry of the Interior of the CR (specifically criminal police), from 1974 to 2010, and their use in the Report on Public Order and Internal Security in the Czech Republic. Along with this, the chapter also contains a proposal for a way of gaining information on latent crime (yet unmapped, unregistered and thus parts of true existing crime not taken into account by the department statistics), using a victimology investigation.

The fourth chapter provides similar insight into crime statistics compiled in the department Ministry of Justice of the CR, and a description of crime in reports on the activities of state prosecutors.

The fifth chapter summarizes the positive and negative aspects of the current method of assessing crime in the CR while using departmental statistics.

The sixth chapter contains a summary of the previous chapters, and proposals for further use of departmental statistics. It contains a specified proposal for gaining information on latent crime.

Translated by: Marvel

Marešová, Alena: Resortní statistiky – základní zdroj informací o kriminalitě v České republice. (Vybrané metody kriminologického výzkumu. Sv.2). Praha: IKSP 2011. – 148 p. ISBN 978-80-7338-110-3.

Psychological Testing and Criminology Research

Researcher responsible: Šárka Blatníková

Criminology endeavours to obtain, examine and systematically increase erudition regarding criminal behaviour and problematic areas of criminality in general. It strives to map contexts and also monitors the structures of individual phenomena. Empirical research in the field of criminology relies on combined methods and techniques from various scientific fields. The Institute of Criminology and Social Prevention as a research inter-disciplinary institution endeavours, in addition to other tasks, to guarantee research, analytical as well as theoretical-expert activities. The methodological apparatus of criminology strives for exactness, be it through carefully elaborated mathematical verifications, profound analysis, case studies or psycho-diagnostic tests that inform about the offender's or group's personality (or sample of offenders). In current psychology as well as criminology, we may observe a trend directed at the combination of methods with the aim of achieving more complex and valid results (this may involve making a diagnosis or confirming a research hypothesis). The selection and focus of the methods used must also correspond to the subject and aim of the research. This also applies to the inclusion of standardised psycho-diagnostic tests as a research method.

The subject of our research involves the methods and techniques are owned by the field of psychology, which may contribute (or have already contributed) to the fulfilment of criminological research goals. The aim of this publication was to present and describe studies that focused on the methodological apparatus of criminology, the inter-disciplinary nature of this field and the possibilities presented by psycho-diagnostic methods (usage and limitations of psychodiagnostic methods in process of administration, scoring, their interpretation). Our aim was to complete, specify as well as acquire new information and knowledge regarding psychological assessment⁶ and **psychological testing** especially with regard to their

⁶ Psychological assessment is similar to psychological testing but usually involves a more comprehensive assessment of the individual. Psychological assessment is a process that involves the integration of information from multiple sources, such as test of normal and abnormal personality, tests of ability or intelligence, tests of interests or attitudes, as well as information from personal interviews. Psychological

application/use in criminological research. Psychological testing is a field characterized by the use of samples of behaviour in order to assess psychological constructs, such as cognitive and emotional functioning, about a given individual. The technical term for the science behind psychological testing is psychometrics. The valid use of any psychological test is specified by the constraints under which that instrument was developed. Typically, a test is assumed to be valid for some specific population, for a particular setting, and for well-defined areas of application. On the other hand, the stressed “standardness” of psychodiagnostic techniques need not represent a limitation to their creative use/application.

The study was divided into several thematic units. The general introduction to the issues of applied psychology, psychodiagnostics as well as more general psycho-methodological subjects such as the qualitative versus quantitative research approach, is followed by two more extensive sections. In the first of these, we focused on **clinical, diagnostic methods** that are more often associated with qualitative methodology and research procedures and that capture the person under investigation in all his/her dynamics of manifestation. These include methods that are also applied by other fields- e.g. the interview or observation. The interview in psychology is a diagnostic method as well as a research tool, whereby the methodological difference between them need not be too significant. Both cases involve the collection of data with the aim of determining facts when resolving a research or clinical problem. Nonetheless, criteria of reliability, validity and objectivity do not apply to the research interview (as a scientific tool). Specific variants of the interview that are used in forensic psychological procedures and criminologically oriented research inform about other possible applications. We also included in this section issues relating to errors and misrepresentations in interpersonal perception, which are mechanisms that may affect not only the research process per se but especially its result. The other clinical research methods in psychology that we deal with in this section include the analysis of documents or products (content analysis) and the research experiment. These again involve methods “shared” by several disciplines and several chapters were devoted to them in the first volume (Cejp, 2011). In our publication, we therefore focused on certain already implemented social-psychological-forensic research and certain particularities. The last selected representative of clinical methods is psychological anamnesis, which is often part of criminological research. We demonstrated the frequency of

assessment – is the use of specified procedures to evaluate the abilities, behaviors, and personal qualities of people.

its application using several concrete examples, as well as the form in which this history is processed and presented in such research.

The second part of this publication is dedicated to **psychological tests** that are most frequently associated by the public with psychological assessment. As these tests are sometimes confused with many of tools, techniques and “ordinary questionnaires”⁷, we wanted to inform at the beginning of this chapter also about the fact that without adequate validation, without careful verification, adjustment of reliability and without item analysis, questionnaires are widely divergent from psychometrically satisfactory tests (inventory and questionnaire with psychometric properties). *Psychological tests* can strongly resemble questionnaires, which are also designed to measure unobserved constructs, but differ in that psychological tests ask for a respondent’s maximum performance whereas a questionnaire asks for the respondent’s typical performance. A useful psychological test must be both valid (i.e., there is evidence to support the specified interpretation of the test result) and reliable (i.e., internally consistent or give consistent results over time, across raters, etc.). Many psychological tests are generally not available to the public, but rather, have restrictions both from publishers of the tests and from psychology licensing boards that prevent the disclosure of the tests themselves and information about the interpretation of the results. Of the **performance tests**, we focused on **IQ tests** that are used relatively frequently when assessing offenders in criminological research and whose results it is not advisable to overestimate. Psychological **measures of personality** are often described as either 1) projective personality tests (free response measures), 2) self-report measures (personality inventory or questionnaires) and 3) performance-based personality tests that are not that well known by the public (lay persons). **Projective personality tests** – such as the Rorschach inkblot test, Lüscher colour test or drawing techniques- remain thanks to their “magicalness” appealing techniques that attract the attention of both researchers and readers. It must be remembered that in psychological assessment they only play a complementary role and serve mainly as a tool for acquiring information regarding emotivity (and eventually the development of a personality). They do not replace standardized personality inventory. Projective techniques are capable of offering information even about the internal structure of the personality, about its maturity, integrity or about the given person’s contact with reality. Projective personality tests have their avowed supporters and opponents and we have attempted to interpret the

⁷ These tests are different from ordinary questionnaires (or check lists) in the way they are constructed and protested.

arguments of both sides in this paper. In general it is stated that the validity of projective methods grows with the psychologist's experience and with the method used and it is no secret that the value of certain techniques in their current form is very debatable. A more precise expression of the validity of these diagnostic methods is mainly expected from the application of modern procedures such as mathematical-cybernetic modelling etc.

Psychological personal tests – questionnaires and inventories– are probably most frequently associated with the term “psychological testing”. In this study, we focused on tests that are currently used in our country or that eventually are potentially useful for criminological research. Moreover, tools are being developed in criminology on the basis of questionnaire method constructions that are helping to distinguish e.g. persons at risk of repeating their criminal behaviour from individuals with a good prognosis and that are based on the psychopathological analysis of personality and social factors in repeat offenders. The text analyses in greater details the Minnesota Multiphasic Personal Inventory, the Eysenck's and Cattell's Personality Inventories as well as the Freiburg personality inventory that is still used in our country in daily practice as is Leary's Interpersonal Check List or the Mikšik's questionnaire. Of the „newer“ personality test in our country, we included e.g. NEOPI-R is a measure of the five major domains of personality, Cloninger's Temperament and Character Inventory (this has not been officially standardised as yet in our country) or the Kuhl's & Kazen's Personality Style and Disorder Inventory. We added to these multi-dimensional personality questionnaires a chapter on the assessing the **aggressive component of personality**, which was incorporated in view of its close link to forensic-psychological and criminological subjects. Although rating scales are not designed for psychological testing (personality diagnosis), i.e. they do not involve tests in the narrow sense of the word, they have some of the properties of psychometric methods. They may be used as a general method or technique for measuring various phenomena or processes- they serve e.g. for recording the characteristics (of persons or objects) in a manner that ensures a certain degree of objectivity and enables the quantitative expression of the studied phenomenon. At the end of the publication, we thus list certain basic data relating to their division and application. For example, in forensic psychology and criminology, self-rating scales are utilised in predictive instruments, covering the dimensions that are directly linked to the offender's personality and subsequently also those associated with the circumstances of the offence and its offending. At the end of the publication we also briefly review some of the ethical principles of research work and the science codex. Naturally, wherever research involves human subjects and deals

with personal and sensitive data, the informed consent of the participating persons is necessary.

The aim of this work was not merely to present a complete list of tests and psychodiagnostic techniques, but to expound on those most often used and to acquaint the wider professional public with the basic approaches used for interpreting psychodiagnostic methods and techniques in criminological research. The potential of individual methods and their application/use in criminological research are illustrated on examples and references to concrete research probes. The publication works with themes related to criminological research and offers a view of the methods and techniques from the field of forensic psychology and psychological testing as research methods in criminological studies. We attempted to map, describe and analyse selected research methods and empirical approaches that may be (and are) used in criminological research.

The publication should provide summary encompassing information regarding the practical application of the selected methods and techniques in criminological research. The group of persons for whom the publication is intended is thus defined.

We would be pleased if the publications from this series were to benefit not only researchers in criminology but also other experts and specialists, enabling their better orientation, understanding and practical application of findings included in reports from criminological research. This volume is resource for legal practitioners and researchers who wish to keep abreast of forensic psychological assessment, and is of particular interest to researchers and students in criminology, forensic psychology and social work.

In the subsequent methodological volumes, it would be possible to focus in more detail not only on individual techniques but also on specific issues- thematic units (e.g. the issue of assessing offender motivation, differentiation on the basis of criminal styles of thinking, useful combinations of standardised psycho-diagnostic techniques and experimentally developed techniques etc.). It is important that we approach the measurement or assessment of any properties and characteristics complexly, i.e. within the context of the personality of the individual being assessed as a whole, as well as within the context of the wider application of psycho-diagnostic methods.

Conclusion: Thanks to its inter-disciplinary nature, applied research in the field of criminal behaviour enables the creative use/application of a number of methods, thanks to which it is possible to monitor and follow the interactions and dynamics of individual phenomena. Professionally prepared criminological research is always designed with regard to the nature of the studied phenomena, which enables the utilisation of a wide scope of research techniques. Information and data may be taken, collected or fixed using observation, interviews, questionnaires, document analysis or tests. This requires not only professional erudition but also concrete knowledge and creativity on the part of researchers in order to apply suitable research methods, procedures and techniques. If a certain method is used in research, it is useful to have a general awareness as to “what” we can expect of it and how (if actually at all) can such a technique help us meet our research goals. The individual methods and techniques cannot be applied mechanically to any criminological theme. On the other hand, the stressed “standardness” of psychodiagnostic techniques need not represent a limitation to their creative use/application. We attempted to illustrate this fact on research probes conducted at our Institute (ICSP) and which involved the use of a test or clinic psychodiagnostic methods as one of the research tools. The aim of the undertaken research was to map, describe and analyse selected research methods in the field of psychology, which may be used and applied today and under current conditions in criminological research. Our aim was to complete, specify and acquire new information and knowledge. We selected those psycho-diagnostic techniques that are commonly used in our country (or abroad) and that may be (or have already been) used as research methods. A larger part of the text is intentionally devoted to test methods – personality questionnaires, among other things because compared to methods of observation or document analysis, these techniques are exclusively administered by the field of psychology.

When selecting methods in criminological research, the particularities of the concrete empirical work must be taken into consideration – in general the target group (research group) must also be taken into consideration. Every technique may be effective in a different section of the research task and it must certainly be kept in mind that these techniques cannot be applied mechanically without considering the context of the research as a whole or the concrete situation. This is also associated with the need to assess the suitability of certain selected methods for application, e.g. in a prison environment to take into consideration the attitude of the convicted persons to the investigation diagnostic techniques, which may differ from the attitude of other persons to test situations etc.

The contribution of criminological research and the applicability of its findings in practice are among others associated with the advancement of individual methods and techniques. Findings from the field of forensic psychology and awareness about psycho-diagnosis- its tools (tests), potential and limits, have their place not only in expert and legal assessor activities or penitentiary practice. In this publication, we attempted to demonstrate that diagnostic methods have a firm and irreplaceable position in criminological research. The text may also be considered to be a certain source of basic information regarding diagnostic techniques- it includes numerous references that will simplify the search for further information- and we would be pleased if this publication proves helpful not only to criminology researchers but also to other involved professionals (from criminal law, penology or social-psychological environments).

Translated by: Presto

Blatníková, Šárka: Aplikace klinických a testových metod v kriminologickém výzkumu. (Vybrané metody kriminologického výzkumu. Sv. 3). Praha: IKSP 2011. – 176 p. ISBN 978-80-7338-109-7.

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