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Introduction

Thirty years ago, a chain of events occurred which brought down the Soviet Union and its satellite communist regimes in Central and Eastern Europe. It originated with unprecedented negotiations and agreements between the Polish communist authorities and the opposition, which led to partly democratic elections on 4 June 1989. This was followed by a mass exodus of East Germans into West Germany via Hungary, and culminated in the 'Autumn of Nations': the creation of the first non--communist government in Poland since 1945, the 'Velvet Revolution' in Czechoslovakia, the subsequent fall of the Berlin Wall, and a bloody revolution in Romania. The so-called Eastern Bloc of 'real socialism', or – to paraphrase the first line of the Soviet state hymn – 'indestructible union of free nations' disintegrated. Somewhat different developments took place in the Balkan state of Yugoslavia, which, although communist-governed, was not part of the Eastern Bloc. However, the collapse of the Soviet Union would also impact that country, contributing to its disintegration and several subsequent armed conflicts lasting throughout most of the 1990s. Therefore, the transformation in those countries that emerged from the former Yugoslavia was different than that of the former Soviet Union and the Soviet Bloc.

Nevertheless, forty-five years of various forms of communist rule in Central Europe and the Balkans, and more than seventy years of communist rule in Russia, left those societies with deep wounds. The transformation from communism to liberal democracy that followed, in some countries aggravated by armed conflict, has brought about equally profound consequences. As Lech Wałęsa, leader of the Polish independent trade union *Solidarność*, used to say in reference to the establishment of 'socialist' regimes after World War I and World War II, it was relatively easy to make fish soup out of an aquarium. The reverse process, making an aquarium out of fish soup, is much more complicated. The return to liberal democracy, a market economy, and a free society also had an enormous impact on the rates, structures, and forms of crime, as well as on criminal justice systems themselves. Fundamental reforms of the criminal justice system, a return to the principles of the rule of law, and European standards, had to be implemented amid growing crime rates and increasing fear of crime. Against this background, other global phenomena and the emergence of new, previously unknown forms of crime had an impact on the region: the rise of international and cross-border crime, international terrorism, corruption, economic crime, cyber-crime, etc. The criminological literature devoted to the consequences of the political, economic, and social transition in Central and Eastern Europe has been steadily growing over the past thirty years. In our opinion, it may be well worth the effort to contribute to this literature with a collection of articles by several authors from Central and Eastern Europe presenting a Central and Eastern

European perspective on selected issues regarding crime and crime control after the fall of communism.

That is why the Editorial Board of the *Archives of Criminology* (*Archiwum Kryminologii*), the oldest and most prestigious peer-reviewed Polish criminological journal, decided to prepare this special issue. The call for papers was published in the summer of 2019 and invited scholars from Europe and beyond to contribute to the issue. However, as mentioned earlier, it was expected that primarily researchers from the region would respond. Criminology and criminological research developed substantially throughout the region during this period. This was somehow natural during a time characterised by growing problems with crime and crime control. The development of Central and Eastern European criminology has been stimulated mainly by the growing cooperation of criminologists in Europe within the framework provided by the European Society of Criminology and its annual conferences, working groups, and journal. It is also necessary to emphasise the role of research financed by the European Commission and national research agencies facilitating comparative criminological research. Therefore, the Editorial Board decided to entrust the editing of that volume to four scholars from the region who have served as Presidents of the ESC since 2001. The current president, Prof. Aleksandras Dobryninas of Vilnius University, was not yet elected at the time when decisions about guest editors of this issue and the call for papers, was made.

We feel that we are now able to present our readers with twelve interesting and high-quality papers that deal with various aspects of crime and crime control throughout the region during the last thirty years, and the current situation regarding these problems. The authors come from almost all countries in the region: Czechia, Hungary, North Macedonia, Poland, Romania, Russia, and Serbia. The topics span a comprehensive spectrum of topics, including: general quantitative and qualitative analyses of crime trends; general and specific problems of crime control, including specific forms of sanctions ranging from community-type sanctions to life imprisonment and the death penalty; specific types of crime, such as trafficking in human beings, violence against woman, and not paying maintenance for dependents; specific criminological perspectives, like research on criminal careers; and finally, the transformation of penitentiary systems. Each paper brings a specific national background and perspective, while at the same time, all of them deal with the common experience of crime as a phenomenon that accompanies the process of transforming the fish soup of the authoritarian state and central planning back into the aquarium of liberal democracy, the rule of law, and freedom. These social changes proved to be a remarkable success in some countries, but the obstacles along the way were also formidable. Recent developments in some countries in the region show that nothing lasts forever, substantial reversals on the path are possible. It may be particularly difficult to get rid of an authoritarian heritage in the area of crime control. Nevertheless, this special volume shows that, despite all the obstacles and problems, criminologists and criminal justice researchers in the region have made significant progress during the past thirty years and are increasingly able to produce valuable contributions. As often happens, problems with crime and crime control stimulate research and contribute to the progress in our understanding of the complex nature of crime and response to it.

We hope you will enjoy reading this special issue of the *Archives of Criminology*, and we are grateful for being invited to co-edit this issue of a leading Polish criminological journal spanning its influence to the international scientific arena. We hope the journal editors continue their productive work and develop the journal into one of the leading Central and Eastern European criminological periodicals.

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Yakov Gilinskiy ■

Criminology and the criminal justice system in the Russian Federation after socio-political transformation

Kryminologia i wymiar sprawiedliwości w Federacji Rosyjskiej po transformacji społeczno-politycznej

Abstract: The article discusses the stages of development of Russian criminology. Particular attention is paid to the modern stage, which began with the collapse of the USSR and the formation of the Russian Federation. Some of the most important findings of various studies are described. The article talks about the negative trends of recent times (since the mid-2000s). In addition, a brief critical description of contemporary Russian criminal justice is given.

Keywords: criminology, criminal justice system, Russia, socio-political transformation, political system

Abstrakt: W artykule omówione zostały etapy rozwoju kryminologii rosyjskiej ze szczególnym uwzględnieniem dziejów najnowszych, zapoczątkowanych upadkiem ZSRR i powstaniem Federacji Rosyjskiej. W tekście przywołano wyniki kluczowych badań oraz omówiono występujące w ostatnich latach negatywne trendy w przestępczości (począwszy od połowy pierwszej dekady XXI wieku). Ponadto przedstawiono krótką analizę współczesnego rosyjskiego wymiaru sprawiedliwości.

Słowa kluczowe: kryminologia, wymiar sprawiedliwości, Rosja, transformacja społeczno-polityczna, system polityczny

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Introduction

Any scientific discipline can only be successfully developed in a free, democratic society. The criminal justice system also depends on the political system and regime.

It is clear that the communist regime in the Soviet Union was absolutely terrible. There were mass repressions, millions of innocent people were destroyed, criminology was banned as a 'bourgeois pseudoscience', as were genetics, sociology, cybernetics, etc. The police, the KGB (State Security Committee), the courts, the prosecutor's office, and the penitentiary institutions (the Gulag – the main department of forced-labour camps) worked as a single repressive mechanism.

The '*Perestroika* of Mikhail Gorbachev radically changed the situation in the country. Freedom of speech, freedom of the press, and the right to private property were introduced, the Iron Curtain was lifted, and the KGB lost its strength. Criminology, sociology, and genetics were revived in the country, and other social sciences have since gained the opportunity to develop.

Criminology in contemporary Russia

In order to better understand criminology in modern Russia, I will briefly name the main stages of its development in Russia. The history of Russian criminology can be divided into four periods (stages) (Gilinskiy 2018: 149–161). The first period was from the beginning of the 19th century until 1917. During this period, all areas of world criminology were represented in Russian criminology: biological, anthropological (D.A. Dril'), psychological (V.F. Chizh, S. Danillo, etc.), and sociological (H.M. Charychov, A.A. Zhizhilenko, M.N. Gernet, etc.). The sociological approach prevailed. The main criminogenic factors are in society, in public relations. Most criminologists in Tsarist Russia were against the death penalty.

The second period was from 1917 until the beginning or middle of the 1930s. In the first years after the 1917 coup, things continued to develop towards sociology. But this soon gave way to a study of the 'personality of the criminal'. This approach is safer for criminologists, because according to the leadership of the country, in the new socialist society there were no social causes of crime. The true reasons were 'survival of the bourgeois consciousness' and 'capitalist encirclement'. By the 1930s, many criminologists – like many other scientists – ended up in prisons or were shot. Criminology in the USSR was finished.

The 'resuscitation' of Russian criminology began in *the third period* (from the mid-1960s to the late 1980s), with the 'Thaw' of Nikita Khrushchev, who opposed the Stalinist repressions. Surviving scientists were released from the prison camps. The works of criminologists such as professors V. Kudryavtsev, I. Karpets,

A. Yakovlev, A. Sakharov, N. Kuznetsova, and others were published. In 1964, the 'Criminology' course was reinstated at Moscow and Leningrad (now St Petersburg) universities. Many empirical criminological studies were organised in those two Russian regions under the leadership of Prof. A. Sakharov in 1979. Empirical studies in other regions of Russia were also undertaken in 1977 under the leadership of L. Spiridonov and Y. Gilinskiy. In the 1980s, under the initiative of Academician V. Kudryavtsev, international criminological conferences began to take place in Moscow with foreign criminologists such as professors N. Christie (Norway), U. Bondeson (Denmark), I. Anttila (Finland), I. Andenes (Norway), B. Swenson (Sweden), L. Hulsman (Netherlands), F. McClintock (Great Britain), etc.

The fourth, modern stage in the development of Russian criminology began in the late 1980s. 'Perestroika' radically changed the situation in the country. Freedom of speech, freedom of the press, and the right to private property were instated, the Iron Curtain was lifted, and the KGB lost its strength. Criminology, which began to be 'reanimated' (after the Stalinist liquidation) under Khrushchev, was given the opportunity to develop. All sorts of prohibitions and restrictions disappeared. Criminal statistics were published, numerous empirical studies began, Russian scientists were given the opportunity to travel abroad and participate in international studies and international conferences (in 1990, the author first got the opportunity to travel to a criminological conference in a 'capitalist country' – Sweden). Consider these processes in more detail.

The development of criminology during this fourth stage was a continuation of the third. The criminological seminars continued at the Research Institute of the General Prosecutor's Office (Moscow), the Baltic criminological seminars held annually since 1987 in Estonia, Latvia, Lithuania, and Leningrad/St Petersburg. However, the content of the reports changed significantly. There was an opportunity to say whatever one thinks is necessary, without fear of being labelled 'anti--Soviet'. Since 1991, Baltic criminological seminars have been turning into International Conferences and criminologists from the USA, Great Britain, Poland, the Czech Republic, Norway, Germany, and other countries take part in them. For example, in 2019, in addition to Estonian, Latvian, Lithuanian, and Russian criminologists, criminologists from Hong Kong, the USA, Poland, the Czech Republic, and Serbia participated in the 32nd International Baltic Criminological Conference (in St Petersburg, 2019). In June 2020, the next Baltic criminological conference will be held in Tallinn, Estonia.

The publication of statistics on crimes, criminals, and punishments (on the websites of the Ministry of Internal Affairs of Russia, the General Prosecutor's Office of the Russian Federation, and the Supreme Court of the Russian Federation and in statistical yearbooks 'Crime and Offences: A Statistical Collection') allows one to monitor the dynamics of crime and analyse the state of crime. Remember that until the early 1990s, almost all criminal statistics were classified and not published.

Russian criminologists began to take part in international conferences and congresses. Thus, since 2001 Y. Gilinskiy, A. Gurinskaya, and A. Petrovsky have taken part in the annual conferences of the European Society of Criminologists. The world criminological congresses are attended by Y. Gilinskiy, V. Kvashis, I. Matskevich, G. Esakov, and others. Y. Gilinskiy has participated in all international biennial conferences organised by John Jay College of Criminal Justice (New York). V. Orekhov and others have also taken part.

Participation in international conferences, conversations with foreign colleagues, and reading foreign professional literature is very important. There is no 'national' science; every science is international. Without access to world literature and foreign conferences, criminology in the USSR could not develop. Only in the fourth period of Russian criminology did my colleagues and I get the opportunity, for example, to work in the library of the Max Planck Institute of Foreign and International Criminal Law (Freiburg, Germany).

Finally, perhaps most importantly, we had the opportunity to conduct empirical criminological research. It began in the previous, third period. Empirical studies of territorial differences in crime were conducted by groups of criminologists led by A. Sakharov (Moscow), A. Gabiani (Georgia), A. Leps and E. Rask (Estonia), and Y. Gilinskiy (Leningrad). Publishing research was very difficult, however, as censorship did not allow it. Large and important empirical studies, including international ones, have only been allowed since the 1990s.

Empirical criminological studies have been carried out by employees of the Research Institute of the General Prosecutor's Office (Moscow), the Research Institute of the Ministry of Internal Affairs of the Russian Federation (Moscow), the Institute of Sociology of the Russian Academy of Sciences (Moscow), the Sociological Institute of the Russian Academy of Sciences (St Petersburg), the Faculty of Sociology at St Petersburg University, and some researchers from other cities in Russia. Thus, a study of drug-related crimes has been published, under the guidance of Prof. Y. Komlev (Kazan) (Komlev and Sadykova 2003), as well as criminological studies of corruption under the guidance of Prof. P. Kabanov (Nizhnekamsk), for example. Prof. S. Olkov has been doing a mathematical analysis of crime in Russia for many years. Group of Prof. S. Inshakov (Research Institute of the General Prosecutor's Office) has studied latent crime for more than ten years. Coefficients of latency for each type of crime for each year have been calculated (Inshakov 2011).

More details will be given about some empirical criminological studies made by the sector of the Sociological Institute of the Russian Academy of Sciences (St Petersburg) under the guidance of the author of this article. This sector of the Sociological Institute conducted an empirical analysis of crime in various regions of Russia (St Petersburg, Pskov, Volgograd, etc.) (Avrutin and Gilinskiy 1991).

From 1990 to 1994, an international project of empirical research of crime and other forms of deviance (alcohol and drug abuse) was implemented in the countries of the Baltic Sea region ('Social problems of the Baltic Sea region'). The initiator and project manager was Prof. Jussi Simpura (Finland). The project was attended by criminologists and sociologists from Poland, Finland, Denmark, Germany, Latvia, Lithuania, Estonia, Sweden, and Russia (led by Y. Gilinskiy). Each year, the project participants jointly developed the topics and methods of research for the following year and reported on the work over the past year. Such meetings were held in St Petersburg, Copenhagen, Warsaw, and in one of the German cities on the Baltic Sea. The study used analysis of statistics, a survey of the population and individual groups, focus groups, and content analysis. The results of the study for each year and the final, overall report were published (Simpura and Tigerstedt 1992; Lagerspetz 1994; Hanhinen and Torronen 1998; Moskalewicz and Tigerstedt 1998; Leifman and Henrichson 2000).

From 1999 to 2002, our department participated in a large international project entitled 'Population and Police'. The initiator of the project was Prof. W. Skogan (Chicago). We developed methods and tools in cooperation with the VERA Institute of Justice (New York). The results were published in Russian and English (Davis et al. 2004; Gilinskiy 2005; Citizen's Watch 2001).

In the period of 2004–2005, a study of torture was carried out in five regions of Russia: St Petersburg, Pskov, the Komi Republic, Nizhny Novgorod, and Chita. The questionnaire and tools were agreed with Mr Patrick Ball (Human Rights). The population of the region (a representative survey), prisoners of the region's prison colonies, prosecutors, lawyers, and former prisoners were interviewed. Analysis of the results of the study showed that in each of the five regions, from 3.5% to 4.5% of residents were tortured by the police during a one-year period. Of the total number of prisoners interviewed, from 40% to 60% were tortured prior to sentencing. We could not ask the prisoners if they were tortured in a prison colony for obvious reasons… The results of the study were published in a bilingual book (in English and Russian) (Belousov et al. 2007) and were discussed at a press conference in Moscow and St Petersburg. Torture in the police and penitentiary institutions, unfortunately, remains a very urgent problem in modern Russia.

From the beginning of the 1990s until the mid-2000s, our department conducted empirical criminological studies of organised crime in Russia. Numerous interviews with current members of criminal organisations (Dr. Y. Kostyukovsky), police, prosecutors, and businessmen (Y. Gilinskiy) made it possible to describe in detail the evolution of organised crime in Russia, especially in St Petersburg. Of particular interest were interviews by members of criminal organisations. Their findings were verified by a survey of law enforcement officers and businessmen. The study identified four stages in the formation and development of organised crime in Russia. The modern, fourth stage is characterised by the merger (association) of mafia-type criminal organisations with law enforcement agencies and local authorities. The results of the study were described in detail in articles and books (in Russian, English, French, German, Italian, and Hungarian) (Gilinskiy 2002; 2003a; 2003b; 2012; 2019; Gilinskiy and Kostioukovski 2001; 2004).

Unfortunately, from the second half of the 2000s, the development of criminology in Russia slowed down and was hampered. Some research groups were liquidated (in St Petersburg and Moscow). Joint research with foreign colleagues ceased. The funding of scientific institutions and conferences was greatly reduced, and reimbursement for trips to international conferences abroad stopped.

The merits of the deceased academician V. Kudryavtsev and professors G. Avanesov, I. Karpets, N. Kuznetsova, A. Sakharov, A. Yakovlev, and A. Zhalinsky in the resuscitation and development of Russian criminology are great. Famous criminologists continue to work actively (professors Y. Antonyan, M. Babaev, G. Gorshenkov, A. Dolgov, A. Dyachenko, V. Kvashis, I. Kozachenko, Y. Komlev, N. Lopashenko, V. Luneev, V. Nomokonov, E. Pobegailo, A. Repetskaya, N. Shchedrin, D. Shestakov, and more); representatives of a new generation of criminologists (O. Bibik, A. Gurinskaya, M. Dikaeva, A. Petrovsky, A. Rybak, A. Zorin, and others) are actively working.

In recent years, criminologists have been paying more and more attention to the problems of crime and the social control of crime in a contemporary, *post-modern* (post-industrial) society (Gilinskiy 2017a; 2017b; Ismaiylov 2018; Zhesterov 2017). Postmodern society began to form in the 1970s and 1980s. The fourth industrial revolution gave rise to unprecedented *technological innovations*. The creation of robots, unmanned vehicles, and drones is fine, but it provides new opportunities for criminals. The Internet is the greatest good, but also the foundation of cybercrime. *Globalisation* of the economy, finance, and culture is good, but the globalisation of crime is also taking place (drug trafficking, human trafficking, arms trade, human organ trafficking, and terrorism). Globalisation is accompanied by *mass migration*, which creates a 'conflict of cultures' (T. Sellin) and 'hate crime'.

In the postmodern era, all of humanity and the population of each country is divided into those 'included' in active economic, political, social, and cultural life and those 'excluded' from it (Bauman 2004; Finer and Nellis 1998; Young 1999). The excluded individuals form the social base of crime, drunkenness, drug use, prostitution, and suicide. In Russia, for example, the proportion of people 'without a stable source of income' (similar to those excluded) among all criminals was 11.8% in 1987; it is currently 65%–67%, and 72%–75% among murderers and rapists. In the regions with the poorest people (the Republic of Tuva, for example) there are the highest levels of serious, violent crimes. Worldwide, economic inequality is growing. In addition to dividing the population into 'included' and 'excluded', there is a fragmentation of society, a division (within both included and excluded groups) into fragments, or subcultures. People from each subculture can have differing (opposite) views on what is allowed and what is forbidden, what is possible and what is not. These groups can differ in terms of age, sex, religion, ethnicity, or education. Young people actively consume narcotic and psychotropic substances that are condemned by older age groups (and in Russia by criminal law). Contradictions between groups (subcultures) can be criminal in nature: hate crimes or terrorist acts, for example. In Europe, the purchase and consumption of alcoholic products (wine, cognac, whiskey, etc.) is normal. In the United Arab Emirates, appearing in a public place with a bottle of alcohol may lead to imprisonment. Russia ranks first in the world in economic inequality (in 2016, 1% of the country's population owned 75% of all wealth). Not surprisingly, Russia ranks first in Europe in terms of homicides (per 100,000 people) and suicides. Postmodern society is also a *consumer society*. Everything is for sale and everything can be bought – including drugs, weapons, people (human trafficking and human organ trafficking), and sexual services. For the sake of money, theft, robbery, illegal trade, and murder are committed. Organised crime and corruption flourish.

The consequences of the features of postmodern society are very interesting, such as a reduction in the level of crime – including murder – around the world (except for two or three countries in Central America). So, for example, in Russia the murder rate decreased from 23.1 per 100,000 people in 2001 to 5.8 in 2018, the number of robberies from 250.3 in 2006 to 34.1 in 2018, and of thefts from 1,174.7 in 2006 to 511.9 in 2018. This is a global process, as seen in the falling homicide rate in Australia, from 2.5 in 1991 to 1.1 in 2013; in Hungary from 4.5 in 1993 to 1.3; in Germany from 1.2 in 1994 to 0.8; in Colombia from 78.7 in 1994 to 30.8; in Poland from 2.9 in 1994 to 1.2; in the USA from 9.1 in 1994 to 4.7; in Japan from 0.6 in 1994 to 0.3 (!).

What can explain this trend? There are several explanatory hypotheses. The most convincing, in my opinion, is that the main perpetrators of 'street crime' – adolescents and young people – left the real world for the virtual one. On the Internet they meet, make friends, disperse, and 'kill' (in 'first-person shooters'), satisfying the very important need for young people to assert themselves, to fulfil themselves. Studies from two American universities (Villanova and Rutgers) showed that when new games ('first-person shooters') appear on the Internet, the number of street crimes is reduced to 30% (How games affect crime 2016). The second hypothesis, associated with the first one, is that there has been a 'restructuring' of crime. Crime moves to the Internet (cybercrime), which is very latent and is not taken into account by statistics. It is safer and more profitable for young people prone to crime to engage in cybercrime than street crime. This is confirmed by the dynamics of fraud in Russia. As the level of homicide, rape, robbery, and theft lowers, the level of fraud grows (from 50.4 in 1996 to 151.7 in 2017!).

In postmodern society there is a '*time acceleration*'. What can now be done in one day required several days ten or twenty years ago. Now in a single year one can accomplish what took several years ten to twenty years ago. This must be kept in mind, for example, when determining the terms of imprisonment. If twenty years ago a prisoner was released after five years and found himself in a familiar environment, a person regaining his freedom after having served five years of imprisonment today, he finds himself in a completely new, unfamiliar world.

Modern technological capabilities allow the state and law enforcement agencies to establish *total control* over the population under the banner of security. Total control over every citizen is successfully done in China. 'Preventive arrest' is made in the USA. 'Security versus human rights and freedoms' is one of the main problems of our time, a solution to which has not been found. George Orwell's '1984' is being implemented…

The features of postmodern society that are unusual for most people (globalisation, mass migration, the latest technologies, the digitalisation of life, etc.) give rise to the '*schizophrenisation*' of consciousness, which entails hard crimes (the Norwegian shooter Anders Behring Breivik, murders in schools, etc.).

Finally, in a postmodern society, the problem of the 'crisis of punishment' has become especially urgent. The works of M. Foucault (1975), T. Mathiesen (1974), N. Christie (1981), A. Zhalinsky (2009), and many other criminologists, including the author of this article, show that punishment does not achieve the aims which the legislature – the state – uses punishment for (the restoration of 'social justice', the 'correction' of a criminal, and the prevention of further crime). The German professor of criminal law H.H. Jescheck wrote about the need to repeal criminal law as violating human rights and freedoms (1988: 3). Of course, it is impossible to accomplish this in modern society, but it is necessary to change the attitude towards punishment and to minimise or reduce its consequences. The death penalty is a crime – murder (by the state) – and it must be abolished in all countries. Imprisonment is a very harsh punishment which should only be used for serious, violent crimes and only for adult offenders. The terms of imprisonment should not be long (except for killers), usually up to one or two years. Finally, perhaps the main thing: the conditions of imprisonment within prisons should not be repressive, but restorative in nature (resocialisation and re-adaptation). Examples of such prisons are those of Northern Europe (Norway, Finland, and Sweden).

'Criminology' is studied as a course in all law schools. Criminology is studied by bachelors, undergraduates, and graduate students, whose dissertations are written in criminal law, criminology, and criminal executive law (scientific specialisation 12.00.08). The main topics of contemporary Russian criminology include organised crime, violent crime, corruption, hate crime, economic crime, drug trafficking, human trafficking, ecological crime, and social control over crime (Gilinskiy 2018; Luneev 2011).

However, the lack of criminological teams in research institutes and universities makes it difficult to conduct large empirical studies. National science does not exist. Every real science (if it is a science!) is international. The state policy of isolationism significantly complicates the entry of Russian criminology into worldwide criminology.

Criminal Justice System

The Russian criminal system formally meets democratic requirements. Russia is proclaimed a legal state (Article 1 of the Constitution of the Russian Federation). The Constitution states that '[f]undamental human rights and freedoms are inalienable and belong to everyone from birth' (Article 17). The rights and freedoms of citizens are guaranteed by justice (Article 18 of the Constitution), and '[e]veryone is guaranteed judicial protection of his rights and freedoms' (Article 46 of the Constitution). Investigations are conducted by the police and the Investigative Committee of the Russian Federation; the prosecutor's office oversees investigations; criminal cases are considered by independent courts and subordinate to the law (Article 120 of the Constitution); and the most complex and important cases are considered with the participation of jurors (Article 47 of the Constitution). 'No-one shall be subjected to torture, violence, other cruel or degrading treatment, or punishment' (Article 21 of the Constitution). However, in practice the situation is more complicated.

Firstly, the Criminal Code of the Russian Federation suffers from excessive criminalisation of acts that do not constitute a great public danger. According to the criminal code, every citizen of Russia is a criminal offender. This is evidenced by the saying: 'If there is a person, an article (of the criminal code) will be found.' Thus, it is hardly a crime to 'refuse to provide a citizen with information' (Article 140 of the Criminal Code of the Russian Federation); this is a disciplinary offence, not a crime. "[D]estruction or damage to property *by negligence*" (Article 168 of the Criminal Code of the Russian Federation) is a civil delict, not a crime. The 'illegal sale of alcoholic beverages' (Arts. 171–174 of the Criminal Code) is a disciplinary offence, not a crime.

Secondly, in recent years, many criminal cases have been poorly investigated. The level of investigators' professionalism has decreased, and investigators are very dependent on 'instructions from above'. Investigating authorities (and courts) are affected by corruption. According to data published in 2011, the amount of a bribe for non-prosecution of a criminal case ranged from $10,000 to $25,000, for initiating a criminal case against an innocent person from $200,000 to $1,000,000, and for a 'light' sentence from $50,000 to $500,000 (Svetova 2011: 18–19).

Thirdly, judges are appointed by the President of the Russian Federation on the proposal of the President of the Supreme Court of the Russian Federation. While they are independent in the eyes of the law, in reality they depend on both the chairman of the court and the higher court. Judges are afraid that if their decisions (criminal sentences) are not in line with state policy, they will be removed from the bench. Judges are afraid to pass acquittals (this is a 'mistake' that will be 'corrected' by a higher court). In Russia in 2018, the proportion of acquittals was 0.25% of all criminal cases. What is particularly scary is the impossibility of passing a verdict of acquittal in cases of political importance. The imposition of a mandatory guilty verdict in poorly investigated criminal cases compels judges to violate the law of criminal procedure, to refuse the defence some well-founded motions.

Of course, there are good investigators and honest judges in Russia, but they do not determine the situation with the investigation of criminal cases and sentences in criminal cases.

Fourthly, torture by police is common in Russia during investigations, and in penitentiary institutions. Of course, torture is officially prohibited (Article 21 of the Constitution of the Russian Federation) and the use of torture may result in criminal punishment (Article 117 of the Criminal Code of the Russian Federation). In reality, though, torture is constantly used. This is explained by history (torture was constantly used under the Stalinist regime, and generally in the Soviet Union) and by the poor professional training of investigators (it is necessary to force a person to plead guilty, as investigators often do not have other means of obtaining evidence), a common habit in the country to solve problems through physical exposure. Human rights organisations operate in the country, including the Committee Against Torture and 'Russia Sitting' (i.e. in prisons and prison colonies). Mass media such as the newspaper 'Novaya Gazeta' and the radio station 'Echo of Moscow' constantly write and talk about the facts of torture; defendants who have been tortured describe it in court. But the practice of torture continues.

Conclusion

Let us make brief conclusions. Prior to 1917, criminology in Russia developed approximately the same as in Europe. From 1917 until the late 1980s and early 1990s, the development of criminology was either limited by the Soviet totalitarian regime or completely stopped (from the mid-1930s to the mid-1960s). The opportunity to develop freely without any restrictions appeared thanks to the 'Perestroika' of M. Gorbachev. In the 1990s, Russian criminology was actively developing, entering the global criminology. Unfortunately, at the beginning of the new millennium, the development of science was again hindered: the policy of isolationism sharply reduced contact with international researchers, reduced the funding of scientific research, and dissolved many research teams.

The criminal justice system in Russia has undergone numerous changes: from Tsarist Russia through the USSR to the Russian Federation. The modern system of criminal justice is better than that of the USSR (the Constitution of the Russian Federation proclaims a democratic system, there is a jury system, and there is no death penalty). However, there are also a lot of downsides. The courts are legally independent, but actually dependent; investigators often do not have the necessary qualifications and attempt to get the accused to plead guilty by any means, including torture. Russia needs to build a truly democratic political system in order to improve the criminal justice system and the development of science, including criminology.

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Penal policy in the Russian Federation: Trends and perspectives

Polityka karna w Federacji Rosyjskiej. Trendy i perspektywy

Abstract: For many years the Russian Federation has had one of the highest numbers of people incarcerated in penal institutions (per 100,000 population). As of 1 January 2020, there were 523,928 people in prison. An analysis of the legislation and the practice of its application reveals that the main trend of modern Russian penal policy is for stricter penalties, longer prison terms, and inefficient use of alternative punishments. The ongoing trend of humanising and liberalising criminal justice remains virtually invisible and suppressed by a repressive bias, which ultimately prevents it from significantly influencing the overall direction of state policy in this area.

Keywords: penal policy, Russian Federation, punishment, imprisonment, alternative punishment

Abstrakt: Przez wiele lat Federacja Rosyjska była liderem pod względem liczby osób osadzonych w zakładach karnych w przeliczeniu na 100 tysięcy mieszkańców. W styczniu 2020 r. w jednostkach penitencjarnych przebywało 523 928 osób. Analiza ustawodawstwa oraz praktyki stosowania kary pozbawienia wolności pozwala zauważyć, że współczesną politykę karną Rosji cechuje tendencja do zaostrzania kar i zwiększanie długości kar izolacyjnych przy jednoczesnym braku efektywności w stosowaniu kar wolnościowych. Represyjne nastawienie władz powoduje, że humanizacja i liberalizacja wymiaru sprawiedliwości karnej w Rosji jest praktycznie niewidoczna i nie ma znaczącego wpływu na ogólny kierunek polityki karnej państwa.

Słowa kluczowe: polityka karna, Federacja Rosyjska, kara, kara pozbawienia wolności, kary alternatywne (wolnościowe)

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Introduction

The collapse of the USSR and the transition from a socialist to a democratic state caused serious changes in Russian society in all aspects of life, including the realm of criminal penalties. Russia's accession to international laws in the fields of human rights protection and the execution of criminal penalties has a certain impact on the development of domestic legislation, such as determining the main directions of criminal and penal policy. As a part of the international community and an active member, Russia is obliged to observe the norms of international law. The country strives to create conditions for serving sentences that meet international standards. In 2011 the President of Russia expressed Russia's readiness 'to consistently implement European standards for the treatment of convicts, create additional guarantees for the protection of their inalienable rights – including personal security – and make greater use of advanced methods – including foreign ones – for correcting those who break the law' (FSIN n.d.-a).

However, as Prof. Gilinskiy (1993) notes, the country's recent totalitarian past could not help but leave a mark on the domestic penitentiary policy. The active use of the work of convicts during the Soviet period and its economic benefits predetermined the state's interest in the widespread use of imprisonment. From 1960 to 1990 the USSR consistently topped international lists of the numbers of people in penal institutions (per 100,000 population). Modern Russia has continued this tradition and also ranks high in terms of the number of prisoners. Despite the proclaimed course of liberalising criminal policy and humanising the execution of punishment, an analysis of the statistical data on the implementation of legislation shows a different picture.

The aim of this article is to describe Russian penal policy, changes in legislation, and the effects of those changes on the prison population. The descriptive information on Russian penitentiary system and statistics analysis should be useful for foreign criminologists and scholars of comparative policing.

1. System of sanctions and types of penal institutions

Before starting an analysis of the modern penal policy of the Russian Federation, a few introductory comments about the types of punishment and types of penal institutions are in order. According to the Russian Criminal Code, the system of sanctions includes 13 types of punishment. They are listed from the least strict to the strictest: fines; disqualification; deprivation of special, military, or honorary title, class rank, and state awards; community service; correctional labour; restriction in military service; restriction of freedom; arrest; service in a disciplinary military unit; forced labour; imprisonment; life imprisonment; and the death penalty.

Deprivation of special, military, or honorary title, class rank, and state awards is imposed only as an additional punishment. Restriction in military service and service in a disciplinary military unit can only be applied for military personnel. Restriction of freedom is similar to house arrest; it means the imposition of some restrictions on convicts (for example, to stay at home at certain times or not to visit certain places or attend certain events). Arrest is in essence a kind of imprisonment, but for a shorter period of time (1–6 months) and with stricter isolation. It cannot be applied because arrest houses have not yet been built. Forced labour is a relatively new type of punishment that was introduced in 2011, but has only started to be applied in January 2017 because new penal facilities (correctional centres) needed to be built. Forced labour is used as an alternative to imprisonment for crimes of little or medium gravity or for committing a grave crime for the first time. Convicts serve their punishment in correctional centres, where they live and work.

As for the system of penal institutions in the Russian Federation, there are several types of facilities for serving imprisonment. There are 693 colonies with different degrees of severity. In colonies, the convicts are held in dormitories; each dormitory is designed for 20–150 people. Another type of facility is a prison, of which Russia has eight. In prisons, the convicts are held in locked, shared cells. There are special educational colonies for juveniles which are not much different from adult colonies. Convicts with alcoholism or drug addiction, and those with mental illnesses, are held in medical correctional facilities.

2. Penal institutions, 1997–2007

Since the Criminal Code of modern Russia came into force in 1997, it seems logical to analyse statistical data and the state of the penal system from that time. From 1997 to 2007, the proportion of imprisonment (including conditional imprisonment) among all of the penalties imposed ranged from 78% to 88% (CDEP n.d.-a).[1] This led to a significant increase in the number of people held in the institutions of the country's penal system. As can be seen from Table 1, between 1990 and 2000, the number of convicts steadily increased, and in 2000 it reached a peak, amounting to more than one million people.

1 The main indicators of penal statistics for 2003–2007 and for 2008–2015 of the Judicial Department of the Supreme Court of the Russian Federation.

Table 1. The number of prisoners in the USSR (1965–1988) and in Russia (1990–2007)

Year	Total number of prisoners	Number of prisoners per 100,000 inhabitants
1965	869,945	379
1970	1,146,882	474
1975	1,266,366	500
1980	1,467,885	555
1984	1,969,364	720
1986	2,356,988	846
1988	1,815,957	639
1989	698,900	400
1990	714,700	500
1991	770,000	459
1992	750,300	520
1993	804,800	563
1994	902,700	580
1995	964,600	655
1996	1,017,000	686
1997	1,009,800	700
1998	1,010,000	720
1999	1,014,000	729
2000	1,060,404	729
2001	960,400	673
2002	965,000	675
2003	847,000	592
2004	763,115	577
2005	823,451	578
2006	871,693	609
2007	883,200	613

Sources: Gilinskiy 2014; Mikhlin 2001; FSIN n.d.-b

There are several reasons for such changes. The first is the absence of actual alternatives to imprisonment in the Criminal Code of Russia. Although 13 types of punishment were established in the Criminal Code, the legislature did not lay out any conditions for applying some of them. Therefore, from the moment the Criminal Code became valid, the imposition of community service (no later than 2004), restriction of freedom (no later than 2005), and arrest (no later than 2006) were immediately postponed. A set of socio-economic circumstances – namely, a rise in unemployment and an increase in the number of poor citizens without regular sources of income – made it problematic for the courts to impose fines, which led to it being imposed extremely rarely. The lack of real alternatives to imprisonment forced the courts to impose it over other punishments. The solution to this situation was found in practice by imposing conditional imprisonment, which is still done very often.

This frequent use of imprisonment has led to a significant deterioration in the living conditions of convicts. As of 2000, there were 5,000 HIV-infected and AIDS patients in penal institutions and about 90,000 patients with an open form of tuberculosis, of which 22,000 – according to experts – were suffering from an almost incurable form of the disease, multidrug-resistant tuberculosis. Persons with disabilities made up about 2% of all convicts. In the 1990s and 2000s, more than 30,000 prisoners sick with tuberculosis were released from correctional institutions, pre-trial detention centres, and hospitals every year. Obviously, this situation created a threat not only for the convicts themselves, but for society as a whole. In 2000, 5–6 roubles (0.20 USD) instead of 16.5 roubles were allocated for food for one prisoner per day by the federal budget. Approximately the same amount was allocated in 1999 (in 1998, 3 roubles were allocated at the norm of the cost of food 12.7 roubles) (*Analiz* 2001). This in turn led to numerous deaths of prisoners from 'general exhaustion of the body'. The expenditures for medical care in 1998 were 5 times lower than the norms established by the Ministry of Health of the Russian Federation.

The reduction in the number of convicts over the period 2002–2006 does not indicate a change in the penal policy, since imprisonment was imposed by the courts at a consistently high level relative to the total number of convictions (see Table 2) (CDEP n.d.a).[2]

2 The main indicators of penal statistics for 2003–2007 and for 2008–2017 of the Judicial Department of the Supreme Court of the Russian Federation.

Table 2. Proportion of immediate and conditional imprisonment among all types of sanctions imposed by a court

Year	Immediate imprisonment	Conditional imprisonment
2003	32.8%	55.5%
2004	32.6%	52.7%
2005	35.1%	48.1%
2006	34.7%	46.7%
2008	33.9%	38.9%
2010	31.6%	36.5%
2012	28.0%	30.2%
2014	29.4%	27.8%
2015	33.0%	26.6%

The large-scale amnesty in connection with the 55th anniversary of the Victory in the Great Patriotic War of 1941–1945, as a result of which over 200,000 people received amnesty, had an impact on the number of prisoners in penal institutions. In general, from 2000 to 2006, six amnesties were carried out, which demonstrates one solution for the problems of excessively repressive criminal justice – not by radically reconsidering the criminal, procedural, and executive policies and forming a new concept for the imposition and execution of criminal penalties, but by releasing prisoners en masse from serving their sentences. It is hard not to agree with Prof. Skoblikov, who says that if amnesties are often announced, randomly or for fictitious reasons, it is a sign of an unstable political situation, an imperfect legal system, and an unjust social system (Skoblikov 2014).

Nevertheless, such a policy has brought about positive results. According to the Federal Penitentiary Service, by 2006 the situation in correctional institutions had begun to improve. Compared with 2001, the number of patients with active tuberculosis had been cut in half, the sickness rate was 2.5 times lower, and mortality was 3.8 times lower. However, according to international organisations, the number of patients with tuberculosis continued to grow until at least 2004, and the number of HIV-infected people increased more than fortyfold from 1998 to 2003 (Gilinskiy 2011; Dikaev 2011).

All of these circumstances indicate the inefficiency of the work of penal institutions and the need to reform the system of imposing and executing criminal sentences.

3. Penal reform and current penal policy

Over the past decade, Russia has adopted a whole range of legal acts, including some aimed at ensuring human rights in correctional facilities. The top leadership of the country proclaimed a policy of liberalising and humanising criminal legislation. The need for fundamental decisions on the borrowing of European experience led to the adoption in 2010 of the Concept for the Development of the Penal System of the Russian Federation until 2020. The Concept initially called for replacing the existing system of correctional facilities (colonies) with two main types of institutions: prisons (with general, special, and strengthened regimes) and colony-settlements (with usual and strengthened supervision). While giving preference to prisons, the drafters of the Concept noted the need to stop the collective detention of convicts. Being held in overcrowded dormitories with more than 50–100 inmates keeps prisoners in a constant state of stress from the need to manoeuver between the requirements of the administration and other convicts. Collective detention only promotes the spread of criminal subculture among convicts and does not facilitate their rehabilitation. The idea for such a reform of the penal system originated in the times of Nicholas I, as described by Prof. Gernet (1946) in his work *History of the Tsar's Prison*. At that time, the construction of 75 single prisons was planned, each of which was to cost about 300,000 roubles. However, this project was not carried out due to its high cost.

It should be noted that the Concept covers a wide range of issues related to the penal system. The purpose of the Concept is undoubtedly noble and deserves all possible support, since there have been significant changes over the past 20 years in Russia, but the penal system in many ways preserves the features of the old penitentiary system, a system meant to serve a different society. However, the Concept was not supported financially, which made its adoption unattainable. The transition to the prison system, according to the estimates of Prof. Smirnov (2013), will cost 120 billion roubles (almost 2 billion dollars). The state does not have such money, especially under the current economic recession and the sanctions against Russia. This was the reason for introducing changes to the text of the Concept in 2015 and for correcting the course of the country's criminal and penal policy by rejecting the transition to a prison system.

Despite the proclaimed course of liberalising criminal policy and humanising the execution of punishment, the policy of the state in this direction cannot be called logical. Table 3 shows that over the past 10 years the number of prisoners has decreased. As of 1 June 2018, 592,467 people were being held in correctional institutions, which invariably puts Russia in first place among European countries.

Table 3. Numbers of prisoners in Russia, 2008–2019

Year	Total number of prisoners	Number of prisoners per 100,000 inhabitants
2008	891,700	623
2009	875,800	617
2010	819,200	577
2011	806,100	564
2012	726,900	508
2013	681,600	475
2014	677,287	471
2015	646,085	442
2016	633,826	433
2017	623,642	424
2018	592,467	403
2019	523,928	357

An analysis of the current penal policy also shows a significant predominance of imprisonment (in almost 60% of cases, both immediate and conditional; Table 4).

Table 4. Main penalties imposed in Russia, 2010–2017 (total and %)

Year	Imprisonment (immediate)		Imprisonment (conditional)		Restriction of freedom		Community service, correctional labour, forced labour		Fines		Total
2010	265,843	31.5	307,206	36.4	7,941	0.9	121,156	14.3	123,495	14.6	**845,071**
2011	227,050	29.0	282,227	36.0	10,994	1.4	129,918	16.6	113,503	14.5	**782,274**
2012	206,254	27.9	221,908	30.0	25,269	3.4	146,950	19.9	113,358	15.3	**739,278**
2013	209,728	28.5	201,538	27.4	32,042	4.4	148,950	20.3	116,176	15.8	**735,340**
2014	209,447	29.1	197,855	27.5	26,983	3.8	145,018	20.2	111,839	15.5	**719,297**
2015	211,170	28.8	170,657	23.3	20,827	2.8	134,841	18.4	86,620	11.8	**733,607**
2016	206,134	27.8	185,095	25.0	25,339	3.4	192,781	29.5	99,922	13.5	**740,380**
2017	200,204	28.7	177,048	25.4	25,097	3.6	183,032	26.3	90,425	13.0	**697,174**
2018	190,325	28.9	169,484	25.7	23,009	3.5	170,579	25.9	85,353	13.0	**658,291**

Source: CDEP, n.d.-b

The repressive bias of criminal policy in the imposition and execution of punishment is manifested in the fact that the proportion of people convicted of non-violent crimes is consistently high in penal institutions. As can be seen from Table 5, the proportion of people who committed non-violent crimes (theft and crimes connected with drug trafficking) and are serving their sentences in penal institutions has been on the rise. In 2017 there are already more than a half of such prisoners (51.2%), in 2018 – 43.1 %.

Table 5. Numbers of prisoners by type of crime (total and % of all convicts in correctional colonies)[3]

Crimes	2014		2015		2016		2017		2018	
Crimes against life (Arts.105, 107–109, 111 part 4)	150,690	27.3	144,432	27.5	133,574	25.7	122,905	30.0	11,3086	24.5
Infliction of grievous bodily harm (Art. 111)	27,471	5.0	28,284	5.4	29,182	5.6	27,239	6.6	24,639	5.3
Sexual crimes (Arts. 131 and 132)	12,117	2.2	11,083	2.1	10,311	2.0	9,414	2.3	8,032	1.7
Theft (Art. 158)	88,145	16.0	75,245	14.3	76,693	14.8	73,493	18.0	68,906	14.9
Violent robbery (Art. 162)	45,827	8.3	41,619	7.9	38,093	7.3	34,346	8.4	29,589	6.4
Drug-related crimes (Arts. 228–233)	127,161	23.1	134,245	25.6	138,260	26.6	136,029	33.2	13,0143	28.2

Source: FSIN n.d.-b; n.d.-c

The question of the prospects for a certain type of punishment being imposed arises long before the conviction, namely, during the proceedings in the criminal case. The imposition of pre-trial detention in many ways predetermines that the court will favour imprisonment when choosing punishment in future. This conclusion can be made by comparing the number of people who were detained pre-trial and the number of people who have been sentenced to imprisonment.[4] This preventive measure is the most widespread in judicial practice: in 2015 it was handed down to 140,457 people, while home arrest was given to 4,676 people, and a pledge to 189 people. (i.e. those preventive measures which are chosen only by the court).

3 Not all types of crime are mentioned.

4 This comparison was based on the statistics of the Judicial Department of the Supreme Court of the Russian Federation, as well as the Federal Penitentiary Service.

In 2016, the court granted 123,296 requests for a preventive measure in the form of detention, 6,101 in the form of house arrest, and 164 pledges (CDEP n.d.-c).[5]

The correlation between the use of a preventive measure in the form of detention and a punishment in the form of immediate imprisonment leads to the conclusion that the penal policy – when it comes to imposing alternative sentences – is dependent on the criminal procedural policy of imposing preventive measures. A poll of attorneys confirmed that for certain crimes or for certain defendants (for example, for law enforcement officers), this dependence is almost 100%.[6]

The proportion of applications for pre-trial detention that are granted by the courts is very high. The breakdown of approved applications for individuals who committed crimes of different severities is as follows: for particularly serious crimes, 96.4% of applications were granted; for serious crimes, 91.2% were satisfied; for crimes of medium gravity, 89.2% were satisfied; and for crimes of minor gravity, 85.3% were satisfied. In 2015, 229,787 applications for extending the term of detention (Part 3, Article 109 of the Code of Criminal Procedure of the Russian Federation) were considered, and 98.7% of the applications were approved by the courts (CDEP n.d.c)[7]. In 2016, 230,276 requests were considered, and 225,311 (97.8%) were granted.

It is necessary to carry out purposeful work to reduce the repressiveness of all stages of the administration of justice, which is manifested in the frequent imposition of detention as a preventive measure or in the accusatory bias of the proceedings, evidenced by the proportion of acquittals: 0.3%. Such statistics cannot be explained by the high professionalism of investigative and law enforcement officials who do not make mistakes. It is worth pointing out that the average rate of acquittals in European countries with a developed criminal justice system is 8%. A significant reduction in the imprisonment rate must be accompanied by an improvement in the quality of the prisons. In a survey among convicts, the respondents noted the poor living conditions and building maintenance of the correctional institutions (35%), the low level of medical care and safety (56%), and the high risk of contracting life-threatening diseases.

On the question of which conditions of imprisonment (from several suggested options) are the most difficult to bear, the responses of the convicts were as follows: separation from family and relatives and loss of freedom (73%); severe regime (48%); the inability to meet some needs (35%); the risk of serious diseases (AIDS, HIV, tuberculosis, or drug addiction; 10%); an unfavourable atmosphere

5 Report on the work of courts of general jurisdiction on the consideration of criminal cases for 12 months of 2015, for 12 month of 2016. Form No. 1.

6 Interview of 30 attorny ies was conducted in April-May 2016 in St. Petersburg

7 Report on the work of courts of general jurisdiction on the consideration of criminal cases for 12 months 2015, for 12 month 2016, Form No. 1.

in the correctional facility or psychological pressure from both the administration and other convicts (42%); constant contact with other convicts (60%).

The statistics show that penal institutions are an exceptional danger, both to convicts and to the staff of the penal system. A report on the results and main strategies of the Federal Penitentiary Service in 2015 states that the prevalence of mental diseases and addiction in the institutions of the penitentiary system is significantly higher than the corresponding indicators for the Russian population in general. As of 1 January 2015, more than 124,900 people (18.5% of all people in penal institutions) had a some psychopathology, of which 54,800 people had mental disorders, 49,600 were drug addicts, and 20,500 patients were alcoholic. There was also a high rate of tuberculosis patients: 26,200 people (3.9% of the total number of people held in correctional institutions). The number of people infected with HIV is steadily increasing: in 2013, it was 56,509; in 2014 it was 59,532; and in 2015, 62,000 people. There is a lack of adequate qualified medical staff and a high death rate among convicts in penitentiary institutions: in 2013, 3,977 people died, 87% of them due to illness (including due to weak medical care, slow equipment renovation, and a lack of certain types of medical services).

4. Changes in legislation

Federal Law No. 14-FZ of 29 February 2012 significantly tightened the requirements for conditional early release and the conditions for replacing with a milder form an unserved portion of a sentence for certain sexual crimes against juveniles. For such crimes, conditional sentencing was abolished, and the terms of imprisonment were increased up to life imprisonment. Similarly, Federal Law No. 18-FZ of 1 March 2012 tightened the punishment for certain types of crimes connected with drug trafficking. Life imprisonment was introduced into the sanctions of Art. 228.1 (the illegal production, sale, or transfer of narcotics, psychotropic substances, or their analogues, and the illegal sale or transfer of plants containing narcotics or psychotropic substances, their parts containing narcotics, or psychotropic substances) and Art. 229.1 (the smuggling of said items). Federal Law No. 130-FZ of 5 May 2014 raised the maximum period of imprisonment for certain types of extremist (terrorist) crimes up to 30 and 35 years instead of 25 and 30 years.

These changes affect the practice of sentencing. As shown in Table 6, 40,618 people were sentenced to imprisonment of more than 5 years and up to 35 years (not including life imprisonment) in 2014, or 19.4% of all prisoners; in 2017, there were 39,238 such individuals, or 19.6%. This number did decrease in 2018 to 18.9%. The gradual reduction in the number of people sentenced to 10–15 years of imprisonment between 2009 and 2012 has been replaced by an increase by 3,000 people (more than 30%) in 2013–2015, although in 2017 and

2018 we can notice a slight reduction. The situation is similar for those sentenced to terms of over 15 years and up to 20 years: in 2016, the indicator grew by more than 10% over 2013. The reduction of imprisonment for relatively short periods (up to 5 years) and the increase of long sentences in 2016 and 2017 are also noticeable.

Table 6. Terms of real imprisonment imposed by courts, 2010–2018 (total and %)

Year	Up to 1 year		1 to 2 years		2 to 3 years		3 to 5 years		5 to 8 years		8 to 10 years	
2010	32,502	12.2	52,577	19.8	61,730	23.2	62,134	23.4	35,988	13.5	13,459	5.0
2011	32,353	14.2	47,546	14.2	48,356	21.3	51,878	22.8	28,713	12.6	11,405	5.0
2012	31,113	15.0	45,388	22.0	43,135	20.9	47,345	23.0	23,541	11.4	10,015	4.9
2013	34,739	16.6	47,226	22.5	42,909	20.5	45,641	21.8	22,914	10.9	10,017	4.8
2014	36,376	17.3	45,381	21.7	42,248	20.1	44,825	21.4	21,932	10.4	10,889	5.2
2015	35,857	17.0	46,073	21.8	41,554	19.7	45,745	21.7	21,783	10.3	11,245	5.3
2016	36,953	17.9	44,413	21.5	39,430	19.1	43,433	21.0	20,681	10.0	11,457	5.6
2017	37,144	18.6	42,629	21.3	39,082	19.5	42,111	21.0	19,360	9.7	10,553	5.3
2018	38,954	20.5	40,673	21.4	36,507	19.2	38,172	20.0	18,246	9.6	9,416	4.9

Year	10 to 15 years		15 to 20 years		20 to 25 years		25 to 35 years		Imprisonment: total
2010	5,604	2.1	1,507	0.5	327	0.12	12	0.005	**265,840**
2011	5,122	2.3	1,367	0.6	301	0.13	9	0.004	**227,050**
2012	4,285	2.1	1,158	0.6	261	0.12	13	0.006	**206,254**
2013	4,897	2.3	1,111	0.5	250	0.12	5	0.002	**209,709**
2014	6,312	3.0	1,227	0.6	253	0.12	5	0.002	**209,448**
2015	7,387	3.5	1,273	0.6	251	0.12	2	0.0009	**211,170**
2016	8,071	3.9	1,428	0.7	257	0.12	11	0.005	**206,134**
2017	7,799	3.9	1,278	0.6	245	0.12	3	0.001	**200,204**
2018	6,908	3.6	1,246	0.7	201	0.1	2	0.001	**190,325**

Source: Reports on the number of individuals brought to criminal responsibility and the types of criminal punishment for 12 months of 2010; for 12 months of 2011; for 12 months of 2012; for 12 months of 2013; for 12 months of 2014; for 12 months of 2015; for 12 months of 2016; for 12 months of 2017; and for 12 months of 2018, Form No. 10.1 – CDEP n.d.-b

Numerous studies conducted in Russia and abroad show that the positive effect of corrective treatment is possible in the first five years or so of serving a sentence (Cooper 1974; Walker 1983; Khokhryakov 1991; Yang et al. 2009). Any further stay in places of isolation leads to destructive processes in the mind of the prisoner and reduces the possibility of resocialising the person. During a prolonged stay in isolation, the prisoner's family (if any) learn to live without him/her, and returning to the family can create conflict, which often results in new crime.

The judicial practice of imposing long prison sentences leads to the proportion of people in penal institutions serving a sentence of more than 5 years remaining consistently high: in 2010 such people made up 53.1%; in 2011, 53.9%; in 2012, 55.3%; in 2013, 54.6%; in 2014, 53.7%; in 2015, 54.7%; in 2016, 53.3%; in 2017, 53.2%; and in 2018, 53.7% (FSIN n.d.-c). Therefore, in our opinion, a national crime policy aimed at significantly reducing both prison sentences and the number of sanctions that call for this punishment should be a priority. Without questioning the fact that serious punishment should be imposed on individuals who commit especially serious, violent crimes, we should note that the position of the legislature, which has increased the punishment to 35 years of imprisonment, is not criminologically justified. From the point of view of general prevention, increasing the length of prison sentences for certain crimes from 25 to 30 years and from 30 to 35 years will obviously not have an intimidating effect on potential criminals. The difference of five years does not play a role in deterring crimes. According to the results of a survey conducted among convicts, the majority of the respondents answered that at the time of the crime they did not even think about the possibility of punishment (more than 75%).[8] It is necessary to understand that people who have found themselves in penal institutions will sooner or later return to society, and that the longer they stay in isolation, the more exacerbated the consequences of imprisonment become (separation from one's family, difficulties in post-penitentiary adaptation, destructive changes in one's mind, inability to independently solve difficulties due to the established habit of obeying the orders of authorities). That is why such extremely long sentences are only able to isolate the most dangerous individuals from society, without having a corrective effect on them. The assumption that, having served a sentence of not 30, but 35 years, a convict will return from prison rehabilitated is utopian.

The legislature chose a significant reduction in the maximum length of imprisonment for juvenile offenders. According to Part 6 of Art. 88 of the Criminal Code of the Russian Federation, imprisonment is imposed on juveniles who commit crimes before the age of 16 for a period not exceeding six years; to the same category of juveniles who commit particularly serious crimes, as well as to other juvenile convicts, the punishment shall be imposed for a term not exceeding 10 years, and shall be served in educational colonies. The number of minors serving prison sentences has been drastically reduced: from 4,053 people in 2010 to 1,354 people in 2018 (FSIN n.d-d). This coincides with a tendency of fewer recorded crimes committed by minors.

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8 The survey was conducted March–May 2016 among 150 people serving prison sentences in Bashkortostan Republic (Russia).

A historical analysis of the development of the institution of punishment reveals that the change in the course of the national criminal policy towards mitigating punishment began as an experiment with juveniles. This leaves room for the hope that Russia's current penal policy in regard to juveniles – aimed at significantly reducing their numbers in prisons – will have an impact on the general policy of imposing and executing criminal penalties. We agree with the opinion of Prof. Starkov, who notes that

> the wider and harsher punishment is applied in society, the more it confirms its helplessness. This is manifested in the fact that society thereby criminalises its own majority, involving more people in the crucible of criminal justice; it is so weak that it cannot cope with crime by other methods, for example, economic ones. Punishment in this case loses the function of intimidation of the population; general prevention, as it becomes customary, commonplace, and even prestigious – especially for convicted and freed youth – turns into its opposite, becoming harmful to society. (Starkov and Miliukov 2009)

As for the practice of imposing alternative punishment, they are rarely used despite their potential. As we can see in Table 3, alternative sanctions play a minor role, but in 2017 the use of community service increased from 15% to 28%. Restriction of freedom is the rarest penalty handed down; the number of convicted people sentenced to this punishment is no more than 2%. The proportion of fines among all punishments remains practically unchanged, at about 15%. A poll of judges[9] reported that the main reason for the non-use of alternative punishment is the 'convenience' of imposing imprisonment (immediate or conditional). The convenience of choosing imprisonment lies in the fact that other types of punishment – a fine, for example, if unpaid by the convict – may force the court to reconsider the case. This increases the burden on judges. In this case, handing down prison sentences solves this problem, since the likelihood of the case being reconsidered by the court and the punishment being replaced with another is minimal. In addition, the judges admitted that in reality in most cases, the guilty do not have enough money, which makes the execution of an economic penalty predictably impossible.

Thus, the widespread use of imprisonment can be explained by the fact that for judges this is a familiar punishment that is easy to impose and even easier to execute. The non-use of fines is also explained by the fact that most convicts do not have the means to pay them. The percentage of convicted people without a permanent source of income is high and is rising: in 2008 it was 54.7%; in 2013, 62%; in 2015, 64%, and in 2018, 62.9% (CDEP n.d.-a).[10] An analysis of the implementation

9 The interviews of 35 judges were conducted February–May 2016 in St Petersburg.

10 The main indicators of penal statistics for 2008–2018 of the Judicial Department of the Supreme Court of the Russian Federation.

of fines indicates that voluntarily paid fines range from 12% to 18%. The proportion of forcibly collected fines ranges from 5.7% to 14.3% (CDEP n.d.-c).[11] The remaining amount, almost 70% of the fines, in fact are not paid. This demonstrates the difficulties in using fines as a criminal punishment.

Clearly, it is not enough for a court to simply impose a punishment; it is much more difficult for the bodies executing a punishment to implement it. Inefficient organisation and a lack of proper experience in the execution of alternative punishments lead the courts to choose other punishments, which ultimately is imprisonment.

Special mention should be made about the strictest form of punishment, the death penalty. Art. 59 of the Criminal Code regulates the imposition of this type of punishment, determining that the death penalty, as an exceptional measure of punishment, can be imposed only for particularly serious crimes against human life and health. The Criminal Code of the Russian Federation includes such crimes as murder with aggravating circumstances (part 2 of Article 105), murder and attepted murder of a statesman or a public figure (Article 277), murder and attepted murder of a person administering justice or a preliminary investigation (Article 295), murder and attepted murder of a law enforcement officer (Article 317), and genocide (Article 357).

The Decree of the Constitutional Court of the Russian Federation placing a moratorium on the use of the death penalty indicated that

> there were stable guarantees of the right not to be subjected to the death penalty and a legitimate constitutional legal regime was established, within which – taking into account international legal trends and commitments taken on by Russia – there is an irreversible process aimed at abolishing the death penalty as an exceptional measure of punishment, which is of a temporary nature and designed only for a certain period of time. (KSRF 2010)

As long as the death penalty is not executed, life imprisonment is the most severe punishment in Russia.

During the Soviet period, life imprisonment was abolished as not fulfilling the correctional goal of criminal punishment, so the Criminal Codes of 1922, 1926, and 1960 did not prescribe this penalty. It was introduced only in 1992 by a decree of the President of Russia, according to which the President could pardon prisoners sentenced to death and replace the penalty with life imprisonment.

The Criminal Code adopted in 1996 provided for life imprisonment only as an alternative to the death penalty for committing particularly serious crimes. Thus, in the original version, life imprisonment could only be imposed for five crimes.

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11 Report on the amount of damage caused to the state as a result of crimes for 12 months of 2015 and for 12 months of 2016, Form No. 4.

However, the criminal and penal policy of the new Russia went in the direction of toughening punishment for certain types of crimes. In 2004, amendments were made to the Criminal Code, lending a new status to life imprisonment, independent of the death penalty. The scope of this punishment has been significantly extended over the 23 years the current Criminal Code of the Russian Federation has been in existence, as the number of articles with this form of punishment has increased from 5 to 20. Life imprisonment can now also be imposed for non-violent crimes. For example, in December 2017 the Moscow regional court sentenced a citizen of Tajikistan to life imprisonment for smuggling drugs (Novye izvestiia 2017). This practice contradicts modern international standards.

The statistics on the imposition of this punishment are markedly stable: in 2008, 71 people were sentenced to life imprisonment; in 2009, 73; in 2010, 66; in 2011, 64; in 2012, 66; in 2013, 67; in 2014, 68; in 2015, 61; in 2016, 94; in 2017, 65; and in 2018, 68 (CDEP n.d.-c).[12] Due to the obvious circumstances, the number of people serving a life sentence increases every year. Since the official statistics on this category of convicts has only been published since 2010, it is possible to analyse the changes in this indicator from 2010 to 2017. In 2010 there were 1,733 people serving life sentences; in 2011, 1,783; in 2012, 1,799; in 2013, 1,840; in 2014, 1,892; in 2015, 1,931; in 2017, 2,015; in 2018, 2,029; and in 2019m, 2,025 (FSIN n.d.-e).

5. Public attitudes

Despite the fact that the death penalty has not been applied since 1999, the question about its restoration periodically rises in Russian public discourse, especially when serious violent crimes such as terrorist attacks are committed. Also, there is still a court practice of imposing the death penalty and replacing it with life imprisonment.

It can be stated that in a society in which the death penalty exists and is used, and which has become accustomed to it, the population tends to believe in it. One of the latest opinion polls conducted by the 'Public Opinion' Fund on 27 October 2019 found that 69% of respondents considered it necessary to restore the death penalty and proposed expanding its use (FOM 2019).

It seems that the existence of the death penalty in the system of criminal penalties is connected with the authorities' wish to satisfy the desire of the population to preserve it. Such a concession of the state authorities to the public desire for cruelty has been dubbed 'Pontius Pilate Syndrome' in the academic literature (Shestakov 2015). However, the emotionality and subjectivity of the population in

12 The main indicators of penal statistics for 2008–2018 of the Judicial Department of the Supreme Court of the Russian Federation.

assessing such a question, as well as the public's non-awareness of the irrationality of using the death penalty, should encourage the state to raise the legal awareness among the public and to recognise that this kind of punishment is inadmissible in a modern, democratic society. In this regard, we agree with the opinion of A.D. Sakharov (1978), who said that

> the reduction or even total elimination of crime can be achieved in the future only through the prolonged evolution of society, a general humanistic ascent instilling in people a deep respect for life and human reason, and greater attentiveness to the difficulties and problems of one's neighbour. So humane a society is now no more than a dream, and only acts of humaneness today can create hope for the possibility of realizing it in future.

The general stance of the state policy to increase the terms of imprisonment, to use life imprisonment, and to keep the death penalty in the Criminal Code of the Russian Federation supports the psychological attitude of society to preserve the established, centuries-old tradition of perceiving only imprisonment as punishment. This is confirmed by a poll which showed that more than 60% of the respondents believed imprisonment is the only acceptable criminal punishment, and other types of punishment, especially fines, are perceived as ransom.[13] The same point of view is shared by some Russian scholars (see: Alekseev, Ovchinskiy and Pobegaylo 2006).

This attitude among the population is quite understandable and is traditional for the country. During the Soviet period, the criminal policy was based on the conviction that it was possible to eliminate crime in a socialist society by legal means. Thus, in the Platform of the Communist Party of the Soviet Union, which was adopted at the 22nd Party Congress held in Moscow 17–31 October 1961, it was decided that

> in a society building communism, there should be no place for offences or crime. But while crime exists, it is necessary to impose strict penalties on individuals who commit crimes which are dangerous for society, who violate the rules of socialist community, and who do not want to join in an honest working life. (V.I. Lenin 1986)

The fact that strengthening the fight against crime was a priority in the policy of the USSR is confirmed by the resolutions and decisions of other congresses of the Communist Party. This could not help but affect the beliefs of both

[13] The survey was conducted March–May 2016 among 240 people, including employees of the Federal Penitentiary Service of Russia (110 people), ordinary citizens (100 people), and judges (30 people) in St Petersburg and the Republic of Bashkortostan (Russia).

law enforcement (primarily judges) and the general public. This was only natural, because, as A.I. Sidorkin and I.A. Anuchinv (2010) point out, 'for decades, public opinion has been intensely cultivated, first to fight the overthrown exploiters to preserve the dictatorship of the proletariat, and then in the years of Stalin's "justice", to "fight" the enemies of the people'. Such propaganda gave rise to an extremely punitive attitude among the populace. Even in 1988, when 'Stalin's methods of administering justice' became public, in the discussion of the draft of the Fundamentals of Criminal Law, 72.6% of the citizens rejected the idea to reduce the maximum prison sentence – even for juveniles – and 88.7% called for imprisonment to be used as the main punishment; 97% of the citizens and 74% of legal practitioners favoured a wider use of the death penalty than that from the legislation in force at the time (Efremova et al. 1984: 274; *Rezul'taty referenduma* 1989).

Therefore, we should not blame the population for excessive cruelty and severity, since this attitude towards offenders had been developed for many years. In this regard, there is a need to change the psychological attitude of the population towards imprisonment as the only (main) means of reacting to criminal behaviour. It is the state that should set an example for the people. When developing a strategy to combat crime, the state should be guided by the achievements of science, and not by public opinion. It seems that the perception of cruelty by the population led to the practice of toughening and improving the methods of torture and killing in the Middle Ages. Humanism of social mores (mitigation of morals) is possible with a careful attitude of the state towards its populace, including those who commit crimes and are convicted of them. The severity of criminal penalties and long prison sentences can in no way ensure the goals of criminal punishment are achieved.

Conclusion

As noted above, the system of sentencing in Russia includes 13 types of punishment. Ten of them are actually executed, since arrest and death penalty only exist in the legislation and are not imposed, and deprivation of special, military, or honorary title, class rank, and state awards is only applied as an additional punishment. If we exclude those punishments that are narrow in their applicability (restriction in military service and service in a disciplinary military unit), there are in fact seven types of basic punishment which are actually in use in Russia. As Prof. Lopashenko (2011) correctly points out, this is 'a lot if you look at the criminal legislation of other countries'. In the Netherlands, there are four main types of punishment (Article 9 of the Criminal Code of the Netherlands). The German Criminal Code provides for only three types of basic punishment: imprisonment, fines, and property fines (§ 38–43a of the Criminal Code of Germany).

Among the seven types of punishment in the Russian Federation, only one is actively used in practice: imprisonment. The remaining types of punishment are almost ignored by the courts and do not constitute real competition to imprisonment. As a result, the country has an inflexible, primitive system of criminal penalties. Such a low level of imposing punishments other than imprisonment is connected, first of all, with the problems of executing alternative punishment.

An analysis of the legislation and the practice of applying it reveals that despite the proclaimed reform of criminal and penal policy, the main trend in modern Russia is to toughen penalties, increase the lengths of prison sentences, and inefficiently apply alternative punishments. This leads to the fact that the penal system is still very archaic and in many ways preserves the features of the Soviet criminal system. The dire conditions of the prisons, the lowering of the number of prisoners by artificial mechanisms (for example, with amnesties and conditional imprisonment), the repressive bias of the legislation and the accusatory bias of the justice system indicate that the penal policy of the Russian Federation has not changed much. The proclaimed humanisation and liberalisation of criminal justice remains virtually invisible and suppressed, which ultimately prevents it from significantly influencing the overall direction of state policy. The most important way to change the situation is by changing the psychological attitude of society (especially judges and law enforcement officers) which deems imprisonment as the only proper form of punishment.

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Crime statistics in Hungary, 1968–2017: What is shaping the trend?

Statystyki przestępczości na Węgrzech w latach 1968–2018. Analiza i wyjaśnienie trendów

Abstract: The study examines the development of crime statistics in Hungary. Data on registered crimes have been collected since 1968 using the same methodology. The long-term analysis reveals several trends. The first period, 1968–1989, was characterised by slow growth. The second phase started after the regime change: 1990–2000. There was a very significant increase and strong waves in the data. In the third phase, in the decade following the new millennium, the data appear to have stabilized at around 400,000 cases per year. Starting in 2012, a new trend of dramatic decline has emerged in the crime data. The study examines the evolution and possible causes of these diverse trends. It presents the social and political changes behind the trends. Particular emphasis will be placed on examining the causes of the period of the transformation from communism to liberal democracy and current trends. These are the most exciting stages of Hungarian criminal statistics. The relationship between social change and the evolution of the criminal situation is the basic question. A significant and lasting decrease in the number of registered crimes is a new phenomenon that has not been seen in processes since 1968. The number of registered crimes has decreased significantly in recent years. In analysing the causes behind this decrease, the combined effect of several factors can be detected. The most significant decrease was caused by the amendment of the legal regulations, modifying the legal situation of document abuse and raising the threshold for infringement. In addition, there is a downward trend at the international level. Significant emigration in recent years has also contributed to a reduction in the number of registered crimes.

keywords: crime data, trend, crime statistic, crime in Hungary, long-term analysis

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Abstrakt: W artykule został przedstawiony rozwój przestępczości na Węgrzech na podstawie danych statystycznych. Ponieważ są one w ten sam sposób rejestrowane od 1968 roku, ich analiza pozwala zauważyć wiele trendów na przestrzeni lat. Pierwszy okres (między 1968 a 1989 rokiem) charakteryzuje się powolnym spadkiem przestępczości. Drugi (po zmianie ustroju w latach 1990–2000) to czas, w którym przestępczość znacząco wzrastała, ale w sposób niesystematyczny (duży wzrost w niektórych latach). Trzeci okres to etap stabilizacji, jaki nastąpił w latach 2000–2010. Liczba rejestrowanych przestępstw utrzymywała się wówczas na poziomie do 400.000 zdarzeń rocznie. Od 2012 roku możemy wydzielić okres czwarty, kiedy to w statystykach przestępczości widoczna jest nowa tendencja – znaczny spadek przestępczości. W artykule zostały omówione wyżej przedstawione trendy oraz zaproponowano ich wyjaśnienie wynikające m.in. ze zmian demograficznych czy społecznych. Szczególny nacisk został położony na wyjaśnienie zmian w przestępczości w okresie transformacji i przejściu od systemu komunistycznego do liberalnej demokracji oraz współczesnych trendów w zmianach przestępczości, które autor uznał za ciekawe. Podstawowym pytaniem, jakie stawia sobie autor, dotyczy związku między zmianą społeczną a przestępczością. Znaczący i trwały spadek liczby rejestrowanych przestępstw to nowe zjawisko, w zasadzie niewystępujące wcześniej (w danych zbieranych od 1968 roku). Można jednaj wskazać co najmniej kilka czynników wyjaśniających znaczne zmniejszenie się liczby przestępstw rejestrowanych w ostatnich latach. Największy spadek wynika ze zmiany regulacji prawnej w zakresie nadużycia dokumentów i podniesienia progu, od którego to naruszenie jest karane. Ponadto istnieje tendencja spadkowa przestępczości na poziomie międzynarodowym. Znaczna emigracja w ostatnich latach również przyczyniła się do spadku liczby rejestrowanych przestępstw.

słowa kluczowe: dane o przestępczości, trendy zmian przestępczości, statystyki przestępczości, przestępczość na Węgrzech, analiza długoterminowa

In the 1990s, following the regime change, the statistical indicators of crime in Hungary showed an unprecedented increase. The figures became several times larger than those previously registered in the statistics. After a slight decline around the turn of the millennium, it was typical to have around 400,000 cases per year. In the last few years (from 2013 onwards), there has been an unprecedented spectacular decline in crime statistics. Currently, the numbers of registered crimes have fallen to the values typical of the 1980s.

Analysing data is an exciting challenge for all criminology professionals. The emergence of a new crime rate that is related to changes in the social and political order raises a number of questions: What caused such a significant increase in the crime statistics in the 1990s? Do the data adequately reflect actual changes in crime? Did the volume of crime increase so much, or were other factors contributing to the increase in the indicators? Was it a new growth path, or did the trends of the pre-1990 era continue to exist, though at a higher level? What is the reason for the current significant decline? There are many questions about the changes in criminal data. In this study, we will seek answers to these questions, based on an analysis of statistical data from the period between 1968 and 1999.

For a long time, the platitude that crime is a normal social phenomenon has existed in criminology. Since the time of pioneers such as Quetelet and Durkheim, research has focused not only on the existence of crime, but on its extent, structure, and dynamics. Under normal social conditions, society can accept and live with existing deviant phenomena, including crime.

One of the most important elements of researching crime as a social mass phenomenon is research into crime statistics. Crime statistics record two elements of crimes: the number of detected offenders and the number of detected crimes. The first element records a criminal offence as human behaviour, while the other records people who violate a criminal law. The relationship between the two groups is obvious, but they differ in their content and numerical values.

Let us first examine the changes in the statistics on detected crimes. For this analysis, we relied on the ERÜBS[1]statistical data for the period 1968–2000. With regard to any research covering a longer period of time, the question of changes in the law is always raised. This is ignored when studying the whole period, and the changes with the greatest impact are taken into account when analysing each period.

Change in the number of detected crimes

Looking at the figures, crime statistics worldwide have seen an increase, roughly up until the end of the 20th century. Based on data from the 1990s, European countries experience almost the same growth trend. The number of registered cases has been growing slightly but steadily since World War II. The Hungarian data were also in alignment with this growth path. The difference was that while growth was steady until the late eighties, it was not dramatic, whereas the early nineties witnessed a dramatic increase. Until 1988, the rate of growth over the previous year did not exceed 10% in any year. Basically, it showed a slight upward trend (Table 1). The average annual growth in the 1970s was 1.4%, but in 1979 it was only 2.4% higher than in 1970. The upward trend accelerated in the 1980s, averaging 4.5% by 1988, when the number of detected crimes was already 42% higher than in 1980. We must separate the data for 1989, because the indicators soared that year to an unprecedented level; the number of crimes brought to the attention of authorities increased by 21.6% in 1989. The following year, though, surpassed even this record: 1990 saw the highest growth ever, at 51.3% over 1989, which itself was a year of significant increase compared to the year before.

1 The Hungarian criminal data reporting system consists of two separate parts. One is the ERÜBS system, which reflects the activities of the police and prosecutors, and the other is court statistics. ERÜBS, currently called ENYÜBS, records criminal data based on data from investigating authorities and prosecutors. These are output statistics, where cases are recorded when the investigation phase of the criminal procedure is completed.

Changes in the pace of growth correlated with changes in the social system, so in this case we need to pay special attention to determining how much the change of pace can be attributed to the change of regime and to what extent the effects of the general trend were visible.

The changes to the statistics are actively influenced by the activities of law enforcement agencies. With the increasing effectiveness of detective work, more and more crimes are brought to the attention of the authorities, and more and more crimes are registered in the statistics without any increase in the number of actual crimes.

> For example, a study in England showed that the 127% increase in burglary cases in crime statistics between 1972 and 1987 corresponded to an increase of only 17% in real life. The greater part of the growth was due to the higher number of reports as a result of the spread of home insurance policies and improved telephone coverage (Kertesz b.d.: 123).

Changes in the proportion of latent and manifest crimes may not have a significant impact on the actual state of crime, but they do impact the statistics. Actual police behaviour is the result of a combination of many factors. The willingness of the police to translate calls or requests for intervention from the general public into crime reports or to initiate and register procedures following such reports depends to a significant extent on the evolution of procedural rules as well as on the system by which police work is evaluated.

During the socialist era, the police were burdened by high expectations, mainly for political and ideological reasons.[2] The police evaluation system was also adapted to this, and it was primarily the detection rate that determined the success of a police unit. Accordingly, the statistical data also developed extremely favourably. Compared to the pre-World War II era, the number of registered crimes decreased significantly, by about 100,000. Detection rates were also extremely favourable—there were no global records that could match, for example, a detection rate of 50% of all thefts; the European average was around 12% during that period. The validity of such indicators has been questioned by many, but most Hungarian criminologists agree that the criminological data before the regime change were somewhat manipulated. There are only estimates and speculations about the extent of the correction, but a downward trend in data manipulation was likely to occur with the socialist system becoming softer and with the change of regime, which may be one factor which contributed to the surge in registered crimes.

2 There were efforts to justify the doctrine of the death of crime under socialism and communism, and the idea that the practice of committing crime was alien to the socialist type of man.

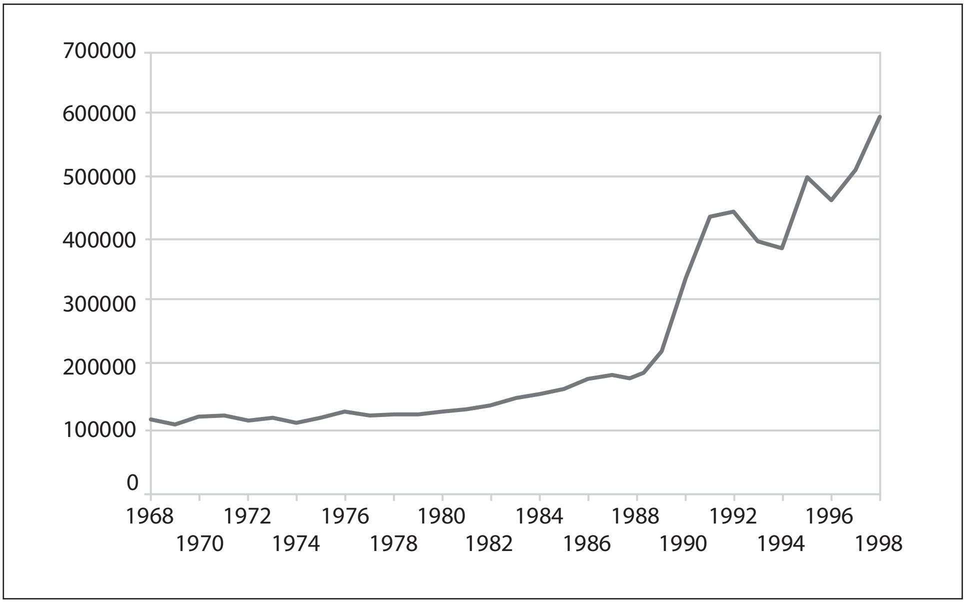
The criminology statistics indicating total crime were on a slow, upward trend from the 1950s onwards, with detection keeping pace with the increasing number of registered criminal cases until the mid-1980s, after which detection rates initially fell slightly and—following the change of regime—then dropped significantly. The 80% detection success rate of the 1970s fell to 52.76% by 1990. A similar phenomenon was observed in other former socialist countries. For example, data for the Czech Republic indicate that the detection rate of 77.5% in 1989 fell to 38.4% in 1990 and appears to have stabilised at around 30% (Niksowa 1997: 68–70), (Zapletal 1997: 80–88). The rapid change in the rather relatively favourable pre-1989 detection rates is rooted in the different characteristics of past and present social and political systems.

No matter how much data manipulation occurred, however, without a doubt public security was generally considered to be good or adequate during the period under review, and the high detection rate—and the social environment—did not allow anyone to accumulate significant wealth by committing crimes without the very real danger of being caught. The detection of crime and the likelihood of being caught play an important role in the development of citizen behaviour towards crime, and if we assign effectiveness data to indicators measuring the magnitude of total crime, the paradox found in spatial analysis becomes understandable.

As a reminder, public surveys reported on the worsening crime situation in Budapest, even though the rate of crimes per capita changed only slightly or not at all, whereas the rural population was less dissatisfied with the situation despite a significant deterioration in the indicators. An analysis of the crime detection data may explain this situation, because in Budapest the detection indicators dropped even though the number of criminal cases did not change significantly, while in the countryside detection rates did not change significantly —despite a 20% increase in crime rates. In smaller settlements, the effectiveness of police work seems to have a stronger impact on citizens' attitudes than the number of crimes committed. Stronger social control makes crime and law enforcement information find its way more easily to residents.

Looking at the time series, it seems that there are several distinct trends in the data. The first slow growth trend lasts until the early eighties; the second faster growth trend characterises data from the 1980s; and the third, new growth path of the 1990s had a much faster growth rate. Let's examine more closely whether these trends can actually be distinguished. We can observe how the data behave when the data series are broken up by growth rate. Visualising the first two phases in a coordinate system makes it clear that, after 1980, the graph rises steeply.

Figure 1. Trends in the number of registered crimes, 1968–1998

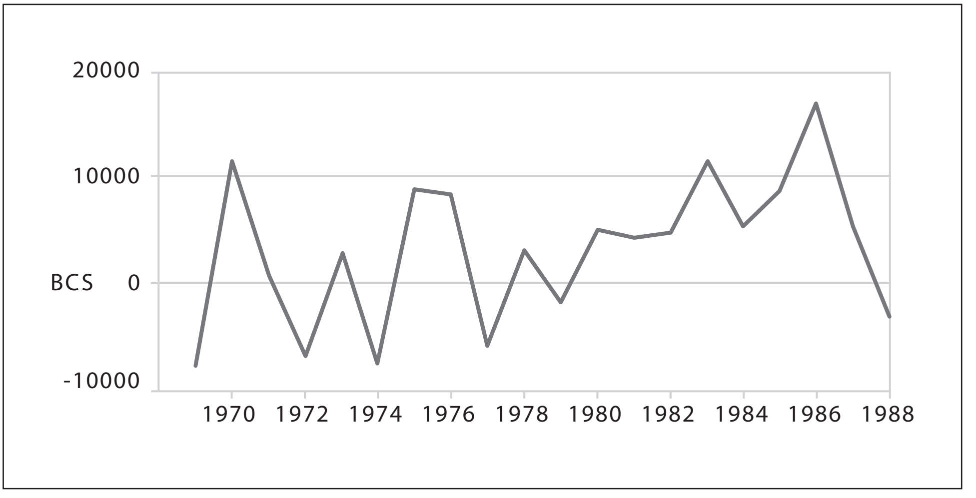


Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The data series from 1968–1988 can be easily portrayed as a linear trend. However, the later data do not follow this trend at all. The entire dataset can be modelled using a curve that cannot be interpreted in terms of content. (A quadratic polynomial yields a good approximation ($R^2 = 0.9825$), but practical experience contradicts this.) The dataset between 1989 and 1998 displays a characteristic that justifies separating it from the previous trend.

To determine if this is indeed a new growth path, let's look at the rate of growth. We can study the changing rate of growth by looking at the first derivative of the dataset, as in

Figure 2. The growth rate of crime, 1968–1988



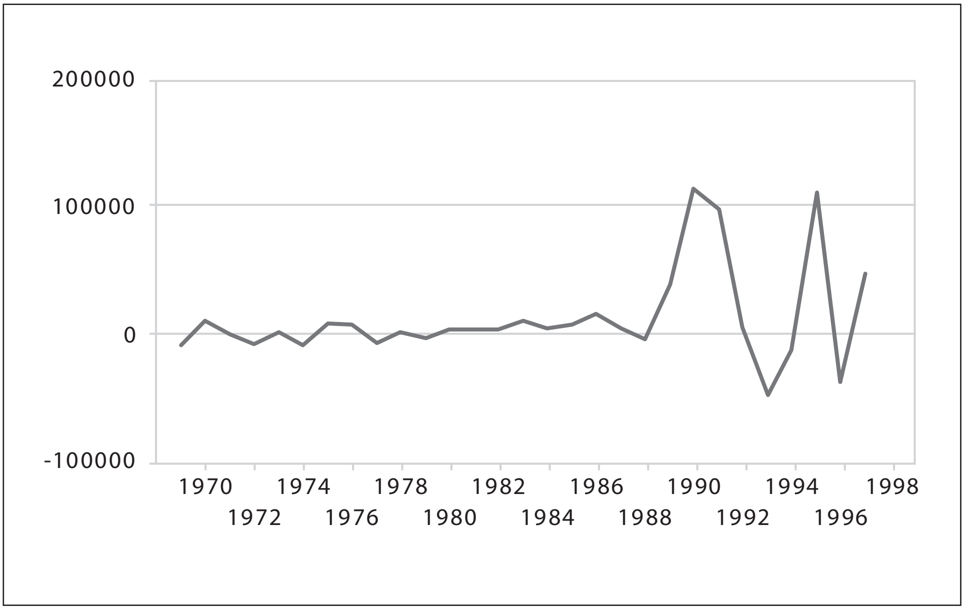
Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

Here we can see that, after the fluctuating growth of the seventies, the data showed a distinct increasing trend in the eighties, even though it was not a clear departure from the earlier trend. Looking at the data of the time series between 1968 and 1988, the picture looks quite different.

Figure 3 clearly shows that the post-1988 trend is different from the previous period. The rate of change increased exponentially, and the figures appear more volatile. The data show an average growth rate of 27% over the period 1990–1998, and the rate of change also accelerated. The data is characterised by unprecedented changes. Based on the graph, we can safely say that some new phenomenon began in 1989. Either a new factor unlike anything before appeared among the background variables influencing the development of the number of crimes, or one or more of the existing influencing factors now had a different impact. A targeted investigation should be carried out to identify the changing factors. Based on the analysis of the data, only the fact of change and the appearance of a new trend can be detected.

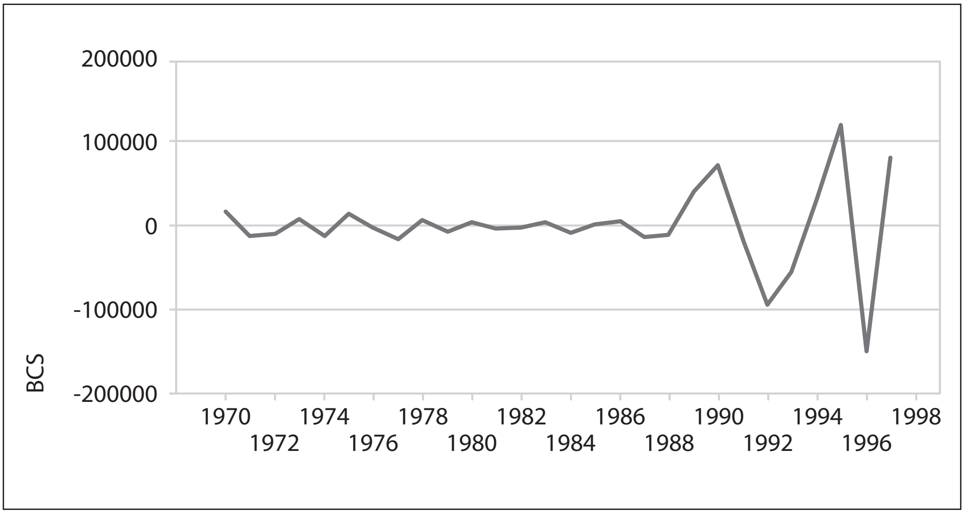
Quantitative changes in the number of crimes also affected the rate of change. The new growth path is characterised by greater and faster changes.

Figure 3. Growth rate of detected crimes, 1968–1998



Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

Figure 4. Changes in the growth rate of detected crimes, 1968–1998



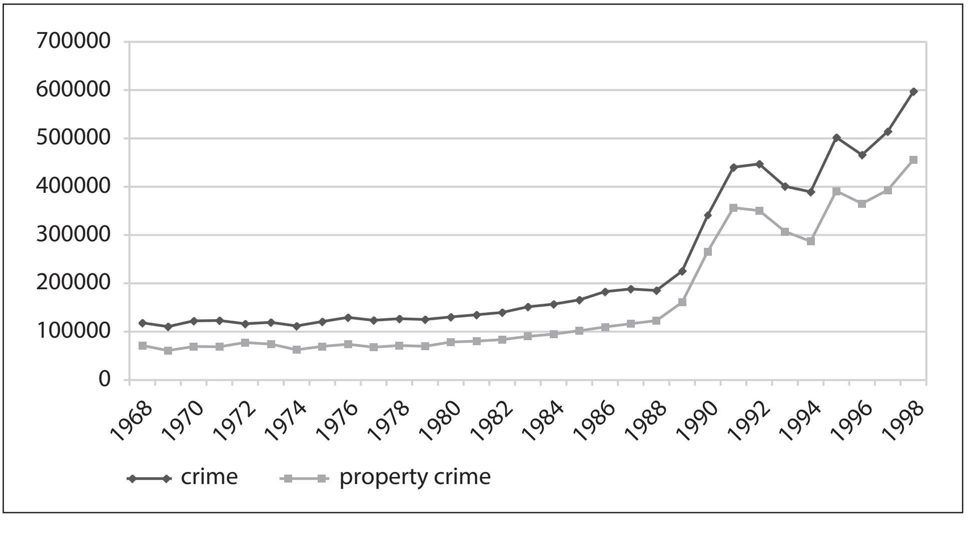
Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The role of crimes against property in shaping the crime trend

The most significant group of detected crimes is crimes against property. The criminological definition of this type of crime is based on the definition of criminal law, and comprises those crimes that criminal law declares as property crimes. The exceptions are those crimes associated with violence; therefore, criminology does not classify robbery, mugging, or extortion as property crimes, unlike the other crime categories in Chapter 18 of the Criminal Code.

Property crimes account for the largest proportion of all crimes, with a marked increase in total crime over the last 20 years—though not a steady one—until 1991, when the proportion of such crimes among all crimes reached a peak at 81%. In 1997, the rate was 76.4%, representing 393,003 crimes. Comparing the changes in the number of crimes and, in particular, the number of property crimes, it can be concluded that the trend is essentially determined by the latter. This is illustrated in Figure 5.

Figure 5. Trends in crime and property crime, 1968–1999



Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The development of the two graphs is practically the same; the difference between them was decreasing until 1991, since then it has been slightly increasing, but the difference has been less than 5% of total crimes. The change in the number of other crimes, therefore, has no significant impact on the change in aggregate data. Property crime can be considered dominant at all times, so as it decreases, overall crime decreases; as it grows, it triggers an increase in total crime.

Therefore, in order to examine the long-term evolution of total crime, it is sufficient to analyse the changes in crimes against property. The number of property crimes has increased by a factor of 5.5 over the last 20 years. However, the growth was not linear: the number only doubled until 1989, and by 1995 it had reached the current level, with a slight increase in 1992 after an extremely high jump of 100,000 cases in 1991, and then for two years the figures were slightly lower. Hence, the growth rate changed for the first time between 1989 and 1991, which was the period that produced the most growth. The radical change in the number of registered crimes at that time can be fully accounted for by the increase in property crime. This was when the proportion of property crime within total crime reached its peak (81%), and its rate of growth was higher than that of any other types of crime.

During the period under review, there was a significant change in the proportion of crimes against property to total crime. The average proportion of property crime in the 1970s was 57.9%, which then increased to 62% in the 1980s, and—based on the currently available data—eventually jumped to 77.4% in the 1990s. This confirms the findings of the trend: the period from 1968 to the end of the 1980s was essentially a time of slow growth and, in particular, a slight increase in the proportion of property crimes. In the 1990s, the number of crimes increased dramatically, mainly due to the increasing number of crimes against property, and, as a result, the internal proportions shifted towards property crime.

The increasing importance of property crime is also indicated by the increase in the damage caused by it. In 1988, the total damage caused by property crimes was 2.75 billion HUF, but in 1991 it increased to 21 billion HUF. This growth rate is also higher than that of crime, and even if we take into account that inflation 'broke loose' during that time, the data still show significant growth. In and of itself, not even the 30% annual inflation rate justifies a nearly tenfold increase in value. The increase in the amount of damage per crime, from 22,427 HUF in 1988 to 59,100 HUF in 1991 (Crime monitor 1997), also indicates that the range of assets affected by crime had increased dramatically.

The next growth wave started in 1995 when, after two years of decline, crime began to increase again. In this new wave of growth, quite uniquely, the growth rate of property crimes lagged behind the increase in the number and proportion of public order offences. The proportion of these two types of crime within total crime increased. Changes related to the change of regime may have provided a convincing explanation for the increase of crime rates in the period 1989–1991, but other factors have to be identified as the reasons for the increase from 1995 to 1997.

Within property crime, which accounted for the largest share of the rising crime rate, there was not only an increase, but also a shift in proportions at the same time. Typically, almost half of all crimes against property are cases of theft, though their proportion within the specific group of crime changed cyclically over the period under review. Registered at 34% at the beginning of the period, the proportion of thefts doubled in 1972, reaching 66.31%, the highest rate ever recorded. The theft rate then took a slow downward trend to reach 60% by the end of the 1970s. This trend has continued, and while overall crime increased in 1998, thefts made up only 44%.

The rate of burglaries within crimes against property also showed an upward trend, and the increase lasted until 1991; since then, the proportion within total crime has been steadily decreasing. Although the number of burglaries is widely considered a characteristic of the wave of crimes after the regime change, the numbers do not support this train of thought. The increase in burglary cases was essentially a trend from 1968 to 1989. Recorded only at 9% at the beginning of the period under review in 1968, the proportion increased to 25% by the 1980s. In 1988, the burglary rate was 25.2%, then it rose sharply to 30.85% in 1990 and 1991, but in the subsequent years it returned to its previous level—24.7% in 1997—whereas the number of crimes continued to rise. The number of burglaries thus essentially increased at the same rate as the number of property crimes. In absolute terms, the growth is significant, but in terms of proportions it is by no means an extra source of crime, but rather a characteristic of the new trend of the 1990s.

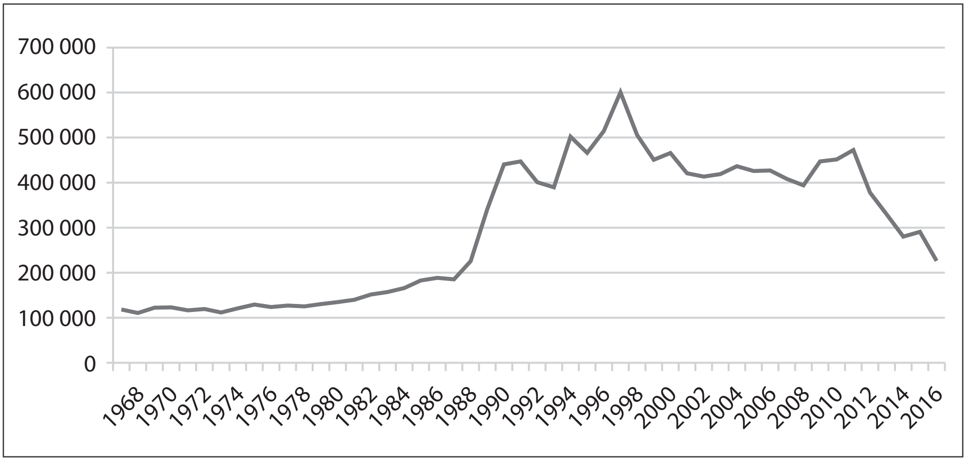
Compared to other property crimes, the most significant change occurred in the number and proportion of cases of fraud. While the proportion of fraud was less than 5% in 1988 and 1989, this indicator rose with significant fluctuations to over 10% in the 1990s and appears to be stabilising at around 15%, representing between 45,000 and 55,000 crimes. The exception was 1995, the peak crime year, with 112,592 cases of fraud accounting for 28.8% of total crime. Hundreds of thousands more property crimes were recorded that year, half of which were due to fraud. In fact, this significant increase can be attributed to two series of frauds and indicates problems with the registration of multiple offences.

The downward trend of the 2010s

According to ENYÜBS, the Hungarian crime statistics, the number of registered crimes has fallen significantly over the last few years. The dynamic increase in crime at the end of the 20th century, following the change of regime, and the record-breaking crime figures have all but disappeared into the past. The highest value ever of 600,621 cases was reported in 1998 (Figure 6).

In the years following this peak, the data showed a rapid decline and, after the turn of the millennium, the number of offences in the statistics stabilised at around 400,000 annually. In 2009, the figure was already below the 400,000 mark; then the upward trend started again, and 2012 was a new 21st-century peak with 472,236 cases.

Figure 6. Trends in the frequency of registered crimes according to ENYÜBS statistics, 1968–2017



Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

After that, however, a dramatic decline began. The number of registered crimes decreased by 100,000, then by another 50,000, and by 2017 the number of registered crimes had reached the level of 1989. Instead of the 400,000 or so cases of the previous years, the number is currently approaching 200,000.What has happened in the last five years? Why have the numbers dropped so drastically?

Before we try to answer these questions, some additional questions need to be clarified. The most important characteristic of crime statistics, which is regularly forgotten even by professionals and which always misleads laypeople, is that crime statistics do not directly reflect the changes in actual crime. There may even be opposing trends at the same time in crime as a whole and in the crime statistics. The increasing numbers in crime statistics do not necessarily mean that the number of crimes committed is also increasing. This may be the case, but the number of offences actually committed may decline even though the statistics show increasing values. Of course, the reverse can also happen.

Criminology textbooks usually list three factors that directly influence the development of crime statistics:

- the willingness to report a crime
- a regulatory environment
- the preferences and attitudes of the investigating authorities

Students are always surprised and complain that the changes in crime figures are not listed among the influencing factors. International experience shows that the numbers of crimes estimated on the basis of victimology surveys and those appearing in statistics follow separate trends and do not necessarily change in the same direction.[3]

The willingness of the public and organisations to report crime

At times, we tend to forget that crime is not limited to individuals. Approximately forty percent of the victims of crimes registered in one year are organisations with legal personality. Crimes are also committed against business associations, institutions, churches, non-profit organisations, etc. According to a 2010 EU survey, one in four (25.7%) business organisations in Hungary had been a victim of crime in the twelve months before the survey (Ducato, 2013). Here too, there is considerable latency because, for example, in many cases when company employees commit offences, they deal with the case 'in house' via disciplinary action instead of contacting the authorities. Companies often have no interest in disclosing offences against them. In order to protect their reputation and avoid having incidents come to light, they often tolerate potential losses. A similar phenomenon can be observed in the case of institutions. The leaders of the institution, fearing any repercussions by the maintainer, tend to hide or attempt to solve cases "in-house".

In the case of victims with legal personality, a proliferation of offences or significant damages may increase their willingness to report incidents.

There are several factors that influence the willingness of the population to report crimes. The type of offence is a key factor. Usually, violent acts are more often reported by victims, but, of course, there are exceptions. Sometimes the victims are so intimidated that they do not dare to contact the police. The extent of the damage suffered plays an important role. The greater the loss, the more likely one is to turn to the authorities. For example, car theft is almost always reported.

Previous experience and knowledge of the consequences of the procedure play a crucial role in someone's decision of whether to report a specific crime. Favourable experiences obviously increase the likelihood of reporting. If events during the procedure or as a result of the procedure do not meet the victim's prior expectations, then these adverse experiences will reduce their willingness to report. In the case of property crimes, the primary expectation of the victims is that they are compensated for their loss. However, this does not always happen. If people are not satisfied with the court's ruling or if the police fail to find the perpetrator, then citizens feel it is not worthwhile to turn to the authorities after a crime, because 'nothing will happen anyway'.

3 Unfortunately, domestic data cannot be relied upon in these issues because, despite several related governmental decisions, there are no regular victimological surveys in Hungary that could confirm or deny the experience from abroad.

In the course of victim-related research, the phenomenon of secondary victimisation has emerged. With secondary victimisation, the injury is not a direct consequence of the crime, but a consequence of the inappropriate attitude and behaviour of the authorities, NGOs, churches, and professionals who come into contact with the victim in relation to the crime.

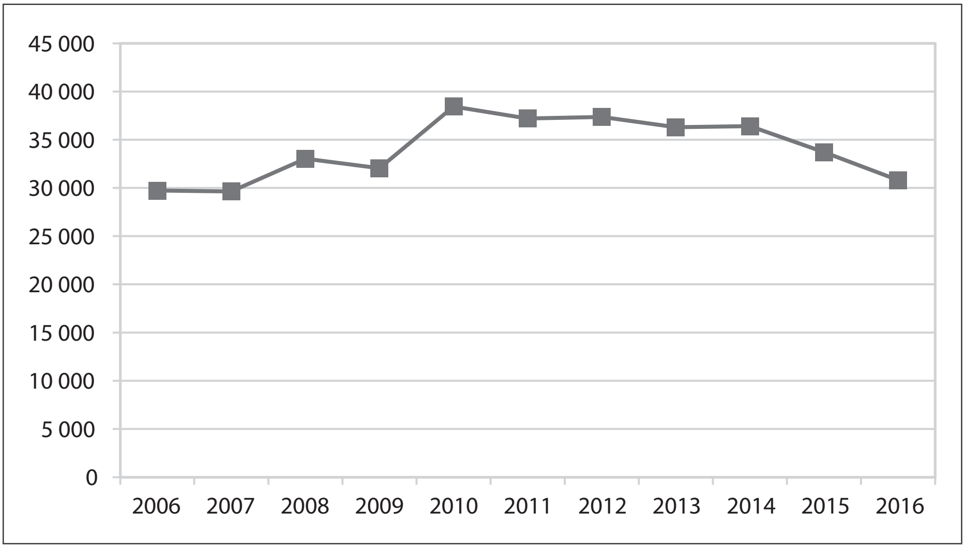
> Recalling the events, confronting the perpetrator, the treatment by the authorities, courts, prosecutors, and the defence of the accused can impose a significant psychological burden and, in many cases, may be humiliating for the victim. Thus, determining the criminal process-related situation helps to eliminate these negatives, or at least to minimise them. This is in the interest of the victim, but also of the proceedings, since the activity of the victim has a significant impact on the process of adjudicating the case. However, many victims do not report crimes, which makes it difficult to uncover the reality of crime, as well as to conduct legal proceedings (Korinek 2010: 381–382).

Primarily, these negative experiences may play a significant role in relation to sexual offences, but there are also other cases when victims may be subjected to further harm during the proceedings. These experiences clearly reduce victims' willingness to report crime to the authorities. Trust in the authorities and in the police may also be diminished for social and political reasons. Citizens tend to react to certain social and political changes and if these are perceived as unfavourable, they may significantly reduce trust in the authorities and, consequently, citizens' willingness to report crime. Experience shows that crime statistics in dictatorships indicate a significantly lower crime rate, which, in part, is certainly due to the fact that people do not want to come into contact with the authorities, even when they are the victims.

In the absence of specific empirical studies to this end, we can only indirectly determine how willingness to report crime has changed. One option is to use the results of opinion polls commissioned by the police. They do not directly inquire about what may have happened, but attempt to survey public attitudes towards the police and the investigating authorities. If the answers to trust-related questions are promising, then analysts can conclude that the relationship with the general public is good and that it triggers a greater willingness to report crimes. The data show an improving trend: in 2010, only 65% of the respondents were satisfied, while in 2017 this indicator increased to 78.6%. However, overall satisfaction is not necessarily accompanied by a high level of willingness. In addition to trust in the police, many other factors influence the willingness to report crimes.

If we could prove that willingness to report has not changed (or may even have improved), the decreasing number of cases in crime statistics would be more likely the result of an actual decline in the number of offences. Victimological data records, which are needed anyway, could easily provide answers to this question, but without them we are left with only indirect methods. Let's look at how the numbers have changed over the period under review for crimes where the willingness to report is less of a factor. Typically, these are violent crimes, vandalism, and traffic offences. Figures 7 and 8 show their development during the period under review. Figure 7 clearly shows that there was no spectacular decrease in violent crime, as was observed for all registered crimes. The situation is similar for traffic offences (Figure 8).

Figure 7. Evolution of violent crime (2006–2017)

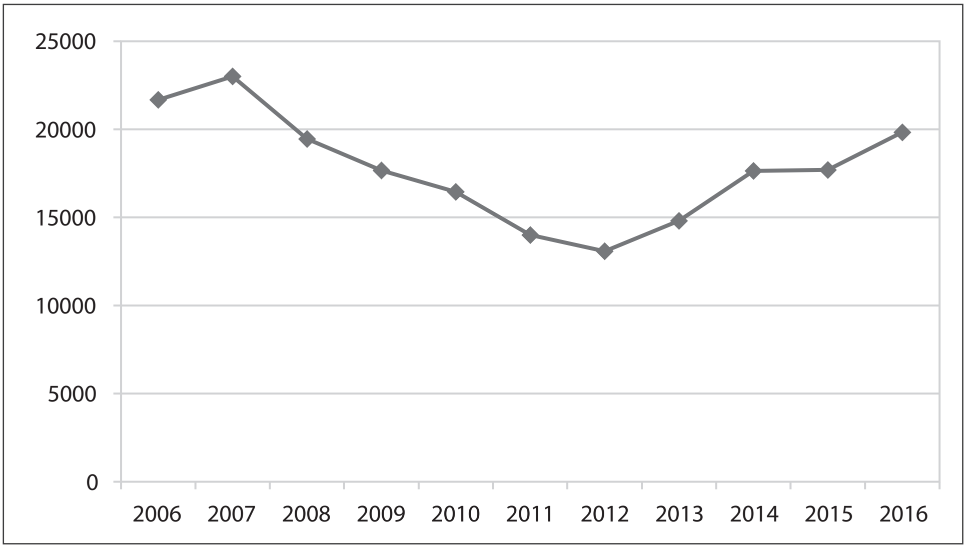


Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

In the case of traffic offences, we can see the opposite of the overall downward trend. Contrary to all other detected crimes, where the 2013 figures show a significant decrease, the statistics on traffic offences actually show an increase.

According to the hypothesis based on the police confidence index, the willingness of the population to report crime did not change or even improved. The number of registered crimes decreased, though it is likely that fewer cases were registered due to fewer crimes being committed. Calculating using the same reporting ratio, fewer crimes were committed. Overall, crime decreased, but then there should also be a drop in those types of crime where the willingness to report plays a less significant role. However, the numbers of registered violent crimes and traffic offences did not decrease. These data contradict the hypothesis that the willingness to report crime remained unchanged. They instead reveal a decrease in the willingness to report crime.

Figure 8. Traffic-related crime (2006–2017)



Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The data suggest instead that crime as a whole did not decrease as significantly as the statistics on registered cases show. This possibility is also supported by the fact that the sharp increase in the number of registered crimes following the change of regime was associated with significant social changes. If we agree that crime is a social phenomenon and its causes are due to social factors and effects, then the significant changes in statistics—provided they reflect the evolution of actual crime—should result from significant social changes. In the 1990s, we find the social changes that triggered an increase in crime. If we look at what caused the increase at that time, then perhaps we can get an answer to what is now reducing the number of registered crimes. The factors that caused the increase after the regime change may account for the current decline, but in the opposite direction. If there were social reasons for the drastic growth, then we should be able to find the drivers for the significant drop. However, no such major social changes are visible in the period 2012–2016. In this case, there is more reason to believe the assumption that the significant changes in criminal statistics are not due to a decrease in crime as a whole. In the absence of social change, we need to find other reasons to explain the massive decline.

The preferences of investigative authorities

ENYÜBS primarily contains traffic statistics. It includes cases in which the investigating authority conducted some sort of procedure. It is often said to include cases brought to the attention of the authorities, but unfortunately this is not entirely accurate. In fact, there are 'countermeasures' with regard to the investigating authorities, which are used to exclude from the system cases considered hopeless or negligible, and these are not included in the statistics at all, even though the authorities dealt with the matter and decided it was not worth investigating. Such a loophole in Hungary relates to petty crime. If the act in question is not a crime but an administrative offence, the investigating authority will be relieved of further action and will not have to deal with the matter. So, for example, if someone reports to the police that his coat has been stolen, he can expect the following conversation:

'How much?'

'I paid sixty thousand forints for it two years ago.'

'Then it is worth no more than thirty thousand forints.'

'You're right, actually.'

Case solved. An offence was committed, no further action is needed, and the case is not included in the criminal statistics.[4]

Unfortunately, crime statistics are still used by the investigating authorities to assess the performance of individual units. This serious problem is visible in the operation of the ERÜBS-ENYÜBS system, which the authorities unsuccessfully attempted to get rid of from the beginning. The work performance of the police as a whole and individual police organisations is appraised primarily through statistical data.

It has long been stated that efforts should be made to separate the evaluation of police work from the statistical recording system. Even today, the evaluation of police work relies to a great extent on the statistical and investigative efficiency indicators that appear in the ENYÜBS system. The problem with this is that the work of individual units of the investigating authorities is assessed on the basis of data from a system that they themselves produce. In that regard, István Vavró cautioned in 2002 that:

> criminal statistics also include data relating to the activities of law enforcement agencies. Basically, the activities of these bodies provide an opportunity to learn about crime. However, it should not be overlooked that some performance is also measured here. Therefore, it is perfectly understandable from a human perspective if data providers act with due care when compiling data on their own activities (Vavró 2002: 17).

4 Of course, investigating authorities also carry out tasks in connection with administrative offences, and there may even be a prosecution, but these procedures do not affect the crime statistics.

Each investigative body and the investigators themselves must produce the statistical data, based on which their work is evaluated. There is motivation and opportunity to adjust or manipulate the data to some extent. If the police are aware that their work is evaluated on the basis of the data sheets they have filled in, they may, deliberately or unintentionally, distort the statistical data. There have been some examples of this recently.

> The Commander of the National Police József Hatala, filed a report on falsifying statistics in the police departments of Gödöllő and Budapest's 3rd District. Tamás Kovács, the former Prosecutor General, wrote in a letter to Sándor Pintér, Minister of the Interior, last summer that criminal prosecution was unavoidable because of false statistical reporting (Csikász 2011).

Some police departments withheld unsolved cases for a more favourable end-of-year evaluation. It may happen that cases which are already considered to be hopeless are removed in some way by the authorities during the early stages of the investigation. Investigating authorities have an interest in increasing the rate of successful cases and have therefore developed and applied a variety of methods to remove hopeless cases. The most common method for dealing with lesser crimes against property is taking advantage of the flexible treatment of the offence threshold. If the estimated value of the damages is successfully kept below the threshold, then one can get rid of a case that is no longer a crime, but an administrative offence, to prevent it spoiling the statistics.

> Sophisticated methods of manipulating crime statistics have evolved over time. Often, two cases were filed under the same case number where no successful discovery could be expected. If the prospect of detection was slim, the police suggested a making a statement instead of reporting it because that way it was not included in the crime statistics. It would be included in the crime data if the procedure was suspended without a substantive investigation; however, it was not included in the statistics of either successful or unsuccessful cases. According to a former police officer requesting his name be withheld, a new captain sent them to the local flea market almost immediately after the change, where hundreds of bootleg DVDs were seized. Each medium was considered as a case of its own, so hundreds of statistical sheets were filled out, even though it was only a single act. The captain significantly improved the number of cases detected in no time, and was able to prove that he was a good choice (Sereg 2015).

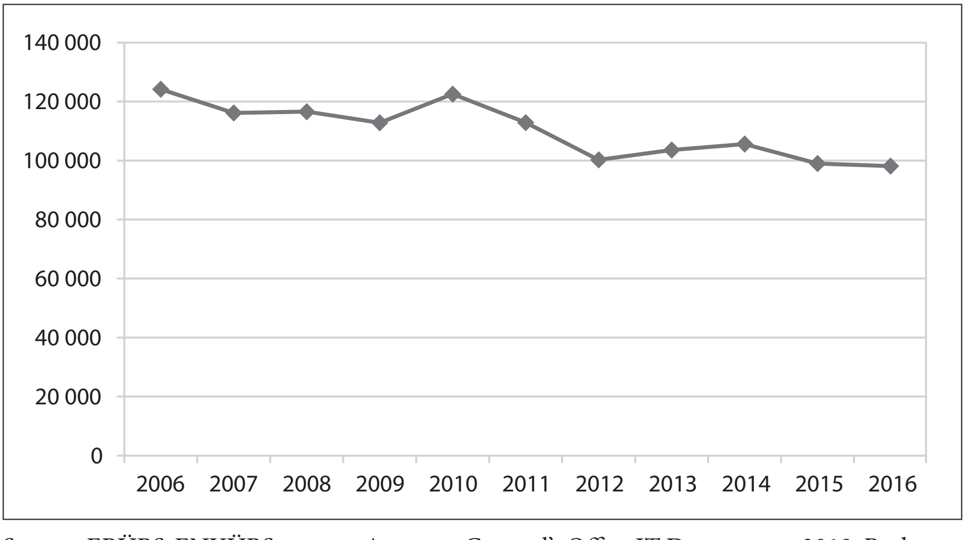
> The Prosecutor General's Office launched a national investigation to determine the exact extent to which police officers falsified the investigating authority's and the prosecution's criminal statistics. The investigation

> identified tens of thousands of errors, omissions, and intentional distortions. With a crime rate close to 400,000 a year, this amount of false data calls into question the credibility of the statistics as a whole (Ihárosi 2011).

We may not have to draw such a far-reaching conclusion yet, but the problem is present in the criminal data reporting system.

It may help to assess the situation objectively by examining the trend in the number of offenders identified rather than by investigation success rates (Figure 9). In fact, the success rate of investigations is very sensitive to changes in the number of all registered crimes. If fewer cases appear in the statistics, the success rate improves regardless of all other factors, such as the actual work completed. The number of offenders found is a better reflection of the effectiveness of the investigating authorities' work, as it shows only the actual results, and the number of cases in which the offender was not identified can provide information on the workload. In this case, if there are more such cases, the investigating authorities had to work on more cases, while the lower total number of registered crimes suggests a lighter workload.

Figure 9. The number of criminal offenders detected, 2006–2017

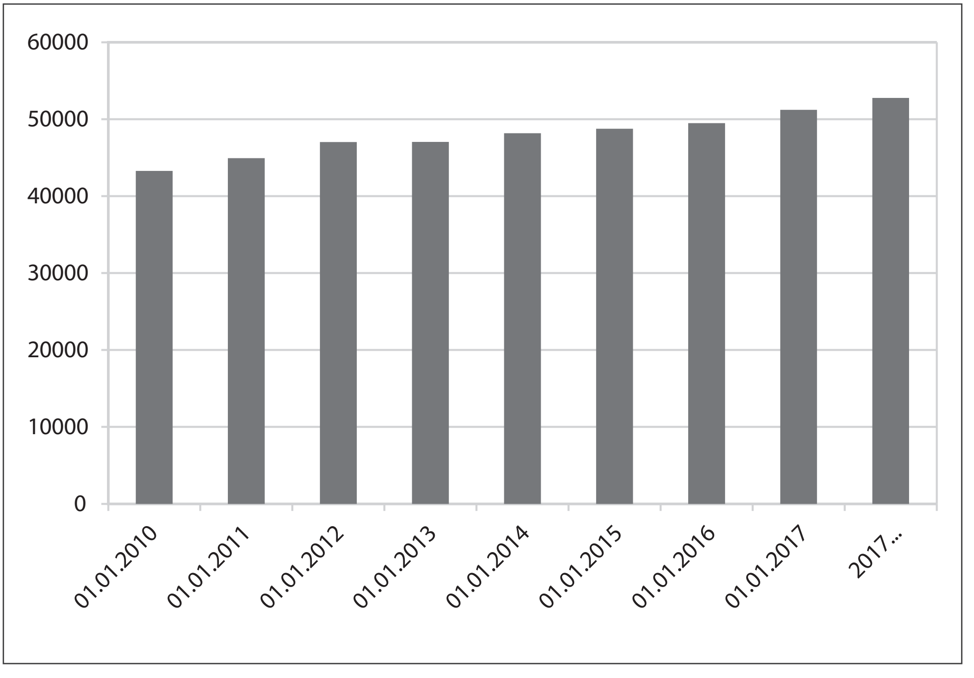


Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The significant decrease in the total number of registered crimes in 2013 had no effect on the number of offenders identified. Essentially, either the investigating authorities solved just as many crimes or there were instead slightly fewer cases than before.

At the same time, the number of police officers increased steadily during the period under review (Figure 10). Compared to the 2010 figures, there are about fifteen to twenty percent more police officers on duty. True, the criminal service branch has not been affected by the increase in the number of police officers, and since 2002 they have had the same number of officers, whether they must deal with 200,000 or 400,000 cases.

Figure 10. Report on the development of the police force employee headcount between 1 January 2010 and 1 November 2017



Source: National Police Headquarters Personnel Department 2018.

Evolution of the legislative environment

Acts that are included in the Criminal Code are considered to be crimes. Criminal legislation determines the scope of crimes, so if the law changes, the number of crimes will also change. Decriminalisation obviously reduces the number of crimes. Cases that were previously criminalised are no longer included in the statistics. If new criminal offences are introduced into the Criminal Code, the number of violations of the law will increase. Thus, changes to the law either increase or decrease the statistics on crimes committed. The new Criminal Code, which came into force on 1 July 2013, contains an amendment that has had a significant impact on the number of registered crimes. This amendment affected the legal situation of the abuse of deeds (Table 1).

Table 1.

Registered crimes of abuse of deeds (2010–2016)							
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Abuse of Deeds, Section 277 (old Criminal Code)	39,110	58,067	83,881	14,233	706	146	42
Abuse of Deeds, Section 346 (new Criminal Code)				636	1654	3228	1221
Total	**39,110**	**58,067**	**83,881**	**14,869**	**2360**	**3374**	**1263**

Source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

The data show that until 2012, the number of abuse of deeds cases was significant, but only a fraction of these numbers appears in the statistics after the law was amended. This one legislative amendment alone reduced the number of registered crimes by about sixty to seventy thousand per year without any change in crime as a whole.

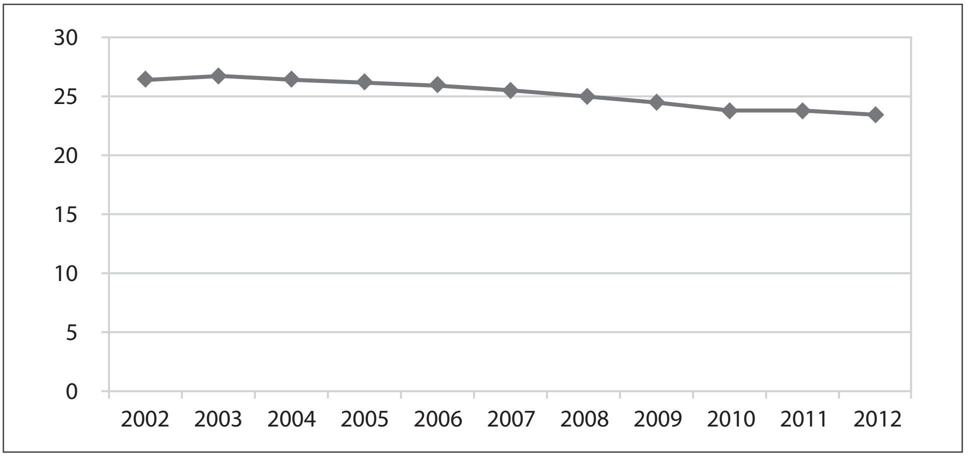
Changing the offence threshold can also have a significant impact on the number of registered crimes. The most common crime is theft of a lesser value. Changes in the threshold affect the judgment of many property crimes. The most recent amendment (Act C of 2012) entered into force on 1 July 2013. This increased the threshold from 20,000 HUF to 50,000HUF. Such a significant change in the threshold had not been made before. As a result of this change, crimes against property worth less than 50,000 HUF have been removed from the criminal statistics, since the statistics only list crimes. Unfortunately, national statistics are not compiled on administrative offences, so we do not have information on the changing number of petty crimes. As a result of this measure, some 60,000 crimes appearing in the crime statistics in previous years are no longer included in the crime data. This amendment, therefore, reduced the number of registered crimes by approximately 60,000 per year. The effect was not visible immediately, as the change came into force on 1 July 2013, so the old regulation was still in effect in the first half of the year, and thus only about half of the reduction occurred in 2013. The number of violations presumably did not change due to the change in the threshold, but crime statistics recorded fewer cases.

International comparison

The number of crimes recorded in the 28 Member States of the European Union has been steadily decreasing since 2003, with 12%less crime recorded in 2012 than nine years earlier.

In recent years, there has been a general trend towards decreasing numbers of reported crimes: the number of cases reported by the police in EU countries fell between 2007 and 2012 in most crime categories (Figure 11).

Figure 11. Number of registered offences in the 28 EU Member States, 2002–2012



Source: Eurostat (crim_gen)

In Germany, according to statistics published by Welt am Sonntag, in 2017 9.6% fewer crimes were registered than in the previous year, totalling 5.76 million. There was a drop in the number of cases of theft (11.8%), burglary (23%), pick-pocketing (22.7%), and violent crime (2.4%), and fewer cars and bicycles were stolen than in 2016 (8.6% and 9.8%, respectively).

What did increase slightly, however, was the number of homicides (3.2%, totalling 785 in 2016), while the number of drug-related offences decreased by 9.2%. Crimes committed by non-Germans fell by a total of 22%last year, which Oliver Malchow, head of the German police trade union, says may also be the result of fewer immigrants arriving in the country in 2017. For the time being, Malchow does not want to draw any serious conclusions from the statistics, but he also notes that there has been no such statistical improvement in the country since 1993 (Lutz 2018).

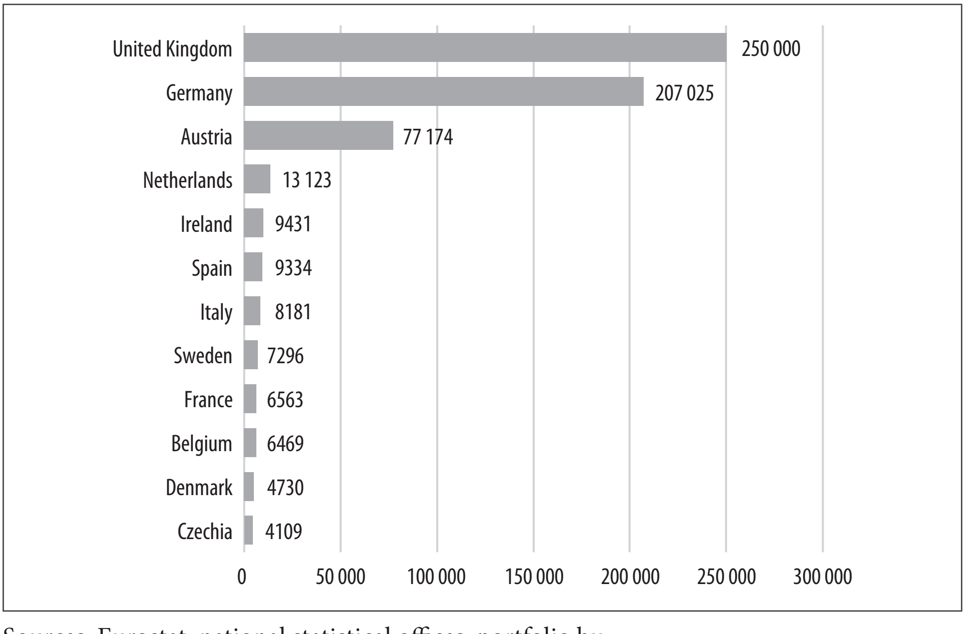
Looking at international data, we can see that the trend of slow growth since World War II has essentially been reversed and that the number of registered crimes in most European countries has been declining since the turn of the millennium. The decline is not as dramatic as in Hungary, but the data still show a steady downward trend. Hungary is also a member of the European Union and is unlikely to escape the general trend. Part of the decline in Hungary (10%–15%) can be attributed to the international trend. The major difference is the extent of the decrease: in most European countries, the decline is 5%–10%per year.

The population with the capacity to commit a crime

There is one more important factor to consider in relation to the significant reduction in registered crime, which is the change in the proportion of the population with the capacity to commit a crime. In several studies, István Vavró analysed the relationship between changes in the number of individual cohorts and changes in the number of registered crimes. He pointed out that when cohorts with lower birth rates and numbers had reached the age of capacity to commit a crime, it caused a detectable change in the number of registered crimes.

As many as 600,000 Hungarians may currently be living in other European Union countries, and this figure is significantly higher than earlier estimates,

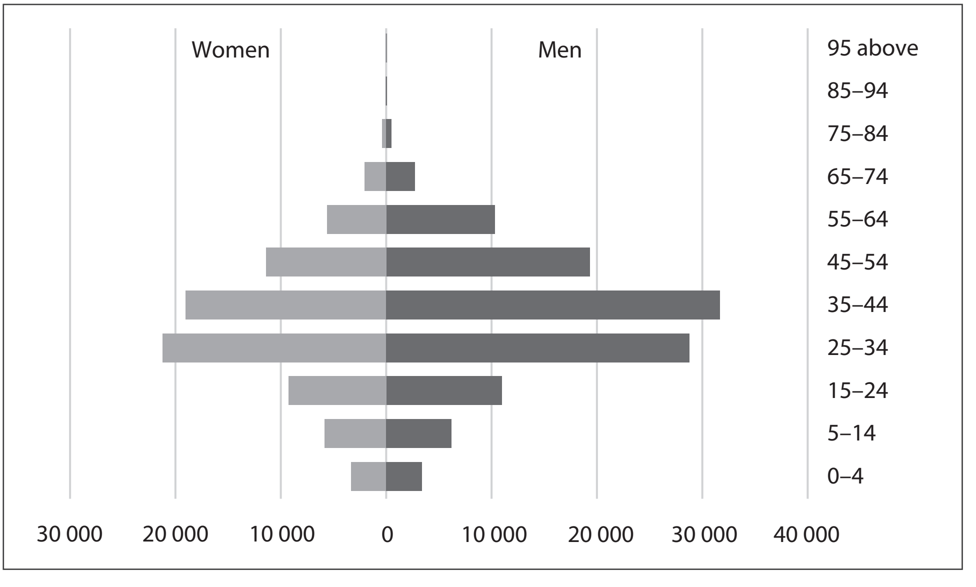
Figure 12. The number of Hungarians living in EU Member States



Sources: Eurostat, national statistical offices, portfolio.hu according to portfolio.hu (Beke 2018). Most officially reside in Germany, but even Denmark hosts more than 5,000 permanent Hungarian workers (Figure 12).

When examining the effect of changes in birth rates on the development of crime, István Vavró concluded that 'in times when the proportion of the group of people within the overall population of the age group that is dominant in terms of crime increases, the volume of crime increases even with the same age-specific crime rate' (Vavro 1994: 38). Obviously, the reverse context may also be true: if the population with the capacity to commit crime and the age group dominant in crime both decrease, we will also see a decrease in total crime. There were differences of 50,000–60,000 in the birth rates studied by Vavró. If the difference in the few tens of thousands can cause significant differences in crime across the relevant age groups, then the current wave of emigration must also have an impact on crime, as there is now also a difference in the hundreds of thousands. If we look at the age distribution of expatriates, we can see that the majority of them are from the age groups most affected by crime (Figure 13) (Beke 2017).

Figure 13. The population pyramid of Hungarians living in Germany



Source: German Statistical Office, portfolio.hu

The age distribution in Germany may be a good starting point for examining the age composition of all Hungarians living abroad. The age distributions of those living abroad and of offenders show a very similar picture. If we assume there are equal proportions of offenders who remain at home and those who go abroad. We then can make an approximate estimation—based on the crime rates per 100,000 residents—as to the drop in the number of crimes registered in Hungary by the 600,000 people who have gone abroad. The estimate is rather uncertain because it also depends, for instance, on the frequencies we are calculating with as well as on the period taken into account. We are talking about between roughly 14,000 and 30,000 registered crimes. This is the number by which registered crimes may decrease due to emigration. The exact figure is debatable, but some decline will certainly be caused by emigration.

Conclusion

Having examined the reasons behind the sharp decline in rates of registered crimes since 2013, we can conclude there are several factors to which the drop in the number of cases can be attributed. Changes in legislation have played the largest role in the emergence of this new trend. As a result of new legislation changing the threshold for abuse of deeds and administrative offences, the number of registered crimes has been reduced by 120,000. This reduction, however, only affected the statistics and was unlikely to change the frequency of the actual offences committed. To a lesser extent, social effects and phenomena have also contributed to the decline in recent times. Since the turn of the millennium, a decline in the number of registered crimes has been a general international phenomenon. There is a slight downward trend in the Member States of the European Union and in developed, industrialised countries. Hungary is likely to be affected by this international trend. In the countries concerned, the decline has been between 15 and 25 percent over the last ten to fifteen years since the turn of the millennium. If this trend is also prevalent in Hungary, it could mean a reduction of about 60,000 cases.

We have no direct information on people's willingness to report crime, but a study on the frequency of less relevant crimes suggests that it has declined somewhat in recent years. The extent of this decrease would be difficult to quantify in the absence of targeted studies.

Large-scale emigration of the workforce and population has also contributed to a reduction in the number of crimes registered, which may have reduced the number of offences actually committed, i.e., latent crimes.

Overall, this unprecedented, steep decline in domestic crime statistics is the combined result of administrative and social changes.

Appendix

Table 2. Data of Hungarian criminal statistics

Year	Number of crimes	Percentage of the previous year	Number of offenders	Percentage of the previous year
1968	118,254	98.65	68,447	93.68
1969	110,622	93.55	71,510	104.47
1970	122,289	110.55	66,677	93.24
1971	123,147	100.70	76,974	115.44
1972	116,373	94.50	78,040	101.38
1973	119,290	102.51	76,017	97.41
1974	111,825	93.74	69,517	91.45
1975	120,889	108.11	72,049	103.64
1976	129,424	107.06	76,577	106.28
1977	123,623	95.52	78,556	102.58
1978	126,907	102.66	79,516	101.22
1979	125,267	98.71	73,838	92.86
1980	130,470	104.15	72,880	98.70
1981	134,914	103.41	77,649	106.54
1982	139,795	103.62	77,174	99.39
1983	151,505	108.38	83,324	107.97
1984	157,036	103.65	83,493	100.20
1985	165,816	105.59	85,766	102.72
1986	182,867	110.28	93,176	108.64
1987	188,397	103.02	92,643	99.43
1988	185,344	98.38	82,329	88.87
1989	225,393	121.61	88,932	108.02
1990	341,061	151.32	112,254	126.22
1991	440,370	129.12	122,835	109.43
1992	447,215	101.55	132,670	108.01
1993	400,935	89.65	122,621	92.43
1994	389,451	97.14	119,494	97.45
1995	502,036	128.91	121,118	101.36
1996	466,050	92.83	122,221	100.91
1997	514,403	110.38	130,962	107.15

Table 2. Continue

Year	Number of crimes	Percentage of the previous year	Number of offenders	Percentage of the previous year
1998	597,281	116.11	140,076	106.96
1999	505,716	84.67	131,658	93.99
2000	450,673	89.12	122,860	93.32
2001	465,694	103.33	120,583	98.15
2002	420,782	90.36	121,885	101.08
2003	413,343	98.23	118,145	96.93
2004	418,883	101.34	130,182	110.19
2005	436,522	104.21	133,790	102.77
2006	425,941	97.58	124,171	92.81
2007	426,914	100.23	116,161	93.55
2008	408,407	95.66	116,584	100.36
2009	394,034	96.48	112,830	96.78
2010	447,186	113.49	122,529	108.60
2011	451,371	100.94	112,895	92.14
2012	472,225	104.62	100,239	88.79
2013	377,829	80.01	103,572	103.33
2014	329,575	87.23	105,588	101.95
2015	280,113	84.99	98,987	93.75
2016	290,779	103.81	98,137	99.14
2017	226,452	77.88	90,364	92.08

source: ERÜBS-ENYÜBS system, Attorney General's Office IT Department 2019. Budapest

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Crime and criminality in the Republic of North Macedonia: A general overview of the period 1991–2018

Przestępczość w Republice Macedonii Północnej w latach 1991–2018

Abstract: Yugoslavia's disintegration in the 1990s resulted in the differentiation of five different countries, meaning the building of five different criminal legal systems with many similarities at that time, but also with differences in the years to come. The Republic of North Macedonia brought its first Criminal Code in 1996, decriminalising some of the previous crimes connected to socialist system norms, and criminalising activities characteristic of capitalist social systems. From its basic draft, the Criminal Code had been changed twenty-eight times by 2018 in accordance with crime changes and flows, and societal changes. Using crime statistics published by the Republic of North Macedonia's State Statistical Office in an annual publication, 'Perpetrators of Crimes', this paper's goal will be to present the trends in crime volume and dynamics, the changes in the breakdown of crimes as result of decriminalisation and criminalisation, and the possible future challenges and changes, as well as the trends and changes to the state's criminal policy, the frequent use of imprisonment as a sanction, and the very rare use of alternative measures apart from probation. The authors will use the comparative method, basic statistics, and content analysis in the general overview of crime volume and dynamics, crime structure, and structural changes. Such an analysis can help in tackling the most important chronological points during the period in question and connect them with political, social, security, and economic challenges for the country.

Keywords: crime, criminality, Republic of North Macedonia, statistics, cybercrime

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Abstrakt: W wyniku rozpadu Jugosławii w latach 90. powstało pięć różnych krajów, co zrodziło potrzebę utworzenia pięciu różnych systemów prawa karnego. W momencie ich tworzenia były one pod wieloma względami podobne, w latach kolejnych zaczęły się jednak coraz bardziej różnić. Pierwszy kodeks karny Republiki Macedonii Północnej z 1996 r. dekryminalizował część dotychczasowych przestępstw związanych z systemem socjalistycznym i kryminalizował działania charakterystyczne dla kapitalistycznych systemów społecznych. Z uwagi na zachodzące zmiany społeczne, w tym zmieniającą się przestępczość, do 2018 r. kodeks ten był zmieniany 28 razy. W niniejszym artykule na podstawie statystyk kryminalnych Republiki Macedonii Północnej (publikowanych przez Państwowy Urząd Statystyczny w corocznej publikacji „Sprawcy Przestępstw") autorzy starają się pokazać zmieniające się trendy w przestępczości – jej rozmiary i dynamikę, zmiany w strukturze przestępczości w wyniku kryminalizacji oraz dekryminalizacji, a także możliwe przyszłe wyzwania. W artykule scharakteryzowano również politykę kryminalną Republiki Macedonii Północnej – częste stosowanie kary pozbawienia wolności i bardzo rzadkie stosowanie środków alternatywnych, z wyjątkiem probacji. Do zbadania rozmiarów i dynamiki przestępczości, jej struktury oraz zmian w tej strukturze autorzy artykułu wykorzystali metodę porównawczą, analizę statystyczną i analizę treści. Dzięki temu możliwe było chronologiczne wypunktowanie najważniejszych zmian w badanym okresie na tle politycznym, społecznym i ekonomicznym kraju.

Słowa kluczowe: przestępstwo, przestępczość, Republika Macedonii Północnej, statystyki, cyberprzestępczość

Introduction

Societies use criminal law as one means of combatting crime as a negative social phenomenon that threatens the social and legal order. It is an organised state coercion, with the ultimate goal being the protection of the general public and an attempt to help the perpetrator in the process of re-socialisation. Therefore, criminal law is a system of legal regulations (norms) which define the conduct of a person as criminal offences, and perpetrators of these offences are subject to criminal sanction as punishment (Bacik 1972: 1). With these criminal norms, states criminalise socially dangerous and prohibited behaviour; they define the conditions of criminal liability and regulate other issues related to criminal conduct.

The way in which one country treats its transgressors paints the picture of its civilisation, culture, and democracy. Criminal law has always been a part of the general political and cultural history of every nation and of all mankind. The process of criminalisation begins when a new behaviour that has not been previously defined as a criminal offence is now incorporated into the criminal law of a society. This means that societies must follow the problems that emerge in the criminal sphere as a consequence of socioeconomic development. These are the changes that can occur: 1) new, previously unknown criminal acts can surface that are not covered by existing crimes, 2) existing criminal acts can be committed in a new way, with new means, or with new motives, and 3) existing criminal offences with new characteristics can be classified under a new criminal category (Kokolj 1986: 211).

Sulejmanov speaks of the need to introduce new offences in the following areas: border crossings, terrorist attacks, kidnappings, and similar threats to citizens for political reasons, such as protecting the natural environment, violating the right to privacy, cybercrime, and similar crimes. All these areas (the economic system, the advancement of medicine and health, computerisation, the protection of human rights) are exposed to perpetual changes, so transformations in crime-related activities connected to these processes are inevitable (Sulejmanov 2001).

The notion of decriminalisation implies an exemption of certain conduct which is currently criminalised under criminal law from the criminal system, and declaring it to be non-criminal. This is a de facto legalisation of some acts that are criminalised in the criminal law, but which almost no-one believes should be the subject of criminal reaction (Milutinovic 1984: 236).

In the next chapters of this paper, we will analyse the amendments that have been made to the Criminal Code since the independence of the Republic of North Macedonia. Then we will present statistical data regarding the total numbers of convictions in order to see the dynamics of criminal activity in North Macedonia, the differences between the sexes and their criminal activity, the characteristics of adult perpetrators convicted according to chapters of the Criminal Code, and the most frequent crimes by the number of convictions.

1. Overview of the criminal code and law in the Republic of North Macedonia

The development of criminal law in the Republic of North Macedonia since its independence in 1991 can be divided into two stages. The first Criminal Code was the one that was inherited from the Socialist Federal Republic of Yugoslavia and since 10 June 1992 has been modified and renamed the Criminal Code of the Republic of Macedonia, though the previous Criminal Code of the Socialistic Republic of Macedonia was still in force. The second stage began on 23 July 1996 with the adoption of the Criminal Code of the Republic of Macedonia (Official Gazette [OG] 37/1996); this law is still in force with numerous changes and additions to its provisions (OG 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 87/07, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 42/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15, 226/15, 97/17, and 120/18).

In the Criminal Code of the Socialist Republic of Macedonia (OG 25/1997) several acts characteristic of socialistic societies were criminalised. For example, in the chapter entitled 'Crime against honour and reputation', a provision of Article 90 of the Criminal Code stated that no-one may damage the reputation of the socialist states or the autonomous provinces, and in Article 91 activities that can damage the reputation of the people and other nationalities that live in the Socialist Federal

Republic of Yugoslavia were criminalised. In the chapter that criminalises acts against dignity, activities that constitute homosexual conduct were defined as criminal acts.

The first codification of Macedonian criminal law was adopted by the Macedonian Parliament on 23 July 1996, and with this Criminal Code the Macedonian legislators started the much needed reform that entailed leaving behind the values of the socialist system and its criminal law and moving towards an effective criminal protection of the new democratic values, the constitutional state, and basic human rights and freedoms. The basic idea of the criminal provisions is that criminal law is an instrument of the legal state in the process of protecting basic human rights and freedoms from being violated (Kambovski and Krstanoski 2010).

In 1999, several changes were adopted in the direction of straightening of the criminal repression towards corruption, but the changes were also made to better harmonise with European law regarding organised crime. These changes came with a delay, because of unknown political reasons and opposition from the corrupt government. Several novelties were implemented in 2002 for a better harmonisation with other domestic legal solutions or with the state's international obligations. An offence from Article 205 (Transmitting an infectious disease) was widened, cyber--crime was redefined, and new crimes regarding human trafficking (418-a) were made in accordance with the ratified United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children. In 2004 several changes were made in the general provisions of the criminal code regarding the criminal liability of legal entities, provisions on the types of punishment for people as well as legal entities, and on the types of alternative measures and the practical implementation of them. Also, a large number of new crimes were introduced with this law from 2004, such as Customs fraud (a.278-a), Covering of goods that are subject to smuggling and customs fraud (a.278-b), Violation of the guarding of the state border (353-a), Not executing an order (a.353-b), Unscrupulous operation within the service (a.353-c), Abuse of state, official, or military secrets (a.360-a), Computer forgery (a.379-a), Terrorist organisation (a.394-a) Crime against humanity (a.403-a), Approving or justifying genocide, crimes against humanity, or war crimes (a.407-a), Abuse of chemical or biological weapons (a.407-b), Smuggling of migrants (a.418-b), Organizing a group and instigating performance of crimes of human trafficking or trafficking in juveniles and migrants (a.418-c), Abuse of the visa-free regime with the member states of the European Union and of the Schengen Agreement (a.418-e), etc. Some especially important changes were made in regard to domestic violence, about what constitutes domestic violence in Article 122 Paragraph 21: the criminalisation was not made in separate provisions, but rather in previous crimes as qualified criminal activities (Murder, Murder in the heat of passion, Bodily harm, Grievous bodily harm, Coercion, Unlawful deprivation of liberty, Endangering security, Mediation in conducting prostitution, and Sexual assault by the abuse of one's position) (Stanojoska and Aslimoski 2019).

The changes from 2008 were in regard to newly criminalised criminal activities – in Violation of a distributor's right to a technical, specially protected satellite signal (a.157-a), Audio-visual piracy (a.157-b), and Phonogram piracy (a.157-c) – then crimes against children – the Production and distribution of children pornography (a.193-a) – and new provisions for Terrorism (a.394-b), Financing terrorism (a.394-c), Trafficking a child (a.418-d), etc.

Next, in 2009 a large number of changes were made to the existing Criminal Code. In the general part, many of the new provisions regulated the criminal activities of minors and sanctions, the conditions under which they are imposed, the enforcement of fines, and the especially significant Article 98-a on Enlarged confiscation of property that derives from any criminal activity. The new wave of electronic payments has brought about the need for criminalisation of activities connected with the production and use of counterfeit pay cards (a.274-b) and crimes connected with the misuse of new technology, such as Spreading racist and xenophobic material via information systems (a.394-d). The theft of electricity, heat energy, or natural gas is a new crime which has been introduced with the changes made in 2012 (166/12); two crimes, Defamation and Insult, were decriminalised in 2012. In 2014 (27/14) new sanctions were defined in Article 38-d – Prohibition on attending sports competitions, Article 65-a – Medical and pharmacological treatment, and two crimes were introduced to the chapter of crimes against life and body, Article 128-a – Cloning, and Article 128-b – Prohibited genetic manipulations for fertilisation. Article 129 has been renamed and is now defined as Unlawful termination of pregnancy and coercive sterilisation. Article 210-a was added to criminalise actions of Unlawful taking and use of genetic and biological material; then Article 218-a on the Production, trade, or use of substances that impoverish the ozone layer, in the chapter of crimes against the environment and nature, several crimes were added, such as Unauthorised hunting, keeping, and transferring of ownership of wild animals and birds (a.228-a), Killing or destroying protected species of wild flora and fauna (a.232-a), Unauthorised introduction of wild species into nature (a.232-b), and Unauthorised trade, import, or transport of wild flora and fauna (a.232-c). The multicultural, religious, and ethnical diversity in the Republic of North Macedonia is fertile grounds for several criminal activities that can endanger or harm people based on that diversity, which is why the crime Causing hatred, discord, or intolerance on national, racial, religious, or any other discriminatory grounds (a.319) was renamed and redefined with the changes of the Criminal Code in 2014. The last changes that were made to the Criminal Code are the ones from 2018 (120/18). Paragraph 42 was added to Article 122, in which the legislature defined what hate crimes are and in which hate is criminalised as a motive for committing several crimes and is qualified as a type of the following crimes: Murder, Grievous bodily harm, Coercion, Unlawful deprivation of liberty, Torture and other cruel, inhuman, or degrading treatment and punishment, Endangering security, Preventing or disturbing a public gathering, Rape, Sexual assault upon a child who has not turned

14 years of age, Not providing medical help, Aggravated theft, Robbery, Armed robbery, Damage to the property of others, Extortion, and Acts of violence (Stanojoska and Aslimoski 2019). Violence against a child is in Article 201-a, and Article 368-a has been renamed to Obstruction of justice and contains new provisions.

The frequent and numerous amendments to the Criminal Code and, in particular, the large number of non-criminal laws has led to the loss of a sense of codification of all crimes in the Criminal Code. These factors have caused problems on several levels: first, in prescribing crimes, deviating from the principles and nomotechnics contained in the Criminal Code, and secondly, by creating difficulties for judges, public prosecutors, and other relevant authorities in the applying the provisions of crimes in other laws, having in mind their confusion and non-compliance with the Criminal Code. At the same time, the non-compliance of sanctions in relation to the severity of the crimes was found. There is also a need to align the criminal area with the latest EU law (Draft Strategy for the Reform of the Judicial Sector for 2017–2022 with Action Plan).

2. Criminological characteristics and statistical data regarding crimes committed on the territory of the Republic of North Macedonia

In this part of the paper we will present the statistical data that are available in the annual publications from the State Statistical Office of the Republic of North Macedonia about perpetrators of crime. We chose this method of data gathering for two reasons. Firstly, the Ministry of Internal Affairs has some statistical data about reported crimes, but the information on its website is not up-to-date and is only available for a period of 10 years. Also, it refers only to reported crimes in general and to the most common criminal offences. Secondly, the Basic Courts in the Republic of North Macedonia do not update their websites regularly, do not upload all final judgements, and destroy the files after a certain period of time (depending on the criminal offence and the sentence). At the same time, we must emphasise that academics and researchers have the right to access and use institutional data for research purposes, but this right is not acknowledged by the institutional staff. Namely, they do not fulfil requests for data access from academics, with the explanation that they are not an active party in the court procedure. When the requests are approved, we have a hard time accessing the court files.

We will present and analyse data regarding reported crimes and accused and convicted perpetrators – both adult and juvenile – and will present and analyse the statistical data regarding the crimes with the highest numbers of convictions, and the available data on female offenders and the proportion they constitute in the total numbers of convictions.

Table 1. Reported, accused, and convicted adult perpetrators on the territory of the Republic of North Macedonia between 1991 and 2018

Year	Reported adult perpetrators	Base index	Accused adult perpetrators	Base index	Convicted adult perpetrators	Base index
1991	13,429	100	9,678	100	7,095	100
1992	17,149	127.7	8,801	90.9	6,660	93.8
1993	22,816	169.9	8,496	87.7	6,538	92.1
1994	20,283	151	8,534	88.1	6,724	94.7
1995	19,969	148.7	9,579	98.9	7,711	108.6
1996	19,452	144.8	8,012	82.7	6,341	89.3
1997	19,277	143.5	7,167	74	4,732	66.6
1998	20,582	153.2	7,891	81.5	6,128	86.3
1999	19,383	144.3	8,533	88.1	6,783	95.6
2000	20,220	150.5	8,078	83.4	6,496	91.5
2001	18,018	134.1	7,509	77.5	5,952	83.8
2002	18,171	135.3	8,450	87.3	6,383	89.9
2003	20,161	150.1	9,926	102.5	7,661	107.9
2004	22,591	168.2	9,916	102.4	8,097	114.1
2005	23,814	177.3	10,639[1]	109.9	8,845[2]	124.6
2006	23,514	175	11,317	116.9	9,280	130.7
2007	23,305	173.5	11,648	120.3	9,639	135.8
2008	26,409	196.6	11,310	116.8	9,503	133.9
2009	30,404	226.4	11,905	123	9,801	138.1
2010	30,004	223.4	11,239	116.1	9,169	129.2
2011	31,284	232.9	12,219	126.2	9,810	138.2
2012	31,860[3]	237.2	11,311	116.8	9,042	127.4
2013	34,436	256.4	12,297	127	9,539	134.4
2014	37,164	276.7	13,699	141.5	11,683	164.6
2015	26,069	194.1	11,951	123.4	10,312	145.3
2016	20,502	152.6	9,320	96.3	8,172	115.1
2017	20,582	153.2	7,423	76.6	6,273	88.4
2018	19,779	147.2	6,829	70.5	5,857	82.5

Source: State Statistical Office of the Republic of North Macedonia

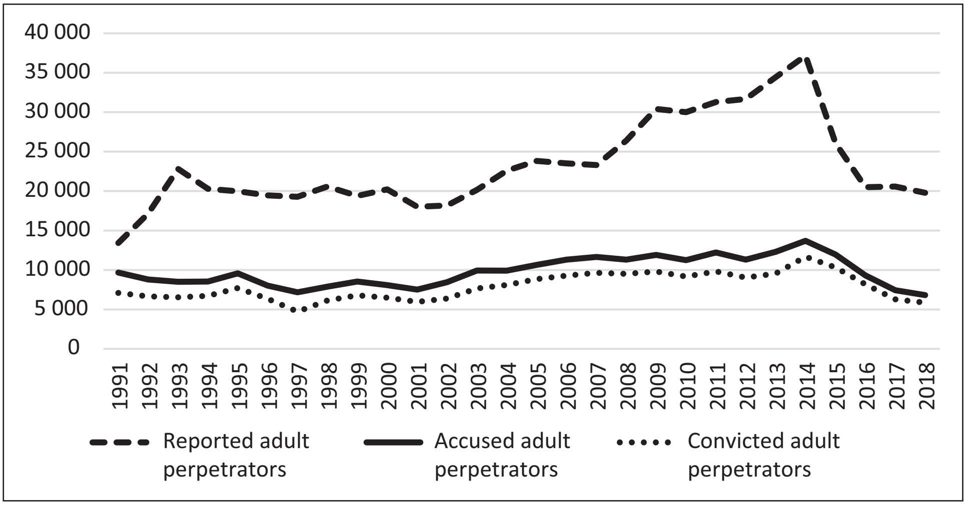
1 Missing data from Primary Court Kumanovo.
2 Missing data from Primary Court Kumanovo.
3 Missing data from the Public Prosecutor's Office in Radovis.

Table 1 presents the statistical data regarding reported, accused, and convicted adult perpetrators from 1991 to 2018. The time period spans from the year of independence of North Macedonia until the last publication from the State Statistical Office on criminal offenders. When it comes to reported crimes, we can see that the lowest number is from 1991 and the highest from 2014, and that since 1991 there was a constant increase in the number of reported crimes until 2014, and a decline in the last four years. The year with the fewest accused perpetrators was 2018 and the highest was 2014; during the time period being studied, this figure fluctuated from 1991 to 2004, then constantly increased until 2014, after which it began to increasingly decline. The fewest convicted perpetrators were reported in 1997 and the most in 2014; in the 1990s the numbers were at their lowest and from the beginning of the 2000s they began to constantly increase until the last three years, where we can observe a decline in convictions. The same trends can be detected by analysing the values of the base index.

Regarding the fluctuations in the volume of reported, accused, and convicted perpetrators, we can notice that during 2001 the number of convicted perpetrators was at its second-lowest point from the research period. These numbers can be attributed to the Civil Conflict that was active in some parts of the country.

The numbers are at their peak in 2014 because of several factors happening at the same time. This was the period of the migration crisis in Europe and the opening of the Balkan Route, when many crime groups were smuggling migrants through Macedonian territory towards the EU countries. These trends continued in 2015 and 2016.

Figure 1. Reported, accused, and convicted adult perpetrators on the territory of the Republic of North Macedonia between 1991 and 2018



Source: State Statistical Office of the Republic of North Macedonia

A lot of the convictions in 2014 and 2015 were connected to the crime from Article 380 of the Criminal Code – Use of a document with false content. This crime was committed in order for the perpetrators to acquire the right to free health insurance by giving false information in their statements that their annual income does not exceed the legally prescribed limit. Most of the perpetrators were farmers whose only source of income is agriculture. They committed this crime in order to obtain more material resources, which is the purpose of non-payment of funds for obtaining free health insurance.

Figure 1 presents the dynamics of reported, accused, and convicted adult perpetrators from 1991 to 2018.

Table 2. Reported, accused, and convicted children on the territory of the Republic of North Macedonia between 1991 and 2018

Year	Reported children	Base index	Accused children	Base index	Convicted children	Base index
1991	2,211	100	1,683	100	1,357	100
1992	2,668	120.6	1,714	101.8	1,453	107
1993	2,616	118.3	2,238	132.9	1,861	137.1
1994	2,289	103.5	1,927	114.4	1,542	113.6
1995	2,314	104.6	1,542	91.6	1,184	97.2
1996	1,699	76.8	1,548	91.9	1,162	85.6
1997	1,888	85.3	1,021	60.6	745	54.9
1998	2,132	96.4	1,285	76.3	934	68.8
1999	1,999	90.4	936	55.6	1,190	87.6
2000	1,815	82.2	1,154	68.5	939	69.1
2001	1,446	65.4	1,088	64.6	877	64.6
2002	1,266	51.2	999	539.3	776	57
2003	1,278	57.8	1,027	61	826	60.8
2004	1,488	67.2	1,004	59.6	877	64.6
2005	1,262	57	889[4]	52.8	762[5]	56.1
2006	1,500	67.8	987	58.6	844	62.1
2007	1,229	55.5	839	49.8	676	49.8
2008	1,355	61.2	981	58.2	715	52.6
2009	1,519	68.7	1,030	61.2	748	55.1

4 Missing data from Primary Court Kumanovo.

5 Missing data from Primary Court Kumanovo.

Table 2. Continue

Year	Reported children	Base index	Accused children	Base index	Convicted children	Base index
2010	1,244	56.2	750	44.5	547	10.3
2011	1,163	52.6	1002	59.5	722	53.2
2012	1,001	45.2	778	46.2	556	40.9
2013	1,005	45.4	657	39	473	34.8
2014	972	43.8	712	42.3	461	33.9
2015	772	34.9	465	27.6	348	25.6
2016	587	26.5	702	41.7	468	34.4
2017	578	26.1	554	32.9	368	27.1
2018	554	25	403	23.9	330	24.3

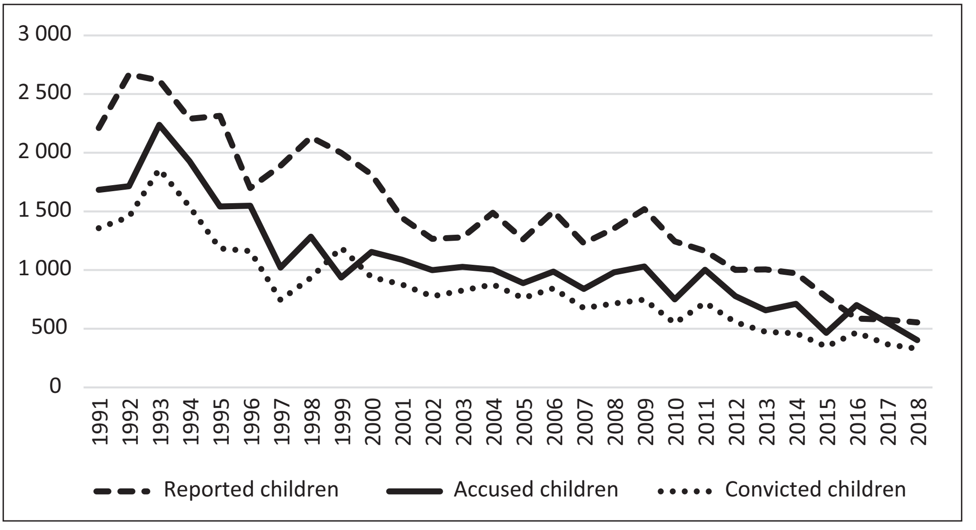
Source: State Statistical Office of the Republic of North Macedonia

The statistical data on children as perpetrators is shown in Table 2. The highest number of reported children was in 1992 and the lowest was in 2018. The rate of reported crimes was higher during the 1990s and started to decline in the 2000s, reaching a low in 2018. 1993 saw the most children accused, while 2018 had the least; the rate of accused children was similar to that of reported children. When it comes to the numbers of convicted children, the peak was in 1993 and the low was in 2018. The same rate can be observed by analysing the values of the base index.

The tendency of the number of reported, accused, and convicted children in the Republic of North Macedonia to decrease can be explained by the fact that Macedonian society has experienced a low birth rate over the last two decades. This situation is due to the fact that there are fewer multi-child families compared to the second half of the twentieth century. At the same time, there is a trend of emigration – mostly of young people and families – in search for employment, financial stability, and a better life.

In 2010, for the first time a lex specialis for minors was adopted. This law refers to the special criminal procedure regarding minors and the types of sanctions which can be imposed on minors who have committed a crime. In 2013 the legislature changed the terminology from minor to child and adopted a new lex specialis – the Law of justice for children. In this law new court procedures are defined for cases of children who have committed a crime, as well as other non-court procedures. The Law also defines the types of sanctions and new, more sophisticated methods of treatment, which should help in the process of socialisation and re-education.

Figure 2. Reported, accused, and convicted children on the territory of the Republic of North Macedonia between 1991 and 2018



Source: State Statistical Office of the Republic of North Macedonia

Figure 2 presents the dynamics of reported, accused, and convicted child perpetrators from 1991 to 2018.

Table 3 presents the total number of convicted perpetrators and the ten Chapters from the Criminal Code of the Republic of North Macedonia in which are the highest numbers of convicted perpetrators. We will analyse the five Chapters that have the highest numbers of convictions, namely, Crimes against property, Crimes against safety on the public roads, Crimes against life and body, Crimes against the public order, and Crimes against legal transactions.

In the group of crimes against property, the highest number of convictions was in 2015, while the lowest was in 1997. As in every other country, crimes against property in the Republic of North Macedonia are the most frequently committed crimes. An explanation for these numbers can be found in the high unemployment rate and the number of people who receive financial help from the social welfare system.

There are several reasons for the high numbers of traffic accidents and crimes, such as speeds not being adjusted to the conditions on the roads, weather conditions, driving above the speed limit, non-compliance with traffic rules, driving under the influence, etc.

Violent crimes are usually connected with the traditional social values in Macedonian society, such as gender roles, traditional family relations, patriarchal social structure, and financial pressure. Many of the crimes are committed within the household and are inter-family crimes, but there others which are committed among football fans, in pubs and restaurants, and between juvenile groups.

Table 3. Breakdown of convicted adult perpetrators by Chapter of the Criminal Code, 1995–2018

Year	Total number	Crimes against life and body	Crimes against the freedoms and rights of humans and citizens	Crimes against sexual freedom and sexual morality	Crimes against marriage, family, and youth	Crimes against public finances, payment operations, and the economy
1991	7,095	1,309	156	72	161	831
1992	6,660	1,073	115	52	123	700
1993	6,538	976	87	48	88	710
1994	6,724	977	96	56	124	691
1995	7,711	1,303	101	64	158	783
1996	6,341	1,014	97	58	123	578
1997	4,732	722	86	21	109	119
1998	6,128	775	90	48	149	136
1999	6,783	810	67	51	146	143
2000	6,496	724	37	54	158	191
2001	5,952	529	58	52	121	186
2002	6,383	567	47	66	147	216
2003	7,661	684	75	59	183	298
2004	8,097	674	91	76	205	257
2005	8,845[6]	689	105	84	238	292
2006	9,280	857	127	91	262	259
2007	9,639	828	109	89	265	268
2008	9,503	835	173	92	272	251
2009	9,801	905	185	65	255	204
2010	9,169	872	217	54	272	293
2011	9,810	945	240	54	317	240
2012	9,042	881	223	47	305	212
2013	9,539	920	283	64	304	255
2014	11,683	924	301	49	275	277
2015	10,312	790	272	56	308	277
2016	8,172	761	321	39	301	261
2017	6,273	664	234	38	252	177
2018	5,857	659	219	44	215	119

Source: State Statistical Office of the Republic of North Macedonia

[6] Missing data from Primary Court Kumanovo.

Crimes against property	Crimes against the general safety of people and property	Crimes against safety on the public roads	Crimes against official duty	Crimes against legal transactions	Crimes against the public order
1,546	95	1,543	467	357	
1,801	79	1,432	357	446	
2,157	77	1,206	250	514	
2,347	61	1,050	256	649	
2,570	85	1,202	208	709	
2,052	61	1,176	170	534	
1,540	44	888	65	268	216
2,136	69	1,080	49	385	347
2,597	64	1,180	82	342	312
2,496	63	1,077	61	391	329
2,133	64,	1,050	66	421	310
2,423	75	1,126	58	396	305
2,852	95	1,395	66	567	401
2,995	94	1,348	102	843	519
3,589	132	1,306	138	721	541
3,690	109	1,572	117	97	577
3,888	128	1,753	153	665	628
3,770	124	1,885	175	544	537
3,952	134	1,903	167	534	592
3,612	100	1,764	142	481	535
3,850	126	1,770	133	477	665
3,652	125	1,595	150	372	601
4,073	138	1,670	137	285	622
3,965	117	1,708	243	1,990	931
4,296	126	1,432	201	858	821
3,370	98	1,322	133	244	653
2,427	83	1,165	96	154	401
2,339	81	975	92	154	483

Table 4. Breakdown of convicted adult perpetrators by category of crime, 1995–2018

Year	Murder, all types	Bodily harm	Grievous bodily harm	Rape	Unauthorised production and release for trade of narcotics, psychotropic substances, and precursors	Theft	Aggravated theft	Fraud	Endangering traffic safety	Acts of violence
1995	40	899	131	18	-	1,110	922	143	981	-
1996	33	690	104	22	-	865	747	148	993	-
1997	23	450	105	7	56	597	547	118	880	32
1998	30	454	148	18	91	813	843	143	1,074	52
1999	49	434	179	14	115	738	1,271	206	1,174	55
2000	35	410	144	19	125	630	1,261	227	1,068	57
2001	27	276	128	19	169	604	1,021	160	1,041	51
2002	43	261	149	23	163	706	1,219	179	1,120	82
2003	52	322	190	15	168	797	1,463	221	1,387	75
2004	61	326	174	31	204	855	1,559	201	1,342	78
2005	40	297	225	23	242	1,086	1,819	286	1,298	125
2006	40	442	228	28	184	1,281	1,670	288	1,567	112
2007	41	430	211	25	191	1,633	1,602	275	1,737	146
2008	33	471	194	27	234	1,462	1,573	276	1,872	119
2009	53	531	181	19	246	1,320	1,748	320	1,897	159
2010	32	524	175	12	293	1,144	1,526	289	1,752	145
2011	37	533	234	18	420	1,017	1,839	311	1,742	171
2012	37	519	173	13	322	1,121	1,707	272	1,586	215
2013	32	554	189	21	364	1,331	1,845	337	1,662	190
2014	34	526	211	15	391	1,112	1,634	326	1,700	321
2015	32	476	169	24	356	1,197	1,687	307	1,421	275
2016	28	487	145	14	281	845	1,027	235	1,313	232
2017	20	423	137	13	254	496	699	200	1,159	146
2018	16	399	124	17	184	430	793	148	973	227

Source: State Statistical Office

The statistical data presented in Table 4 show which crimes are most frequently committed according to the number of convictions from 1995 to 2018. Overall, in the period under study the most frequent crimes are those against property;

from this group of crimes we selected the three with the highest numbers of convicted perpetrators: Theft, Aggravated theft, and Fraud. The crime with the second--highest number of convictions is from the group of Crimes against safety on the public roads – Endangering traffic safety. The most common reasons for traffic accidents in the Republic of North Macedonia are driving above the speed limit, failure to comply with the rules of overtaking other vehicles, driving under the influence, etc. In the chapter from the Criminal Code about Crimes against life and body, we selected three criminal offences which have the highest rates of conviction, namely, murder (all types), bodily harm, and grievous bodily harm.

Property crimes usually are committed when people leave their homes, because of everyday work activities, family gatherings and celebrations, agricultural and farming activities, and during winter and summer holidays. Even though people undertake precautionary measures to prevent criminal activity on their properties, criminals are modern and use sophisticated methods to commit crime.

One exception is the crime Theft of electricity, heat energy, or natural gas, when the owner of the property illegally connects to the official network and avoids metering of the energy used. This crime is easily detectable through the automatic electrical grid, which is why this crime is one of the most frequently committed in the group of crimes against property since its introduction in 2012.

Murders in the Republic of North Macedonia occur between close and distant family members, intimate partners, and acquaintances. The crimes Bodily harm and Grievous bodily harm are connected to domestic violence in most cases.

Table 5. Breakdown of convicted adult perpetrators in the Republic of North Macedonia by gender, 1995–2018

Year	Total number of convicted adults	Women	Percentage	Index (women)
1995	7,711	554	7.1%	100
1996	6,341	406	6.4%	82.2
1997	4,732	312	6.5%	61.3
1998	6,128	373	6%	79.4
1999	6,783	372	5.4%	87.9
2000	6,496	357	5.4%	84.2
2001	5,952	298	5%	77.1
2002	6,383	374	5.8%	82.7
2003	7,661	394	5.1%	99.3
2004	8,097	463	5.7%	105
2005	8,845[7]	574	6.4%	114.7

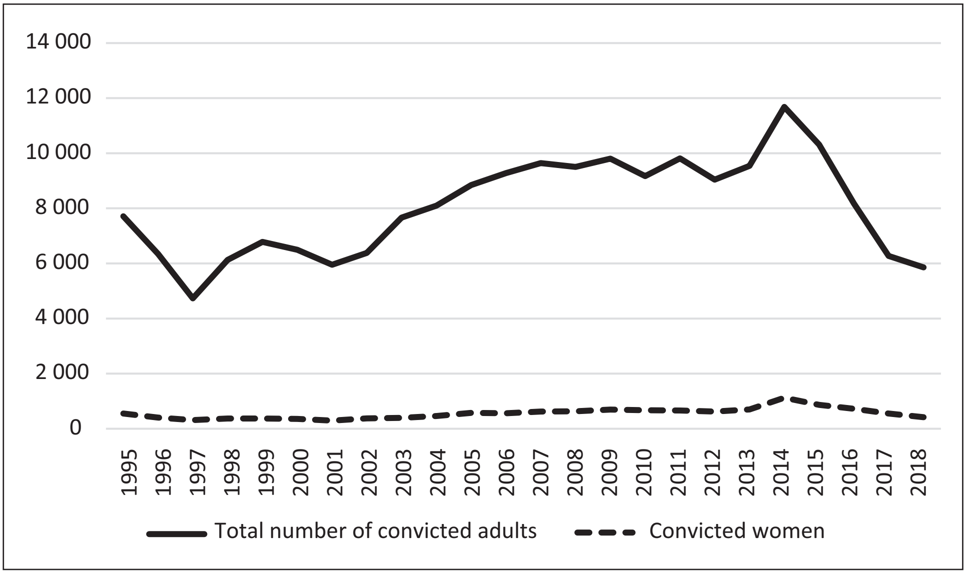
7 Missing data from Primary Court Kumanovo.

Table 5. Continue

Year	Total number of convicted adults	Women	Percentage	Index (women)
2006	9,280	560	6%	120.3
2007	9,639	622	6.4%	125
2008	9,503	635	6.6%	123.2
2009	9,801	695	7%	127.1
2010	9,169	669	7.2%	118.9
2011	9,810	661	6.7%	127.2
2012	9,042	624	6.9%	117.2
2013	9,539	701	7.3%	123.7
2014	11,683	1126	9.6%	151.5
2015	10,312	865	8.3%	133.7
2016	8,172	723	8.8%	130.5
2017	6,273	550	8.7%	99.2
2018	5,857	419	7.1%	75.6

Source: State Statistical Office of the Republic of North Macedonia

Figure 3. Structure of convicted adult perpetrators by gender in the Republic of North Macedonia, 1995–2018



Source: State Statistical Office of the Republic of North Macedonia

Through the statistical data in Table 5, we try to present the number of female perpetrators compared with the total number of convictions between 1995 – the year of the first publication from the State Statistical Office with information regarding women – to 2018, the latest publication. From the presented data, we can conclude that the proportion of women convicted is below 10% in all 24 years. The lowest percentage was in 2001, and the highest was in 2014.

Figure 3 presents the dynamics of convicted adult perpetrators by gender from 1995 to 2018.

Table 6. Rates of convicted offenders and convicted women per 100,000 criminally liable citizens* and convicted women per 100,000 criminally liable women* in the Republic of North Macedonia (2007–2016)

Year	Total number of criminally liable citizens	Total number of criminally liable men	Total number of criminally liable women	Total number of convicted perpetrators	Total number of convicted women	Number of convicted perpetrators per 100,000 criminally liable citizens	Number of convicted women per 100,000 criminally liable citizens	Number of convicted women per 100,000 criminally liable women
2007	1,667,690	830,604	837,086	9,639	622	578	37	74
2008	1,678,404	835,865	840,539	9,503	635	566	38	76
2009	1,689,265	841,122	848,143	9,801	695	580	41	82
2010	1,698,313	845,516	852,797	9,169	669	540	39	78
2011	1,706,069	849,304	856,765	9,810	661	575	39	77
2012	1,711,140	851,792	859,348	9,042	624	528	36	73
2013	1,717,353	854,737	862,616	9,539	701	555	41	81
2014	1,721,528	856,864	864,664	11,683	1,126	679	65	130
2015	1,726,369	859,324	867,045	10,312	865	597	50	100
2016	1,730,164	861,114	869,050	8,172	723	472	42	83

* Criminally liable individuals are those who have reached the age of 14 years.
Source: State Statistical Office of the Republic of North Macedonia

The volume of crime can be determined by using the crime rate, which is the number of convicted perpetrators per 100,000 criminally liable citizens. For example, the crime rate in the Republic of North Macedonia in 1952 was 850 convicted perpetrators per 100,000 criminally liable citizens; in 1962 it was 111 convicted perpetrators, 105 in 1972, 121 in 1982, and 90 in 1996 (Arnaudovski

2007: 246). Our research shows that the crime rate per 100,000 criminally liable citizens was 578 convicted adult perpetrators in 2007, 540 in 2010, 679 in 2014, and 472 in 2016 (Stanojoska and Aslimoski 2019). This statistical overview begins in 2007 for one reason, namely, that the State Statistical Office started to publish data about the natural population changes in 2007 and the last report of its kind was published in 2016. Furthermore, the last official population census in the Republic of North Macedonia was in 2002.

3. Discussion and conclusions

When it comes to the breakdown of crime in the Republic of North Macedonia and its connection to the territorial distribution, we can conclude that some types of criminal behaviour are typical for rural areas, such as crimes against life and body, and some are typical for urban areas, such as property crimes, sex crimes, cybercrime, financial crime, and juvenile delinquency (Arnaudovski 2007: 274; Stanojoska and Aslimoski 2019). If we compare this territorial distribution with victimisation surveys in the United States of America, the structure of crime in the two countries differ – for example, violent and property crimes are more prevalent in the cities, while arson is more likely in villages (Konstantinovic-Vilic et al. 2010: 105).

In relation to the seasonal distribution of crime in the Republic of North Macedonia, previous research shows that violent and sexual crimes are committed in the spring and summer, while property crimes are committed at the end of the autumn and winter. Why does this type of seasonal distribution exist? For example, during the winter, it is more difficult for individuals from lower social classes to fulfil their basic needs, so they resort to criminal activity as a means of meeting these needs. On the other hand, during the spring and summer, people are more active, have everyday social contact and communication, which can end in conflict (Arnaudovski 2007: 277; Stanojoska and Aslimoski 2019).

When taking into account the amendments to the Criminal Code regarding certain crimes – such as the Smuggling of migrants, domestic violence offences, and Theft of electricity, heat energy, or natural gas – in relation to the statistical data available from the annual publications of the State Statistical Office, we noticed that even though the smuggling of migrants has been a crime since 2004, in the publications there are no data on this crime prior to 2014, when the number of convictions for this crime increased, mainly due to the increase in the number of migrants who passed along the Balkan Route between 2011 and 2018. Thus, there were 98 convicted people in 2014, 177 in 2015, 73 in 2016, 50 in 2017, and 39 convictions in 2018 for smuggling migrants.

Human trafficking was criminalised in 2002, with the widest amendment in 2004, when the obligations from the Palermo Protocol were implemented. Before it was criminalised, there were high profile cases of organised criminal groups trafficking women for sexual exploitation, but the perpetrators were convicted under another offence from the Criminal Code: Intermediation in prostitution, from Art. 191 of the Criminal Code.

After the criminalisation, there were many cases of human trafficking where the victims were foreign citizens. This was connected with the civil conflicts in 1999 in Kosovo and in 2001 in the northern part of North Macedonia, and with the presence of peacekeepers afterwards; additionally, though, many of the victims were lured into the trafficking business because of their financial situation, the lack of employment opportunities in their countries of origin, and the false promises for a better life – most of those victims have been sexually exploited. Since 2007, most of the victims were Macedonian citizens, moving from rural areas or small towns into the big cities. These victims have been sexually exploited and forced to work more than 12 hours a day (Stanojoska 2011; 2014).

The introduction of qualified forms of certain crimes committed in the course of domestic violence punishes all related acts. However, statistics do not provide the paragraph of the article under which criminal offences are criminalised, only information about the article itself. Therefore, we cannot determine which crimes were committed in the context of domestic violence, and the State Statistical Office only has data on the number of adult and child victims: there were 834 in 2015, 774 in 2016, 601 in 2017, and 337 victims in 2018. From the group of crimes against property, we treated the newly criminalised Theft of electricity, heat energy, or natural gas as a separate crime, since from 2012 to 2018 this crime was one of the most frequently committed crimes against property. Thus, in 2014 there were 232 convictions, 411 in 2015, 799 in 2016, 626 in 2017, and in 536 in 2018.

We must emphasise that there are no statistical data when it comes to legal entities as perpetrators of crimes. The State Statistical Office does not keep such data and in order to research this aspect of crime, one must pay for information on each legal entity.

Air pollution has been a problem in the past few years, but from the statistical data about crimes against the environment and nature, we could not find convictions related to this problem. This may be because the perpetrators are legal entities or because there have not been convictions for crimes against the environment and nature, even though there have been changes to the Criminal Code in regards to this group of crimes.

In the latest amendments to the Criminal Code, hate crimes have been defined in Article 122, which refers to the terms used in the text of the Criminal Code. There is no independent crime, but hate crimes have been criminalised as a qualified category of several crimes. Until today, the only source of statistical data for this type of criminal activity was the daily bulletin of the Ministry of Internal Affairs and the Annual Reports from the Helsinki Committee for Human Rights. The Ministry of Internal Affairs had a special section on its website, called the Red

Button, where citizens could report hate crimes, trafficking in human beings, or other violent crimes (with the warning that false reporting is itself a crime). Unfortunately, before criminalisation there were no reported or convicted perpetrators of hate crimes. Using the statistics from the website of the Helsinki Committee for Human Rights, we can conclude that hate crimes in the Republic of North Macedonia are connected with bias towards ethnicity, religion, political opinion, sexual orientation, and social status.

Also, in the past few years, changes have been made in an unorthodox way (accelerated procedure and without any public or academic discussion) when it comes to passing amendments to the Criminal Code about the involvement of a group of citizens – among whom were MPs and other high-ranking political figures – in the unconstitutional breach of the Macedonian Parliament. These amendments resulted in amnesty for some of the perpetrators and prison sentences of 7–12 years for others.

With all that has been presented in this paper we can suggest that there is a need for codification of all crimes into one Criminal Code, so that we have a more efficient judiciary system and to make sure that all criminal offences are reported and that the perpetrators are punished. Further, we must not allow future amendments to be passed in an accelerated procedure, because criminal matters – criminalisation and changes in sanctions – require more comprehensive work that must be based on scientific research and must represent the societal changes in our societies.

The available statistical data from the publications of the State Statistical Office have a paucity of details related to the crimes committed, and in this paper only general numbers are presented in order to create some kind of overview of criminal activity in North Macedonia. That is why there must be a change in the way data are collected from the judiciary institutions and in the way these data are presented in the annual publications. We must also work on the access to data for academic work in the courts and create a system for more comprehensive data collection. This will help in the process of research on criminal activity, and the results from this research will portray the reality and help in the process of prevention – lowering the rates of recidivism and playing an important role in the changes to the Criminal Code – and in the process of creating policies in the area of crime.

Victimisation surveys should be conducted as a source of statistical data in North Macedonia. Why is this important? Victimisation surveys are used to study the real crime rate in regards to those crimes that have been reported and those which have not. The results from such surveys can be used in discovering the risks of victimisation, and being aware of the victimisation risks we can work on preventing some types of crimes.

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Crime in the subsequent adult life of former juvenile offenders: Selected aspects of the impact of political transformation in Poland on a return to delinquency by adults who were juvenile delinquents in the 1980s and 2000s[1]

Przestępczość w losach życiowych dorosłych – dawnych nieletnich sprawców czynów karalnych. Wybrane aspekty wpływu transformacji ustrojowej w Polsce na powrotność do przestępczości nieletnich z lat 80. i 2000.

Abstract: This article presents an analysis of criminal repeated activity by minors who committed criminal acts in the 1980s and in the year 2000. On the basis of long-term follow-up studies carried out on two age groups, it presents selected aspects of the extent and nature of this type of crime, as well as the percentage of minors who continued their criminal activity. The data which the analysis was based on came from criminal records in the National Criminal Registry, collected in 2017 for both previously sentenced groups. The comparison of the two generations of minors and their criminal careers is interesting in the context of the social, political, economic, and legal reality in which they began their criminal activity. Moreover, it is interesting to investigate to what extent the political transformation that took place in Poland at the turn of the 1980s /90s translated into repeating juvenile delinquency of the two groups of juveniles brought up in different social realities. The thesis

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proposed herein assumes that the construction of a deviant identity is connected with a weakening of the social ties characteristic of anomie, which accompanies sudden changes in our environment.

Keywords: juvenile, crime, long-term follow up studies, developmental criminology, life course criminology, return to crime

Abstrakt: Artykuł prezentuje analizę przestępczości powrotnej nieletnich, którzy popełnili czyny karalne w latach 80. XX wieku i w roku 2000. Na podstawie badań katamnestycznych przeprowadzonych na dwóch grupach wiekowych w tekście przedstawiono wybrane aspekty dotyczące rozmiarów i charakteru tego rodzaju przestępczości, a także ukazano, jaki odsetek nieletnich kontynuuje aktywność przestępczą. Źródłem danych, na podstawie których dokonano analizy, były odpowiedzi na zapytania o karalność pochodzące z Krajowego Rejestru Karnego, zebrane w 2017 r. dla obydwu grup wcześniej notowanych i poddanych badaniu nieletnich. Porównanie dwóch pokoleń nieletnich i ich utrzymywania się w przestępczości jest interesujące m.in. w kontekście rzeczywistości społecznej, politycznej, ekonomicznej i prawnej, w której rozpoczynali aktywność przestępczą. Interesujący ponadto jest fakt, w jakim zakresie transformacja ustrojowa, jaka dokonała się w Polsce na przełomie lat 80. i 90. XX w. przełożyła się na charakter powrotnej przestępczości nieletnich z dwóch grup młodzieży wychowanej w innej rzeczywistości społecznej. Proponowana przez nas teza zakłada, że budowa tożsamości dewiacyjnej jest powiązana z osłabieniem więzi społecznych charakterystycznym dla zjawiska anomii, które towarzyszy gwałtownym przemianom otaczającej nas rzeczywistości.

Słowa kluczowe: nieletni, przestępczość, badania katamnestyczne, kryminologia rozwojowa, kryminologia drogi życiowej, powrotność do przestępstwa

Introduction

The issue of repeated crime is a problem raised in many studies and research papers and is of particular interest to criminal law, criminology and correctional studies (Zygmunt, 2008, 223). One of the more interesting aspects of this phenomenon is the return to criminality by young people who have committed a criminal act as minors or as juvenile offenders.[2] The lower limit of liability in Polish criminal law is 17 years of age and, in exceptional cases, 15 years of age (Bojarski, 2008, 138–141).

The term 'juvenile delinquency' is commonly used in criminological literature (Błachut, Gaberle, & Krajewski, 2006, 317–319). It is a conventional notion because, at most, a minor can only commit a punishable act due to the fact that they cannot be ascribed guilt (a constitutive element of the notion of a crime), and they cannot manifest demoralising behaviour. The authors of the text also use the term juvenile delinquency, which refers to dysfunctional behaviour in its broadest sense, and for which there has been a formal reaction from a juvenile court.

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2 The following authors have written more extensively on this subject: Szelhaus (1969); Ostrihanska, Szamota and Wójcik (1982); Krawczyk (1992); Klaus (2009); Woźniakowska-Fajst (2010, 2011); Wiktorska (2012); Rzeplińska (2013); Włodarczyk-Madejska (2017).

Certain terms have been used since the 1930s in Polish criminology – child criminality, criminal juveniles, and criminal child – although from a formal and legal point of view, they relate to acts prohibited by law which carry a penalty, committed by perpetrators who cannot be blamed due to their age. Such persons are excluded from the criminal law system based on the idea of punishment – retribution – which it is considered more appropriate to apply educational and corrective measures (Woźniakowska-Fajst, 2010, 15). A formal reaction towards minors in the event of their demoralisation or committing of criminal offences is possible under special laws separate from criminal legislation. Systems for controlling the deviant behaviour of minors vary from country to country, but they all share the principle that any actions taken against minors should primarily educate and not punish (Konarska-Wrzosek, 2013).

The aim of this article is to analyse repeated juvenile delinquency by minors who committed criminal acts in the 1980s and 2000s.[3] The percentage of former minors continuing their criminal activity and the size and nature of this phenomenon were described on the basis of follow-up studies. The data on which the analysis was based came from criminal records in the National Criminal Registry (NCR), retrieved in 2017 for both previously examined populations. This comparison between the two generations of minors and their persistence in crime into adulthood is interesting in the context of the social, political, economic, and legal reality in which they started their criminal activities.

The focal point of life-course criminology (most often used to explain multiple returns to crime) is change in its broadest sense (Loeber, 1990), closely linked to the moment in a person's life when they first become involved in criminal activity or when they abandon criminal activity at a certain stage in their life. In Polish criminology, the process in which an individual becomes involved in or gives up criminal activity is most often placed at the level of the individual's functioning in their immediate environment (Kotowska, 2019, 75). Three dominant paradigms are indicated in criminology: individuals, norms, and events (Błachut, 2007, 43), and it is assumed that the perpetrator of a crime acts with free will but is also determined by social factors (Tyszkiewicz, 1997). Therefore, it seems interesting to compare the development of 'criminal careers' of former minors against the background of selected problems from the political transformation that took place in Poland in the early 1990s.

The construction of a deviant identity is linked to the weakening of social bonds that is characteristic of the phenomenon of anomie, which accompanies a rapid transformation in environment. Factor analysis indicates that the level of juvenile and adolescent crime is very significantly related to the phenomenon of anomie (Celmer, 2013). The process of socialisation in the minors who had cases in juvenile courts in the 1980s took place in a different reality than that of the respondents

[3] The detailed selection of both samples will be discussed during the analysis later in the article.

in the 2000s. Human socialisation is a process that affects a person throughout their lifetime, but is particularly intense during the period of entering adulthood. It takes place in various spaces of everyday life and forms the basis for constructing an individual's personality and identity of acting (Wrzesień, 2017, 286–287). One of the identities formed may turn out to be a deviant identity (Podgórecki, 1976), leading in certain situations to the development of a 'criminal career' model (Macleod, Grove, & Farrington, 2012).

> The predominant structure of an individual criminal career looks first at the envelope of the offending pattern, the initiation and termination of the career, and then at the pattern of offences within that envelope. The characteristics of those offences would be the mix of crime types, their frequency, and the way that mix varies over the course of the career. (Macleod, Grove, & Farrington, 2012, vii)

The issue of criminal careers is most often included in the area of scientific research carried out as part of developmental criminology, and some researchers consider this trend to be uniform (Blockland & Nieuwbeerta, 2010, 52; Farrington, 2003, 221–256), while others see a certain dichotomy in the understanding of this term, distinguishing between 'developmental criminology' and 'life-course criminology'. Developmental criminology puts much more emphasis on psychological factors, while life-course criminology focuses primarily on sociological factors (Kotowska, 2019). Developmental criminology does not deny the voluntary nature of an individual's decision to engage in criminal activities, while simultaneously appreciating the influence of a variety of factors that are not extremely deterministic. Developmental criminology focuses primarily on the problem of the direction in which a person's motivations change during their life and influence the decision to commit crime (Carlsson & Sarnecki, 2016, 16). A particularly interesting question posed by developmental criminology is why some people continue their criminal activities (criminal careers) for longer than others, and why some simply abandon them at some stage in their lives (Carlsson, 2014, 16).

The term 'criminal career' in the academic literature is understood in different ways. The word 'career' itself means a sequence of professional roles that an individual performs over his or her lifetime. This term essentially assumes that the successive roles imply advancing specialisation and increased professionalism and prestige, without excluding downward professional and social mobility. The essence of research into careers is to determine certain typical, recurring circumstances and problems related to their course. There are two career lines: subjective and objective. The former is tantamount to the identity felt by an individual, while the latter touches upon the external aspect, concerning the official position, external evaluation of lifestyle, relationships with the law, and functioning in a public institutional complex (Marshall, 2005, 142). As far as a criminal career is concerned, the basic division is the one between a 'criminal career' and 'career criminals' (Błachut, Gaberle, & Krajewski, 2006, 312). The first term is used in the study of the sequence of crimes committed by the same offender in the monitoring of subsequent adult life by repeat offenders, while the second is understood as the choice of a specific path or life identity, consisting of a permanent connection with the criminal world, which may also occur as a result of stigmatisation or selective action of the agencies of formalised social control; thus, it cannot be excluded that, despite committing a crime, such persons may not be convicted. The studies under analysis are more in line with the notion of a 'criminal career' because their subject is the formally registered return to crime of people who committed crimes during their childhood.

It should be stressed that in criminological terms, a return to crime is not synonymous with recidivism in the sense of criminal law. Recidivism in criminal law means a return to criminality which calls for certain legal consequences under the law, resulting in more severe punishment (Wróbel & Zoll, 2010, 526–530).

The concept of recidivism is also used in punishment criminal law, where it is thought to be penitentiary. Recidivism in the penitentiary sense 'defines such a return to committing an offence which results in the repeated serving of a prison sentence' (Wróbel & Zoll, 2010, 526). Such recidivism is conditioned by the offender 'climbing the ladder' through successive levels of the institutional system of crime prevention and the formation of the social identity of the recidivist (Szczepanik, 2015, 13). A penitentiary recidivist is simply defined as a criminal who is serving at least a second mandatory sentence of imprisonment.

A criminal career, as already mentioned, is usually conditioned by both exogenous and endogenous factors (Tyszkiewicz, 1991, 123–125), which, according to various theories, have a larger or smaller influence on its formation. As the impact of social changes on the size and structure of crime has long interested sociologists and criminologists (Kossowska, 2013, 73), the authors decided to compare the data on the continuation of crime by minors who started their criminal activity in the 1980s, i.e. started on the path to a criminal career during the fundamental social changes resulting from the transformation in Poland, with those who began in 2000. The process of deregulating previously preferred norms, values, and behavioural patterns and replacing them with new ones is a natural process associated with social changes that usually lead to anomie. This phenomenon is most often understood as a temporary inability of society to maintain the functions of control and a lack of identification with the standards in force, causing the objectives of social activities to decompose and leading to general chaos (Durkheim, 2005). The trajectories and turning points in the development of criminal careers – concepts which have been proposed in developmental criminology (Piquero, Farrington, & Blumstein, 2007) – are not questioned in this paper, but it did seem interesting to us to look at the issue through the prism of political transformation, which could play a key role in the fate of the minors under study – all the more so as the systemic, political, economic, and social changes were also accompanied by changes in the relationship between parents and children, which resulted in a break in the intergenerational transmission of culture (Wrzesień, 2015).

1. The social background of the 1980s and the beginning of the 21st century

Minors who committed criminal acts in the 1980s, as well as those who came into conflict with the law in the 21st century, lived in times of difficult social and political changes in Poland, which caused a decrease in the efficiency of the state's control functions and chaos in the normative order, resulting in a redefinition of values at the level of micro-social structures most relevant to the socialisation process.

The years 1980–1989 were an exceptionally difficult time for the country: it was a period of decline in the Polish People's Republic, when political structures and the centrally controlled economy were slowly disintegrating, and when the communist authorities made a last-ditch effort to save the system. It is also a time of serious economic and political crisis, which resulted in an unprecedented outbreak of social conflict (Buczkowski, 2015). The year 1981 ended with the introduction of martial law, which not only drastically reduced civil rights, but also paralysed the economy. The abolition of martial law two and a half years later was unable to prevent the erosion of the system.[4]

As Konrad Buczkowski wrote,

> the socialist state – contrary to official propaganda – was not an area in which society lived prosperously, where the educational system was at a high level, where the equality and freedom of citizens was guaranteed, or where crime rates were low. On the contrary, according to estimates since the 1970s, 40% of the Soviet population and 20%–30% of the Polish population lived below the poverty line. The shape and organisational structure of the socialist economic system was a combination of legal and informal elements, forming a parallel economy to the official one. The developing "parallel economy" was intensely fought by the state by criminalising behaviour considered – from its point of view – to be harmful. (Buczkowski 2017)

[4] As Ryszard Bugaj wrote, 'Soon after the peak of martial law, the legitimacy of reforming the socialist economy began to erode rapidly.… Wojciech Jaruzelski's team initially rebuilds the authoritarian system in the political sphere, but does not give up on a "reform of the socialist economy". The market monetary balance temporarily improves as a result of the price increases under the guise of the rigours of martial law. However, despite the liberalisation of central planning and a kind of "modernisation" of the command and control mechanism, the resource-intensive trends in the economy could not be stopped' (Bugaj, 2010, 17).

Widespread shortages of basic products, especially food, also inevitably translated into crime. It is therefore not surprising that the number of convictions for offences involving speculation (considered an economic crime under the Criminal Code of 1969) increased more than 2.5 times between 1981 and 1985, and in 1988 dropped to the level from 1981. In the 1980s, crimes against property grew in a manner similar to the dynamics of reported crime, i.e. it increased until 1984 and decreased in the following years. The number of convictions for serious crimes (indictable offences and serious misdemeanours) tended to decrease between 1980 and 1988 (Buczkowski, 2015).

The turn of the year 1989, which brought about social and political change and a transformation of the country's political system, also brought new social problems. The common belief that a return to capitalism would bring an immediate improvement in quality of life proved to be completely unjustified. The economic reforms undertaken by the first democratic governments brought on a recession that had a significant impact on the transition taking place. Inefficiently managed state-owned enterprises began to collapse on a massive scale, causing the unemployment rate to rise sharply and leading to rapidly growing social inequalities and widespread poverty. The fall in state revenues caused a collapse in public services and infrastructure. The division between beneficiaries and victims of the reforms quickly led to social tensions. As Zdzisław Sadowski noted,

> unemployment of this magnitude had to entail a chain of negative consequences: from poverty, through a difficult start in life for large numbers of young people entering the workforce, to unfavourable changes in morality related to the commercialisation of life, and ending in an increase in crime, including organised crime. (Sadowski, 2010, 38)

The police statistics show that the number of crimes detected increased throughout the entire decade of the 1990s, reached a peak in 2003, then gradually decreased.[5] Looking at the structure of crime in 1990 and 2007, one can see a fairly significant decrease in crimes against property (from 80% of all registered crimes to almost 54%) and an increase in the categories of crimes against life and health (from 1.8% to 2.8%), crimes resulting from the law on counteracting drug addiction (from 0.1% to 5.5%), and crimes against the reliability of documents (from 0.7% to 5.1%). New types of crime also began to appear: economic crime,

[5] In searching for the reasons for the increase in crime in the 1990s, Andrzej Siemaszko pointed out, among other factors, the increase in valuable goods owned by the population – influencing the number of crimes against property – the weakening of social control and the related liberalising of law enforcement agencies and the judiciary, the feeling of marginalisation of large social groups favoured in the previous system – which could have led to greater susceptibility to criminal patterns of behaviour – and the progressive stratification of society which is characteristic of a market economy (1999, 170).

organised crime, cross-border crime, tax crime, and crimes committed by foreigners (Rzeplińska, 2010, 195–198).

All of the above-mentioned changes must have had an impact on the shape of juvenile delinquency in the groups studied. So, was their subsequent criminal activity a continuation from this period or does it display some new characteristics resulting from the social changes taking place?

2. The population of minors in the 1980s

The population of minors studied in the 1980s included people with cases in juvenile courts in the period 1985–1988. The selection of case files in the study was determined by their availability. The study was carried out in the year 2000, when some of the files – in accordance with the regulations in force – had been destroyed or the data on convictions had been expunged or erased (Rzeplińska, 2013). Therefore, the study is not representative, but it seems nonetheless valuable to have.

The 1980s constitutes a set of years from before the social changes that took place in Poland in 1989. The study found that 555 juvenile offenders were in this set. It was possible to obtain 329 criminal records from 28 courts (Rzeplińska, 2013, 81). The aim of the study was to determine which group of juvenile offenders committed crimes in adulthood as well as the nature of their criminality. In order to answer this question, a checking the convictions recorded in the NCR was carried out in 2000. However, it is important to be aware that only the formal aspect of 'adult crime' of 1980s juvenile offenders has been investigated. In fact, on the basis of the study, we cannot state firmly what form of crime was present in the lives of minors, but can only determine the extent and nature of recorded crimes, next to which there are undisclosed crimes – the set of crimes existing in society, but not subject to formal social control (Błachut, 2007–2008, 78–79).

One-third of those who faced justice before the juvenile courts in the 1980s became adult offenders 22–28 years later, including 179 men and 6 women. Approximately 40% of the subjects were sentenced under special recidivism conditions. Minors from the 1980s most often (in about 60% of cases) committed crimes against property, such as theft, robbery, extortion, fraud, destruction or damage to property, taking a vehicle for short-term use, or fencing. About one-fifth (21%) were later convicted for crimes against life and health, even more convictions (24%) were for drink driving, less than 5% were liable for the crime of family abuse, and 11% for the crime of failing to pay alimony. There were also offences against the administration of justice (8%). Occasionally, there were convictions for offences under the law on counteracting drug addiction, though only 7 people out of all subjects were involved in drug crime. The subjects of the study often committed several types of crime during the follow-up period, but crimes against property always dominated. It is interesting that about 11% of those studied had committed more than 10 crimes in adulthood, which may lead to the conclusion that they started and consistently pursued criminal careers, and certainly to the conclusion that crime was part of their lives and for some of them it may even have become part of their identity.

The population of minors sentenced by the courts in the 1980s was also subject to a follow-up study. Inquiries were made to the NCR about their criminal records in 2017, which again made subject to investigation only the extent and nature of the crimes which were recorded. The follow-up study was carried out approximately 30 years after the criminal activity of their childhood, so it concerned people aged about 40–50 years old. Out of 530 inquiries about criminal records, less than 39% of the people are listed in the NCR, while slightly more than 67% of this group are adult repeat offenders. The most frequently group of people are those listed as having been convicted of crimes against property, which is in line with general crime trends, including theft (43.9%) and burglary (36.6%). There are also crimes involving robbery (24.4%) and other crimes against property (44.4%). Crimes against life and health are reported much less frequently. Only 6 out of 250 people committed murder, which is less than 3%. Being involved in a fight or injuring others was the type of crime for almost 28% of the subjects. One-fifth of the population was listed in the NCR for insulting or threatening behaviour and 27% for falsifying documents or money.

Drug offences during the follow-up period were committed by former minors on an occasional basis: 5% were recorded for drug use and just over 2% for drug dealing.[6] The minors from the 1980s were about 40 to 50 years old at the time of the follow-up study, hence the very low drug crime rate in this group. One could risk putting forward the thesis that even if their problems with the law were related to drugs during their childhood, then they gradually and naturally withdrew from drug use as they grew up. On the other hand, driving under the influence of alcohol was quite frequent, found in 43% of cases. While age usually translates into 'extricating oneself' from drug-related crime and drug problems in general, problems with alcohol – if any – affect a wider age group of perpetrators. Occasionally, a conviction was based on domestic violence or other crimes against family and care.

6 It was only after 1989 that the drug market in Poland developed, with a clear division of roles between consumers and those benefiting financially from the production, smuggling, and dealing of drugs. For minors who had court cases in the 1980s, the problem of drugs was less known than after the transformation, and the availability of drugs was much more limited. Drug crime is particularly characteristic of young people. Experimenting with various types of psychoactive substances is a result of the physiological and emotional changes taking place in adolescents' bodies, overlapping with difficulties in adapting to the expectations of the family and school environments, and conflicts within peer groups. Sometimes drugs become a way to find one's own path; sometimes they are an expression of rebellion against norms. Criminological studies have for many years indicated a trend of high risk of drug addiction among young people, particularly in those under 18 years of age (Czapów, 1976, 383).

In the adult life of the minors studied in the 1980s, new types of economic crime also emerged, which during the follow-up study reached the level of 15%. The political transformation enabled mobility of individuals outside the country, and 10% of the study population had convictions in countries other than Poland, with the majority of convictions coming from Germany and Great Britain – the two most popular countries for Poles' economic emigration. These were mostly theft, burglary, drink driving, and crimes against business. Other types of offences were not committed or were isolated cases.

3. The population of minors in the 2000s

The contemporary set, hereinafter referred to as the '2000 set', is representative of all minors sentenced for crimes before juvenile courts in Poland in the year 2000. This covers a group of 771 people aged 13–16 years, with the majority of them (550 [71.3%]) aged 15–16. This group included 79 girls and 692 boys.

Minors between the ages of 13 and 16 who were recorded in 2000 in police statistics as suspects of criminal acts numbered 56,345 people. They constituted 13.9% of the total number of suspects, which means that one in seven suspects in Poland in 2000 was a minor (Rzeplińska, 2011, 669).

The group of 15- and 16-year-olds who were subject to educational and corrective measures for their criminal acts in 2000 amounted to 16,398 people, which constituted 1.2% of the total population in that age group. A representative group of 15- and 16-year-olds who went before the Family and Juvenile Divisions of the District Court ('the juvenile courts') covered by the subject of the analysis, constituted 0.04% of the youth population at that age in Poland in 2000.[7]

After checking the test sample at the NCR in October 2005, it turned out that 13 girls (16.5%) and 320 boys (46.2%) were subsequently punished as adults, which means that by committing another crime in adulthood they continued their previous criminal career (Rzeplińska, 2007–2008, 409).

For the '2000 set', another follow-up study was carried out in 2010. This time, it covered 760 people. The follow-up period was nine years. After reaching the age of 17, 390 former minors, i.e. 51.3% of the people included in the study who went before the juvenile courts in the year 2000, were convicted of crime. This group was aged between 20 and 28 years old at the time of this follow-up study, with the majority of the perpetrators – as many as 80% – being between the ages of 24 and 28, i.e. people who were in the period of the most criminal activity (Rzeplińska, 2013, 81).

7 In 2000, the number of young people aged 15 and 16 years was 1,336,100 people, i.e. 3.5% of the total population in Poland (GUS, 2003, 106).

The follow-up study carried out for the purposes of this research consisted of a second check of the 2000 set in the NCR statistics in 2017. The follow-up period was therefore 15 years from the first check in 2001, 12 years from the check in 2005 (the 2005 follow-up) and 7 years from the next check in 2010 (the 2010 follow-up).

The newest long-term follow-up from the year 2017 (the 2017 follow-up) included 752 people from the original 2000 set. The smaller data set was due to the inability to verify data concerning the remaining former minors, resulting mainly from discrepancies in personal data, including in particular in their PESEL (personal identity) numbers, which are the basis for sending inquiries to the NCR, and the data contained in this registry, which could not be removed at the verification stage, as well as the recorded deaths of some of the participants.

The NCR data in the 2017 follow-up show that as many as 487 people from this group (almost 65%) were listed in the registry as having been convicted of crimes, of which more than 26% were chronic offenders. It should be noted that within the framework of the 2005 follow-up, 333 people (43.2% of the population from 2000) were recorded in the NCR, and that 390 people (over 51% of the study group) were listed in the 2010 follow-up. This variability in the period of successive follow-ups shows that people who for many years after committing a punishable act as minors remained out of the system – i.e. they did not commit crimes – during their adulthood (this refers to people between 27 and 35 years of age), subsequently had problems with the law which ended in a conviction.

A sentence of conditional imprisonment was imposed on more than 53% of the convicted people. In this group – in almost 42% of cases – the sentences were executed due to violations of the individuals' probation.

As regards the types of crime committed by former minors in the 2000 follow-up, in the 2017 follow-up crimes against property still prevailed: thefts were recorded in 46% of cases, burglaries in almost 40%, and robbery in almost 33% of cases. The remaining offences against property constituted over 43% of convictions.[8]

The most common crime against life and health by far was injury or participation in a fight (a joint category), which occurred in over 32% of cases. Murders were committed in five cases (1%), and the subjects were convicted for the remaining crimes in this group in less than 1% of cases.

In almost 29% of cases the conviction was due to an insult or a criminal threat.

Only a small proportion of convictions – less than 3% of cases – were related to offences against family and guardianship (mainly family abuse) and offences against sexual freedom and morality.

Very often, adults covered by the 2017 follow-up were convicted of driving under the influence of alcohol: in as many as 36% of cases.

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8 These percentages do not add up to 100 because individual convicts may have committed several acts at once.

A ‘popular’ crime for which the subjects were convicted was the crime of forgery of documents and money. This occurred in almost 22% of cases. Offences against business activities accounted for just over 9% of convictions.

Attention should also be paid to drug-related crime by convicted ‘former juveniles.’ They were convicted of both drug possession and drug dealing. The former accounted for 16% of cases, while the latter was true in almost 13% of cases.

It is interesting to note that in almost 12% of the cases the subjects had been convicted abroad (58 convictions). The foreign judgements mainly came from Germany and Great Britain (over 80% of cases), as well as Belgium, Sweden, Italy, and Spain, among others. Such convictions abroad are obviously not surprising due to the fact that Great Britain and Germany are the main destinations for the economic migration of Poles. As for the breakdown of the offences committed and for which the adults of the 2000 follow-up were convicted, these were mainly offences against property, participating in a fight or personal injury, driving under the influence of alcohol, and offences against business activities.

It is worth comparing the criminality of participants convicted in the 2000 follow-up which was revealed in the current 2017 follow-up with the results of the original study on this set and the two follow-ups: from 2005 and 2010. The comparison, due to the different sample sizes, only has a cognitive value, but it allows us to observe trends in criminality within the same group of people over a period of a dozen years or so.

In the 2000 follow-up during the first study, the dominant offences were criminal acts (both crimes and offences) directed against property, which were committed by almost 44% of the analysed set of minors, of which only theft and burglary accounted for 25%. The perpetrators of robbery and extortion made up only approx. 14% of the study group, and of criminal acts against a person (life and health, bodily harm, or violation of bodily integrity) was almost 8%. Other punishable acts in this set concerned a wide variety of behaviours that were contrary to the norms of criminal law. A novelty in the 2000 follow-up was the appearance of violations of the act on counteracting drug addiction, the crime of document adulteration, or the offence of intentional destruction of property (Rzeplińska, 2006).

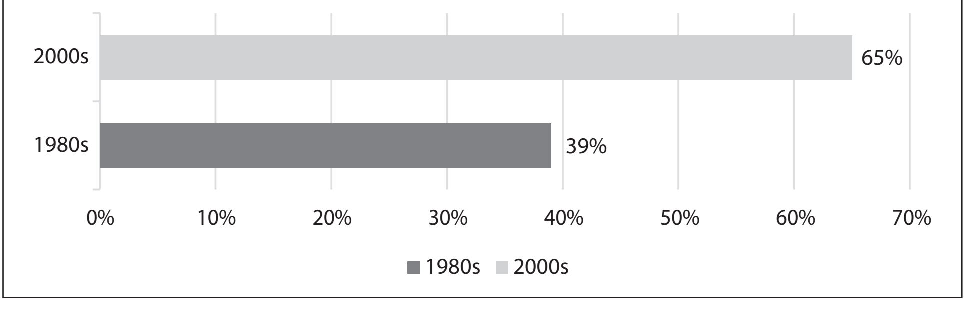
The 2005 follow-up of the set in question, in the group of juvenile boys ‘punished in adulthood’, showed an increase in the number of convictions for crimes against property, constituting almost 59% of all those punished in adulthood. The crimes of robbery and threatening behaviour were committed by those punished in adulthood in equal measure, at 10%. Boys punished in adulthood who were responsible for other deeds in their youth constituted 36.3% of the punished in adulthood set. As far as girls punished in adulthood are concerned, they were mainly perpetrators of crimes against property (over 61% of convictions in this group) (Rzeplińska, 2008, 646–647).

The 2010 follow-up once again confirmed that the further criminality of the 2000 set was dominated by crimes against property (theft, robbery, extortion, fraud, and computer fraud), which together accounted for almost 26% of all the crimes of which the study participants were convicted in the first case. Sentences for the crime of theft with burglary represented over 12% of cases, for the crime of robbery 10%, driving under the influence of alcohol or while intoxicated (article 178a of the Criminal Code) was almost 14%, crimes against life and health almost 6%, and crimes against the law on counteracting drug addiction almost 3% (Rzeplińska, 2013).

4. Do changes in social macrostructures really affect juvenile delinquency?: Similarities and differences between sets, final conclusions, and 2017 follow-up

A comparison of selected crime statistics of adult offenders who had court cases for criminal acts in the 1980s and 2000s as minors confirms that criminal activity disappears with age. Among the younger subjects who were recorded as juvenile offenders for the first time in the 2000s, 35% had abandoned criminality, in the sense that during the follow-up period they were not registered in the NCR, while in the population from the 1980s this ratio was 61%. This confirms a commonly held thesis in criminology that, in general, age is conducive to the abandonment of crime and that, in the majority of people, criminal activity disappears in the long-term (Laub & Sampson, 2001). In our opinion, however, it would be too bold to draw the conclusion, based on the data analysed herein, that changes related to the political transformation did not affect the development of individual criminal careers. It would probably be interesting to analyse in more detail the structure of the crimes committed by adults who started their activity during childhood in different political, economic, and social realities, which is not yet possible with the empirical material collected so far; however, research which has been conducted

Figure 1. People recorded in the National Criminal Registry as offenders

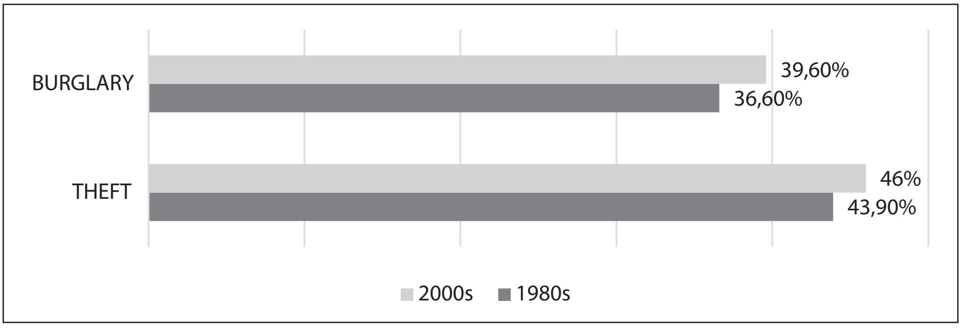


Source: National Criminal Registry

for years at the Department of Criminology at the Institute of Legal Sciences of the Polish Academy of Sciences is being continued. The history of longitudinal research confirms our conviction that it requires patience and humility to conduct such research, all the more so as we can already see some differences in the structure of crime on the basis of the analysed data found.

We can say that the dominant category of crimes in both groups were crimes against property, particularly theft and burglary, wherein the minors studied in the years 2000–2005 committed these crimes slightly more frequently. Property crime dominates crime in general, including juvenile crime. The small increase in this type of crime that was recorded in the follow-up study of 2017 among younger respondents may be due to the fact that they were less affected by factors influencing the abandonment of crime, but it is also possible that economic changes – connected with the freeing up of the market, improvement in the welfare of most of Polish society, or an increase in consumerism – have had only a small influence, but an increase nevertheless.

Figure 2. The most common types of crime in the groups studied



Source: National Criminal Registry

In both of the groups studied, the offence of driving under the influence of alcohol was quite common. For the population from the 1980s, it was found in 43% of cases, while for the population of the 2000s it was 36%. Minors recorded in the 1980s were slightly more likely to commit crimes related to forgery of documents and money (27%) than those first convicted in the 2000s (22%). The level of convictions of former minors before foreign courts is similar (about 10%). Out of the crimes against life and health, the most frequent were injuries or participating in a fight. Among the older participants, we noted a higher level of convictions under the condition of repeated offences.

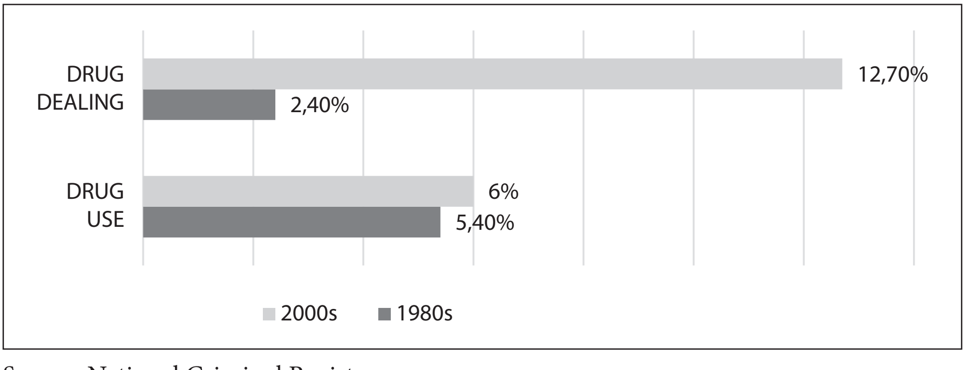
Figure 3. Convictions with the condition of recidivism

Source: National Criminal Registry

Murders occurred incidentally, while younger minors were more likely to commit offences in the form of bodily harm or participating in a fight and to make insults or criminal threats. Forgery of documents and money was more often the basis for convicting minors from the 1980s population than for the subsequent set.

There is a huge difference in drug crimes. Approximately 3% of the older former juvenile offenders were sentenced for drug dealing, and 13% of the younger set; for the offence of drug use, this was over 5% and 6%, respectively. Interestingly, the difference in drug use is small, while dealing has increased significantly.

Figure 4. Drug crime in the study groups



Source: National Criminal Registry

The recurrent criminality of former juvenile offenders is characterised by some constant trends, although there are types of crime that depend on the changing socio-political reality. Few criminals maintain a linear or fixed path in their criminal activities. 'Cycles of crime' are sometimes interrupted. This is shown in particular by tracking the population of minors starting their criminal activity in the 2000s. Some of them give up crime and then, for various reasons – perhaps related to experiences with the justice system and 'successes' in criminal undertakings – they return to it again (Ouellet, 2019).

The comparison of the size and structure of crime committed during adulthood by minors from the two study groups, those who had cases before juvenile courts in the 1980s and those convicted in the 2000s, is a significant contribution to the achievements of Polish criminological research. Longitudinal analyses allow us to capture the dynamics of changes occurring in the cohorts of the study. These are studies of high cognitive value which confirm the usefulness of continuing them. It is worth noting, however, that while the minors surveyed in the 2000s constitute a representative group, the population surveyed in the 1980s was not selected via a probabilistic method, which may raise some methodological doubts when justifying the comparison of both groups of respondents. The failure to maintain the condition of representativeness in the study populations of minors from the 1980s was necessitated by the unavailability of data obtained from court case files at the time of the study.

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20 years on the path – the criminal careers of polish juvenile girls[1]

20 lat na ścieżce – kariery kryminalne polskich nieletnich dziewcząt

Abstract: The ongoing research conducted at the Department of Criminology at the Institute of Law Studies of the Polish Academy of Sciences into juvenile delinquency has resulted in a database of individuals who appeared before family and juvenile court for a punishable offence before 2000. The database enabled the continuation of research into the fate of juvenile girls, offering unique insight into the lives of those individuals who continued to break the law in adulthood. The analysis of juvenile girls' offending was based on studies of court files at the time. Since then, the convictions of the juveniles in question has been verified three times: in 2011, in 2016 (for the period 2011–2015), and in 2018 (for the years 2016 and 2017). For the research covering the period 2017–2019, 836 qualifying juvenile girls remained. Of this group, 167 had been convicted of a criminal offence as adults, which is one in five study subjects. For the sake of the study, the research team decided to do an in-depth analysis of the group of women who committed at least three offences in adulthood, for which they had had at least two convictions. Such an established framework yielded 64 records (7.7% of the total juveniles in the research).

Keywords: juvenile delinquency, juvenile girls, criminal career, life-course criminology, gender, developmental criminology.

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Abstrakt: Rezultatem badań nad przestępczością nieletnich, prowadzonych w Zakładzie Kryminologii Instytutu Nauk Prawnych PAN jest baza danych osób, które odpowiadały przed sądem dla nieletnich w roku 2000. Istnienie owej bazy daje unikalną możliwość kontynuacji badań dalszych losów nieletnich dziewcząt, wglądu w życie tych, które popełniały przestępstwa jako osoby dorosłe. Analiza przestępczości nieletnich dziewcząt została oparta na materiale zebranych w aktach sądowych i dotyczyła spraw, które trafiły do sądu dla nieletnich w roku 2000. Od tej pory ewentualne skazania kobiet z tej grupy zostały sprawdzone trzykrotnie: w latach 2011, 2016 (dla okresu 2011–2015) oraz w roku 2018 (dla okresu 2016–2017). Na 836 dziewcząt z pierwotnej bazy, 167 (czyli co piąta) było skazanych w dorosłości za popełnienie przestępstwa. Na potrzeby badań zespół badawczy zdecydował o pogłębionej analizie akt karnych kobiet, które jako dorosłe popełniły co najmniej trzy czyny, z które zostały skazane co najmniej dwukrotnie. Dotyczyło to 64 kobiet (7,7% wszystkich z pierwotnie badanej grupy).

słowa kluczowe: przestępczość nieletnich, nieletnie dziewczęta, kariera kryminalna, kryminologia drogi życiowej, płeć, kryminologia rozwojowa

The problem of criminal careers has become a constant presence in global criminology, and it has recently made a comeback in the Polish literature (Muskała 2016; Szczepanik 2015). Still, because crime is often considered to be a male domain, criminological analyses of various phenomena will often overlook female offending. The same is true about criminal careers of women (Carlsson and Sarnecki 2015: 117). Female criminals are considerably outnumbered by their male counterparts, and those whose deviant behaviours resemble a 'criminal career' are even less numerous. That notwithstanding, such women do exist, even if they are few and far between.

The literature emphasises that just as women's offending differs from that of men, so does persistent women's offending differ from chronic offending by men. Most of all, chronic offending is much more common among men than women (Broidy et al. 2015: 122). Not only do men tend to pursue longer criminal careers, but they also commit more serious offences while they last (Broidy et al. 2015: 136). Likewise, the criminal activity of women is less varied than that of men (although it does nevertheless display variability) (Cauffman et al. 2015: 250). Researchers also draw attention to different risk factors in the case of male and female offending. Recent years have seen more emphasis placed on etiological factors contributing to juvenile delinquency which have more to do with the offenders' gender. The first two are the experience of sexual abuse and mental health issues. Both of these factors significantly increase the risk of deviant behaviour occurring for both boys and girls, though in the latter case they have a much greater significance and impact on their fate. The third difference concerns the fact that in the case of girls there are more risk factors they are likely to encounter and the impact of those risk factors is likely to be greater (Carlsson, Sarnecki, 2015). These factors mean that at-risk delinquent girls should be on the receiving end of slightly different educational measures and corrective schemes than boys (Garcia and Lane, 2013). Moreover, women who persist in their criminal careers tend to be exposed to more violence in their lives, have more mental health problems, and experience more adversarial interpersonal relationships compared to those who desist (Cauffman et al. 2015: 261).

Subject, purpose, and methodology of the study

The aim of this paper is to analyse patterns of Polish female criminal careers and to attempt to answer the question of whether, in the case of women, we can talk about criminal careers at all? Is it at all possible, based on quantitative data, to indicate female patterns of onset in criminal activity? Can we say anything about the desistance? Or does long-lasting female criminality perhaps resist any patterns?

In the paper I will also analyse the social standing of women who have committed several crimes and were convicted of them. What was their family structure like? Have they got any children? Are they raising them alone or with a partner? How well are they educated? Do they work? What kind of problems must they face? Is it possible to confirm the hypothesis that criminal activity goes with a certain 'antisocial tendency': other deviant behaviours, such as alcohol abuse or drug dependency?

The paper also examines the structure of the criminality of female recidivists. This is followed by a consideration of the problem of whether the life of female recidivists is strongly determined by various external factors or whether, at least in some cases, it is possible to escape one's destiny?

The ongoing research conducted at the Department of Criminology at the Institute of Law Studies of the Polish Academy of Sciences into juvenile delinquency resulted in a database of individuals who had appeared before family and juvenile court for a punishable offence before 2000. The database enabled continued research into the fate of young people, including juvenile girls, and offered unique insight into the lives of those individuals who continued to break the law in adulthood. With respect to girls, the database contained the details of 873 cases. The analysis of juvenile girls' offending were based on studies of court files at the time (Woźniakowska-Fajst 2010). Since then, the convictions of the juveniles in question have been verified three times: in 2011 (for the period 2000–2010; Woźniakowska-Fajst 2012), in 2016 (for the period 2011–2015; Woźniakowska-Fajst 2017), and in 2018 (for the years 2016 and 2017). During the last study, the database was reorganised so that the full life story was available for every subject. As a result, only individuals whose complete set of data was available remained in the database (i.e. the questionnaire from their youth, responses to questions about convictions from 2011 and 2016, correct PESEL number and correct full name allowing access to the National Criminal Registry in order to look up further convictions). In the end, after the database was ordered, 836 juvenile girls remained who qualified for the research covering the period 2017–2019. Of this group, 167 women had been convicted of a criminal offence as adults, which is on in five juvenile female in the study. Naturally, this is not to say that all these women can be classified as chronic offenders. However, for the sake of the research a clear definition of higher criminal activity was necessary, which is why a decision was made by the research team to conduct an in-depth analysis of the group of women who had committed at least three offences in adulthood, for which they had received at least two convictions. This framework yielded 64 records (7.7% of the total juveniles in the research). Additionally, the research team decided to obtain court files pertaining to the last criminal case involving each of the chronic offenders, which proved possible in 52 cases. As researchers, we were particularly interested in the family and social background of each subject: education, occupation, marital status (and actual family situation), and number of children. It should also be noted that the oldest women from the group from 2017 were already 34 years of age when their convictions were last checked. Hence, the group itself is quite unique in that only a few longitudinal studies into women offenders have followed their careers further than early adulthood (Block et al. 2010: 75).

Onset and persistence of offending

The first phase of the catamnestic research in 2010 confirmed the model of a criminal career as described by Terrie Moffitt, who argued that chronic offenders display antisocial behaviour very early on (in childhood) and continue it throughout their whole lives. Those offenders who commit criminal offences exclusively during adolescence come into conflict with law much later, although their behaviours escalate notably during adolescence and become less and less frequent after the age of 18 years (Newburn, 2017, p. 912). A lifetime propensity for criminal activity is characteristic of people who have engaged in criminal offences since early childhood (Newburn 2017: 912). In the group of former juveniles in the study of convictions for the period 2000–2010, 105 women (12.7% of the study group) had been convicted of a criminal offence after reaching the age of criminal responsibility[2] (i.e. within 6–10 years). In 2017, that number had risen to 167 women, which constituted 20% of the group. More than half of the women had only been convicted once (51.5%), while 22.5% had had two convictions. All in all, for three-fourths of the women in the study, a conviction in adulthood seemed to be an incidental

2 In Poland, full criminal responsibility is assumed when a person turns 17 years old.

occurrence. Meanwhile, the two 'record breakers' in the 18-year follow-up study had received 18 and 17 convictions.

Table 1. Number of convictions among the female subjects, 2000–2017

Number of convictions	Number of offenders	Percentage
1	86	51.5
2	37	22.2
3	13	7.8
4	12	7.2
5	6	3.6
6	4	2.4
7	3	1.8
8	1	0.6
10	2	1.2
13	1	0.6
17	1	0.6
18	1	0.6
Total:	**167**	**100**

Source: Own research

As mentioned above, the most important theories attempting to explain the age–crime curve have been developed with reference to boys and men. Nevertheless, there seems to be a consensus among scientists that the age of peak criminal activity is 17–18 years, which is followed by a visible drop in convictions in subsequent years (MacLeod et al., 2012: 51).

In the case of the group described in this article, all the subjects were tried as juveniles, while only 20% were convicted in adulthood. The vast majority, then, did not return to a life of crime, or more specifically, had not been convicted of a criminal offence. We need to constantly remind ourselves that the analysis of criminal records and court files is always incomplete and renders our knowledge limited to cases that were brought before institutions of justice. It is then wholly conceivable that there are women among the study group who did indeed commit offences in adulthood, but were never brought to justice. The explanation might be twofold: their activities either flew under the police radar or, for various reasons, they were not convicted. Nevertheless, with only the 167 women who had been convicted in adulthood, and assuming that the model of desistance is similar for women and men, we should end up with a graph illustrating that the older a woman is, the less likely she is to turn to crime. Instead, upon analysing the age of women when first convicted in adulthood, the graph fails to be parabolic. More curious still, it does not seem to illustrate any regularity at all.

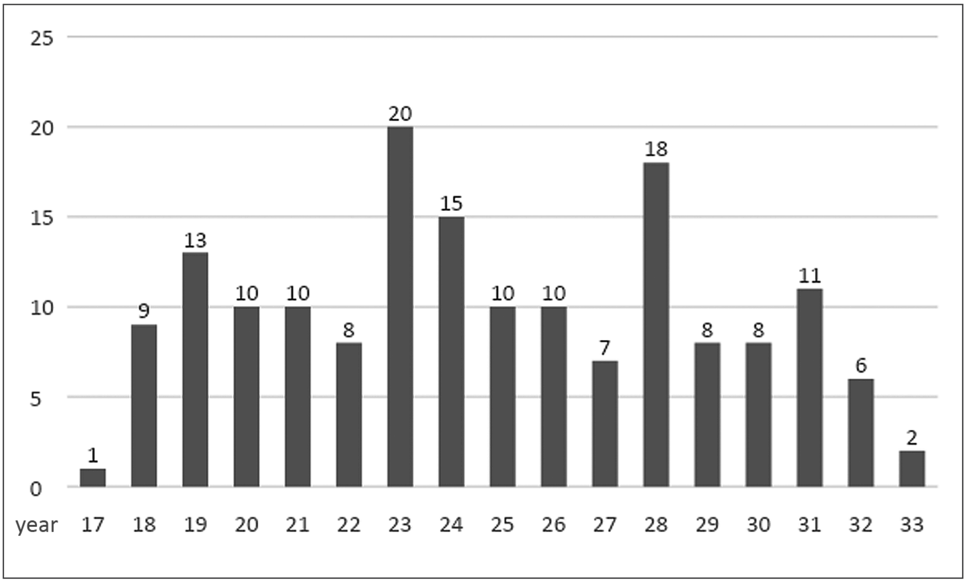

Figure 1. Age at first conviction in adulthood among the female subjects
Source: Own research

Only 43 women (26%) committed their first adult offence before the age of 21, i.e. when they were still juveniles.[3] In a noteworthy observation, Polish statistics (for the years 1990–2017) consistently demonstrate that the majority of male offenders per capita in a given age group are juveniles. In the case of women, the results are different: for most years, the majority of offenders are indeed women aged 17–20, but in eight years (1993, 1994, 1996, 2002, 2003, and 2010–2012) the majority of convicted women per capita were females aged 21–24 (Siemaszko et al. 2015: 97–98; Ministerstwo Sprawiedliwości, 2019: 72–73). In the case of our study, 53 women (32%) committed their first adult offence at the age of 21–24,

[3] In Polish criminal law, the concept of a 'juvenile' is used with reference to a person who, at the time the offence was committed, was under the age of 21 years and at the time of the trial before the court of first instance was under the age of 24 years (Arts. 115 § 10 of the Penal Code). Such individuals should be treated slightly more leniently during sentencing. Due to the incomplete formation of the psyche of young offenders and the high susceptibility to environmental influences, Art. 54 § 1 of the Penal Code introduces a general directive providing that when punishing an adolescent, the court is guided primarily by educational considerations. For the same reasons, if it is justified by such educational considerations, the court may apply extraordinary leniency to a juvenile (Art. 60 § 1 of the Penal Code).

becoming the most numerous group. There is a visible decrease in first convictions of women in the 25–28 age group, but it is by no means dramatic (45 women [27%]). It is not until later that a marked downward trend can be observed: there were only 33 women (20%) with first convictions in the 29–32 age group, and only two women aged 33. Interestingly, the statistical analysis conducted by John F. MacLeod, Peter G. Grove, and David P. Farrington of convictions in England and Wales in 1997 demonstrates a near-parabolic age–crime curve with one curious exception. According to the curve, the peak age for first convictions is 17–18, but a slight elevation at the age of 25 (MacLeod et al. 2012: 51) marks a visible departure. At least this analysis seems to be in line with the results of Polish research, although the British sample was a cohort of male offenders. Similarly, Swedish researchers suggest that women turn to crime at a later age than men (Andershed 2012), and there are studies that show some women who embark on criminal careers as adults, which is not a common occurrence among men (Block et al. 2010: 78).

The above analysis emphatically demonstrates how deceptive research into recidivism can be, if it analyses the phenomenon, say, five years after the introduction of an educational measure (the criterion adopted by the Supreme Audit Office (NIK) in its report on Youth Educational Centres (Najwyższa Izba Kontroli 2017). It transpires that there may well be a fair number of people who continue living crime-free for some time past their youth, or who violate the law and manage to get away with it.

Even in the case of women with no real criminal careers who were convicted a single time in adulthood, it would be hard to confirm the hypothesis linking the adult conviction strongly with juvenile delinquency. I would rather put forward the hypothesis that individuals who commit criminal offences in both their youth and adulthood are characterised by a certain societal ineptitude, which either means that in crisis situations they are prone to looking for an 'easy way out' or that their lifestyle remains chaotic and conducive to deviant behaviour, hence the random cases of isolated convictions for drink driving or drug possession. The research does not lend credence to the concept that reoffending occurs soon after youth and then ceases (MacLeod et al. 2012: 51). Of the 85 women with a single adult conviction, only 12 (14%) committed a criminal offence as juveniles and then desisted. With the exception of a slightly larger group aged 23 or 27 at first conviction, the age distribution at first conviction remains quite stable. One in five women was convicted for the first time only after the age of 30, i.e. more than a decade after committing an offence in their youth.

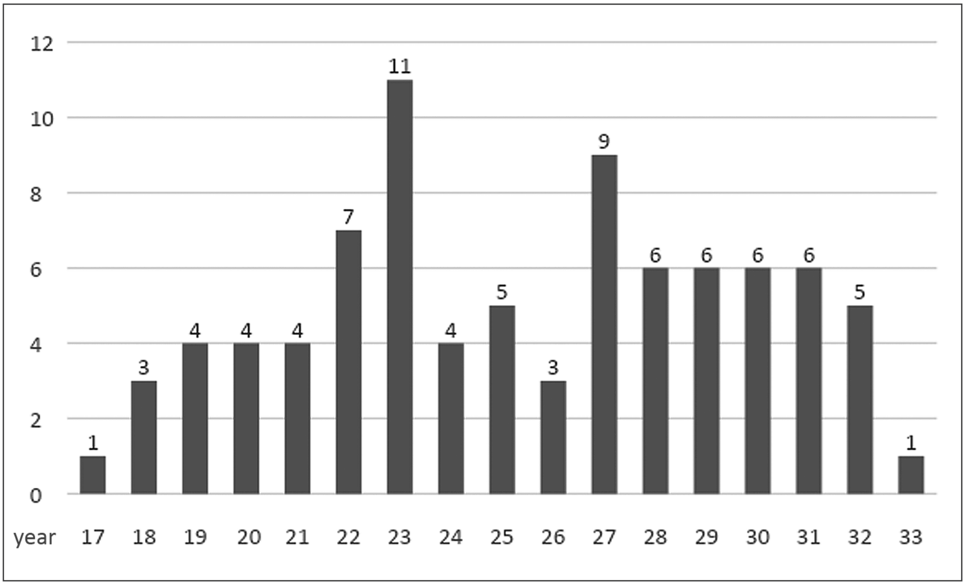

Figure 2. Age at first conviction in adulthood for the female subjects with only one conviction
Source: Own research

Based on the fact that at the time of the last questionnaire on adult convictions (2017) the oldest women were 34 years of age, it is impossible to determine whether offending was a closed chapter in their lives. In the same vein, several convictions does not constitute a career, since there will be people with two convictions in the same year, as well as those whose two convictions were set 9 years apart. Out of the 36 women who had two convictions, 16 (44%) were convicted either in the same year (6) or in two consecutive years (10). The next 14 (39%) women committed criminal offences 2 to 5 years apart, while the remaining 6 were convicted 6 to 9 years apart. It seems that with regard to women convicted twice it would be difficult to construe any criminal career at all. Either their criminal activity was very intensive but short-lived, or the convictions were so far apart that claims of any continuity of criminal activity would be unjustified.[4] Table 2 shows the length of time which passed between the first and last conviction for all women who were convicted two or more times.

4 In the case of long breaks between convictions, it cannot be ruled out that the women broke the law but were never formally brought to justice.

Table 2. Period between first and last conviction (in years)

Period between first and last conviction	Number of offenders	Percentage	Accumulated percentage
Less than one 1 year	5	6.2	6.2
1 year	16	19.8	25.9
2 years	5	6.2	32.1
3 years	9	11.1	43.2
4 years	4	4.9	48.1
5 years	11	13.6	61.7
6 years	7	8.6	70.4
7 years	4	4.9	75.3
8 years	5	6.2	81.5
9 years	5	6.2	87.7
10 years	3	3.7	91.4
11 years	4	4.9	96.3
12 years	1	1.2	97.5
13 years	1	1.2	98.8
14 years	1	1.2	100.0
Total:	**81**	**100**	

Source: Own research

If we only concentrate on studying persistent offenders whose brushes with the law begin very early and who then experience criminal episodes (I'm using the term 'episode' deliberately, to differentiate from a 'career' which implies an element of certain continuity), then the observation that there are women who go years without a conviction is not particularly groundbreaking. David P. Farrington made a similar observation when describing a group of offenders who exhibited extensive criminal behaviour at the age of 19, but then went conviction-free until legal proceedings were initiated against them after a break of 7–10 years (Farrington 1992: 529). It would be interesting to know what set of circumstances led these individuals to reoffend after such a long break.

Antisocial attitudes and criminal careers

Literature on criminal careers reiterates now and again that multiple offending in and of itself is insufficient to speak of a 'career'. Rather, it is more to do with a certain 'antisocial tendency', i.e. the concurrence of criminal behaviours and other deviant behaviours, such as alcohol abuse, drug dependency, disturbing the peace, joblessness, or violations of the law (MacLeod et al. 2012: 99).

In the course of research into criminal careers, the factors that play the most important role are not those that are responsible for persistence (since they are already fairly well-researched and described), but the factors that are responsible for desistance and helpful in prevention of recidivism. Most studies agree the two factors which most contribute to terminating a criminal career are starting a family (in most cases understood by researchers as getting married) or taking up paid work (Sampson and Laub 1995).[5] It was also possible to analyse these two factors in the study described in this paper, if only with regard to persistent offenders: the 52 women who had committed at least three offences in their adult lives, had a minimum of two convictions, and whose court files pertaining to their last criminal case were accessible for analysis. While it is not possible to determine—on the basis of the collected research material—whether women who desisted from criminal activity in adulthood or who had only one conviction worked and had families, it is clear that most recidivists remained unemployed and had unstable family lives.

In the research group in question, at the time their last offence was committed, over two-thirds of the women (36) were unemployed, and only 4 had declared their main activity was running the household and caring for children. The remaining women worked (apart from one woman on disability benefit), but only half (7) had permanent jobs, whereas 8 worked casually. It should come as no surprise, since the persistent offenders in question had very low professional qualifications: two-thirds had only graduated from junior high schools and most had a primary-school or partial primary-school education, i.e. eight years of primary school.[6] The remaining recidivists whose educational background we managed to obtain had a vocational education (8) or secondary-school education (10). Even as juveniles, the persistent offenders had bleak educational prospects: 29% had flouted compulsory schooling, one-third of the women were often truant, and 9 of them had to repeat a year in primary school.

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5 As a side note, it might be worth quoting Raymond Paternoster and his affiliates, who observed that 'Good jobs and warm marriages do not change offenders themselves in any substantial way; however, they simply reduce the opportunities for criminal activity' (Paternoster et al. 2016: 1204).

6 The low number of junior high school graduates (7), which in Poland was a compulsory stage of education in the period 2000–2019, is related to the fact that in 2000 an educational reform began in Poland. The eight-year primary school was replaced by a six-year system and a compulsory, three-year junior high school. The research subjects were girls whose cases were brought to a family court in 2000. Most of the subjects were in the eighth grade of primary school under the old educational system.

In adulthood, the recidivists undertook simple jobs, which were doubtless poorly paid. The data on current or recent employment revealed that only one of the women ran her own business and one offered office service. Most of the women were manual workers, with the majority (21) doing unskilled jobs and 10 working as skilled workers. Seventeen women had no occupation and the data indicated that they had never worked. In the case of persistent offenders, joblessness seems to run in the family. The data collected for the group[7] when they were still juveniles revealed that 56.5% of their mothers were unemployed, as were one-fourth of their fathers.

Undoubtedly, their occupational status, persistent unemployment, or having to work in simple, low-paid jobs contributed to the poor financial status of the female recidivists. The personal income[8] declared by the women was low, fluctuating between 200 PLN and 5,000 PLN monthly,[9] although the highest sums—5,000 and 4,000—were only declared by one subject each. The median personal income among the women in the study stood at 712 PLN[10].

As for marriage acting as a stabilising factor in the lives of women and encouraging desistance from crime, the reality proves to be more complex. First of all, it is important to note that despite the important role the Catholic Church still plays in people's lives, fewer and fewer people get married every year, more people choose to live in informal relationships, and more and more children are born to cohabiting parents[11] (CBOS 2017; G US, 2016). Moreover, nationwide studies show that cohabitation is more common among people with less social capital, although the last decade has seen a shift in attitudes, with informal relationships becoming increasingly more prevalent across all social classes (Schmidt 2015: 248–90). I mention this because writing about formal marital status and drawing any conclusions from this does not make much sense these days. Perhaps in the case of the female recidivists in our study, it would have been more advisable to analyse their actual family circumstances, rather than formal marital status. Indeed, out of 52 recidivists, only 7 were married, 2 women were divorced, and there were 2 widows. Formally, only one in four women had ever been married. On closer inspection of the actual situation,[12] it turned out that at the time of the last conviction over half of the women were in relationships, most of them informal.

7 From among the recidivists whose criminal records were analysed, there was no information on the mother's employment in 6 cases.

8 The data were extracted only with reference to 31 recidivists.

9 The information on income appears in court files while the woman is being interrogated as a suspect. It is entered by a police officer based only on the declaration of the person being questioned. This is the interviewee's own income, not including their partner's income. Also, starting in 2016, every woman with children has been entitled to a family benefit for the second and each subsequent child in the amount of 500 PLN per month.

10 In 2017, the minimum remuneration for an employment contract stood at 1,449.48 PLN net per month, and the average salary was just over 3,000 PLN.

11 In 2019, one in four children in Poland was born to unmarried parents.

12 The data were collected with reference to 41 recidivists.

A departure from a traditional family model could be observed a generation earlier, in the families our subjects grew up in as teenagers. Only 40% had had both biological parents around, one-quarter of the girls (27%) were raised by a single mother, while one in ten (11.5%) grew up in a reconstructed family with a stepfather. Similarly, almost one in ten girls (9.6%) had been taken in by a foster family or an institution.[13]

Most (83%) of the recidivists in the study were mothers; only 9 were childless. In most cases, the women had only one (25%) or two (31%) children. Seven of the women had 3 children, 5 had 4 children, and 2 women had 5 children. In the course of the research, we also collected data on how many dependent minors remained in the women's households. It transpired that one in five female recidivists was not raising one or more of her own children. Considering that the subjects were of an age where their children could not have yet reached maturity, the only explanation was that the children were being raised by other people. This was mostly true for women with several children. Out of the 7 mothers with 3 children, only 3 were raising all of them. Out of the 5 mothers with 4 children identified in the study, only 2 women had all of their children in their care. Only 1 of the 2 mothers with 5 children was raising all of them.

As can be inferred from the data presented above, the women who had the most convictions were all in quite vulnerable positions. Most of them were not raising their own children, they were often the sole breadwinners, and they had low incomes. Moreover, the case of persistent offenders corroborates the observation that criminal careers are accompanied by other deviant behaviours. Out of the 52 recidivists whose court files had been analysed, more than half were addicted to alcohol, and one in five struggled with drug abuse. This is yet another element on a list of factors which affect the social functioning of these women and their ability to carry out their maternal duties. In several cases the court files reported that the subjects struggled with both alcohol and substance dependency. Thirty of the persistent offenders who—according to the court files— suffered from substance abuse had experienced quite a lot of drama involving alcohol and drugs early in their lives. Twelve girls were reported to be abusing alcohol extensively; 6 of them were taking drugs, with 3 girls already addicted as teenagers. By and large, the parents failed to provide a nurturing environment: two-thirds of the mothers were incompetent as parents or had a negative opinion, the latter shared also by 70% of the fathers.

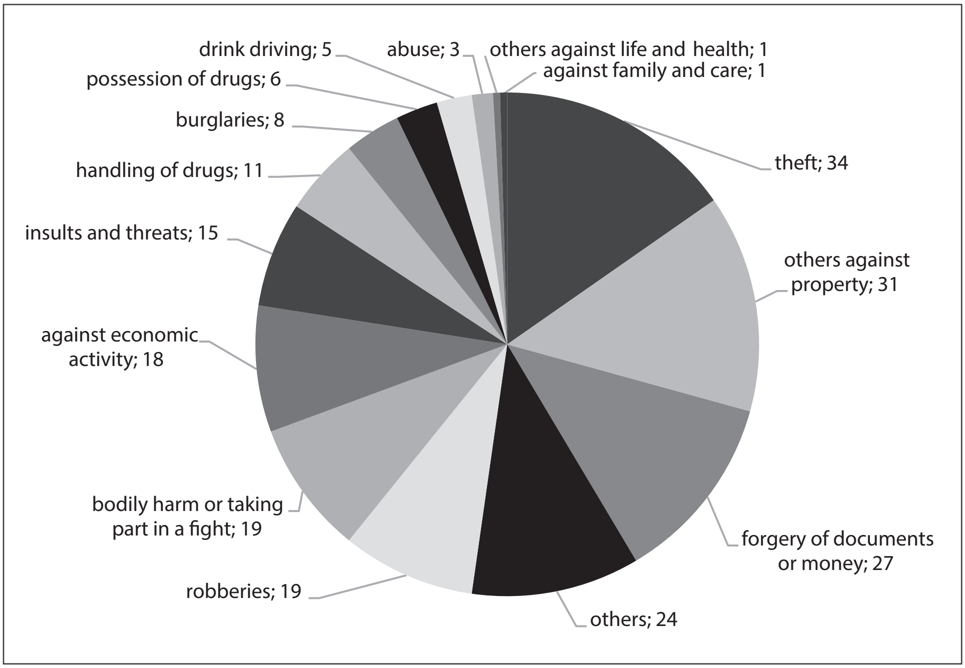
All of the above-described factors, such as poor financial situations, joblessness, or low-paid work, no professional qualifications, or addictions which afflicted almost all of the persistent offenders identified in the study, were the biggest obstacles on the road to desistance (Nugent and Schinkel 2016: 569).

13 No data were available on 6 girls.

Types of crimes by recidivist women in adulthood

A look at the breakdown of crimes committed by recidivist women[14] reveals a predominance of crimes against property, particularly theft (34[15]), forging of documents and money (27), and crimes against economic activity (18). Other crimes against property were also common (31). Special attention should be paid to assaults and robberies: they are classified as crimes against property according to criminal law, but are perceived as violent crimes from a criminological perspective. There were 19 women who were found guilty of those. Similarly, 19 women answered for bodily harm or taking part in a fight, and 15 for insults (including insulting a public official) or threats. There were also crimes related to possession (11 offenders) or selling drugs (6 offenders). The remaining crimes occurred less

Figure 3. Types of crimes committed by recidivist women



Source: Own research

14 For this analysis, the data for all 64 women who were defined as persistent offenders were taken into consideration (those who had committed at least three offences in adulthood and were convicted at least twice). One woman in this group died in 2013 at the age of 28.

15 This number means that out of 64 recidivists, 34 were convicted of theft. The numbers in brackets do not add up to 100 due to the fact that all women in this group committed offences repeatedly and of different types.

frequently: burglaries (8), drink driving (5), mental and physical abuse of relatives and dependants (3), crimes against family and care (1), and other crimes against life and health (1). Additionally, 24 women were found guilty of crimes other than those listed above.[16]

Are there different categories of recidivism?

A particular advantage of longitudinal studies is that they offer the opportunity to verify the collected data over and over again, and to examine whether a hypothesis proposed earlier is still valid several years later. In an article from 2017 (Woźniakowska-Fajst 2017) in which I studied the recidivism of girls after a five-year follow-up period, I surmised that there were three types of recidivism. It should be recalled that in 2016, when the article was written, the girls had had two follow-ups, in 2011 and 2016. During the first phase of the catamnestic research in 2011, 105 women had been convicted of criminal offences after reaching the age of criminal responsibility (i.e. within 6–10 years[17]). By 2015 that number had risen to 153 women. In the group of women who had been convicted at the fifteen-year follow-up period, a subgroup emerged which I dubbed 'late recidivists' concerning women who had got in trouble with the law as juveniles, then desisted[18] in subsequent years (from 6 to 10 years[19]) only to be convicted between 2011 and 2015. Thus, I observed that the recidivists were by no means a homogenous group. To my mind, they fell into the following categories: 'early recidivists', who had been convicted before 2010 and who remained conviction-free afterwards, the previously-mentioned 'late recidivists', and 'permanent recidivists', who consistently racked up convictions throughout the follow-up period. Having accounted for corrections of the database implemented in 2019, the database ultimately yielded 68 'early

16 In the course of further research, which entailed determining how many of the recidivist women were currently serving a prison sentence, it turned out that in 2018 one of them was convicted of murder. In the summer of 2019, she was the only one from this group who was in prison.

17 The period depended on the age of the juveniles in 2000. Based on the data from National Criminal Registry, it was only possible to analyse offending history once the age of criminal responsibility was reached.

18 At this point, it should be clearly emphasised that a lack of conviction does not mean that the women did not commit any criminal offences. Only convictions for committing a crime are recorded in the National Criminal Registry. Consequently, this system will not provide us with data on offences (and some of the juvenile girls did appear before court in connection with offences), discontinuation of proceedings, and cases in which the punishable offence was never brought before any institution of justice.

19 The individual fitted our working definition of a 'recidivist', however we failed to obtain her court files detailing the last criminal case against her, which effectively eliminated the woman from in-depth research.

recidivists', 38 'permanent recidivists', and 48 'late recidivists', totalling 155 women who had been convicted by 2015 (inclusive). There is no distinct difference between the groups. In addition, 12 more women with first adult convictions from 2016 or 2017 appeared in the follow-up period in 2017.

That the group of 'early recidivists' had not shrunk was a welcome observation. None of them were convicted in the two following follow-up studies after 2010. Out of the 48 'late recidivists', only 7 women were convicted after 2015 (5 in 2016 and 2 in 2017). As for the group of 38 'permanent recidivists', 2016 saw the convictions of 7 women, while there were none convicted in 2017.

On the one hand, it is clear that the women convicted after 2015 appear before courts more rarely. It may be (or may not be) that this is a harbinger of their desistance. On the other hand, the 12 women convicted for the first time after 2016 and 2017 are a cause for concern. There does not seem to be a common thread linking the women in this group. Since most of them were only convicted once, their adult profile has not been researched. Only one woman was convicted 4 times for 5 offences[20] between 2016 and 2017. All of them had one case before family court in their youth, in 2000. Most of them were at school at the time; one had to repeat a year. Half of the girls lived with their biological families with both parents, 2 were raised by single mothers, and 2 were with foster families. Most of them had siblings. In most cases their housing conditions were deemed to be good or average.

As adult women, they were first convicted after turning 30. Ten women had had a single conviction (the remaining 2 had 2 and 5 convictions). Half of the women had committed crimes against property, 1 was guilty of assault and robbery, 2 had caused bodily harm, 2 had been convicted of insults and threats, and 1 had committed a crime against economic activity, and another 1 was guilty of drink driving. Two women had broken the law abroad. None of the offenders were sentenced to imprisonment. I'd wager that as far as this particular group of women is concerned, their criminal activity was a single occurrence in the majority of cases and most will continue their lives conviction-free.

Determinism indeed?

The second half of the 19th century saw the birth of criminology and its positivist approach, which was based on a deterministic concept of man and offenders. It is predicated on the premise that human behaviours have causes, often beyond the individual's influence or control. It questioned why some people commit crimes, while others don't. Spurred by scientific zeal, the proponents of the approach looked for biologically-motivated causes (such as brain trauma or genetic characteristics)

20 Only one for theft, the remaining ones for 'other crimes against property'.

or socially-determined causes (e.g. a difficult situation at home or poverty). The trend of critical criminology which emerged in the 1960s included further factors which contributed to offending, such as social inequalities or conflicts between social groups, and it labelled offenders as deviants, leading to their exclusion from society. In other words, the positivist and critical trends propose that certain individuals are, as it were, 'burdened'—with independent circumstances at play they have no choice but to commit offences; alternatively, committing an offence seems like the only rational choice given the circumstances (Błachut et al. 1999: 44–51)—some are simply unlucky enough to have been born in such disadvantageous conditions and into such dysfunctional families that their fate seems to have been sealed from the start.

Yet, just as the classic victimology concept of victim precipitation can quickly lead to victim blaming—which distorts the original idea and harms the victim—so can the criminological idea of the deterministic concept of man prompt fatalism and a belief that there is little point fighting for the life and needs of a person whose circumstances predetermine them towards deviant behaviour and persisting in it. If we look at the qualitative data and analyse individual cases, there is plenty of evidence that in some situations it is not easy to go against the grain and find enough strength to live a stable life away from crime, although, hopefully these women are not doomed.

The last follow-up (from 2017) showed that in the original group of juvenile girls there were 5 women who had at least 10 convictions in adulthood. It may be interesting to take a closer look at their stories, a lot of them alike and offering an insight into similarly deprived childhoods and teenage years leading to troubled adulthoods, where desisting does not come easy. What these 5 women with the highest number of convictions have in common is a much more frequent involvement with the criminal justice system in their youth. In the year 2000 alone, 4 of them had 4 cases each, and 1 had 3 cases. Furthermore, before 2000, each of the girls had appeared before family and juvenile courts. The second common denominator was falling in with the wrong crowd and abusing alcohol at the age of 15–16, including attempting to steal a crate of vodka, breaking into a property to have a drunken party, and committing vandalism while drunk. Sadly, as regards this group of recidivists, too little information was gathered on the family situation and the socio-educational situation to be able to draw any conclusions. What is known is that the housing and financial situation of two of the girls were dire—the places they lived in did not even have toilets.

Another common element shared by the most prolific offenders was joblessness. The last time data was collected, only one of them worked. One woman from the group had never had a job, while the remaining ones took on simple physical tasks regardless of their educational background: 2 women had not continued their education beyond primary school, 1 had a vocational-school education, and 2 women had graduated from secondary schools.

As far as their adult family life is concerned, all the women were officially single (1 was a divorcee and 4 had never been married), but 2 had partners. All 5 women had children (3 had 2 children and 2 had 4), and for the most part they were raising them themselves (1 mother was only raising 3 of her 4 children).

Despite the abundance of offences and the number of convictions, none of the persistent offenders had ever engaged in serious crime, instead committing almost exclusively offences against property. Two women had committed robbery, which in both cases remained isolated incidents. One woman was charged with insulting a public official and another with drink driving. All of the offences combined comprised mainly thefts (4 women) and burglaries (2 women). There had also been cases of document forgery and crimes against economic activity.

Notwithstanding the fact that courts generally refrained from passing immediate custodial sentences with regard to the women in the study (only 32 women had served one in adulthood), all 5 of the women in question had been given the very sentence multiple times (from several to a dozen or so times: both suspended, and unsuspended custodial sentences). Each of them had served sentences a few times. The shortest combined prison time stood at 2.5 years, while the longest amounted to more than 6 years.

In 2017, when we followed up on the women's convictions for the last time, their lives had turned out differently. One of the women had been convicted the previous year, but the remaining ones had had a several-year break in their criminal pursuits. In two cases, it was unfortunately due to imprisonment of the subjects, however, in the other cases, there simply were no convictions over a period of 3 to 5 years. It is certainly impossible to say whether this spells desistance or just a break in the criminal career.

Of all the women who took part in the study, D. W., the most prolific of the offenders—with 18 convictions for 21 offences—was most extensively covered, data-wise. Her name came up twice during the primary research, when we analysed court files from family and juvenile courts for the year 2000, as she had appeared in court twice for punishable offences. At the age of 15 and under the influence of alcohol, she broke into a bookshop with a female accomplice her age and stole hair accessories. The court refused to open the case, on account of the juvenile D. W. having been issued an educational measure in the form of placement at an educational centre,[21] where she'd been for two months already. Several

21 In 2000, there were very many minors who committed criminal offences, so many that the educational centres and correctional facilities had fewer places than the number of children for whom such measures were imposed. Therefore, it was not uncommon at the time to wait for months until a place became available, while the children remained at home. The problem was also that isolation measures are imposed on children, not only because of the gravity of their offences, but also due to the conviction of the court that the family environment was so bad and destructive for these minors that for the sake of the child they should be taken away (Górecki and Konarska-Wrzosek 2019: thesis 47). The prolonged stay of a minor in their family generally exacerbated the process of their moral corruption.

months after that, she offended again by breaking into a flat and having a drunken party on its premises. She was accompanied by two male friends, a female friend, and a sister, all aged 13–21. The victim was an acquaintance of the female friend. At the time of the offence, D. W. was already a resident of Youth Educational Centre (she was on leave to visit family), hence the case was dropped. With the second case pending, the court had collected information on the minor's upbringing and found that D. W., who had previously dropped out of school, had resumed her education at a vocational school, while at the centre. It transpired from further records that in the end she left school with only a primary-school education. Very scarce information from the background check indicated considerable challenges with both the minor herself and the functioning of her family. D. W. had a minor learning disability. The course of the two cases related to punishable offences revealed a teenager who was dependent on alcohol, smoked, and was involved with the wrong crowd. She skipped school, ran away from home, and was a regular at a children's shelter.[22] Her family consisted of a stay-at-home mother, a stepfather, and a younger brother all sharing the space of a single room with an open kitchen and no bathroom.

Her older sister— with whom D. W. broke into a flat to drink— was 21 at the time, did not attend any school, did not work, and had a drinking problem. The upbringing environment of the juvenile girl was so morally corrupt that the probation officer in charge of the check recommended that D. W. go on leave from the Youth Educational Centre less frequently, since contact with her family contributed further to her problems.

In 2001, D. W. reached the age of criminal responsibility and was convicted of theft a year later. She received a 6-month custodial sentence,[23] but clearly failed to carry it out in accordance with the court's recommendations, as it was replaced with an alternative punishment of 5 months imprisonment. The subsequent convictions were solely for theft (including a burglary). Also, she'd been imprisoned 5 times. The last conviction dated back to 2014. The sentence was imprisonment, which had already been postponed twice,[24] possibly as a result of the woman's family circumstances. According to the background check of 2017, D. W. was a divorced mother of two, with no steady income (registered as unemployed) and a history of simple, manual work. Financially, she relied on the '500+' child benefit and child support, amounting to 2,000 PLN. In 2017, she was raising two sons: a 6-year-old back in her care since the previous year, after having been taken away, and a baby boy under 12 months of age. The fathers of the children and the woman's mother

22 Children's shelters are facilities that reach out to children who have run away from homes or educational facilities and who end up roaming the streets.

23 This punishment involves doing community service.

24 Art. 151 of the Executive Penal Code provides that the sentence of imprisonment may be postponed if the consequences of its implementation would be too severe for the convicted person or their family. A case in point might be the responsibility of childcare.

supported her in the parental duties. D. W. maintained constant contact with her family, where the mother and the older sister had been previously convicted and imprisoned. On the other hand, D. W. declared that she had turned over a new leaf, severing ties with former friends, no longer drinking or using. She also emphasised that no criminal proceedings were being conducted against her (although the probation officer pointed out that in 2016 she had been punished for a minor theft).[25] It would seem that in this case at least there was a glimmer of a brighter future, albeit fickle.

Conclusions

In conclusion, we should hypothesise that (at least in Poland) when describing women who have been convicted more than once, it is not a case of criminal careers. I would suggest considering their acts more as criminal episodes rather than careers. In nearly half of the cases, these acts were concentrated in a rather short period of time (up to 4 years) and were periodically abandoned during their whole adulthood.

As regards all of the surveyed women who were convicted in adulthood, we can never know the reasons why at some point in their lives they decided to commit a crime. However, we know these decisions (or perhaps just an unfortunate set of circumstances?) had nothing to do with 'mistakes of youth', youthful immaturity, or a lack of deeper reflection on the consequences that are so characteristic of young people. The first conviction in adulthood (and this is both for women convicted only once as well as for those who were convicted several times) did not necessarily fall in the period of early adulthood. This likely has more to do with the beginning of adult social roles, the need to look after themselves and their child(ren). After all, the majority of criminal acts were crimes against property. One should remember that the overwhelming majority of female recidivists were raising children and that only half of them were in relationships.

The hypothesis that recidivism and other deviant behaviours coexist has been confirmed: half of the recidivists are addicts, most often alcoholics. In the case of 12 girls, these addictions have persisted since they were juveniles. In the case of five female chronic offenders (convicted 10 times or more), we can say that their fate was somehow determined. Their childhoods were difficult, the onset of criminal behaviours was early, in adulthood they did simple manual work or did not work at all, struggling with the need to support their children. They all were sentenced to prison and actually served their sentences.

25 In 2016, theft of items worth up to 25% of the minimum salary, i.e. 462,50 PLN, was treated as an offence, not a crime.

Determinism is yet different from fatalism in that it assumes different life scenarios stemming from the same starting point. While fatalism argues that 'nothing in the future depends on any human actions, because everything has been predetermined by causes even before our decisions have been made' (Kotarbiński 1976: 23), determinism insists that even if an individual is burdened by various factors it does not mean they have no control over their life and cannot find a way out or change the course of their life. This altogether optimistic belief leaves room for the hope that the fate of women embroiled in the life of offending and deviation since adolescence is not set in stone. Even those women who have broken the law numerous times, have been in and out of prison, have no education to speak of, and struggle to find even simple employment can find it in themselves to turn their lives around.

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The characteristics of trafficking in human beings in Hungary and Romania

Charakterystyka zjawiska handlu ludźmi na Węgrzech i w Rumunii

Abstract: Hungary and Romania are both origin and transit countries for victims of human trafficking, considering the lack of work opportunities and the deep poverty in some parts of these countries. The TIP Report[1] for 2019 lists both Hungary and Romania on the Tier 2 Watch List[2] for different reasons. National and international organisations report an alarmingly high number of trafficking cases in both countries, while the number of trafficking investigations and the sentences for these crimes are low. Since 2010, the leadership of the two countries has tried to meet American and European expectations through various measures. New laws have been created in both Hungary and Romania, and there are numerous regulations that deal with victims of trafficking in human beings (hereinafter: THB). This desk research study, based on a comparison of Romania and Hungary, provides insights into the characteristics of THB in these countries.

Keywords: trafficking in human beings, Romania, Hungary, exploitation, crime groups

Abstrakt: Węgry i Rumunia są uznawane zarówno za kraje pochodzenia, jak i kraje tranzytu ofiar handlu ludźmi. Wynika to z braku możliwości podjęcia pracy i głębokiego ubóstwa panującego w niektórych częściach tych krajów. W raporcie "Trafficking in Persons" (the TIP Report) za 2019 r., wydawanym przez Biuro ds. Monitorowania i Zwalczania Handlu Ludźmi Departamentu Stanu USA, oba

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1 The Trafficking in Persons (TIP) Report is an annual report issued by the U.S. State Department to monitor and combat human trafficking. The report divides countries into tiers based on their compliance with the standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000.

2 The Tier 2 Watch List is a list of countries whose governments do not fully meet the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards (USA Department of State 2019: 36).

kraje zostały wymienione wśród państw, które – pomimo podejmownanych wysiłków – nie spełniają minimalnych standardów określonych w *Trafficking Victims Protection Act*. Różne krajowe i międzynarodowe organizacje informują o dramatycznie zwiększającej się liczbie przypadków handlu ludźmi w każdym z tych krajów, ale jednocześnie o niewielkiej liczbie prowadzonych postępowań karnych i skazań za to przestępstwo. Od 2010 r. rządy Węgier i Rumunii, wykorzystując różne instrumenty, starają się doprowadzić do implementacji amerykańskich i europejskich zaleceń. W każdym z tych krajów zostały wprowadzone nowe przepisy dotyczące postępowania z ofiarami handlu ludźmi. Analiza danych zastanych pozwoliła na charakterystykę i porównanie nowo przyjętych rozwiązań w obu państwach.

Słowa kluczowe: handel ludźmi, Rumunia, Węgry, wykorzystywanie, grupy przestępcze

Introduction

In the last 30 years similar changes have taken place in Hungary and Romania: economic and social difficulties following the political transformation. The trafficking in human beings is currently quite common in both countries.

These three decades can be divided into two major periods from the aspect of human trafficking in Hungary and Romania.

> With the fall of Berlin Wall and the opening of the borders between East and West, trafficking from South and Eastern Europe and the former Soviet Union increased markedly… Some countries, such as Hungary… developed prolific sex industries, which involve trafficking or sexual exploitation. (Surtees 2008: 40)

The first 15 to 20 years were focused on joining the EU and catching up with the Western economy, then joining the Schengen Area and the economic crisis of 2009. While Hungary has been a member of the European Union since 1 May 2004, Romania became a member state on 1 January 2007. The inclusion of Romania in the Schengen Area is still to come.

The last 10–15 years have been characterised by meeting international expectations, taking steps to curb the spread of corruption (a major problem in these countries), and promoting the rule of law. Since EU accession, a significant proportion of the population in both countries has had access to free movement and employment in other EU countries, and there has been considerable emigration for the past decade and a half.

The 2009 economic crisis has left a mark on the economies of both countries, caused major social problems, and deeply affected the living standards of their populations: the 'empty villages' left behind by a migrant workforce following the unemployment, the deprivation of material resources, and the proliferation of criminal groups exploiting vulnerable people without marketable skills.

Nevertheless, TBH is happening in both countries, and their citizens are both the victims and the perpetrators. It is therefore useful to look at the characteristics, similarities, and differences between the victims and perpetrators in the two countries and how the states have tried to put an end to it by legal means.[3]

1. Statistical background

The economic and social problems that followed the financial crisis in 2009 remain unsolved, in both Romania and Hungary. It is a very serious concern that many young people are dropping out of school; illiteracy and other poor life skills make potential victims even more vulnerable to accepting what seems like easy money. The exploitation of the vulnerability of people living in poor financial situations lies behind these problems, and it is precisely the impoverished regions of northern Hungary and southern Transdanubia that are the most susceptible.

However, there is a huge difference in the size of the populations of the two countries: while Hungary has fewer than 10 million inhabitants, Romania has nearly twice as many. Although the proportion of young people (between 0–14 years) is similar (Hungary: 14.3%; Romania: 15.2%), youth unemployment is very different: in Romania, it is almost double (17.3%) that of Hungary (9.4%). Another noticeable difference is the degree of urbanisation. The proportion of people living in urban areas is higher in Hungary (71.4%) than in Romania (54%). Romanian small towns and rural areas are much more likely to become a source of THB (Migration Data Portal 2019).

In 2017, more than one-third of the population was at risk of poverty or social exclusion in three EU member states: Bulgaria (38.9%), Romania (35.7%), and Greece (34.8%) (Eurostat 2019).

With an at-risk-of-poverty or social exclusion rate of 24.9% in the EU28, children were at a greater risk in 2017 than the general population (22.4%). This situation also existed in 19 of the EU member states. In the EU28, the largest gaps between the at-risk-of-poverty rates for children and the total population can be seen in Romania and Hungary (6.0% each) and Slovakia (6.2%) (Eurostat 2019). To outline the similarities and differences – without claiming completeness – we present some aspects below.

3 We would like to thank to Ágota Szekeres, who was an Erasmus+ Student at the National Institute of Criminology. Special thanks to the International Organisation of Migration Budapest (to the director, Balázs Lehel) and to Mircea Mocanu and Emma Smith (IOM Mission in Romania) for their kind help.

2. Criminological view

2.1. General overview

From a criminological point of view, human trafficking can be typified in several ways. It can be classified by type of exploitation, including sexual, labour, and other purposes. The point of departure may be where the crime takes place: within one country or internationally. Based on the age of the victims, the vulnerability of children should be particularly highlighted. Based on the gender breakdown, some forms of exploitation are gender-specific: a sexual purpose is typically used to harm women and girls, labour exploitation is more likely to harm men, and the other purposes (e.g. forced begging) are more likely to harm boys and men.

As with most crimes, statistics on THB do not necessarily reflect the reality. Data provision is not uniform across EU countries, and Hungary has not always provided the same data[4] for the preparation of TIP Reports. Therefore, comparing the data requires some source criticism. What certain is that the Romanian raw numbers are orders of magnitude higher than those for Hungary.

Both cross-border and domestic exploitation are extremely common in both countries. Romanian and Hungarian woman are very famous as sex workers in large European cities. On the other hand, labour exploitation is also very common in these two countries. 'In 2019, the numbers show that 46% of the victims were trafficked inside the borders, while 54% of the victims were trafficked outside of Romania' (*Caracteristicile victimelor* 2019).

Statistics on THB have only been collected by Eurostat statisticians at the EU level since 2010. According to Eurostat data, two-thirds of victims of THB were EU citizens (Romania, Bulgaria, the Netherlands, Hungary, and Austria) in 2013–2014, while less than half of them were in 2015–2016.

Unfortunately, 'the top five EU countries of citizenship of registered victims in 2015–2016 were Romania, Hungary, the Netherlands, Poland, and Bulgaria.' These are the same countries as in 2010–2012 in the first Commission Progress report (European Commission 2018: 13).

When the focus is on proportion (registered victims per million population), the top five member states for registered victims' country of origin in 2015–2016 are the Netherlands (72), the United Kingdom (54), Cyprus (53), *Hungary* (51), and Austria (44). When the focus is on absolute numbers of registered victims, the top five are the United Kingdom (7,071), the Netherlands (2,442), Italy (1,660), *Romania* (1,636), and France (1,516) (European Commission 2018: 14). Clearly, the citizens of Hungary and Romania are routinely victimised by THB at the European level.

On the other hand, Romanian criminal groups play a central role in THB at the EU level. The five member states with the highest number of reported persons

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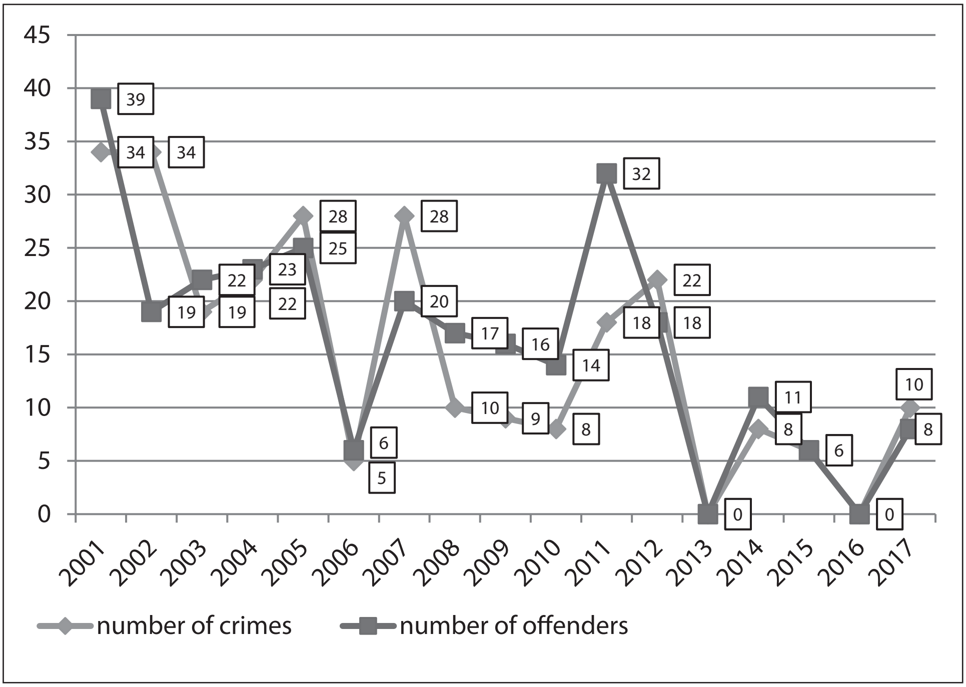
4 Numbers of total (closed) or newly registered cases.

suspected, arrested, or cautioned for THB in 2015–2016 were Romania (2,777), Germany (1,198), Czechia (1,148), Bulgaria (856), and France (465) (European Commission 2018: 15). The five EU citizenships with the most suspects in 2015–2016 were Romania (3,280), France (612), Bulgaria (337), Germany (314), and Latvia (161) (European Commission 2018: 15).

Among EU citizens prosecuted for human trafficking in the EU28 during the period 2015–2016, the countries with the greatest representation were Romania (44%), Hungary (28%), the Netherlands (5%), Italy (5%), and Lithuania (5%) (European Commission 2018: 16). Since 2010, three countries have consistently been in the top five: Romania, Bulgaria, and Hungary (European Commission 2018: 81).

Sexual exploitation was the most widespread form of exploitation identified in both countries in 2017, comprising 69% of the total. Romanian statistics show an increase in the number of victims being forced to steal.[5]

Figure 1. Hungarian data on Trafficking in Human beings between 2001 and 2017



5 Rising from 4 to 43 between 2016 and 2017 (Analiza 2017).

Although the international data paint a negative picture of the situation in Hungary, the Hungarian national criminal statistics from 2001 onwards show that the numbers are very low. Between 2001 and 2012 the *average* number of crimes and perpetrators of THB was about 20 per year; following the introduction of the new Criminal Code, it was about 5 between 2013 and 2017. The Hungarian law enforcement authorities are wary of applying the new fact on THB.

While in Hungary there were only about 10 registered cases in 2017 and 2018, in Romania

> there were 1,598 criminal cases regarding human trafficking, child trafficking, and pimping. Of the 1,598 files in 2018, 498 were registered, concerning 884 perpetrators. According to the official data, in 2018 about 87 per cent of THB cases were registered for sexual exploitation, 8 per cent of cases for exploitation through work, and about 4 per cent for exploitation through begging. (Data from IOM Mission in Romania)

According to data on Eurojust's activity, only 5% of all cases dealt with related to THB in 2017. Of the 132 cases in 2017, most were initiated by Romania, the United Kingdom, and Bulgaria (so-called requesting member states). The most frequent requesting member states were Romania, Germany, and the United Kingdom. The Eurojust has nearly 400 THB cases and 62 joint investigation teams (26 new and 36 ongoing) (Eurojust 2018; 2020: 50).

2.2. Recruitment methods

The recruitment methods are very similar in these two countries, as mentioned above: the hope of a better life and the promise of quick income, especially coming from the mouth of an acquaintance, will always be enticing. Victims are mostly recruited by friends, acquaintances, or relations. 'Some recruiters were women who were encouraged by their recruiter/trafficker to invite their friends to also work abroad. Some recruiters/traffickers were male/female couples' (Surtees 2008: 44–45). It was very new in 2008, but by 2019 this had become an everyday recruitment method. 'Romania recruited victims who were known to them, although their relationship to the victim ranged from close (friend/family) to more distant (acquaintances)' (Surtees 2008: 52).

Romanian offenders prefer the following countries as destinations, including those parts of the country where Romanian communities are more concentrated: Italy, France, Germany, Spain, and the United Kingdom – in a different order to 2016.

> In most of the cases, the recruiter approaches the victim directly, in face-to-face discussions. In 24% of cases, the recruiter presents some advantageous

> work opportunities for the potential victim, both in Romania and abroad, while in 38% of the cases the recruiter offers the victim the possibility to practice prostitution, begging, or pornography.' (*Caracteristicile victimelor* 2019)

According to ANITP (National Agency Against Trafficking In Persons) data from 2019, it is 'noteworthy that 55% of the victims originate from rural areas.'

2.3. Victims

The situation of the Roma minority in both Romania and Hungary poses enormous challenges for the decision-makers of the two countries, and unfortunately they have been hit the hardest over the last 30 years. The Roma minority face huge problems: extreme poverty, social exclusion, and difficulties with education, employment, health, and housing conditions. The risk of marginalisation of Roma populations is very high in both countries. These findings show a correlation with the phenomenon of Roma being represented as both victims and offenders of THB. On the other hand, we must emphasise that the phenomenon is not only linked to the Roma. According to the TIP Report, minors represent nearly 50 percent of trafficking victims identified in Romania (USA Department of State 2019: 393).

The Hungarian Roma population was prominent in two counties in 2016: 19% of the Roma lived in Borsod-Abaúj-Zemplén, and 14% lived in Szabolcs-Szatmár-Bereg (60,000 and 45,000 people, respectively). These are also the main source counties for THB in Hungary (*Mikrocensus* 2016: 12).

In this type of crime, the offenders are mainly men (with some help from women, especially close relatives). The gender of victims depends on the type of exploitation: sexual exploitation is mainly committed against women, while the victims of forced labour and other exploitations are more often men than women.

As reported over the past five years, human traffickers exploit domestic and foreign victims in Romania, and they exploit victims from Romania abroad. Romania remains a primary source country for victims of sex trafficking and labour trafficking in Europe. Traffickers subject Romanian men, women, and children to labour trafficking in agriculture, construction, hotels, manufacturing, and domestic service, as well as forced begging and theft in Romania and other European countries. Traffickers subject Romanian women and children to sex trafficking in Romania and other European countries (*Analiză…* 2017).

Child abuse is widespread in both countries; their forced 'release' is one modus operandi, and, unfortunately, we have less information about the situation in Hungary than in Romania. Roma children in Romania, as young as 11 years old, are particularly vulnerable to forced begging and sex trafficking. Traffickers subject Romanians living in state institutions for the mentally disabled to undertake forced labour (USA Department of State 2019: 393).

According to migrationdataportal.org, child victims are much more frequent in Romania than in Hungary. The reason for this difference may stem from the dissimilar child protection systems. Although there is much room for improvement in Hungary, the country does have experience (Anghel, Herczog and Dima 2013).

Table 1. Proportion of child victims of trafficking identified by CTDC partners between 2002 and 2018

	Proportion of children among victims, by country of citizenship	**Proportion of children among victims, by country of exploitation**
Hungary	6.7%	4.3%
Romania	8.9%	8.8%

Source: migrationdataportal.org

The characteristics of child victims registered during the period 2015–2016 also vary according to their citizenship in the EU28. Nearly half of the registered child victims from the EU (647 out of 1,310) were from Hungary (647), with the Netherlands (255), France (191), Romania (86), and Croatia (27) being the most significant other countries. There were more child victims with EU citizenship (1,310) than with non-EU citizenship (643) or where citizenship was 'unknown, stateless, or other' (253). The gender of the child victims varied according to citizenship in the EU28 in 2015–2016 as well. Over four-fifths (84%) of the victims with EU citizenship were girls; girls made up just over half (54%) of the victims with non-EU citizenship and just under one-third (30%) of those whose citizenship status was unknown, stateless, or other (European Commission 2018: 92).

The five most common citizenships of EU suspects in child trafficking cases in 2015–2016 were Romanian (3,280), French (612), Bulgarian (337), German, (314) and Latvian (161). In the period 2010–2012, Eurostat found that the most frequent countries of citizenship of EU suspects were Bulgaria (1,230), Romania (1,209), Belgium (1,089), Germany (681), and Spain (396) (European Commission 2018: 122). Of those prosecuted for trafficking in 2015–2016 whose citizenship was known, 87% held EU citizenship; the countries that contributed most were *Romania* (44%), *Hungary* (28%), the Netherlands (5%), Italy (5%), and Lithuania (5%) (European Commission 2018: 127).

According to the TIP Report,

> a large number of Hungarian child sex trafficking victims exploited within the country and abroad come from state-provided childcare institutions and correctional facilities, and traffickers recruit them when they leave these

> institutions. Hungarian men are subjected to labour trafficking in agriculture, construction, and factories in Western Europe. Within the country, some Roma children are exploited in forced begging, child sex trafficking involving both girls and boys, and forced petty crime.' (USA Department of State 2019: 233)

Segregated and impoverished environments, where the risk of criminalisation is substantially higher, are identified as an additional risk factor in Hungary, Romania, and Slovakia (Dimitrova, Ivanova and Alexandrova 2015: 17; National Agency against Trafficking in Persons 2013).

Low levels of education, early school leaving, and high illiteracy rates – resulting from a history of social exclusion of the Roma and representing both the consequences and causes of poverty and unemployment – make parents and children less aware of the risks and potential facilitators of human trafficking and more susceptible to the traffickers' 'traps' (Dimitrova, Ivanova and Alexandrova 2015: 16). Roma constitute about 90% of the victims of trafficking for begging and pickpocketing, and the minority group is significantly overrepresented among victims of sexual exploitation. The significant share of Roma among trafficking victims calls for special attention to the factors that make members of this ethnic minority vulnerable to trafficking (Dimitrova, Ivanova and Alexandrova 2015: 14).

In Hungary, an important distinction is made between children used in begging by their mothers (who are usually between 0 and 5 years old), children begging alone but living in family environments (who are usually between 8 and 13), and children from institutions who practice begging from the age of 13 to 17 years (Dimitrova, Ivanova and Alexandrova 2015: 27).

3. Legal background

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000) and EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims defines the crime of trafficking in human beings (Europol 2016: 5).

In this study, we want to talk not only about the sociological/criminological characteristics of THB, but also to provide insight into the criminal (substantive) legal regulations of the two countries: unfortunately, we only have the opportunity to make an brief summary within the scope of this study.[6]

6 We note that, in terms of Romanian regulations, the study is based mainly on the available English-language academic literature.

Both the Hungarian and Romanian legislatures have built their respective criminal law(s) on THB on the model of the EU directive, although in different ways, as we will illustrate. Fundamental differences exist in the detailed regulations (it is worth exploring and analysing them in detail in further research in the future), but the essential identity exists.

Thus, based on our own conception, we review the criminal law part of the study according to the following key cornerstones[7] in the regulations of both countries (first in Hungary, then in Romania): the legal context, the structure of criminal law cases concerning THB, a more detailed presentation of 'basic cases', and different interpretations of exploitation. Within the framework of this study, we sought a more descriptive comparison, but these comparisons may serve as a basis for an in-depth, international (possibly on the whole Carpathian region) comparative study in the future.

3.1. Hungarian perspective

Legal context

Hungary has made progress in the fight against human trafficking by following the recommendations of the Council of Europe (MTI-Hungary Today 2019). Vulnerable women trafficked for sexual exploitation by organised crime groups, identification of victims, and assistance and support are the key priorities of the Hungarian government and national NGOs, whilst combatting criminal groups or individual traffickers is passed on to the national law enforcement authority (Sharapov 2019: 41).

The domestic legal regulations against trafficking in human beings (and related phenomena) are rooted in the 19th century. The first Hungarian Criminal Code (Act V of 1878 – Codex Csemegi) did not contain specific provisions on trafficking in human beings, but it addressed issues that were later referred to in international conventions as trafficking in women and children.

In addition to the substantive and procedural provisions of criminal law, TBH is also covered by other legal acts in Hungary, and more than 90 legal acts and sources refer to it.[8]

7 These are the cornerstones on which additional regulation points and cases (which are only summarised in this study) are built.

8 Decision 1125/2019 (III.13) of the government on the measures necessary to increase the efficiency of combatting human trafficking (Action Plan), Act LXXXV of 2001 on the Protection Programme for those Participating in Criminal Proceedings and Supporting Jurisdiction ('Witness Protection Act'), Act CXXXV of 2005 on Crime Victim Support and State Compensation, Government Decree No. 354/2012 (XII.13) on the identification order of victims of trafficking in human beings, Order No. 13/2014. (V. 16) of the National Police Headquarters on the police duties concerning the treatment of offences related to prostitution and human trafficking primarily serves uniformed police action against prostitution and victim protection tasks for police agencies, etc.

Furthermore, it should be noted that three recent innovative guidelines from the General Prosecutor's Office are outstanding in the field of THB and its criminal substantive and judicial issues in general (on the crime of THB in the light of international standards and the practical aspects of its application and on identifying victims of trafficking crimes, these victims are persons with special needs).

Under the Fundamental Law of Hungary, in the Chapter of Freedom and Responsibility:

'Article III (1) No-one shall be subject to torture, inhumane or degrading treatment or punishment, or held in servitude. Trafficking in human beings shall be prohibited' (see Gerencsér 2015: 319). This chapter of the Fundamental Law, along with the general provisions and other regulations, shows that the new regulation lays an emphasis on the role of the individual within the community, on the responsibility of individuals for themselves, and for the community (Vincze Ádány et al. 2015: 79). The Fundamental Law maintains and reaffirms such significance of dignity; its function – to protect individuals and equality – is upheld therein. Absolute prohibitions in connection with human dignity are also listed by the Fundamental Law, such as the prohibition of torture, inhumane and degrading treatment, human trafficking, medical experiments without consent, and of practices aimed at eugenics, any use of the human body or any of its parts for financial gain, and human cloning (Vincze Ádány et al. 2015: 83).

Changes in social and economic conditions require legislative answers and solutions, even if there is a need to find a legal solution to the problem of human trafficking: all forms of trafficking in human beings are prohibited in Hungary. The specific offence of trafficking in persons has existed since 1998, under crimes against personal freedom and human dignity. The background to the offence being established, according to the legislature, was primarily the obligations stemming from the Slavery Convention (signed in Geneva on 25 September 1926).

The law was amended as of 1 April 2002, as required by the requirements of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000). The basic case has been supplemented by a number of behaviours, the system of aggravated circumstances has changed, and the legislature has created new aggravated cases. Act C of 2012 (the new Criminal Code), which largely modifies the above regulation, mentions THB in Article 192. In order to comply with its obligations of legal harmonisation, the legislature also explicitly criminalises certain acts committed for the purpose of exploitation. It addresses THB and forced labour in the Special Part Chapter XVII (Offences against Personal Freedom).

In view of its obligations under international conventions, the Hungarian Criminal Code proscribes THB in great detail, as a violation of human dignity, personal freedom, and the right to self-determination (Belovics 2018: 187).

Table 2. Forms of Exploitation[9] in the Hungarian Criminal Code

Form of exploitation	**Criminal Code (Act C of 2012)**
Sexual exploitation	§ 192 (2), §192 (5)d, § 192 (6)c, § 196, § 200–204*
Forced labour or forced service	§ 192 (2), § 193**, § 200–203, § 356***
Slavery or similar exploitation	§ 192 (2), § 193, § 356
Organ trafficking	§ 192 (3)f****, § 192 (4)b, § 192 (5)b, § 192 (6)a
Crimes committed by using a person (THB victim) (e.g. by the use of force)	§ 13 (2)***** (in CC General Part)

*§ 196 Sexual exploitation, § 200 Pandering, § 201 Procuring for Prostitution or Sexual Act, § 202 Living on Earnings of Prostitution, § 203 Exploitation of Child Prostitution, and § 204 Child Pornography. These offences are found in Chapter XIX (Sexual Freedom and Sexual Offences) of the Hungarian Criminal Code, which deals with offences against sexual morality and protects sexual freedom.
**§ 193 Forced labour in Chapter XVIII of the Hungarian Criminal Code
***§ 356 Unlawful Employment of Third-Country Nationals in Chapter XXXIV of the Hungarian Criminal Code (Criminal Offence-Related Administrative Procedures)
****§ 192, § 192 (3)f: 'The penalty shall be imprisonment between two to eight years if trafficking in human beings is committed: […] f) for the unlawful use of the human body.' More about unlawful use of the human body: see § 175 Illegal Use of Human Body in Chapter XVI of the Hungarian Criminal Code (Medical Procedures and Criminal Offences against the Order of Research)
*****'A covert offender is a person who instigates the commission of an intentional offence by using a person who cannot be prosecuted for reason of minority or insanity, of for reason of acting under undue influence by coercion or duress, or under misconception.'
Source: Emberkereskedelem elleni: 6

Here, we will point out that Act V of 2020 on the amendment of certain laws to prevent the exploitation of victims of human trafficking, unanimously adopted by Parliament on 10 March will take effect on 1 July 2020. From a criminal law perspective, one of the most prominent parts of the Act is the comprehensive reform of the facts of trafficking in human beings and forced labour.[10]

9 A wider context of exploitation: § 192 is supplemented in the system of the Criminal Code by the so-called prostitution-related parasitic offenses, sexual offenses, offenses relating to labor exploitation and other provisions for the protection of children.

10 Hungary's National Strategy against Trafficking in Human Beings (2020–2023) and the action plan on measures to be implemented in 2020–2021 were adopted in February 2020 by Government Decision No. 1046/2020 (II.18). The new strategy has foreseen the improvement of the legal environment for combatting human trafficking, which aims to exempt minors providing sexual services from criminal liability and to criminalise the users of any services provided by the victims of trafficking (reduction of the demand side). The Criminal Code, the Act on Minor Offences, the Act on Organised Crime, and the Child Protection Act were amended with a view toward protecting children from sexual exploitation (source: https://thb.kormany.hu/new-anti-trafficking-legislation-to-protect-minors).

Characteristics of the basic case in Section 192 (1)[11]

The basic case of THB beings criminalises acts without any other objective (means) or subject matter (exploitation purpose). The conduct of the basic case referred to in Para. 1 of Section 192 falls into two categories[12]:

a) a human as a subject of 'trade in goods': a sale, purchase, or exchange for another person, the transfer or receipt of another person as consideration
b) sui generis preparatory or sui generis aiding offences committed for the purposes referred to in paragraph (a) – the transport, harbouring, or sheltering of another person, the transfer of control over such a person.

ad (a)

Under the terms of civil law, for the purposes of sale and purchase, a seller is required to transfer ownership of the item, and the buyer must pay the purchase price and take possession of it. A common feature of property transfer agreements is that the actual principal service, the thing owned (or subsequently taken over) by the party providing the material service, is transferred to the other party for consideration (Bíró 2003: 14–30). However, although the subject matter of a sale may be nothing, the sale of a natural person is null and void under civil law and it is a criminal offence for the purposes of criminal law if the seller offers the passive subject for consideration (money or other property) to the buyer (Belovics 2018: 187).

During the exchange, the subject of the service and consideration is also the subject of a passive subject. The notion of swapping in this sense reflects the position of two or more individuals exchanging something, as in a barter deal (Czine 2011: 202). In the case of transferring or receiving as consideration, the consideration is not money, but other services. The person who transmits the natural person receives or has received a service and the consideration for it is the transfer of the person under his/her power, while the person providing the service receives a receipt (Belovics 2018: 188).

ad (b)

The acts listed here for the purposes of point (a) are intended to provide the conditions necessary for the commission of an offence. Transport is intending to change the location of the victim. Harbouring is the provision of accommodation for the victim (in any property owned or lawfully used by anyone). Sheltering the victim not only from the authorities or the victim's relatives, but from anyone else

11 Act C of 2012 on the Criminal Code Special Part Chapter XVIII (Offences against Personal Freedom), Section 192 (1) Any person who:

a) sells, purchases, exchanges, or transfers or receives another person as consideration; or

b) transports, harbours, shelters, or recruits another person for the purposes referred to in Paragraph a), including the transfer of control over such a person; is guilty of a felony punishable by imprisonment not exceeding three years.

12 See § 192 (1) in footnote 11.

(other traffickers) is factual (Gellér 2013: 278). Transfer of control over such person is a unilateral act that provides the perpetrator with control over the person of the passive subject that the perpetrator ultimately wishes to exercise for another acquirer (Karsai et al. 2019). This may include persuading the passive subject to go somewhere that provides direct access to the third party (Gellér 2013: 278).

Definition of Exploitation: Characteristics of Article 192 (2)[13] and an assessment of the vulnerable situation

Some have argued in the literature that an aggravated case is created (Belovics 2018: 189) – and others that a new, stand-alone case is created (Gellér 2013: 280, Karsai et al. 2019) – if the conduct ('sells, purchases, exchanges, supplies, receives, recruits, transports, harbours, or shelters another person, including the transfer of control over such a person') is committed for the purpose of exploitation.

In this case, recruitment as an offence is also punishable here, in the factual situation of the crime. Recruitment is an activity designed to influence the victim's decision to work with the offender or other person (e.g. as a prostitute or 'employee').

According to the memorandum on the Criminal Code, a vulnerable situation may be the result of one factor, or it may be triggered by a combination of several factors. Vulnerable situations may be brought about by the offender or they may exist independently of the offender, in which case the offence may be accomplished by maintaining it or preventing the already vulnerable situation from prevailing. According to Article 192 (8), 'in the application of this Section, "exploitation" shall mean the abuse of power or of a position of vulnerability for the purpose of taking advantage of the victim forced into or kept in such situation.' Guideline KSB 3771/2018/5-I of the Prosecutor General's Office (on the crime of trafficking in human beings in the light of international standards and the practical aspects of its application) draws attention to the fact that Article 2 of the relevant EU Directive defines a vulnerable situation as one in which, in the absence of an actual or acceptable choice, a person is obliged to submit to the abuse. The guideline specifically emphasises that, according to both international and domestic definitions, 'the consent of a victim of trafficking in human beings through the abuse of a vulnerable situation to intentional exploitation shall not be taken into consideration.'[14]

In the case of Article 192 (2) and related aggravated cases, special consideration shall be given to proving that this situation applies to the vulnerable victim.

The sanctioning against THB is more stringent when the victim is a person under the age of eighteen years, or fourteen years and the offence exhausts other

13 Act C of 2012 on the Criminal Code Special Part Chapter XVIII (Offences against Personal Freedom) Section 192 (2) Any person who – for the purpose of exploitation – sells, purchases, exchanges, supplies, receives, recruits, transports, harbours, or shelters another person, including the transfer of control over such a person, is punishable by imprisonment between one to five years.

14 Guideline KSB. 3771/2018/5-I. of the Prosecutor General's Office (on the crime of trafficking in human beings in the light of international standards and the practical aspects of application) 2.

aggravating circumstances too (these are aggravated circumstances that exist in previous aggravated cases [in 192. § (3)]: e.g.: by force or by threat of force; by deception; by tormenting the aggrieved party; by a public official, acting in an official capacity; in criminal association with accomplices; on a commercial scale, etc.)[15] (Belovics 2018: 190).

3.2. Romanian perspective

3.2.1. Legal context

National legislation for the prevention and fight against human trafficking was developed in early 2000, integrating several provisions from international conventions which had previously been ratified by the Romanian state, as well as European regulations (later – in the current national regulations – the EU Directive 2011/36). The specific regulations are to be found in Law 678/2001 on preventing and countering trafficking in persons (Tomșa et al. 2019: 24) and other national legislation related to THB.

In Romania, the new Criminal Code (286/2009 Law regarding the Criminal Code, published in the Official Gazette no. 510 on 24 July 2009 with subsequent additions and modifications) for the first time enshrines a distinctive chapter, in the special part, dedicated to crimes in the field of THB, i.e. Chapter VII – The Trafficking and exploitation of vulnerable persons from the 1st Title, Crimes against the person (Buzatu 2018: 226). In this chapter, the following acts are criminalised:

- Slavery – Art. 209,
- Trafficking in human beings – Art. 210,
- Under-aged trafficking – Art. 211,
- Submitting to mandatory or forced labour – Art. 212,
- Pandering – Art. 213,
- Exploitation for begging – Art. 214,
- Using a minor for begging – Art. 215,
- Using the service of an exploited person – Art. 216[16], and
- Using infantile prostitution – Art. 216.

15 The sanctioning against THB is the most stringent in § 192 (6): the penalty shall be imprisonment between five to twenty years or life imprisonment if:

a) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years, and either of the aggravating circumstances under 192. § (3) apply;

b) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years, and results in particularly great damage or danger to life; or

c) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years for the purpose of child pornography.

16 Although the offence of mendicancy was decriminalised, three related offences that can be committed in connection with it were criminalised *ex novo*, in Arts. 214–216 of the Criminal Code.

3.2.2. Trafficking in human beings – Art. 210

Article 210 of the Romanian Criminal Code is a new criminal category, without an equivalent in the previous Criminal Code. With some modifications, it did have a corresponding provision in Article 12 (1) of Law 678/2001 – Law on preventing and combating human trafficking (Buzatu 2018: 227).

Pre-existing conditions

a) Legal object

According to Romanian doctrine (Boroi 2014: 22), the generic legal object of a crime is founded upon social relationships, the training, deployment, and development of which are conditioned by the existence of a human being. Given the importance of this value, its actual defence can only be achieved through effective combating, by means of criminal law, the main facts that tarnish human beings (Rusu 2015: 42).

The special legal object for this article consists of specific social relationships that are born and developed in relation to the protected value of this crime (Rusu 2015: 43). Thus, the special legal object is represented by social relationships whose existence and normal progress are conditional to the protection of individual freedom against acts of human trafficking (Serban 2015: 836). The material object is the body of the person towards whom any of the crimes are committed (Buzatu 2018: 228).

b) Active and passive subjects

The active subject of Art. 210 may be any person, physical (or even legal) entity; for the aggravated version, the active subject is a public servant. The passive subject is any person who is subjected to trafficking. A common factor for victims, as mentioned above, is their vulnerability (Buzatu 2018: 230).

The objective aspect

The offence is carried out in terms of a material element, through the following actions: recruitment, transportation, transferring, harbouring, or receiving persons for exploitation (Serban 2015: 836).

Recruitment consists of the identification of a person suitable for being exploited and making him/her become a victim of exploitation. Transporting consists of moving the victim from where he/she was situated to the place of exploitation, by a person described as the transporter, with the help of some means of transport. Transferring means the act of a person to dispose of and accomplishing the victim's movement from where he/she had been accommodated, hidden, or exploited to another place, even in the same town, with the same purpose. Harbouring is the act of providing accommodation or hosting space to the victim with the purpose of exploitation or facilitating his/her exploitation. Reception is the action of taking over, taking into possession, or taking into ownership the person to be exploited or to facilitate his/her exploitation.

In any of the five alternative cases laid out in Art. 210 Para. 1, the act represents a crime only when committed:

a) by means of coercion, abduction, deception, or the abuse of authority;
b) by taking advantage of the inability of a person to defend themselves or to express their will, or of their blatant state of vulnerability; or
c) by offering, giving, and receiving payments or other benefits in exchange for the consent of an individual with authority over such person (Buzatu 2018: 230–231).

In all modes of the material element existence, the law requires as a prerequisite the connection of the proscribed action with the exploitation of the victim for the purpose of benefiting from it (Serban 2015: 836).

The subjective aspect

The crime is committed with direct intention, because an essential requirement of the purpose has the meaning of destination and is characterised by the material element and not by the subjective side (Buzatu 2018: 231). As Article 16 (3) states, an action is committed with intent when the perpetrator can foresee the outcome of their actions, in the expectation of causing such an outcome by perpetrating the act. Another point of view is that this offence is committed with direct or indirect intent, so motive is irrelevant (Serban 2015: 836).

3.3. Definition of Exploitation

The Romanian legislature did not include in the provisions of the new Criminal Code any definition of the term 'victim of trafficking in human beings' when the offence was criminalised; however, according to Article 182 of the same code, the exploitation of a person is explained through five different points (it is a complex definition, more comprehensive and nuanced than the one contained in the special law):

a) performing work under forced conditions,
b) slavery keeping,
c) forcing the practice of prostitution or pornographic representations and any other forms of sexual exploitation,
d) forcing the practice of begging, and
e) illegal organ harvesting (Iovu 2015: 9).

This definition must be taken into account in its close connection with the definition of trafficking in human beings and trafficking in minors under the same code (Sarkis 2018: 189).

A phrase which is used for the first time in the Criminal Code and which is defined in the interpretive law contained in the general part of the code is that of 'human exploitation'. It has been shown in the doctrine (Lascu 2013: 41) that it is not the first time that this phrase has been used in Romanian law, since it is also contained in Law no. 678/2001 regarding the prevention and control of human trafficking, a law adopted by the Romanian state on the basis of some international documents and as a consequence of Romania's ratification of the Children's Rights Convention on the sale and prostitution of children and child pornography (Panainte 2014: 694). In Romanian law, the exact translation of this Convention was a significant challenge (e.g. the term 'harbouring', which has been changed several times over the years to make it more comprehensible), while the Hungarian legislature has added further acts to these five terms of the Directive. Romanian criminal law only punishes THB in the situation of exploitation and when two other conditions are met, whereas Hungarian criminal law is broader: the first case of THB (Art. 192 [1]) without a means and/or purpose of exploitation defines an extremely wide range of crimes.

Furthermore, as regards minors, it should be noted that trafficking in minors is an aggravating circumstance under Hungarian criminal law, while Romanian criminal law provides for this case as a separate criminal offence; however, in Hungary, certain qualified cases of THB are punishable even by life imprisonment, unlike under Romanian legislation.

Final Remarks

THB is a very complex phenomenon; it has changed much over the last three decades and it cannot be separated from some important changes that have taken place, not only in Romania and Hungary, but also in Europe. Although the phenomenon is present in both countries to a similar extent (poverty, social exclusion, the state and problems of minors, etc.), there are significant differences in its treatment, historical traditions, and systemic responses. There is an obvious link between the socio-economic problems of the two countries over the last ten years (as well as since the transformation after 1989) and the EU connection, which have caused this crime to gain ground.

It was evident that both Hungary and Romania face serious challenges in dealing with THB. Directive 2011/36/EU provided the framework for lawmakers in both countries, and they have tried to comply with it in different ways, as we have shown, but there are some further steps to be taken in order to use these laws more effectively. The numbers are expected to increase as latency decreases; the issuing countries will remain in this state until solutions to the root of the problem are found.

This comparison of these two countries is unique; we could not describe in detail other aspects in a paper of this volume, but it can be forwarded for further research.

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'We condemn abusing violence against women': The criminalization of domestic violence in Poland

„Potępiamy nadużywanie przemocy wobec kobiet". O kryminalizacji przemocy domowej w Polsce

Abstract: One can often hear Polish politicians saying there is no violence against women in Poland, since Polish men respect their women and women hold a strong position in Polish culture. The conviction rates for domestic abuse in Poland are indeed low, though the attrition rates are high. Every year, for approximately 75,000 registered cases of domestic violence, there are roughly 10,000 convictions. Most of the prison sentences are conditionally suspended. Protective orders or other punitive measures are seldom handed down. There is a visible reluctance on the part of the criminal justice system to punish and correct domestic abusers. One of the reasons is that domestic abuse provisions in the Polish Penal Code (Article 207 of the Polish Penal Code from 1997) criminalises a very different behaviour than is defined in the Counteracting Family Violence Act from 2005. Another, possibly even greater, reason is the culture of sentencing (both in general and of domestic abuse) within the Polish judiciary and the very strong conservatism of Polish decision-makers and society. The protection of family values by legislators and the judiciary is often enforced at the expense of the victims' right to life and to a life free from violence. This article discusses the Polish system for preventing domestic violence, which was set up in 2005 and the construction and jurisprudence of crime described in Article 207 of the Polish Penal Code. In particular, the question of culpability raises many problems when it comes to prosecution. First, we must compare Article 207 with the definition of 'family violence' specified in the Counteracting Family Violence Act and the Istanbul Convention. Then, I will explain how such an understanding and interpretation of Article 207 translates into the dynamics of sentencing and penal decision-making and the virtual ineffectiveness of both penal provisions (the lack of deterrent effect) and the system of counteracting family violence designed by lawmakers.

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Keywords: domestic violence, violence against women, Istanbul Convention, penal law, criminal justice, Poland

Abstrakt: Powszechnie przyjmuje się, że art. 207 kodeksu karnego kryminalizujący znęcanie się nad najbliższymi osobami jest formą kryminalizacji przemocy domowej w polskim ustawodawstwie karnym. Jednak czy tak jest w istocie? Gdy Polska ratyfikowała konwencję stambulską (Konwencja Rady Europy ws. zwalczania przemocy domowej i przemocy wobec kobiet, CETS 210) w 2015 r. uznano, że nasze ustawodawstwo odnośnie do przemocy domowej spełnia wymogi konwencji, jeśli chodzi o zintegrowane, kompleksowe i skoordynowane ogólnokrajowe strategie obejmujące środki mające na celu zapobieganie wszelkim formom przemocy objętych zakresem konwencji. Pod względem ścigania aktów przemocy domowej uznano, że art. 207 jest wystarczającym instrumentem prawnokarnym, by zadośćuczynić wymogom konwencji. W artykule przedstawię polski system przeciwdziałania przemocy w rodzinie ustanowiony w ustawie z 2005 r. oraz zarysuję wzajemne relacje między systemem z ustawy o przeciwdziałaniu przemocy w rodzinie a regulacjami prawnokarnymi, a dokładnie to, czy zachowanie stypizowane w art. 207 k.k. pokrywa się z ustawową definicją przemocy w rodzinie. Te relacje bardzo wyraźnie obrazują liczby, które pokazują, że państwo polskie nie jest specjalnie responsywne na przemoc domową, a owa niska responsywność tylko po części wynika z niedoskonałych przepisów prawa, a w ogromnej części z pewnej inercji podmiotów stosujących prawo, archaicznej wykładni znamion omawianego przestępstwa i braku woli politycznej.

Słowa kluczowe: przemoc domowa, przemoc wobec kobiet, Polska, prawo karne, konwencja stambulska

Introduction

One often can hear in Poland politicians saying that there is no violence against women in Poland, since Polish men respect their women and women hold a strong position in Polish culture and within the family. The conviction rates for domestic abuse in Poland are indeed low, though the attrition rates are high. Every year, for approximately 75,000 registered cases of domestic violence (DV), there are roughly 10,000 convictions. Most of the prison sentences are conditionally suspended. Protective orders or other punitive measures are seldom handed down. There is a visible reluctance on the part of the criminal justice system to punish and correct domestic abusers.

When Poland ratified the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence) in 2015, it was said that our domestic violence laws complied with the Convention's requirements. Poland was said to be in compliance with the obligations of the Istanbul Convention in terms of providing comprehensive and coordinated policies which encompass all relevant measures to prevent and combat all forms of violence covered under the scope of this Convention and which offer a holistic response to violence against women (VAW). The only legal modification that was made by the legislature was to introduce ex officio prosecution for rape, which previously had to be initiated upon a complaint filed by the victim.

Article 5.2 of the Convention provides an obligation to punish (criminalise) acts of violence covered by the Convention: 'Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish, and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.'

In terms of prosecuting DV, Poland was said to comply with the provisions of the Istanbul Convention, thanks to Article 207 of the Penal Code from 1997. So it was said, though the provision in question refers to behaviours that fall within what we call domestic abuse. This paper discusses the legal framework of DV provisions in Poland, presents numbers that show high attrition rates, and finally analyses the why the criminal justice system is nonresponsive towards domestic abuse.

Perhaps the statement that only a small proportion of domestic abusers are convicted is not exceptionally insightful or illuminating, nor is it only a peculiarity of the Polish system. The interesting question is why this is so. It seems that one of the reasons is the construction of the basic legal provision designed to cover DV, i.e. Article 207.

In particular, the question of culpability raises many challenges when it comes to prosecution. Firstly, we must look up the interpretation of Article 207 and the definition of 'family violence' specified in the Counteracting Family Violence Act. Finally, one has to explain how the understanding and interpretation of Article 207 translates into the dynamics of sentencing and penal decision-making.

The paper is based on available data from two separate systems of reaction the so-called Blue Card data and criminal records. The difference between the two indicates a significant gap and raises doubts as to the adequacy of criminal responses, besides the more universal problem of the effectiveness of criminalising DV.

The quote in the title – by the government spokesperson in 2017, Beata Mazurek, commenting on the high-profile case of intimate partner violence by the local politician Rafał Piasecki – serves as a very accurate illustration of the solutions we have in Poland: 'I wish that in cases where there is an abuse of violence against women, the justice system worked efficiently' (TVN24 2017).

1. The criminalisation of domestic violence

Domestic violence, and intimate partner violence in particular, is a social phenomenon that affects a broad cross-section of the world's population. It is not merely a social, political, or public health problem, but a very violation of our human rights, protected by international law. When it comes to Europe, there have been several sentences from the European Court of Human Rights to hold Council of Europe member states accountable for not providing protection and criminal recourses for victims of domestic violence (e.g. Bevacqua and S. v. Bulgaria 71127/01 from

12 June 2008; Opuz v. Turkey 33401/02 from 9 June 2009; Eremia and others v. The Republic of Moldova 3564/11 from 28 May 2013). The state is thus internationally obliged to provide victims with protection and to punish perpetrators.

Currently in the Western world, no-one denies the urge to punish domestic violence. To the contrary, the problem is rather that some states rely excessively on criminal justice responses whilst overlooking the complexity of the problem and the issues of social justice (Goodmark 2018). Instead of solving the problem, it exacerbates it.

In the past few decades there has been a co-optation of the feminist agenda with the emergent political and penal paradigms of 'governing through crime' (Simon 2007), the neoliberal penal state (Wacquant 2009), or the late-modern 'cultures of control' (Garland 2001). It was visible not only in the United States, although the issue has so far been the most pronounced, perceived, and studied there. The feminist theorists have begun to explore how the feminist movement/agenda in the United States helped to facilitate the carceral state and how it was used to legitimise and justify the expansion of the crime control agenda and punitive policies of the contemporary state (Gottschalk 2006; Gruber 2007; Bumiller 2008; Bernstein 2012).

A trend of excessive reliance on the criminal justice system to eradicate VAW in the USA was coined 'carceral feminism' (Bernstein 2012) and in the Latino world 'punitive feminism' (*feminismo punitivo*, Larrauri 2007). It refers to a 'feminism' that calls for the criminalisation of the perpetrator and a harsher punitive response towards any acts of VAW. The underlying logic relies on increased policing, legal frameworks and state intervention, and harsher punishments as appropriate responses to prevent VAW while simultaneously overlooking other non-punitive social measures to prevent such violence.

Once the victims' rights movement and discourse emerged in the public sphere in the late 1970s, it quickly took over feminist concerns for protecting women from violence and used them to achieve its own goals. Such a deviation/diversion from the primary goals of the feminist movement and the feminist alliance with the penal function of the state – a joining of forces with the neoliberal project of social control (Bumiller 2008: 15) – has proved to be adverse to women themselves. The Violence Against Women Act (VAWA), enacted in 1994, solidified the understanding of VAW as a principally criminal matter and was applauded by conservative political forces as another powerful symbol of the war on crime (Gottschalk 2006: 152).

The 'zero tolerance' and tough-on-crime approach in cases of domestic abuse encompassed harsh measures that hardly improved women's safety, but instead make them more vulnerable and disempowered in their lives – shifting control over their lives from their abusive husbands to a paternalist state and criminalising their victimisation (Chesney-Lind 2006: 14). For example, in the USA, there is evidence that mandatory arrests, no-drop policies, and expanded definitions of violence adopted by police departments have resulted in a greater risk for battered women to be arrested for domestic assault and the criminalisation of women who were merely defending themselves[1] (Chesney-Lind 2006: 16). Furthermore, these policies have increased the probability that state protection agencies will remove the children of abused women from their homes after reports of violence which they could not be protected from witnessing or becoming the victims of (Gottschalk 2006: 160). Additionally, abused women who live in public housing (abused by their non-resident partners) face eviction when reporting violence for exposure to violence of her neighbours (Simon 2007: 197).

Framing VAW as mainly a legal and law enforcement problem was useful in terms of deviating attention from the shrinking social functions of the state and its welfare resources which actually could better address the needs of abused women, and in a much less constraining way. The emphasis of DV criminalisation has come at the cost of deflecting focus from economic empowerment, education, and other non-punitive goals (Gruber 2007: 819). By embracing harsh criminalisation policies and resorting to the penal apparatus of the neoliberal paternalistic state without addressing any larger social issues or underlying conditions that are root causes of VAW (economic empowerment, education, or gender stereotypes), the state reinforces inequality rather than dismantling it, and so strays from the underlying values of the feminist movement – the equality and autonomy of women.

On the other hand, this inclusion of a feminist agenda in a penal and crime control framework also might be seen as policymakers' symbolic recognition of the importance of the problem. In times of late (Giddens 1990) or liquid (Bauman 2000) modernity, when we are witnessing the decline of the power of the traditional sovereign state, criminal law has become the last powerful tool by which the state can assert its power. Globalisation and neo-liberal policies increased the exclusion and hardship of specific social groups, thus creating new problems of order and new fears and anxieties (Garland 2001: 153). The criminalisation of social problems, in situations when social policies and resources are no longer available (and certainly not as effective or spectacular) to address the social conditions that produced them, has become the easiest way to demonstrate the state's power (or efficacy of politicians) and its concern for the well-being and safety of its citizens.

Addressing VAW as a mainly criminal matter is yet another example of 'governing through crime'. This in fact means making crime (criminal law, crime control field, and popular crime narratives) available outside its original, limited subject domains and making it a powerful tool with which to interpret and frame all forms of social action as a problem of governance (Simon 2007: 17). When something is

1 For example, because of dual arrest policies, which refers to situations where police officers cannot identify the primary aggressor, and detains both parties. Law enforcement agencies developed an expansive definition of DV that fails to distinguish between aggressive/instigating violence and self--defensive/retaliatory violence (Chesney-Lind 2006: 16).

framed as a problem of governance, the suggestion is that it is possible to regulate or solve by political and immediate measures.

This trend – an alliance, or rather appropriation, of the feminist agenda by 'tough-on-crime' politicians – however, was not observed in Poland. Despite the Polish politicians' readiness to resort to criminal law for any social problem in the last two decades (Grzyb 2017), they never brought DV into play in such a way. The system of prevention beginning in 2005 does not resort to criminal law, although many effective remedies are in fact only available to the victims when they decide to start criminal proceedings.

2. Preventing domestic violence in Poland

Since 2005, when the Sejm adopted the Counteracting Family Violence Act, there has been a dual track for reacting to domestic violence. The system for counteracting family violence (Polish lawmakers adopted the term 'family violence') which was enacted in the bill is run by the public administration and the criminal justice track. These two tracks do not actually overlap, though the key role in both cases is assigned to the police.

The Counteracting Family Violence Act of 29 July 2005 established a system of comprehensive measures and obligations of the public institutions (at both the central and local levels) to protect victims of domestic violence.

Article 2.2 of this law defines 'family violence' as a single or recurring wilful action or negligence which infringes upon the personal rights or well-being of the persons listed in Point 1 (i.e. a family member – a close relative or other person sharing the residence or household), in particular, exposing them to the risk of losing life or health, compromising their dignity, physical integrity, or freedom – including sexual freedom – causing harm to their physical or mental health, and causing pain and moral suffering in those who are subjected to violence.

Given the definition of DV enacted by Article 3(b) of the Istanbul Convention,[2] the Polish provision omits economic abuse and also overlooks the problem of violence between former intimate partners who do not live together or do not share households.

2 Article 3 of the Istanbul Convention defines VAW and DV as follows:
- 'violence against women' is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life
- 'domestic violence' shall mean all acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

The lawmakers adopted a gender-neutral approach, which is to say there is not a single reference throughout the whole document to the fact that women are more likely to suffer from DV and that men are more likely to perpetrate it. The Act uses the neutral term 'victim'.

Under the provisions of the Act, a person suffering from DV is entitled to several forms of assistance (Art. 3): medical, psychological, legal, social, professional, and family counselling; crisis intervention and support; protection from further harm by preventing the abusers from using a home occupied jointly with other family members and prohibiting contact with a victim via restraining orders to stay away from them; safe shelter in a specialised support centre for victims of DV; medical examination to identify the causes and types of injuries resulting from DV and to issue a medical certificate in that respect; assistance in finding a place to live for people who experience DV and do not have legal title to the premises occupied with the perpetrator. The perpetrators instead shall be subjected to measured aimed at preventing contact with the victims and at corrective and educational measures (Art. 4).

In general, the Act is in line with the standards set by the Istanbul Convention; therefore, when Poland signed and ratified the Convention in 2015, no changes were made.

A key procedure in response to family violence enacted in 2005 is the 'Blue Card' procedure (Article 9d). A Blue Card is a form of intervention within the family where DV occurs. It is a procedure that provides assistance to a family affected by violence, both those suffering and those inflicting violence. The approach adopted by the lawmakers and in the Blue Card procedure identifies DV not only as a legal problem, but also a health, psychological, and social problem.

The procedure takes a comprehensive and coordinated approach. It is run by an interdisciplinary council at the municipality level, composed of representatives from 1) social welfare, 2) municipality committees for solving alcohol problems, 3) the police, 4) education institutions, 5) healthcare institutions, and 6) non-governmental organisations (Article 9a).

The Blue Card system was initially introduced in 1998 to regulate police intervention and interaction with families experiencing DV. The questionnaire was printed on blue paper, hence the name of the procedure. Originally, in the mid-90s it was intended to detect alcohol-related DV, provide some assistance to affected families, and monitor the family situation.

Until 2010 such procedures were initiated by the police. After a 2010 amendment to the Act, the procedure can be initiated by a social worker, healthcare professional, or other public functionary, although almost 80% of all Blue Card cases are still initiated by the police (MRPiPS 2019: 173).

The Blue Card procedures shall be initiated by means of filling in the Blue Card form in the event of a suspicion of domestic violence arising in the course of performing professional tasks, or as a result of notification by a family member or a witness to domestic violence (Art. 9d.4). To open a case, the consent of the victim is not required (Art. 9d.1).

The Blue Card form is comprised of forms entitled A, B, C, and D. Form A is the report of the police intervention itself or of the professional initiating the procedure. It is done in the presence of the victim. Form B is a useful piece of information for the victim, describing the violence, her rights, and the places she can seek help. Form C is completed at the meeting of an interdisciplinary team (or working group) in the presence of the suspected victim, acting as a kind of diagnosis of the situation and a personalised assistance plan tailored to the individual victim. Form D, finally, is also filled in by the professionals during the meeting, in the presence of the suspected perpetrator of the violence. During the course of the case and the realisation of the assistance plan, the family is monitored and assisted by the police officers and/or social workers. The procedure is deemed complete when the interdisciplinary team decides the plan has been executed and that further actions are unwarranted or the problem has been solved.

Besides the Blue Card procedure, the Counteracting Family Violence Act imposes obligations on both local authorities – the development and implementation of a programme for preventing DV (Art. 6) – and the central administration – developing a National Programme for the Prevention of Domestic Violence (Art. 8) – as well as providing infrastructure for the victims (e.g. support centres) and developing corrective and educational measures for perpetrators (Art. 6.4).

The Act also provides specific measures in cases of violence, i.e. eviction orders issued by a civil court on the demand of the victim (Art. 11a). Social workers also have the right to remove a child from a family in the event of a direct risk to the child's life or health due to domestic violence (Art. 12a). When a perpetrator of violence is on parole or probation for committing acts of violence or threats against family members, the probation officer also has the right to file a motion to execute the penalty of imprisonment or to revoke the parole (Art. 12d).

Finally, in the event a professional suspects an offence of injuries or domestic abuse in the course of performing their duties, the professional shall report it as a crime to the police, or a police officer shall initiate criminal proceedings (Art. 12). It needs to be emphasised that opening a Blue Card case, even by a police officer, does not at all equate to pressing criminal charges against the perpetrator. The provisions of Article 12, the Act, and the system for preventing domestic violence do not have recourse at any time to the criminal justice system.

3. Prosecuting domestic violence in Poland

The second track of addressing domestic violence is to start criminal proceedings. When a person experiences domestic abuse, apart from opening a Blue Card case, they may press charges against the perpetrator.

In the Polish Penal Code of 1997, Article 207 criminalises offences of maltreatment of family members or vulnerable persons, which is described as ‘domestic violence crime’. Otherwise, a victim may press charges for some other offences: injury (Art. 157), punishable threats (Art. 191), or rape (Art. 197); however, Article 207 is deemed to be the basic type for behaviour which falls under DV, and it represents the majority of convictions (which is elaborated on later).

Starting criminal proceedings and reaching a conviction – apart from the penalty – provides the judge with several options regarding the perpetrators of domestic abuse which aim to protect the victim. Along with a conviction, the court may (although it is not mandatory) issue

- a restraining and barring order
  - prohibiting the guilty party from contacting certain individuals,
  - prohibiting them from approaching certain individuals, or
  - prohibiting them from leaving a specific area without the court’s permission [Art. 39.2b], or
- an eviction order – the order to vacate the premises which the guilty party shares with the victim [Art. 39.2e].

An eviction order may be issued by the prosecutor before a conviction. The police, however, have no right to issue an eviction or restraining order in emergency situations, during police intervention.

Furthermore, when conditionally suspending the enforcement of the penalty imposed, the court may impose an obligation:

5) to abstain from abusing alcohol or from using other stupefacient substances
6) to submit to treatment (e.g. for alcoholism) or to therapeutic activities
6a) to participate in correctional/educational activities (therapy for domestic abusers)
7) to refrain from associating with specific social groups or visiting specific locations
7a) to refrain from contacting the harmed party or from approaching them [Art. 72]

At first glance, it seems that Polish criminal law does adequately address the problem of domestic violence. The Penal Code does criminalise the conduct of domestic abuse or other forms of violence against family members. The sentencing rules and existing measures (i.e. barring and protection orders) do not aim to merely punish the perpetrators, but also to protect the victims.

However, all of these measures or obligations that often proved to be efficient deterrents rather than 'just deserts' in terms of stopping and preventing further abuse are seldom imposed and only used in criminal proceedings, even if some of them can be issued before the sentencing phase. That is to say, they are not available for victims who have had a Blue Card procedure initiated but who have not pressed charges.

Only in April 2020 the Polish house of parliament passed a law providing immediate restraining and eviction orders for the perpetrators of domestic abuse issued by police officers upon intervention (up to 14 days) (Ministry of Justice 2020). The law is expected to come into force in 2020.

Moreover, in fact, a provision in Polish Penal Code regarding domestic abuse (Article 207 of the Polish Penal Code from 1997) criminalises a very different behaviour than is defined in the Counteracting Family Violence Act of 2005. The numbers on DV and attrition rates clearly demonstrate the discrepancy.

4. Domestic violence figures in Poland

Because DV has a very high proportion of unreported cases, victimisation surveys can be a reliable source of information on its prevalence. The rates obtained in surveys may differ, but presenting these numbers is a good starting point for discussing the official number of reported cases.

4.1. Victimisation surveys

The first Polish victimisation survey on VAW was conducted by Beata Gruszczyńska (2007: 58–63) in the framework of the International Violence Against Women Survey (IVAWS). The survey was carried out in 2004 among a sample of 2,000 women aged 18–70. The results revealed that 34.6% of women had experienced physical or sexual violence in their lifetime, out of which 15.6% were victimised by their partner. Physical violence was experienced by 18.1% of respondents, 15.1% of which was from their partner. Within the 12 months prior to the survey, 5.1% of respondents had experienced physical violence, and 1.6% sexual violence.

Slightly different, though comparable, rates were reported in the 'Violence against women: An EU-wide survey', published by the Fundamental Rights Agency in 2014. The survey was conducted on a European sample of 42,000 women (over 15 years of age) from EU28 countries – approx. 1,500 women from each country – and covered a wide range of abuse: physical abuse, sexual abuse, psychological violence, stalking, and sexual harassment. The study found that 13% of women had experienced physical or sexual violence from a partner since the age of 15 (4% within the previous 12 months), 11% from a non-partner, and 19% overall from a partner or non-partner. 37% of women reported having been subjected to psychological violence (FRA 2014).

The third survey worth mentioning is the study commissioned in 2014 by the Polish Ministry of Family, Labour, and Social Policy, which is in charge of coordinating the system for preventing domestic violence. It was carried out on a sample of 3,000 men and women who were asked about physical, psychological, sexual, and economic violence. According to that study, 26.8% of women and 22.3% of men had experienced violence within their lifetime. Of the respondents, 16.8% had experienced physical violence, 20.3% psychological violence, and 2.7% sexual violence. In a very similar study commissioned by the Ministry of Family, Labour, and Social Policy in 2010, 39.4% of women reported experiencing violence during their lifetime (Miedzik and Godlewska-Szurkowa 2014: 68).

4.2. Blue Card statistics

Another source of information are the Blue Card statistics published annually by the Ministry of Family, Labour, and Social Policy. Thanks to an amendment of the Counteracting Family Violence Act made in 2010, comparable statistics have been collected since 2012. One can tell there is quite a stable trend. Each year, between 90,000 and 100,000 Blue Card cases are started. One-fifth (18.4% in 2014) of them are reports on subsequent incidents, and four-fifths (81.6% in 2014) are new cases.[3] Based on police records, 92% of the perpetrators are men and 70% of the victims are women (a further 15% are children).

The efficiency of Blue Card procedures is rather low. Every year, there are approximately 70,000 Blue Cards are finalised, 70% of them because the violence has stopped or there are reasonable grounds to believe it has stopped, and 30% because there is no reason to take further action. In 2016, the Supreme Audit Office (Polish constitutional agency) published a report on assistance and services for victims of DV and an evaluation of the Blue Card procedure. The report revealed that in only 2.6% of the cases studied did the violence stop; in 13% of cases a completed procedure had been reopened (NIK 2016: 11). Nonetheless, 61% of people receiving assistance said their situation had somehow improved or they were feeling better, and only 1.5% were feeling worse.

[3] While interpreting Blue Card statistics, one must bear in mind a few reservations. The statistics are collected on the basis of completed forms A, C, and D. The numbers presented here refer to A forms, which technically initiate the procedure. Firstly, if the interdisciplinary team in its work discovers that the suspect was not the perpetrator, this fact is not reflected in the statistics. Secondly, a procedure in one year can pertain to one family in different configurations. It may happen that one person is simultaneously a victim and a perpetrator (e.g. they may suffer violence from their partner and inflict violence on their child). Thirdly, there is sometimes the problem of mutual accusations – a wife opens a Blue Card case against her husband, and vice versa. All of these issues require caution from researchers whilst interpreting Blue Card statistics.

Table 1. The Blue Card procedure

	2012	2013	2014	2015	2016	2017	2018
Number of Blue Card forms	63,820	73,119	99,093	99,749	97,224	98,307	93,311
Number of Blue Card forms filled in by the police	51,236	61,047	77,808	75,495	73,531	75,662	73,153
Number of perpetrators (only police Blue Card records)	51,531	61,450	78,489	74,155	74,155	76,206	73,654
Number of victims			105,332	97,501	91,789	92,529	88,133
Percentage of female victims			69.1	71.15	72.9	73.47	73.8

Source: Ministry of Family, Labour, and Social Policy [MRPiPS] (2015; 2019).

The Blue Card statistics suggest that each year there are at least 60,000–70,000 recorded cases of Article 207 offences or related crimes. This is not the case, though. These numbers are in stark contrast with the criminal justice statistics.

4.3. Criminal Justice Statistics

It is still virtually impossible to count all convictions related to DV, since the courts are not obliged to mention in their sentences that an offence was committed in the context of DV, which would subsequently be a ticked box in the statistics. Since 2011, it has been possible to extract from judicial statistics figures on crimes committed against an immediate family member, e.g. injuries, threats, or rape, but that joint qualification is still not mandatory for judges in the sentencing phase or during statistical reporting. Nevertheless, there is a growing tendency among the judiciary to indicate such cases in their sentences.

Moreover, it is important to emphasise that not every conviction from Article 207 §1 was related to DV. Article 207 protects family members and vulnerable persons from maltreatment; thus, the victim may be a student maltreated by a professor or an employee harassed by a superior, though these are a tiny proportion of all cases. To illustrate the breakdown, in 2018 70.3% of all convictions for crimes related to DV were for Article 207 §1 (Lewoc 2019), and among all convictions for Article 207 §1, 88.6% (in the final judgement, 84% in the first instance) were for maltreatment of a family member.

Thus, despite the fact that Article 207 of the Penal Code does not include all recorded cases that can be considered DV, it still remains the basic penal provision for addressing DV. Therefore, Article 207 figures remain the most accurate portrayal of criminal justice. In particular, §1 (and since 2016, §1a as well) of Article 207 covers the vast majority of cases tried in relation to domestic abuse.

Table 2. Numbers of reported and recorded crimes (police records) and judicial statistics on adjudications (first instance) and final convictions (second instance)

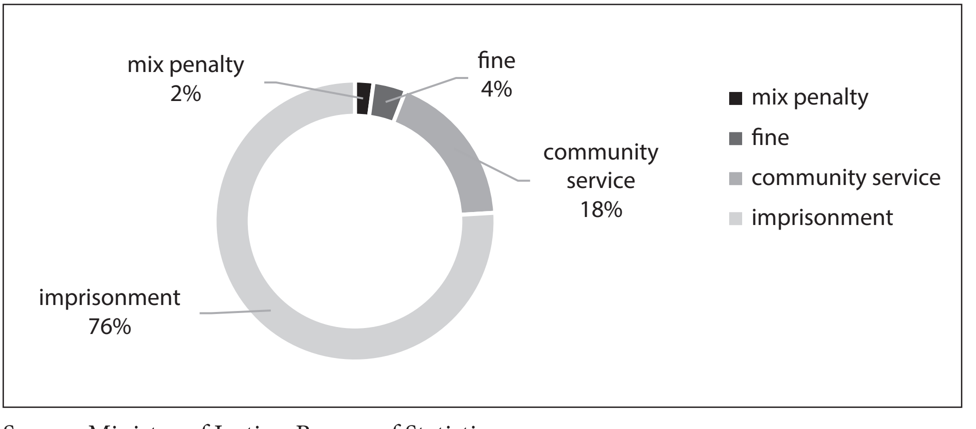
Article 207 §1, Penal Code	2010	2011	2012	2013	2014	2015	2016	2017	2018
Reported crimes	30,534	29,958	29,193	29,879	30,901	27,642	26,633	28,608	28,014
Recorded crimes	18,759	18,832	17,785	17,513	17,523	14,191	15,513	15,730	14,797
Adjudications (first instance)	16,239	13,588	11,937	14,132	15,001	14,400	12,846	13,252	13,422
Convictions (final judgments)	13,484	13,153	12,318	11,593	11,282	10,533	10,572	9,755	10,450

Source: Ministry of Justice, Bureau of Statistics.

Out of 10,450 convicted individuals in 2018 (final judgements) for Art. 207 §1:

- 221 were sentenced to mixed penalties,
- 397 were given a fine,
- 1,895 were sentenced to community service, and
- 7,937 were sentenced to imprisonment.

Figure 1. Penalties for Article 207 § 1



Source: Ministry of Justice, Bureau of Statistics.

Table 3. Length of prison sentence

Imprisonment	Total: 7,937	100%
3–12 months	7,415	93.4%
1–2 years	460	5.8%
2–5 years	62	0.8%

Source: Ministry of Justice, Bureau of Statistics.

The offence of maltreatment of an immediate family member is punishable by between 3 months and 5 years of imprisonment. Most of the prison sentences are for the mandatory minimum sentence, up to one year (93.4%). Furthermore, 67% (5,319) of all prison sentences are conditionally suspended. That is to say that only 2,618 perpetrators were sentenced to prison for DV.

Table 4. Attrition in domestic violence cases in Poland, 2018

Number of Blue Card forms ('Form A') (MRPiPS, 2019)	93,311
Number of perpetrators (Blue Cards)	73,654
Number of victims (Blue Cards)	88,133
Article 207 §1 – proceedings initiated (police)	28,014
Article 207 §1 – crimes recorded (police)	14,797
Article 207 §1 – perpetrators identified (police)	14,756
Article 207 §1 – adjudications (first instance)	13,422
Article 207 §1 – convictions (final judgements)	10,450
Article 207 §1 – prison sentences	7,937
Article 207 §1 – prison sentences executed (not suspended)	2,618
Article 207 §1 – adjudicated measures (first instance):	
• restraining order (prohibition from contacting someone)	2,495
• restraining order (prohibition from approaching someone)	3,100
• eviction order	839
• therapy for the perpetrators	952

Source: Lewoc 2019.

Table 4 shows that the attrition rates are quite high. For 73,654 people suspected of inflicting violence and recorded in a Blue Card case (MRPiPS 2019: 76), only 2,618 were sentenced to imprisonment without suspension, that is, 3.3% (10.8% are sentenced to imprisonment in general). It is clear that most of the DV cases do not reach the criminal justice system. Furthermore, only a few previously convicted perpetrators are issued protection orders or subjected to any kind of treatment.

5. A problem with Article 207 of the Polish Penal Code

5.1. Legal framework

The origin of the provision can be traced to the first Polish Penal Code from 1932. Lawmakers at that time proscribed in Article 246 abuse of dependent minors (that is to say, those under guardianship) and vulnerable individuals. Other family members, i.e. partners or healthy adult relations, were not protected. The equivalent of that provision in the succeeding Penal Code of 1969 – Article 184 – expanded the scope of protected individuals and broadened the category to include all minors and adult dependent family members and vulnerable people, regardless their dependency. This was due to the merging of this article with another provision, Article 23 from the Combatting Alcoholism Act of 1959, which criminalised the abuse of family members by someone under the influence of alcohol. The current Article 207 is a virtual copy of its legal predecessor from 1969 (Jodłowski and Szewczyk 2017).

Since the offence of maltreating a family member emerged in the Polish legal order in the context of addressing the consequences of alcohol abuse (not as a result of feminist activism), the problem of domestic abuse was framed primarily as being alcohol-abuse-related (Sienkiewicz 1985) and specific to the lower classes in society. That approach permeated the jurisprudence, and until the last few years public debate and political responses, as well.

Article 207 of the Penal Code is placed in Chapter XXVI ‘Crimes against family and guardianship’, that is to say, the primary legal interest protected is the integrity and proper functioning of the family (Jodłowski and Szewczyk 2017: 857). The in fact means that the proper goal to achieve through criminal justice intervention is to uphold the integrity of the family unit. Some scholars add that the secondary legal interest protected is the individual’s interests, i.e. the life, health, and physical and moral integrity of family members (Muszyńska 2014). However, these are only secondary.

The provision of Article 207 states:

[*Physical and mental maltreatment of an immediate family member or a dependant person*]

§1 Whoever physically or mentally maltreats an immediate family member or another person being in permanent or temporary relation of dependence to the perpetrator, is subject to the penalty of deprivation of liberty for between 3 months and 5 years.

§1a Whoever physically or mentally maltreats a person who is helpless, due to this person's age or mental or physical condition, is subject to the penalty of deprivation of liberty for between 6 months and 8 years.
§2 If the act referred to in §1 is coupled with the use of particular cruelty, the perpetrator is subject to the penalty of deprivation of liberty for between 1 year and 10 years.
§3 If the consequence of an act referred to in §1 or §2 is the harmed party's attempt on his own life, the perpetrator is subject to the penalty of deprivation of liberty for between 2 years and 12 years.

At first glance, it seems that physical and mental maltreatment does not encompass exactly the same as the definition of 'family violence' from Article 2.2 of the Counteracting Family Violence Act. However, to understand the relationship between Polish domestic violence law and penal provisions – whether they correspond and are a coherent whole – it is necessary to have a look at the dogmatic construction and jurisprudence on Article 207.

5.2. Jurisprudence and application

The scholarship and jurisprudence regarding Article 207 emphasise four constitutive elements that could cause a behaviour to be considered a crime of maltreating a family member. These elements dramatically limit the application.

The first element refers to *mens rea*, an **intention**. In Polish criminal legal theory, the scholarship distinguishes direct intention, i.e. the perpetrator intends to commit the act, he/she wants to commit it, and oblique intention, where the perpetrator foresees the possibility of committing the act and accepts it (Article 9 §1 of the Penal Code). The intention encompasses the goal of the actor, which in case of mistreating someone is to inflict physical or moral suffering, to harm someone.

The jurisprudence is predominantly of the opinion that the actor acts with the direct intention to cause harm (Marek 2010; Mozgawa 2018: 650; see e.g. IV KKN 312/99 and V KKN 580/97), that is to say, his/her goal was to cause suffering and pain. When it comes to physical harm, it is not difficult to prove, since the victim has a medical certificate – the obviousness of the harm beyond question. When it comes to psychological harm, however, it may be difficult to demonstrate, as it is more intangible than physical injury. Moreover, it gets even more complicated, given that the point of reference is not the perspective and feelings of the victim, but an 'objective judgement' – the feelings of a reasonable citizen (Jodłowski and Szewczyk 2017, section 17), that is to say, an individual judge.

As an aside, one can ask, what are the criteria of the 'harm'? Who decides what is enough harm to fulfil the conditions of Art. 207? This question is particularly relevant when it comes to psychological harm. According to the jurisprudence an objective assessment shall be applied, not the subjective feeling of the harmed person (that is to say, a rational, properly socialised adult, a model citizen).

This makes it almost virtually impossible to get a conviction for pure psychological abuse (with no accompanying physical abuse), especially in the context of gender--based violence. According to the conception of coercive control, these are the most harmful abuses that women suffer from their intimate partners (Stark 2007).

Furthermore, when it comes to domestic abuse, the main goal of the perpetrator is often not to inflict pain, to make the victim suffer, but merely to have control in the relationship, to dominate, to subordinate the victim. The perpetrator does not necessarily care whether the victim suffers or not, and this depends very much on the victim's individual capacities (Pospiszyl 1998). Since the intention must cover the consequence of the act – the physical or psychological suffering – it becomes difficult to prove mistreatment in court when there are no severe physical injuries. Mental states and feelings can be very subjective and gendered. Some behaviours which are devastating for some people can be seen as harmless and inconsequential by others.

The second element refers to a **relationship of power or a preponderance of force** between the perpetrator and the victim. The victim has to be dependent in relation to the perpetrator (materially, personally, emotionally, or contractually). The perpetrator mistreats the victim by using their power over them (Jodłowski and Szewczyk 2017, p. 32; III KK 262/6). The victim cannot resist, or only to some extent. This does not encompass mutual malicious teasing between spouses or ex-spouses. The mutual violence or conflict between family members when there is no preponderance of force of one over another do not fall under the scope of Article 207. Even if it sounds logical, this in fact leads to widespread confusion among the judiciary. The occurrence of violence is commonly confused with conflict (Wrona 2017).

The third and fourth elements relate to the nature of the violent behaviour – its **severity** and **frequency**. Not every maltreatment can be qualified as an offence under Article 207. To meet the standards of Article 207 it must be severe (more than usual) and repeated, i.e. extended over time and incidents, not just a single act, but a series of behaviours. As an exception, it can be one incident, but a particularly cruel and violent one. The Court of Appeals in Gdańsk stated in a judgement from 2 April 2013 (II Aka 399/12):

> Inflicting moral and psychological suffering on a victim in order to debase, humiliate, or tease her, no matter the motivation, shall not be 'maltreating someone' in the meaning of Article 207 §1, since it is not 'severe' and 'beyond measure', so by its intensity go beyond a usual violation of physical integrity, insulting, humiliation, or others kinds of defamation.

The conduct of the perpetrator must be intense, excessively painful, i.e. beyond measure, and the purpose foreseen in every single activity. Its intensity must go beyond the limits of 'usual' breaches of someone's personal integrity/inviolability, insults, debasement, and so forth (Supreme Court judgement, 6 August 1996, WR 102/96).

Thus, Article 207 of the Penal Code is interpreted in a very restrictive way. It criminalises only severe and malicious forms of DV. Article 207 covers only DV which is 'beyond measure', as though abuse within whatever 'measure' is referred to is, from a criminal law standpoint, acceptable. This is precisely why Article 207 does not include all behaviours or situations deemed as 'family violence' under Article 2.2 of the Counteracting Family Violence Act (Wrona 2011; Lewoc 2019).

It is worth noting that is has recently become possible to get a conviction for a different crime, e.g. homicide (Article 148 of the Penal Code), an injury (Article 157), a lethal injury (Article 156), or a punishable threat (Article 190) in the cumulative qualification (i.e. Art. 148 in conjunction with Art. 2.2 of the Counteracting Family Violence Act) with DV.

This trend is new for the Polish justice system, discretionary and introduced mainly for statistical purposes. The data are available from 2012, yet few courts use that cumulative qualification, so one cannot exactly ascertain an accurate proportion of all convictions for a certain crime.

The basic penal provision referring to DV is still Article 207 §1. Since the provision embraces only a small proportion of all reported DV cases, it means that the protection measures, granted only when there is a conviction, are available only for very few victims of domestic abuse. In practical terms, this means that most victims of DV are denied sufficient legal protection. Moreover, without going into a discussion of the effectiveness and deterring effect of the punishment, in the Polish legal order only a court during sentencing and in the case of conditional suspension may oblige the defendant to undergo therapy for domestic abusers, which means that most domestic abusers go unpunished and there is no option to force them to change their behaviour.

Conclusion

The Polish legal system does address DV, but it does not criminalise it, or it criminalises it in an extremely limited way. The definition of family violence provided in Article 2.2 of the Counteracting Family Violence Act covers all forms of inflicting and using violence against a family member. In turn, Article 207 §1 of the Polish Penal Code covers only 'abusive' violence, which is to say, limited to severe and premeditated forms of DV. Its application in the penal decision-making process strengthens this gap. Article 207 and its legal interpretation covers only a tiny proportion of all DV cases reported to the state agencies each year.

DV is practically not a crime under Polish law, in the practice of the Polish justice system.

Besides the penalties adjudicated for offences of Article 207, penal measures aimed at preventing or deterring further DV may sometimes be more efficient than a mere penalty, but they are only applied in cases of conviction under Article 207. Given that protection orders aimed at preventing or deterring further violence can only be adjudicated during the sentencing phase, very few DV victims are entitled to these orders, and fewer in fact receive them.

One of the reasons for this situation may be the culture of sentencing within the Polish judiciary (both in general and regarding DV cases) and the strong conservatism of Polish society and decision-makers. Given the primary legal interest protected by the provisions of Article 207 of the Penal Code, it turns out that the protection of family values by law-makers and the judiciary is often enforced at the expense of the victims’ right to a life free from violence.

The policy-makers in Poland by and large have not acknowledged that DV is a deep social problem and that the state apparatus should condemn it (Grzyb 2019). Following the political transformation after 1989, the Polish welfare system and all of society underwent neoliberal reforms that did not leave or develop public resources to solve that multifaceted problem in an integrated way. The problem arises, however, when there is an actual decriminalisation of DV inscribed within a system of prevention.

Needless to say, the criminal justice response alone has not solved the very complex and deeply rooted problem of DV, though a factual criminalisation of the issue seems indispensable nowadays to convey the symbolic message that some behaviour is harmful and intolerable and that society wants to eradicate it. It seems, then, that without framing domestic abuse as a crime, and without effectively prosecuting and punishing the perpetrators, eradicating the problem would be even harder to achieve.

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Transition in offences of not paying maintenance in Poland

Przemiany przestępstwa niealimentacji w Polsce

Abstract: How can the courts ensure someone pays maintenance? What is a sufficient and just reaction to avoiding these obligations? Non-payment of maintenance is an offence in most, but not all, European countries. Due to an amendment in the Polish Penal Code of 23 March 2017, the scope of the criminalisation of this offence in Poland expanded significantly. This paper presents a statistical analysis on this specific type of crime 30 years before and 30 years after the socio-political transformation in Poland and discusses the methods and purpose of criminal justice responses to this issue.

Keywords: evading alimony obligation, non-payment of maintenance, Poland, political transformation, statistical analysis

Abstrakt: Jak skłonić osobę zobowiązaną do płacenia alimentów, aby wypełniała ten obowiązek? Jaka jest wystarczająca i sprawiedliwa reakcja na unikanie tych zobowiązań? Niepłacenie alimentów jest przestępstwem w większości, ale nie we wszystkich krajach europejskich. W związku z nowelizacją polskiego Kodeksu karnego z 23 marca 2017 r. zakres kryminalizacji tego przestępstwa w Polsce znacznie się rozszerzył. W artykule przedstawiono wyniki analiz poświęconych przestępstwu niealimentacji z okresu 30 lat przed i 30 lat po transformacji ustrojowej w Polsce oraz poddano dyskusji sposoby reakcji wymiaru sprawiedliwości na to zjawisko.

Słowa kluczowe: analizy statystyczne, Polska, przestępstwo niealimentacji, transformacja ustrojowa, zobowiązania alimentacyjne

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Introduction

Avoiding payment of maintenance support (which mainly involves child maintenance – Chełstowska 2016) is an example of what is known as family crime, domestic violence, and domestic abuse – especially economic abuse and the concept of coercive control (Stark 2007). Money, support, and contributions to the maintenance or care of a family member can be used as a method of control or a kind of interpersonal abuse in an intimate relationship, especially after the breakup of an intimate relationship with joint minor children.

Historically, this 'family crime' was largely ignored within criminology and the criminal justice system as a 'private matters' (Saraga and Muncie 2001). The change was initiated by women's emancipation, followed by feminist movements asserting that 'private is political' and demanding that private matters become public. Attention was paid first to physical domestic violence, physical abuse of children, then sexual abuse, and elder abuse, and later to psychological and emotional violence such as stalking. All these issues are currently the subject of many analyses and discussions in criminology. Domestic abuse and violence against women are presented as the result, element, and confirmation of systemic inequalities between women and men and the discrimination of women in society, not merely as an individual aberration or a feature of dysfunctional families (Grzyb 2020). Thus, the need to criminalise these behaviours and for the justice system to take them seriously is no longer under discussion.

It is a bit different in the case of economic abuse of an intimate partner that does not include typical physical force. This type of violence is included, for example, in the definition of violence against women and domestic violence in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention 2011), but not in the WHO definition of violence (Krug et al. 2002). Economic abuse among intimate partners fits well within the concept of coercive control, which includes behaviour towards an intimate partner that jeopardises their rights and liberties, but does not necessarily cause physical injuries. Coercive control is defined as a new form of gender-based violence situated next to physical violence, a means of subordinating women to men's power and exercising male privilege (Stark 2007).

In the field of family crime and family abuse research in criminology, a lot of attention is paid to physical violence, much less to psychological abuse, and practically none to economic abuse (Chełstowska and Niżyńska 2015). The same applies to the problem of the offence of not paying maintenance, despite its presence in almost all national penal codes (certainly European ones). This problem is very broad, affecting many issues such as family crises, divorces, separations, ex-partner relationships, abandonment of children, child neglect, offences related to the violation of an order from a court or other institution, etc. Important questions arise – is child support, for example, not paid with an intention to harm (an important element of violence and abuse) and, if yes, who is the target of this violence, the child or the ex-partner?

Additionally, the most critical issue, in fact, is whether we define it as a criminal or a social problem. If we consider that the most important is to provide an adequate livelihood, maintenance, or support to those who need it, e.g. children, then we may decide that it is not so important to punish those who avoid taking care of their children, but to provide support by the state.

This paper examines the changes the offence of non-payment of maintenance was subject to in the course of socio-political transformation in Poland. It is composed of four parts. The first one briefly analyses changes in provisions of the law penalising the offence of non-payment of maintenance in Polish penal codes since World War II. The second part presents general statistical data of this offence over the longest possible timeframe. The third one adds to this analysis data on the 'second demographic transition' in Poland in regards to non-payment of maintenance. The fourth part presents criminological research on social attitudes towards and characteristics of perpetrators and proceedings of offences of non-payment of maintenance in Poland before and after political transformation.

1. Offence of non-payment of maintenance in Polish penal codes

Avoiding payment of maintenance support is one of main articles in the section 'Crimes against the family' in the Polish Penal Code, next to the crime of abusing a close relation and neglecting a child.

This behaviour was first criminalised in Poland before the Second World War, in the Polish Penal Code of 1932, Article 201. This provision provided criminal liability of malicious evasion of the obligation to provide maintenance support for a close relation which leads to misery (the inability to meet the most basic needs of food, clothing, housing, etc.) or to the need to rely on support from others. Prosecution of the offence was at the request of the victim. The justification for this criminalisation was the statement that the obligation to pay maintenance is on the family rather than the whole of society, but society cannot ignore the problem of neglecting to fulfil this obligation. The extent of criminalisation was limited to only intentional and malicious behaviour. After the Second World War, in the beginning of the communist era, this provision of the article was preserved – until the introduction of the new Penal Code of 1969. In the Penal Code of 1969, in place of Article 201 from the Penal Code of 1932 Article 186 was introduced with the following, rather similar, content: 'Whoever persistently refuses to comply with his obligation under the Act to provide for the maintenance of a child, parents, or other close relation and thereby exposes him or her to the inability to meet basic needs is subject to imprisonment of up to 3 years.' Therefore, the only changes were the replacing the word 'maliciously' with the word 'persistently' and the concept of 'misery' with the concept of not satisfying 'basic needs', which led to the criminalisation of this behaviour being extended. In 1975 another amendment changed the form of prosecution to ex officio (Jodłowski 2017).

In 1998 the newest Polish Penal Code of 1997 was introduced, with a provision – Article 209 – which was very similar to Article 186 from the Penal Code of 1969. The changes include a return to prosecution at the request of the victim, except in cases of payment of benefits from the alimony fund, and replacement of the words 'obligation to provide maintenance' ('*obowiązku łożenia na utrzymanie*') with words 'obligation to care by neglecting maintenance support ('*obowiązku opieki przez niełożenie na utrzymanie*'). The maximum penalty for this offence in the new Penal Code was reduced from 3 to 2 years' imprisonment. Since the introduction of the new Penal Code, this article has been amended several times, generally in relation to the list of entities that may apply for prosecution and the specification of situations in which prosecution may take place ex officio.

The last amendment to the Polish Penal Code – of 23 March 2017 – introduced a radical change to Article 209 which expanded the scope of criminalisation of this type of behaviour significantly. After that amendment, the offence covered in Article 209 §1 is expressed as the perpetrator evading their obligation to carry out maintenance payments specified as the amount (monetary) which is equivalent to at least three periodic (monthly) benefits. Article 209 §1a established an aggravated type of non-payment offence. A stricter liability is imposed on those who, by failing to comply with maintenance obligations under §1, expose the beneficiary to an inability to meet their basic needs. Prosecution of this offence is at the request of the victim, social welfare body, or the entity taking action against the maintenance debtor. If the victim has been granted adequate family benefits or cash benefits paid in the event of ineffective enforcement of maintenance, prosecution of the offence is ex officio. Paragraphs 4 and 5 introduced the principle of not punishing the perpetrator if he or she, in general, pays all maintenance in full. The subject of this crime is the right to material security for people who cannot support themselves, and the right to dignified living conditions – to provide material support for persons entitled to maintenance (Lachowski 2018; Mozgawa 2019).

Thus, the current provision of Article 209 defines the basic type of offence for non-payment of maintenance as a failure to comply with maintenance obligations, regardless of the consequences that this behaviour may entail for the victim (e.g. in the form of misery – as was the case under the Penal Code of 1932, or exposing the victim to the inability to satisfy basic needs – as is the case in the Penal Code of 1969 and the previous legal status of the Penal Code of 1997) or whether it is of a malicious or persistent nature. This raises the question of the main goal of criminalising this behaviour after the amendment. Is it still a fundamental threat to an important, legally protected interest, in this case, the interest of family well-being and the duty of care? Or is it just an inability to fulfil a contractual obligation – non-compliance with the maintenance obligations (which may be considered contrary to Art. 1 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms)?

To sum up, instead of one type of offence, two were introduced – the basic one and the aggravated type, the latter of which covering situations where not paying maintenance leads to serious deprivation for the victim. As a result, the old type became the aggravated one and the new basic type was introduced. Thus, it was not an example of tightening criminal law, but of extending the scope of criminalisation – the creation of a new, less serious crime. Two main purposes for these changes were introduced: improving the economic situation of families for which maintenance should be paid – by increasing the efficiency of enforcement of maintenance payments from people avoiding this obligation – and eliminating this behaviour – by deterring potential perpetrators of this crime. Another aim was to simplify the proceedings. According to the legislature, the previous wording of this provision caused numerous difficulties related not only to the various interpretations of the term 'persistence' (long-term, repetitive behaviour, characterised by bad will), but also to the obligation to prove the existence of a relationship between the fact of persistent failure to pay maintenance and exposure leading to serious deprivation of the victim's needs.

In studies of Polish criminal law, there was a very intense discussion continuing for many years on the criminalisation and decriminalisation of non-payment of maintenance. It was said that the current provision is ineffective and often irrational due to the increasing inability to fulfil this obligation in the future, and that it should not be the subject of criminal law, but rather of family or civil law (Kołakowska-Przełomiec 1989; Ratajczak 1980; Siwik 1974). Therefore, it has been claimed that these offences should not be punished by imprisonment (Warylewski 2012: 1035). However, non-custodial and community sanctions such as fines or community service are not good either, because they reduce the perpetrator's earning potential. Imprisonment would only be effective if all prisoners were effectively employed and paid (Siwik 2016).

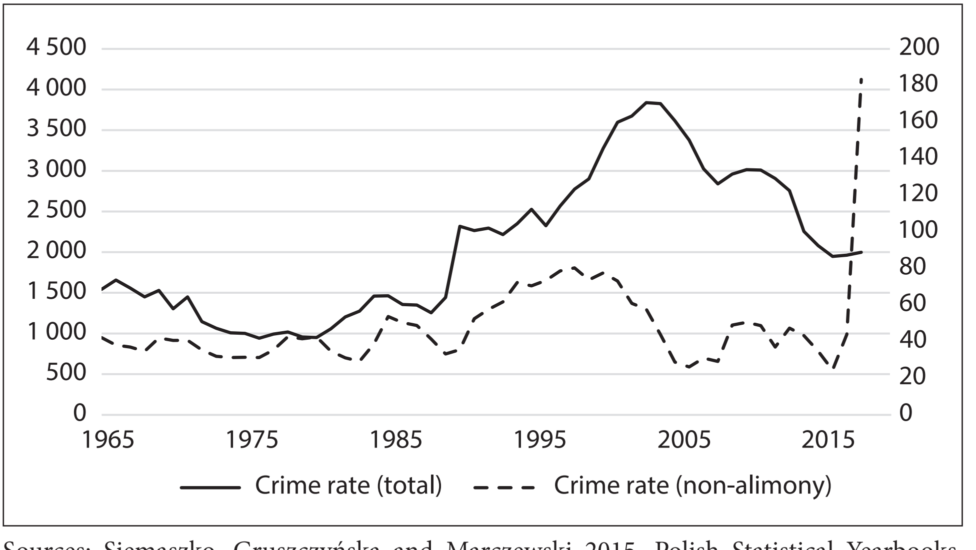
In short, non-payment of maintenance was not a top priority of the police, the criminal justice system, or even criminologists, but it has always been a significant part of all registered and punished crimes in Poland. It is interesting to show how changes to the provisions of the Criminal Code have affected the statistical picture of non-payment offences in Poland and to what extent they were able to achieve the goals set for them.

2. Statistical overview of offences of non-payment of maintenance in Poland

The number of registered offences of non-payment of maintenance was published in Polish statistical yearbooks from 1965 to 1997. To a greater extent, the statistics present the number (and gender) of people convicted of this crime from 1959 to the present. In addition, some of these yearbooks also contain other selected data on this phenomenon, such as the number of suspects broken down by gender and age group (1970–1975) or the number of convicted people according to the length of prison sentence (1995).

Looking at the number of non-payment of maintenance offences in reference to the total number of crimes nationwide and the number of inhabitants in the corresponding years (crime rates), one can distinguish several periods (Table 1 and Figure 1). From 1965 to 1989, that is, the last 25 years before the political transformation, there was a period of rather stable total crime rate (with the exception of a slight decrease in the seventies and an increase in the eighties) and a rather stable number of non-payment offences (with the exception of two increases – in the late seventies, probably related to the change in the way this offence was prosecuted – and late in the eighties, divided by a decline in the early eighties).

Figure 1. Crime rates (total crime and non-payment of maintenance offences) in Poland



Sources: Siemaszko, Gruszczyńska and Marczewski 2015, Polish Statistical Yearbooks, Polish Police data.

After the political transformation, we can observe a significant increase in the number of non-payment of maintenance offences, similar to the general rise in the number of crimes in Poland. Then, despite the continuing increase in crime, the number of non-payment of maintenance offences started to fall in 2001. The huge decrease in 2004 was due to a change in the welfare system which led to less reporting of such crimes: the Alimony Fund was closed on 1 May 2004 with the introduction of the Act on Family Benefits. This fund was restored in July 2008. At the same time, the list of entities that may apply for prosecution was extended to social welfare entities and authorities taking action against maintenance debtors; this resulted in a rise of reporting non-payment of maintenance offences since that year.

The last significant (fourfold) increase in the number of non-payment of maintenance offences was caused by the above-mentioned last change to the provision of the corresponding Article of the Penal Code from 2017. In 2018, non-payment of maintenance offences covered 9.2% of all crime in Poland; in 2016 it was 1.3% (more or less the average level for the 2000s), and before 1989 it was approximately 3%. What should be emphasised is that introducing new penal codes in 1969 and 1997 (with insignificant changes to the corresponding article) had no effect on the number of these offences.

As mentioned above, conviction data for offences of non-payment of maintenance have been available since 1956. On average, the number of people convicted for non-payment accounts for about 70% of the number of all related crimes registered (Table 2). This quite high proportion (especially compared to the proportion of the total convictions and the total number of crimes, which was about 33% on average) is connected to the fact that the identity of all maintenance offenders are known to the victims and law enforcement authorities. This is also one of the main reasons maintenance offences covered a greater part of all convictions, especially in times when that figure was lower, such as just before and just after the political transformation. The number of convictions of this crime is not affected much by the efficiency of law enforcement agencies in detecting the crime, so in times of organisational turmoil the decrease was not as significant as that of other crime.

The number of people convicted for avoiding payment of maintenance underwent similar changes as described for the number of offences. Additionally, the period of 1956–1964 was a time of large, difficult-to-explain fluctuation in the total number of convictions and the number of those convicted for non-payment. In addition, data from 1974 and 1977 were affected by two general amnesties.

In 2018, people convicted for non-payment of maintenance comprised 15.3% of all people sentenced in Poland; in 2016 it was 3.4% (as with the police data, it was average for the 2000s); before and after 1989 it was approx. 9%.

Table 1. Police data on non-payment of maintenance in Poland

Year	Total number of crimes	Crime rate* (total)	Non-payment of maintenance crimes	Crime rate* (maintenance-related)	Year	Total number of crimes	Crime rate* (total)	Non-payment of mainte-nance crimes	Crime rate* (maintenance-related)
1965	486,007	1,543.1	13,280	42.2	**1992**	881,076	2,296.6	22,104	57.6
1966	525,540	1,658.0	12,069	38.1	**1993**	852,507	2,216.7	23,739	61.7
1967	498,027	1,559.1	11,831	37.0	**1994**	906,157	2,351.0	27,874	72.3
1968	468,602	1,450.6	11,208	34.7	**1995**	974,941	2,526.6	27,193	70.5
1969	497,971	1,529.6	13,686	42.0	**1996**	897,751	2,324.7	28,349	73.4
1970	424,217	1,304.2	13,215	40.6	**1997**	992,373	2,567.6	30,394	78.6
1971	475,411	1,449.2	13,363	40.7	**1998**	1,073,042	2,775.1	31,037	80.3
1972	379,086	1,146.4	11,732	35.5	**1999**	1,121,545	2,901.5	28,487	73.7
1973	355,125	1,064.4	10,674	32.0	**2000**	1,266,910	3,278.2	29,967	77.5
1974	339,542	1,007.8	10,542	31.3	**2001**	1,390,089	3,597.4	28,264	73.1
1975	340,423	1,000.6	10,686	31.4	**2002**	1,404,229	3,672.9	23,280	60.9
1976	324,182	943.4	10,752	31.3	**2003**	1,466,643	3,839.9	22,061	57.8
1977	344,507	992.9	12,308	35.5	**2004**	1,461,217	3,827.2	16,728	43.8
1978	355,493	1,017.8	14,903	42.7	**2005**	1,379,962	3,616.1	10,994	28.8
1979	337,301	956.7	14,664	41.6	**2006**	1,287,918	3,377.5	9,982	26.2
1980	337,936	949.8	15,144	42.6	**2007**	1,152,993	3,025.0	11,814	31.0
1981	379,762	1,057.8	12,469	34.7	**2008**	1,082,057	2,838.9	11,133	29.2
1982	436,206	1,204.1	11,290	31.2	**2009**	1,129,577	2,960.6	18,718	49.1
1983	466,205	1,274.8	10,701	29.3	**2010**	1,151,157	3,014.5	19,304	50.6
1984	538,930	1,460.0	14,314	38.8	**2011**	1,159,554	3,009.8	18,775	48.7
1985	544,361	1,463.2	19,982	53.7	**2012**	1,119,804	2,906.0	14,262	37.0
1986	507,913	1,356.0	18,865	50.4	**2013**	1,061,237	2,756.3	18,249	47.4
1987	508,533	1,350.2	18,390	48.8	**2014**	867,855	2,255.1	16,664	43.3
1988	475,273	1,255.3	15,674	41.4	**2015**	799,779	2,079.8	13,368	34.8
1989	547,589	1,442.4	12,624	33.3	**2016**	748,459	1,947.8	9,398	24.5
1990	883,346	2,317.3	13,558	35.6	**2017**	753,963	1,962.3	16,885	43.9
1991	866,094	2,264.6	20,069	52.5	**2018**	768,049	1,999.4	70,412	183.3

* Number of crimes per 100.000 population
Sources: Siemaszko, Gruszczyńska and Marczewski 2015, Polish Statistical Yearbooks, Polish Police data.

Table 2. Convictions for non-payment of maintenance in Poland

Year	Total number of people convicted	Convictions for non-payment of maintenance	Year	Total number of people convicted	Convictions for non-payment of maintenance
1956	135,743	4,466	**1988**	137,159	12,840
1957	176,697	5,287	**1989**	93,373	8,452
1958	257,004	5,470	**1990**	106,464	7,563
1959	280,761	4,206	**1991**	152,333	12,464
1960	301,927	4,999	**1992**	160,703	15,322
1961	328,490	6,250	**1993**	171,622	16,161
1962	298,090	6,436	**1994**	185,065	16,321
1963	271,545	6,124	**1995**	195,455	15,386
1964	191,933	4,865	**1996**	227,731	19,524
1965	222,323	7,303	**1997**	210,600	19,129
1966	248,447	7,876	**1998**	219,064	20,677
1967	231,786	7,461	**1999**	207,607	19,455
1968	220,520	7,108	**2000**	222,815	20,984
1969	150,668	5,602	**2001**	315,013	20,527
1970	166,049	9,349	**2002**	365,326	17,361
1971	197,334	9,931	**2003**	415,933	17,700
1972	169,321	9,686	**2004**	513,410	18,065
1973	152,176	8,060	**2005**	504,281	10,946
1974	147,469	7,598	**2006**	462,937	7,870
1975	161,286	8,348	**2007**	426,377	8,922
1976	159,363	8,733	**2008**	420,729	9,960
1977	137,847	7,634	**2009**	415,272	12,139
1978	157,463	10,785	**2010**	432,891	17,910
1979	153,026	11,491	**2011**	423,464	16,138
1980	151,958	11,107	**2012**	408,107	12,271
1981	126,403	9,588	**2013**	353,208	13,911
1982	148,456	9,103	**2014**	293,852	12,967
1983	141,768	7,689	**2015**	260,034	10,746
1984	125,132	7,137	**2016**	289,512	9,744
1985	149,414	12,535	**2017**	241,436	7,711
1986	153,037	11,967	**2018**	275,768	42,220
1987	166,753	13,788			

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

Despite the availability of these quite long-term data, more specific, comparable statistical data is hard to come by, concerning, for example, the socio-demographic characteristics of perpetrators. To compare such characteristics from before and after the political transformation in Poland, the author had to use the data of both suspects and people convicted (Table 3). Offenders of non-payment of maintenance are almost exclusively male. There has been a very slight increase in the percentage of female perpetrators – from less than 2% to less than 4%. As for age, there were no significant differences between the four time-points under consideration – in most cases the offenders were between 30 and 49 years old.

Table 3. Gender and age of non-payment of maintenance perpetrators

Year		1970	2000	2016	2018
Suspects – total	**N**	12,262	28,742	-	-
Suspects – men	**N**	11,834	27,765	-	-
	%	96.5%	96.6%	-	-
Convicted – total	**N**	9,349	20984	9,744	42,220
Convicted – men	**N**	9,189	20423	9,436	40,449
	%	98.3%	97.3%	96.8%	95.8%
Perpetrators: 1970, 2000 – suspects 2016, 2018 – convicted		12,262	28,742	9,744	42,220
Up to 17 years	**N**	21	2	0	0
17–20 years	**N**	51	87	169	464
	%	0.4%	0.3%	1.7%	1.1%
21–24 years	**N**	624	845	766	2378
	%	5.1%	2.9%	7.9%	5.6%
25–29 years	**N**	2071	2912	1719	6747
	%	16.9%	10.1%	17.6%	16.0%
30–49 years	**N**	8,967	22,384	6,549	29,861
	%	73.1%	77.9%	67.2%	70.7%
50+ years	**N**	482	2,512	539	2,764
	%	3.9%	8.7%	5.5%	6.5%
Unidentified	**N**	46	0	2	4

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

We can also look at a different source of statistics for this offence for a very interesting three years (2016–2018). The aforementioned amendment to the Penal Code from 23 March 2017 came into force in mid-2017. Since then there has been a huge, unprecedented increase in the numbers of reported crimes, incoming cases to prosecutors' offices (including police cases) people sentenced, and people sentenced to imprisonment (Table 4). In fact, the percentage of custodial sentences are lower than in previous years, though, and the highest increase was in sentences for community service.

Table 4. Offences for non-payment of maintenance in Poland, 2016–2018

	Year		
	2016	**2017**	**2018**
Cases sent to prosecutors' offices	27,976	57,596	156,502
Proceedings initiated by prosecutors	18,017	40,797	118,040
Offences registered by the police	9,398	16,885	70,412
Indictments and applications for conviction prepared by prosecutors	7,957	13,647	59,503
People sentenced (final)	9,744	7,711	42,220
People sentenced to imprisonment (final)	1,381	1,216	4,529

Sources: Polish Police date, Polish Prosecutors Office data, Polish Ministry of Justice data.

3. Demographic transition in Poland related to non-payment of maintenance

This paper does not claim to describe the whole course of the political transformation in Poland after 1989 and its impact on all criminal policy in Poland. This topic has been the subject of numerous studies (e.g. Szymanowski 2012; 2018; Wieczorek 2006). Here, it is important to point out some aspects of the so-called second demographic transition, which describes Poland in a period of political transformation, to offences of evading alimony obligation.

The second demographic transition is a process of gradually decreasing birth and death rates, increasing life expectancy, changing of the cross-section of society, and a growing proportion of older people. This period is accompanied by cultural changes, e.g. the more important role of education and careers, postponing the age of starting a family, falling marriage rates and rising divorce rates. In the sixties and seventies in Poland, 95% of children were born in wedlock (Domański 2013: 364–371); in the beginning of the nineties it was 93%–94%, and in 2013 it was 77% (Stańczak, Stelmach and Urbanowicz 2016: 7).

There is also no place in this paper to present all of the demographic data or to describe in detail all aspects of Polish family law and changes to it over the past few decades, but it should be noted that maintenance orders are issued as part of divorce judgments or judgments which strictly establish or change a maintenance order. Therefore, it is also worth examining whether and to what extent the numbers of these cases and decisions have changed.

In Poland, the period of the 'Polish People's Republic' – from the Second World War to the political transformation in 1989 – was characterised by a rather stable, high number of marriages and a growing number of divorces (Table 4). It was also a time of increasing maintenance cases and orders, but – as mentioned above – a rather stable number of cases and convictions for non-payment of maintenance. The increase in the number of offences for non-payment of maintenance after the political transformation in Poland, and especially in 2018, coincides with falling numbers of cases imposing maintenance orders. This of course requires an in-depth analysis, but it could nonetheless be concluded that there is probably no simple relationship between these cases and that changes in non-payment of maintenance offences are not the result of demographic transition.

Table 5. Numbers of marriages, divorces, maintenance orders, non-payment of maintenance offences, and convictions in Poland

Year	Marriages	Incoming divorce cases	Divorce judgments	Incoming cases on maintenance orders	Maintenance orders	Non-payment offences	Convictions for non-payment
1946	282,000	-	8,000	-	-	-	-
1950	267,100	-	11,012	-	-	-	-
1960	244,900	30,254	14,800	22,888	-	-	4,999
1970	280,000	59,065	34,600	56,080	-	13,215	9,349
1980	307,000	82,380	39,833	102,378	77,404	15,144	11,107
1990	255,000	76,421	42,400	313,226	299,182	13,558	7,563
2000	211,000	81,993	42,770	220,398	176,728	29,967	20,527
2010	228,337	91,400	61,300	135,993	136,175	19,304	17,910
2018	192,443	89,200	62,843	80,383	81,081	70,412	42,220

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

4. Social transition in offences of non-payment of maintenance in Poland?

The last part of this paper is an attempt to answer the question of whether any change in social attitudes towards non-payment of maintenance or in the detailed characteristics of offenders can be observed in Poland before and after political transformation. Not many surveys were conducted on the topic of non-payment of maintenance, though two are worth mentioning here – one carried out by Jerzy Kwaśniewski and Andrzej Kojder in 1976 on a sample of Warsaw citizens and another by Aleksandra Szymanowska in 1993, 1995, and 2006 on representative samples from around the country. Unfortunately, no similar studies were carried out in subsequent years. In 1976, 90.5% of respondents strongly condemned non-payment of maintenance and another 8% somewhat condemned it (Kwaśniewski 1983: 57–62). The only behaviours condemned even more were rape, pickpocketing, purse-snatching, and espionage. Even unintentional homicide during a quarrel and fighting received lower rates of condemnation.

According to Aleksandra Szymanowska's surveys on a representative sample of Poles, non-payment of child maintenance after the political transformation was not one of the most reprehensible behaviours from all crimes and violations of law (Szymanowska 2008: 64–126). The level of condemnation towards it did not change significantly from 1993 to 2006. The percentage of the responses which 'strongly condemn' this act was 77% in 1993, 79% in 1995, and 73% in 2006. The level of general condemnation (both the answers 'strongly' and 'somewhat' condemn) was rather stable – 97% in 1993, 95% in 1995, and 96% in 2006; this was also comparable to the result from 1976 (98.5%). This may indicate a slight change from unconditional to conditional (rather) condemnation of this behaviour and not to acceptance of it.

Among the most often condemned behaviours were 'traditional' crimes: rape, incest, murder, robbery, kidnapping, sexual exploitation of children, battering, theft, or destruction of property. Non-payment of maintenance after political transformation was similarly condemned as giving false testimony, using one's position to obtain undue benefits, offering a bribe, or assisting a wanted criminal. Interestingly, in the factor analysis carried out by the author, non-payment of child support did not combine with other behaviours considered in the study, which may suggest that this crime is assessed differently from the others on the scale of condemnation–non-condemnation and that no group of behaviours would be similarly rated by the same people.

Another interesting result of the reported study was the very high level of responses that non-payment of maintenance is a crime for which the state could decline to adjudicate and instead allow mediation (53.4% of such answers in 2006). This rate was much higher than in the case of traffic accidents, assault, or theft. The breakdown for the answers to the question 'How should courts punish people who persistently do not pay their maintenance' were 17% – courts should not punish them and the case should be dealt with in civil proceedings; 22% – imprisonment (suspended or not); and 59% – other punishment. This suggests respondents were not quite certain of the appropriate reaction to these offences.

To reveal any changes in the criminal justice system's response to the crime of non-payment of maintenance and the characteristics of the perpetrators, it is worth mentioning two courts case-files studies – one carried out by Helena Kołakowska-Przełomiec on court cases which ended in 1979 and another one on court cases ending in 2017–2018 and carried out at the Polish Institute of Justice in 2018 by Paweł Ostaszewski, Justyna Włodarczyk-Madejska and Joanna Klimczak (not published).

Kołakowska-Przełomiec conducted an examination of 160 case files from Article 186 of the Penal Code which ended in a single month (March 1979) and were drawn from the list of 1,196 perpetrators sentenced in that month in all common courts in Poland (Kołakowska-Przełomiec 1989). The proceedings in question were initiated by bailiffs (45.2%), the wife/ex-wife/mother of the children of the perpetrator (42.5%), and other people (11.9%). The maintenance orders which were unpaid by the perpetrators were handed down uniformly, approximately 30% for each category: 1–2 years before initiating the case, 3–4 years before, and 5–10 years before. Maintenance orders which were handed down more than 10 years before the non-payment case constituted 11.2% of cases. 73% of the non-payment of maintenance offences were committed in towns, and 27% in villages. Interestingly, due to the very low reported income of the perpetrators in about half of the cases, the amount of child maintenance was estimated to be about 50%–90% of their total income.

The maintenance orders of 160 investigated perpetrators were awarded to 263 people. In all cases they were children, while in one case it was the children and ex-wife of the perpetrator. 34.4% of cases concerned a maintenance order awarded during the marriage, 20% awarded in the divorce proceedings, 17.5% in judgments regarding non-marital relationships, and 13.1% together with a paternity case. 38.8% of the debtors had never paid maintenance, 46.9% paid it irregularly from the very beginning, and 12.5% paid regularly at the beginning. In 53.2% of cases, due to the insolvency of the perpetrator the entitled individuals received payments from the Alimony Fund.

Child maintenance orders were awarded as follows: for young children (0–3 years) – 40%; for pre-schoolers (4–6 years) – 24.6%; for primary-school students (7–14 years) – 23%; and for adolescents (15–17 years) – 5.6%. At the time of initiating the case, the children were usually 7–14 years old (42.5%). The children typically remained under the care of the mother, very rarely with grandparents or other relatives. Perpetrators usually did not maintain contact with their children – only 2.5% were interested in their children and 31.3% showed little interest.

Criminal proceedings of non-payment of maintenance offences were rather brief – most often they lasted 3–4 months from submitting a notification of a crime to filing an indictment. In 36% of cases, the perpetrators were detained pre-trial. Most of them (72%) admitted their guilt, while 11% denied it.

Kołakowska-Przełomiec pointed out the active role the mother of the children for whom maintenance was awarded played in the proceedings, and not the active role of the children. She stated that unpaid child maintenance orders were always preceded by some conflict in the family. According to the mothers, the conflict was usually caused by alcohol, a failure to support the family, and the father's abandonment of the family. According to the father-perpetrators, the wives or children's mothers contributed in various ways to the breakup of the families by causing quarrels, demanding more money than they were able to earn, or mismanaging the money, also citing interference from distant relations (Kołakowska-Przełomiec 1989: 48–49). The author identified three attitudes of mothers to criminal cases for non-payment of maintenance:

- mothers who wanted maintenance but not to punish the father of their children – they didn't initiate criminal cases themselves, e.g. when they received money from the Alimony Fund (approx. 12%)
- women in difficult financial situations, who wanted fathers of their children to return home (approx. 18%)
- women who did not want to forget about the conflict and harm and who wanted to take revenge and to punish the perpetrator (approx. 60%; Kołakowska-Przełomiec 1989: 49–60)

The vast majority (96.3%) of the perpetrators were men. At the time of case initiation, their ages were as follows: below 25 years – 10%; 25–29 years – 28.7%; 30–34 years – 26.9%; 35–39 years – 19.4%; 40–44 years – 11.3%, 45–49 years – 9.4%; and 50+ years – 5.6%. 48.8% were married, 35.6% divorced, and 13.1% were single. In 40% of the cases they had 1 child, in 37.5% of cases 2 children, and in 22.5% 3 or more children. They had a low level of education: 56.3% had finished primary school at most – of whom 12% did not even complete it – 18.7% had graduated from vocational school, 12.5% from lower secondary school, and only 1 person had graduated from high school. Only 23.7% had permanent work, 49.4% only did odd jobs, 5% were farmers, and 20% did not work at all. Additionally, 18.1% of the perpetrators were chronically ill and 9.4% also had other maintenance orders than those from the cases analysed.

Approximately two-thirds (66.3%) of the offenders had been previously sentenced, and one-fourth (25.6%) had been sentenced 3 or more times. Domestic abuse was the reason for the previous sentence in 11.9% of cases and non-payment of maintenance covered 27%. Most perpetrators abused alcohol (78%) and only 22% drank alcohol moderately or not at all. Approximately 14% of the offenders were addicted to alcohol. The author identified five types of perpetrators:

- I – socially and psychophysically degraded (alcohol abusers), 24%
- II – socially degraded (criminals and alcohol abusers), 13%

- III – unstable in life (abandoning family and work, irregular payment of maintenance), 22%
- IV – careless (didn't remember, didn't want to pay), 26%
- V –shiftless (with financial and employment difficulties), 15%

In general, penalties in the period of the Polish People's Republic were rather severe. Of the cases analysed by the author, 30.6% ended in imprisonment, 53.3% in suspended imprisonment, and 14.2% in community service. Not a single fine was handed down and only 1.9% of cases ended in conditional discontinuance of proceedings. The prison sentences (both types) were most often 1 year, 1.5 years, and 2 years in length. Additionally, the courts imposed different obligations on the majority of offenders: to pay child maintenance (65.7%), to have a paying job (38.9%), to pay overdue maintenance payments (36%), and to abstain from alcohol abuse (30.6%).

The author also analysed the sanctions which were imposed on the perpetrators of a given type. What was interesting was that the most severe sanctions were imposed on people from types I and II – repeat offenders and alcoholics – and the lowest rate of imprisonment was given to type IV offenders – the careless – which, paradoxically, could be most reformed by punishment. These kinds of judgment often raised doubts as to whether it was the right reaction to those offences. Severe sanction was also imposed on afflicted, often permanently ill people without a chance to take up a paying job and pay off their obligations, or people raising other children in desperate financial situations. The results showed that the only factor important to the courts in sentencing was non-payment for a certain period of time. Examining the existence of payment options and a negat -ive attitude towards payment were secondary. This was especially visible in cases initiated by bailiffs.

Similar data to those from Kołakowska-Przełomiec's research from 1979 case files was collected in the course of a research project carried out at the Polish Institute of Justice in 2018, which examined a total of 211 cases ending in 2017–2018, including 107 cases of domestic abuse offences (article 207 of the Polish Penal Code) and 104 cases of non-payment of maintenance offences (article 209 of the Polish Penal Code). Half of both types of cases were finalised at the stage of prosecutors' proceedings (a decision of discontinuance of the proceedings or a refusal to initiate proceedings – from 12 randomly drawn district prosecutor's offices) and half at the stage of court proceedings (a final conviction – from 12 randomly drawn district courts). The main subjects of that analysis were the criminal justice response to such acts and the characteristics of the perpetrators, victims, and the relationship between them. The data collected (from 104 perpetrators) are largely comparable to those from 1979 analysed by Kołakowska-Przełomiec (160 perpetrators), and they are worth noting because they are the most recent and have not been previously published.

Eighty-five percent of those cases were related to acts committed before the middle of 2017, that is, before the last amendment discussed above came into force. The length of the pre-trial proceedings – as with those in 1979 – were rather short: up to 1 month in 18.3% of cases; 1–2 months in 26.9%; 2–3 months in 20.2%; 3–4 months in 15.4%; and 5 months or more in 19.2%. The length of court proceedings (regarding 52 cases) was up to 1 month in 44.2% of cases; 1–2 months in 25%; 2–3 months in 11.5%; 3–4 months in 7.7%; and 5 months or more in 11.5%. The crime of non-payment of maintenance was reported by the victim in 16.3% of cases; a social assistance body in 26% of cases; an authority taking action against the maintenance debtor in 54.8%; and by bailiffs in 2.9%. Therefore, one should note the significant change in the structure of entities reporting the crime: individuals entitled to maintenance are currently in the definite minority, and the authorities responsible for payments from the Alimony Fund, which initiate these proceedings ex officio, prevail.

The proceedings under study ended in a refusal to initiate in 16.3% of cases; in a decision to discontinue the preparatory proceedings in 33.7%; and in conviction in 50% of cases. The reasons for refusing to initiate or discontinuing proceedings were mainly 'no signs of a prohibited act'. In two cases, it was because of the death of the suspect and one case was due to a lack of sufficient data to justify the suspicion of an act, other pending proceedings, and the lack of a required prosecution application from an authorised person. Most of the offenders who were sentenced were given community service (33 people, 20–30 hours of work monthly for 3–24 months), though the other punishments included suspended imprisonment (10 people, 2–12 months suspended for 1–3 years), imprisonment (7 people, 3–12 months), and fines (3 people, 1000–2000 PLN). Most of them (36 people) were also required to provide for the maintenance of another person and one was ordered to abstain from alcohol abuse, to hold a paying job, to inform the court about the course of the probation period, and to systematically compensate the Alimony Fund and the victim within 2 years of the final judgment. There was only one appeal – against the decision to refuse to initiate the proceeding.

Maintenance orders for 104 perpetrators from 2017–2018 were awarded to 154 people – 152 children and 2 ex-wives. The beneficiaries of the maintenance orders were one child (59.6%), two children (26%), three children (5.8%), four children (1%), five children (1%), the mother and 2 children (1.9%), and an adult child (4.8%). Only five (out of 104) offenders lived together with someone entitled to maintenance when the case was initiated. Despite the fact that, as stated before, non-payment of maintenance often coexists with domestic violence, in only one of the analysed cases was there also an accusation of physical violence.

Again, the vast majority (93.3%) of offenders were male, while 7% were female. Their ages ranged from 22–29 years in 11.5% of cases, 30–39 years in 34.6%, 40–49 years in 32.7%, and 50+ in 21.2%. The perpetrator's place of residence was a village in 37.5% of cases, a town with up to 10,000 inhabitants in 10.7% of cases, a town with 10,000–50,000 inhabitants in 20.4%, a town with 50,000–100,000 residents in 5.8%, and a city with over 100,000 residents in 24%. Additionally, 1 person lived abroad. Their level of education was primary school – 21.2%, vocational school – 32.7%, secondary school – 11.5%, and higher education – 1%; there was no such data for 33.7% of them. Only 20 of the offenders maintained a permanent job, 36 only did odd jobs, 5 were pensioners, 4 were in prison, 2 work abroad, and 1 woman – the perpetrator – took care of her other small children. As for the marital status of offenders, 37.5% were divorced, 20.2% were married, 13.4% cohabited, 15.4% were single, and 1.9% were widowed. There were no such data for 10.6% of the cases. The financial and living situation of the perpetrators was rather poor – 38 of them had significant financial problems, 24 were alcoholics, 21 were unemployed, 11 had severe physical illnesses or disabilities, 1 was mentally ill, and 3 were homeless. Twenty-seven of received welfare benefits. Most of them (62 people) had previously been sentenced, usually once or twice, and in 1 case – even 15 times. Their previous sentences were for non-payment of maintenance (24 people), drink driving (23), offences against property (20), family violence (12), assaults (7), and violation of a court ban on driving vehicles (6); 29 had been in prison before.

To sum up, the characteristics of those entitled to child maintenance and those obliged to pay it did not change significantly before and after the political transformation in Poland. However, according to changes in regulations regarding the initiation of these proceedings, the role of actual victims – the person entitled to maintenance – has been reduced; administration bodies now play the main role in initiating cases. One can state that non-payment of maintenance is now more of a conflict between local government authorities that supervise the payment of maintenance from the Alimony Fund and the perpetrators. The actual victims (and the victims' mothers) bring forward cases only approximately 16% of the time.

Conclusion

The paper discussed changes in non-payment of maintenance offences in Poland in relation to the political transformation. The author analysed changes to the provisions of the article which penalises this offence in Polish penal codes since World War II and the statistical data on this offence over the longest possible timeframe. Finally, the author compared the criminological research on this topic made before the socio-political transformation in Poland with the most recent research, including some conducted by the author and not published before.

In the period of the Polish People's Republic, the number of offences for non-payment of maintenance was rather stable, with exceptions – in the late seventies, there was an increase connected with changing the prosecution of this offence to ex officio, and another increases in the late eighties followed a decline earlier in the decade. After the political transformation, a significant increase in the number of non-payment offences can be observed, similar to the general rise in the number of crimes in Poland. Then, despite the continuing increase in crime, the number of offences for non-payment of maintenance started to fall in 2001. The huge decrease in 2004 caused by the closing of the Alimony Fund, which resulted in less reporting of these acts. The fund was restored in July 2008, which resulted in a rise in non-payment offences, as did adding the social welfare body and authorities taking action against maintenance debtors to the list of entities which may apply for prosecution. The last significant (fourfold) increase in the number of offences of non-payment of maintenance was caused by the amendment of the Polish Penal Code from 2017. In 2018, people convicted of non-payment offences constituted 15.3% of the total number of people sentenced in Poland; in 2016 it was 3.4% (this was the average level for the 2000s). Before and after 1989 it was about 9%.

In a detailed view of court proceedings for non-payment of maintenance, the only significant change was the proportion of the entities reporting the crime – the people entitled to maintenance are currently in the definite minority, and the authorities responsible for payments from the Alimony Fund, which initiate such proceedings ex officio, prevail. Perpetrators of non-payment of maintenance, as in the seventies, are male, 30–49 years old, uninterested in their children, with little education, likely to be unemployed, and prone to alcohol abuse and recidivism. The types of penalties imposed have changed – in 1979 suspended and unsuspended imprisonment dominated, while in 2018 it was community service.

When it comes to the efficiency of the criminal justice response to non-payment of maintenance, one can look at a very interesting change in the Polish Penal Code from 2017 and the creation of a new, less serious offence for non-payment of maintenance. After more than two years, a huge increase in the number of non-payment offences and convictions can be observed. At the same time, there has been no improvement in the recovery of maintenance according to reports of the Polish Registry of Debtors Office, but some evidence of improvement in the National Alimony Fund data (in terms of the amount and percentage of debts paid off). According to the same data, there is clearly no evidence that non-payment of maintenance has been eliminated – statistically, it has grown by several times.

On the potential deterrence effect of criminalisation and punishment, we can look from two perspectives – the general and specific deterrence hypothesis (e.g. the conditional hypothesis, the replacement hypothesis, and the additive hypothesis) and the labelling perspective (legal sanctions escalate crime by assigning the role of criminal) (Sherman et al. 1992: 681–683). It is of course impossible to test these hypotheses with the data presented in this paper; it requires additional research and, importantly, till now there have been no evaluations of the different types of interventions to reduce economic violence and non-payment of maintenance, such as a meta-analysis on interventions against physical violence. That is why this topic is very interesting for criminology, the criminal justice system, and public policy and why it is worth an in-depth analysis.

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The emergence of community control sanctions in the Romanian sanctioning system

Wdrożenie kar probacyjnych do systemu kar w Rumunii

Abstract: This article presents the context that led to the establishment of the probation system in Romania in relation to some reforms of the criminal sanctioning system. These reforms were necessary because of the difficulties faced by the penitentiary system before and after 1989, as well as the need to align the administration of penalties with the requirements imposed by the country's accession to the Council of Europe and the European Union. Eighteen years after the creation of the probation system within the Ministry of Justice, it can be stated that this endeavour constitutes a success, but it is absolutely necessary to continue the efforts towards consolidating it. In addition, these measures have to be accompanied by a change of vision in relation to how other community members can be involved in the process of social reintegration of individuals who have broken the law.

Keywords: Romania, probation system, community control sanctions, Penal Code, prisons

Abstrakt: W artykule został przedstawiony proces wdrożenia systemu probacyjnego w Rumunii w kontekście reform dotyczących zmian systemu sankcji karnych. Z uwagi na trudności, z jakimi borykał się system penitencjarny w Rumunii przed rokiem 1989 i po tym roku, wprowadzenie takich zmian było konieczne. Przemawiała za tym także potrzeba dostosowania systemu karnego do wymogów nałożonych na państwa członkowskie przez Radę Europy i Unię Europejską. Z perspektywy 18 lat od wdrożenia systemu probacyjnego w ramach Ministerstwa Sprawiedliwości przedsięwzięcie to jest uznawane za sukces. Konieczne wydaje się jednak kontynuowanie dotychczasowego

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wysiłku, by system ten dodatkowo umocnić. Wykonywaniu środków probacyjnych musi bowiem towarzyszyć zmiana co do postrzegania przez członków społeczeństwa konieczności ich zaangażowania w proces reintegracji społecznej osób, które weszły w konflikt z prawem.

Słowa kluczowe: Rumunia, system probacyjny, kary probacyjne, Kodeks karny, więzienia

Introductory aspects

Although in the historiography of Romania the events of December 1989 are still a controversial topic (Pusca 2018; Stoenescu 2005; Young and Light 2016), what can be said with certainty is that they represented a turning point for the further social, economic, or political development of Romania.

Some of the guidelines of the processes that would outline the recent history of Romania were to be drawn up on 22 December 1989, shortly after Nicolae Ceausescu would leave power. Thus, the new structure that de facto had taken over power, namely, the National Salvation Front, established among its priorities the separation of the legislative, executive, and judicial powers, the development of a foreign policy by integrating a policy of establishing a common Europe, and the promotion of policies subordinated to the principle of respect for human rights and human dignity.

The process by which all these aspirations were to be put into practice has been known throughout Eastern Europe by the generic term 'transition', a process that represented a challenge for the communist states, at least in terms of two aspects. Firstly, it was an economic novelty, i.e. a transition from a centralised economic system to an economic system based on the principles of the free market – of economic relationships following supply and demand. Secondly, it was a process that required a profound reform in almost all aspects of society. It was a process of transformation whose complexity would only be revealed later (Illner 1996), a process with winners and losers, finalised by the accession of most of these countries to the European Union (EU), a moment generally recognised as representing the end of the transition period.

In this context, it is obvious that the criminal justice systems of these countries would undergo radical transformations, given that the system developed in these countries after 1945 was incompatible with the principles and values promoted by the new democratic regimes.

It was (and still is) a complex process, in which the decision-makers were simultaneously subject to pressures from the European institutions and organisations, stressing the need for reforms which emphasise the respect of human rights and human dignity and alignment with the demands imposed by a series of instruments such as the European Convention on Human Rights, but also from public opinion which often perceived these reforms as being far too indulgent towards people who broke the law, requesting firmer action from the state in the repression of crimes (Meško and Tankebe 2014).

In this article we will examine the particularities of the reform process of the system of penalties in Romania with regard to the context and the way of implementing a system based primarily on the application of some non-custodial measures and sanctions.

1. The premises of the reform process of the sanctioning system

It can be said that the reform of the sanctioning system would begin shortly after the events of December 1989, considering that in January 1990 the death penalty would be abolished by a decree of the National Salvation Front. Also in January 1990, a decree-law[1] was issued giving amnesty for the political crimes committed after 30 December 1947, the date of the official establishment of popular democracy in Romania – in fact the moment when the communist party took over political power in Romania.

However, the actual reform process of the sanctioning system would start under the pressure of two factors: the beginning of the process of joining the European institutions and the inability of the penitentiary system to adequately manage a large number of people. All this was on the backdrop of an increasingly precarious economic situation, a constant in the former communist Eastern European countries during that period.

Although some explanatory proposed models (Durnescu 2015) also highlight the importance of aspects, such as the role of personalities (ministers of justice who have undertaken a series of reforms) or of judicial practice (in the sense of an increasing openness of magistrates for the application of some community control sanctions) in the reform process; we consider that these aspects were rather contextual factors that did not have a decisive influence in reforming the sanctioning system.

Thus, the reforms that some ministers of justice (see the mandate of Minister Valeriu Stoica) initiated were based precisely on the commitments that Romania had assumed internationally through the above-mentioned accession process and on the realities of the penitentiary system which, as we will further indicate, was already marked by a series of significant problems (overcrowding and rioting) which required urgent measures to be taken.

With respect to the openness of the magistrates in applying community control sanctions, a series of legal opportunities have been offered to them in order to pronounce such sanctions, opportunities introduced by the successive modifications

[1] Decree-Law no. 3/04.01.1990 (Official Journal no. 2/05.01.1990)

to criminal law. However, these changes were made as a result of the phenomena mentioned above.

Regarding the impact of the accession process to the European institutions, we can distinguish between two stages: Romania's accession to the Council of Europe and the country's accession to the EU.

Romania's accession to the Council of Europe took place on 7 October 1993, on the occasion of the statutory documents and the European Convention of Human Rights and Fundamental Freedoms being signed. From the perspective of the normative transformations in criminal matters, this moment would be very important, mainly due to the fact that Romania would ratify the European Convention of Human Rights,[2] thus opening the way for the Romanian people to petition the European Court of Human Rights when their rights were being violated. Also, as a result of joining the Council of Europe,[3] Romania would accept the monitoring of detention centres by the Committee for the Prevention of Torture[4] in order to evaluate the respect of human rights in the case of prisoners.

Over time, these two institutions (the European Court of Human Rights and the Committee for the Prevention of Torture) played a fundamental role in improving the conditions of detention and reforming the related normative framework.

The European Court of Human Rights, through the decisions made in the cases of imprisoned people subject to examination, would repeatedly find violations of human rights within Romanian detention facilities. In most cases,[5] the Court would oblige the Romanian state to pay damages to those individuals, which entailed a significant financial effort. For example, the amount paid by Romania as compensation to convicted people as a result of certain ECHR decisions in 2017 was 2 million EUR.[6] Beyond awarding these damages, though, the Court's role was also to place pressure on the political decision-makers in Bucharest to take firm measures in the direction of reforming the system of criminal sanctions, both custodial and community.

In this respect, the decision in the case of Rezvmieș et al. v. Romania is emblematic; in this case the Court was not limited to finding that during the execution of the petitioners' sentence they were held in conditions deemed improper (overcrowded, unhygienic conditions), but it also ruled on the systemic nature of these problems which the penitentiary system has been faced with. Accordingly, the pilot decision[7] procedure was initiated, forcing the Romanian state to submit to the Court, within six months, a timetable for implementing measures aimed at

[2] Law no. 30/18.05.1994 (Official Journal 135/31.05.1994)
[3] Law no. 64/4.10.1993 (Official Journal 238/4.10.1993)
[4] Law no. 80/30.09.1994 (Official Journal 285/7.10.1994)
[5] See for example *Micu v. Romania; Olariu v. Romania*; *Stana v. Romania*.
[6] http://anp.gov.ro/wp-content/uploads/2017/04/bilant-ANP-2016.pdf
[7] *Rezvmieș et al. v. Romania*

avoiding overcrowding and improving detention centre conditions. The strategy developed by the Ministry of Justice for the period 2018–2024[8] foresees the introduction of measures that may contribute to increased application of alternative measures and community control sanctions (for example, the possibility of introducing electronic monitoring) as well as to a stronger probation system, which, as we will show, plays an essential role in the implementation of those measures.

An important result of the Committee for the Prevention of Torture's actions was that, through the visits made over time within the detention facilities, the precariousness of the facilities was unveiled, as well as some institutional procedures by which the rights of the detainees were violated. Moreover, the conclusions of these reports were incorporated into the decisions made by the Court, also justifying the sanctions applied to Romania in the light of the findings made by the Committee.

Another important factor that contributed to the implementation and promotion of community control sanctions, from the perspective of Romania's accession to the Council of Europe, was the fact that it imposed the recommendations of the Council of Ministers as reference standards for the legislation to be adopted in the future.[9] From this perspective, a series of recommendations made over time (for example, Recommendation [2008] 11 on the European Rules on the treatment of juvenile delinquents) would emphasise the priority of a criminal sanctioning treatment orientated mainly towards the application of non-custodial sanctions.

Besides the accession to the Council of Europe, another factor of progress in applying measures of community control sanctions was the accession of Romania to the EU. Even if there are no mechanisms at the EU level similar to those developed under the aegis of the Council of Europe, there are still a number of procedures in place which can compel member states, even indirectly, to review their criminal sanctions framework or to improve their method of execution.

We are looking here at the mechanism established for the implementation of the European arrest warrant. It was established by Framework Decision 2002/584/JHA, being an instrument by which the Member States of the EU created the premises for mutual recognition of judicial decisions in criminal matters, thus eliminating the extradition procedure (Klimek, 2016). The adoption of this decision represented a real 'make-or-break' for the justice systems of the member countries, replacing the extradition system, under certain conditions, with a transfer system.

From the perspective of our approach, the existence of situations in which European enforcement orders issued by the Romanian authorities cannot be

[8] http://www.just.ro/wp-content/uploads/2018/01/calendar-masuri.pdf

[9] See for example Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules; Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe Probation Rules; and Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member states concerning restorative justice in criminal matters.

enforced due to the conditions in Romanian penitentiaries being considered inhumane or degrading is, in turn, a premise for reforming the sanctioning system.

The Court of Justice of the EU decision[10] in the case of Aranyosi and Căldăraru is relevant here: having been referred by a court in Germany, the Court – recalling that the absolute prohibition of inhumane or degrading treatment and punishment is part of the fundamental rights protected by European law – decided that if, in the light of information provided or any other information available to it, the authority responsible for executing the mandate finds there is a real risk of inhumane or degrading treatment regarding the person subject to the mandate, the execution of the mandate must be delayed until further information is obtained, which allows for the elimination of such a risk.

A further driver of change is represented by the European Parliament, e.g. its reports or motions constituting a factor that can initiate changes to the legislation of EU states towards the adoption of EU sanctions on a wider scale. Such an example is the European Parliament resolution on prison systems and detention conditions.[11] Point 15 of this motion highlights that Member States should consider reducing the number of detainees by using more frequent non-custodial measures, such as community service or electronic monitoring.

Regarding the second factor we have referred to, namely, the inability of the penitentiary system to manage a large number of people deprived of liberty, we consider that the following observations should be made. Some of the problems that the prison system has faced originated during the communist period. If we were to refer to the evolution of this system after 1947, we can distinguish two periods. First, the one between 1947 and 1964 was represented by the involvement of the penitentiary system in repressing those whom the newly installed regime considered undesirable (political detainees, members of the former interwar bourgeoisie, intellectual elites who did not cooperate with the new regime, peasants who did not accept the party's agricultural policy, etc.). It is difficult to estimate the number of detainees whose punishment was carried out in labour camps or penitentiaries, though the figure could have been as high as 500,000 people. There were over 120 units registered in which they executed their punishments, some of those locations being large – as many as 5,000 detainees served their sentences in these units (Boldur-Lățescu 2005). There was in fact a systematic attempt to exterminate these people behind the process the communist regime presented as 're-education', considering, among other things, the inhumane conditions of treatment or forced labour.

After 1964, Romanian communism entered a stage known as 'liberalisation' (Tismaneanu and Stan 2018). Formally, the abuses committed previously by the

[10] Judgment of the Court (Grand Chamber) 5 April 2016 in Joined Cases C-404/15 and C-659/15 PPU

[11] European Parliament resolution of 5 October 2017 on prison systems and conditions (2015/2062(INI)

communist regime were to be 'condemned' by Nicolae Ceausescu during a plenary session of the Romanian Communist Party in 1968 (Popa 2018). A new constitution that ostensibly guaranteed a series of rights and freedoms was also drafted. In order to maintain a series of appearances, the communist regime stopped punishing those crimes which were considered to be directed against the socialist system, though the repression of opponents would continue – only this time they were accused of committing more common crimes (Deletant 2018). Also, in 1968 a new penal code was drafted[12] which, with subsequent changes, would be in force until 1 February 2014. In such circumstances, it is obvious that the penitentiary system would have to undergo a series of transformations, no longer primarily being an institution of political repression.

However, a number of ideologically motivated reforms did have a series of long-term repercussions on this system. With the communist regime asserting its superiority in terms of the humane treatment of people who had broken the law over the capitalist regimes, and following Nicolae Ceausescu's desire to be regarded as a reformer, in 1977 Decree-Law 225[13] was issued by which 70% of the Romanian penitentiaries were closed down, it being estimated that the maximum number of detainees should not exceed 15,000 detainees annually.

This measure was taken simply for propaganda purposes, without any analysis. Obviously, given the above-mentioned underestimated number, the penitentiary system became unable to cope with the much larger number of detainees who would serve out their sentences, taking into account that the criminal law was a mainly repressive one, with an emphasis on the application of custodial sanctions. Later, some penitentiaries were reopened, but the capacity of the penitentiary system remained underdeveloped. Under these conditions, the periodical granting of amnesty or pardons was identified as a method of controlling the number of detainees (Stefan 2006).

Given all these aspects, it was obvious that the penitentiary system was incapable of contributing to the rehabilitation of convicted people. As in the previous period, the social reintegration of the detainees consisted in their obligation to work on different sites, often under conditions taking the form of genuine exploitation.

In December 1989, in Romanian prisons, there were 36,450 detainees, serving their sentences under totally inadequate conditions, the detention facilities being characterised by a lack of basic hygiene and suffering from overcrowding (Cartner 1992). Given that after 1989, the newly established political regime could no longer appeal to the mechanisms of the previous era for controlling the flow of the prison population (granting amnesties or pardons), the number of convictions would increase relatively quickly. Thus, in 1992 the number of people in prisons was 41,300 and the capacity of the penitentiary system was 29,400 (Cartner 1992).

[12] Law no. 15/21.06.1968 (Official Journal no. 65/16.04.1968)

[13] Decree-Law 225/16.07.1977 (Official Journal 722bis/18.07.1977)

This is the context faced by the prison system in the 1990s when, in addition to the pressures exerted by the international bodies mentioned above, a series of riots or hunger strikes initiated by the detainees took place, a situation which would hasten the implementation of reform measures orientated towards the application of non--custodial measures and sanctions. All of this took place under economic conditions which at the time made it almost impossible to allocate the resources necessary for the rapid construction or modernisation of the penitentiary infrastructure.

2. Highlights in the development of community measures and sanctions in Romania

As mentioned before, the main method by which the legal framework regarding the extension of the application of the community measures and sanctions in Romania until 1 February 2014 was by a series of successive changes[14] to the Criminal Code adopted in the year 1968.

For our part, we consider that three stages can be considered in this process. The first stage (1990–2001) was one with a rather strong legislative character, with norms that allowed judges to apply community measures and sanctions on a wider scale being implemented during this period. The second period (2001–2014) was focussed on the emergence of the probation services as part of the criminal justice system. It also represented a period during which a series of penal code drafts were debated, having in common proposals for the extension of non-custodial measures and sanctions. The third stage (2014 to date) is the period after the new penal code came into force,[15] in which the probation system has become the only structure involved in the management of community penalties. In the following paragraphs, we describe the main milestones that would mark each of these stages, placing our approach in the general socioeconomic context of Romania.

Thus, in 1992 a modification introduced to the penal code by Law no. 104/1992 allowed for suspending the execution of prison sentences under supervision.[16] The importance of this achievement lies in the fact that this new practice in criminal law would pave the way for subsequent provisions specific to probation. Essentially, according to the law, under certain conditions, the courts could order a prison sentence to be suspended for a probationary term (not exceeding 9 years).

Similarly, a convicted person had to comply with a series of measures that mainly concerned periodically presenting themselves to the judge appointed as

[14] For example, Law no. 140/5.11.1996 (Official Journal 289/14.11.1996); Law no. 197/13.11.2000 (Official Journal 568/15.11.2000); Law no. 278/04.07.2006 (Official Journal 601/12.07.2006

[15] Law no. 286/2009 (Official Journal 510/17.07.2009)

[16] Law no. 140/5.11. 1996 (Official Journal 289/14.11.1996)

their supervisor or to other bodies established by the court and a control that was instituted regarding their means of support, freedom of movement, or change of workplace. At the same time, if deemed necessary, the court could impose one or more obligations, which were geared rather to the social reintegration of the convicted person (for example, to attend a training course or earn a qualification, or to undergo treatment measures – in particular for detoxification). If the convicted person did not comply with these measures and obligations, the court could revoke their suspension under supervision by ordering their prison sentence to be carried out or by extending their term of probation (Art. 864, Penal Code 1968).

These legal provisions have undergone a series of transformations over time, most of which were dictated by the need to exercise control over the offences where the judges could apply the suspension under supervision. It could not be ordered, for example, in the case of premeditated offences, for which the law provides for imprisonment of more than 15 years, or in cases of serious bodily injury, rape, or torture.

The introduction of suspension under supervision was necessary as a series of criminal sanctions provided for by the penal code had become inapplicable in the new economic conditions after 1989. For example, the penal code provided for the execution of a prison sentence at the workplace. In the context of economic liberalisation, with the increasing volatility of jobs, it was obvious that such a sanction would become inapplicable, falling into desuetude (Durnescu 2015).

The year 1997 is important from the perspective of setting up the first experimental probation centre in Arad, as part of a pilot programme involving local social actors, namely, courts, prosecutors, nongovernmental organisations, authorities, and the penitentiary in Arad. The role of this experimental centre was to pilot a series of elements specific to probation, such as the psycho-social evaluation of the defendants or supervision in the community (Oancea 2012). Subsequently, between 1997 and 2000, eleven such experimental probation centres were to be set up and run following the model of Arad, with financing secured through external financing programmes (for example, the PHARE fund, Know How funded by the Government of Great Britain etc.). Furthermore, a probation department was to be set up within the Ministry of Justice in 1998, a department that had the main role of ensuring the coordination of these experimental centres' activities (Pescaru 2007).

An essential aspect of these centres' activity was that suspension under supervision was promoted as an alternative way of sanctioning and, moreover, one that aimed at eliminating the formality of its execution and orientating it towards the social reintegration of those under supervision.

In my personal comments made during the period I worked at the Bucharest Experimental Probation Centre, I pointed out that when the supervision was carried out by judges, the emphasis was often only on the presentation of the person on probation at court when summoned by the judges; no action was taken to reduce the risk of recidivism. The novelty of these centres' interventions was precisely the attempt to introduce a practice based on a risk-need-responsibility model and adjusting the intensity of the probation officers' intervention to be in accordance with the risk of relapse of the people under supervision, their criminogenic needs, and their learning style, cognitive abilities, or level of motivation for change (Bonta and Andrews 2007).

In addition, other activities, such as training for the release of people carrying out custodial sentences, working for the benefit of the community, holding victim–offender mediation, or implementing structured work programmes with the offenders (Oancea 2012), were piloted within these centres. Mainly, the decentralised nature of the experimental centres' operation made it possible to carry out the respective additional activities.

During this same period, a series of normative acts were also drafted, regarding the organisation and functioning of the probation institution, starting from the experience accumulated in the experimental centres, but also that resulting from the expertise provided by the partners from England and Wales or the Kingdom of the Netherlands.

The establishment of a probation system within the Ministry of Justice was foreseen, but this initiative was estimated to be implemented in 2004–2005. However, a series of political emergencies related to the processes driven by Romania's accession to the EU and the implementation of profound reforms of the sanctioning system led to the creation of a probation system being placed on the list of immediate priorities; consequently, Government Ordinance no. 92/2000 was drafted in the year 2000. What is unique to this piece of legislation is that, under given conditions, it would limit the scope of the activities carried out by probation more to the community, making the activity of penitentiaries secondary and rather a decision that was to be taken locally by these services. Formally, there was no provision for the probation services to collaborate with the penitentiary units towards social reintegration of people in custody.

From the point of view of the institutional architecture, the method chosen for the organisation and functioning of the probation services ensured their extension for the short-term at the national level with minimum resources allocation. Thus, from an administrative point of view, the newly established services (one in each county, without legal personality) have been placed under the subordination of the courts and the Ministry of Justice through a specialised direction that exercised only the control of the functioning of these services (inspections, methodological guidance, staffing, etc.).

This mode of operation would characterise the organisation and functioning of the probation system up until 2014, when the new set of laws on probation[17] came into force, in the context of drafting the new penal code. This organisational architecture would provide an advantage in the sense that only probation officers

[17] Law no. 252/19.07.2013 (Official Journal 512/14.08.2013); Law no. 253/19.07.2013 (Official Journal 513/14.08.2013)

would be employed within the services, the courts that had their own budget were responsible for the administrative side (assurance of spaces, endowments, payment of salaries, etc.). In the long run, this solution would generate a series of discrepancies between the probation services, generated by the different ways the courts would be involved in their development.

The fact that the establishment of a probation system under the subordination of the Ministry of Justice became a short-term priority (it was practically created between September 2001 and December 2002) meant that the area of activities that the probation services carried out was initially limited to those that were conducted in the former experimental probation centres.

Thus, in the first phase their competence consisted in preparing evaluation reports for the defendants at the request of the courts, supervising the way the people who were convicted respected their obligations and measures during the period of supervision and, upon request, providing them with legal services, assistance, and counselling in order to meet some of their criminogenic needs, as well as supervising the way the minors on whom the courts imposed the educational measure of supervised freedom respected their obligation to perform work for the benefit of the community.

However, the main challenge faced by the newly established services was to achieve a major change in judicial practice, to respectively require the judges to extend the use of suspension under supervision, given that – in the year 2000, for example – 34,448 sentences of imprisonment were pronounced with execution, and only 445 of them with suspended sentences under supervision.[18] The period that followed would see the activity of the services being heavily promoted, both by the magistrates and the institutions in the community, the success of these actions being evidenced by the steady rise in the number of judgments in which the courts entrusted to probation services the supervision of the people sentenced. For example, in 2010, nine years after the establishment of these services, the number of convicted people in their records was 8,977.[19]

Beyond these figures, however, the probation services have gained the confidence of the magistrates, the probation officers being perceived by them as professionals, upstanding and focused on the social reintegration of those convicted. In fact, as a series of investigations would reveal, the judges' expectations from the probation services were aimed at them taking steps to reduce the risk of recidivism among convicted people and not just supervising how the measures were respected or how the obligations related to the period of supervision (Oancea 2012).

In order to increase the capacity of the services to be involved in a meaningful way in the rehabilitation process, a number of approaches specific to the 'what works' paradigm (McGuire 2001) have been introduced at the national level. Firstly,

[18] http://www.just.ro/directia-nationala-de-probatiune
[19] http://www.just.ro/directia-nationala-de-probatiune

we consider the adaptation, piloting, and accreditation of structured programmes for working with the offenders, programmes based on the cognitive-behavioural paradigm or on developing the social skills of those convicted (Micle, Oancea and Saucan 2012a). Judges have begun to be receptive to these new approaches, including in cases of pronouncing prison sentences suspended under supervision and obliging convicted people to participate in programmes run by the probation services.

Unpaid work for the benefit of the community has been introduced to probation practice in criminal matters; judges now have the possibility to impose this obligation when they consider it necessary.

Another element that has consolidated the role of the probation services in judicial practice was the modification brought to the penal code that provided the obligation to have an evaluation report drawn up by these probation services in all cases where minor offenders were judged. The evaluation report plays the role of providing a variety of information regarding the psycho-social profile of the minor offender, which judges consider to be useful tools in the process of individualizing the sanctions (Art. 506 Law no. 286/2009).

Furthermore, the collaboration between the probation services and the penitentiary units has continued to be developed, firstly by reforming the legal framework for the execution of the penalties, with the probation officers becoming members of the parole commissions, and secondly, that they would begin running as partners a series of programmes aimed at preparing the convicted people to be released (Art. 41 Para. 3 Law no. 254/2013). All of these innovative activities have been subordinated to the imperative of increasing the degree of community security that the probation system in Romania has assumed since its establishment.

In summary, the experience from 2001–2014 can be described as a period of consolidating the probation system, of identifying the effective means of intervention in order to reduce the risk of relapse of those supervised, and of creating and strengthening partnerships with community institutions. At the same time, all these institutional developments required a rethinking of the probation system, as it was obvious the way of organising and running it which was envisaged in 2000 was no longer compatible with the new realities.

However, it was not so much the probation system which had to be reformed as the whole vision of the administration of the criminal justice system, since the approach considered after 1990 to successively modify the criminal code in order to adapt it to the new socioeconomic realities had already reached its limits. In the explanatory memorandum released when the new criminal law was being drafted, the legislature acknowledged that previous repressive practices had not proved to be effective (for example, the maximum punishment for the crime of robbery was 15 years). The important thing was to achieve a sanctioning system which, through flexibility and diversity, would allow the choice and application of the most appropriate measures so as to ensure both proportional constraint in relation to the seriousness of the crime committed and the dangerousness of the offender and an efficient way to rehabilitate the offender.

Under these conditions, given the introduction of the new penal code, the probation system would have to be reformed, by reorganising the National Probation Directorate within the Ministry of Justice. On 1 February 2014, both the new penal code and the new laws governing the organisation of the probation system came into force simultaneously. The innovation that the new regulations would bring is represented first of all by the fact that the National Probation Directorate would exercise full control over the activity of the probation services, the latter having a separate budget. As far as the jurisdiction of the probation system is concerned, it would be significantly expanded, giving it the power to administer the enforcement of all community control sanctions (except for fines).

Thus, with regard to juvenile justice, the legislature explicitly stipulated that the rule, in the case of minors in conflict with criminal law, is to sanction them with a non-custodial educational measure (Art. 114 Para. 1 Law no. 286/2009), while the application of a deprivation of freedom measure is exceptional in nature and must be justified firstly by the degree of gravity of the crime for society. Also, at the time of release from the centres where they execute their custodial measures, the supervision of minors in the community is usually the responsibility of the probation services. Judges are offered the opportunity to adapt the educational measure to the criminogenic needs of minors by imposing obligations (for example, attending school or qualification courses, or the obligation to not associate with certain people).

Significant changes were also made in the way of sanctioning adults. In addition to suspending prison sentences under supervision (which would have survived in a relatively similar form compared to the old regulation), the concept of postponing the sentence was introduced. The introduction of this measure (which exists under German and, partially, French law) was mainly justified by the need to create a stronger sanctioning framework for people who commit crimes with a low degree of gravity for society. In many cases the individuals who were sanctioned did not perceive these solutions as being punitive in nature, and returned to their criminal conduct. Here we consider, in particular, the offences of the traffic regime on public roads (for example, driving under the influence of alcohol).

The new penal code limited the discretionary character of the prosecutors' decisions, so that in most of these cases the judges choose to postpone the sentence. Essentially, the enforcement of the sentence consists in establishing a punishment for a person found guilty of committing a crime and temporarily delaying its execution, when the exact punishment established is a fine or imprisonment of a maximum of 2 years, and the court considers – taking into account the offender's character and the conduct he/she had before and after committing the crime – that due to the personal situation of the defendant, the immediate application of a sentence is not necessary, but supervision of his/her conduct is required for a fixed period of 2 years.

In the practice of the probation services, the institution of postponing sentence execution has generated a real 'inflationary' effect of the cases under supervision. Thus, on 31 December 2014 a total of 26,749 supervised individuals were registered in the services' records, and on 31 December 2018 this number had risen to 69,702 cases.[20]

Another novel element was the compulsory nature of the work for the benefit of the community in cases where the court decides to suspend the execution of the punishment under supervision and optionally in the case of delaying the execution of the punishment, except for cases where the sanctioned person cannot perform it for medical reasons.

In its explanation of the new normative framework, the legislature expressed a greater concern for providing the probation services with the tools necessary to adapt interventions to the criminogenic needs of the person under supervision. Given that people who have broken the law sometimes have a low level of intrinsic motivation to change, a fact which generates genuine frustration for practitioners (Viets, Walker and Miller 2002), one possible solution is to transform extrinsic motivation into intrinsic motivation by imposing obligations (Day et al. 2010).

As we have shown, it was also possible to impose obligations on a supervised person under the old regulations, but they could not be modified during the supervision period. Moreover, a consistent judicial practice aimed at imposing obligations had not been outlined, although a series of studies proved its to be effective in the practice of probation (Micle, Oancea and Şaucan 2012).

The new penal code provides the probation officers with the possibility of requesting the executing court to remove or add new obligations during this term, depending on the risk of recidivism or the criminogenic needs of the person under supervision.

Another way in which the new penal code established new tasks for the probation system was by introducing attributions regarding the supervision of convicts after being released from the penitentiary. As we have mentioned, at the time of setting up the probation services, they were focused mainly on activities in the community, while collaboration with the penitentiary units was rather secondary.

After 1989, the reforms were directed in particular towards improving the conditions of detention, totally neglecting the aspects aimed at the social reintegration of former detainees. Moreover, as a result of the collapse of the centralised economy, the approaches used during the communist period would fall into desuetude, meaning the existence of bodies on the local level that mediated the employment of a detainee after their release from prison in one of the economic units controlled by the state. Under those circumstances, lacking the most elementary support after release, the recidivism of the former detainees was for the most part only a matter of time.

[20] http://www.just.ro/directia-nationala-de-probatiune

The steps taken were to be sequential, rather based on a series of local initiatives or projects of some non-governmental organisations that, in most cases, after the financing ran out could no longer ensure their sustainability. Even though there were a number of initiatives of the political factor to identify a variety of ways to improve the situation of post-release detainees, they have not been completed.

The reasons for this state of affairs are manifold, but the most important one seems to be the reluctance of the decision-makers to take the initiative of concrete steps to avoid a series of negative reactions from the media or public opinion. In this regard, a relevant factor was the reaction of the media to a draft bill aimed at granting benefits (paying transport expenses, providing clothing, and providing free medical care) to detainees released from prison in order to facilitate their social reintegration. Most often, the newspapers presented this initiative with headlines like 'Detainees the priority of Members of Parliament', 'Incredible benefits after release from prison', and 'Social Democratic Party wants to force mayors to give prisoners homes, meals, clothing, and free transportation upon leaving prison'. In most cases, the media presented the rights that former detainees would have enjoyed as being excessive, which would ultimately lead to the abandonment of these initiatives. Under these conditions, the natural consequence of this state of affairs has materialised in the high recidivism rates faced by the Romanian prison system (approximately 70%).

The novel element introduced by the current penal code is the probation services' supervision of individuals released conditionally from penitentiaries who have at least two years of their sentences remaining, within the framework of procedures similar to suspending a sentence under supervision.

However, this involvement of the probation services deals only with part of the problem, namely, that of the supervision of the conditionally released detainees, while the most important aspect – their social reintegration – remains unresolved. The causes are multiple, some being related to the capacity of the probation services to involve themselves in a substantial way, given that the volume of cases per probation officer is high (196 cases/probation officer in 2018). In addition to the volume of activity, it should also be taken into account that the people released on parole most often face a complex of criminogenic needs, with a high risk of recurrence (Durnescu 2018).

Also, opportunities in the community are extremely limited, as there are still no services tailored to the specific needs of former detainees (e.g. half-way houses), and the existing initiatives are rather exceptional. In addition, there is still an attitude of stigmatisation of former detainees in public opinion and among potential employers, which makes their social reintegration extremely problematic; they most often identified the solution to the problems faced after liberation to be emigration (Durnescu 2019; Durnescu et al. 2016).

The Criminal Code which came into force on 1 February 2014 introduced a series of procedures likely to help and recover the civil damages set by the court involving the probation services. In cases where the person under supervision does not pay his civil obligations, they are obliged at the latest three months before the end of the supervision period, to notify the court by report that the suspension or postponement of the application of the sentence can be revoked.

Conclusions

Thirty years after the fall of communism, Romania has undertaken a series of fundamental reforms of the system of criminal sanctions, but it still faces a series of systemic problems that demand immediate intervention. If we look at the statistical data, it is obvious that the application of custodial sanctions is not the rule for the judges, who have at hand a series of community control sanctions, whose enforcement is ensured in almost all cases by the probation services.

The period after the adoption of the new penal code was characterised by a steady decrease in the number of prisoners and an exponential increase in the number of people under the supervision of the probation services. So far, there has not been a complete assessment of the impact of the new criminal legal provisions on the probation system; the data available to us are only a few summaries (the number of people evaluated and supervised, the type of sanction applied, or the possible obligations related to the period of supervision). We do not yet have an accurate picture of the risk of recidivism presented by the people under supervision, or an analysis of the causes underlying their relapse. This information is fundamental in the process of allocating resources to the probation services.

The most important gain of the eighteen years that have passed since the establishment of the probation services is the fact that they are perceived as institutions with a key role in the reintegration process of people who have been in conflict with the law. In this regard, there is a constant concern in the direction of providing these services with effective means of intervention (see structured programmes for working with offenders). The efforts of the probation system must also be doubled by a series of transformations at the level of the community partners. It is obvious that changing public opinion on the situation of convicted people is difficult to achieve, but at the institutional level it is important to take concrete steps, for example, by providing tax benefits to companies that employ these individuals. The prerequisites for making these changes exist, given that the Romanian state has made a series of commitments to the Council of Europe to implement several reform measures aimed at probation services as well.

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Extreme criminal penalties: Death penalty and life imprisonment in the Polish penal and penitentiary system

Skrajne kary kryminalne – kara śmierci i dożywotniego więzienia w polskim systemie karnym i penitencjarnym

Abstract: In the article we analysed how the introduction and application of life imprisonment in the period of transformation has impacted the development of the penitentiary system to date. We answered how and why the legislature eliminated the death penalty from the catalogue of penalties in the Polish Penal Code of 1997, and replaced it with life imprisonment. We took into account the statistics on life sentences passed in Poland. We present the evolution of the prison system, which for a quarter of a century had to cope with this difficult category of prisoners by finding new legal solutions and applying international standards. We also discussed some conclusions of the scholarly study 'The best of the worst and the still evil: Prisoners serving life sentences', which has been conducted since 2014 by our research team. The study focuses on the management and application of this extreme punishment in Poland, the adaptation of prisoners with life sentences to the isolation and social dimension of imprisonment.

Keywords: life imprisonment, death penalty, prison, penitentiary system, transformation, human rights

Abstrakt: W artykule przeanalizowałyśmy wpływ wprowadzenia i wykonywania kary dożywotniego pozbawienia wolności w okresie transformacji na dotychczasowy rozwój systemu penitencjarnego. Przedstawiłyśmy to, jak i dlaczego ustawodawca usunął karę śmierci z katalogu kar w polskim

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kodeksie karnym z 1997 r. i zastąpił ją dożywotnim więzieniem. Przedstawiłyśmy analizę statystyki orzekania kary dożywotniego pozbawienia wolności w Polsce od daty jej wprowadzenia. Zaprezentowałyśmy ewolucję systemu więziennictwa, który przez ćwierć wieku musiał poradzić sobie z tą trudną kategorią skazanych poprzez sięganie po nowe rozwiązania prawne i standardy międzynarodowe. Omówiłyśmy także niektóre wnioski z badań naukowych „Najlepsi z najgorszych i źli stale. Więźniowie dożywotni" – prowadzonych od 2014 r. przez nasz zespół badawczy. Badania koncentrują się na zarządzaniu i wykonywaniu tej ekstremalnej kary w Polsce, przystosowaniu więźniów do izolacji i społecznym wymiarze więzienia.

Słowa kluczowe: kara dożywotniego pozbawienia wolności, kara śmierci, więzienie, system penitencjarny, transformacja, prawa człowieka

Introduction

We assume the initial date of Poland's transformation to be 1989. This year was a turning point in the history of the Polish state: its system and, consequently, the law.

> The post-socialist systemic transformation is a comprehensive process of transition from a single-party political system, a centrally planned nationalised economy, a top-down society, and the associated culture and mentality towards a parliamentary democracy, a market economy, a civil society, and a new culture and mentality which is linked to these structural features. (Kołodko 2007: 3)

One area of the Polish transformation was penal policy, especially penitentiary – concerning prison isolation. After 1989, but before the modern penal codification of 1997, changes in criminal law 'concerned the removal of the most repressive, inhumane, or even illegitimate laws that cannot be maintained in a democratic state under the rule of law' (Szymanowski 2012: 104). A characteristic effect of the transformations in Europe at the time was a departure from the death penalty in post-communist countries (Frankowski 1996: 215). In this paper, we will focus on this process in Poland: we will present how the policy of handing down and carrying out the most severe criminal penalties has changed over the last 30 years.

Our findings are based not only on the studies we have already found, but also on our research into life imprisonment as a penalty. The first stage of the study, entitled 'Life imprisonment: The killer, his crime, and his punishment' was carried out between 2014 and 2017. Currently, we are continuing it in the project 'The best of the worst and the still evil: Prisoners with life sentences'.[1]

[1] This paper was created as a result of research project no. 2017/27/B/HS5/00633, financed by the National Science Centre. For more see http://lajfersi.uw.edu.pl/en/research/current/ [access 15.03.2020].

1. The harshest criminal penalties during the transformation period in Poland

At the beginning of the transformation, the Penal Code of 1969, which was in force in Poland,[2] provided for the following types of penalties: fines, restriction of liberty, imprisonment (from 3 months to 15 years), and exceptional penalties for the most serious crimes, i.e. a sentence of 25 years' imprisonment or the death penalty.

The law did not provide for life imprisonment, which was known to Polish legislation from the pre-war penal code of 1932.[3] Interestingly, when the legislature introduced the penal code of 1969, they justified the abandonment of this type of punishment on humanitarian grounds (Szumski 1996: 5), though this did not prevent them from retaining the death penalty. Since the 1930s, the application of capital punishment had met with resistance from part of the academic community, and in the draft Penal Code of 1932 the introduction of this punishment passed by a single vote (Zubik 1998: 84). Also, after the Second World War, there were strong voices against the death penalty, such as Stanislaw Ehrlich's

> we were discoloured by the war, oceans of suffering, mountains of corpses. Come terrifyingly close to death for years, losing loved ones, at the same time we lost our sensitivity to the fate of a single person … to the tragedy of taking one's life'. (Szumski 1997: 83)

Representatives of post-war abolitionists included Władysław Wolter, Marian Cieślak, and Maria Ossowska.

The death penalty under the Penal Code of 1969 was provided for in nine cases, as well as in over a dozen extra-codex provisions. Until 1981, 24 crimes were liable for it. The court could not target perpetrators under the age of 18 at the time of the act or pregnant women. In any case, the death penalty could be imposed alternatively with 25 years' imprisonment (Zubik 1998: 88–89).

The events of 1980 in Poland (the creation of 'Solidarity' and growing public dissent) were conducive to starting work on a new shape of the Penal Code. The first proposal was from the Ministry of Justice, which provided either for the abolition of the death penalty and its replacement by life imprisonment, or the retention of the death penalty for only two crimes (murder and treason against the homeland). The second project, described as 'social', was prepared by experts connected with Solidarity. Its authors proposed the complete abolition of the death penalty and, as an alternative, leaving the sentence of 25 years in prison (Szumski 1997: 85). Soon after, as martial law was imposed in December 1981 (lifted in

[2] Act of 19 April 1969 – Criminal Code (Journal of Laws 1969, No. 13, Item 94 as amended)

[3] Regulation of the President of the Republic of Poland dated 11 July 1932, Criminal Code (Journal of Laws 1969, No. 60, Item 571 as amended)

1983), the related circumstances interrupted the debate on these draft bills. Moreover, this period resulted in extending the threat of the death penalty to 86 types of crimes, and during the martial law suspension period it still involved the high number of 40 crimes (Zubik 1998: 91).

Since 1988, a period called the de facto moratorium on the use of the death penalty began – the last execution in Poland was carried out in 1988. However, since that time there were still sentences condemning perpetrators to this punishment. The last death sentence was imposed by the 'Court of Appeal in Łódź (24.04.1998, IIAKa 18/97), which upheld the quadruple death penalty for the perpetrator of seven murders, ordered by the Regional Court in Piotrków Trybunalski (26.05.1995, IIIK 173/93)' (Rzepliński 2008: 906).

After the elections to the Sejm and Senate in 1989, on 10 August, a group of 27 MPs from the Solidarity movement submitted to the Sejm a bill on the abolition of the death penalty, providing for a 25-year prison sentence in its place. This initiative failed, which may be justified by the unfavourable attitude of the then authorities towards the abolition of capital punishment, but also by the inadequate preparation of the bill – 'it must be acknowledged that the opportunity was not taken to present the abolitionist rationale more widely, as if it were thought that a noble cause would defend itself' (Grześkowiak 1993: 172).

A year later, however, the abolitionists managed to make progress, when the provision providing for the death penalty for organising and directing a major economic scandal, i.e. an economically motivated crime, was removed through an amendment to the Penal Code in 1990. This step was important because of the embarrassing nature of this sanction, which Polish courts twice managed to use (Szumski 1997: 87).

In 1995, as a result of the amendment of the 1969 Penal Code still in force,[4] a statutory five-year moratorium on the execution of the death penalty was introduced, life imprisonment was reinstated, and 25 years' imprisonment was maintained. However, the moratorium did not prohibit sentencing to the main penalty, i.e. putting convicts to death. The courts could still rule on it, and they did so:

> in 1991 it was used in one case, in three cases in 1992, one in 1993, two in 1994, and one in 1995. However, the judgments were not carried out because there was no response from the President – who took over after the abolished Council of State – to exercise or not to exercise the right of mercy. (Zubik 1998: 91)

[4] Act of 12 July 1995 amending the Criminal Code and the Executive Penal Code and increasing the lower and upper limits of fines and compensation in criminal law (Journal of Laws 1995, No. 95, Item 475).

Such a solution – the suspension of the death penalty for five years but leaving the possibility of sentencing someone to death – was assessed by doctrine as 'flawed', primarily because of the risk of human rights violations: 'five years' imprisonment with the knowledge that there is a final threat of execution must be qualified as a form of psychological torture' (Szumski: 1997: 87).

The introduction of life imprisonment, as proposed in the drafts of the new Penal Code, was widely discussed in the academic community. The opponents of the introduction of this punishment cited its contradiction with human rights: too long a period of time after which one can acquire the right to apply for conditional release (25 years) and the irrationality of maintaining a 25-year prison sentence at the same time (Hołda 1994; Zawłocki 1996). It is worth noting another criticism that has been raised, which coincides with that of the death penalty – from a criminological point of view, there were and are no grounds on which to claim that life imprisonment effectively prevents crime, and thus that its absence will increase crime. There were also voices against this punishment, demanding 'real life imprisonment', i.e. criticising the possibility of conditional release.

In view of the actual cessation of the death penalty since 1988 on the one hand, and the changes that were intended to be achieved through this transformation on the other (including the inclusion of Poland in the Council of Europe [CoE] and the European Communities), it seemed an obvious step to eliminate this penalty from the legislation. Despite the support of abolitionists in the academic community, this was not a foregone conclusion. As one of the previously quoted authors aptly noted,

> it is known that the decisive vote on the possible abolition of the death penalty will belong to the so-called political elite, which – unfortunately – is today the greatest threat to the victory of the idea of abolitionism in our country. This is because some politicians treat this problem instrumentally, as a kind of bargaining chip in the pursuit of their parties' ad hoc interests. (Szumski 1997: 89)

However, the draft of the new Penal Code, for the first time in the history of Polish law, did not provide for the death penalty, which was justified by the fact that this penalty

> is incompatible with the principle of human dignity and the contemporary system of values and with the results of criminological research. These studies have shown that the death penalty is not an effective deterrent against committing the crimes for which it is prescribed and applied, and that abolition of the death penalty does not increase the risk of crime that it should be preventing. The function of protecting society from the most serious offenders can be effectively taken over by life imprisonment, which can also satisfy the public's sense of justice. (Draft Penal Code 1990)

Last but not least, the abolition of the death penalty fulfilled the requirement of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Zagórski 2000: 77).

Finally, the new Penal Code in Poland was passed on 20 June 1997.[5] The Sejm introduced a new catalogue of penalties including fines, restriction of liberty, and three separate isolation penalties: imprisonment from one month to 15 years, 25 years' imprisonment, and life imprisonment. With regard to perpetrators sentenced to death who had not been executed, pursuant to Article 14 of the Act – Provisions implementing the Penal Code,[6] the courts commuted their death penalty to life imprisonment.

In the explanatory memorandum to the draft Penal Code, the legislature argued for the introduction of life imprisonment: 'the highest seriousness of the crimes for which it is provided, the reckoning with the public perception of the death penalty, and the exceptional need for the permanent elimination of the most dangerous offenders' (Szumski 1996: 15–16). It should therefore be concluded that an important reason for introducing lifetime incarceration was to take the place of the death penalty, which society expected. Opinion polls indicated that most Poles were then in favour of the death penalty (Szymanowski 2012: 253, 258).[7] Without entering into a discussion about the importance of public opinion, it is worth recalling the reservations over the way in which this issue was studied at the time in Poland – by asking one abstract question: Are you for or against the death penalty? When looking at more complex studies, where the respondent was to assess his or her position on the basis of examples, it turned out that support for the death penalty was no longer so apparent[8] (Krajewski 1990). As one of the authors criticising the introduction of life imprisonment wrote, 'one might get the impression that replacing the death penalty with life imprisonment for the authors of the bill was essentially about calming down public opinion, which seems to be too high a "price" for abandoning the main penalty' (Szumski 1996: 17).

The penalty of life imprisonment has been the subject of criticism from the academic community in Poland and around the world for many years. The arguments for and against its application have been brought up in the discussion on the occasion of its reinstatement in the Polish criminal law and have been raised to this

[5] Act of 6 June 1997 – Criminal Code (Journal of Laws 1997, No. 88, Item 553)

[6] Act of 6 June 1997 – Provisions introducing the Criminal Code (Journal of Laws 1997, No. 88, Item 554 as amended)

[7] In the first years of the 1993–1995 transformation, support remained at 64% and 62%. Also, the opinion about the penalty for murder in those years was 97% in favour of the most severe penalty, i.e. life imprisonment. In 2006 and 2011, over 80% of the respondents were in favour of administering this penalty for murder.

[8] It should be remembered that the quality of this type of research is also dependent on the appropriateness of the wording used in it.

day, except that today we are no longer talking about the theory, but about the real people who are affected by it.

2. Life imprisonment in the current Penal Code

The offences punishable by life imprisonment have been as follows since 1998:[9]

- Initiating or waging an aggressive war (Article 117 §1)
- Genocide (Article 118 §1)
- Participation in a mass attack (Article 118a §1)
- Use of means of mass destruction prohibited by international law (Article 120)
- The killing of surrendering persons, the injured, the sick, prisoners of war, the civilian population of an occupied area, and other categories of persons referred to in Article 123 §1
- Coup d'état (Article 127 §1)
- Assassination of the President (Article 134)
- Murder (Article 148 §1, 2, and 3)

In each of the above-mentioned crimes, lifelong incarceration is accompanied by the alternative of ordinary imprisonment and 25 years' imprisonment. Therefore, in no case is it an absolute sanction.

In accordance with Article 54 §2 of the Polish Criminal Code, life imprisonment cannot be imposed on an offender who is under 18 years of age at the time of the offence. This is the only prohibition the law gives to an offender to exempt him/her from this penalty.

The decision to imprison someone for life as an exceptional punishment is to argue for 'the highest degree of guilt and social harmfulness of the act, the absence of any mitigating circumstances, and consideration of the nature of the perpetrator, his particular antisocial characteristics, and deep immorality' (Melezini 2010: 121). Unlike the Penal Code of 1932, in the present Criminal Code, there is no obligatory sentence of life imprisonment in the form of the loss of public rights forever.

As in the pre-war Polish legislation, there is a possibility for parole with a life sentence.[10] In addition, this penalty may be reduced by granting clemency or as a result of a general amnesty affecting the convicted person.[11] The difference in the

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[9] This is the year the 1997 codification came into force.

[10] However, the legislature prepared an amendment to the Criminal Code in 2019, Art. 77 §§3 and 4 of which allow for life imprisonment without the possibility of applying for parole. At the time of writing this article, it is not known whether these changes will come into force, because on 28 June 2019 the president referred the bill to the Constitutional Tribunal.

[11] Another basis for shortening a life sentence at the trial stage may be Art. 60 §3 of the Criminal Code, when the court applies an extraordinary mitigation of punishment in cases where a perpetrator

current Criminal Code is the period that must pass for the convicted person to be able to apply for conditional early release. According to Article 78 §3 of the Penal Code, a person sentenced to life imprisonment may be released on parole after serving 25 years of that sentence. This is only possible

> if his/her attitude, personal characteristics and conditions, the circumstances in which the offence was committed, and his/her conduct afterwards and during his/her sentence justify the belief that the convicted person, after release, will comply with the criminal or protective measure imposed and will respect the legal system, in particular, that he/she will not commit the offence again.

The establishment of a minimum period of 25 years before applying for conditional release was criticised even while the Penal Code was being drafted, and this length of time is not justified in penitentiary experience:

> No view in penitentiary studies based on the pedagogy of rehabilitation expresses the view that improvement in a sentenced person to life imprisonment can be achieved only after serving 25 years, and not before… Our history does not know such a high minimum of serving a sentence as 25 years. (Wąsik 1993: 191–192)

Moreover, attention should be paid to Art. 77 §2 of the Criminal Code, according to which a court, when imposing a custodial sentence, may – in particularly justified cases – set stricter restrictions on the use of conditional early release for a convicted person. This means that the court can raise the limit after which a particular convict can be released on parole from 25 years to, say, 30, 40, or even 50 years. It should be mentioned that the 25-year limitation adopted in the current Penal Code is already high anyway – '10 years higher than the one laid down in the 1932 Criminal Code and 15 years higher than the minimum provided for in the 1951 and 1957 Parole Acts' (Zagórski 2006: 248).

Nevertheless, the courts take advantage of the possibility offered by Article 77 §2 of the Criminal Code by raising the limit at which a person sentenced to life imprisonment may apply for conditional release. The extent to which the court

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cooperating with other persons in committing a crime discloses to the body appointed to prosecute crimes information about other persons participating in the commission of the crime and the relevant circumstances of its commission. The law does not exclude from this measure offences punishable by life imprisonment. Our research shows that such cases occur in practice, such as in the judgment of the Court of Appeal in Poznań of 10 March 2004 ref. II AKa 528/03 or the Court of Appeal in Katowice of 3 February 2000 ref. II AKa 132/99, in which cases the courts of appeal pursuant to Art. 60 §3 of the Criminal Code extraordinarily eased the punishment for perpetrators sentenced in first instance courts to life imprisonment.

may increase the threshold for applying for conditional release is not determined by law, but by reason and the standard of the European Convention for the Protection of Human Rights and Fundamental Freedoms (judgment of 9 July 2013 in the case of Vinter and others v. Great Britain, application nos. 66069/09, 130/10, and 3896/10; judgment of 20 May 2014 in the case of László Magyar v. Hungary, application no. 73593/10; and judgment of 13 September 2019 in the case of Marcello Viola v. Italy, application no. 77633/16).

> It is [also] a matter of making the possibility of parole appear real at the time of conviction, so it cannot be ruled, for example, that a 50-year-old person sentenced to life imprisonment will be able to apply for early parole no earlier than after having served 50 years' imprisonment. (Melezini 2010: 127)

Nevertheless, at the beginning of these regulations, there was already an assumption that this gateway to tightening the life sentence by increasing the threshold for applying for conditional release may constitute a compromise between the legislature and supporters of absolute lifelong incarceration (Wilk 1998: 24). The fact that by using this provision, the court may actually eliminate the perpetrator from free society is evidenced by the judgment of the District Court in Łódź of 20 December 2011, which, by condemning a 64-year-old man to life imprisonment, set the threshold for applying for conditional early release at 30 years. The court's verdict has become final, which means that the convicted person will acquire the right to apply for conditional release at the age of 94 (Lelental 2017: 559–560). This case is one exception, but it shows the danger of depriving a convicted person of his or her real right to hope in the current state of law.

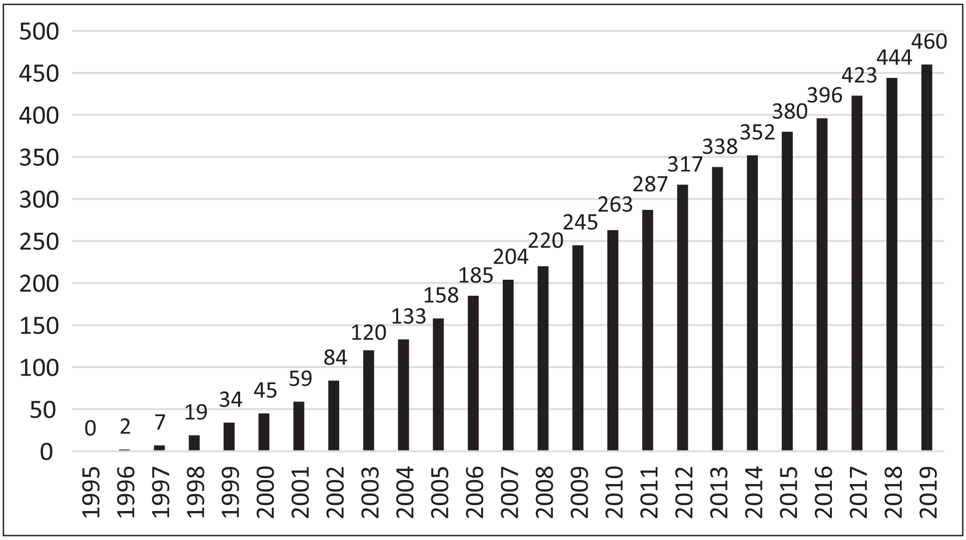
3. Lifers: The statistical picture since 1995

In 1998, when the new Penal Code entered into force, there were 19 prisoners sentenced to life imprisonment. After five years, this number had increased more than sixfold – in 2003, there were 120. Over the next five years, this group almost doubled to 220 prisoners. The trend continued over the following decade (2008–2018), reaching 444 convictions in 2018.

The explanatory memorandum of the Penal Code defines life imprisonment as an exceptional penalty reserved only for the most dangerous offenders requiring permanent elimination. In practice, it is difficult to agree with its exceptionality given that, since 1998, the Polish prison population has increased annually by an average of 20 lifers.

By 1 January 2020, two prisoners with a life sentence had died a natural death, and none of those sentenced to this punishment in Poland had been granted conditional early release or clemency.[12] For these reasons, the number of lifetime prisoners continues to increase, which will continue until they start to leave prison either through parole or death.

Chart 1. Number of prisoners sentenced to life imprisonment (finally and pending appeal) in Polish prisons, by year



Source: 1995–2013 – Atlas of Crime in Poland 5 (Siemaszko 2015); 2014–2019 – CZSW

In the course of our research on life imprisonment, we established that on 20 December 2019, 455 people were imprisoned in Polish prisons, including 14 women, with a final sentence of life imprisonment. Of these, 55% are serving their first sentence (they are not repeat offenders). Our calculations show that at the end of 2019, 185 prisoners had already served at least 15 years of their sentence, and 64 of them at least 20 years. Five convicts, on the other hand, had already served 25 years of their life sentence, which means that they are able to apply for conditional early release from prison.[13]

Lifetime prisoners, like other prisoners, are subject to the principle of free progression, which allows them to be promoted or demoted between three types of prisons, differing in the degree of security, control, freedom of movement, and

[12] As of 1 January 2020, the right to apply for parole has been acquired by five.

[13] These convicts did not have an increased threshold for applying for conditional early release.

contact with relatives and the public.[14] By law, lifetime prisoners may be promoted from a closed prison to a semi-open one after serving at least 15 years of their sentence. At the end of 2019, 11 lifers had been promoted, i.e. about 6% of all those with a life sentence and at least 15 years behind them. Interestingly, none of the five prisoners with the 'longest seniority' of life imprisonment has been promoted to the conditions of a semi-open unit.

The research we have carried out shows that performing and undergoing life imprisonment is far from 'civil or social death.' Most of them are proactive in the process (writing not only in criminal cases to the court of justice, but also in family, civil, and executive matters involving the Ombudsman of Citizen's Rights, the media, and international institutions, in particular the European Court of Human Rights.

The family relationships of prisoners sentenced to life do not disintegrate; on the contrary, they are established or regenerated. Lifers get married, become parents and then grandparents, and initiate contact with further family members or new people they meet. There are those who prefer or are used to solitude, without the need for social contact, but most lifetime prisoners rely on outside contact and invest in it, regardless of their motive.

The transformation and modern trends in the execution of prison sentences have also included life imprisonment.

4. The execution of life imprisonment in Poland: Regulations and practice

Prison – the institution responsible for the execution of imprisonment – reflected the tension of the repressive system before the political transformation and its irrationality, and was an anachronism in the subsequent era of transition towards the CoE.

In the case of long sentences, it is particularly evident – not only in the evolution of ideology, but also in practice – how the way convicts are treated has changed and how sensitive the prison system is, as a result of the adoption of the new axiology and international standards. The transformation of the prison system after 1989 is not only an intra-system movement, but it also includes external stimuli and influences – the supervision of human rights institutions, public participation in the execution of punishment, and the need to construct a new image for the prison system, and the consequent need to gain support and legitimacy for its activities.

[14] These are closed, semi-open, and open institutions. The rules of executing a sentence, depending on its type, are regulated by Arts. 90–92 of the Executive Criminal Code.

Furthermore, prisons – the last bastion of total power enforced 'behind the curtain' of ignorance and walls – accepted the need to show itself as friendly and law-abiding, according to the principle of building the public trust in state authorities. Prisons have gradually opened up to scientific research, public debates, the media, and organisations involved in the execution of prison sentences which offer rehabilitation programmes and legal counselling.

The dynamics of change and the new pro-CoE trend took place under specific conditions. During the period of transformation and modernisation, the prison service took over the legacy of the regression of the 1970s and the repression of the 1980s. The prison service inherited the infamous memory of what happened at the service of the authorities. It also inherited an underinvested material base, i.e. prison facilities that are old and overrun, often with inadequate infrastructure. This part of the heritage did not work in applying the new axiology of in dealing with convicts.

At the same time, the Polish prison system had more glorious reflections, traditions, and experiences from before the war, and those after 1956, which modernised the way punishment was carried out on an equal footing with Western European countries (Kalisz, Kwieciński 2013: 118, 128). The main 'carriers' were the scientific community and educated practitioners convinced by the idea of humanitarianism. Thanks to them, psychologists and visitors entered prisons, equipped with knowledge and methods to create the prison as a better place – a turning point in returning criminals to an honest life. We learned to associate the execution of punishment more with aid than with retribution.

The dynamics of the transformation of the prison system was in the '90s. It was a revaluation of the prison system: measurable legal, structural, organisational, and personnel changes. After 1989, the Polish prison service carried out the most spectacular, thorough, and exemplary reform of the penitentiary system and its institutions, which is still an example to many countries, especially the young [post--Soviet] democracies (Kosiacki 2018: 124).

The analysis of the regressions and progress of the Polish penitentiary system and the execution of prison sentences from the transformation to 2020 shows that the positive changes have been significant:

- the axiological change in executive criminal law (the subjectivity of the convict, respect for their dignity, and the principles of individualisation and normalisation), the development of human rights and the dissemination of knowledge about them (Hołda 2007: 134); the new codification of 1997, the judgments of the Constitutional Tribunal (CT), and the European Court of Human Rights (ECHR) *pilot judgment* procedure have become the determinants of the aspirations of the modern prison system, which should not be underestimated in the prison service
- the predominance of the corrective purpose of punishment and voluntary rehabilitation (Szymanowski 1996: 15–17; Bogunia and Kalisz 2010: 125, 132);

by implementing the corrective purpose of punishment (individual prevention), the Polish prison system has become a tool for reducing criminal recidivism (Machel 2003: 104; Poklek 2013: 143);
- the principle of openness – inspections by non-systemic national and international bodies and public participation in the execution of deprivation of liberty (public inspection and offers of assistance)
- research and transfer of the results into the prisons and the treatment of convicts
- a change in personnel – the prison service has been fed by people with knowledge and aspirations who are more convinced of the rehabilitative purpose of punishment

The analysis has also allowed the negative changes to be identified:
- the system proved to be inefficient in using scientific and empirical knowledge, as well as 'their own people' – educated prison staff; the inefficiency of the system was 'determined' by the low proportion of officers to convicts (Migdał 2014: 113–116)
- the increase in the prison population (Migdał 2014: 114) and overcrowding in prisons resulted in a loss of control over security (Moczydłowski 2004: 93), limited possibilities in influencing individual convicts, and difficulties achieving the rehabilitative goal of the sentence
- pendulum-swing changes in penitentiary policy and the politicisation of the prison system (Migdał 2008: 279), though by definition it works to ensure the protection of social order against dysfunctional phenomena and political order against destabilisation (Porowski 2016: 11)
- destabilising prison work and efforts to achieve the purpose of the sentence as a result of unpredictable behaviour by convicts
- media coverage of unfortunate events in the prison system (e.g. escapes or corruption); the transparency of the prison tempts the media with scandals from behind the walls and losers 'on the floor' in front of the ECHR; the media only provide negative information (Ćwieluch: 2018), which results in a lack of societal support and recognition for the prison service (Migdał 2005: 142)

Describing the evolution of the Polish penitentiary system in the context of the execution of the most severe punishments, we will present the first years of transformation – the revolution in the concept of rehabilitation and imprisonment as such, the creation of units for dangerous prisoners and diagnostic purposes, the role of external control and public debate and science in connection with the competition for the best rehabilitation programmes (*offender behaviour programmes*). The dynamics of change and the prisons' susceptibility to expert external criticism are reflected in the Supreme Audit Office (NIK) inspections and in Poland's defeat at the ECHR in prison matters.

Poland – thanks to the democratic changes that took place after 1989 – was accepted as a member of the CoE on 26.11.1991. Both state authorities and society started to learn what human rights, democracy, and the rule of law mean in theory and practice (Machel 2003: 163).[15] This was not the beginning of the school of democracy, but a return to it, as Poland had previously recognised and implemented the values and principles of this school. As Andrzej Duda stated at a meeting with the Committee of Ministers' Delegates in the CoE, 'joining the CoE was for us a sign of freedom, a sign of return – I stress, return – to the family of countries of the European cultural circle, to the countries of the West, but above all to democratic countries, free countries' (cited in Bodalska 2016).

However, a condition and, at the same time, a consequence of joining the CoE was the reform of executive criminal law. The codification which came into force in 1998 gave rise to the present-day prison system (Lelental 2009: 95). It remains an example not only of a re-evaluation of the treatment of prisoners, but also of the procedural and material guarantees of respect for fundamental human rights. It has become the culmination of penitentiary law.

'The Moczydłowski Reform' – under the slogan 'from a totalitarian to a pro-social prison' – ameliorated the conditions in prisons and increased convicts' rights (Stępniak 2009: 86). The reform of the prison system was divided into three stages:

- 1989–1994: introduction of a new typology of penal institutions (closed, open, and semi-open) and changes to the classification of convicted persons with an emphasis on personality criteria, strengthening the principle of individualisation in the execution of sentences, though rehabilitation – defined as subjecting a sentenced person to discipline and order in the Penal Institution in order to prepare them for socially useful work and to observe the legal order – was still compulsory
- 1996: introduction of a new law on the Prison Service with an emphasis on the pro-social functions that the Service is to perform
- 1998: introduction of the new penal code, which changed the existing priorities for the execution of imprisonment, its objectives, and the means and methods of penitentiary influence and which eliminated the model of forced rehabilitation in favour of the principles of subjectivity and voluntariness

What the prison system became after 1989 can be summarised in a few words:

- politicisation – before 1989, the prison system, in addition to the tasks arising from the requirements of controlling and combating crime, also pursued political objectives, consisting in the repression of political opponents (Szymanowski 1996: 97; Szczepanik 2015: 37); the prison officer was an officer who broke the

[15] Poland is a party to more than 85 of the CoE Conventions, headed by the Convention for the Protection of Human Rights and Fundamental Freedoms and the Recommendations on the Execution of Life Imprisonment and other long-term penalties Rec (2003) 23.

political awareness of the prisoner through operational work (Moczydłowski 2003: 82; Moczydłowski 2003: 94; Stępniak 2009: 77–93)

- the severity of the law, the repressive execution of punishment, and the practice of legalised violence – these manifestations of state action generated a totalitarian system of prison management (Migdał 2008: 625; Moczydłowski 2004: 89–91)
- the legacy of the revolts which testify to the loss of control over those controlled and of the public trust (Kozłowski: 2014; Moczydłowski 2004: 93, 99)
- an outdated, underinvested material base (Szymanowski 1996: 31)
- the mentality of the staff and staff shortages; in the 1990s, 40% of the prison staff was replaced (Migdał 2005: 147)
- the unemployment rate among convicts is 70%; the democratic market economy led to the collapse of state enterprises (Szymanowski 1996: 58)

The regime change and the democratisation of the prison system meant a multitude of requirements codified in the law. As a consequence, it caused casuistry, and the spread of guidelines and bureaucracy. The implementation of standards has brought about favourable and unfavourable legal and practical solutions (Niełaczna 2017: 35; Adamczyk 2015: 8–9). Over-interpretation of human rights in relation to prisoners and sometimes unrealistic recommendations of control spoiled the human relationship between officers and convicts (Machel 2003: 333).

The limited autonomy of the prison system in relation to the Ministry of the Interior and the paramilitary nature of the Service and the removal of a certain degree of autonomy from it are also worthy of criticism – guidelines or orders from headquarters had to be fulfilled regardless of the risk of arbitrariness and negative side effects. The paramilitary-orientated Prison Service is more focused on fulfilling the alleged will of the superiors through their orders and commands than on carrying out effective work with the prisoners (Migdał 2008: 279).

It is also worthy of criticism that although the prison system does not remain isolated in its problems and dilemmas – it is supported by the penitentiary judiciary, the Ombudsman and Commissioner for Human Rights, and the scientific community and can benefit from dialogue with international bodies, such as the European Committee for the Prevention of Torture (CPT; Niełaczna 2007: 43–65) on the content of the execution of sentences and balancing the interests of the convict and the state – they are cautious about the results of their work. The declaration by the prison administration regarding openness to signals of abuse or risk of abuse or of the implementation of specific practices remains questionable.

4.1 Units for dangerous prisoners

The Criminal Executive Code did not contain the provisions in question until mid-1995 (Kremplewski, 2005–2006: 227; Bulenda, Lasocik 2003: 189). The qualification procedure for this category of prisoners and the manner of dealing with them were not clarified until the passage of the Act of 12 July 1995 amending the Criminal Code, the Executive Criminal Code – tightening criminal responsibility if the perpetrator acted in an organised group or in a relationship aimed at a crime – which covered the regulations for the execution of custody and punishment of 1989 and the Ordinance of 9 April 1996 on the classification and treatment of dangerous prisoners. The creation of this category was a reaction to dangerous perpetrators from organised crime groups. The downside of the country's democratisation was an increase in crime, the most serious kind and previously unknown in Poland – organised crime. This was reflected in the structure of the group of dangerous prisoners – in the period 1992–1993 there was an increase in the number of people remanded in custody in this group (Misztal 2000: 52). They represented a new challenge for the prison system (Machel 2003: 170), which was quite well--prepared to introduce changes in legislation and practice (Lasocik 2009: 322). The Executive Criminal Code in 1997 for the first time contained provisions on dangerous prisoners as universally binding act. In practice – in line with the scattering policy – they were placed in separate cells (Kremplewski 1996: 170). At the beginning of 2003, they were placed in special residential units in closed prisons.[16] The new concept of 'scattering' 'dangerous' prisoners forced the need to select penitentiary units where they could be housed (Misztal 2000: 54). This classification was applied for committing a serious crime or creating a threat to the security of the prison during previous or current incarceration (the same basis applies in 2020).

The radical regime for the dangerous prisoners was the subject of an intervention by an Ombudsman (Misztal 2000: 51) and the Polish Section of the International Commission of Jurists in 2003. The CPT also expressed criticism. As a result, the prison system relaxed the regime and shortened the time for reclassification decisions from six months to three. However, this did not affect the quality of the treatment of this category of convicts, including lifers.

Although the legislature clarified the prerequisites for classification as and the treatment of dangerous prisoners, and prison administrations were intuitive and law-abiding and gaining experience, the two Strasbourg pilot sentences in the cases of dangerous prisoners against Poland in 2012[17] demonstrated that they were being dealt with using inhumane and arbitrary treatment. It was not a matter of complete

[16] There were 16 such branches with a capacity of 400. See: Bulletin 2401/IV Commission for Justice and Human Rights, No. 108, meeting of 22 October 2003.

[17] Both judgements of the ECHR were delivered on 17 April 2012 in the cases of Horych, complaint no. 13621/08, and Piechowicz, complaint no. 20071/07.

social isolation, which in the practices of other countries is a clear violation of freedom from inhumane treatment, nor was it about deliberate forms of humiliation. The infringement concerned the arbitrariness of the extension of the status, since the executive body continued to rely on the same historical grounds for the basis of such decisions, without taking into account the current state of play of the conduct and attitude of the convict. The breach was due to automatically subjecting convicted persons to the same security measures and restrictions, regardless of the passage of time, their conduct, and the type of threat they originally posed.

The modernisation of this important aspect of prisons is recorded in the reports of international inspections (the CPT and the ECHR), scientific studies (Gronowska 2013: 7), public debate (HFPC 2014: 8–9)[18] and subsequent changes (Kalisz 2017: 178–180).[19] Since 2009, we have had registered programmes dedicated to dangerous prisoners (Przybyliński 2009: 253).[20]

According to our research, by the end of 2014 – after over a quarter of a century – one in three lifetime prisoners (98 out of 299 convicts) were classified as dangerous. Thirty-nine of them had been in a special unit for over 5 years. The longest period in isolation was 16 years.[21] The decisive, overwhelming majority of the circumstances was murder with weapons, explosives, or committed in a group; the second circumstance was murder with aggravating circumstances.

4.2 Diagnostic units and rehabilitation programmes

The inclusion of psychologists and criminologists in the prison system (in 1931, then in 1956) led to the establishment in 2000 of diagnostic units with professional staff delegated exclusively to the difficult-to-manage category of convicts. Diagnostics has become a permanent, documented element of corrective action. Until 1975, before the establishment of the units, the diagnosis was made by

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[18] 'The problem remains the length of time a prisoner is classified as "dangerous." In 2011, the maximum time from a detainee being qualified to this group until the classification was removed was over 4,000 days. The record of remaining in this category was 6,000 days, i.e. over 16 years. At present, 108 inmates are staying in the "dangerous" units for no longer than one year… Too little time is spent by dangerous prisoners on organised, cultural, and educational activities, as well as sporting activities,' said the Prison Service spokesperson, Colonel Luiza Salapa.

[19] See the MP's bill on amending the Act – the Executive Criminal Code. Draft print no. 2874.

[20] Instruction No. 15/10 of 13 August 2010 of the Director General on the rules of organisation and conditions for the conduct of penitentiary proceedings against convicted prisoners, remand prisoners, and punished persons who pose a serious social threat or a serious threat to the security of the prison or detention centre under conditions providing increased protection for the public and the safety of the prison

[21] Data from BIS CPSB of 21 June 2016. Poland acknowledged the complaints of five lifetime prisoners brought to the ECHR, agreeing that the long period of detention in the dangerous unit was unjustified.

psychologist-diagnosticians in observation and distribution units (Niewiadomska 2007: 153). After the units were liquidated, personal cognitive research was carried out by unqualified psychologists or prison visitors – neither group was able to construct a pedagogical diagnosis on their own (Machel 2003: 278).

The Ministry of Justice Regulation of 14 March 2000 on the principles behind the organisation and conditions of psychological and psychiatric examinations in diagnostic centres defined these principles of examinations conducted in diagnostic centres, 16 of which were appointed at Prison Service District Inspectorates and were obliged to prepare a psychological-penitentiary certificate or psychological opinion. The research concerned, among other things, prisoners sentenced to life imprisonment and 25 years' imprisonment at important stages in view of the passage of time of their sentence and the possibility of the prison administration making specific decisions (e.g. moving the prisoner to a lighter type of prison).

The study and observation ends with the development of a psychological and penitentiary ruling, i.e. a social, personality, and criminological profile of the convict with a determination of the degree of susceptibility to penitentiary effects. The diagnosis serves not only to design the latter, but also to properly classify the convicts, ensure their safety, and individualise the execution of the sentence.

The range of specialist penitentiary facilities is particularly important for long-term prisoners. Despite the fact that the Ministry of Justice Regulation on the methods of conducting penitentiary interventions in prisons and detention centres of 14 August 2003[22] provided for interventions dedicated to lifetime prisoners and despite the scientific opinion of Andrzej Majcherczyk (head of the penitentiary department at the Central Board of the Prison Service) on implementing specialised rehabilitation programmes whose effects have been empirically proven (evidence-based programmes) (Majcherczyk 2006: 15–49; 2013: 195; 2011: 5–30), programmes dedicated to lifetime/long-term inmates as an area of interest at the central level appeared in 2016 during the third edition of the National Competition for a Programme of Social Rehabilitation Fostering Social Readaptation of Persons Deprived of Freedom (Służba Więzienna n.d.). A jury of external experts – representatives of the scientific community – assessed programmes to prevent the negative effects of isolation on long-term prisoners. In the fourth edition of the competition, one of the proposed thematic areas was individuals sentenced to life imprisonment or 25 years in prison (NIK 2014b). In the following years (2018–2019), the Central Prison Service Board did not conduct a competition.

Seventeen years earlier, in 1999, the Headquarters organised a conference devoted to people sentenced to life imprisonment and other long-term sentences, which resulted in the 'Programme of dealing with people sentenced to life

[22] The Regulation provides that one of the objectives of the rehabilitation programme is to prevent the negative effects of isolation, especially for convicts serving long-term imprisonment, and to change their pro-criminal attitudes (§4[1][1]).

imprisonment' by psychologist Beata Witkiewicz. As they constitute an extreme group, requiring careful observation, in-depth research, and balanced decisions, and as they bring various problems to the prisons – from the need to ensure safety and prevent the effects of long-term isolation to future pension and health issues – the programme recommended in-depth personal research and consideration of the punishment in the interventions dedicated to them (Witkiewicz 2007: 259). The programme was not implemented. Meanwhile, the specificity of the problems, needs, and risks of life for long-term inmates and the empirical and legal facts associated with it (Grudzińska 2013: 231–242; Stępniak 2014: 133–162), have remained a natural and important feature of long-term penal isolation.

4.3 Watchdog supervision

International and national supervision remains a key mechanism for modernising the prison system. The controls of the national authorities leave a permanent mark on the democratisation and humanisation of the oppressive nature of the prison system, which is conditioned by the hardship of the punishment, the totality of the institutions, the para-military service, and the need to control difficult personalities, which are also affected by the obligation to change them.

The text is not conducive to tracing the evolution of the prison system as a result of international inspections (CPT visiting recommendations and ECHR sentences). The source of knowledge on this subject is the publication of Maria Niełaczna (2010) entitled 'European Committee for the Prevention of Torture: Between control and standardisation'.

National control by the Ombudsman or Supreme Audit Office (SAO) deserves closer attention. The cases won by the Ombudsman as a result of a complaint to the CT or questions to the Supreme Court which resulted in changes to the Polish prison system include the following:

- statutory limitation of cell overcrowding – CT judgement of 26 May 2008, ref. SK 25/07
- equalisation of payment for prisoners' work – CT judgement of 23 February 2010, ref. P 20/09 (Kwieciński 2014: 17)
- elimination of guards' presence during medical examinations – CT judgement of 26 February 2014. ref. K 22/10
- elimination of non-legal prerequisites for parole – judgement of the Supreme Court of 26 April 2016, ref. I KZP 2/17

Between 2010 and 2019, The SAO checked seven aspects of the prison system:

- places for detainees in 2010
- prison schools in 2010
- medical care for prisoners in 2013

- social re-adaptation of long-term convicts in 2015
- work for prisoners in 2017
- the Justice Fund (Injury and Post-Penalty Assistance Fund) in 2019
- social assistance for inmates released from prisons in 2019

In the case of lifetime prisoners and the control of social re-adaptation of prisoners sentenced to long-term imprisonment, during which the SAO investigated institutional support for the return to social, professional, and family life after a period of isolation and the prevention of feelings of exclusion from and condemnation by society, proved to be crucial.[23]

The SAO criticised the impact to the quality of categories of prisoners[24] and prison work.[25] Almost half (44%) of rehabilitation programmes were characterised by dubious re-adaptation effectiveness. The programmes lacked in-depth, up-to-date expertise on the methodology of rehabilitation. The actions taken had little relation to the theoretical model described in the programme. The majority of those assessed (93%) had no tools or methods to measure their effectiveness. The Prison Service did not analyse their effectiveness or their usefulness in the conditions of freedom. It also did not conduct separate, profiled classes for those sentenced to many years' imprisonment, but did subject them to classes analogous to those for other groups of prisoners.

There is a lack of comprehensive research on the effectiveness of life sentences in Poland, and if we assume the level of recidivism is an indicator, it is impossible. In 2013–2014, we conducted research on the implementation of this penalty and the treatment of convicts in thirteen Polish prisons in view of Recommendation Rec (2003) 23 of the Committee of Ministers to member states on prison administrations' management of life sentence and other long-term prisoners and Committee Prevention Torture standards.[26]

To sum up, the reform of the penitentiary system which started twenty years ago aimed at matching the prison system to the new political conditions and the ideological superstructure of the democratic state of law. The public debate on the function of the prison system in serving the interests of citizens and the state, the urgent search for directions for systemic organisational and legal changes, and the strong conviction of the public that the power of punishment lay not in its restrictions, but in the promise of forgiveness, paid for by the suffering of atonement (Porowski 2009: 203–210) played an important role.

[23] For more see NIK 2014a.

[24] In 2013, out of almost 79,000 prisoners, 7,500 were sentenced to more than 5 years, nearly 1,600 were sentenced to 25 years, and 318 were sentenced to life imprisonment.

[25] For more see NIK 2014b; 2015.

[26] The studies have been published in Niełaczna 2014.

An indicator of the modernisation of the culture of a 'learning organisation' – such as the prison service – was also the reference to systemic solutions for lifetime prisoners practised in Western European countries.

Conclusions: 30 years of transformation and further perspectives?

One of the arguments justifying the introduction of life imprisonment to the Penal Code of 1997 was the conviction that some criminals require permanent isolation from society.

In recent years in Poland, we have witnessed a discussion on this subject, triggered by the end of the 25-year prison sentence for a prisoner who was originally sentenced to death (the amnesty of 1989 changed this sentence to 25 years in prison). The case gained media fame, which caused widespread fear in society and increased the popularity of punitive attitudes – it came as a surprise that the perpetrator of such serious crimes may simply end up serving his sentence and returning to society as someone's neighbour.

As a result of this discussion, the Sejm adopted a special Act of 22 November 2013 on the treatment of persons with mental disorders posing a threat to the life, health, or sexual freedom of others (Journal of Laws 2014, item 24), according to which (if the criteria listed in the Act are met) it is possible to isolate perpetrators who have completed their sentence in a specially established centre (the National Centre for the Prevention of Dissocial Behaviour) virtually indefinitely.

Let us mention that the first 'patient' of the centre was the aforementioned convict, whose case – and the prospect of his living in freedom – was the cause of the whole discussion.

Since 2005, the Penal Code has had post-penal measures at its disposal which allow a court, when sentencing an offender, to pronounce a protective measure in the form of therapy or placement in a psychiatric facility at the end of his custodial sentence. On the other hand, in Art. 80 §3 of the amendment to the new Criminal Code of 2019,[27] the trial period after conditional release of a person sentenced to life imprisonment is to last a lifetime – such a solution is practiced in England, for example. In view of all these possibilities, the question has arisen, 'is it more appropriate to maintain the sentence of life imprisonment or to renounce it in favour of timely imprisonment and post-penal safeguards for particularly dangerous offenders?' (Konarska-Wrzosek 2015: 140). Although such a solution is not

[27] Act of 13 June 2019 on amending the Act – Criminal Code and some other acts, http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451_u/$file/3451_u.pdf [accessed 18.03.2020].

widely discussed, especially at a time of growing penal populism and the preference of both the public and the legislature for more severe punishment, it is worth noting it.

We are now approaching the moment when the courts will have to decide whether or not to give a person sentenced to life imprisonment a chance for parole. Thus, in the coming years we will be able to verify whether life imprisonment is a façade for the permanent isolation (elimination) of dangerous people, or whether it is a punishment to be carried out like any other term of imprisonment, in accordance with the common purpose of punishment, which is rehabilitation.

The beginning of the political transformation was heralded by the need for a more liberal penal code and humanitarian punishment, and after 30 years we are witnessing a growing punitiveness in society – including a parliamentary bill for an absolute life sentence.

Life imprisonment is still an experiment in Polish conditions in terms of how to do it properly and how to work with these people in prison. Can they really count on parole? Looking at the current political and social moods, one cannot help feeling that 30 years after the transformation, we are moving away from abolitionist thought towards pessimistic penal populism.

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The prison chaplain as a part of penitentiary care? Transformation of the Czech prison system after the fall of communism[1]

Opieka duszpasterska jako część opieki penitencjarnej? Przemiany czeskiego systemu więziennego po upadku komunizmu

Abstract: The prison system in the Czech Republic has been carrying out a reform process since the end of the communist regime, and has gone through more than 30 years of transformation, based on an effort to make it a modern European correctional system. Part of this change is the transformation of pastoral care, which is presented as one of the key pillars of penitentiary (and also post-penitentiary) care in the Czech Republic. This text is focused on the historically changing role of prison chaplains in the process of release preparation and rehabilitation of inmates in post-communist Czech prisons. Our aim is to compare official declarations, which are reproduced in written documents, with everyday practice from the perspectives of three different groups within the prison environment. This study is based on ethnographic research conducted in Czech prisons for men. The data corpus includes qualitative interviews with selected actors of the prison world (prison chaplains, inmates, and representatives of prison management), material gathered through observations inside prisons, and an analysis of the documentation on the Czech penitentiary system. We have found that although prison chaplains have become an integral part of the Czech prison world, their position is still specific in comparison with the rest of prison staff. In our study, we will focus on the

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historical evolution of the position of prison chaplains within the organisational structure of prisons, the nature of their work with inmates, and interactions with other prison actors.

Keywords: prison, chaplain, penitentiary care, religion, Czech Republic

Abstrakt: Od zakończenia reżimu komunistycznego czeski system więzienny przechodził ciągły proces reformowania. Ponad 30-letnia transformacja była oparta na dążeniu do osiągnięcia poziomu nowoczesnego europejskiego systemu penitencjarnego. Częścią tej zmiany była transformacja opieki duszpasterskiej, która jest przedstawiana jako jeden z kluczowych filarów opieki penitencjarnej (a także postpenitencjarnej) w Czechach. Niniejszy artykuł koncentruje się na pokazaniu zachodzącej na przestrzeni lat zmiany roli kapelanów więziennych w procesie przygotowywania więźniów do zwolnienia oraz ich resocjalizacji w czeskich więzieniach postkomunistycznych. Celem artykułu jest porównanie oficjalnych, udokumentowanych informacji z codzienną praktyką pokazaną z perspektywy różnych grup uczestników systemu więziennego. Niniejsze opracowanie jest oparte na wynikach badania etnograficznego przeprowadzonego w czeskich więzieniach dla mężczyzn. Dane wykorzystane w artykule obejmują: wywiady jakościowe z wybranymi uczestnikami systemu więziennego (kapelanami więziennymi, więźniami, przedstawicielami funkcjonariuszy służby więziennej), materiały zebrane podczas obserwacji w więzieniach oraz analizę dokumentacji dotyczącej czeskiego systemu penitencjarnego. Pokazują one, że kapelani więzienni stali się integralną częścią czeskiego systemu więziennego, jednak ich pozycja – w porównaniu do reszty personelu więziennego – jest nadal specyficzna. Przeprowadzona analiza skupia się na zmianie pozycji kapelanów więziennych w strukturze organizacyjnej więzień, jaka się dokonała na przestrzeni lat, specyfice ich pracy z więźniami oraz interakcji z innymi osobami obecnymi w systemie więziennictwa.

Słowa kluczowe: więzienie, opieka duszpasterska, system penitencjarny, religia, Republika Czeska

Introduction

This study is the result of an effort to grasp, conceptualise, and reflect on the problems associated with the changing role of religion in the prison environment within the Czech Republic. Our aim is to analyse and describe the process of institutionalisation of spiritual care within the Czech post-revolutionary prison system. We want to approach the specificity of the role of prison chaplains in working with convicts, and their position within the organisational structure of the prison. Our reasoning is based on current ethnographic research conducted in Czech men's prisons, which is part of our long-term interest in this research field. In the current study, we conducted semi-structured interviews with selected groups of respondents, which we supplemented with observation in the interior of prisons, along with an analysis of relevant documents related to the issue in question.

Spiritual care and the status of prison chaplains are described using a hybrid model that takes into account the differences in the performance of spiritual care compared to other standardised forms of treatment/care. The chaplains we interviewed used a strategy in their daily practice which we call long-term, based on an effort to contribute towards changing the value orientation of prisoners. This strategy differs in many ways from the usual methods of working with prisoners, and contributes significantly to the (re)production of the special status of chaplains. On the one hand, they are a standard part of the process of institutionalisation taking place in the Czech prison system, while the other hand, we are able to perceive that it is evident this process of institutionalisation is to the contrary.

1. The process of institutionalisation of spiritual care in the Czech prison system

For most European countries, it is now a standard in the prison environment to pay attention both to spiritual activities involving chaplains and to the convicts' rights of freedom of religion. In other words, religion has various functions in prisons (Kerley et al. 2005), such as helping prisoners cope with guilt (Johnson 2011; Váně and Dirga 2016), reducing aggression, and increasing motivation for lifestyle change. In addition, spiritual care for convicts is expected to contribute to reducing the risk of possible criminal recurrence (Walters-Sleyon 2013).

These expectations are based on traditional practice in Western European countries, where spiritual care is based on the special relationship the prison chaplain and convicts create and maintain (Hoge 2011). The characteristic features of this relationship include social proximity, the expression of mutual respect, and the minimisation of power inequalities resulting from different positions within the organisational structure of the prison (chaplain versus convicted persons).[2] Last but not least, it is assumed that the effect of individual denominations will be positively reflected in penitentiary care (Jensen and Gibbons 2002), which, however, is qualitatively different from other commonly used, standardised treatment programmes.

Long-term legislative practice, as well as the findings of the above-mentioned research, show that in the international context, efforts to integrate religion into prisons prevail. At the same time, however, there is no consensus on the evaluation of the effectiveness of spiritual care in relation to the reintegration of convicts and the prevention of their possible criminal relapse after release. In this respect, the context of post-communist countries is a specific one, which, moreover, has to do with the remnants of the communist regime. It is precisely the transformation of the prison system and the place of religion in it that we concentrate on in this study.

The theoretical basis on which we base our thinking and analysis of the prison environment is the concept of deprivatisation of religion by José Casanova. It was Casanova who pointed out that since the late 1980s, there has been an apparent rise

[2] Proof of the specific perception of spiritual care by prisoners is the marking of the chapel space as a place of freedom in an otherwise unfree world (Becci 2012; Synek 2013; Becci and Dubler 2017).

in religious groups and their efforts to re-enter the public space, from which they have been crowded out in modern times.[3] Casanova tried to demonstrate that religion is leaving the place it used to have assigned to it in the private sphere, and that it is entering a non-differentiated public sphere of civil society, where it participates in conflicts on the redrawing of social borders as they have existed until now. In the resulting situation, religious groups no longer see themselves as integrating social elements of individual nations, but rather transgress to a new trans-national level, acquiring a global identity that enables them to be compared with the nation-state, and the current social order. In such a situation, deprivatisation takes three forms: a) religion as a tool of mobilisation and defence of traditional forms of life against the state and economic expansionism, b) religion as a defence against 'wild' capitalism, and c) religion as a barrier against individualism (Casanova 1994: 225–230).[4]

All three points share the assumption that religion is able to re-establish itself in a given public space and to raise public themes. Casanova uses the facts of the Catholic environment to consider the process of religion's transformation[5] and return to the public sphere (Casanova 1994: 75–134, 167–207). It shows that the Catholic Church once again represents one of the influential players in the socio--political field.

Also, it was the Catholic Church which, in the Czech environment at the end of the 1980s, made a public demand that was directly related to the prison environment. In 1987, it was possible to read in Czech churches on 29 November the *Common pastoral letter of the bishops and administrators of the Czech and Moravian dioceses for the year of Blessed Agnes Přemysl*, which started with the words 'stand up straight and lift your heads'. This pastoral letter initiated the so-called Decade of Spiritual Restoration, which was prepared by the Catholic Church in co-operation with underground Catholic structures.[6]

It was about establishing religious themes, overlapping with the public space.[7] The petition *Suggestions of Catholics to address the situation of religious citizens in CSSR* was signed on the same date, which contained 31 areas concerning the role of religion in the public space of communist Czechoslovakia. This petition was soon supported by Cardinal Tomášek.

[3] In the Czech or Czechoslovak context, the displacement of religion from the public space (in this case, the prison environment) was enhanced by the dominance of the Communist regime.

[4] For more on the application of Casanova's concept see, e.g. Váně, Stočes (2016).

[5] Casanova demonstrates that in late modern societies, traditional religious groups (Catholicism) have ceased to view themselves as integrative social components of the nation, and have shifted to a new transnational form of global identity, allowing them to confront the nation-state and its current social order. (Casanova 1994: 48–51).

[6] The decades of spiritual renewal of the nation was a pastoral initiative in 1987–1997. It was declared in a pastoral letter on 29 November 1987 by Cardinal František Tomášek. For more on this, see (Opatrný 1992).

[7] Concerning religious issues in the public space in the post-communist period in the Czech Republic, see (Váně 2012; 2015; Váně and Kalvas 2013).

In connection with our research topic, point no. 10 was key; it stated, 'We ask to be permitted to visit priests and hospitals when patients, prisoners, or their relatives so wish, but also at the priest's own request. Enable religious rites in prisons and hospitals. Allow believers in prison to wear crosses and other religious symbols, and to carry religious literature. Allow them confession and spiritual conversations with priests.'

We present this event not only to illustrate the theoretical framework on which it is based, but also mainly because this public demand has further developed in the post-communist period, and takes on an institutionalised form, which we will continue to focus on.

Before we do so, it is necessary to state that religion or spiritual care realised by chaplains in the environment of Czech prisons did not appear for the first time after 1989. Father František Josef Řezáč worked as early as the nineteenth century as a prison chaplain in Svatováclavská trestnice (St. Wenceslas Penitentiary) in Prague. He devoted himself not only to his chaplain ministry, but also to the prison environment. Thanks to his writings, we have surviving reports of how he considered the role of religion and chaplain ministry in prisons. In his texts, he emphasised the education of prisoners, which he considered key for their rehabilitation. This means attempts at institutionalising religion and its role in the prison system in the Czech lands have more than a century-long tradition.

With the establishment of an independent Czechoslovak state (1918), a new prison system was gradually built, but it was based on the previous Austro-Hungarian model. Religion maintained its prominent position. Spiritual services and education were available to all convicts who were interested in them. However, this promising development was soon interrupted by the Second World War and the subsequent long period of non-freedom (the Nazi and Communist regimes), during which the rights of prisoners were systematically suppressed, and religious activities all but disappeared from the prisons of that time (Synek 2013).

After the fall of Communism, the demand of churches to re-enable their leaders to enter prisons and restore the role of religion in working with prisoners gradually became a reality. This 'search for an imaginary place' is a story of the institutionalisation of religion under the conditions of the Czech prison system. Religion, which is mainly represented in Czech prisons by prison chaplains, has become a formal part of the prison system, and is described as one of its current pillars (Ministry of Justice of the Czech Republic 2016).

Priests began to work in Czech prisons from the beginning of the post-revolution era. However, the beginning of the 1990s was marked by uncertainty and confusion in the performance of spiritual ministry, which at that time was not legally anchored. Internationally accepted documents, in particular the Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules, were the key support for spiritual activities in prisons.

The year 1994 brought a significant change, when the *Agreement on spiritual services between the General Directorate of the Prison Service of the Czech Republic, the Ecumenical Council of Churches, and the Czech Bishops' Conference* was signed (within the framework of the Prison Service of the Czech Republic, binding as Regulation of the Director General No. 3/1994). This established the formal foundations for the systematic provision of spiritual care in Czech prisons.

The professionalisation of the Prison Clerical Service was further strengthened in 1997 by the creation of the first positions for prison chaplains as prison staff. Since 1998, these posts have been gradually filled and the number of prison chaplains working in Czech prisons as employees of the Prison Service of the Czech Republic has been gradually increasing. In recent years, this trend has intensified even more, with 35 chaplains (of which 5 were full-time) working in Czech prisons in 2010, and in 2018 there were 50 chaplains (of which 10 were full-time). There was also a unique situation in 2018, where every prison in the Czech Republic had at least a part-time chaplain (Prison Service of the Czech Republic 2019).

And it was in 2018 that the Prison Service of the Czech Republic celebrated the twentieth anniversary of priests' professional activity in Czech prisons, which since 2001 has been organised by the Ecumenical Prison Chaplaincy. It is a congregation of prison chaplains who have been commissioned by churches to work in Czech prisons, and who are also employees of the Prison Service of the Czech Republic.[8] The establishment of the Ecumenical Prison Chaplaincy represents an important milestone in the institutionalisation of religious activities within the Czech prison system. However, as we have already shown, the connection between religion and prison has a much longer history in the Czech context.

In summary, prison chaplains have become an important part of the professional treatment of prisoners over the past thirty years, and their role has been standardised and even formalised. However, our research shows that the position of chaplains in Czech prisons is not entirely problem-free. The activities of chaplains and the provision of spiritual care are not perceived and evaluated entirely positively by all actors of the Czech prison system. Therefore, religion in prisons still represents, to a certain extent in the Czech context, if not a controversial, then definitely an ambivalent phenomenon. The ambivalence of approaches to the role of religion in prisons is linked mainly to doubts about the effectiveness of spiritual influence on prisoners, i.e. the influence of chaplains on the possible rehabilitation of convicts. Another topic discussed is the use of spiritual care by prisoners in order to gain faster release, which is associated with the phenomenon of 'pragmatic faith' (Váně and Dirga 2016).

[8] Along with the prison chaplains, who come together within the framework of the Ecumenical Prison Chaplaincy, there is also Prison Spiritual Care in Czech prisons, which is a non-governmental organisation of clerics and members of churches and parishes who volunteer to provide spiritual and pastoral care in prisons.

Therefore, the formal integration of spiritual care does not necessarily mean the full integration of religion into the Czech prison system. Despite the above-mentioned development towards greater institutionalisation of spiritual care, prison chaplains maintain a relatively exceptional position within the prison organisation itself, which is also reflected in the specific ways of working with prisoners. We turn to the topics related to the position of religion and chaplains in Czech penitentiary practice in the following part of the text, which is based on the realisation of our field ethnographic research, whose methodology we can briefly introduce below.

2. Methodology

In this paper, we start from our own empirical research, which we have complete or are currently in the process of carrying out. In our case, the first entrances to the environment are dated 2013, and have persisted to varying degrees. Our research is primarily based on an ethnographic approach that we have implemented in several research waves in the prison environment (Dirga and Hasmanová Marhánková 2014; Dirga et al. 2015; Dirga 2016; 2017; 2020; Dirga and Váně 2016; Váně and Dirga 2016; 2020). In the Czech context, this methodological approach has long proved to be one of the most effective in examining the prison environment (e.g. Nedbálková 2006; Dirga and Hasmanová Marhánková 2014; Dirga 2016; Beláňová 2018; Beláňová and Trejbalová 2020; Lochmannová 2020).

The fieldwork was conducted in medium-security Czech prisons for men.[9] In 2019, we conducted qualitative semi-structured interviews[10] with 35 respondents in 5 different prisons. Specifically, there were 10 prison chaplains, 13 convicts, 4 volunteers, 2 psychologists, 1 special educator, 1 educator, 1 guard, 1 deputy management representative, and 2 church representatives.[11]

Some of the interviews took place on prison grounds (especially interviews with convicts and prison staff), and some were conducted outside the prisons. The length of the interviews varied depending on security conditions. Especially in the case of interviews conducted inside the prisons, the time allocated was relatively limited. At the same time, only the interviewer and the respondent participated in

[9] Since 2017, the Czech prison system has recognised two basic types of prisons, according to 'external differentiation': with surveillance/medium security, and with increased surveillance/high security.

[10] The interviews were recorded, transcribed, and analysed.

[11] Among the prison chaplains (10 prison chaplains in all), there were seven representatives of the Catholic Church, one from the Methodist Church, one from the Orthodox Church, and one from the Evangelical Church. A total of two church representatives were representatives of the Catholic Church.

the interviews, thereby limiting any disturbing effects resulting from the presence of another person (for example, a prison employee performing an inspection).

We used contacts within our own social networks and contacts from previous surveys to reach potential respondents. To increase the number of respondents, we also used the snowball method. Conducting interviews with the convicts presumed automatically being granted permission to enter the prison's interior. In this case, the directors of the individual prisons have the decision-making power.

We obtained permission from the directors of three of the aforementioned five prisons to carry out research on the premises.[12] Thanks to this permission, we were able to extend our dataset to include observations, during which we were guided round the prison by a particular employee, with a special emphasis on places related to religious topics, such as chapels, 'refectories', or special sections dedicated only to religious convicts. Overall, we carried out approximately 23 hours of observation.

The interviews and observations were complemented by an analysis of documents related to the research problem. These were mainly international documents with an impact on the Czech prison system, conceptual documents at the Czech national level, legislative sources, and internal regulations of the Prison Service of the Czech Republic, which were made available to us.

3. Religion as a 'peculiar' part of penitentiary care

The involvement of religious activities in penitentiary care can be described as a hybrid model, which is characterised by a certain degree of institutionalisation of spiritual care within the professional influence on convicts, but this institutionalisation has its own limits and specifics.

In principle, there are two basic models of working with convicts. The first is referred to as a standardised model, which is based on standardised methods (referred to as programmes in professional terminology) for the treatment of prisoners. In particular, professional employees of the prison service, who are responsible for them under the internal regulations of the Prison Service of the Czech Republic, participate in it[13] and are considered to be special educators, psychologists, sociologists, social workers, educator/therapists, educators, and leisure time

[12] Within the framework of our long-term study of the Czech prison system, we strive to continually expand cooperation with prisons (not only) in the Czech Republic, in order to maximise opportunities for future research activities, for example in the form of repeat visits.

[13] This definition is pursuant to Regulation of the General Director of the Prison Service of the Czech Republic No. 5/2016 on Employees and Members of the Prison Service of the Czech Republic Ensuring Custody, Imprisonment, and Security Detention.

educators. Such standardised treatment is provided to all convicts and all of them are obliged to carry out at least a minimum treatment programme.[14]

The second model is described as the spiritual model, which involves voluntary spiritual care. This care is based on individualised content, i.e. exclusively the individual approach of chaplains (and volunteers) to the prisoners and their needs.[15] Compared to the standardised model, significantly fewer prisoners participate in the spiritual model, and they must apply to participate in the spiritual activities themselves.

This institutionalisation of spiritual care in the context of treating convicts is therefore a story of incorporating the spiritual model into the standardised model. From the interviews conducted, it appears that the spiritual model within the Czech prison system has to a large extent become an independent part of penitentiary care, which constitutes an imaginary superstructure above the basic treatment.

The basic tools of the standardised model are the treatment programmes, which are a form of action on convicts with the aim of preparing them for release (rehabilitation). The treatment programme includes a plan of individual professional activities to be carried out with the convict in order to fulfil the purpose of the sentence as much as possible (i.e. rehabilitation). The treatment programme, according to the provisions of § 36 of Decree of the Ministry of Justice No. 345/1999 – which established the Code of Imprisonment – is divided into working activities, educational activities, special educational activities, interest activities, and forming external relationships. Spiritual care can be part of leisure activities. Formally, it is interesting that convicts are obliged to devote themselves to satisfying their spiritual needs in their personal leisure time (pursuant to §22 (2) of Decree of the Ministry of Justice No. 345/1999).

The treatment programmes are set with regard to the needs and risks of individual convicts. Since 2012, the SARPO evaluation tool – *Souhrnná analýza rizik a potřeb odsouzených*, which translates to the Tool for Assessing Offenders' Criminogenic Risk and Needs – has been used by the Prison Service of the Czech Republic to assess the risks and identify the needs of prisoners.

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[14] A convicted person who refuses to participate in the treatment programme shall be included in the programme of basic incentive treatment, which emphasises the observance of order and safety, along with work activity which corresponds to the state of the convict's health. The incentive programme is characterised by an individual degree of professional intervention in order to motivate the prisoner to change their attitudes and behaviour (according to the provisions of §37 of the Decree of the Ministry of Justice No. 345/1999, which lays down the Code of Imprisonment).

[15] The sentenced/convicted prisoners described the relationship with the chaplain as different from the one with other prison staff. In their opinion, the difference consisted of a greater degree of mutual trust, an individualised approach, and more time set aside for mutual discussion ('the chaplain has time for us, others don't') (see Beláňová and Trejbalová 2020). The chaplains were even compared to family members and close friends by some convicts. The chapel, as a physical space, was then referred to as 'a place of freedom in an otherwise non-social environment' (see Synek 2013).

SARPO consists in an analysis of criminogenic risks and needs, in the form of static and dynamic factors (Jiřička et al. 2014). The SARPO is operated by professional staff, who create an assessment related to their designated part (industry specialization). At the end of this process, a comprehensive report is produced, and this serves as the basis for developing treatment programmes for individual convicts. Therefore, if the basic instrument for standardised action on prisoners is a treatment programme, the basic instrument for developing the treatment programme is the SARPO.

Using the SARPO and setting treatment programmes, it is possible to demonstrate the limits of institutionalisation of spiritual care within penitentiary activities in Czech prisons. The analysis shows that prison chaplains are only marginally involved in establishing and implementing standardised treatment programmes.

Prison chaplains do not work with the SARPO or participate in the creation of a comprehensive report, which is a key output of SARPO analysis. Assessments are included in the comprehensive report by educators, special educators, social workers, and psychologists. A comprehensive report is elaborated into the final form of a treatment programme by a special educator, who, according to the internal regulations of the Prison Service of the Czech Republic, should cooperate with other professional staff. From a formal point of view, there could be room for chaplains to participate in the preparation of treatment programmes. However, the interviews have shown that in practice, chaplains are not involved in the preparation of treatment programmes, with only a few exceptions.[16] Then, they only participate in the implementation of treatment programmes if the convicted person actively requests it.

The limited/low influence of chaplains on the establishment and implementation of treatment programmes is, to some extent, also due to their unique position within the organisational structure of the prison. Professional staff are defined by the aforementioned Director General Regulation No. 5/2016 as employees of the prison department, which each prison must have. However, prison chaplains are not considered employees of the department, and their activities are governed by their own regime and, from an organisational point of view, the chaplains are subordinated to the first deputy director of the prison. The definition of the status and role of chaplains (of spiritual care in general) is enshrined in a separate Regulation of the General Director No. 54/2017. This also proves their uniqueness within prisons' organisational culture.

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[16] Chaplains can theoretically cooperate in the preparation and implementation of treatment programmes because, according to Regulation of the General Director of the Prison Service of the Czech Republic No. 54/2017 on the organisation and performance of spiritual service in the Prison Service of the Czech Republic, they 'may participate in the preparation and implementation of thematically similar treatment programmes'. In practice, however, it is less likely to be expected, and is not used.

On the one hand, spiritual care is partly subject to the pressure of institutionalisation and standardisation by formalising the involvement of chaplains in penitentiary care in the form of employment. Because the chaplains are a formal part of the prison service, their work is partially bound by and formalised in written rules (internal regulations).[17] On the other hand, it seems (based on the interviews we have conducted) that the full institutionalisation of spiritual care, i.e. the incorporation of the second model into the first, is not preferred by either the chaplains or the management of the Prison Service of the Czech Republic. We believe that at the moment, the institutionalisation of spiritual service has reached its maximum. The result is a hybrid model, based on individualised care, provided to a (relatively) small number of convicted people. Chaplains, therefore, still occupy a special position within the organisational structure of the prison, and use special methods of rehabilitating prisoners in their work (especially in the form of deep, personal relationships).

Conclusion

In our view, the post-revolutionary process of integrating religion back into prisons is twofold. Firstly, there is a gradual development of formal acceptance of spiritual service by the state, which in this case is mainly represented by the Ministry of Justice of the Czech Republic, and especially the Prison Service of the Czech Republic. Formal acceptance then incorporates spiritual care into the legislation and internal regulations of the Prison Service of the Czech Republic. One of the outcomes of this formal acceptance is the creation and increase of formal employment arrangements for chaplains working in Czech prisons.[18]

Secondly, there are still practical difficulties in integrating chaplains into the process of working with convicted persons (see the chaplain's inability to use the SARPO, or the minimal participation in preparing/implementing treatment programmes). At the same time, it appears that the formal increase in employment has net with a difficulty in subsequently filling the jobs created (from 'fighting' for places to searching for human resources). In other words, our research shows that the process of institutionalisation has slowed down in recent years (it may even have reached its maximum).

[17] Internal regulations and methodological instructions define the form and scope of the spiritual care provided. Compliance with the rules is then regularly checked by the Chief Chaplain of the Prison Service, who heads the Ecumenical Prison Chaplaincy.

[18] In spite of the fact that the number of working hours for chaplains has undoubtedly increased, the number of chaplains is still very low when compared to other groups of professional employees. In other words, if there is one chaplain in the prison, it is considered a success for the prison, but psychologists, special educators, educators, and other professional staff are usually several times more frequently represented in prisons.

The limits of the institutionalisation process are found, in particular, in the special nature of a chaplain's work described above, and in the possibilities of operationalisation (and the measurability of effectiveness). On the one hand, the chaplains have earned a respected position (where they were given space in individual prisons). However, the strategy of their work with prisoners differs from that of the prison staff (Beláňová and Trejbalová 2020). Quantification and associated gamification of their performance (spreadsheets) – most popularly profaned by the statement 'paid for by our taxes' – force the prison management, who in turn force their employees, to perform a clearly quantifiable performance. Paper statements summarising, for example, the number of hours spent implementing treatment programmes, or the number of prisoners participating in them, have become key indicators of their work. These indicators are objectified in the SARPO programme, which is another way of quantifying/operationalising the work of professional staff. A common measure of the effectiveness of their work is the rate of criminal relapse. This approach is, to some extent, understandable, as society wants to know the level of recidivism, and whether prisoners' rehabilitation works and how likely is their reintegration.

In prisons, however, there are three conflicting strategies. In the short term, they are mainly represented by uniformed prison guards (referred to in the Czech context as members of the Prison Service of the Czech Republic). Their job is to ensure order in the premises of the prison and to prevent or eliminate violations against the discipline or the order of the prison. The specific indicators of the overseers' work are the number of 'extraordinary events' (serious breaches of order and security) and cases of breach of discipline.

The medium-term strategy is primarily implemented by the above-mentioned professional employees. Their aim is to develop and implement treatment programmes that would contribute towards risk reduction in selected areas/factors, assessed on the basis of SARPO. A specific indicator in this case is the evaluation of the effectiveness of activities in the given areas.

The third type of strategy, the long-term one, is embodied in the chaplains themselves, whose aim, according to one interviewed prison chaplain, is to

> Help the wounded and achieve at least a basic value change, … because I am not under the illusion that the several-generation criminals will not relapse. The aim is to influence at least a little in the future, to move at least two degrees away from how they are living now.

And this shift is very difficult to quantify or convert into SARPO methodology, especially if a chaplain is working in a prison where there are short sentences, as the prisoners in these facilities come and go at six-month intervals. Evidence that the pendulum has gradually shifted from decades-long efforts to institutionalise spiritual ministry in the prison administration system to slowing the process of unconditional merging with the environment suggests repeated answers to the question of what working practices the chaplains have performed best in prisons. 'Not to be pulled down to libertarianism, in such a way that I will do it my way, despite the rules of the prison. And at the same time, not be pushed by the apparatus of minimalism' (excerpt from an interview with a prison chaplain).

We believe that in this example statement, we can point out the difficulty of the chaplain's role, which constantly lies between Skyla's defiance of the totalitarian institution and Charybou's submission to the system of rules. The tendency not to be ensnared in the rules and regulations of the prison has been the phenomenon of chaplains' behaviour for a long time. This stems from retrospective testimonies recalling the 1990s. The regime in prisons, both in terms of the rules and the mentality of the administrators and supervisors, was significantly charged with ideas and behaviours taken from the communist regime. In such a situation, the defence mechanism advocated by the chaplains was understandable. But as prison staff gradually changed over the years, and the Czech Republic gradually implemented the prison standards in force in the European Union, the presence of chaplains (the role of religion in general) in prisons became a typical feature (at least a phenomenon that did not give rise to resistance, as in the '90s). This positive change, at least according to some chaplains, could become a less obvious trap.

It appears that the process of institutionalising religion on prison grounds was further influenced mainly by the following processes. On the one hand, there was the aforementioned gradual replacement of prison staff by supervisors and management. Among the guards, the number of individuals with the higher education required of them and proportion of younger guards – who have gone through different processes of socialisation (education, values, and culture) – has increased, thereby weakening the communist ethos in the approach to prisoners (the prisoner as an enemy of the state, or an incorrigible person). However, this does not mean that the basic strategy described above as 'short-term' has changed, focusing on the immediate 'pacification' of convicted persons.

On the other hand, there has also been a generation change among the chaplains. Our findings show that part of the older generation of chaplains (those who began working in prisons in the 1990s) were motivated to work in prisons, especially because of their own experience with the Communist State Secret Police (STB). This also resulted in their watchful attitude towards the guards, often expressed by pointing out the communist past of many guards. We would like to provide a few examples from the statements of the chaplains: 'Yes, in the 1980s, I counted on the option of being locked up, and one of the things a chaplain needs is empathy and some experience with repression, which opens the way to the prisoners.' 'Thanks to the repeated interrogation and pressure from the STB on me, I know what someone in prison can be exposed to.'

A similar experience with imprisonment also applies to some of the interviewed volunteers, who pointed out the psychological pressure associated with a detention centre:

> Because when you get into custody, you are experiencing a crisis – a life-long crisis. First, you don't know how many years you will get. You have a law there that threatens you. You don't know how your family will react.… And all this bothers them, because they have no vision of what will happen in the future.

This personal experience of persecution, loss, or restriction of liberty was one of the causes of the chaplains' vigilance against many guards. But, once the transition from declared cooperation to actual cooperation given by the individual approach of the specific prison governors or directors started, very progressive procedures began to be implemented.[19]

From the statements of the chaplains interviewed, the negative attitudes towards the role of chaplains in prisons seem to have weakened in recent years. This is evidenced by the words of one of the chaplains:

> I think that today, the service, although there is still some tension between us (between the chaplains and the guards) – but for other reasons – that relationship has become much more professional. At least, as far as I know, over the last eight years.

The displeasure of supervisors and educators over the inclusion of chaplains has eased, but they partly see a new threat in administrative actions, and the need to record their activities, which some see as a reason for paying only a standardised minimum.

In spite of these ongoing tensions, we can say that in the period from the end of the communist regime to the present day, the foundations for institutionalising spiritual care in Czech prisons have been successfully laid. However, we believe that in order to make spiritual care more effective and sustainable long-term, more coordination and closer cooperation between chaplains and professional staff (especially psychologists and special educators) is needed (Beláňová and Trejbalová 2020). If

[19] For example, one whole floor was established in one of the prisons where there was a section for convicted persons who were believers and prisoners with an interest in spiritual values. This block existed for over four years, and the capacity was around 60 people. Individuals referred to as 'MONs' (subjects at risk of possible attack) and 'MNUs' (individuals with low mental capacity) were placed together with them on this block. Those individuals who showed an interest were included in the section. A convicted person was included in the programme with the prison management's approval, based on the expert recommendation of a special educator and a psychologist. Prisoners' testimonies showed that the demand for placement in this section exceeded supply, and that it was a unique project within the Czech prison system. The project has 'collapsed' in recent years, not because of a lack of interest, but because of the massive demand of the labour market, where labour shortages ensure long-term work for convicts. As a result, the programme associated with spiritual care, such as regular prayers, etc., could not be continued, due to the work of the convicts. This project, however, inspired other Czech prisons, where they put at least some elements into practice in their prisons.

prison officers are also motivated to cooperate, the situation is almost 'ideal'. During our research, we had the opportunity to see such cooperation in three prisons. However, given the total number of 35 prisons in the Czech Republic, this cooperation needs to be further strengthened. This also applies to cooperation with non-governmental, non-profit organisations which are active in the field of post-penitentiary care, where spiritual care also finds its irreplaceable application.

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