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Veřejnost a trestní politika

The Public and the Penal Policy

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Summary

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

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

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

Penal policy is reflected in a set of measures of a criminal law nature with which society reacts to criminality with an aim of controlling, limiting and suppressing this

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

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

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

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

much that they serve a certain integrative function. We can understand stances as products of learning. The origin of their formation lies mainly in individual experiences.

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

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

There is a whole range of factors, which form the public's stances towards criminality. Some are fairly obvious and have a direct influence, others are harder to pinpoint and tend to act indirectly. At the very centre of these influences are the mass media. This is where most citizens gain their knowledge of crime over and above the sphere of their own experiences or experiences passed on by people in their close vicinity. The basic problem, which should be considered in relation to the media and their informing about criminality, is the bias they apply in relation to the real situation. Amongst other areas, this consists of overestimating violent and, on the contrary, underestimating property crime. By means of their focus and style, how they process information on individual offences and present it to the public, the media contribute also to the emotional timbre of most open discussion about criminality.

In addition to the influence of the mass media, it is necessary to consider other factors too, which may play a significant role in relation to the stances of the public towards criminality and penal policy. These can include the respondent's personal experiences with crime, especially the sufferings of a victim of a crime. A related topic is secondary victimisation and its effect on evaluation of the work of bodies of criminal justice system or on the stance towards them. Another unique experience, which can influence the opinions and stances towards criminal justice, is personal participation in court proceedings. It is a well-known fact that the stances of respondents change depending on their knowledge of the field

in question. If respondents are aware of the state of crime, the system of sanctions, the rate of re-offending or the most frequently imposed sanctions, they evaluate the work of bodies of criminal justice system more favourably. Differences between respondents also usually become apparent in relation to some fundamental demographic characteristics such as age, sex or education.

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

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

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

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

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

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

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

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

The survey IKSP_TP2009 confirmed the findings of previous research on this topic: that the majority of the public consider the sentences stipulated in the Criminal Code to be too lenient and also regard the sentences imposed in practice by Czech courts as being too lenient. According to the stances expressed regarding the role of penalties and sentencing, the public

can be divided into three groups: a) retributivists, according to whom the present way of prosecution of crime in the Czech Republic is not sufficiently functional and that it would be desirable to toughen the approach to offenders and to defend the interests of the victims; b) institutionalists, professing the standpoint that the reaction to crime and treatment of the offenders should be the sovereign affair of the state and its institutions, however, the practical implementation of this power in the Czech Republic is not exceedingly effective; and c) nihilists, who do not trust to anything in the area of sanctions and sentencing. The proportion of retributivists and institutionalists in society is approximately the same, with a slight preponderance of retributivists; the nihilist group is smaller and accounts for approximately one fifth of citizens.

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

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

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

The most significant findings of the survey IKSP_TP2009 can be seen as those concerning the citizens' interest in the issue and their awareness of it, either perceived or actual awareness. Research in this area indicated significant shortcomings. It can therefore be recommended that, as part of preparation and implementation of national penal policy, public awareness should be given greater attention both from the point of view of the extent and structure of information provided and, with regard to its form, lucidity and comprehensibility.

Translated by: Presto