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Summary

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

Research subject, goal and methodology

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

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

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

respective relevant knowledge and any and all personal experience which they would share with us.

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

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

Criminal code evaluation

Requesting a general evaluation of a specific legal standard is always problematic, because the respondents must, in their effort to evaluate the standard, connect various constituent aspects or viewpoints according to which they evaluate the law as a whole. Respondents were asked to evaluate the overall quality of the old criminal code n.140/1961 Sb. and the new criminal code n. 40/2009 Sb. This was evaluated on a scale from 1-5 where 1 was the highest quality and 5 the lowest score available. Judges and state prosecutors evaluated the criminal code with similar average scores. If we compare the average score of both criminal codes, the old criminal code came out with a slightly better average score with a

2.4 than the new criminal code, which was evaluated at an average of 2.6. In comparison of both legislations in the case of the probation officers, the new criminal code has come markedly on top of the old – the average score it received was 2.18 while the average score of the old criminal code was 3.02.

On alternative punishment legislation

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

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

On punishment of house arrest

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

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

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

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

The opinion of probation officers on the effectiveness of the house arrest punishment without electronic monitoring differed from the opinions of judges and state prosecutors. As opposed to the opinion of judges and state prosecutors, a slight majority (58.9 %) believe in

the effectiveness of the house arrest punishment without an electronic monitoring system, but the portion of those who do not share this view (35.6 %) cannot be overlooked.

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

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

Probation officers were given room to voice their opinions on possible issues they currently face regarding the execution of the house arrest punishment and furthermore to comment on potential changes that could be made in order to make the execution of this punishment more effective. It was not a surprise to us that the main issues they raised was the absence of electronic monitoring, the approach of the courts towards this kind of sentencing and a greater tendency of convicts to violate its conditions. However, a different topic was even more prevalent; the issues linked with the management of random inspections so that they would abide by the requirements of the labour code. Respondents also raised concerns with the time requirements of the inspections of proper execution of the punishment with regard to the fact that this activity subtracts from the time probation officers could spend with

other activities. A part of the critical commentary was concerned with the way courts operate. According to some probation officers, courts sometimes impose a sentence of house arrest inappropriately and without previous investigation by the Probation and Mediation Service or in conflict with its recommendation, or that the courts do not react strictly enough to reports of convicts' violations of conditions of the execution of the punishment.

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

On the punishment of community service

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

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

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

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

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

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

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

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

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

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

Probation officers were asked to describe the most significant difficulties or obstacles their centre faces in the area of enforcing the execution of the community service punishment. Respondents repeatedly returned to the issue of extending the period in which community service is to be performed to two years and to the question of transforming the community service punishment. They detailed their discontent in regard to specific issues that were

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

The change in the law concerned with the obligation to request a report from a probation officer was unanimously welcomed by the probation officers. Better executability of the punishment was by far the most mentioned justification for the answers provided by the

respondents. All of the changes listed still rely in practice on the expectation that the court will respect the report of the probation officer and the opinions expressed within it. According to some probation officers, this is not always the case.

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

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

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

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

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

Suspended sentence of imprisonment with supervision, the issue of supervision

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

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

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

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

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

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

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

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

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

On fines

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

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

Evaluation of cooperation

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

Conversely, the cooperation with probation officers during imposition of alternative punishments was praised by a number of judges in their comments that predominantly listed quality of work as well as initiative displayed by probation officers participating in the process of imposing alternative punishments. The state prosecutors (three quarters of them) evaluated their cooperation with the Probation and Mediation Service during imposition of alternative punishments very positively. They especially valued the active approach and swift (to the extent possible) work of the Probation and Mediation Service. A portion of state prosecutors pointed out the insufficient number of Probation and Mediation Service employees, which they viewed as a factor which hinders their otherwise productive

cooperation. There were nonetheless some opinions, which were not as common that considered the cooperation with the Probation and Mediation Service during the process of imposing alternative punishments a significant hindrance to the proceedings.

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

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

The heads of Probation and Mediation Service centres evaluated the cooperation with prosecutor's offices slightly worse than the cooperation with courts. This corresponds with the fact that the commentary following the answers made by the respondents more frequently showed negative observations. Similarly to the case of the courts, the predominant point was the general lack of acceptance of the role of PMS in the criminal justice system. It was not a rare occurrence to see responses detailing the experience that the cooperation, be it a quality

cooperation as it may, relies mainly on the internal activity of PMS and without this initiative (or without cooperation with the Police of the Czech Republic) the probation officer would not even see the cases which are in the stage of preparatory proceedings.

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

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

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

Lowering the prison population, working with offenders, rehabilitation

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

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

Recidivism is undoubtedly a serious issue which has a significant effect on the prison system. Respondents from all groups were asked to think about possible measures or steps that could be taken in the area of rehabilitation of offenders, which would, according to them, lower the rate of recidivism and what exactly does the criminal policy need to focus on in this area. All of our respondents agreed on the importance of job placement as a tool for

rehabilitation and a significant factor lowering the possibility of subsequent recidivism. A considerable portion of judges view the employment of convicts, who are already executing their punishment of imprisonment as very important for keeping, or in many cases even facilitating the creation of working habits in the convicts. Probation officers thought about how and whether it would be possible to make the effect on the offender more effective during his stay in prison. These most often suggested focusing on employment and on rehabilitation or requalification programs for prisoners (including adequate preparation for their release).

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

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

Translated by: Aspena