

Rozum, Jan, Tomášek, Jan, Háková, Lucie, Vlach, Jiří:

Efektivita trestní politiky z pohledu recidivy

The effectiveness of criminal policy from the perspective of recidivism

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Summary

The monograph “The effectiveness of criminal policy from the perspective of recidivism” is one of the results of a project undertaken at the Institute of Criminology and Social Prevention (hereinafter referred to as the “Institute”), based on the decision to provide purpose-built support from public resources for research and development. Support was provided from the budget chapter of the Ministry of the Interior, as part of the Security Research for the Needs of the State programme between 2010 and 2015 ((BV II/1 – VZ), to deal with the project entitled “Verifying the effectiveness of criminal policy in relation to trends in the development, number and structure of the prison population”, having identification code VF20152016043.

Criminal policy must generally be understood as part of general policy that articulates the objectives and means of social control of crime using criminal law. Criminal policy should ensure that people are protected from crime and that recidivism is limited, but at the same time does not lead to an excessive increase in the number of prisoners. The term criminal policy is joined in specialised literature by the term sanctioning policy. One of the key topics of modern criminal policy is the issue of recidivism. If society endeavours, through programmes, to ensure that the intervention of the justice system leads an offender to end his criminal career, it is precisely such information about his possible future criminal activity that is used to judge the success or otherwise of the relevant measures. It comes as no surprise that interest in this information has been rising in recent years.

Our research project concentrated on the implementation of criminal and sanctioning policy and its influence on the character and size of the prison population. The aim was to analyse the main development trends in sanctioning policy after the adoption of the new Criminal Code. The results of the project also offer proposals for legislative and conceptual measures aimed at ensuring that criminal policy provides better protection to the people from crime, while not concurrently leading to an excessive increase in the number of prisoners. The aim of

the research was also to generate a proposed system of regular monitoring and evaluation of recidivism among convicted persons in the Czech Republic that will allow long-term, conceptual monitoring of data about recidivism.

When we consider the period in the Czech Republic following the Velvet Revolution, we can consider as fundamental from the perspective of criminal and sanctioning policy depenalisation and decriminalisation, broadening the range of alternative punishments after 1989, a major amendment to the Rules of Criminal Procedure and an amendment to the Criminal Code, Act No. 265/2001 Sb., which influenced the decision-making of courts with regard to punishments, the adoption of Act No. 218/2003 Sb. on juvenile justice and finally the adoption of a new Criminal Code, Act No. 40/2009 Sb.

If we concentrate on the period after the adoption of the new Criminal Code, we can confirm that there have been considerable changes in the legal regulation of criminal sanctions. The new philosophy of criminal sanctions draws on the principle of depenalisation, whereby existing criminal sanctions (sentences and protective measures) are regulated to the required extent and new, more effective alternative sanctions are conceived and articulated with consideration for adequate satisfaction of the victims of crimes. The hierarchy of sanctions had to be amended and emphasis was placed on an individual approach to the resolution of criminal matters that assumed the broad option of using alternative sanctions to ensure positive motivation of the offender. The legislator supposed that the changes would be manifested in a positive way in the applied sanctioning policy, primarily by reducing the application of short-term unsuspended prison sentences and reducing the number of prisoners.

In the case of unsuspended imprisonment, the rise in the number of imposed unsuspended prison sentences that began in previous years continued even after the effective date of the new Criminal Code. This naturally led to a gradual increase in the prison population. This fact was obviously reflected negatively in the structure of persons serving a prison sentence according to the length of the sentence.

The main cause is reinforcement of criminal repression, which was manifested in the Criminal Code and in an increase in sentences for less serious crimes (specifically the crime of theft, Section 205 of the Criminal Code, neglect of compulsory maintenance, Section 196 of the Criminal Code, and frustrating the enforcement of an official decision and reporting, Section 337 of the Criminal Code – also linked to recidivism), which led to a significant increase in

unsuspended prison sentences. Since these are the most commonly-committed crimes, it was no surprise that this toughening was also manifested negatively in the composition of convicts serving a prison sentence according to the length of the sentence imposed. If we consider that, at the same time, new alternative sentences were slow in “taking off”, primarily house arrest (this caused mainly by failure to secure the anticipated electronic controls of adhering to the sentence), the combination of these situations had a fundamental negative effect, in that minor property-related crime, neglect of compulsory maintenance and frustration of the enforcement of an official decision and reporting in particular have long accounted for around 70 % of the criminal activity sentenced in the Czech Republic. There was also an increase in those convicted for longer than 15 years after the adoption of the new Criminal Code, again in consequence of the toughening of thresholds for serious crimes. There was a significant increase in the number of persons serving a prison sentence with a term of between 6 months and 3 years from 2010 onwards and the number of prisoners rose by approximately 2,700 people in the first years of the effect of the new Criminal Code.

The legislator responded to the above with an amendment to the Criminal Cod, No. 390/2012 Sb., such that sanctions were reduced for the crimes of neglect of compulsory maintenance and frustration of the enforcement of an official decision. Another important factor for sanctioning policy, and the effect on the level of the prison population, was the President’s Amnesty of 1.1.2013, No. 1/2013 Sb., which inter alia pardoned suspended prison sentences not exceeding two years (some 80,630 people were given amnesty). The amnesty given to unsuspended sentences of up to 1 year (18,627 people) or community service (9,660 people), invariably with the fiction of expungement, was also significant in terms of numbers.

If we concentrate in detail on defining the main causes of the increase in the number of prisoners after the adoption of the new Criminal Code, there is an exhaustive list in the research of Scheinost and Marešová (compare Scheinost, Válková, et al, 2015; Marešová et al, 2016). According to these authors, the main causes include: **failure to achieve the main objective of criminal law – depenalisation, toughening sanctions for particularly serious crimes and primarily toughening sanctions for recidivism for the bodies of frequented crimes and long-term failure to deal with the issue of recidivism.**

For criminal policy to work, the conditions must be created in the area of legislation and criminal justice and within the scope of broader social policy. Essential requirements are the motivation the offender has to change, the ability to achieve such change and the opportunity

for something like this to happen. It is known from criminological research that a positive reversal of a criminal career among most offenders is triggered by factors that are active in his natural social environment (stable employment, finding a place to live, finding a life partner, the birth of his own children). We suppose that a reduction in the prison population could be helped by measures which are on the one hand the result of research by the Institute in the sphere of criminal and sanctioning policy and on the other by the result of the work of the Institute for the Ministry of Justice in the form of source materials, opinions or assignments in the area of criminal and sanctioning policy (for more see Marešová et al, 2016, or Scheinost et al, 2014, and others). We assume that implementing the steps specified below will help reduce the prison population: **dealing with the criminal activity of recidivists, including dealing with the issue of sanctions for recidivists for the crime of theft according to Section 205 of the Criminal Code; dealing with the decriminalisation of the crime of neglect of compulsory maintenance according to Section 196 of the Criminal Code; introducing a system of electronic monitoring for the sentence of house arrest; changing the structure of imposed alternatives – analysing the causes of the low use of pecuniary punishment and proposing measures leading to the increased application thereof; building a functioning and tied criminal policy.**

Among the fundamental aims of criminal policy is its positive effect on convicted offenders in order that they do not continue in their criminal careers. Information about possible recidivism is a significant gauge of the success or failure of individual interventions of the justice system. **Recidivism, its frequency and development serve as the fundamental criteria of the effectiveness of intervention activities.**

As far as the term criminal recidivism is concerned, we usually understand it a general level to be further criminal activity committed by an individual who has been convicted of criminal behaviour in the past. Of course, a precise definition of the term is problematic because we can view it from various angles of perspective. We often talk of, for example, the need to distinguish recidivism in the criminal law sense (an offender commits a crime after having been lawfully convicted of a previous crime), in the criminal-statistical sense (offenders repeatedly recorded in criminal statistics) and in the criminological sense (repeat asocial behaviour irrespective of whether the offender was punished or sanctioned for a previous deed).

In contrast to other countries, recidivism is not statistically monitored in relation to the sanctions imposed and their effectiveness. Police and court statistics do present the share of recidivists in the total number of prosecuted or convicted persons, but we cannot deduce from these which specific sentences or other measures were used against these individuals in the past. It also stands for the comparability of statistical data on recidivism that a comparison of its level at different periods of time in the same territory without any deeper or dedicated comment is more likely to be misleading and does not document actual differences and changes.

The statistics of the Ministry of the Interior and the Police of the Czech Republic are published in the form of Reports on Security Situations within the Territory of the Czech Republic and Statistical Overviews of Crime. These documents are a valuable source of information on the number of recidivists prosecuted and investigated and on how many of the deeds on record were committed by recidivists. In comparison with the statistical data at the department of justice, the scope is considerably broader in such material since a recidivist here is adjudged to be an offender having committed a wilful crime who has already been lawfully convicted of a wilful crime in the past. It is clear from the statistics in question that the share of recidivists in the number of all prosecuted persons had a predominantly rising tendency between 1993 and 2015. We can, at a general level, say about the share of recidivists in the total number of prosecuted and investigated persons according to selected types of crime, as they are monitored in reports on security situations within the territory of the Czech Republic from 2000 – 2015 that the rising trend of this share is clear in most of the selected types of crime. After all, whereas it was not quite a third in 2000, it had reached more than one-half by 2015.

Recidivism of crime and the imposition of sentences on those convicted, deemed by courts to be recidivists, has been monitored by the Ministry of Justice of the Czech Republic for a long time now and is shown in the statistical Yearbook of Crime of the Ministry of Justice (MoJ). Recidivists were kept on record in court statistics until 2010 according to Section 34 of the Criminal Code (Act No. 140/1961 Sb.). Convicts that had already been convicted of a crime and had committed a second or further crime following the legal force of a prior convicting judgment were termed recidivists in court statistics and the courts considered this circumstance to be aggravating, depending on the nature of the previous conviction. Particularly dangerous recidivists according to Section 41 of the Criminal Code were also

monitored in the yearbook before the new Criminal Code was adopted. After the new Criminal Code (Act No. 40/2009 Sb.) came into effect, so-called court-determined recidivists have been recorded in statistics in cases in which the court considers, when imposing a sentence on the convict, his previous criminal activity according to Section 34(l) of the Criminal Code or Section 42(p) of the Criminal Code.

It is clear from the statistical overviews of the MoJ that the number of convicted persons determined by the courts as recidivists has fallen since 1989. The lowest proportion in the total number of convicted persons was shown in the final year of effect of the old Criminal Code (Act No. 140/1961 Sb.) in 2009 – 9.1 %. Even following the adoption of the new Criminal Code (Act No. 40/2009 Sb.), justice statistics show a reduction in the proportion of convicted persons determined by the court as recidivists (i.e., designated as recidivists based on the conditions laid down by the Criminal Code). The share in convicted persons in 2014 was 6.3 % and last year 5.5 %, the lowest since 1989. The main reason for this is new legislation, in which recidivism (prior conviction for a crime) is considered to be an aggravating circumstance and is shown as such in statistics. The criminal activity of recidivists is, of course, problematic from the perspective of general criminal policy, particularly the perspective of imposing unsuspended prison sentences. The number and the proportion of imposed unsuspended sentences also fell after 1989 among persons designated as recidivists. The number of recidivists in the number of imposed unsuspended sentences has fallen again since 2010.

Recidivism in the penological sense of the word provides us with very important information on the success of a previous prison sentence. This involves monitoring repeat imprisonment. The penological concept of recidivism is narrower than recidivism in the legal sense of the word since it puts on record only offenders who have previously been imprisoned. Data on this is found in the statistics issued by the Prison Service of the Czech Republic. Around two-thirds of convicts committed further criminal activity in spite of the fact that they had experience of the sentence (often repeated experience).

Efforts have been made in recent years to improve the system of gathering data on recidivism in all Member States for the purpose of its mutual comparison. **Recidivism is understood in most countries of the EU to be a fundamental and irreplaceable gauge of the effectiveness of imposed sanctions**, which is for that matter fully in accord with its general

criminal policy, which stresses the corrective level of criminal sanctions and the systematic evaluation of their application. The Council of Europe is well aware of these facts (see, for example, Council Recommendation on European Prison Rules of 2006 or Recommendation on Probation Rules of 2010).

New opportunities to examine recidivism to a broader extent have opened up in the past two decades as a result of the gathering and (primarily) digitalisation of police and court data. Individual states differ markedly in the measurement and evaluation of criminal recidivism. Whereas in some countries statistics about recidivism have become an integral part of overall justice statistics, in others the crime policy relies only on partial criminological research. The fundamental condition for effective monitoring of recidivism in each case is nonetheless enabling access to standard databases of criminal activity and its resolution at individual stages of the justice system; therefore to criminal records and like information systems. Work with data and the possibility to continually map out recidivism for the purpose of monitoring development trends is made easier by its computerisation, thanks to which it is possible to evaluate recidivism in individual time cohorts on an annual basis. We also come across attempts to interconnect these databases with information on significant sociodemographic variables, such as the education, employment or marital status of convicted persons (for example, registers of the population etc.). Such analyses are of course even more effective for predictive purposes. There is agreement among experts that databases of recidivism should primarily be as complete and as flexible as possible.

We are convinced that the Czech Republic should also go down this road if it wants to effectively and rationally develop its criminal policy. The proposed methodology of monitoring criminal recidivism in relation to imposed sanctions from the database of the Criminal Records also draws on this. The fact that all data is now processed electronically favours such a solution and the implementation of the intended analyses is therefore more of a technical nature, at least to a certain extent. We are convinced that information about the effectiveness of selected sanctions could in the future become a standard element of justice statistics.

Monitoring the effectiveness of sanctions according to the criterion of subsequent recidivism could significantly influence the ongoing discussion about criminal policy and its general direction. Knowledge of the facts allows us to approach the issue rationally, whereby in the situation in which the resultant effect of alternative sentences appears to be very similar to the

effect of imprisonment, the chance opens up to take criteria such as economic costs into greater consideration.

Translated by: Presto