ISBN:978-9928-174-11-6

CRIMINAL JUSTICE SYSTEM AND THE SOCIAL WELFARE

International Scientific Symposium

Proceedings Book

University of Tirana, Faculty of Law
Department of Criminal Law

Konrad-Adenauer-Stiftung
Rule of Law Program South East Europe

Konrad Adenauer Stiftung

International Scientific Symposium

CRIMINAL JUSTICE SYSTEM AND THE SOCIAL WELFARE

Proceedings Book

05-06 March 2015, Tirana, Albania

Rule of Law Program South East Europe

BOOK OF PROCEEDINGS

International Scientific Symposium

CRIMINAL JUSTICE SYSTEM AND THE SOCIAL WELFARE

05-06 March 2015, Tirana, Albania

Editor | Dr. Evisa Kambellari

Konrad Adenauer Stiftung e.V.
Klingelhöferstr. 23
10785 Berlin
Germany
Telephone: (+49) (0)30 269 96 453
Fax: (+49) (0)30 269 96 555
Website: www.kas.de

Rule of Law Program South East Europe
Konrad Adenauer Stiftung e.V.
Strada Franzelarilor nr. 5
020785 Bucuresti
România
Telephone: (+40) (0) 21 302 02 63
Fax: (+40) (0) 21 323 31 27
E-mail: office.rspsoe@kas.de
Website: www.kas.de/rspsoe

Faculty of Law of the University of Tirana
Rruga "Milto Tutulani", Tirana, Albania
Website: http://www.fdut.edu.al/

Published by: Shtypshkronja "MILENIUMI I RI"
Address: Higway Tirane - Durres, km 27
Mob: 0682064654 / 0672063702
e-mail: info@mileniumiri.de http://www.mileniumiri.de

ISBN: 978-9928-174-11-6

SCIENTIFIC COMMITTEE

Prof. Dr. Altin Shegani
Dean, Faculty of Law, University of Tirana (Albania)

Prof. Dr. Xhezair Zaganjori
President of the Supreme Court of the Republic of Albania;
Professor, Faculty of Law, University of Tirana, (Albania)

Mr. Thorsten Geissler
(Director of the Rule of Law Program South East Europe (Rumania)

Prof. Dr. Philippe Conte
Professeur at Directeur de l'institut de Criminologie
de l' Université Paris II –Panthéon-Assas (France)

Prof. Dr. Ernesto U. Savona
Director of Transcrime -Joint Research Centre on Transnational Crime.
Università Cattolica del Sacro Cuore di Milano-Università degli Studi di Trento (Italy)

Prof. Giovanni Cimbalo
Professore ordinario nella Scuola di Giurisprudenza, Università di Bologna (Italy)

Prof. Dr. Skënder Kaçupi
Head of the Criminal Law Department, Faculty of Law,
University of Tirana (Albania)

Prof. Asoc. Dr. Ersi Bozheku
Dipartimento di Scienze Giuridiche, Sapienza University, Rome (Italy)

Prof. Asoc. Dr. Jola Xhafo
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

PhD Skerdian Kurti
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

ORGANIZING COMMITTEE

Dr. Evisa Kambellari
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

Dr. Alban Koçi
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

Dr. Engjëll Likmeta
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

PhD Sokol Mëngjesi
Department of Criminal Law, Faculty of Law, University of Tirana (Albania)

TABLE OF CONTENTS

Keynote Speech
by

Mr. Thorsten Geissler

Director of the Rule of Law Program South East Europe

It is a great pleasure for me to welcome you to our symposium on the topic of "Criminal Justice System and the Social Welfare" on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

I would like to express my profound thanks to our partner, the Faculty of Law of the University of Tirana and its dean, Prof. Altin Shegani. The cooperation with you has always been excellent and we highly appreciate your work. Let me say a few words about the Konrad Adenauer Foundation in general and the RLP SEE in particular.

Konrad Adenauer Stiftung is a political foundation affiliated to the Christian Democratic Movement. Its precursor, the Society for Christian Democratic Education Work, was founded in 1955. Nine years later the name was changed to its present one. We are proud to bear the name of Konrad Adenauer. The first chancellor of the Federal Republic of Germany's name and principles are our guidelines, duty and obligation. We stand for the Christian Democratic values of freedom, solidarity, and justice.As a think-tank and consulting agency our soundly researched scientific fundamental concepts and current analyses are meant to offer a basis for possible political action. Our headquarters are located in Berlin and St. Augustin near the former West German capital of Bonn. Berlin is also the seat of our Academy which is the national forum of dialogue between the spheres of politics, economy, science and society. We do, however, work in more than 120 countries, having more than 80 offices all around the globe, which are in charge of more than 200 projects.

We focus on consolidating democracy, on the unification of Europe and the strengthening of transatlantic relations, as well as on development cooperation. The Rule of Law Program has existed since 1990. It consists of five regional programs, one in Latin America, based in Bogota, one for Asia, based in Singapore, one in Sub-Saharan Africa based in Nairobi, one in South East Europe, which was founded in 2005 and is based in Bucharest and the latest one for Middle East/ North Africa, based in Beirut. The Rule of Law Program South East Europe

comprises Romania, Bulgaria, Croatia, Serbia, Albania, Macedonia, Kosovo, Montenegro, Moldova and Bosnia Herzegovina.
We concentrate on the following seven subject areas in which there is substantial need for reform and consultation within and among the countries of the region:
- Support of democratic institutions,
- Independence and integrity of the judiciary,
- Substantial Law,
- Procedural Law (Administrative and Penal in particular),
-Constitutional Law and the jurisprudence of the Constitutional Court,
- Fight against Corruption,
- Protection of Human, Civil and Minority Rights.
- Coping with the Past by Legal Means.

We happily support this symposium because it provides the opportunity to elaborate a comprehensive analysis on the main problems of the Criminal Justice System in Albania and other neighboring countries and to discuss on the factors that contribute to the effectiveness of criminal justice institutions. We hope that this event serves as a baseline for effective evaluation and empirical research on the main problems of the criminal justice system and crime controlling mechanisms as well as for producing recommendations on further relevant matters that should be analyzed and on measures that should be implemented. And we want to analyze critically two different approaches when coping with crime in transition countries: (a) Reducing crime through criminal justice and (b) reducing crime through social welfare policy.
I am a lawyer but I am not a criminologist. I will therefore not speak about the theories on the origins of criminal behavior. We have experts among us who are much more competent regarding this issue.
But I was a state legislator for sixteen years, spokesman on justice policy of my party, and later on deputy mayor of my home town responsible for security. So I talked to many judges, prosecutors, police officers, probation officers, prison wardens and inmates. I would therefore like to share some thoughts with you that are based on my experience.
Franz von Liszt, a German law professor who lived from 1851 until 1919 used to say “The best crime policy is a good social policy.” He was most likely not referring to all forms of crime. After all we are talking about a very complex phenomenon. We are talking about murder and infliction of bodily harm, treason and disclosure of state secrets, capital investment fraud, violation of book-keeping duties, driving under the

influence of alcohol or drugs. All forms of crime can probably not be prevented or fought by a good social policy. On the other hand there are lots of studies that show certain crimes are more likely to be committed by poor people. To give one example: A study published in Sweden last year showed that teenagers who had grown up in families whose earnings were among the bottom fifth were seven times more likely to be convicted of violent crimes and twice as likely to be convicted of drug offences as those whose family incomes were in the top fifth. If you organize a fair society in which all people can live in dignity you will most likely reduce crime. We do, however, not advocate to organize a fair society in which all people can live in dignity in order to fight crime –that is a nice side effect – but because we consider it a value on its own.

A good social policy is of course more than handing out benefits, providing decent housing or giving people access to education and medical attention. I have always been impressed by the Danish SSP concept which is a locally based cooperation between school, youth clubs, social services and police. By exchanging information they identify risks that provide criminal opportunities and they intervene immediately if they get information that an individual gives reason for concern about getting involved in criminal activities. In Germany many municipalities have crime prevention councils that follow a similar concept.

It has become my conviction that tough penalties and high incarceration rates do not make a society safer. There are countries which are extremely punitive and have a high incarceration rate but if you look at their crime statistics and their recidivism rate the results are poor. Penalties must be fair and adequate. And the rights that accused people and defendants have according to Article 6 of the European Convention on Human Rights must be fully respected, investigation and court proceedings must be fair and as fast as possible. This is especially true for juvenile offenders. A 20 year old who is convicted for infliction of grave bodily harm two years after he has committed the crime will hardly be impressed and maybe will have committed further crimes in the meantime. And all the legal professionals that I ever talked to confirmed the theory that the best deterrents are not harsh sanctions but a high risk to get caught. When I talk to Justice Ministers in South East Europe, they almost all complain how difficult it is to get money for modernizing the penitentiary system. You don´t obtain public support

because many people who abide by the law have little money themselves and think that money should better be allocated to other institutions. But the objective of modernizing the penitentiary system is to make society safer and to prevent people from becoming the victims of recidivists. If prison inmates have to live under conditions that must be called inhumane their social reintegration will be much harder. The recidivism rates in countries that invest little in their penitentiary systems are very often not convincing. I did probably not tell you anything that you did not yet know and maybe many of you share my convictions. But they are far from being common sense both in Albania and Germany and therefore I wanted to make these points. I now look forward to the following lectures and interventions. Once again I wish to thank the Law Faculty of the University of Tirana and each of you for your interest and participation. The Rule of Law South East Europe of the Konrad Adenauer Foundation looks forward to further cooperating with you.

Plenary speech

by

John A. Carver

Chief of Party to the USAID

Albanian Justice Sector Strengthening Project JuST

It is with great pleasure that I address you today at the opening ceremony of the International Symposium on "Criminal Justice System and the Social Welfare". As the Head of the USAID Albanian Justice Sector Strengthening Project- JuST, working with the Tirana University Law Faculty has been a real honor, and together we have accomplished a lot. I certainly recognize what this Faculty and this community of professors and students bring to the table, as we work together to strengthen the justice system as a whole, and specifically the criminal justice system. During my work in Albania, I have seen for myself how almost all actors working in the different parts of the criminal justice system in Albania – including the legislature, the courts, the prisons and the new probation service come from this Law School. This means that the Law Faculty has a special responsibility for preparing qualified graduates who will be tomorrow's leaders in all of these different agencies responsible for maintaining and protecting the rule of law within society. Ghandi once said that "the true measure of any society is how it treats its most vulnerable members." And who are the weakest members in any society? They are the poor. The abused. The victims of domestic violence. The drug addicted. The hungry.

And who do we look to speak for the downtrodden? In our courts of law, where many vulnerable people find themselves, it is the public defender, or the legal aid lawyer who is likely to be the only person whose role is to stand up and protect the rights of his or her client. Before coming to Albania, I had a long career in America, and all of it was spent in the criminal justice system. My first job as a law student was interviewing criminal defendants in the court cellblock and typing up and presenting background reports to judges. In those days, I went to Law School in the evenings, and we had no clinical programs. So the only way to get practical experience in a court was to find employment in a court. With that background, it has been personally gratifying to work with Dean Shegani and all the professors here to establish the kind of legal clinic I wish I had had. We have supported the Law Faculty with trial advocacy training, and opportunities to acquire practical legal experience. It has

been inspiring to watch the students here take on real cases of people with real legal problems, and make a difference in their lives. USAID is working in other areas as well – all designed to promote good governance and the rule of law. One such area is the introduction of digital audio recording equipment in every courtroom in Albania. This represents a significant advance in the justice system. Sure, it adds to court transparency. But it is much more. It is key building block in establishing procedural due process. The most basic elements of due process include notice, the right to confront witnesses, an impartial tribunal, and judicial review. To have meaningful judicial review, there must be a verbatim record of what happened at trial. Handwritten summaries simply do not meet the basic requirements of fairness or procedural due process. This investment in digital audio recording is transforming the courts. The benefits can be seen and felt by the parties. Parties now feel protected in a way they did not feel when their fate depended on how accurately a court secretary wrote down their arguments on a piece of paper. Complaints against judges have dropped, because now everyone knows there is an accurate, verbatim record of everything that happens in the courtroom. When today's law graduates take up the practice of law, or go on to the Magistrate's School, they will have a different and better courtroom experience from their colleagues of five years ago.

So, in keeping with USAID/JuST support to the Law Faculty, and in line with our mutual commitment to better-prepared law graduates, it is my pleasure to make a special announcement. I am announcing today that the JuST Project is prepared to finance and install a complete set-up of digital audio recording equipment of the same kind law graduates will encounter when they find themselves in a courtroom. There will be one enhancement not found in courts, and that will be a video component as well as the audio. I know that there are many moot court competitions and trial advocacy skill-building trainings, and we believe that the ability to record video and critique ourselves will further enhance the educational experience, and further prepare aspiring lawyers for their future career.

In closing, I would like to congratulate the Tirana Law School for the work and commitment which is promising in terms of the future justice sector professionals this country will have. I am pleased to be supporting the strengthening of legal education in Albania and of our

work with the Law School and look forward to hearing your important academic contributions to the topic of Criminal Justice System and the Social Welfare.

Criminal Sanctions and Crime Control: Past, Presence and Future in Europe

by

*Hans-Jörg Albrecht**

Abstract

Systems of sanctions since the 1960s have undergone profound changes with incorporating community sanctions and alternatives to imprisonment and introducing mediation and restorative justice elements. New concern for security and risks have resulted in moving away from rehabilitation and strengthening crime control policies which emphasize deterrence and incapacitation. The course of imprisonment rates, however, displays significant differences in Europe despite a common normative framework provided in particular by the Council of Europe. These differences cannot be explained by differences in crime rates. It is rather the political will to rely more or less on prison sentences as a response to crime which makes a difference. Neither deterrence nor incapacitation can justify the use of more severe criminal sanctions as there is no evidence of measurable impacts on crime rates.

1. Introduction: Criminal Punishment and Crime Control

Penal sanctions have a unique potential of inflicting pain, exerting power and serving as a regulatory instrument in the moral economy of a society. Moreover, penal sanctions operate as powerful symbols and therefore are of particular value for policy makers and policy-making.

* H.J. Albrecht (✉)
Director at the Max Planck Institute for Foreign and International Criminal Law, Freiburg/Germany. E-mail : h.j.albrecht@mpicc.de

This particular value is due to a most important quality of criminal sanctions. Criminal sanctions convey messages about norms, values and identity to offenders, victims and the general public. Such messages may be conveyed by public debates on sanctions and sentencing, by the parliament through criminal law making and ultimately also through sentencing practices and enforcement of criminal penalties. These messages are so important because they respond to basic feelings of fear and anger/hate and, moreover, they themselves may fuel these basic feelings of fear and anger. Criminal sanctions may do both, channelling and controlling anger and accommodating fear on the one hand and provoking fear and anger on the other hand. Criminal sanctions then may carry promises of security in times of high levels of crime and feelings of insecurity. There are different perspectives on the relationship between criminal sanctions and crime control. From the viewpoint of modern criminal law and criminal law doctrine, emerging in the 19th century in Europe, criminal punishment serves solely the goal of protecting fundamental individual and collective interests and draws its legitimacy and acceptance from preventing damage to such interests. Systems of criminal sanctions and sentencing practices therefore essentially are geared towards prevention of crime, albeit placed under restraints of findings of individual responsibility and personal guilt. While nobody will contest today the role of crime prevention for criminal law, nevertheless various and rather distinct crime control policies can be accommodated under the umbrella of preventive and protective criminal punishment. Crime prevention through criminal punishment can be (roughly) collapsed into 4 crime control approaches which in varying shades can be found in all national systems:

Crime control through reinforcing public disapproval of crime and raising acceptance of criminal law and criminal justice;

Crime control through rehabilitation;

Crime control through deterrence;

Crime control through incapacitation.

All approaches are based on the belief that crime control through criminal sanctions can be devised as reationa, evidence based policies. But, these approaches are also placed under normative and economic guidance and restraints. Criminal punishment of course comes with

(tangible and intangible) costs and these costs tend to increase with advancing normative standards. The economy of criminal sanctions in fact had significant impacts on the course of criminal sanctions during the last decades. In particular the significant increase in crime in Western Europe in the 1960s and 1970s has been responded to by adopting resource saving non-prosecution policies and alternatives to prison sentences (Albrecht 2001). Financial crises and budgetary problems are sometimes cited as encouraging decisions to revisit sentencing policies and early release procedures in the United States in recent years (PEW 2010, p. 2). The development of systems of sanctions goes hand in hand with reform of criminal procedure. Procedural reforms in many European countries in the last decades demonstrate that simplification is sought in order to escape problems posed by bulk crimes and complex (economic) crime. There are two lines in this simplification trend, one fueled by mass crimes where essentially fines imposed in summary proecdures (or transaction fines imposed by the public prosecutor) are used to speed up procedures. The other line is marked by particular reactions towards complex and time consuming cases (e.g. economic, environmental and transnational crimes). Here plea-and sentence bargaining between prosecution and defense (as well as criminal courts) serves to establish consent between the parties and to minimize the burden coming along with a full-blown trial (Weigend 1990). Normative restraints are imposed through a fundamental rights based approach to criminal sanctions which endorses proportionality and human dignity as guiding principles and rules out inhumane, cruel and/or unusual (grossly disproportional) punishment. Over the last two decades the relationship between criminal sanctions and crime control, however, has then been shaped also by a rapidly growing political concern for security and risk control. The call to make criminal sanctions instruments for the containment of risks and the pursuit of (public or internal) security moves attention away from personal guilt (for a crime committed in the past) and to the risk of future crime. Criminal punishment then responds to what may happen in the future and is transformed into a „social defence“ mechanism and what has been called “actuarial” criminal justice. Criminal law thus risks to be turned into an element of general security policies which seek to optimize

effective protection against dangerous individuals at the expense of justice and proportional punishment (Hassemer 2006).

2. European Normative Frameworks of Criminal Sanctions

The European landscape of criminal sanctions and punishment today is influenced particulary by the Council of Europe and the European Union. The Council of Europe and the European Union provide for normative frameworks which go far beyond what comes through hard and soft international law (created within the framework of the United Nations, mainly soft law and the ICCPR). European standards on penal sanctions developed through the Council of Europe have resulted in banning the death penalty completely from Europe (with the exception of Belarus). Membership in the Council of Europe and access to the European Union are today conditioned by complete abolition of the death penalty (and ratification of the European Convention of Human Rights, including Protocols 6 and 13 banning the death penalty in times of peace and war). The European Court of Human Rights continues to develop jurisprudence which sets limits to the use of life imprisonment. Recently, in Vinter v United Kingdom (Applications nos. 66069/09, 130/10, 3896/10), Judgment,July 9, 2013) and Bodein v France (Requête no 40014/10, Judgment, November 13, 2014) the ECHR has confirmed that – at the time of sentencing – an offender sentenced to life must have the prospect of release and the possibility to have the life sentence reviewed. Life without parole does not meet the requirements established through Art. 3 of the European Convention of Human Rights. The Committee for the Prevention of Torture (CPT) has developed into an effective instrument of monitoring implementation of prison sentences and prison conditions and compliance with the prohibition of torture and inhuman or degrading punishment. Soft law in the form of minimum standards and recommendations affecting criminal sanctions has dealt with community sanctions (1992, 2000), probation (2010), conditional release (2003), mediation (1999), imprisonment ("Prison Rules" 1987, 2006), compensation of victims (1985), life sentences and long-term prisoners (2003), prison overcrowding and prison inflation (1999), the use of remand prison (2006) and electronic monitoring (2014). The European Union's contribution to framing and

developing criminal sanctions and crime policies can be seen in its commitment to create a common space of freedom, security and justice based on common principles and values adopted in the Charter of Fundamental Rights of the European Union (which calls for proportionality of penal sanctions, Art. 49 §3). While criminal sanctions and crime control policies in general still fall in the realm of the member states (notwithstanding framework decisions and directives in the field of cross-border organized crime, terrorism and the position of the victim in the criminal process), the European Union has expressed interest in sanction systems particularly from the viewpoint of strengthening trust between the member states as a precondition for the mutual recognition principle and effective cooperation in law enforcement. In fact, the European Commission has issued Green Papers on criminal sanctions (2004), non-custodial pretrial measures (2004) and detention (2011) which underline the urgent need for identifying national differences which could impede effective implementation of mutual recognition. National differences are substantial and the policy approach adopted in penal sanctions related framework decisions and directives (restricted to requiring a "minimum maximum sentence") certainly will not achieve the goal of approximation.

Summarizing the basic principles and standards of penal sanctions adopted by the Council of Europe and the European Union we may conclude the following. Penal sanctions shall be:

- proportional
- in compliance with the prohibition of inhumane/cruel punishment and human dignity
- guided by the principles of rehabilitation, reintegration and furthering the capability to lead a crime free life (inclusion)
- effective (in containing serious crime and harm to potential victims)
- subject to minimizing harm (in particular when implementing prison sentences)
- subject to the ultima ratio principle when it comes to the use of unsuspended prison sentences

Despite a common set of standards and principles a look at the practice of criminal sanctions reveals significant differences in Europe.
Michael Tonry (2004) has raised the question why - despite facing the same crime problems and displaying the same punitive discourses in the political arena compared to the United States – German penal policies were not harsher and imprisonment rates higher. In fact, imprisonment rates declined significantly in Germany since the beginning of the new millennium following a significant decrease in especially serious crime. In contrast, England/Wales, Spain, the United States and recently France display a reverse pattern: imprisonment rates move up despite a long term trend of declining crime rates. While many of the new democracies in Central und Eastern as well as South-Eastern Europe can be classified as low crime countries (see UNODC 2008, pp. 23, 35 for the Balkans; or at least as low criminal conviction countries) many of them are found in the group of countries with the highest imprisonment rates in Europe. Albania, for example, is a country with a remarkably low rate of criminal convictions. The conviction rate amounted in 2011 to one third of the rate found in Germany (Aebi et al. 2014, 156). However, between 2001 and 2014 Albania has experienced an increase in imprisonment rates from 99 to 193. Within the same period the rate of imprisonment in Germany fell from 95 to 76. International comparative research on criminal sanctions and sentencing is still in its infancy. Research so far has dealt with various approaches to explain increases (to a lesser extent decreases) in prison populations. Increases in prisoner rates in the last decades are explained by a growth in the public's demand for more severe punishment (punitivity). Public opinion has been seen to be crucial in understanding the increase in prison populations in some countries (Freiberg/Gelb 2008) as has been the extent of insulation of the judiciary against political and public pressure. However, it is evident that the course of imprisonment and the trends in the size of prison populations do not follow a common set of variables or conditions. Developments in prison populations, in particular in Europe, are diverse and reflect – as Tonry/Farrington (2005) have pointed out for criminal sanctions and sentencing in the Western world – idiosyncrasies which necessitate careful analysis of individual national systems of criminal justice. Significant variation in the use of (long) prison sentences in Europe does not lend itself to easy explanations. Theoretical approaches

discussed by Garland (2001), Waquant (2004) and Christie (2000) place emphasis on the emergence of the "penal state", which replaces the welfare state and focus on data taken from the "American prison experiment" (which seems to be unique and therefore not suitable to draw conclusions for the development of penal sanctions and crime control in general and in particular in those European countries which experience either stable prisoner rates or even significant decrease).

3. Looking Back

When looking back on the course of criminal sanctions in the 20th century and concepts of crime control, two major developments can be noted. The first concerns the rise of community sanctions, alternatives to imprisonment and intermediate penalties. The second development points to new attention for victims of crimes and community (or civil society). Concern for community sanctions or alternatives to imprisonment is triggered by the belief that imprisonment in many cases has rather adverse than positive effects (on crime). Attention for victims and the community in systems of criminal sanctions are based on the conviction that social order and peace in a community are better served through catering also to the victim of crime and bringing back the community in a process of restoring peace and settling conflicts.

3.1 Alternative, Intermediate and Community Sanctions

It was in particular from the view of the abundant use of imprisonment that in Western Europe the question has been put forward as early as in the 1960s whether the range of criminal penalties should be widened by what today is commonly called intermediate, community or alternative criminal penalties and what conditions must be established to make this type of criminal penalties work. Faced with rising crime rates on the one hand and herewith increasing numbers of offenders adjudicated and sentenced, virtually all countries in the West of Europe since the 1960s have emphasized cost-benefit effective but non-custodial responses to crime other than the summary fine and non-prosecution policies based on conditional or unconditional discharges. These efforts were devoted to a considerable part to the search for alternatives to prison sentences

which on the one hand lay a heavy financial burden on the state and on the other hand do not seem to meet promises such as being an effective deterrent to crime or reducing recidivism. However, the search for intermediate penalties back in the 1960s was fueled also by theoretical arguments stressing adverse effects of detention practices in terms of stigmatization and labeling as well as the then still strong political and public support of rehabilitative approaches to the individual offender. A bifurcated approach developed with an attempt to concentrate „rehabilitative" imprisonment on heavy recidivists (in particular career offenders) while low risk offenders or first offenders should be eligible for non-custodial criminal sanctions and diverted from the prison system. Mistrust voiced against prisons and imprisonment already by Franz v. Liszt at the end of 19th century prevailed and was backed up by the rise of labeling theory on the one hand and general (social-democratic) political programmes headed towards more freedom and less repression on the other hand. Furthermore, sentencing theory as elaborated in the 1960s and 1970s strongly advocated the need for a wide range of penalty options thought to facilitate matching particular sentences to particular offenders. Putting the focus on individualization in sentencing partially reflected rehabilitation theory but was in particular called for by the assumption that personal and individual guilt as expressed in criminal offending could be best accounted for by various sentencing options tailored to the individual case. Although, community sanctions had been justified with avoiding negative impacts of imprisonment and the European Rules on Community Sanctions and Measures demand for proper researchon and evaluation of community sanctions (Bishop/Schneider 2001, 190) such research has rarely been carried out in Europe. In particular, controlled experiments have been neglected (Bremer Institut für Kriminalpolitik 2000). Indeed, in an attempt to identify cost benefit research on various sentencing options for a review of the state of research McDougall et al (2003) were able to find 9 studies satisfying criteria for inclusion. Out of these, only two of these studies dealt with a comparison between secure institutions and community sanctions.

However, despite deficits in the area of evaluation and implementation research remarkable success stories can be reported from creating and successfully implementing alternatives to imprisonment in Europe.

There is clear evidence that day fines succeeded in Austria, Germany and some Scandinavian countries as well as in Switzerland, partially also in France and Spain in replacing to a quite considerable though differing extent in particular short-term prison sentences in the 1960s and 1970s. Suspended prison sentences and probation turned out to be quite successful as alternatives to immediate imprisonment. Furthermore, community service has been introduced as alternative penalty in the 1980s in many European countries. Compensation and restitution then have been added to systems of criminal sanctions. In general, community based criminal sanctions received wide support in the 1980s and were based upon the conviction that too many offenders were sent to prison although not presenting risks to the community. Finally, various diversionary practices, as for example transaction fines today are firmly rooted in the criminal justice system's responses to not only juvenile crime, but to adult criminal offences also. However, the latter is also a significant expression of a dislocation of powers from the judicial system to prosecution authorities. From the 1990s on electronically monitored house arrest is introduced in systems of criminal sanctions. Most European countries today have adopted some version of electronic monitoring. It seems that electronic monitoring finds a particular place in supervision of dangerous offenders in the comunity. As many criminal offenders suffer from addiction problems treatment orders which address alcohol or drug problems are perceived to provide a more effective remedy against relapse into drug or alcohol related crime. Intermediate sanctions and diversion today work in many countries and for a wide range of offender groups. A lot of these success stories are documented in several volumes on sentencing and sentencing systems published in the 1990s and providing full evidence for the success of alternatives to imprisonment (Tonry/Hatlestad 1997; van Kalmthout/Tak 1988, 1992).

3.2 Victims, Victim-Offender Mediation and Restorative Justice

Victim-Offender-Mediation and restorative justice approaches experienced international and exceptional growth during the last three decades. Growth and development can be described on the basis of the number of "programs" implemented, the rapid spread of mediation

training programs and professionalization, endorsments by international bodies like the Council of Europe (see Recommendation 99/19 on Mediation in Penal Matters, The European Union (see Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, October 25, 2012) and the United Nations (Basic Principles on the use of restorative justice programmes in penal matters ECOSOC Res 2002/12; Basic Principles and Guidelines on Reparation 2005) and the rapid and uncontested adoption of victim offender mediation in criminal procedural law and criminal codes of many, not to say most countries. There is agreement on why victim offender mediation (and restorative justice) is much needed in the Western world. The point of departure concerns the assumption that the punitive or punishment based approach to control of crime (and adversarial processing of offenders) have failed (Law Commission of Canada 2003, p. 17). The diagnosis of failure of the penal law based approach to crime control is grounded on the view that the current system of criminal punishment in some regions has spiralled out of control. The tremendous increase in the number of prisoners in the United States and a lesser though still significant rise in prison populations in many other countries come with a heavy burden for society. The consequences are felt in the prison systems with overcrowding affecting the conditions under which prison sentences are served (Albrecht 2012) and in societies (and communities) which have to deal with re-entry and accommodate scores of hardened ex-prisoners. High rates of recidivism and the revolving door syndrom are perceived to be signs of the ineffectiveness of criminal punishment and to indicate that criminal punishment is not the solution of crime problems but is a substantial part of these problems. The finding of failure is also based upon the conclusion that the conventional criminal justice systems does not cater to the needs of crime victims. It is argued that victims are alineated from justice in a prosecution and court system which only recognizes them as witnesses and does not help in re-establishing trust and feelings of security and does not reassure in face of fear of retaliation. In fact, criminal law and criminal justice do not respond to fear nor do they respond to feelings.

Despite the remarkable political movement which carries victim-offender-mediation and restorative justice and their perceived potential

of effective crime control, these approaches have nowhere managed to replace criminal penalties (and/or criminal proceedings) to a significant extent.

4. Criminal Sanctions and Crime Control Between Rehabilitation, Deterrence and Incapacitation

4.1 Shifts

Systems of criminal sanctions were geared towards rehabilitation and reintegration throughout much of the 20th century. General deterrence and incapacitation had been sidelined as goals in sentencing decisions and rather had been allocated to the threat of punishment in the criminal law itself (deterrence) or as a mere side effect of prison sentences. However, the decline of the rehabilitative ideal internationally gained momentum in the 1970s, and a move away from rehabilitation (and related sentencing strategies) could be observed in many countries. This process was associated with new concern for sentencing theories which place more weight on seriousness of the offence (and the impact of the crime on the victim) as well as deterrence, incapacitation and public opinion. Reports from many countries underline then that over the last decades the public became more punitive, less supportive of rehabilitation and demands for tougher responses to crime. Demand for punishment becomes visible in the increase in long term prison sentences (Lambropoulou 2005, 223). In fact, in many criminal justice systems minimum and maximum penalties have been raised and minimum sentences have been introduced in particular for violent and sexual criminal offences. The introduction of "truth in Sentencing" policies, determinate sentencing, mandatory minimum penalties, three and two strikes laws and ultimately the move towards security have been interpreted as indicating a paradigm shift. Attention shifted away from the offender and individualization of punishment to seriousness of crime and deterrent punishment. The new concern for the victim and protection of potential victims certainly is a visible expression of such changes. These changes have been interpreted also as indicating a "pervasive penal populism" on the side of politicians pushing for harsher penalties especially for recidivists (Daems 2007) and as a gap between criminal

justice practitioners and researchers interested in evaluating the substance of criminal justice policies on the one hand and politicians interested in sending out messages to the public on the other hand (Tonry 2006, 51). But, it is rather a fragmentation of theory and politics of criminal punishment once uniformly organized around prevention through rehabilitating and re-integrating criminal offenders which characterizes today systems of criminal justice. But, rehabilitation optimism never disappeared completely. Rehabilitation and reintegration remained deeply entrenched in European thinking on criminal sanctions and crime control. Standards and rules developed by the Council of Europe as well as the jurisprudence of the European Court of Human Rights underline the still strong position of rehabilitation in the region. Moreover, various studies in the 1980s and 1990s on effects of prison based treatment on recidivism in groups of career criminals generated encouraging results (Ortmann 2002). Since then, meta-analyses consistently point to moderate but significant effects of rehabilitation efforts in particular for violent and sexual offenders (Garrido/Morales 2007, Hanson et al, 2009). Like rehabilitation deterrence and incapacitation come with promises of effective crime control, too.

4.2 Searching for Effects of General Deterrence

Much of empirical research on general deterrence has centered around the question of whether the death penalty deters murder (and other serious crime). Initially, cross-sectional and longitudinal comparisons between death penalty states and non-death penalty states were used in studying deterrent effects of the death penalty (and other criminal sanctions). Besides such comparative approaches time series of murder rates interrupted by abolition (or introduction) of the death penalty have been investigated in order to detect a possible impact of capital punishment. These comparisons enabled criminologists to determine that the threat of execution had no effect on the murder rate (Sellin 1967, 138). During the 1970s econometric analyses of time series data on executions and murder rates were undertaken to assess the impact of the death penalty on murder rates. Ehrlich, an American economist, concluded in an econometric study on murder and executions between 1933 and 1969, that an execution prevented 7-8 murders (Ehrlich 1975).

In a meta-analysis of the deterrent effects of criminal punishments initiated by the American National Academy of Science (Blumstein et al. 1978), as early as in 1978 it was pointed out that flaws in econometric analysis exist that have until this day not been remedied. The burden of proof to demonstrate the deterrent effect of (enhanced or aggravated) criminal sanctions must lie with the state that uses or introduces it. Whilst it is certainly not to be expected that the deterrence debate will conclude in the near (or distant) future, it would appear that no plausible evidence can be provided to convincingly demonstrate that a deterrent effect exists. The perception that the death penalty deters is based on belief. In this regard, general preventive grounds do not offer a viable basis to support the death penalty. This is also the conclusion of a recent report on deterrence commissioned by the National Academy of Sciences. More than thirty years after publication of the 1978 report on deterrence (Blumstein et al. 1978), the new report comes up with virtually the same results. The 2012 report says that "research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates". The report recommends then that political decisions about the death penalty should not be influenced by "claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate" (Nagin/Pepper 2012, 2). Further evidence of the limited impact of sanction severity on crime can be drawn from international comparative research. The longterm crime drop which can be observed in the United States and setting off in the 1990s can be also seen in Canada and in many European countries. The crime drop and in particular the decrease of serious violent crime is evidently independent from the use of the death penalty and from the wide use of long prison sentences.

4.3 Identifying Incapacitative Effects of Punishment

Incapacitation as an instrument of crime control came back to the political agendas in the 1990s. Violent sexual crime stirred up attention of German criminal policy makers in the second half of the 1990s (Albrecht 1999). Sexual murders of children committed by offenders with prior sexual convictions and judged to be low risk and subsequently

released on parole had caused public uproar (Albrecht 2004). The Belgian Dutroux case (Cartuyvels 1997) then received international media coverage and fueled the view that the response towards dangerous offenders must be tightened.

In Continental Europe no attention was attached to policies of incapacitation developing in the United States since the early 1970s. Criminological interest in the habitual or chronic criminal rather subsided completely in the 1960s (Kinzig 1996, 129). The land mark study on the „Philadelphia Birth Cohort" (Wolfgang et al. 1972) had fueled research and policy debates in North America. The focus was placed on the career criminal and criminal careers as well as the potential of sentencing strategies specifically devised to prevent crime through locking up highly active, chronic criminals (Blumstein et al. 1986). Prospects of incapacitation policies were considered to be moderate in the 1980s, in particular due to the problem of identifying chronic offenders early in their career (Blumstein et al. 1986, 7-8). But expectations grew as a result of economists contributions to research on deterrence and incapacitation and as a consequence of the American "prison experiment" which parallels from the 1990s on the great American crime drop (Blumstein/Wallman 2000). In the 1970s American economists express interest in the study of crime and punishment, the application of econometric methods on time series of crime and criminal penalties and the modeling of crime along economic theory. First, it is the deterrent effect of capital punishment which draws attention of economists resulting in influential studies conducted by Ehrlich (1975, 1975) in the 1970s. Second, the observation of a long term decline of crime setting off in the first half of the 1990s (Blumstein/Wallman 2000) and the spiraling prisoner rate gaining momentum in the 1980s evidently increases confidence that high rates of imprisonment have significant returns in the form of less crime (Levitt 2004, Barker 2010, for The Netherlands see Vollaard 2011 assuming a strong correlation between minimum prison terms for persistently recidivist property offenders and a declining rate of property offences). However, assumptions on a causal relationship between incapacitating prison policies and the crime drop remain controversial (Spelman 2006) as remains controversial whether the costs coming with incapacitating prison sentences and the dramatic inflation of the prison population are

balanced by sustainable benefits in terms of reductions in the crime rate (Barker 2010).

5. Political Will, Criminal Sanctions and Crime Control

Political will as to what place prison sentences should play in a system of criminal sanctions and how prison sentences should be enforced certainly have a central place in explanations of differences in the use of criminal sanctions. A major impact on the size of prison populations can be expected from deliberate political decisions to cut down the use of imprisonment. Examples can be drawn from decisions made by Austrian and German parliaments to reduce the use of short term prison sentences (up to six months) in the 1960s. Finland opted also for a major change in the use of prison sentences when making a decision to adjust to practices implemented in other Scandinavian countries. Both examples, the German/Austrian as well as the Finnish, demonstrate also what is needed to initiate political discourses and ultimately political changes which reduce the prison population effectively: a justificatory system or a narrative which is politically acceptable and which endorses decarceration policies or alternatives to imprisonment (Jacobs 2007). In Germany/Austria the narrative drawn from the program of Franz v. Liszt was very successful when implementing in the 1960ies a policy which gave priority to fines and cut back drastically short prison sentences. In Finland it was evidently the wish to fall in line with the rest of the Scandinavian countries which resulted in adopting a decarceration policy which decreased the prison population significantly. However, it is not clear how such justifications are made to work and why under certain conditions they seem to be successful and under other conditions they are not. The Finnish case shows that discourses on the role of prison sentences and the size of the prison population may be also initiated by placing prison figures into a comparative perspective. In the 1990s in Australia the question was raised why New South Wales would experience a much higher prisoner rate than the demographically similar state of Victoria. Research came up with a mix of grounds. In New South Wales more imprisonment for fine default, longer prison sentences, and in particular a higher rate of custodial sentences can be observed, while Victoria disposes of an additional alternative, periodic

detention. Such comparisons seem to become effective within clusters of countries (or political entities) which are due to various reasons close to each other. However, comparisons may also result in discourses headed towards increasing the size of the prison population. So, when looking at the changes in crime control and in systems of criminal sanctions there are no clear or dominating trends but it is evidently patchwork which reflects sometimes diverging interests in criminal sanctions and crime control and various interest groups. Various countries take different courses in crime control policies and in the use of criminal sanctions. Some countries evidently have more appetite for prison sentences than have others, either as a result of deliberate political decisions or as a result of "sticking to old habits". It is certainly not evidence which explains differences in crime control policies, nor is it differences in crime rates. A promising path of explaining differences in relying on prison sentences and imprisonment and developing a new policy project with respect to crime control is opened by re-evaluating the relationship between crime control, criminal sanction, welfare and general trust. It has been shown that countries with a conventional and well established welfare system are also countries where fear of crime is low and trust in state institutions is high (Downes/Hansen 2006). At the same time these are countries with rather stable and low rates of imprisonment and with a high share of community sanctions (Lappi-Seppälä 2008). If these correlates can be confirmed, then, a sentence coined by Franz v. Liszt would in fact hold true: "the best criminal policy is a good welfare policy".

Literature

Aebi, M. et al. (2014). European Sourcebook of Crime and Criminal Justice Statistics. Helsinki: Heuni.

Albrecht, H.-J. (2001). Simplification of Criminal Procedure: Settlements out of Court - A Comparative Study of European Criminal Justice Systems. Pretoria: South African Law Commission, Research Paper 19.

Albrecht, H.-J. (1999). Die Determinanten der Sexualstrafrechtsreform. Zeitschrift für die Gesamte Strafrechtswissenschaft 111(4), 863–88

Albrecht, H.-J. (2004). Security Gaps: Responding to Dangerous Sex Offenders in the Federal Republic of Germany. Federal Sentencing Reporter, 16(3), 1-8.

Albrecht, H.-J. (2012). Prison Overcrowding: Finding Effective Solutions. Freiburg: Max-Planck Institute.

Barker, V. (2010). Explaining the Great American Crime Decline: A Review of Blumstein and Wallman, Goldberger and Rosenfeld, and Zimring. Law & Social Inquiry, 35(2), 489–516.

Bishop, N., Schneider, U. (2001). Improving the Implementation of the European Rules on Community Sanctions and Mesures: Introduction to a New Council of Europe Recommendation. European Journal of Crime, Criminal Law and Criminal Justice 9(1), 180-192

Blumstein, A. and Wallman, J. (2000). The Crime Drop in America. Cambridge: Cambridge University Press.

Blumstein, A. et al. (1986). Criminal careers and career criminals. Washington: National Academy Press.

Blumstein, A. et. al. (1978). Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates. National Academy of Sciences: Washington.

Bremer Institut für Kriminalpolitik (Hrsg., 2000). Experimente im Strafrecht – Wie genau können Erfolgskontrollen von kriminalpräventiven Maßnahmen sein? Bremen: Universität Bremen.

Cartuyvels, Y. (1997). L' affaire Dutroux. Brussels: Editions Complexe.

Christie, N. (2000). Crime Control as Industry. Towards Gulags Western Style. London.

Commission of the European Communities (2004). Green Paper on mutual recognition of non-custodial pre-trial supervision measures. Brussels, 17.8.2004, COM (2004) 562 final.

Commission of the European Communities (2004). Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union. Brussels, 30.04.2004, COM(2004) 334 final.

Commission of the European Union (2011). Green Paper. Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention. Brussels, 14.6.2011, COM(2011) 327 final.

Daems, T. (2007). Engaging with penal populism. The case of France. Punishment & Society 9(3), 319–324.

Daniel S. Nagin, D.S., Pepper, J.V. (eds. 2012). Deterrence and the Death Penalty. National Research Council, National Academy of Sciences: Washington.

Downes, D., Hansen, K. (2006): Welfare and punishment. The relationship between welfare spending and imprisonment. Kings College, London, www.crimeandjustice.org.uk

Ehrlich, I. (1975). The Deterrent Effect of Capital Punishment: A Question of Life and Death. American Economic Review 65(2), 397-417

Freiberg, A., Gelb, K. (2008). Penal populism, sentencing councils and sentencing policy in Penal Populism, Sentencing Councils and Sentencing Policy edited by Freiberg, A. and Gelb, K., Cullompton: Willan, 1-14.

Garland, D. (2001). The Culture of Control. Cambridge: Cambridge University Press.

Garrido, V., Morales, L.A. (2007). Serious (Violent or Chronic) Juvenile Offenders. A Systematic Review of Treatment Effectiveness in Secure Corrections. Valencia: Campbell Campbell Collaboration Crime and Justice Group.

Hanson, R.K. et al. (2009). A Meta-Analysis of the Effectiveness of Treatment for Sexual Offenders: Risk, Need, and Responsivity. Ottawa: Public Safety Canada.

Hassemer, W. (2006). Sicherheit durch Strafrecht. HRR-Strafrecht 7(4), 130-143.

Jacobs, J.B. (2007). Finding Alternatives to the Carceral State. social research 74(4), 695-699.

Kinzig, J. (1996). Die Sicherungsverwahrung auf dem Prüfstand. Freiburg: Max-Planck-Institut.

Lambropoulou, E. (2005). Crime, Criminal Justice and Criminology in Greece. European Journal of Criminology 2(2), 211-247.

Lappi-Seppälä, T. (2008): Trust, Welfare, and Political Culture: Explaining Differences in National Penal Policies. In: Tonry, M. (Ed.): Crime and Justice. A Review of Research. Bd. 37, Chicago, London: University of Chicago Press, 313-387.

Law Commission of Canada (2003). Transforming Relationships Through Participatory Justice. Ottawa: Law Commission of Canada 2003.

Levitt, S.D. (2004). Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not. Journal of Economic Perspectives, 18(1), 163–190.

McDougall, C., Cohen, M.A., Swaray, R., Perry, A. (2003). The Costs and Benefits of Sentencing: A Systematic Review. The Annals of the American Academy of Political and Social Sciences 587(1), 160-177.

Ortmann, R. (2002). Sozialtherapie im Strafvollzug. Eine experimentelle Längsschnittstudie zu den Wirkungen von Strafvollzugsmaßnahmen auf Legal- und Sozialbewährung. Freiburg: Max-Planck-Institut.

PEW (2010). Right-Sizing Prisons: Business Leaders Make the Case for Corrections Reform. Washington: PEW Center on the States.

Sellin, T. (1967). Capital punishment. New York 1967.

Spelman, W. (2006). The Limited Importance of Prison Expansion in The Crime Drop in America, edited by Blumstein, A., and Wallman, J. revised edition, Cambridge: Cambridge University Press, 97-129.

Tonry, M. (2004). Why Aren't German Penal Policies Harsher and Imprisonment Rates Higher? German Law Journal, 5(10), 1187-1206.

Tonry, M., Farrington, D.P. (2005). Punishment and Crime across Space and Time, in Crime and Punishment in Western Countries, 1980 – 1999, edited by Tonry, M. and Farrington, D.P. Chicago, London: University of Chicago Press 2005, 1-39.

Tonry, M., Hatlestad, K. (1997, Eds.). Sentencing Reform in Overcrowded Times. A Comparative Perspective. New York.

Tonry, M. (2006). Criminology, Mandatory Minimums, and Public Policy. Criminology & Public Policy 5(1), 45–56.

UNDOC (2008). Crime and Its Impact On the Balkans. Vienna: UNODC.

van Kalmthout, A., Tak, P. (1988, 1992). Sanctions-Systems in the Member States of the Council of Europe. Part I and II, Deventer, Arnhem.

Vollaard, B. (2011). Preventing crime through selective incapacitation. Tilburg: TILEC Discussion Paper No. 2011-00.

Wacquant, L. (2004). Punir les pauvres. Le nouveau gouvernement de l'insécurité sociale. Paris: Harmattan.

Weigend, Th.: Absprachen in ausländischen Strafverfahren. Freiburg 1990.

Wolfgang, M.E., et al. (1972). Delinquency in a Birth Cohort. Chicago: University of Chicago Press.

The Role of Comparative Criminal Studies in the Development of National Criminal Law

by

*Prof. Dr. Altin Shegani**

*Prof. Asoc. Dr. Ersi Bozheku**

1. Introduction

Friedrich Carl von Savigny[1] conceived the law and the legal studies[2] as an outcome of a process and not merely the product of an act.[3]The process of the lawmaking, constitutes a reflection of the model of the particular social order[4] to which it tends to apply. The various models of social order, have resulted in a legal cultural diversity, which is deemed to be the direct consequence of the differences between civilizations. In order to overcome the discrepancies between normative system, the science and practice of law has progressively elaborated new

* A. Shegani (✉)
Department of Criminal Law, Faculty of Law, University of Tirana, Albania
E-mail: altin_shegani@yahoo.com

* E. Bozheku (✉)
Dipartimento di Scienze Giuridiche, Sapienza University, Rome (Italy)
E-mail: ersi.bozheku@gmail.com

1 Friedrich Carl von Savigny, one of the most distinguished lawyers of all times, remarkable for the publication in 1814 of the criminal "*De la Vocation de notre époque pour la legislation et la science du droit* ".

2 For further details see: Altin Shegani, *Comparative Criminal Law,* Tirana, 2013, pg. 7-23

3 Quoted in: Rodolfo Saccco, *Lingua the Diritto,* p. 117, available at http://www.arsinterpretandi.it/upload/95/att_sacco.pdf, last visit dates in May 2015.

4 H.Motulsky *Cf, Mission pratique de la Philosophie du droit,* Arch.Philo.Droit 1952, p.175-180.

interpretative methods, including *inter alia* he comparative studies. Comparative studies on the micro and macro level focus on the development of criminal legal norms and institutes, the impact of various circumstances *(such as socio-political elements)* that influence directly in establishing of the legislative framework.[5] The legislative framework and the sources are described as the key elements of the landscape of a legal model.

Lawyers are inclined to compare the legal framework based on the respective manner of its creation and evolution. Based on this point of view, the comparison is a necessary method of legal reflection. Comparative law is not only important *per se,* but it certainly serves to the society as a whole and its interest for legal progress. Pragmatism pertaining to the causes and objectives performed by the function of social development, gives to the the comparative studies in criminal matters a clear utilitarian touch.

The evolution of the interpretative method of criminal norms has favored the affirmation of comparative law as a distinct legal discipline.[6]In the quest for understanding more about comparative law, Montesquie's lesssons become particularly useful,[7] in the sense that *"in their broader sense, laws are stemming from the nature of things"*.[8] Each civilization establishes its own legal culture, its normative system of positive law, its legislative standards.[9]The measure in which they change, are inter alia, a result of the analytical process of legal comparison. Nowadays, comparative legal reasoning is increasingly present in all dimensions of practice and study of law. Comparative law being integrated more and more to the right itself, as a supporting mechanism and as a fundamental technique.

---

5 These enable the distinction of the concepts and classification of offenses (crimes and misdemeanors), their elements, subjects and the respective criminal consequences.

6 See: Ersi Bozheku, *Il diritto comparatto: Aspetti Generali (prima parte),* Universita TELEMATICA Pegaso, available at the website: http://vm3942.cloud.seeweb.it/LMG-01/Sist_penali_comparati/Bozheku/Lezione_I /Aspetti_generali.pdf

7 Jean Marc Trigeaud, *La liberte du legislateur civil selon Montesquieu,* Cahiers de Philisophie Politique et juridique, no.7, p.30-46

8 See Esprit des Lois, I, 1.1.

9 Eric Agostini, *Droit Compare,* Presse Universitaire de F rance 1988, p. 9.

Comparative studies also show how peculiar the field of legal research is. As such, this process requires a thorough understanding and knowledge of the rules applicable in different systems and legal orders, as well as the socio-political context in which they apply.[10] The comparative analysis is certainly of better quality if the ideas of the comparative lawyer are well-structured.

2. The scope of comparison and the object of comparative studies

Comparative studies constitute in themselves a cognitive operation based on the evaluation of objects, phenomena, processes which helps to create the image of qualitative and quantitative characteristics.[11] A necessary precondition for the process of comparison is the scope of comparison,[12] also known as the areas of comparison.[13] The particular examination of the comparison areas helps us understand that the reference to institutional normative models, is a common practice in comparative law. The different models of criminal orders, are the starting point of analysis and they represent a fundamental basis for legal interpretation.[14] With regard to the object of comparison, it should be mentioned that it is directed towards what is comparable. As regards to comparability, it is necessary and crucial that there should be a common variable for each case and have the same meaning in every case.[15] This means that there should be at least two samples, a comparative one and another to which it is compared. The

---

10 PC Raig, "Preface", in BS tirn, D Fairgrieve, M. Guyomar, *Droits et en France et au Freedoms Royame -Uni,* Paris, Odile Jacob, 2006, p.7.

11 Tatyana Udilova, Notion de Comparaison et des moyens de son expression en francais, available at the website: http://oaji.net/articles/2014/941-1404303957.pdf , p. 2, consulted in May 2015.

12 Berislav Pavisic, op.cit.

13 Altin Shegani, op.cit., Tirana, 2013, p. 70,

14 They distinguish between them based on the sources of criminal norms, which constitutes a significant criterion for comparative analysis.

15 *Elgar Encyclopedia of Comparative Law* , edited by Jan M. Smits, A.Esin Örücü "*Methodology of Comparative Law* " Published by Edward Elgar Publishing Limited, p.442, 2012.

history of the creation and development of law has shown that the comparative studies are gaining significant ground. Comparative studies are oriented towards two or more important legal objects[16] whose similarities[17] and differences[18]are to be highlighted. The lawyer may use instinctively, without saying and without taking into account, the genotype to develop a conceptual reflection, and produce an argument on the positive right[19]. J. Vanderlinden, proposes a solution by suggesting the dissolution of the legal concepts, to highlight from all components, the elements that do not correspond to the right one or the other, and to process in a way of continuously expression with diagrams, to which the semantic unit, has all the characteristics features to distinguish one from another notion[20]. It seems that J. Vanderlinden proposal could serve as a starting point for all the future efforts which aim to create a way of expression of the uniform right and, possibly, a way to express the right in itself. One of the major aims of the comparative criminal law is the legal analysis of the cultural diversity. At this point begins the main operation that starts with the ascertainment of the situation and the major characteristics of the materials, object of a comparative review.

3. Comparative studies characteristics

The comparison understanding is complex, as a philosophical, logical and cognitive category that plays a crucial role in the perception

16 Berislav Pavišić, *La Comparazione dei Principali Sistemi Europei*, Corso integrativo di Diritto e Procedura Penale Comparati, Università degli Studi di Macerata, p. 2 – 7, e disponueshme ne faqen web: http://www.progettoinnocenti.it/dati/168SISTEMI%20PENALI%20COMPARATI.rtf

17 Comparative Law aims to group legal phenomena and to orient their comparability based on the similar elements.

18 Nowadays, models of legal culture today clearly prove that no legal rule can remain faithful to just one model.

19 See: Rodolfo Saccco, *Lingua e Diritto* , pag. 117, available on web: http://www.arsinterpretandi.it/upload/95/att_sacco.pdf, consulted on May 2015.

20 See: Rodolfo Saccco, *Lingua e Diritto* , pag. 117, available on web: http://www.arsinterpretandi.it/upload/95/att_sacco.pdf, consulted on May 2015.

of the world[21]. Well- known comparativist[22] lawyers emphasize its value as a tool for the dissemination of knowledge and for a better understanding of the domestic law. Comparative studies' development today, appears in the form of a reaction against or towards the nationalization of the right which was observed in the nineteenth century, at the time of the codification[23]. Considering the normative nationalist' legal theory for aforementioned period, the comparative right became a necessary tool for the recognition of the right beyond the national political borders[24].

From the general principles upon which the comparative studies logically rely, we can acknowledge that the norms and institutions of the national criminal justice system, in itself represents two important aspects, one organic and the other functional[25]. The organic and functional aspects should be considered by the general characteristics of the right under consideration. So for example, in the case of the Common Law Regulation, we need to understand that the key element for the continuity of the legal life of this family, is the faithfulness of the existence of the doctrines related to the judicial precedent[26].

The comparison does not work and does not apply only and simply for the cognitive and informative disposition. If it was organized only by this limits, its coefficient of efficiency and its legal and social usefulness will be decreased. The comparative method does not exclude the realistically recognition but intends the positive expectations of the

---

21 See: Tatyana Udilova, Notion de Comparaison et des moyens de son expression en francais, available on web: http://oaji.net/articles/2014/941-1404303957.pdf, pag. 1, consulted on May 2015.

22 Understand, Konstantinesco, David etc.

23 See: *Droit pénal comparé,* available on web: http://www.lexeek.com/document/22755-caracteristiques-droit-penal/, consulted on May 2015.

24 See: Jan M. Smits, *Elgar Encyclopedia of Comparative Law- Aims of Comparative Law*, H.Patrick Glenn, pag.58-59, Published by Edward Elgar Publishing Limited, 2012.

25 For more see: Michele –Laure RASAT, *La justice en France*, Collection Encyclopedique Que sais – je ?, Presses Universitaires de France 1991, pag.9.

26 For more see: Michele –Laure RASAT, *La justice en France*, Collection Encyclopedique Que sais – je ?, Presses Universitaires de France 1991, pag.9.

comparative lawyers. The comparison as a research method, is deeper structured in the mechanism of action than to provides just recognition. In this context, the comparative method should be understood as a method oriented to be implemented in the legal models. The comparative attempts reminds us that the comparative studies combine the various exchanges between legal orders[27]. The right intends to benefit from the comparative studies to achieve a general model of construction, moving from the normative data to reach other general abstractions.

4. Comparative sudies as references to the legal traditions

The comparative studies can be considered as the starting point of reflection in the early legal traditions. The roots of the comparative studies in criminal sciences are found in legal multiculturalism. The comparative criminal science lawyers, study even today these traditions in order to find a way to combine interpretation, views of different legal traditions[28].

The universe of criminal legal culture demostrates a rich diversity of doctrinal, normative and institutional. This diversity easily justifies the legal transformations happened in different societies at different times. The interest and not simply a legal curiosity has led lawyers to orient the analysis process by comparison, as a natural process of reflection on legal multiculturalism.

The comparison of the rules of law, is the comparison that goes throught the historical models of the organizations in different times. The history of comparative studies constitutes, after the birth and creation of the history of law, an important event realized through a solid ally, such as language. Language has developed and modernized the

---

27 See: *Droit pénal comparé* : Available on web : http://www.lexeek.com/document/22755-caracteristiques-droit-penal/

28 See: Zartner Falstrom, Dana. "*The Role of Legal Tradition in the Development of International Law: Conflict or Compromise*" Paper presented at the annual meeting of the Southern Political Science Association, Hotel Intercontinental, New Orleans, LA, Jan 09, 2008.

right, and therefore its history is also an important part of the history of law[29].

The different positions in terms of comparison of the rights and goals have been evident throughout legal history. Greek lawyers referred to the law of another Greek city-state to judge the cases, and the process of comparison has no difference between the same processes of comparison among two different internal norms in the decision-making process. In the same way, the Romans, sent a delegation to Greece before the drafting of the Twelve Tables, however in practice a more formal comparison of laws inevitably has happened among the Roman provinces[30]. The Medieval era is identified as the "the time of increment of the rights" in the same territory. The comparative studies, have played a crucial role in the "reunification" in specific instances[31]. European states construction' process used many sources of law and in the 16th century were observed major doctrinal efforts to coax from the resources of the Roman law, the canons and the customary law.

5. The role and use of comparative studies in the development of criminal law and sciences

Law theorists aim at explaining law based on its social and public purposes and usefulness as a guardian of the social legal order.[32] The comparison works based on a "*legitimacy*" of its own, as a useful means to social interests. From its legal usefulness dimension, results, solutions and normative efficiency are gained. Comparative criminal law, based on views from different authors, aids the legal normative technique combining – or better say harmonizing – three basic functions:

---

29 See: *The Encyclopedia of Language and Linguistic*, IV, Elsevier Science, New York 1994, pag.2080 and ss.

30 See: Jan M. Smits, *Elgar Encyclopedia of Comparative Law- Aims of Comparative Law*, H.Patrick Glenn, p.57-58, Published by Edward Elgar Publishing Limited, 2012.

31 See: Jan M. Smits, *Elgar Encyclopedia of Comparative Law- Aims of Comparative Law*, H.Patrick Glenn, p.58, Published by Edward Elgar Publishing Limited, 2012.

32 See: Altin Shegani, *The Criminal Law of Public Order as a Guardian of Public Interest in Terrorist Acts Scenario*, Sociology Study ISSN 2159-5526 March 2013, Volume 3, Number 3, p172-177.

First, to create criminal law;

Second, to define what criminal law and approximate disciplines are;

Third, to enable application to specific social relationships of the already established criminal law specifically and of criminal sciences in general.

The practical interests is to allow or enable a better application of the useful foreign law e.g. in the field of dual criminality as a precondition to extradition, and for the purposes of improving criminal policy. The use of comparative techniques in the field of criminal sciences aims at assisting lawyers better understand their domestic law. The role and objective of a comparative lawyer is to enable lawyers from different countries – who do not reason based on the same method, and use different concepts – achieve a necessary degree of knowledge on foreign law. Thus, criminal comparative studies stand out as a mechanism that serves the evolution of criminal law. Comparative studies, in addition to their use as an evolving instrument, practically serve laws' classification system.33 This operation consists in setting the worlds legal orders in a classification system as per different notions of legal traditions and ideal patterns of legal systems.34 The comparative lawyer must gather an explain data based on carefully established classifying schemes, find out and describe similarities and differences based on such data, and lay down reciprocal reports between constituent elements of the comparative process.35

Comparative studies in the criminal field contribute to a better understanding of the domestic law from the perspective of contrasts and the vast information they provide. Therefore, in the domestic aspect they

---

33 See: Jan M. Smits, *Elgar Encyclopedia of Comparative Law- Aims of Comparative Law*, H. Patrick Glenn, p.59-60, Published by Edward Elgar Publishing Limited 2012.

34 This purpose of the comparative law was influenced by the birth, in the nineteenth century, of various comparative and classifying disciplines (comparative anatomy, comparative literature etc.) and the concept of ideal models which was given importance in social sciences by Max Weber.

35 See: *Elgar Encyclopedia of Comparative Law*, edited by Jan M. Smits, A. Esin Örücü "*Methodology of Comparative Law* "Published by Edward Elgar Publishing Limited, p. 447, 2012.

constitute an important element that can be useful to both legal and institutional reforms.

The systematic study of the legal patterns lead to the crystallization of the investigation and trial processes' pattern. One of the most important pragmatic purposes of comparative law is the regional and international legal harmonization, which is of paramount importance nowadays in the European continent, but also in the widespread process of transnational and international law.

In the European context specifically, comparative law is an irreplaceable method of the work of European courts which rely on the domestic law of each member state and the European Union law, as well as on the application of the European Convention on Human Rights.[36] The regional harmonizing forms or those based on a specific topic can be viewed today as the maximum limits of the harmonization comparative process. It is now clear to all that legal universalization is a utopia. The internationalization of crime brought an internationalization of anti-crime reaction. The United Nations Organization and other regional organizations such as the Council of Europe have different institutions and develop various policies in the field of comparative studies.37

6. Conclusions

Comparative Law, like many other legal disciplines cannot avoid the explanation of reasons about its existence. In the efforts to explain itself, Comparative Law, completes an important cycle of its internationality. The dynamic nature of the mechanisms through the comparison is made, is influenced by the dynamicity of content of the legal culture.

Through these mechanisms, of revealing yet comparing nature, comparative studies form and unveil the contours of legal culture identity. Comparative studies in themselves represent a mechanism of legal techniques, In the field of models for enforcement of normative factors.

---

36 See Yves Jeanclos, *Droit Pénal Européen*, Dimension historique, Economica 2009, p. 9-24.

37 See: Ibid

Today Comparative Law, can be considered , not only , as the language and the communication code for the community of jurists, but also as a drive of significant impact on the improvement of social relations, considering that it creates a qualitative reflectiv product resulting from the confrontation of different legal orders. Due to the communication with different legal cultures, it targets the necessary normativ and institutional improvements, as well.

Based on this argument, we can conclude that, Comparative Criminal Law, puts into action methods[38] that influence the legal technique of creating, elaboration, and enforcement of the Law.[39] In this context, comparative studies rightfully can be considered as the model of integrated research , regarding the law phenomena.
Comparative studies promote important and dynamic movements , and produce significant legal consequences in the national systems. The analytical scepter, orients and realizes mainly the comparative model, with institutional and normative aspects as it object.
Analytic products, explain without a doubt the legal transformations that the national legislations have been through, in different fields, starting from the doctrinal diversity. Transformations in themselves testify for the enrichment of the universe of national legal cultures .For these and other reasons mentioned above, I think that lawyers who are part of the comparative research category, have rightfully understood that the "International Life of Law", tents to harmonization. In this context, comparison is used, not only first and foremost with the goal of approximation and integration in a common Law , in the context of its modernization. [40]
In the context of the European Union , for example , where the right to compare is a driving force and plays a crucial role in the process of harmonization , functional comparative analysis diverts attention from

---

38 See: Altin Shegani, Veper e cituar, Tirane 2013, p. 63-70

39 See: Bajram Pollozhani, "*Krijimi i se drejtes dhe roli i teknikes juridike – aspekte komparative*", Logos SA, 2003

40 See: Argita MALLTEZI, *L'influence francaise et les rapports commerciaux entre la France et l'Albanie dans une perspective historique*, Revue Internationale de Droit Compare , 3/2014, p. 817 – 843.

the " vertical " to the " horizontal " and provides the opportunity for convergence , for the legal systems as well as legal methods of member states , leading to the gradual and eventually legal integration.[41]
Comparative analysis contributes in the incrimination rate improvement, and in the improvement of the sanctions nomenclature , in the internal Criminal Law space. In an optimistic point of view, comparative studies in the field of Criminal Law, have the value of the legal language, which the new century must use, the right to digital era.

Bibliography

Elgar Encyclopedia of Comparative Law , edited by Jan M. Smits, Published by Edward Elgar Publishing Limited, 2012

Jean Marc Trigeaud, *La liberte du legislateur civil selon Montesquieu*, Cahiers de Philisophie Politique et Juridique, no.7

Argita MALLTEZI, *L'influence francaise et les rapports commerciaux entre la France et l'Albanie dans une perspective historique*, Revue Internationale de Droit Compare , 3/2014

Altin Shegani, *The Criminal Law of Public Order as a Guardian of Public Interest in Terrorist Acts Scenario*, Sociology Study ISSN 2159-5526 , Volume 3, Number 3, 172-181, March 2013

Altin Shegani, *E Drejte Penale e Krahasuar*, Tirane 2013,

Emmanuelle Gindre, *L'émergence d'un droit penal de l'Union européenne*, L.G.D.J 2009

Richard J. Terrill, *World Criminal Justice Systems, a survey*, 7th edition 2009 . introduction

Yves Jeanclos, Droit Pénal Européen, Dimension historique, Economica 2009, p. 9-24.

---

41 *Elgar Encyclopedia of Comparative Law* , edited by Jan M. Smits, A. Esin Örücü "*Methodology of Comparative Law* " Published by Edward Elgar Publishing Limited, p. 444, 2012.

Zartner Falstrom, Dana. "*The Role of Legal Tradition in the Development of International Law: Conflict or Compromise*" Paper presented at the annual meeting of the Southern Political Science Association, Hotel, New Orleans, LA, Jan 09, 2008

P.Craig, "Preface", in B.Stirn, D.Fairgrieve, M. Guyomar, *Droits et libertes en France et au Royame –Uni*, Paris, Odile Jacob, 2006

Bajram Pollozhani, "*Krijimi i se drejtes dhe roli i teknikes juridike – aspekte komparative*", Logos SA, 2003

Michele –Laure RASAT, *La justice en France*, Collection Encyclopedique Que sais – je ?, Presses Universitaires de France 1991

Eric Agostini, *Droit Compare* ,Presse Universitaire de France 1988

H.Motulsky, *Mission pratique de la philosophie du droit*,Arch.Philo.Droit,1952

Berislav Pavišić, *La Comparazione dei Principali Sistemi Europei*, Corso integrativo di Diritto e Procedura Penale Comparati, Università degli Studi di Macerata, pg. 2-7, available at: http://www.progettoinnocenti.it/dati/168SISTEMI%20PENALI%20COMPARATI.rtf

Droit pénal comparé : available at http://www.lexeek.com/document/22755-caracteristiques-droit-penal/, last visited on May, 2015.

Tatyana Udilova, Notion de Comparaison et des moyens de son expression en francais, available at: http://oaji.net/articles/2014/941-1404303957.pdf, last visited on May, 2015.

Markus Dubber, Comparative Criminal Law, available at: http://www.law.utoronto.ca/utfl_file/count/users/mdubber/Comparative%20Criminal%20Law%20(OUP%20Handbook).pdf

Ersi Bozheku, *Il diritto comparatto: Aspetti Generali (parte prima)*, Universita telematica Pegaso, available at:

http://vm3942.cloud.seeweb.it/LMG-01/Sist_penali_comparati/Bozheku/Lezione_I/Aspetti_generali.pdf

Rodolfo Saccco, *Lingua e Diritto*, available at: http://www.arsinterpretandi.it/upload/95/att_sacco.pdf, konsultuar ne maj 2015.

Jacqueline Visconti , Lingua e Diritto – Livelli di Analisi, Collana: «Esedra. Collana di Letture» - 23, *Università degli Studi di Genova, e* available at: http://www.lededizioni.com/lededizioniallegati/442-9-Visconti-Lingua-diritto.pdf

Criminal Justice System and Social Welfare: Why the drive towards more community policies?

by

*Dr. Evisa Kambellari**

Introduction

Increases in the frequency of crime, face governments with the diffcult dilemma of shifting towards a more punitive sentencing policy or developing sustainable social structures that guide to community instruments of crime control. In criminological discussions, it has long been asserted the idea that the criminal justice system alone can not tackle crime-related problems. Rooted in the early statement of von Liszt that "the best criminal policy would be a good social policy", the idea that societies can do better by investing in family support, schools, and local communities had attracted a growing scholarly attention. Furthermore, the 1991 Morgan Report, prepared by the U.K Home Office[1], represented a significant entrance of welfare policies in the policymakers' agenda. The report had reflected a change in thinking about who should be responsible for preventing crime. It suggested that the responsibility for crime prevention, which was traditionally thought of as being the sole remit of the police, should be allocated to local authorities (Fisher & Lab. 2010).

Reaction to deviant behavior cannot be bassed on a system of punitive sanctions that neglects the relationship between social welfare and

* E. Kambellari (✉)
Department of Criminal Law, Faculty of Law, University of Tirana, Albania
E-mail: evisa.kambellari@fdut.edu.al

1 Morgan Report: "*Safer Communities: The Local Delivery of Crime Prevention through the Partnership Approach".* (U.K. Home Office, 1991).

punishment in delivering criminal justice. Withing the welfare perspective, main causes of criminal behavior are related to the social and economic conditions rather than to the individuals themselves. Social welfare policies place emphasis on the rehabilitation of the individual, and rehabilitation of the society to eliminate the necessity of an individual engaging in criminal activity (Roberts & Springer, 2007). The criminal justice system's major concern lies in balancing the objectives of protecting public safety and rehabilitating the offender. Social welfare measures seek to accomplish these goals through a community-based approach. Community sanctions and measures refer to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations.[2] Furthermore, welfare policies based on the role of comunities in preventing crime and delinquency, had been subject of increased criminological attention over years. Community crime prevention programmes are concerned with changing the social conditions in an area, which are considered to contribute to criminal behavior (Evans, 2015). They start from the specific assumption that crime prevention strategies function more efficiently when adapted to the specific needs and problems of local settings. In addition, more efforts should be done to promote restorative justice as a tool of collective response to crime. Restorative justice instruments provide wide opportunities to resolve conflicts within the family or the local community, ensuring that the interests of all stakeholders are satisfactorily addressed.

1. From retributive to community safety policies

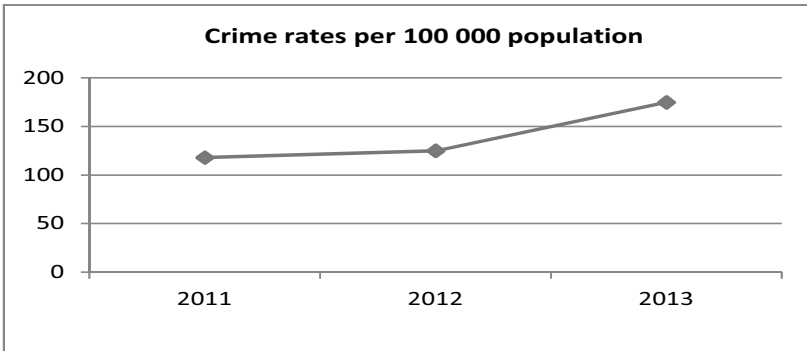
There are two main perspectives to be considered in the framing of crime prevention policies: reducing criminal opportunities through criminal justice, or, reducing criminal motivations through social welfare policy (Rosenfeld & Messner, 2013). The second alternative focuses on the controlling role of social institutions and community

[2]According to the definition provided in the Recommendation no. R (92) 16 of the Committee of Ministers to Member States "On the European rules on community sanctions and measures".

development programs, as major sources of reducing criminal motivation.

In Albania, state action have been steadily addressing cime related problems through the institutionalized response of the criminal justice system. Up to now, seems that the prevalence of the punitive-oriented approach have not been associated with a satisfactory result in reducing crime rates. Figures for recent years indicate that crime rates have been increased.

Figure 1. Crime rates per 100 000 population[3]



Developments in the criminal policy of recent years have been characterised by a growing trend towards more harsh sentences or punishments and a quite missing discussion on the controlling functions of social institutions. Thus, changes that were made to the Penal Code in 2013 provided that a number of criminal offenses, which, at the time, could alternatively be sentenced with a fine penalty or an imprisonment term, should be punishable by imprisonment only. In 2014 the government started to actively seek from the criminal justice system, the application of harsher penalties for minor offenses such as electricity theft and breach of the road traffic regulations, which was associated with a new wave in the prison population. It is also worth mentioning that for a certain category of offences the sentencing terms over-represent the seriousness of the offense and are consequently, unproportional to the goals to be achieved.

---

[3] Source: Statistical Yearbooks of the Ministry of Justice; http://www.drejtesia.gov.al/

Considering all of the above, it is obvious, that the key features of the criminal policy over years had been focused in the crime prevention tasks of the criminal justice system. The work of crime control agencies should go beyond mere targeting and increased surveillance of particular places that might attract crime, or deflection of potential offenders from risky situations. Critics of situational crime prevention argue that unless motivation is also reduced, the removal of opportunities will simply result in crime being redistributed, not reduced (Clarke, 2000).

In this regard, no significant undertaking has been made to address major sources of criminal motivation. Several surveys show that the main factors influencing criminal behavior are related to unemployment, low level of education, family's violent cultural background, and cultural collision. However, evidence-based evaluations on their specific correlation with deviant behavior, are vague or incomplete. At this stage, it is of crucial importance for public agencies to seriously think about compensating the role of state corrective institutions with that of social actors, and to replenish the crime preventing role by strengthening the community roles and social bonds.[4] In community-based approaches the competency development roles are distributed among community institutions such as schools, civic organizations and employers that facilitate the reintegration process, and consequqently, the rehabilitation of the offender (Bazemore et al. 1997).

In doing so, the Albanian criminal justice system shifts the focus from the traditional approach of individualised staff work, focussed on the offender's behavior only , and instead, gets primarly engaged in creating opportunities to enable him demonstrate competency and build community ties.

In the European Union line of action it has been ascertained that strong social policies are necessary for accomplishing crime prevention goals.

---

4 This is in line with the EU guidelines on the nature of community sanctions and measures. According to recommendation no. R (92) 16, such corrective measures should tend to foster "community participation", which refers to all those forms of help, paid or unpaid, carried out full-time, parttime or intermittently, which are made available to the implementing authority by public or private organisations and by individuals drawn from the community.

They are conidered especially important for the fostering of social cohesion, the promotion of tolerance through education and cultural programmes and the respect for cultural diversity.[5]
In Albania, massive migration waves from rural areas towards urban centers have been associated with a growing cultural heterogeneity in the population of main urban settings. Cultural conflicts combined with other social or economic problems generate a vicious circle of accummulated anger that fuels criminal motivation. In order to eradicate the structural causes of crime, some prioritary issues for the Albanian policy maker remain the development of sustainable social cohesion policies and of effective structural reforms to alleviate economic disparities.

2. Epanded use of restorative justice

The Albanian criminal justice system is primarily focused on the need to hold offenders accountable and punish them, rather than on the need to recover the harm inflicted on individual victims. The general perception is that crime has been committed against the state and that it has violated the prevailing social norms. An effective criminal justice system should be capable of ensuring that both the rights of offenders and victims are equally protected. Although the social welfare perspective's main focus consists in the treatment of the offender, it should not be disregarded the growing attention that welfare policies are placing on ensuring the interests of the victims as well. In this respect, restorative justice instruments play an indispensable role in bringing to a balance the offender-driven system, which puts victim needs in a secondary perspective. Restorative justice has been dominantly seen as a process that brings together all stakeholders affected by some harm that has been done (e.g., offenders, their families, victims and their families, affected communities and state agencies such as the police) (Braithwaite & Strang, 2001). They enter into discussions in order to find a satisfactory solution for recovering any wrong suffered by the affected party.

---

5 *Local Authority Policies For Crime Prevention In Europe.* Council of Europe Publishing, 2004.

In 1999, the Albanian lawmaker passed the Law 'On mediation in dispute resolution'[6], which was amended in 2003 and then in 2011. It defines mediation as an '*extrajudicial activity whereby the parties seek resolution of a dispute with the assistance of a third neutral party (mediator) in order to reach an acceptable agreement on the resolution of the dispute, which is not contrary to the law'.* In the the role of the mediator can be every person who has a degree in law, is over 25 years old and has successfully completed the training and the vocational program of mediators. Mediation in criminal matters applies to disputes examined by the court at the request of the accusing injured party, or upon complaint of the injured party, such as non-serious bodily harm, inferences into one's private life, domestic violence et cetera. After more than a decade of its implementation, the law has not produced significant effects in resolving criminal matters through alternative dispute resolution. In his last report, in the National Conference of the Judiciary, the head of the Albanian Supreme Court noted that "effective mechanisms for alternative dispute resolution are lacking. Many conflicts involving people who know each-other, family members, or conflicts on relatively insignificant financial harm could be addressed better and faster through mediation".[7] Besides ensuring an acceptable solution for all parties in a criminal case, restorative justice instruments would help to economize the judicial resources and to avoid the overburdened courts' dockets, that continue to be a problem for the Albanian system of justice.

For expanding the application of mediation in criminal cases it is necessary to increase the awareness of both state agencies and private stakeholders on the use of restorative justice instruments and their effectiveness. In this regard, expert opinion shows that it is necessary to focus on permanent, multi-tiered training activities targeted to the various practitioners: judicial authorities, social workers, NGOs, law

---

6 Law no.8465, dated 11.3.1999 "On Mediation in Dispute Resolution", as amended by law no.10385, dated. 24.02.2011.

7 Plenary speech of the President of the Supreme Court, Albania, at the National Conference of the Judiciary , 18 April 2014, http://www.gjykataelarte.gov.al/, [10.02.2015].

enforcement authorities, volunteer organisations, and to start information campaigns to the public, as well.[8]

3. Conclusions and recommendations

In the agenda of the Albanian policy maker are still missing discussions for a comprehensive crime prevention strategy. In addition, the lack of complete and coherent studies on crime risk factors and their extent in different areas, makes it difficult to underline the main routes of future policing scenarios. There are only fragmentized studies, sometimes limited, which try to make some inferences on risk factors to deviant behavior, whilst practice-oriented research on protective factors is quite missing. The state reaction on the implementation social welfare policies is very slow.

The predominant punitive approach in the Albanian criminal policy is not in line with EU recommendations, and especially with recommendation no. R (92) 16 "On the European rules on community sanctions and measures", which places emphasis on the use of sanctions and measures whose enforcement takes place in the community.

Research indicates that crime prevention strategies or plans function more efficiently when they are geared to a small, specific geographical area or neighborhood (Palmiotto, 2000).

The enhancing of community protection roles contribute to more holistic and integrated rehabilitation programs that facilitate the offender's reintegration into society. To provide social welfare services, it should be started with the development and implementation of social policies that make them available to the community. The criminal justice system should build stable cooperation mechanisms with schools, youth organizations, and suppliers of community services in order to sustain integrated offender rehabiliation programs, and to become a powerful resource for influencing positive models of behavior. For ensuring that

[8] *Restorative Justice and Crime Prevention: Presenting a theoretical exploration, an empirical analysis and the policy perspective*. (2015:181). Final report of the European project 'Restorative Justice and Crime Prevention'. Department of Juvenile Justice-Italian Ministry of Justice, [23.02.2015].

policing resources are used effectively and applied to the right extent, it is necessary to strengthen institutional capacities and social mechanisms involved.

State and local authorities have to foster their mutual cooperation for offering more recreational activities and work opportunity programs within local communities. Previous studies reveal that funding of community sport facilities and other recreational infrastructure would contribute to social cohesion (Jarvie, 2006). Community engagement helps generating or strengthening neighborhood bonds and developing the sense of belonging to the whole.

Early prevention: The dicussion on welfare programs should not disregard the role of early psychological intervention in preventing criminality. In accordance with the EU recommendations early prevention programs have to take into account adverse social and economic circumstances of children, and deficits in their socialisation, personality and specific needs. [9] Such programs should include measures to support and strengthen families, promote attachement to school, encourage accountable and positive social behavior and develop more safer and cohesive neighbourhoods.[10]

Lastly, It is necessary to design an effective multi-agency intervention for the provision of services to former young offenders so as to avoid the negative effects of social exclusion when they rejoin society.

---

9 See: Recommendation Rec(2000) 20 of the Committee of Ministers to Member States "On the role of early psychosocial intervention in the prevention of criminality".

10 Ibid, part II/2.

References:

Books and articles

Bazemore, G., Pranis, K., & Umbreit, M.S. (1997). *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Century St. Paul, Minnesota: Center for Restorative Justice & Peacemaking.

Braithwaite, J., & Strang, H. (2001). *Restorative Justice and Civil Society.* Cambridge: Cambridge University Press.

Clarke, R.V. Situational Prevention, Criminology and Social Values., in Von Hirsch, A., Garland, D., & Wakefield, A. (2000). *Ethical and Social Perspectives on Situational Crime Prevention.* Portland: Hart Publishing.

Evans, K. (2015). *Community and the Problem of Crime*. Abingdon: Routledge.

Fisher, B.S., & Lab, S.P. (2010). *Encyclopedia of Victimology and Crime Prevention, Vol.1*. SAGE Publications.

Jarvie, G. (2006). *Sport, Culture and Society: An Introduction.* New York: Routledge.

Local Authority Policies For Crime Prevention In Europe. Council of Europe Publishing, 2004.

Palmiotto, M. J. (2000). *Community Policing: A Policing Strategy for the 21st Century*. Gaithersburg: Aspen Publishers.

Roberts, A.R., & Springer, D.W. (2007). *Social Work in Juvenile and Criminal Justice Settings, 3rd edition.* Springfield: Charles C Thomas Publisher.

Rosenfeld, R., & Messner, S.F. (2013). *A Social Welfare Critique of Contemporary Crime Control*. http://thesocietypages.org/papers/rosenfeld-messner/

Recommendations, Reports, Legislation:

Recommendation Rec(2000) 20 of the Committee of Ministers to Member States *"On the role of early psychosocial intervention in the prevention of criminality"*.

Recommendation no. R (92) 16 of the Committee of Ministers to Member States *"On the European rules on community sanctions and measures"*.

Restorative Justice and Crime Prevention: Presenting a theoretical exploration, an empirical analysis and the policy perspective. (2015). Final report of the European project 'Restorative Justice and Crime Prevention'. Department of Juvenile Justice-Italian Ministry of Justice, [23.02.2015].

Safer Communities: the Local Delivery of Crime Prevention Through the Partnership Approach Unknown Binding. Standing Conference on Crime Prevention, Home Office, Great Britain, (1991).

Plenary speech of the President of the Supreme Court, Albania, 18 April 2014, http://www.gjykataelarte.gov.al/, [10.02.2015].

Law no.7905, dated 21.3.1995 "Criminal Procedural Code of the Republic of Albania Albania"

Law no.8465, dated 11.3.1999 "On Mediation in Dispute Resolution", as amended by law no.10385, dated. 24.02.2011.

Video and audio recording by the traffic police andthe right to private life

by

*Irina Kotenko**

*Dr. Idlir Peci**

1. Introduction

The Albanian Ministry of Interior is currently implementing a project, which aims at the use of body-worn cameras (hereinafter BWC) by (traffic) police officers in Tirana. The project aim is to enable them to make audio and video recording of their encounters with individuals while on duty and performing a law-enforcement task/assignment. As of today various attempts to introduce the use of body-worn cameras by police officers on duty were made in various countries, where such tools were introduced on the basis of both short-term and long-term projects: EU (the UK[1], the Netherlands (Ham, Ferwerda and Kuppens, 2010). (experimental in 2009 in Rotterdam, Holland Midden, Haaglanden, Twente); Canada[2]; USA (California and other states)[3]

* I. Kotenko (✉)
Lawyer at the Law Firm 'Tashko & Pustina', Tirana, Albania
E-mail: irina.kotenko@gmail.com

* I. Peçi (✉)
Deputy Minister of Justice of the Republic of Albania
E-mail: idlirsan@gmail.com

1 *Report of* Bedforshire Police. Body Worn Video Policy and Procedure. Retrieved from http://www.bedfordshire.police.uk.

2 *Report of the Office of the Privacy Commissioner of Canada*. Guidance for the use of body-worn cameras by law-enforcement authorities. Retrieved from https://www.priv.gc.ca

3 Report by Police Executive Research Forum (PERF. Implementing a body-worn cameras program. Recommendations and lessons learned. Retrieved from http://www.policeforum.org worn%20camera%20program.pdf>

The main purpose of the use of BWCs is to contribute to the maintaining of a public order and public security. They are specifically used for prevention of crimes, collection of evidence (investigation), enhancing of accountability of police officers and therefore enhancing trustful relations between the police and the population. One of the main problematic issues arising in relation to the use of such cameras is ensuring that the use of cameras and the processing of the information do not violate the right to a private life of any individual. In this respect, drafting accurate and lawful policies for both the use of cameras and storing and processing of received data play an important role, so that the collection of data with the use of BWC is done in a manner compatible with obligations under both national and international privacy legislation, norms and standards. Therefore, this contribution seeks to analyse whether the international standards of a clear and foreseeable legal ground for the usage of cameras, storage and further distribution of footage is met by the Albanian legal framework. This contribution is divided into three main sections. The first section focuses on general aspects of the right to privacy and analyses whether the usage of body-worn cameras in the law enforcement context interferes with this right of the citizens. The second section outlines the relevant national and international legal framework. It further discusses whether the domestic legal framework regulating the use of cameras and processing of data may be considered to constitute a lawful ground for interference with the right to privacy. The third section provides for some concluding remarks and recommendations.

2. Interference with the right to privacy

2.1. Video recording with the use of BWCs and the processing of personal data

This paragraph will consult the definition of "personal data" and its "processing" as provided in international treaties and domestic laws in order to consider whether video recording with the use of BWCs can be qualified as processing of personal data. The Convention for the Protection of Individuals with regard to Automatic Processing of

Personal Data (Data Protection Convention)[4] defines personal data as any information relating to an identified or identifiable person. Processing of personal data, according to the Data Protection Convention is constituted by operations carried out with the data: collection and storage, any operations, alteration, erasure, retrieval, or dissemination. The Law of the Republic of Albania 'On Protection of Personal Data'[5] defines as personal data 'any information relating to an identified or identifiable natural person' (article 3.1. of the Law). Processing of data means, according to article 3.7 of the Law 'any operation which is performed upon personal data, whether or not by automatic means, such as the collection, recording, storage, organization, adaptation, alteration, consultation, use, retrieval, blocking, erasure, destruction or any other action, as well as data transmission'. According to this definition, video recording either in public or private places with the use of a BWC and subsequent downloading and processing of such video footage constitute processing of personal data.
Body-worn cameras operated by police officers in Tirana will be used in a law-enforcement context to obtain video recording of an actual counteracting between an officer on duty and an individual. Technical attributes of the cameras allow for the recording of both image and voice, which gives rise to concerns regarding due protection of the right to private life of an individual. It should be immediately noted here that issues concerning the right of privacy of the police officer wearing the camera will not be considered in this contribution. Received video footage will be downloaded and stored on a specially designed server system. The downloaded material is to be managed by a police department, which will be responsible for all operations with the received footage, including its storing, distributing (where possible), etc. Under these circumstances, video recording with the use of BWCs can be qualified as processing of personal data within the meaning of the Law on Protection of Personal Data and the Data Protection Convention.

---

[4] Council of Europe Convention, 1 October 1985, CETS No 108. Ratified by Albania on 14 February 2005.

[5] Law of the Republic of Albania No 9887 of 10 March 2009 "On Protection of Personal Data".

2.2. The processing and/or use of personal data in the context of an individual's right to a private life

The question which arises in respect of storing and processing of such video recordings is whether and to what extent they constitute an interference with the right to respect for private life and if such interference does find place, what guarantees are provided in the domestic legislation to prevent abuse and violation of the right to privacy, as well as to protect personal data. This latter issue will be discussed in the next section of this contribution. Private life and the right to protect it have a very wide application in international law of human rights. It is expressly provided in article 8 of the ECHR[6], which reads as follows:

> "*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*"

Privacy is a rather broad concept and it includes, among others, protection of personal identity, and as a part thereof protection of the image and voice of an individual. In a significant body of the relevant case-law, the European Court of Human Rights (ECtHR) has confirmed that:

---

6 *Article 17 of the ICCPR* also establishes the right to protection of a private life:
"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks."

"*concept of private life extends to aspects relating to personal identity, such as a person's […] image. A person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development. It mainly presupposes the individual's right to control the use of that image including the right to refuse publication thereof*" (Khmel v Russia, 2013, 40).

Whereas the ECHR does not specify extensively what fall under the scope of private life, it held on many occasions that protection of private life shall not necessarily be limited to the person's private or living premises. Also in the situations where an individual finds himself in a public domain (on the street, in public premises, etc), a person can expect his privacy be protected. To consider whether specific measures constitute an intervention with a person's right to a private life, the Court uses a number of elements (Uzun v Germany, 2010, 44-45), including: 1) a person's reasonable expectation of privacy; 2) whether there was compilation of data on a particular individual; 3) processing or use of personal data; 3) a publication of the material concerned in a manner or degree beyond normally foreseeable. The question which arises in consideration of these elements is when collection, storing, and processing of data do amount to the interference with a right to private life. In the case of *Khmel vs Russia*, the ECtHR observed that "recording of the video in the law-enforcement context […] constitutes an interference with their rights to respect for private life" (Khmel v Russia, 2013, 41). In that case the Court found an interference with the right to private life where a video recording of the applicant was made by journalists at a police station. In most of its case law where the issue of video or audio recording was discussed, the ECtHR, however, seems to employ an approach, according to which not every manipulation with data (either collecting and storing on the one hand or processing on the another) can amount to an interference.

Thus, in its case law the Court refers to "systematic" or "permanent" manipulations when considering if there was an interference. In the case of *Rotaru vs Romania,* where the applicant complained about the

holding of a file by Romanian Intelligence service containing his personal information, the Court referred in this respect to: "the *systematic* collection and storing of data by security services on particular individuals, even without the use of covert surveillance methods" (Rotary v Romania, 2000, 43-44 and 46). In the case of *Perry vs UK,* where the applicant was video recorded while in a police station with a purpose to use recording for further identification, "the *permanent* recording of footage deliberately taken of the applicant at a police station by a security camera and its use in a video identification procedure" was qualified as the processing of personal data about the applicant interfering with his right to respect for private life (Perry v UK, 2003, 39-43).

Likewise, in the case of P.G. and J.H v the UK the Court observed that: "the […] *permanent* recording of the applicants' voices […] for further analysis as voice samples directly relevant for identifying these persons […] was regarded as the processing of personal data about them amounting to an interference with their private lives" (P.G and J.H v the UK, 2001, 37 and 59-60). Important factors for the consideration whether collecting of data interferes with the private life might be as well whether the collected data remains anonymous, in that no names are noted down, whether the personal data are entered into a data processing system, and whether the data have been made available to the general public or will be used for other purpose (P.G. and J.H. v UK, 2001, 59, 61).

The use of BWCs does not, in principle, have as its purpose a "systematic" recording of an individual. The recording will find place during a specific encounter and not necessarily on systematically planned occasions. However, during this encounter, a police officer will be instructed to proceed with a video recording "permanently", thus to commence video recording at the beginning of an encounter and to record a complete encounter. A received video footage will be stored as a separate file and can be accessed by authorised persons on later occasions, including for identification purposes, in order to identify an individual pictured on the record. An individual recorded will be identified, where necessary, or identifiable. On the basis of above mentioned standards, it can be concluded, that even though the video

recording with the use of the BWC in Albania does not pursue a "systematic" recording, collecting of data and surveillance of specific individuals, the "permanent" nature of a video recording in a law-enforcement context constitutes an interference with the right to private life and therefore, requires a legal ground as provided in a number of international human rights law instruments.

3. Existing legal framework

3.1. International standards

Processing of personal data and protection of privacy are subject to regulation in a number of international law instruments. Among those are the International Covenant on Civil and Political Rights (the ICCPR)[7], the Data Protection Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR).[8]

Thus, in its article 17.1 the ICCPR establishes that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". In its General Comment No.16 the Human Rights Committee (HRC) has observed the basic aspects of protection against interference with the right to privacy and gave its explanation of the provisions of article 17 of the ICCPR. Specifically, the HRC observed that "the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private

---

[7] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>

[8] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

individuals or bodies, must be regulated by law".[9] In order to not being arbitrary, the interference, even based on the law, "should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable"[10].

The ECHR, in its article 8.1, provides that "everyone has the right to respect for his private and family life, his home and his correspondence". As was mentioned above in the previous section, recording, downloading and storing of footage in the law-enforcement context is regarded by the European Court as interference into the right to privacy of an individual. The requirement of a lawful interference are stipulated in the paragraph 2 of Article 8 of the ECHR. Further requirements to the protection of privacy in the context of data processing are provided in the Data Protection Convention. Specifically the Data Protection Convention provides for the requirements of a lawful personal data processing and has, according to its Article 1, as its purpose "secured respect for the every individual's rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection"). Article 5 of the Data Protection Convention specifies the requirements for quality of data, which includes fair and lawful receiving and processing, and existence of specified and legitimate purposes for storing of the data. The Law on Protection of Personal data provides in article 5.1 under "b" that processing of personal data can be exercised only on the basis of specific, clearly defined and legitimate purposes and shall be processed in a way that is compatible with these purposes. Article 8 of the Data Protection Convention allows individuals certain rights in respect of gathered personal data file (establish the existence of a data file, receive this data in eligible form and rectify or erase of such data), as well as allows a remedy where the request for rectification or erasure was not complied with. Article 9.1 and 9.2 of the Data Protection Convention provides that any exceptions to the rights stipulated in Article 8 shall be provided by law, shall be necessary in a

---

[9] The Human Rights Committee, General Comment No 16 (Article 17), HRI/GEN/1/Rev.9 (Vol.1), 8 April 1988, para 10.

[10] Op. footnote 9, paras 3-4.

democratic society and contribute to protection of specific interests (state security, public safety, the monetary interests of the state or suppression of criminal offences).
The international norms and standards require that a lawful interference with the right to privacy shall be based on a clear, accessible and foreseeable law (legal act), pursue legitimate purposes and be proportionate to these purposes.

3.2. Albanian legislation

The Law on Protection of Personal data provides in article 6.1 "d" a general legal ground for lawful processing of personal data: "performance of a legal task of public interest or in exercise of powers of the controller or of a third party to whom the data are disclosed". Such "legal task" in respect of the video recording with the use of a BWC, is established in the Law "On the State Police"[11] and, where relevant, in the Code of Criminal Procedure[12] which allow police in certain cases to perform video recording. Specifically, these two legislative acts distinguish overt (open) intercepting in public or private spaces. Video recording in public spaces, as it is provided in article 124.2 of the Law On the State Police can be performed by police in order to collect personal data which is necessary for "prevention of a real risk for public order and security, and prevention, detection, prosecution, and investigation of criminal offences" as is stipulated in article 124.1. Collection of data in general should be necessary to achieve the main objectives of the State Police defined in Article 2 of the Law on the State Police as "maintaining public order and security, protection of persons and objects of particular importance, and protection of the rule of law". Collection and further processing of the personal data is subject to the regulations provided in articles 126-127, 131 of the Law on the State Police and is subject to the requirements provided by the Law on Protection of Personal Data. The Code of Criminal Procedure regulates situations when video and audio recording finds place in a private place.

---

[11] Law of the Republic of Albania, Nr 108/2014 of 31 July 2014 "On the State Police "

[12] Law of the Republic of Albania, No 1905 of 21 March 1995, the Code of Criminal Procedure, Consolidated Version as of 2 May 2013

Thus, according to Article 221.1: […] the interception by video and audio in private places […] is permitted only where there is a proceedings: a) for intentionally committed crimes for which a punishment of imprisonment of no less than seven years is provided; b) for the criminal contravention of insult and threat committed through the means of telecommunications. Neither the Code of Criminal Procedure nor the Law on the State Police define the scope of a "public" or "private" place. Interpretation of these notions can be made both with the use of interpretation of the relevant provisions of the ECHR, including the case-law of the European Court. What is covered by the concept of "premises", in its turn, is observed in the case law of the ECtHR, which on multiple occasions held that this concept, apart from living premises also covers hotels or holiday homes, providing long term-accommodation (Demades v Turkey (dec), 2003), living caravans (Buckley v UK, 1996), business premises with no obvious distinction between private and business activities (Niemietz v Germany, 1992).

A special issue where it concerns the distinction between "private" and "public" places, arises in respect of the cars (vehicles), as the capacities for using BWCs will be given, first of all to the traffic police officers, who will video record their conversations with drivers, including situations where a driver is still sitting inside of a car, or where a traffic police officer requests from a driver to open a trunk. Whereas it is not clear from the case law of the Court whether a vehicle (apart from living caravans mentioned above) can constitute a "home" within the meaning of article 8 or a "private place" referred to in article 221.1 of the Code of Criminal Procedure, one of the criteria which the ECtHR uses for assessment whether a measure in question constituted an interference with the privacy was a "reasonable expectation of privacy", which an individual might have in given circumstances. This criteria was first accepted in US legal doctrine (Winn, 2008) and further recognised and applied, among many other jurisdictions, by the ECtHR to outline in every specific case whether a person's privacy "was concerned by measures effected outside a person's home or private premises" (P.G. and J.H v. UK, 2003, 57).

The standard application of the "reasonable expectation" test as formulated by the Justice Harlan in concurring opinion *Katz vs United*

States case where the issue of constitutionality of wiretapping with the means of electronic surveillance was observed, suggests a two-fold approach, where criteria of a possible intervention with a privacy would be 1) whether a person has a reasonable expectation of privacy, which 2) the society is prepared to recognise. Thus a person who finds himself at his home can expect privacy, but objects, activities or statements, which he exposes to a "plain view", are not "protected" because no intention to keep them to himself has been exhibited (Katz vs US, 1967, 361). In the USA, courts while applying "reasonable expectation of privacy" test consider also such factors as whether what has been recorded by the police could have been seen by the naked eye (Sjaak Nouwt, 2005, 17), whether a person has knowingly exposed recorded space to the public eye (Sjaak Nouwt, 2005, 10). Also the ECtHR in the case of *P.G and J.H v UK* the Court observed, that "since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy maybe significant, although not necessarily conclusive factor" (P.G. and J.H v. UK, 2003, 57).

If to apply the above-mentioned principles and standards, it becomes clear that under private places can be understood "premises", including under certain circumstances private homes, hotels and business premises. Video recording with BWCs in the vehicles is possible where it captures parts of the vehicle open for public and which can be seen by public (for example salon of a vehicle with transparent windows). However, video recording of parts of a vehicle, which are not exposed to the public eye might require a court order which is needed for search as provided in article 202 of the Code of Criminal Procedure.

To sum up, Albanian domestic legislation allows for video recoding in a law enforcement context. Recording in "public spaces" is provided in accordance with the Law on State Police with a purpose of the data collecting necessary for prevention of a real risk threatening public order and security, as well as for prevention, detection, prosecution, and investigation of criminal offences. Video recording in "private places" is possible where requirements of article 221.1 of the Code of Criminal Procedure are met. The distinction between private or public places for the purposes of video recording can be made in accordance with relevant domestic provisions (including application by analogy) of by application

of principles and standards developed in the case-law of the EctHR. Thus, for the purposes of recording in vehicles, the "reasonable expectation of privacy" test can be applied to consider whether such video recording goes beyond the scope of video recording in public places, and thus, requires court order as provided in article 221.1. of the Code of Criminal Procedure.

3.3. Is the interference with the right to privacy lawful?

In the previous section was observed that video recording in the law-enforcement context, including use of BWCs constitutes an interference with the right of a person to a private life. Further will be assessed whether the legal grounds for video surveillance provided in domestic Albanian legislation answer the requirements of article 8.2. ECHR and article 5 of the Data Protection Convention. Lawful interference with private life which does not violate a right of an individual to privacy is possible solely *in accordance with the law*, shall be *necessary in democratic society* in the interests of *national security, public safety or the economic well-being* of the country or to pursue such aims as, among others, *prevention of disorder and crime* and, at last, is expected to be *proportionate* to these aims. These requirements are the core of lawful intervention with privacy. Their interpretation and detailed explanation can be observed in the case-law of the ECtHR. Specifically, the Court normally uses a three steps approach to consider whether there is unjustified violation of article 8: 1) whether a measure in question is provided in accordance with a law; 2) whether this lawful measure pursue one of the legitimate aims as provided in article 8.2. and 3) whether this measure is "necessary in a democratic society". The requirement of lawfulness is also provided in Article 6.2. of the Law on Protection of Personal Data which requires that processing for the purpose of crime prevention and prosecution activities shall be performed by official authorities as stipulated in the law.

The requirement "in accordance with the law" has a very specific meaning in the case-law of the ECtHR. Thus, the Court considers that a measure in question meets the criterion of being provided "in accordance with the law", when it "has some basis in domestic law. This

requirement also refers to the quality of the law in question, requiring it to be accessible to the person concerned, who must, moreover, be able to foresee its consequences for him, and compatible with the rule of law." (Uzun v Germany, 2010, 60). As to the requirement of legal "foreseeability", in *Malone v UK* the Court established that the purpose of this requirement is to provide for a citizen the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society against arbitrary intervention. Specifically this implied that the measures of interception, especially, but not only, secret interception should be counterbalanced by the measures of legal protection which ensure that authorities do not apply interception on an arbitrary basis (Malone u UK, 1985, 67).

In the case of *Kruslin and Huvig v France* (Kruslin v France and Huvig v France dejoined, 1990), where the applicant submitted that tapping of his telephone by the police was in breach of article 8 ECHR, the Court established that in such assessment the significant role played the degree to which the measure in question (such as secret telephone tapping in *Kruslin* or open use of body-worn cameras) interfered with the right to private life. Thus in *Kruslin* the ECtHR established that such measures shall be based "on a law that is particularly precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated". In this context the Court further reiterated in *Uzun v Germany* that in the context of covert measures of surveillance, the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any such measures (Uzun v Germany, 2010, 60).

Specifically in *Kruslin*, the Court found that despite certain legislative and factual safeguards the authorities used at the moment to minimize the degree of engagement of the right to private life, the law in question did not "indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities" In case of Albanian practice with the body-worn cameras, accessibility of the legal provisions regulating it does not cause much difficulties. Thus, video surveillance by the police is provided in article 124.2 of the Law on State Police and article 121.1 of the Code of Criminal Procedure. Both legal acts have been published in the Official Gazette of the

Republic of Albania (Fletorja Zyrtare E Republikës Së Shqipërisë) and are therefore provided in domestic law within the meaning of article 8.2. ECHR and are accessible. However, assessment of the "foreseeability" of the "law" regulating open video-recording by the police in Albania requires more attention.

First of all, the terms of article 124 of the Law on the State Police and 221.1. of the Code of Criminal procedure are in principle clear for understanding and do not create much of a room for double or alternative meaning. In this respect it can be concluded that the rules provided in these articles are sufficiently clear within the meaning given in the relevant case-law of the ECtHR. Secondly, the question which arises is whether the law "gives citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any such measures" and provides for sufficient amount of safeguards to prevent from arbitrary use of the cameras in violation of the citizen's rights to private life.

Art 124.1 and 124.2 provide for rather general permission to the State Police to video-record in public places for the purposes of "prevention of a real risk for public order and security, and prevention, detection, prosecution, and investigation of criminal offences". On the other hand the law offers much less broader room for use of the video-recording in private places: the sufficient grounds for the use of this measure inside of the private places are exhaustively listed in article 221.1 of the Code of Criminal Procedure and amount either to (a) intentionally committed crimes for which a punishment of imprisonment of no less than seven years is provided or (b) the criminal contravention of insult and threat committed through the means of telecommunications. It should be kept in mind that the basic principle when it comes to foreseeability is that the more intrusive the measure is the clearer and more specific the legal basis for the intervention should be. The examples of the ECtHR case law above involved far reaching measures in the context of covert operations. Therefore, the legal basis in such cases cannot be a general one. In the case of BWC the recordings are made mainly in public spaces and therefore the intrusion with the right of privacy is of a lesser degree. We can conclude thus that the legal basis for video recording in

public spaces as defined above is sufficiently clear and in line with the requirements of 'foreseeability'.

Video recordings into the trunks of the vehicles with the use of WBC seem to be a little more problematic. We concluded above that the trunk cannot be considered as a public space and therefore the intrusion into the privacy of the citizen concerned is bigger in such cases. It should be noted here that the video recording should not be confused with the competence of the police (as well as other law enforcement agencies, such as tax or customs authorities) to order the driver of a vehicle to open the trunk. Such power is very common among all law enforcement authorities in Europe and in principle it aims at supervising the observance of the law: i.e., whether the driver has a spare tire in the trunk as traffic regulations require. But the intrusion with the right to privacy in such cases is not the same with video recording the personal contents of the trunk. Following the case law of the ECtHR described above, one can expect that the legal basis authorizing video recordings into the trunks should be more elaborated so as to give the citizens the opportunity to foresee the consequences of his behavior and especially under which circumstances his trunk will be filmed. We saw above that article 221.1 of the Code of Criminal Procedure provides specific conditions under which video recordings may be made in private spaces. It is fair to assume that police should be entitled to record the contents of a trunk only when the requirements of the Code of Criminal Procedure are fulfilled. There is the risk that police officers let the cameras running when they order the drivers of a vehicle to open the trunk for a routine check. If this will be the case, than the video recording will not be in conformity with the requirements of the privacy regulations. It is thus of outmost importance that internal directives or codes of conduct make it clear that video recordings into the trunks of the vehicles should be used only if the requirements of the Code of Criminal Proceedings are fulfilled.

Another issue which arises in the context of the foreseeability of the legal framework regulating the video recordings with the use of BWC is that of the storage of the data gathered. In the case of *Huvig v. France* (Huvig v. France, 1990, 34) the ECtHR attached quite some importance to the clarity of the provisions regulating the storage of the data. Accordingly, national legislation should specify in clear and detailed

terms the duration of the storage and the destruction of the data. Currently the Albanian legislation does not provide for specific time limits set for storing of video record collected by law-enforcement authorities with the use of (mobile) cameras. However, the basic principles of retention of personal data processed in electronic system are regulated in accordance with the Instruction of the Commissioner for Protection of Personal Data No 17 dated 11 May 2012 (The Instruction No 17)[13]. Thus, the Instruction No 17 establishes that "the personal data which are processed based on one or some specific purposes shall not be retained for a period longer than necessary for the fulfillment of such purposes". Periods within the data shall be stored on a server or external drivers shall take into account different categories of the data. Collecting of the data for purposes established in article 124.2 of the Law on the State Police presumes that the collected data can potentially be used as evidence in different kinds of trial or pre-trial proceedings (criminal/administrative). The object of evidence is defined in article 150 of the Code of Criminal Procedure as the object which constitutes facts relevant to the charge, guilt of the defendant, issuing of the remand order, punishment and civil liability, and also facts on which the application of procedural rules depends. Given the wide range of proceedings where the stored data can be used, it is doubtful whether such a general provision included in Instruction 17 meets the requirement of a clear and detailed provision as required by the ECtHR.
Whether a measure intervening with an individual's private life is "necessary in a democratic society" is one of the decisive factors provided in article 8.2. ECHR for the assessment of lawfulness of the measure in question. Such "necessity test" embodies different criteria, the most important of which are whether the measure in question corresponds to a 'pressing social need', pursue a legitimate aim and is proportionate to this aim. For the assessment of the other criteria of "necessity", besides legitimacy of aims pursued and proportionality, the ECHR or the Court in its case law do not provide an exhaustive list of

[13] Instruction No 17 of 11 May 2012 "On definition of retention periods of personal data processed in the electronic systems by the state police bodies for crimes prevention, investigation, detection and prosecution"

criteria, but more rely on the circumstances of the case, such as importance of the right engaged and intensity of the intervention. Despite interference with the privacy of individuals, collecting of personal data by means of BWCs can provide a valuable assistance in law-enforcement. The results of report on the use of BWCs in different countries demonstrate that introduction of body-worn cameras might increase transparency and accountability of officers and on the other hand secure absence or decrease in false accusations against police. Furthermore the use of body-cameras result in decreasing of force used by or against police officers (Farrar, 2013). Other benefits from the use of BWCs include a possibility to obtain more accurate witness and victim statements and other valuable evidence. Such results prove BWCs as an effective tool, which work towards prevention, detention and investigation of crimes. Considering the importance of the aims pursued and effectiveness of the tool, collecting of data by means of BWCs can be recognized as a answering important interests of the state.

Article 8.2. of the ECHR stipulates that the interference with the right to a private life is justified when it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. Article 8.2 provides for an exhaustive limited list of aims, which can be pursued by a lawful intervention with the right to a private life.

Video recording in a law-enforcement context tends to fall under the list of measures, which aim the prevention of a disorder or crime. In this respect it is important to know, that the ECtHR tend to distinguish measures directed against "disorder" (alarming situations derived from individual or collective conducts threatening peaceful social life) and directed against crime (seek to prevent or detect criminal offences).

The Law on Protection of Personal Data stipulates in article 6.1. under "d" that one of the lawful purposes of data processing can be "performance of a lawful task of public interest". Article 124.1 and 124.2 of the Law on the State Police allows the police to perform video recording in public places in order to collect personal data necessary for prevention of a real risk threatening public order and security, as well as for prevention, detection, prosecution, and investigation of criminal

offences. Video recording in private places is allowed in accordance with article 121.1 of the Code of Criminal Procedure in the framework of investigation of a) intentionally committed crimes for which a punishment of imprisonment of no less than seven years is provided; b) criminal contravention of insult and threat committed through the means of telecommunications. The purpose of data collecting and processing for prevention, detection, prosecution, and investigation of criminal offences generally fall under the definition of prevention of crime as stipulated in article 8.2 of the ECHR and can be considered as pursuing a legitimate aim in compliance with article 8.2.

The BWCs will be attached to the uniform of police officers and will be used to video record encounters with individuals. The purpose of such video recording must comply with the purposes as provided in article 124.1 of the Law on the State Police or article 121.1 of the Code of Criminal Procedure and therefore such video recording can find place only in a context of performance by a police officer of his or her tasks or obligations. This aspect of lawful video recording has direct relation to a decision whether the BWCs should video record continuously through the whole shift, of an officer has a discretion/duty to record only separate encounters. Whereas continuous recording seems preferable from the point of officers' accountability, because it provides a continuous unedited version of the shift and gives little room for manipulation, such continuous recording has more severe impact on privacy.

Thus, it appears that continuous uninterrupted video recording throughout the shift violate the "legitimate aim" criteria and therefore might amount to breach of the right to a private life. The reason for it is that during uninterrupted video recording inevitably the officer will capture on video situations that happened outside of law-enforcement context (a police officer during a shift might enter supermarket to buy water or food, or ask for directions from another person, etc). The record of such interactions can not by definition pursue an aims defined in article 124.1 of the Law on the State Police or article 121.1 of the Code of Criminal Procedure and therefore is unlawful. To avoid unlawful video recording, the police officer might be instructed to activate the camera exclusively in situations which fall within the law-enforcement

context and where data collecting (by means of BWCs) pursue aims defined in article 124.1 of the Law on the State police.
Proportionality of a measure depends on such criteria as best interests to be protected and necessary, relevant measures to protect those interests. All these criteria severely differ in various cultural or socio-economic contexts and the state is traditionally found by the Court to be in a better position for their assessment. Therefore the Court allows to ECHR member states rather wide margin of appreciation in deciding on proportionality of a measure. The standard assessment of proportionality of a measure includes such factors as whether a measure is subject to important limitations in its application and effect and whether domestic legislation provide for adequate and effective safeguards available for individual to secure that this individual is not subject to arbitrary or discriminatory treatment (M.S. v Sweden, 1997, 43). General regulations of the processing of the collected personal data are set in the Law on Protection of Personal Data in article 7.2 “c” which provides that the personal data can be processes even without a consent of its subject where such processing is authorized by the responsible authority for an important public interest.
Article 27 of the Law on Protection of Personal Data imposes on the organizations in charge of controlling and processing or personal data an obligation to take various organizational and technical measures to secure safe processing. The measures provided under article 27 include organisation of work within the department charged with processing of the data, instruction and training of officers involved regarding compliance with the regulations on data protection, providing safe storing with no unauthorised access, securing availability of equipment which secure safe processing of data, record and documenting any alteration, correction, erasure and transfer of the data.
Article 20 “g” of the Law on the State Police provides that the capacity to process and analyse of the data collected by the Police is granted to the State Police Directorate to achieve purposes of data collection (article 124.5 in conjunction with article 2 of the Law on State Police). Provided the State Police comply with the requirements set in article 27 of the Law on Data Protection and take all necessary measures to secure safe collecting of video records with the use of BWCs and safe

processing of collected data, such step and measures appear to be capable to provide effective and secured processing.
Safeguards required by the ECtHR as a requirement for assessment of proportionality of a measure intervening with the right to privacy are important to prevent arbitrary treatment of individuals. Important safeguards are provide in the Law on Protection of Personal Data. One of the aspects of a video recording with the use of a BWC is that such recording will be performed openly, with an individual informed of a video recording. This requirement is imposed on a police officer in article 18.1 which stipulates that a data subject shall be informed on the purposes of data collecting and processing, categories of the data and other information relevant for a fair processing when a controller collects personal data.
Further, article 13.1. provides for the right to correction or erasure of the data which is either irregular or processed in breach of Law on Protection of Personal Data. This requirement can be read in conjunction with the requirement of Article 125.3[14] of the Law on Protection of Personal data, where is stipulated that an individual has a right to request correction or erasure of inaccurate data. However, the right to access to collected data allowed in principle for all categories of personal data is restricted in the interests of prevention and investigation of crimes.

Additionally the Law provided for certain remedies available for individuals whose video has been recorded by a police officers. Thus, such individual is allowed for a complaint before the Commissioner for the Protection of Personal Data (article 16 and 13.1.). A decision of the Commissioner can be appealed before the relevant court. Article 17 of

---

14 Article 125 defines the rights of individuals whose personal data has been collected by the police:
125. 1. Every person has the right free to request in writing information to personal data processed by the police. 125.2. The application shall be rejected in order to justify the case that this refusal is necessary to enable the police to fulfill its duties .125.3. Every person has the right to require the police correction or deletion of inaccurate data about 125.4. In any case, the police reply in writing within 30 working days subject. 125.5. Rules, admission procedures, the examination of the return of the response of the request for information on personal data specified in the relevant legislation.

the Law provides for compensation of the damages caused by unlawful processing of personal data. Whereas the legislation does provide for at least a minimum number of safeguards and remedies, their effectiveness is severely dependent on how well this legal provisions are implemented in the given context. Thus, at this stage of the BWCs implementation is still difficult to assess adequately effectiveness of the remedies and safeguards provided. Specific practical implementation will reveal possible obstacles and drawbacks. However, can be considered that at least a minimum number of safeguards is guaranteed to individuals – subjects of the collected video recordings.

The use of BWCs for prevention and investigation of crimes is a new method of data collecting which was allowed due to development of electronic technologies. Whereas personal data could be collected by the police with a less intrusive measures (for ex, taking photos instead of video recording), such video recording, although more intrusive, is expected to bring effective results in investigation and prevention of crimes. Thus, there is no fully alternative measure, which with bringing similar effective results, would intervene less with the privacy of individuals.

4. Conclusions

The use of electronic instruments within a law-enforcement context appears to become a highly valuable tool, which contributes enormously to the prevention, detention and investigation of crimes. The use of BWCs as a monitoring instrument is expected to contribute significantly in the law-enforcement operation in Albania, as well as will assist in decreasing of the cases of law violation by the members of police forces. It is also expected to strengthen the relation between police and general public and leave no, or very little room, for arbitrary behavior on the side of police on the one hand and decrease a number of unfounded complaints. In further prospective, use of BWCs will assist in decreasing of time-limits for crime investigation by providing effective evidence.

However, the main concern associated with this tool is possible implications to the right to a private life. Such implications will concern not only individuals being directly and intentionally captured on the video, but also those who were not “a target” for video recordings, but

appear on the footage just due to technical implication of the camera. In this respect it is also worth to mention issues arising in respect of the right to privacy possessed by the officers equipped with BWCs. Whereas this contribution focused exclusively on the right to private life of those individuals captured intentionally by use of BWCs, after analysis of the international norms and standards set up by article 8 of ECHR and relevant case-law of the Court of Human Rights, we inevitably came to a conclusion that the use of cameras interfere significantly with the right to a private life.

The analysis of the Albanian legislation in place as well as the international standards allow for a fair conclusion to be made that in general the Albanian legislation provides for a legal ground which is accessible and foreseeable. However, concerns may arise regarding the continuous recording, especially into the trunks of the vehicles and outside the strict law enforcement context (i.e., when police officer enters a super market to buy beverages or food). In the former situation there is a risk that the foreseeability requirement will not be met, while in the latter situation it is doubtful whether the recordings pursue a legitimate aim. It is also doubtful whether the provisions regulating the storage of the data are entirely in line with the foreseeability requirement.

It is essential to consider that this contribution was prepared solely on the basis of the existing legislation and could not properly assess whether all the measures in place to secure fair and lawful use of BWCs and processing of data are properly implemented. Neither at this stage of this project it is possible to foresee the full spectrum of possible impact to the privacy and benefits to the goals pursued.

Therefore strict policies regulating the use of BWCs shall be adopted in every police department where the use of BWCs is implemented. Bearing in mind that cultural and social context plays an enormous role in implementing measures of electronic surveillance and impacts to privacy of individuals by such measures, undertaking a pilot project is highly recommended as a practical way of evaluating the benefits of BWCs and privacy impacts of BWCs as well as impact to effectiveness in relation to the aims pursued.

Bibliography

Farrar T. Self-awareness to being watched and socially-desirable behavior: a field experiment on the effect of body-worn cameras on police use-of-force, 2013, Retrieved from http://www.policefoundation.org/.
Ham, T. Cameratoezicht in beweging. Ervaringen met nieuwe vormen van cameratoezicht bij de Nederlandse politie. 2010.
Nouwt S. Reasonable Expectations of Privacy?: Eleven Country Reports on Camera
Surveillance and Workplace Privacy, 2005, p.17

Winn P. Katz and the Origins of the "Reasonable Expectation of Privacy" Test, McGeorge Law Review, Vol. 40, 2008, p. 7 and further.

List of official reports

Bedfordshire Police. Report. Body Worn Video Policy and Procedure, 2014. Retrieved from https://www.bedfordshire.police.uk.
Office of the Privacy Commissioner of Canada. Report. Guidance for the use of body-worn cameras by law-enforcement authorities, 2014. Retrieved from https://www.priv.gc.ca.
Police Executive Research Forum (PERF), Report. Implementing a body-worn cameras program. Recommendations and lessons learned, 2014. Retrieved from https://www.policeforum.org.

List of the legal cases

ECtHR:

Malone v UK, App no 8691/79, 2 August 1984, para 67
Leander v Sweden, App no 9248/81, 26 March 1987, para 48
Huvig v France, App no 11105/84, 24 April 1990, para 37
Kruslin v France, App no 11801/85, 24 April 1990, para 33
Niemietz v Germany, App no13710/88, 23 November 1992
Buckley v UK, App no 20348/92, 25 September 1996
Rotary v Romania, App no 28341/95, 4th May 2000, paras 43-44 and 46.

P.G and J.H v the UK, App no 44787/98, 25 September 2001, paras 37, and 59-60
Peck v the UK, App 44647/98, 28 January 2003, para 62.
Perry v UK, App no 63737/00, 17 July 2003, para 39-43
Demades v Turkey (dec), App no 16219/90, 31 July 2003
M.S. v Sweden, App no 20837/92, 27 August 1997, para 43
Uzun v Germany, App.no 35623/05, 2 September 2010, paras 44-45
Khmel v Russia, App no 20383/04, 12 December 2013, paras 40-41

Other instances:
Katz vs US, 389 U.S. 347 (1967), at 361, J. Harlan (concurring)
US v Taketa, 923 F. 2d 665 (9th Cir 1991)
The Human Rights Committee, General Comment No 16 (Article 17), HRI/GEN/1/Rev.9 (Vol.1), 8 April 1988, para 10.

List of legislative acts
International
Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171
Council of Europe Convention, 1 October 1985, CETS No 108. Ratified by Albania on 14 February 2005

Domestic
Law of the Republic of Albania, No 7895 of 27 January 1995 (the Criminal Code, Consolidated version of 2013)
Law of the Republic of Albania, No 1905 of 21 March 1995, the Code of Criminal Procedure, Consolidated Version as of 2 May 2013
Law of the Republic of Albania No 9887 of 10 March 2009 "On Protection of Personal Data"
Law of the Republic of Albania, Nr 108/2014 of 31 July 2014 "On the State Police "

Instruction No 17 of 11 May 2012 “On definition of retention periods of personal data processed in the electronic systems by the state police bodies for crimes prevention, investigation, detection and prosecution

Reducing Criminal Motivations through Social Welfare Policy

by

*Reana Bezić**

Abstract

Some sociological, political and economical conditions especially favor the formation of criminal motivation. Social inequalities, large social differences, poverty, unemployment, wars, cultural backwardness, constant political and economic crisis, corrupt and criminalized government, institutional disorganization, etc., are favoring the social milieu from which springs crime and most other social deviance. The aim of this article is to analyze do some conditions such as poverty, unemployment, lack of education stimulate conditions for criminal behavior among juveniles in Croatia. This analysis is going to be based on the International self-report delinquency study.

Keywords: Criminal motivation, juvenile delinquency, Croatia, economy, education.

1. Introduction

If criminal opportunities are *proximate* causes of crime, criminal motivations are closer to *ultimate* causes: they reside deeper in the social structure and are implicated in a society's basic institutional patterns (Richard Rosenfeld & Steven F. Messner, 2013). Some sociological, political and economical conditions especially favor the formation of

* R. Bezić (✉)
The Max Planck Partner Group for Balkan Criminology
E-mail: r.bezic@balkan-criminology.eu

criminal motivation. Social inequalities, large social differences, poverty, unemployment, wars, cultural backwardness, constant political and economic crisis, corrupt and criminalized government, institutional disorganization, etc., are favoring the social milieu from which springs crime and most other social deviance. The aim of this article is to analyze do some conditions such as poverty, unemployment, lack of education stimulate conditions for criminal behavior among juveniles in Croatia. This analysis is going to be based on the International self-report delinquency study (ISRD3). Self-report delinquency surveys are studies in which people, usually juveniles, are asked to reveal information about their delinquent behaviours, but they also disclose information about their life-style in general, their attitudes toward different subjects, their families, their school, their friends, and many other socio-demographic factors (Aebi*,* 2009.).

2. ISRD3 Croatia

International self-report delinquency study is an ongoing research study on delinquency, victimization, and substance use among 7th, 8th and 9th graders. ISRD3 is the third edition of the international data collection; it started in 2013 and it is currently still ongoing, with about 50 partners across the globe. The expansion of the survey to countries that belong to Central and Eastern Europe started in ISRD2 and was pushed further in this edition. The aim is also to conduct the survey in Albania. During 2013 it has been conducted in Croatia for the first time by the Max Planck Partner Group for Balkan Criminology (Max Planck Partner Group- project 2014).

ISRD3 project has two main aims. First, to note and compare differences, similarities and tendencies in delinquent behavior and victimizations between countries. Second, to examine and verify theoretical questions related to juvenile delinquency and victimization while maintaining relevance for needs of policy making. The further goal for Croatia research team is to expend the knowledge in the field of juvenile delinquency by providing a cross-national comparison in the Balkan region, because history, culture, similar patterns of perception and behaviour, and unstableness are such common characteristics.

Aspects that make the states so unstable are: young and inexperienced states and bureaucracies; unrest in the past; neither effective/fully developed democracies nor autocracies; anocracies − most vulnerable to new unrest; very high degree of dissatisfaction; low level of trust in political institutions; ethnic fragmentation and discrimination of minorities (Getoš, 2012).

3. Survey Methodology

The study design basically followed the general design of the ISRD3 study. Data collection was carried in the spring of 2013 and in the winter of 2014. It was decided to use a city-based sampling strategy. The survey was conducted in the city of Zagreb, as the capital, with a population of around 800 thousand (Državni zavod za statistiku. Statistical Yearbook 2013), and in the city of Varaždin, as a medium size city, with a population of around 47 thousand (Državni zavod za statistiku. Statistical Yearbook 2013). The survey was conducted among students from 7th and 8th grade of primary school, and because of Croatian education system, which does not have 9th grade of primary school, 1st grade of secondary school was used. Data for this study were collected using paper and pencil version of the questionnaire. The Croatian version of the questionnaire did not contain any essential modifications.

4. Sample Characteristics

In total 1,744 completed valid questionnaires were received, of which 891 were from Zagreb, and 853 were from Varaždin. During the survey 35 schools were visited. The proportion of grades in the sample is more or less alike, slightly bigger number of 1st grade of secondary school students and a slightly smaller number of 8th grade of primary school students. The population of participants who provided information about their gender (N=1,739) shows a very slight over-representation of females (53.2%). Cross-tabulation shows that the Croatian´s sample (N=1,733) was dominated by participants in the age between 13-16 years old, which makes 92.4% of the total number of participants who provided information about their age. It should be emphasized that

96.7% of the students considered themselves as natives. Expectedly, 88.6% consider themselves as Roman Catholic. Similarly, on the national, data from the Croatian Bureau of Statistics indicates that 86% of the population consider themselves as Catholics (Državni zavod za statistiku. Statistical Yearbook 2013).

Table 1: Sample characteristics

City		**Sex**	
Zagreb	*Varaždin*	*Male*	*Female*
51.1% (891)	48.9% (853)	46.8% (813)	53.2% (926)
Age			
<14	*14*	*15*	*>15*
30% (520)	29.8% (517)	34.1% (591)	6.1 (105)
ethnic background			
natives	*others*		
96.7% (1.681)	3.3%		
Grade			
grade 7	*grade 8*	*grade 1*	
33.4% (583)	31.4% (547)	35.2% (614)	
Religion			
Roman Catholic	*atheist or agnostic*	*Islam*	*others*
88.6% (1,533)	8.2% (141)	1.1% (19)	2.1% (28)
Total	**1744**		

5. Risk Factors – Economy

The study of crime and economy is a long-standing tradition in criminology (Apel, 2009). "The social stratification perspective implies that crime relates to economic conditions: communities with high crime rates tend to be low in economic status. According to the absolute deprivation model, crime is more likely to prevail in communities with low income levels" (Weijters, Scheepers & Gerris, 2007). Employment has long been observed to be a correlated of criminal behavior, and it is concerned as an important causal factor in prevention of criminal

behavior (Apel, 2009). Farrington et al. assessed the impact of unemployment among 16 to 18 years old London men (Apel, 2009). Their finding suggests that employment may be associated with the largest crime-preventive benefits among high-risk individuals, but it may have little or no impact on crime among low-risk persons (Apel, 2009). Some eastern European countries are joining supranational organizations, with the aim to support their economies through international trade and economic integration (Andresen, 2009). The EU has expended its membership significantly to include Central and East European countries (CEEC) (Andresen, 2009). Croatia's official membership in the EU began on 1st July 2013.

Table 2: Work of father and mother

	Father %	**Mother %**
Unemployment rate	8.8	11.9
Employment rate	81.7	83.5
Other	9.5	4.6

Unemployment rate of mother and father of students which participate in the survey is much lower than it is on the national level. It is interesting that unemployment and employment rate is higher for mothers than for fathers. Answer other referred to retirement, serious illness, looks after the home… Results showed that more and more women are working, not staying at home as a housewife. Women staying at home and taking care of the children and the house was through the history very common in Balkan region. It is harder for a women to find a job than it is for a men. Unemployment rate (15-64) on the national level at the end of 2014 was 18.5%. These results should be considered in future correlation between economic and delinquency variables. It should be emphasized that the unemployment rate in Croatia is lowest in city of Zagreb.

Table 3: Deprivation of the family and self-deprivation

	Family Deprivation %	**Self-deprivation %**
Better off	32.2	28.4

The same	52.1	50.2
Worse off	15.7	21.4

Table 3 shows that most of the participants consider there family to be economically equal or similar to majority of others. They also consider themselves to have about the same amount of money to spend as their colleagues.

6. Risk Factors – School

The school is also one of the risk factors for juvenile delinquency, based on the reason that the school is, along with the family, one of the main environments in which young people develop (Egli, Lucia & Berchtold, 2012). That is the reason why it is important what do students think about their school, whether they consider their school lessons interesting, and what do they think about their teacher. According to the results of research conducted by *International Organization Eurydicea* (*Recommended Annual Taught Time in Full-time Compulsory Education in Europe 2012/13* 2013) research, the total number of hours in Croatian elementary school is behind number of hours in Slovenia and Romania. There are also differences in the structure of elementary and secondary school, which can be seen in the characteristics of the sample in the ISRD3 study.

Table 4: Student perception of school and classes

	Miss School, %	**Like going to School, %**	**Like School, %**	**Classes are Interesting, %**
Disagree	17.6	53.4	31.3	56.1
Agree	82.4	46.6	68.7	43.9

The results shows that if the students had to move, most of them would miss their school, but most mornings they do not like going to school. One of the explanations could be that in first case they connect school with their friends, and in second one with the classes. This is also noticeable from the results that most of the students like their school, but do not find classes to be interesting. This is alert for the educational

system in Croatia, which has to be modernised and go in time with other educational systems in EU.

7. Conclusion

Policy makers must seek to replenish the moral bases of social order and criminal justice. They have to seek for the ways how to strength social institutions e.g. family, school, communities and dedication to socially approved values confirmed by those institutions. The societies should be based more on the values from mentioned institutions, and less on the values of economy market. Policy makers has to modernized and go in time with the social institution which are under their scope. The state has to prepare students for the economy market through social institutions which are under the national scope e.g. school, but it must not interfere in economy market as it was in the past in Croatia. The state has to be careful not to sacrificed individual liberties and democratic values in order to limit crime and promote justice.

References:

Aebi, M. F. (2009). *Self-Reported Delinquency Surveys in Europe*, in: Zauberman, R. (ed.), Self-Reported Crime and Deviance Studies in Europe, Current State of Knowledge and Review of Use. 11-49.

Andresen, M. A. (2009). Crime in Lithuania: The Impact of Accession to the European Union. *European Journal of Criminology* 6, 291-311.

Apel, R. (2009). *Employment and Crime*, in: Miller, J. M. (ed.), 21st Century, Criminology, A Reference Hand-book. 118-124.

Egli, N. M., Lucia, S. & Berchtold, A.(2012). Integrated vs. differentiated school systems and their impact on delinquency. *European Journal of Criminology* 9, 245-259.

Getoš, Anna-Maria (2012.). *Politische Gewalt auf dem Balkan. Schwerpunkt: Terrorismus und Hasskriminalität – Konzepte, Entwicklungen und Analysen*. Freiburg, 89.

Rosenfeld, R. & Messner, S. F. (2013), A Social Welfare Critique of Contemporary Crime Control, *The Society Pages*

Weijters, G., Scheepers, P. & Gerris, J. (2007). Distinguishing the City, Neighbourhood and Individual Level in the Explanation of Youth Delinquency: A Multilevel Approach. *European Journal of Criminology* 4, 87-108.

Državni zavod za statistiku. Statistical Yearbook 2013; www.dzs.hr/ [21.04.2015].
International self-report delinquency study 3; http://www.northeastern.edu/isrd/ [21.04.2015].
Max Planck Partner Group; www.balkan-criminology.eu/en/index.html [21.04.2015].

Correctional system effectiveness in reducing criminal behavior

by

*Alba Jorganxhi**

Introduction

The manner that a criminal justice system deals with offenders determines the size of the prison population, which in turn has a significant impact on the way in which prisons are managed. In assessing the correctional system, there is a need to raise awareness that an efficient management and prison conditions are not dependent on the prison authorities alone. What happens with the correctional system in a country are linked to the management of the criminal justice system as a whole, as well as the pressure that politicians and the public try to influence upon. Thus, attempts to reform the system with the aim of reducing criminal behaviour need to be undertaken as part of a comprehensive programme that addresses challenges in the entire criminal justice system. The Albanian criminal legislation is relatively new. Following the fall of communism, the Criminal Code was approved in 1995. In a transition economy, the speed and nature of change often result in unemployment and decline in incomes, with a consequent rise in criminality. The natural reaction, and one that has occurred in Albania, is to impose custodial sentences in a wide variety of cases, where such sentences are often inappropriate. Until 2008, the Albanian criminal justice system is mainly prison based with very few community sentences. The sentencing pattern is towards imprisonment, with lengthy sentences. Every year, more than 50% of the tried offenders are sentenced to custody, imprisonment dominating penal philosophy and practice[1]. Prior to the changes of November 2008 in the Criminal

* PhD Cand. A. Jorganxhi (✉)
National Legal Officer, Rule of Law and Human Rights Department, OSCE Presence in Albania, E-Mail: Alba.Jorganxhi@osce.org

1 Law No. 7895, dated 27.01.1995 "The Criminal Code of the Republic of Albania", amended.

Code as well as in the Law on the Execution of Criminal Decisions,[2] although alternative sentencing was permitted by the legislation, many judges lacked confidence in the execution of community sentences and measures. Their implementation was not secured due to the fact that there was no specialized institution in charge of the supervision of offenders during the execution of a community sentence. A specialized probation service did not exist in Albania. Practice had shown that judges, when considering an alternative to imprisonment, applied a fine or suspended the execution of prison sentences ("Suspension of the execution of imprisonment" (Article 59 of the Criminal Code) and "Early conditional release" (Article 64 of the Criminal Code). According to the statistics of the Ministry of Justice, only one or two alternative sentences were used by the courts, whereas the other alternatives were used quite rarely, almost never.

1. Rehabilitation and reintegration of offenders

Talking about the effectiveness of the correctional system in reducing criminal behaviour, we should dwell upon the ability of the penitentiary and probation system to rehabilitate and reintegrate offenders into society. Prison and probation can do a lot in this regard. Rehabilitation and social integration programmes for offenders are an essential part of any comprehensive crime prevention strategy. A variety of studies have confirmed the positive impact which prison-based rehabilitation programmes have had on reducing recidivism. The success of efforts to assist prisoners with their social reintegration can reduce the return of former prisoners to prison again, thereby reducing the size of prison population in the long term. Reducing the number of prisoners who re-offend means fewer victims and greater community safety. Their successful reintegration means that fewer of them will enter the criminal justice system again, come back to prison and contribute to prison overcrowding, and generally increase the costs of the criminal justice system. [3]

---

2 Law No. 8331, dated 21.04.1998 "On the execution of criminal decisions," amended.

3 For more information see UNODC: Introductory Handbook on the Prevention of Recidivism and the Social Rehabilitation of Offenders.

Desistance from crime is about more than criminal justice. Desistance requires engagement with families, communities, civil society and the state itself. All of these parties must be involved if rehabilitation in all of its forms (judicial, social, psychological and moral) is to be possible.
Desistence from crime goes in the following four phases:

- Personal reintegration
  - Re-development of the self
  - Capacity building.
- Social reintegration
  - The re-development of social identity
  - Informal de-labeling
- Judicial reintegration,
  - Formal de-labeling
  - Re-qualification.
- Moral reintegration
  - Provision of redress/reparation
  - The restoration of good character.[4]

2. International standards related to rehabilitation

The international legal framework places special attention to rehabilitation of offenders as an essential aim of imprisonment. Legally binding human rights treaties, such as the International Covenant on Civil and Political Rights, make clear that rehabilitation and reintegration of offenders is not only a social goal, but also a duty of States and prison administration to ensure that offenders are equipped, as far as possible, to lead a law-abiding life. According to Art. 10 (3) of the International Covenant on Civil and Political Rights "*The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation*…."
Various international standards and norms, such as the Standard Minimum Rules for the Treatment of Prisoners, although not legally binding, elaborate in detail the importance to the rehabilitation of prisoners. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime.[5] This could only be achieved if the period of

4 Based on McNeill and Maruna (2010); McNeill (2012).

5 Rule 58, Standard Minimum Rules for the Treatment of Prisoners.

imprisonment is used to ensure, so far as possible, that upon his/her return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

According to research findings, education, vocational training, employment, housing and family support are essential for a successful resettlement of prisoners. The international standards pay special attention to all these areas on intervention. Prison administration can contribute to the reintegration of offenders if assistance to offenders in oriented towards:

a) improving the offender's education
b) equipping the offender with skills that can help them gain employment
c) assisting the offender in finding housing, and
d) maintaining family ties

In addition, the Council of Europe European Prison Rules[6] emphasize that all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty. However, it is widely accepted today that imprisonment itself does not have a reformative effect. On the contrary, it tends to exacerbate many challenges faced by people who have fallen into conflict with the law. They may have lost their livelihood, their personal belongings, their ability to maintain housing for themselves and their family; they may have contracted a serious disease while in custody; they may have lost important personal relationships and incarceration may have damaged their social networks; and they may have experienced mental health difficulties or acquired self-defeating habits and attitudes.[7] Consequently, effective programmes are required in order to treat various challenges that offenders face, including their stigmatization as ex-offenders. *Risk and needs assessments:* The assessment of risks and needs of each individual offender is a key component of the prison

6 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules1 (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) https://wcd.coe.int/ViewDoc.jsp?id=955747, Rule 6.

7 UNODC, Assessment Report, Regime Activities in Institutions for the Execution of Criminal Sentences in Albania.

administration approach that promotes social reintegration. Such assessment identify the risks that the offender may represent to himself/herself and others, as well as their rehabilitation needs. The Standard Minimum Rules for the Treatment of Prisoners recognize the need for an individualized treatment and rehabilitation programmes. Individual sentence plans should be drawn up for prisoners, about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release. The assessment should start as soon as the prisoner's admission.[8] In addition, the Council of Europe European Prison Rules elaborate in detail the individual sentence plans, as well as reviewing these plans periodically.[9] According to the European Prison Rules, the individual sentence plans should include:

a. work
b. education
c. other activities
d. preparation for release

Work and vocational training: International standards emphasize that work and vocational training should be provided to prisoners. The Standard Minimum Rules on the Treatment of Prisoners provide that all prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.[10] The work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release. Pre-trial detainees should equally be allowed, but not required, to perform remunerated work. In no case the prison work should be of an afflictive nature. The same ideas are reiterated by Principle 8 of the *Basic Principles for the Treatment of Prisoners*. According to this principles, conditions should be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families. Work and vocational training appear to be productive if this is provided in co-operation with private contractors, inside or

8 See Rules 67 -69, SMR

9 See Rules 103-104, European Prison Rules.

10 SMR, Rules 71-76.

outside prison.[11] This is important especially for providing job opportunities even after the prisoner finishes his/her imprisonment period.

Education: Special attention should be paid to the education of offenders in prison facilities. According to the UN Special Rapporteur on the Right to Education[12], learning in prison is generally considered to have a positive impact on reintegration and, more specifically, employment outcomes upon release. The education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty. The Standard Minimum Rules[13] highlight that every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it. In addition, provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. Moreover, the education of prisoners should be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty, as well as education should take place under the auspices of external educational institutions.[14]
In the United States, education and vocational training reduces recidivism and improves job outlook. The RAND Corporation (U.S.) released the findings of correctional educational studies in the United States. The study confirmed a clear linkage between the provision of education programs and vocational training in prisons on the one hand, and reduction of recidivism and the improvement of future job prospects on the other. Correctional education programmes were also found to be

11 See Rule 26, European Prison Rules.

12 Human Rights Council (2009): The right to education of persons in detention - Report of the Special Rapporteur on the Right to Education, Vernor Muñoz (A/HRC/11/8);

13 SMR, Rules 40, 77.

14 The European Prison Rules, Rule 28.

cost-effective, taking into account direct costs of providing education and re-incarceration costs.

More specifically, the study found that:

- Inmates who participated in correctional educational studies had a 43 percent lower odds of returning to prison than those who did not;
- Employment after release was 13 percent higher among prisoners who participated in either academic or vocational education programs than those who did not;
- Those who participated in vocational training were 28 percent more likely to be employed after release from prison than those who did not receive such training;
- Direct costs of providing education were estimated to be $1,400 – 1,750 USD per inmate, with re-incarceration costs being $8,700 - $9,700 USD less for each inmate who received correctional education as compared to those who did not.[15]

Contact with the outside world: Visits and correspondence shall not be considered as privileges, but they are rights. They play an important role to the protection of family life and the mental wellbeing of prisoners. According to the Standard Minimum Rules, prisoners should be allowed to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. In addition, prisoners should be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration. Prison authorities should assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.[16]

Other activities: Physical exercise, recreation and religious support: The international standards and norms acknowledge the need to provide prisoners, upon request, with access the services of a qualified

15 RAND Corporation (2013): Evaluating the Effectiveness of Correctional Education – A Metal- Analysis of Programs that Provide Education to Incarcerated Adults.

16 SMR, Rules 37-39; European Prison Rules, Rule 24.

representative of their religion as well as books of religious observance.[17] In addition, exercise and sport are also important not only for the physical health of prisoners, but also as an alternative means of excitement to that gained through engaging in offending behaviour. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.[18]

Preparation for release: The process of preparation for release and resettlement begins in prison and continues after release with a need for continuity of assistance spanning this period. This requires close liaison between social agencies and services, especially between the Prison Department and Probation Department, as well as relevant community organizations and prison administrations during sentence. In addition, there needs to be a programme of assistance to prepare for release to ensure that the social, psychological and medical support needs of the offender are met and continue uninterrupted after prison. During this period, the probation system or services have an active role in assisting in the prisoner's gradual transition from prison to life outside. For pre-release programmes and aftercare services international standards identify the need of prison administrations to co-operate with non-governmental services and other agencies in the provision of these programmes, for eg., with a view to facilitate the availability of appropriate documents and identification papers, suitable homes and work, adequate clothing, sufficient means to reach their destination, as well as maintenance in the period immediately following release.[19] These programmes have particular importance for a successful reintegration into the community.

17 SMR, Rules 41-42.

18 SMR, Rule 21.

19 European prison Rules, Rule 107; SMR, Rules 80-81.

3. Current situation on the penitentiary system in Albania

Protection of the rights of people in detention in Albania has improved significantly over the last 20 years. The establishment of the Office of the People's Advocate, as well as the active participation of civil society organizations have served to draw attention to necessary improvements in detention centers. Following the decision of EU Member States to grant the country the status of EU membership candidate on 24 June 2014, the reform in the penitentiary system now represents an integral part of the European Union integration agenda. Currently, in Albania there are 22 institutions for the Execution of Criminal Decisions, which fall under the General Directorate of Prisons. The IECD consist of prisons and pre-trial detention centres, on special health institution for prisoners and pre-trial detainees in Tirana, one rehabilitation institution for juveniles deprived of their liberty in Kavaja and one special institution for the treatment of prisoners with chronic diseases, the elderly and prisoners with disabilities in Kruja.

Despite improvements, the General Directorate of Prisons (GDP) in Albania faces shortcomings in the area of prison-based rehabilitation. Past assessment reports from, inter alia, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as from the Organization of Security and Co-operation in Europe (OSCE), have requested the Albanian government to devote more attention and resources to the rehabilitation of offenders in order to facilitate their social reintegration.[20]

According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2012), 'The CPT recommends that the Albanian authorities redouble their efforts to improve the programme of activities offered to prisoners (…). [T]he aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).' Recidivism is therefore a key indicator of the performance of social reintegration programmes and initiatives. According to the statistics of the GDP, the recidivism rate in Albania is 24% (as of 23 February 2015).

---

20 CPT/Inf(2012)11, para. 59; OSCE Presence in Albania (2013): Report on Conditions in Albanian Prisons and Recommandations for Reform, pg. 23

Figures:
No. of offenders, including pre-trial detainees: 5,802 (capacity: 4,628)
Imprisonment rate: 202/100,000 inhabitants
Data on overcrowding: 1,174 detainees
Cost of imprisonment: 439 Eur/month (14.21 Eur/day)

While protection of the rights of people in detention and in the community in Albania has improved significantly over the last 20 years, the OSCE Presence in its latest Detention Monitoring Report still witnessed certain shortcomings in educational and professional activities in prisons. At the same time, there is a growing recognition on the part of Government and criminal justice agencies that the education, training and employment of offenders can play an important role in decreasing recidivism and thereby reducing criminality overall. The poor education and employment records of many offenders – both before and after their involvement in the criminal justice system – is now a widely recognized fact. Two-thirds of prisoners are not working or in training in the month before they start their sentence, and three-quarters do not have a paid job to go to upon their release from prison.

Overcrowding in prisons and in pre-trial detention facilities has increased dramatically over the last year. Pre-trial detention continues to be over-used by the judiciary with substantial costs. Prison overcrowding and prison population growth represent a major challenge to prison administration and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions. There is an immediate need to address this issue as overcrowding violates the rights of persons deprived of their liberty and most likely sets the grounds for inhuman and degrading treatment. The Albanian Constitution provides for the right of all persons deprived of their liberty to humane treatment and respect for their dignity. The Law on the treatment of prisoners and pre-trial detainees[21] reconfirms the overall principle of treating inmates in line with their dignity as human beings and on the basis of non-discrimination. Chapter III of this law

21 Law No. 8328, dated 16.04.1998 "On the rights and treatment of prisoners and pre-trial detainees".

refers to the rehabilitation and social reintegration of inmates, and emphasizes that rehabilitation is a responsibility of the General Directorate of Prisons in co-operation with other relevant State institutions, including NGOs.

Rehabilitation and reintegration programme are drawn up on the basis of the principles of individualization of treatment. Upon admission, the prison administration is requested to assess the individual needs of each prisoner, including the prisoner's individual psychological and social needs, the environment where the offender has previously lived, the offender's education, risks factors, as well as the social circumstances associated with the offence (alleged offence).[22] Programmes and services which are specifically referred to in the prison law include education, professional training, work, sports activities, spiritual assistance and other individual or collective activities aimed at facilitating the reintegration of prisoners into society. All penitentiary institutions shall encompass appropriate premises and material for the purpose of work, vocational training and other rehabilitation programmes.

Currently, the availability of educational, vocational and work-related programmes still varies a great deal from prison to prison, leaving inmates in many prisons to not much more than exercising sports activities during the time they are allowed to be outside of their rooms. The

overall percentage of the prison population which actually benefits from such services remains very low, amounting to 5% (education), 8% (vocational training) and 9% (work), respectively. Even when applying the numbers to sentenced prisoners only, taking into account the high percentage of pre-trial detainees, their frequent rotation and corresponding challenges of involving them in the prison regime in a consistent way, the respective figures do not exceed 11% (education), 16% (vocational training) and 20% (work).[23] Persons deprived of liberty constitute a category that has faced various difficulties before, during and after the sentence. All these difficulties in the future most likely are converted into high risk factors for their re-involvement in crime. These

22 Article 10 of Law No. 8328, dated 16.04.1998 "On the rights and treatment of prisoners and pre-trial detainees".

23 UNODC Assessment Report.

difficulties mainly related to economic and social factors should be identified and analyzed by the prison administration in order to address them.

Education of persons deprived of their liberty is very important in reducing criminal behaviour. Education can improve self-esteem, motivation chances for employment, as well as facilitates the offender's reintegration into society and helps him/her to gain social behavior. In addition, education assists the offender in maintaining effective communication links with both the society and the community where the offender belongs to. In a prison-based survey of 1,300 Albanian prisoners aged 14 to 35 years in 2013, it was found that the picture differed significantly in the prison population. More specifically,
(a) 4% were found to be illiterate
(b) 16% had completed primary school only
(c) 53% had completed compulsory education, but had significant difficulties in reading and writing
(d) 25% had completed secondary schooling
(e) 2% had completed higher education[24]

According to the Albanian Helsinki Committee's observation the 'enormous shortages that the institutions have both in regard to unsuitable premises, and also in terms of human and material resources' represent a serious challenge for enhancing the rehabilitative aim of imprisonment in Albania.[25]

Work and vocational training can play an important role in reducing recidivism. Employment has found to be key to the ability of former prisoners to secure housing, support family members, and establish financial stability. All these factors can assist in desistance from crime. If the former offender can earn a living after release, the chances for his/her involvement into crime are very low, almost none.

---

24 Gjerazi, Blerina (2013): The role of education in prisons and pre-trial detention centres in reducing recidivism; Paper for the 1st International Conference on 'Research and Education – Challenges towards the future' (ICRAE 2013), pp. 3, 6.

25 Albanian Helsinki Committee (2013), p. 40.

The Albanian Law on the treatment of prisoners and pre-trial detainees provides for work opportunities for prisoners, both within and outside prisons under the supervision of prison staff. According to statistics of the GDP, currently there are a total number of about 500 prisoners, or 9% percent of the overall prison population employed in prisons.
Prisoners who work benefit from a sentence reduction of 3,9 days per month. According to the DGP, no prisoners are currently engaged in work outside of prisons. Workshops, prison industries or cooperation schemes with the private sector are currently not in place in any of the prisons. The General Directorate of Prisons is considering some initiatives with private companies who are interested in implementing work programmes in selected prisons. However, there is a need to improve the legal framework on remuneration and pay to prison inmates. There should be a fair remuneration system for prison labour and to provide for a linkage, in principle, of such system to the national minimum wage applicable in the community.

The development of vocational training in prison facilities is considered as contributing to the rehabilitation and reintegration of the offender in the society, which might contribute to desistence. Article 37 of the law on the treatment of prisoners and pre-trial detainees refers to professional courses for prisoners. Types of training include tailoring, plumbing, welding, hairdressing, painting, woodwork, foreign languages and IT. However, in practice, there are no workshops available in any prisons countrywide. In most of the cases there is a limited number of materials for such vocational courses, thus bringing into question the quality of these training sessions and the impact of these programmes.
The GDP has drafted a Mid-term Strategy on prisons 2014-2017 and an action plan, which include its vision and priorities. According to this Strategy, Sub-priorities 2.4 and 2.5, respectively, highlight the need to 'improve the process of social rehabilitation and reintegration into society of persons with restricted freedoms' as well as to 'establish an effective system for the employment and compensation of inmates'. For this purpose, it is foreseen to improve the individualized treatment process for inmates; to draft suitable policies and bylaws on the employment of prisoners; to develop new social rehabilitation and reintegration programs; and to base respective initiatives on contemporary research findings and good practice from other European countries.

Preparation for release: The period of transition from imprisonment to living in the community is a challenging process for prisoners, with the most vulnerable time being the first weeks upon release. Without a stable housing, an employment and the capacity to earn a living in the community as well as support from families and/or partners and friends, former prisoners will often run the risk of going back towards criminal activities. Therefore, it is crucial to actively prepare prisoners for release, in particular at, but not limited to, the final stage of a prisoner's sentence. The Standard Minimum Rules emphasize that the duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoners efficient after-care directed towards the lessening of prejudice against him and towards his social habilitation (Rule 64).

4. The role of the Probation Service in Albania in reducing criminal behavior

The establishment of the Probation Service in 2009 was a major step forward in reforming the criminal justice system, as an increased use of alternatives to imprisonment has been proven to reduce overcrowding in prisons, as well as of the costs and negative effects of unnecessary imprisonment. An increased use of alternatives to imprisonment would reduce overcrowding in prisons, as well as the costs and negative effects of unnecessary imprisonment.[26]

The creation of the Probation Service in May 2009 saw a change in the application of alternatives to custody in Albania, and in particular of the trust of justice institutions in rehabilitation measures. A National Probation Service was established as a central public organ, under the Minister of Justice. The Probation Service consists of the General Directorate of Probation Service located in Tirana and currently 22 local offices throughout the country.

---

26 Alba Jorganxhi, Paper: "Alternatives To Custody In Albania And The Establishment Of A National Probation Service" Cep World Congress On Probation, London, United Kingdom.

The underlying idea for the establishment of a Probation Service was to ensure an increased use of individualized sentences, which require more information about the offenders to be submitted to the court, in order for the judges to be able to apply alternatives to imprisonment wherever possible rather than imprisonment. Moreover, the Probation Service has contributed to public safety by guiding and supporting offenders and facilitating their effective reintegration into community, as well as to the offloading of prisons and reducing reoffending.
According to the Law on the Execution of Criminal Decisions, the Probation Service is the State body which oversees the enforcement of alternative sentences, submits information and reports to the prosecutor or court according to this law. The Probation Service assists the enforcement of alternative sentences and supports the convicted person to overcome difficulties of social reintegration. Central State and local government units' bodies provide the Probation Service with the necessary assistance for the fulfilment of legal obligations.

One of the key functions of the Probation Service is to draft pre-sentence reports. At the request of the prosecutor or the court, the Probation Service submits a report for the evaluation of the offender's social circumstances in order to help in the decision-making during the investigation stage or trial. The report should contain information and data regarding the personality of the offender, his/her employment record, his/her behaviour and educational background, as well as all factors which influence or might influence his/her behaviour. This will allow the court to make a proper evaluation of the case in view of ordering an alternative sentence. The report should also contain a recommendation of the Probation Service of the most appropriate alternative sentence, aiming at his/her reintegration into society and preventing him/her from committing other criminal offences.

From the time the Probation Service was created, the number of offenders under probation has progressively increased, from 705 offenders in 2009 to about 13,314 in 2015. The same applies for juveniles, from 109 juvenile offenders in 2009 to 1,871 as of December 2014.

Statistics:
- No. of offenders on probation: 2009-2015 (13,314 offenders)

- Probation is at least 10 times cheaper than imprisonment in the new EU Member States

The Probation Service aims at reducing reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and promoting their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice. [27] Interventions of the Probation Service aim at rehabilitation and desistance and should therefore be constructive and proportionate to the sanction or measure imposed. Assessment focuses on the circumstances of the offender which led to his/her involvement in the offence. It contains an analysis of the offence, and analysis of the offender, the risk of reoffending and the risk of harm as well recommendations for the appropriate type of alternative sentence when imprisonment is not judged to be necessary. The information gathered is compiled using a structured instrument tool called Offender Risk Assessment System (ORAS). The Offender Risk Assessment System is an important instrument to measure the risks and needs of criminal offenders under the supervision of the probation service. The ORAS has an important part to play in delivering the objectives of reduced re-offending and improved public protection. Assessment of an offender involves attention to risk, need, responsiveness and resources - including the offender's own personal strengths. In addition, for juveniles and young adults (18-21 years), there is a separate Offender Risk Assessment System for Juveniles and Young Adults.

During supervision, interventions are undertaken with the offender's commitment and informed consent. An Individual Treatment Programme is drafted and after agreement is reached it is signed by the offender. Whenever there is a need for specialized treatment, offenders are referred to other agencies co-operating with the Probation Service through a memorandum of understanding. Their role is to assist offenders in all cases referred to them by the Probation Service. The

27 Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules, Basic Principles, 1.

Probation Officer makes an assessment of the offender in the Individual Treatment Programme aiming at analysing:

a) criminal actions/ non-actions, threat to society and the damage incurred;

b) family, economic, and social situation and the psychological attitude of the convicted person towards these;

c) short- and long-term plans of the convicted person and how to achieve them. [28]

Research shows a strong correlation between employment and desistance. In order to gain employment, however, offenders must not only have the required skills and motivation, but also opportunities to work, as one key component of a law-abiding life. Ex-offenders, especially former prisoners, typically find it hard to get a job and win the confidence of employers. Probation agencies should therefore work actively to encourage employers in all sectors to give fair and reasonable opportunities of employment
to ex-offenders.[29] Not only are community sentences proven to be 8% more effective than short-term prison sentences at reducing reoffending, but they can also challenge criminal behaviour; they are better at dealing with drug and alcohol problems; they require people to repair the damage caused by their crimes, and they cost significantly less. A study by the National Audit Office in the UK in 2010 found that the cost of a six-week stay in prison was £4,500. For an offence such as burglary, a 12-month prison sentence would cost the state more than £40,000. By comparison, an intensive two-year community order with 80 hours of unpaid work and mandatory accredited programmes would cost just £4,200.[30]

As a conclusion, probation in Albania is considered to be a combination of both supervision and assistance. On the one hand, the Probation Service supervises and supports the implementation of alternatives to custody with the aim of protecting the public interest and crime prevention. On the other hand, the Probation Service assists the convicted person in fulfilling the criteria and obligations imposed by the

---

[28] Chapter on Albania, Probation in Europe, CEP, in process.

[29] European Probation Rules, Rule 59.

[30] Paul McDowell, Longer prison sentences are not the way to cut crime, the guardian.

court, as well as in overcoming difficulties for his/her social reintegration.
Probation intervention aims at the offender's rehabilitation and no further offences being committed by them. Most probation interventions are focused on educational programmes, vocational training, support in getting a job or accommodation, maintaining regular contact with probation staff or other forms of practical help.
When working with offenders, probation staff uses offending behaviour programmes, often based on the principles of cognitive behavioural psychology. These programmes are designed to reduce re-offending by helping offenders learn new skills that improve the way in which they think and solve problems. They help them cope with pressure, consider the consequences of their actions, see things from the perspective of others and act less impulsively. Programmes may be general (i.e. covering all kinds of offending behaviour) or specific to a particular type of offence or characteristic (e.g. programmes for offenders who use drugs).

5. Conclusions

There has always been a continuous debate on the role prisons should play in a society. The international standards emphasize the mission of penitentiary institutions in rehabilitation and reintegration of offenders in society. Much more can be done to radically reduce crime and make communities safer. In order to do this, we must go to the root of offending behavior and stop people reoffending. When someone is sent to prison, they often lose their home and their job, as well as family and social relationships deteriorate in most of the cases. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. The prison regime is known to contribute to the institutionalization of offenders, which hampers their ability to reintegrate into society upon release. Adopting measures to ensure the effective reintegration of prisoners into the community is arguably one of the best and most cost-effective ways of preventing their re-offending. A comprehensive 'social reintegration' policy should encompass a range of different measures in order to have maximum effect, including diversion from the criminal justice process, non-custodial sanctions,

purposeful activities and rehabilitation programmes in prisons, and interventions to support former prisoners upon release. Unfortunately, the provision of education and vocational training programmes, physical exercise facilities, and treatment for problems such as drug dependence, are lacking in many prison systems – to some extent due to a lack of resources, but also due to an inadequate recognition of the rehabilitative aims of imprisonment. These shortcomings exacerbate challenges which prisoners face on re-entry into society following release, and fuel high rates of re-offending.

Research has repeatedly found that those offenders who successfully complete programs targeted to their risk are less likely to commit new offences. As well, the provision of education, employment and other correctional programs (e.g. substance abuse, violence prevention, sexual offending, family violence prevention), at the most appropriate time in the offender's sentence, contributes to safe transition to the community. As well, ample empirical evidence now exists on the effect of correctional programs on reduced misconduct rates in custodial settings.

Education, work and personal development programmes are the cornerstones of correctional intervention. They have been shown to reduce criminal behaviour and increase positive behaviour in prison.

Ex-offenders employment is a survival issue that affects everyone. If the ex-offender does not have a paid employment, he/she is likely to revert back to criminal activity to survive. Social inclusion of offenders through community sanctions and measures is also a step forward in guaranteeing communities' safety. It is a step forward in crime prevention. This, in turn, contributes to social stability.

Supervision of offenders in the community should not be seen purely as a control measure, but rather as a means of advising, assisting and motivating offenders. Supervision should aim to meet the offenders' needs for a smooth transition back into society, helping them with employment, housing and education. It should also ensure compliance with specific conditions set by the court, to reduce the risks of reoffending and to help individuals become law-abiding citizens.

There is a good case for investing in programmes to get more offenders into jobs, and for raising their skill levels to improve their chances of becoming more productive and successful in employment, which will, in turn, ensure their full reintegration into society as meaningful members of their communities.

Interventions to support the social integration of offenders do not necessarily require their detention. On the contrary, many of these interventions can be delivered more effectively in the community as opposed to in an institution. In fact, imprisonment can often seriously hinder an offender's social reintegration. When offenders must be imprisoned to protect society, the period of imprisonment must be used constructively to ensure, as far as possible, that upon their return to the community they are not only willing but also able to lead a law-abiding life. At that point, additional support can be offered to assist them in effecting that difficult transition and to ensure that the community is willing and able to receive them.

Most offenders face significant social adaptation issues, which can include family and community stigmatization and ostracism, and the ensuing negative impact on their ability to find jobs or housing, return to formal education or build or re-build individual and social capital. Unless they receive help to face these issues, they frequently become caught up in a cycle of failed social integration, reoffending, reconviction and social rejection. Unless communities understand and accept the importance of ensuring the successful reintegration of offenders, they will remain unwilling or unable to facilitate that process or to play an active role in the rehabilitation of offenders.[31]

References:

- Bryan A. Garner, Black's Law Dictionary 7th Ed, August, 1999
- Law No. 7895, dated 27.01.1995 "The Criminal Code of the Republic of Albania", amended.
- Jorganxhi A., Paper: "Alternatives To Custody In Albania And The Establishment Of A National Probation Service" Cep World Congress On Probation, London, United Kingdom, 2014
- Albanian Helsinki Committee, Report on the Situation of Human Rights of Persons Deprived of Liberty, 2013
- UNODC, Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, 2012

[31] UNODC, Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, 2012.

- Assessment of the Albanian System of Alternatives to Imprisonment", OSCE Presence in Albania, September 2007.
- UNODC, Assessment Report on Regime Activities in Institutions for the Execution of Criminal Sentences in Albania, 2014
- Gjerazi, B., 2013, The role of education in prisons and pre-trial detention centres in reducing recidivism; Paper for the 1st International Conference on 'Research and Education – Challenges towards the future' (ICRAE 2013)
- CPT/Inf(2012)11, para. 59; OSCE Presence in Albania, 2013: Report on Conditions in Albanian Prisons and Recommandations for Reform,
- McNeill, 2012,Legal and Criminological Psychology, Volume 17, Issue 1, February 2012
- RAND Corporation, 2013, Evaluating the Effectiveness of Correctional Education – A Metal- Analysis of Programs that Provide Education to Incarcerated Adults.
- Human Rights Council , 2009, The right to education of persons in detention - Report of the Special Rapporteur on the Right to Education, Vernor Muñoz (A/HRC/11/8)
- Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules1 (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) https://wcd.coe.int/ViewDoc.jsp?id=955747
- United Nations, New York, 2006, Criminal Justice Assessment Toolkit,

  http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/CJAT_Toolkit_full_version.pdf

- Paul McDowell, Longer prison sentences are not the way to cut crime, the guardian. (Monday 16 July 2012 09.30 BST Last modified on Wednesday 21 May 2014 05.41 BST)

  http://www.theguardian.com/commentisfree/2012/jul/16/longer-prison-sentences-civitas

- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states
  on the Council of Europe Probation Rules *(Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies)*

  https://wcd.coe.int/ViewDoc.jsp?id=1575813
- Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977
  http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf
- Law No. 8331, dated 21.04.1998 "On the execution of criminal decisions," amended.
- Law No. 8328, dated 16.4.1998 "On the rights and treatment of prisoners and pre-trial detainees," amended.

Women in jail: social welfare and crime control

by

*Merita Poni**

Abstract
This study explores the social factors influencing the inhibition of the deviant behavior in women. The study investigates the social factors as the main cause of deviant behavior by use of qualitative method, using interview as main instrument for gathering information from 20 female detainees in prison. Besides the social factors, the analysis includes the psycho-social profile of incarcerated women and the causes that pushed them towards criminal offences. The results of the study confirm that the social factors are more influential than personal traits in deviant behavior. The gender factor influences as well in deviant behavior by moderating aggression and enduring resilience in deviant women. The study reveals the situation of social care for incarcerated women and the importance of the welfare state in crime control. The study intends to provide indices for penitentiary policy and practice on the relevance of social factors in crime commitment and the importance of social and criminal justice in addressing the adverse factors of deviant behavior in women.
***Key words**: gender, crime, social factors, social welfare, prison.*

1. Introduction

After the collapse of the socialist regime, Albania has experienced a growth in incarceration rates for both men and women. Evidence shows that the recorded crime have risen in eastern Europe since capitalist economies replaced socialism at the end of twentieth century (Eadie & Morley, 2007:565). The causes of the rise of the criminality during the transition period of 25 years, from 1990-2015 would better correspond

* M. Poni (✉)
Department of Sociology, Faculty of Social Sciences, University of Tirana,
E-mail: meritaponi@gmail.com

to the "Strain theory "which emphasizes the poverty as the main cause of the unmet material necessities of living. The consequence is the weakening of moral principles among population. The response to the criminal behavior has been shifting depending on the political claims and moral panic that urge for strict measures to preserve order and security. No matter the proclaimed expectations of policy reform, the rate of crime is rising. The number of women in jail has increased until 2012, and after 2013 it has decreased significantly, from 501 to 335 women.

Source: Ministry of Justice, Annual Statistics 2015.

The phenomenon of incarceration is affecting more women from poor communities, especially young and in search of material wealth. The incarcerated women have faced enormous difficulties in an effort to survive and escape from poverty of their unstable communities. They have been living in low income families and neighborhoods with no services to address their needs. Public concerns about rise of criminality have been loudly outspoken and reflected in the policy-making process. But the ideological debate about criminal justice, on behalf of public protection, is somehow obfuscating the motives of criminal behavior and the impact the punishment policy may have in disaffecting low-income families and communities from justice. The criminal behavior may have complex economic, social and individual reasons and the rise of criminal behavior and incarceration is mostly affecting the poor low income communities even in industrialized countries (Beth, Freudenberg, & Page, 2001:291).

Although compared to men, women are less represented in jail, they are increasingly becoming a subject of criminal justice. In industrial countries the penal justice has been experiencing a rise of women offenders that are subject of law enforcement agencies (Shepherd, Lubbers & Dolan, 2012:390). Another gender difference in criminal behavior is that women are represented less than men in the recidivist criminal offences. Studies in the criminology have found that one of the factors contributing to the increase of male incarcerated population is the fact that they repeat the criminal offence and face penal sentences for recidivism (Mandrachia & Morgan, 2012:5).

Young women are being more involved in nonviolent criminal offences such as drug dealing, theft and prostitution. Most of them have lured into the illegal drug economy in an attempt to make money. Prior to incarceration, they have been victimized not only by the chronicle destitute conditions of their communities but from their partners and family members as well. The more mature women are involved with financial fraud activities in search of improvement of economic stability of their families. Few women have committed homicide against their husbands after years of domestic violence and child abuse.

The more educated mature women possess a sophisticated performance of financial criminal offences and represent the minority of incarcerated women. While the less educated young women were directly exposed to the criminal acts of drug dealing and are constantly becoming a majority population of female prisoners. Studies confirm a negative correlation among the education and commitment in crime, the lower the level of education the higher the risk of criminal offences. The high level of education refrains well educated people from crime commitment because of education helps understanding that antisocial behavior consequences (Burt & Simons, 2013). Women return from jail into their families without any kind of social services support that could mitigate the problems that pushed them to crime.

Women that are imprisoned for killing their husbands have committed murder after a long time of extreme violence. These women and their children have been victims of systematic domestic violence. Most of them have been protecting themselves from being killed under the conditions of the necessary self-defense. None of them was receiving social, familial, institutional and community support prior to incarceration to address the domestic violence problems. The incarceration has a particular adverse impact on their mental health.

They should rely on extended family members to provide for children care and supervision. Most of children whose mothers are in prison are in custody of grand-mothers or relatives for care. Research in criminology argue the importance of developing specific child welfare facilities within criminal justice environment for serving both mother and child (Johnson, E. & Waldfogel, J., 2002:461). Incarcerated mothers are very concerned about their children up-rearing, and they are afraid of the impact their incarceration may have on children's social adjustment. Children of incarcerated mothers may be at risk because of poverty, family violence, and shift in caregivers, stigmatization and substance abuse (Parke & Clarke Stewart, 2003:197).

Many of incarcerated women are mothers and the capital sentence to them is "not seeing their children". Because of their role in parenting and family support, the social policy on family need to preserve the ties between mothers and children. The family social policy has a powerful effect on the living standards and welfare of families (Pahl, 2007:200). The new policies on family life, reflect a dual concern with raising children out of poverty and getting parents into work. As social scientists argue, the promise of the welfare state for crime control is not simply to compensate for the deficiencies of the market economy by providing for the unmet material needs of a population (that is, giving people what they need so that they won't steal it), but to seem the ideal social housing for protection against the material *and* moral failings of the market economy (Rosenfeld, R. & Messner, S. F., 2015: 1).

2. Method of study

The study was conducted in the prison of women "Ali Demi" in Tirana. The study made use of the semi-structured interviews and observation. The interviewed are 20 incarcerated women. The majority of jailed women, almost half of them, are sentenced for crime of death as they have killed their husbands in a tentative effort to escape the extreme acts of domestic violence. The other half of incarcerated women are sentenced for financial fraud and for narcotic-drug- trafficking. The majority of incarcerated women are from urban areas of poor communities where the levels of crime are higher. The population of communities, where women were living prior to incarceration, is heterogeneous and composed of many faction of population coming from very different subcultural backgrounds. The unemployment rate

has created confusion for the newcomers from rural areas into urban areas, as they were hoping to explore more opportunities for a better life in cities. The overpopulation of urban areas, especially in large former industrial cities has not been followed by employment or welfare policy and the migration shift has been very chaotic. To make a living, the population is invested in criminal offences and has adopted an avoiding moral normativity. Although many families would like for their children quality education, in fact schools can barely afford only access to education, because of the large number of children in classes that have overpopulated the urban schools. Many desired objective are unmet and people are desperately searching for subsistence. Young people, including girls, are invested in the criminal offence of drug trafficking as dealers and users. Only few interviewed women confessed that they were not aware about the implications of trafficking drugs and narcotics, since this is a new penalty. The majority of the incarcerated women for drug trafficking were fully informed about legal sanctions of this criminal offence and they chose to do it because they had no job and this was the only possibility to get out of poverty. They were going against the risk of being caught with full conscience. A young mother arrested and processed for the drug dealing confessed in an interview that she was a victim of her partner who made use of her and the baby to pass the drug quantity in the baby's diapers. Another young women provides details of the difficult moments of her arrest: "I am 26 years old, and at the time of my arrest I was a student in Durres University. I married young and I divorced the year after. I had a baby from the marriage and I went to live with my family to get help to raise my daughter and continue studies. My parents were very supportive but they could not cover the cost of living for all of us. I felt responsible for myself and my child and I wanted to help since my mother quitted the paid cleaning job in order to care for my daughter. I had no money to send my child in the crèche so one of us should stay home, and my mother did. I had to finish the school to find a job after. I desperately needed financial support and the father of my daughter was jobless so he could not provide any help. I came in contact with some people dealing with drug trafficking and I worked with them. My working partner was under surveillance and I didn't know that police was tracing him. So we were caught together and I am sentenced with 6 years for drug-trafficking. I am so desperate that I am not there for my daughter and I am a shame for my parents"

Women incarcerated for financial fraud are of age 40-50 years old. They have manipulated money investors by promising them high financial interests and have used the money for their needs. Some have used fraud in exchange for secure economic emigration and have possessed money from job-seekers wanting to work abroad. One of them narrates: "I am from Shkoder, north up country. My family has migrated in USA but I could not because at the time they left I was above 21 years old. I got married to a men from Vlore and we opened a tourist agency. People were asking to go in western countries for longer than a tourist visit and I promised them to pay more so we could arrange a job for them in the countries they would go. I got a sentence of 5.8 years for financial fraud and human trafficking. I have a child and I keep thinking about all time. His eyes are the only hope that keeps me alive. His grandmother is taking care of him now. I do not know if he will recognize me when I will be released from jail. My mother in law told me that he runs after young women and calls them mom." She swept and stopped talking after that.

Half of incarcerated women are in jail for murder. Almost all of them have killed their husbands. All of them confess that they are beastly beaten for years and so did their children. On behalf of children and pushed at the edge of extreme patience these women have consumed the capital act of murdering. The brutal domestic violence on them and on their children leaded them towards the crime, which was promoted by external factors rather than from internal predisposition. A women of 59 years old from Fier, who is suffering a 25 years sentence for murder of husband told during the interview: "I have two kids out there and I am so worried about them. I have been caring almost alone for them, since you know this is a mother job. By profession I am geometer and I have been working before the communism collapsed. My husband and I remained jobless after the closure of the state enterprise and our life became infernal. He tried to find a job but without success. He felt useless and turned to alcohol to forget his duties as father. The kids were growing up and I had to search for job too, but with no success. My brothers helped with few money but my husband used to spend the money we needed to survive for drinking. He became very aggressive and started to beat me. The children were terrified. It became a nightmare to live with such a terror, but I was ashamed to divorce him because of public opinion and because of children. When children were growing up he begun to kick and fight them too. He treated our son very badly and when the son was

getting older they used to fight each other, and I was often caught in between them to separate the fight but I finished in blood because of my husbands' cruelty. I wanted to defend my son from him. One night he was furious and wanted to kill all of us with the knife. I was petrified and my son stepped out to defend me and my daughter. My husband run after my son to kill him and I took another knife and I stabbed my husband. I saved my son's life from his father of from prison. If I were not killing my husband my son would have done it and would spend his life in prison. I am almost dead here in prison without my children around, because my children are my life".

3. Results

The data from interviewed women and their personal narratives on the crime commitment show that their crimes are not violent. The violence is an indicator of the antisocial behavior and since women are not violent they are do not represent a social threat to their communities in terms of security. Half of them, invested in financial fraud and drugs dealing (usually they trade small cannabis) and would like to be in conditional release and under probation service. Many of them accept to be guilty and confess that they would cope with new moral standards of living in the community. Moreover, the young women prefer to follow studies and finish school, during the time of suffering the sentence in the community.

Mothers of young children expressed a very poignant concern about their children social adjustment and would prefer to work and care for their families. Almost all of them questioned the role of jail in their criminal behavior correction. According to them they would never engage in criminal activities if they had to choose, but they were left with no choice, strained by material needs and extreme violence. Women who have killed their husbands told that they were forced by circumstances to act in their legitimate defense and to protect children from psychological and physical harm exerted on them by violent fathers. They have been left with no protection support from their large families, neighbors and police. They had reported the violence and in some cases the violent husbands deterred the police orders and violated their wives and children. These women were very alert about TV news on the killing of women from their husbands. Many of the husbands were having a police order to not contact their wives but they violated

the orders and retaliated the denouncing wives. Mothers told that they had to act to protect more their sons from being killed by fathers or from killing their fathers in a terrific fight between them. To mothers the safety of their children was capital compared to their own life. If they would not react, their sons would. In order to safe their sons from "jail or tomb" these mothers did the most extreme act of executing the killing fathers.

Mothers reported a high level of anxiety from the separation with children. They were very worried that their children would forget them and they would lose them symbolically. Another concern of mothers was about their children physical and the psychological health while coping with new care-givers. Mothers reported that they children were in the custody of grandparents, and they were worried about the level of support and social control offered by grandparents to children. Women who killed their husbands agreed to stay in prison, not more for moral sentiments rather than for pragmatic issues. If let outside the prison they could face a mortal revenge from the husband family, or worse their sons could be killed by the relatives of the father, to redeem their loss. Although the cultural traditional norms of blood feud do not allow that kind of vengeance, mothers were very afraid that this may happen to their sons if mothers were let free.

Mothers were longing to be longer with their children. They face many difficulties towards communication and contact with their children. The visits are short and the telephone calls do not allow a long touch with children. The young children become aggressive when hearing mothers' voices and cry a lot to be in touch with mothers. They do not understand the distance and ask for mothers' presence immediately. Grandparents hesitate to let mothers talk sometimes because of the child pain inflicted by mother's absence. Another difficultly is that the prison is located far from the home and children and care-givers should make long distances to visit women. The care-givers have limited financial resources to afford the cost of transport. Some of care-givers are busy with jobs and care for other dependents in their families and do not possess sufficient time to come frequently for visitation. Another problem is the availability of the visitors according to the scheduled visit hours specified by the jail personnel. The visitors have to suit to the schedule thing that is not feasible all time. The jail environment is unfriendly to children and increases anxiety on the part of the visiting child, but visiting calm child' fear about mother's welfare.

Concerning to the support psycho-social services within penitentiary system, all women reported that the staff was being correct to them, but they need to be introduced to purposeful activities in order to feel themselves useful. Almost all of them want to work to gain the bread and do not want to be a burden to no one even to the prison authorities. However they were conscious that such a jobs are available only outside the jail, and it is difficult for the professional staff of the prison to deal with the issue of employing women while in jail.

4. Discussion

The imprisonment has an effect in the social control of the deviant behavior, especially in the case of recidivism. Although none of women is a recidivist, the first place for them to suffer the consequences of the criminal offence has been the jail. In almost half of the cases, that relate to the light criminal offences such as drug-dealing in small quantity and financial fraud the conditional release could be an alternative to prison. Given the nonviolent nature of the crime and the low social threat, women could conduct a normal life within their communities with the due social support to address the causes of their problems. Women that have killed their husbands need psychological treatment for being abused from systematic domestic violence. All of them show signs of post-traumatic disorder that is related to the act of killing and long-lasting abuse on them and their children. Even inside the prison, women need more psycho-social support from professionals dealing with abuse and psychological trauma, in order to help them recover from mental distress and psychological wounds.

The separation from children has an adversary effect on them and their children. Children who have witnessed their mothers arrest have nightmares and flashbacks. The attachment of child to mother compromises with time, and the longer the mother stays in jail the greater is the risk of detachment. As many studies have confirmed, children with compromised attachment from missing incarcerated mothers express high levels of anxiety, hypervigilance, withdrawal, depression, shame, guilt and eating disorders (Parke & Alison-Clarke, 2003:200). These children externalize the problem via anger, aggression and hostility against care-givers and siblings. Children who undergo separation due to incarceration have less healthy attachment relationship

with the incarcerated parent and may be less adapted to social relationship with others.

Almost all women have had strong familial ties and are still having familial support, especially for the child care. The families were supportive to their daughters because the parents felt guilty for not giving their incarcerated daughters a better chance for living. Their daughters were sacrificed in illegal acts on behalf of family welfare, and they deserve a moral amnesty for what they have done. The parents and siblings of women that are incarcerated for killing their husbands felt guilty for not helping enough their daughters or sisters to overcome the abusive relationship and help them out towards a living outside a dead marriage. Especially brothers feel shameful of letting their victimized sisters defenseless. The familial ties serve as a secure buffer from emotional depression of incarceration for women.

The incarcerated women are not always understood by public which fails to recognize in women a set of social reasons for incrimination. Used to the high number of male criminals, the public is confused to see female criminals because culturally it is unusual for a women to behave in masculine way. Women who fail to admit their social role of servant and care-provider and invest in masculine like activities are considered more as deviant to the gender role rather than to the legal rules. The incarcerated women face a terrible stigma and are surrounded by public prejudices that condemn them more on moral gender stereotypes for failing to ascribe to the moral expectations for women. Such attitudes are often held by judiciary system staff as well, no matter the causes that pushed women to the criminal offence. It seems that women are invested in the criminal offences for the same reasons men are, but a more complex analysis reveals that women are more victims of the criminal situations rather than initiators. As women in jail affirmed they have been caught in criminal activities without even knowing that they were misused by others and because they did not know the consequences of being used. They were acting in "*buona fide*" to help their familiars, but instead they were used by partners, friends and family members with the excuse that women are less suspicious to the police. In many situations related to their rights and freedoms, women are very little informed and may be easily manipulated by others to whom they believe.

5. Conclusions

Women criminal offences are being a constant concern for the criminal policy. Although compared to men, women criminal offences rate is far lower, the problem has provoked the public sensitivity. Women involvement in crime has increased the moral panic on crime rates and insecurity. The public is not informed on the gender differences in crime commitment. Studies on gender differences and crime are fairly missing. The society holds strong patriarchal beliefs on gender and considers women as subordinated to male authority which means that women should comply with obedience to any kind of insult and offence by the male side. Women that have committed a criminal offence have infringed the moral gender cultural norms of behaving like men, and they face double discrimination as prisoners and as uncompliant to the gender role. The long-held believes on the role of women contradict the capitalist values of individualism and personal success. In order to comply with the capitalist ideology of being successful by yourself, women find difficulties in coping with gender stereotypes on women as passive and dependent on others. In absence of a social care system, women have to lay on their forces to come out the poverty and adopt the double role of the bread-winner and care-giver for their families. The missing social protection for unemployed women from destitute families leaves them with few alternatives for survival, and most of them find the way out via crime activities.

Incarceration is still considered as the best alternative for women. The treatment of incarcerated women is equal to men, without taking into consideration their needs as women. The social and criminal policies have to consider the circumstances that lure women to the criminal acts, and try to address the adverse conditions of their living. Prevention of criminal behavior is an achievable objective for women who receive aid from state and community. The chances for deviant behavior in a supportive environment are reduced by social welfare not only by instrumentally targeting poverty and substitute care for children, but by providing meaningful solidarity to those in need.

The incarceration results in institutionalization and loss of capacity for independent productive economic life. The working capacity is compromised because of the long-lasting economic passivity. The loss of working capability and the effects of institutionalization create complex barriers to employment of the released women. The lack of

social services and community support may well address women to the previous acts of criminal offence as a mean for survival. Than recidivism can occur for every returned women.

The lack of social welfare means absent support and shortage of professionals in the field of criminology. The profession of community criminologist is a partial solution to the problem of the crime prevention and treatment. This new profession is the core stone for the implementation of the social policy in the criminal justice. Professionals in the field of crime and social rehabilitations are needed to address the myriad of unsolved problems in the social behavior which results to be deviant more due to the social causes rather than to personal predispositions. The community criminology service may complete the missing part of the social welfare puzzle which is aiming at the strengthening of social ties between individual, family, community and social institutions in order to prevent human capital loss and increase social security. By filling the gap between social policy and criminal policy, the community criminology may build the bridge between social justice and criminal justice.

References:

Beth, E. R., Freudenberg, N. & Page, J. (2001). Reintegrating women living in jail into urban communities: A description of model program. *Journal of Urban Health*: Bulletin of the New York Academy of Medicine, 78(2):290-305.

Burt, C.H. & Simons, R.L. (2013). Self-Control, Thrill-Seeking and Crime: Motivation Matters. *Criminal Justice & Behaviour*, 40(11):1326-1348.

Eadie, T. & Morley, R. (2007). Crime, justice and punishment. In Baldock, J. Manning, N. & Vickerstaff, S. eds, *Social Policy*, 3rd edition. Oxford: Oxford University Press.

Johnson, E. & Waldfogel, J. (2002). Recent trends and implications for child welfare. *Social Sciences Review*, 76(3):460-479.

Mandrachia, J.T., & R. Morgan. (2012) Predicting offenders' criminogenic cognitions with status variables. *Criminal Justice & Behavior*, 39(1):5-25.

Pahl, J. (2007). The family and welfare. In Baldock, J. Manning, N. & Vickerstaff, S. eds, *Social Policy*, 3rd edition. Oxford: Oxford University Press.

Rosenfeld, R. & Messner, S. F. (2015). A social welfare critique of contemporary crime control. *The society pages: social science matters*. URL accessed in 15.03.2015, http://thesocietypages.org/papers/rosenfeld-messner/

Ross, D. P. & Alison-Clarke, K. (2003). The effects of parental incarceration on children: promises, perspectives and policies. In Travis, J. & Waul, M., *Prisoners once removed: the impact of incarceration and reentry in children.* Washington DC: The Urban Institute Press.

Websites:

Ministria e Drejtwsisw (2015) *Vjetar Statistikor*. URL accessed in 15.02.2015, http://www.drejtesia.gov.al/files/userfiles/statistika/VJETARI_STATISTIKOR_2013.pdf

Overview of juvenile delinquency trends and controlling mechanisms

by

Dr. Evisa Kambellari *

Abstract

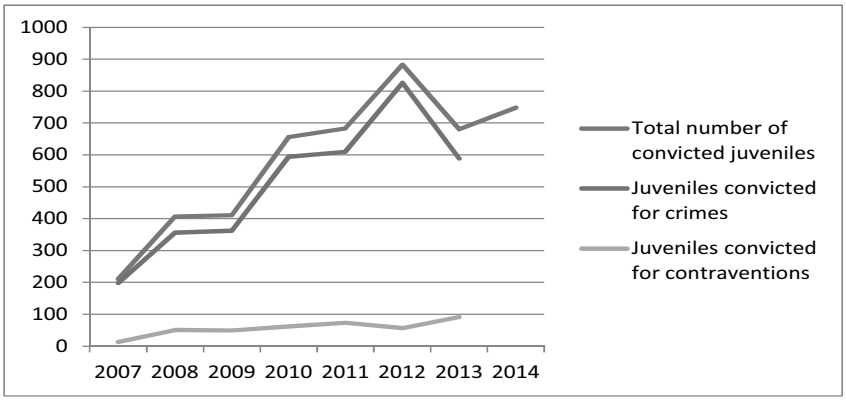
The phenomenon of juvenile delinquency is not a negative development of recent years only. Previous studies have revealed that juvenile offending in Albania became a serious issue at the beggining of the 90's and has been steadily present since then. This paper makes an overview of the current patterns and trends of juvenile crime, the factors influencing juvenile delinquency, and draws the attention on some main policy issues in preventing anti-social and/or criminal behaviour among children and adolescents. When trying to understand juvenile crime it is important to acknowledge that it is the result of a complex interplay of many internal and external risk factors, which might have a static or dynamic nature. In this respect, the answer on how to deal appropriately with juveniles who commit crimes, should be subject of a comprehensive risk assesment process. The study concludes with recommendations on the most relevant questions that need further attention by policy makers, and places special emphasize on the importance of developing community-based interventons for addressing problems of juvenile offending.

1. Trends in juvenile delinquency

Official data show that there is a growing trend in juvenile offending over years. The Figure 1 indicates that during the last ten years the number of juvenile offenders have been increased. Majority of the juveniles are convicted for commission of crimes rather than for minor offenses.

* E. Kambellari (✉)
Department of Criminal Law, Faculty of Law, University of Tirana, Albania
E-mail: evisa.kambellari@fdut.edu.al

Figure 1. Convicted juveniles over years[1]



Compared to the overall number of convicts, the proportion of convicted juveniles in 2013 was about 8%. The proportion has been more or less the same even in the previous years. In 2012, convicted juveniles made up 10 % of the overall number of convicts, in 2011 the proportion was 7.5 % and in 2010 juvenile conviction rate was 8.3 %. Although overall juvenile crime rates remain quite stable, the nature of juvenile delinquency and the implications that it might have on young people's future inclination towards more serious forms of offending, requires the development of new responses and new frontiers of intervention.

If we have a look to the types of criminal offenses committed by juveniles as indicated in Table 1., it can be noticed that property crimes make up the major figures of juvenile offending. It can be noticed that generally juveniles are under represented in more serious crime such as homicide and sexual offences.

[1] Source: Statistical Yearbooks of the Ministry of Justice (2007-2013), and Official Statistics of the General Prosecutor Office for the Year 2014.

Table 1. Convicted Juveniles (age 14-18)[2]

Type of criminal offence	2010	2011	2012	2013
Theft and robbery	462	480	639	471
Homicide	7	7	8	4
Intentional health injuries	10	13	17	12
Rape	6	-	2	1
Prostitution	2	1	2	1
Drug-related offences	10	15	26	14
Fraud	--	2	1	3
Arms possessing*	34	40	48	38

* The figures refer to the number of juveniles convicted for illegal posession of both fire arms and cold weapons.

The number of minors convicted for theft offences is significantly higher than the number of those convicted for fraud offences or other types of crimes that require a well elaborated intellectual activity, prior planning and organization. This might lead to a general assessment that juvenile crime is less sophisticated.

In addition, juvenile delinquency does not manifest notable patterns of violent behaviour. The figures in Table 2 show that juveniles are more likely to be involved in the commission of simple theft acts rather than in violent property offenses.

Table 2. Juveniles convicted for theft and robbery[3]

	2010	2011	2012	2013
Theft	446	467	597	449
Robbery	13	6	33	13
Armed robbery	3	4	6	5
Aggravated robbery	0	2	3	0

However, it is important to pay special attention to the involvement of minors in drug related offenses, the use of narcotics, as well as arms possessing, which could drive towards more serious offending patterns.

---

2 The figures presented in Table 1. are retrieved from the Statistical Yearbooks of the Ministry of Justice. http://www.drejtesia.gov.al/al/dokumente/statistika

3 The figures presented in Table 1 are retrieved from the Statistical Yearbooks of the Ministry of Justice. http://www.drejtesia.gov.al/al/dokumente/statistika

In a survey made by private actors[4] in a champion of 450 children from different regions of the country, 53% of the participants answered that they used to find the money for buying narcotics by stealing, borrowing them, or through being involved in the illegal sale of narcotics[5]. 85% of the respondents admitted that the desire to show off, or curiousity were the main motivators that prompted use of narcotics. Other reasons were related to influence of peers, family conflicts and social indifference. Although, figures in Table 1 show that the number of juveniles convicted for drug-related offenses remains low, it should not be disregarded the negative effect that narcotic use and/or dependence might have on juveniles. Is is generally accepted now, that use of narcotic substances increases criminal courage and might also be the major motivation of committing crimes of theft, robbery and burglary. Research shows that substance abuse is associated with violent and income-generating crime (Dickinson & Crowe 1997). According to Goldstein such patterns of criminal behaviour might be explained under the following models:

a. Psychopharmacological model of violence which suggests that the the exhibition of violent behaviour results from the short or long term ingestion of specific substances (alcohol, stimulants, et cetera).

b. Economic compulsive model which explains engagement of some drug users in economically oriented violent crime, with their need for affording costly drug use (Goldstein, 1985).

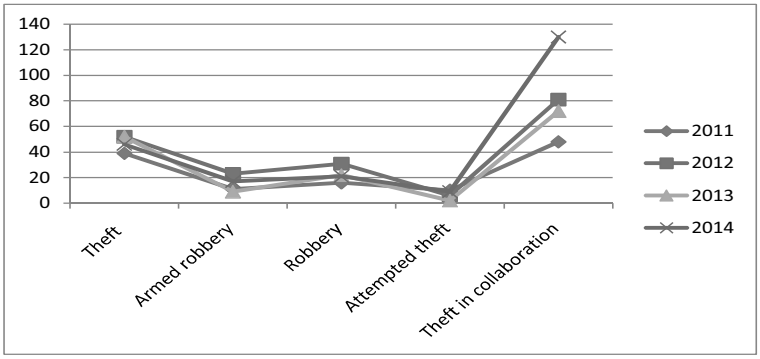
Lastly, figures on the nature of theft offenses committed over years by juveniles under custody show a significant growing tendency of juveniles to get involved in collaboration offenses. In 2013 they were responsible for 72 theft acts committed in collaboration, whereas in 2015 the figure was 130 (which is 58.3% of the overall theft offences committed in 2015).

---

4 Universal Periodic Review of Albania 19th session, 2013, submitted by Child Led Groups "Voice 16+" and Peer Educator's Group with the support of Save the Children and World Vision, pp.4, https://albania.savethechildren.net

5 It is difficult to estimate the true rate of use of alcohol or narcotic substances among juveniles because many such instances go unreported and, hence, are not recorded in any official record.

Figure 2. Theft offences committed by juveniles under custody 2011-2014[6]



This trend should concern criminal justice professionals because it might be a significant indicator of juveniles future involvement in criminal group and forms of organized criminality.

2. Causes of juvenile delinquency

There might be many possible explanations on causes of juvenile crime, but the prevailing opinions among experts tend to address the issue with economic disparities, family dysfunction and a general lack of social control. Studies reveal that the social, economic and cultural conditions prevailing in a country generally have a determinant influence on the intensity and severity of juvenile offenses. Thus, juvenile crime is associated with economic decline, rather low educational attainments and insufficient basic social experience acquired in the family[7]. Previous surveys on juvenile delinquency in Albania show that individual and family factors tend to be the main causes of crime among children, whereas adolescents are more prompted by social risk factors and inadequate peers influence [8] Recent studies show that juvenile crime is

6 Source: Statistics compiled by the General Directorate of Prisons.

7 World Youth Report, 2003: The Global Situation of Young People. United Nations. Dept. of Economic and Social Affairs, 2004, pp.193.

8 *Juvenile Delinquency in Albania. Analysis of factors and causes of juvenile delinquency in Albania.* Study published by Children's Human Rights Centre of Albania – CRCA Tirana: 2007, pp.13, http://www.unicef.org/albania/Al-JJ_De_Rep-07.pdf

the result of a complex interplay of factors related to the family context, educational level, peer influence, and social exclusion (Trota, 2014).
Negative influencing factors in family are associated with authoritative and non-communicative models of parenting, family's violent cultural background, lack of attention to children in large families, and family's low economy. Main forms of negative peer influencing has to do with socialization with former convicted juveniles, with alcohol or drug users, or with peers that have drop out of school (Trota, 2014). In some experts opinions, causes of juvenile delinquency are mainly attributed to family poverty, unemployment, family's crisis and history of violence, conflicts between generations and cultural collision (Agolli, 2013).

Durkheim's theory of anomie helps explain some of the social dimensions of juvenile delinquency. This theory departs from the idea that rapid change to a more complex, urban, and technologically sophisticated social system, leads to the destruction of the fundamental bonds uniting individuals in a collective social order (Lilly et al. 2011).
The anomic state resulting from the changes of social structure and cultural collision is characterized by lack of a collective conscience and common moral values. In this conditions, the role of social control mechanisms in placing limits on ends and means of social action, is seriously compromised. After the collapse of the communist regime at the end of 1990, Albania entered in a transition period towards a democratic society and a free market economy. The new socio-economic context was associated with uncontrolled and unplanned internal migration waves of rural population towards urban areas. Uncontrolled demographic movements lead to massive urbanization of some areas, and consequently, to a growing cultural heterogeneity in the population of main urban locations,[9] and concentration of social and economic problems in specific urban conglomerations.
Authors supporting Durkheim's theory of anomie state that "the transition from a rural society to an urban society, the diffusion of new norms and values disrupts the equilibrium of traditional societies and breaks down traditional beliefs… individuals challenge old cultural values and social rules, resulting in the rapid increase of anomie" (Zhao, R. & Cao, L 2010). The state of social instability or personal unrest

[9] In 2014 the urban population made up 57% of the total population. Source: National Institute of Statistics (INSTAT) http://www.instat.gov.al/

resulting from rapid breakdown of standards and values[10], would consequently increase chances of deviant behaviour.

More recently, the american sociologists, Messner and Rosenfeld, have elaborated a special concept of institutional anomie by analysing the problem in a prevailing economic perspective.

They argue that when the market economy assumes an unusual dominance in the institutional structure of a society (such as in the case of United States), it affects the role of other social control tools. The education, the family and the polity and their respective functions serve no longer as main social orientation values.

According to them economic dominance of a market society manifests itself in three related ways :

- Devaluation of non-economic institutional functions and roles;
- Accomodation to economic requirements by other institutions;
- Penetration of economic norms into other institutional domains (Messner, & Rosenfeld. 2013).

For instance, in order to explain how non economic goals, positions and roles are devalued, the authors mention the devaluation of the distinctive functions of education and of the social roles that fulfill this functions. So, education is regarded largely as a means of occupational attainment, which in turn is primarly valued for its promising economic rewards rather than for the acquisition of knowledge.

In societies where institutional anomie is a very influential phenomenon, the dominance of economic goals and values makes it difficult for other social institutions to maintain social control (Benekos & Merlo 2009).

The goals themselves are not unlawful, but the pressures of obtaining monetary rewards, combined with with weak controls from noneconomic social institutions, promotes high levels of instrumental crime (Chamlin & Cochran 1995).

Institutional anomie theory might be used, at least, to explain juvenile involvement in theft offenses. Nowadays, the young generation is getting increasingly prone to material goals and values. The opinion of peers has a great influential role in Albanian adolescents. They pay extreme attention to everything that their peers think on them, and consequently, to friends comments on their economic status.Adolescents

---

10 This is the definition of anomie, according to the Merriam-Webster Dictionary. http://www.merriam-webster.com/dictionary/anomie

coming from families with limited economic resources, find in theft an easy way to get things that their family finances can not afford (Abazaj, 2014). The desire to make money easily and quickly, so as to be equal with other peers, seems to be a strong drive towards theft crimes.

3. Sentencing practice

Juvenile sentencing practices have an indispensable role on juvenile offenders, especially first-time offenders, and, if not properly applied can affect the juvenile inclination towards criminal behavior. When imposing a sentence, juvenile courts have to find a fair and balanced response that holds juveniles accountable of their actions, but in the same time contributes in their personal development which helps to accomplish rehabilitative objectives. Statistical data related to types of sentences applied by Albanian juvenile courts indicate that the average length of juvenile imprisonment sentences is up to two years (see Figure 3).

The proportion of imprisonment sentences of more than two or more than five years had remained stable. The practice of juvenile sentencing over years does not manifest any trend towards harsh sanctions.
However, it should be noted that the fine sentence rates continue to remain low. Figure 4 indicates that the fine sentence is rarely applied on juvenile offenders. The courts are more inclined to apply an imprisonment sentence even towards juveniles of age 16-18, who are legally capable of getting involved in working activites. When conditions related to the nature of the offense and the dangerousness of the juvenile offender allow, the goal of criminal punishment could be properly satisfied by a materially-oriented sentencing practice**.**

Figure 3. Types of sentences given by Juvenile Courts[11]

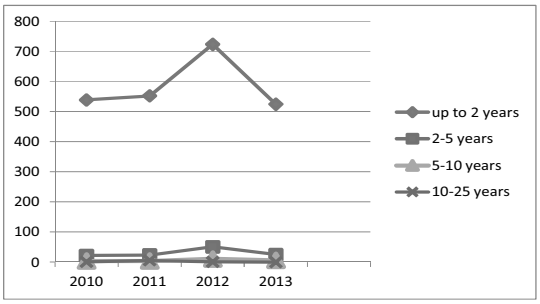
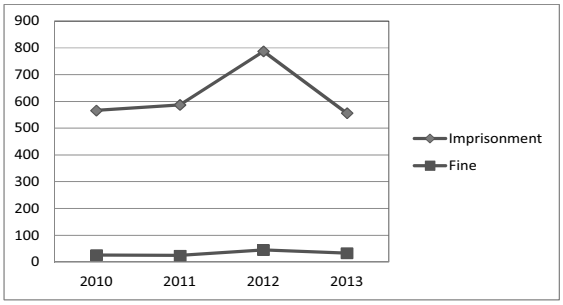


Figure 4. Proportion of imprisonment and fine sentences



A specific problem for the juveniles justice system represents the lack of special educational institutions. In art. 36 of the Albanian Penal Code is stated that: *"The court may decide ... educational measures toward minors who are excluded from punishment or, because of their age, do not bear criminal responsibility....Educational measures consist in placement of a minor in an institution of education".* The general prosecutor has reported that compulsory educational measures on minors excluded from criminal responsability or punishment remains inapplicable because there is not any special educational institutions within the framework of the juvenile corrections system yet [12]. Lack of

11 Source: Statistical Yearbooks of the Ministry of Justice.

12 Yearly report of the Albanian General Prosecutor "On the situation of criminality in 2013". http://www.pp.gov.al/web/raporti_2013_855.pdf

educational institutions inevitably affects the sentencing policy, by orienting it towards application of more repressive measures on juveniles excluded from punishment, even when conditions allow for the application of other lenient forms of punishment.

An important step forward in juveniles sentencing policy represents the elaboration of a system of risk assessment for juveniles and young adults[13]. It was first introduced in July 2014 and consists in an assesment tool that will provide well-structured information for each convicted juvenile or young adult that has a first contact with the criminal justice system. The risk assesment instrument analyses the personality of the offender, so as to indentify the presence of causes and factors associated with high or low levels of dangerousness. The Probation Service is the responsible authority for the implementation of the system that consists in filling out a form divided in special informative sections on different personality traits and environmental conditions such as: a) family background information, social attachments and living conditions; b) education, training and employment, c)alcohol or narcotic use; d) physical and psychological conditions; e) motivation and the offender's attitude towards the offense. Then, the results are elaborated in order to determine the criminal prospects of the offender (inclination towards criminal beahviour), and then presented to the juvenile court.

The elaboration of risk assessment tools is in line with recommendation (2003)20 of the Council of Europe[14] that places emphasis on *the development of instruments for assessing the risk of future re-offending in order that the nature, intensity and duration of interventions can be closely matched to the risk of re-offending, as well as to the needs of the offender*. In addition, the recommendation requires that *when considering whether to prevent further offending by remanding a juvenile suspect in custody, courts should undertake a full risk assessment on the young person's personality and social circumstances*.

---

13 The *'Risk Assesment Tool for Juveniles and Young Adults'* was prepared by a group of international and national experts with the support of the OSCE Presence in Albania.

14 Recommendation (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice. 24 September 2003. https://wcd.coe.int

4. Recommendations on future action and the criminal policy

The traditional challenge among juvenile justice actors when addressing juvenile crime, is to find a balance between the healthy development of juveniles and the public interest to punish the offenders.
To design and effectively implement efficient measures for preventing juvenile crime, requires a comprehensive evaluation of individual, family, socio-economic and environmental factors that influence juvenile delinquent behavior.[15] Only then, policymakers could be able to design early prevention measures at individual, family or community level.
So far, public action has been missing either in targeting the factors that place juveniles at risk, or in making general assessment of their personal or community needs. No comprehensive strategy has been drafted on juvenile crime prevention. In this respect, it is worth mentioning that the public sector's role is indispensable in supporting both quantitative and qualitative research on the subject matter. Studies made by non-governmental agencies on juvenile delinquency risk factors and their recommendations on matters that need change, would not have any effect in practice, unless governmental initiatives are taken.
Furthermore, any study made by private actors it is meant to result in limited observations due to the lack of necessary human resources to be involved in field work and lack of full geographical coverage of the area of study. In the designation of policy measures for handling juvenile delinquency, should be properly evaluated developmental disparities between juveniles and young adults. Experts draw attention that emotional balances and level of maturity of children and adolescents differ from those of little adults, but this the recognition of this fact is often missing from discussions of juvenile crime (McCord, 2001). Children might be less capable than adults of reasoning logically whilst facing particularly strong emotions (Baird, 1999).

Increasing Alternative Sentencing The primary sanctions imposed by juvenile courts remain custodial measures. Juvenile sentencing policies

---

15 In the Recommendation (2003) 20, representatives of EU member states agreed upon that responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community, https://wcd.coe.int/ViewDoc.jsp?id=70063

should be driven by a "minimum intervention" approach that asks for the application of penal sanctions only if absolutely necessary. Juvenile justice actors should try to balance the need for sadisfying public safety with the juvenile's reintegration plan requirements, and especially, their needs relating to education, housing, family support/supervision, employment, health, and social inclusion. Expanded use of alternative or community based sentences offer plenty opportunities to achieve these goals through effective and equally demanding contr
olling measures. It is recognized that alternative sentencing has a key role in the integration of juveniles and in the future management of related risk factors. Increased use of alternative sentencing requires more coordinated actions among criminal justice system actors, as well as mutual partnership with private actors.

Furthermore, important legislative measures should be taken to introduce open regime or semi-open regime options for juvenile offenders. They help juveniles' re-entering to society through a continued close-monitoring process that increases their competencies and personal development and drives progressively towards complete freedom. The actual framework of the Albanian correctional system makes it quite impossible the application of the semi-freedom alternative to sentencing provided under article 58 of Penal Code[16] because the infrastructure of juvenile facilities si not adapted to the requirements of the semi-freedom regime. It is worth noting that open regime or semi-open regime institutions could also be an efficient solution for the rehabilitation of juvenile offenders who are orphans, or have a history of exposure to patterns of violent behaviour in their families, and as such, are not in the position of having effective parental supervision.

In addition, due lack of supportive infrastructure for housing orphan convicted juveniles, or for dealing with those having alcohol or substance abuse problems, or other documented health problems, the

16 Article 58 of the Penal Code provides that "In case of an imprisonment sentence of up to one year, the court, based on the entitlement of the sentenced offender with regard to legitimate labor, vocational training, fulfillment of basic family obligations or with regard to the necessity of medical treatment, may decide upon the modification of the imprisonment sentence in a sentence of half -freedom. The offender that is subject to such an alternative sentence is under the duty to return to prison upon fulfillment of the respective entitlements and obligations within the terms and conditions laid out by the court".

stay at home[17] alternative to sentencing becomes inapplicable. This inevitably would orient the courts towards application of more repressive measures on these categories of juveniles, even though their specific conditions would allow the application of other lenient forms of punishment.

Enhancing capacity building. It is important to make significant efforts for the development of knowledge, skills and attitudes among juvenile justice system professionals relevant in the design, development and maintenance of institutional and operational infrastructures.

Alcohol and substance use control. Experimentation at young age with alcoholic beverage increases the likelihood of violent behaviour. There are indications that increase in violent acts such as fights and assaults in peer environments are frequently the result, of the widespread use of alcoholic beverage. In addition, use of narcotic substances among adolescents represents a serious issue to our society at this stage. Considering the correlation that exists between factors contributing to substance abuse among adolescents and those contributing to delinquency, early prevention policies should play a key role in addressing crime-related problems within this category.

Early intervention towards minors that show antisocial behaviour. Research shows that early detection of at-risk children and appropriate intervention is critical to deterring development of a persistent pattern of

---

17 Stay at home consists in the court's decision that the juvenile offender serves his sentence at home, at another private home, or in a public healthcare centre, in presence of the following conditions: (a) when the court has given a sentence up to two years of imprisonment or when there is a remained imprisonment period of two years until the full completion of the sentence, and (b) the offender supports with documents the existence of a special need to study, work, or meet family obligations (article 59/a of the P.C).
The 'stay at home' does not imply an offender's isolation within his or her home without a possibility to move. The provision enables the court to authorize the offender to move out of his/her home, engage in working or studying activities, i.e. regularly follow his studies or work, and even attend rehabilitation programs, when necessary. In this case, the probation service plays not only a supervisory role, but even a supporting role for the offender. The probation service drafts programs for the offender, and ensures the necessary assistance and help through co-operation with the local government authorities, health institutions, social services, NGOs et cetera.

antisocial behaviour (Krapp & Wilson 2005). Family and school have a key role in detecting child symptoms of disruptive behaviour. Parents and teachers should get actively involved in treatment programs and coordinate their efforts in that way that will best benefit the child. Public agencies should should pay enhanced attention to juveniles exposed to multiple risk factors such as poor parenting and disfavorable social conditions by engaging all concerned actors.
In order to fight juvenile delinquency resulting from exclusion, prevention programs have to focus more on school-based and community-based interventions. In this regard, special attention should be paid to the development of recreational programs in schools and to the implementation of school-linked services. School linked services consist in programs situated near schools that are supported by a combination of state and local resources, both public and private (Wang & Boyd, 2000). These services would significantly contribute in increasing youth engagement in community live through educative and recreational programs or involvement in certain working activites.

Community-based sentences. While personalised treatment programs keep offenders in passive roles as recipients of the related services, community-based interventions attempt to engage them in productive activities, provide opportunities for skill building, positive interaction and contributes in establishing ties with the community. This, inevitably reduces the prospects of future antisocial behavior of juveniles (Bazemore et al. 1997) Community-based programs create a more natural educative and recreational environment, and as a result, sends more clear messages of accountability towards juveniles.

Promoting functional education. Education only, can not lead to an educated society. It is time to establish the appropriate frame towards functional education. The primary aim of educational activities should be to increase young people accountability in order to make them capable to really understand the responsibility of their actions and the eventual consequences coming from them. Thus, education should be seen as a complex process involving many actors: family, local community, school staff, children's rights organizations which have to effectively play their roles in the overall process of children healthy development. In this respect, is necessary to design a cooperation framework to coordinate the action of social institutions and public

actors for supporting enhanced education projects. Considering the great influence of TV programs on children and adolescents it is necessary to reshape the media educative role on young generation. At this stage, Albanian televisions have a very poor guide related to children education-related problems. In order to expand the realization of TV educational programs for children, state agencies should provide appropriate incentives to those TV operators that show interest to work on educational projects for children, and when necessary, offer public promotion or assistance on the project.

References:

Abazaj, E. Social and legal politics related to juvenile criminality in Albania, in *Administration of Social Institutions in the Criminal Justice System*, project supported by OSBE Presence in Albania. Tirana: Gent Graphic Printing, 2014, pg. 87-100.

Agolli, I. *Increased alternative sentencing for juveniles.* http://www.zeriamerikes.com/ , accessed February 20, 2015.

Baird, A.A., et al. (1999). Functional magnetic resonance imaging of facial affect recognition in children and adolescents. Journal of the American Academy of Child and Adolescent Psychiatry 38(2):195-199; as cited in McCord, J., Widom, C.S, & Crowell, N.A. (2001). *Juvenile Crime, Juvenile Justice.* Washington: National Academy Press.

Bazemore, G., Pranis, K. & Umbreit, M.S. (1997). *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Century St. Paul, Minnesota: Center for Restorative Justice & Peacemaking.

Benekos, P.J. & Merlo, A.V. (2009).*Controversies in Juvenile Justice and Delinquency*, 2nd edition. New York: Routledge.

Chamlin, M.B., & Cochran, J.K. (1995). Assessing Messner and Rosenfeld's Institutional Anomie Theory: A Partial Test. *Criminology.* Volume 33, Issue 3, pg. 411–429.

Dickinson, T., & Crowe, A. (1997). *Capacity Building for Juvenile Substance Abuse Treatment.* U.S. Department of Justice - Juvenile Justice Bulletin.

Goldstein, P.J. The Drugs/Violence Nexus: A Tripartite Conceptual Framework. *Journal of Drug Issues* v. 39 (1985):143-174.

Krapp, K., & Wilson, J. (2005). *The Gale Encyclopedia of Children's Health: Infancy through Adolescence.* Thomson Gale.

Lilly, J.R., Francis T., Cullen, F.T., &. Ball, R.A. (2011). *Criminological Theory: Context and Consequences*. London: Sage Publications.

McCord, J., Widom, C.S, Crowell, N.A. (2001). *Juvenile Crime, Juvenile Justice.* Washington: National Academy Press.

Messner, S., & Rosenfeld, R. (2013). *Crime and the American Dream, 5th edition.* Belmont: Wadsworth Cengage Learning.

Trota, E.(2014). Factors influencing juvenile delinquency. in *Administration of Social Institutions in the Criminal Justice System,* project supported by the OSBE Presence in Albania. Tirana: Gent Graphic Printing, pg. 180-189.

Wang, M.C., & Boyd, W.L. (2000). *Improving Results for Children and Families: Linking Collaborative Services with School Reform Efforts*. Information age publishing.

Zhao, R. & Cao, L. *Social change and anomie: A cross-national study. Social Forces*, Volume 88, Number 3, 2010, pp. 1209-122.

Legislation and Reports:

Law no. 7895, dated 27.01.1995 'The Penal Code of the Republic of Albania'.

Juvenile Delinquency in Albania. Analysis of factors and causes of juvenile delinquency in Albania. Study published by Children's Human Rights Centre of Albania – CRCA Tirana: 2007, pp.13, http://www.unicef.org/albania/Al-JJ_De_Rep-07.pdf

Recommendation (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice. 24 September 2003. https://wcd.coe.int

Universal Periodic Review of Albania 19th session, 2013, submitted by Child Led Groups "Voice 16+" and Peer Educator's Group with the support of Save the Children and World Vision, pp.4, https://albania.savethechildren.net

World Youth Report, 2003: The Global Situation of Young People. United Nations. Dept. of Economic and Social Affairs, 2004.

Yearly report of the Albanian General Prosecutor "On the situation of criminality in 2013". http://www.pp.gov.al/web/raporti_2013_855.pdf

Websites:

http://www.drejtesia.gov.al/

http://www.dpbsh.gov.al/

http://www.sherbimiproves.gov.al/

http://www.instat.gov.al/

http://www.pp.gov.al/

Witness Protection and legal framework in Albania

by

*Dr. Brunilda Bara**

*Dr. Jonad Bara**

Abstract

A significant importance for the protection of individual's rights and freedoms is given to the rule of law. Behind the idea of rule of law are fundamental values: freedom, equality before the law, submission to law, a political regime in which all functionaries act strictly in accord with the constitution and legislation, and in which all citizens' rights are scrupulously respected.

Individuals' understanding of the law and their trust in the state and state's institutions is to be promoted, individuals' rights must be guaranteed, the administrative and judicial application of law facilitated.

Witness testimony is of crucial value when investigating and prosecuting crime. The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. Important aspect of the rule of law and the social welfare, especially when dealing with organized crime, terrorism and crime in the family is witness protection. Violence can erode fragile democratic regimes, and further undermine rule of law, justice and respect for human rights within societies.

* B. Bara, (✉)
Head of the Judicial and Documentation Department of the Constitutional Court of Albania. E-mail: bruna.bara@gjk.gov.al

* J. Bara(✉)
Foreign Affairs Department of the General Prosecution of the Republic of Albania.
E-mail: jbara@pp.gov.al

Providing witnesses with proper and adequate protection can play a crucial part in bringing offenders to justice since the successful conclusion of each stage in criminal proceedings often depends on the cooperation of witnesses. The position of the witness is therefore central to any modern criminal justice system. Keeping them safe and feeling safe can be critical to successful prosecutions and play a vital role in dismantling such networks, while giving other potential witnesses the confidence to come forward. Increasingly, countries are enacting legislation or adopting policies to protect witnesses whose cooperation with law enforcement authorities or testimony in a court of law would endanger their lives or those of their families.

1. Witness protection

Witness testimony is essential to the proper function of the criminal justice system in any state upholding the rule of law. It is essential for the effective investigation and prosecution of organized crime and terrorism, as it contributes to the dismantling of powerful criminal structures, including transnational ones. Organized criminality with a strong transnational reach has increased in Europe due to globalization, the abolition of border controls within the Schengen area and the development of new communication technologies. Witnesses requiring protection include not only victims or bystanders of crime, but also criminals. Without the cooperation of so-called "collaborators of justice" and their insiders' knowledge, effective investigation of serious crimes and dismantling criminal structures would be difficult, or even impossible. That is why sophisticated witness protection measures, including so-called "witness protection programs" (WPP), implying relocation and even the change of identity of the witness or collaborator of justice, have been developed over the last two decades.[1] Witness protection has also become very important in the fight against terrorism and domestic violence.

---

[1] Committee on Legal Affairs and Human Rights, *Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe Repor*t, Mr Arcadio Díaz Tejera, Spain, Draft resolution and draft recommendation adopted unanimously by the committee on 30 October 2014.

A criminal justice system's effectiveness is highly depending on its means to obtain information crucial for the investigation or the prosecution of crimes. Since sufficient physical evidence will not always be found, the information provided by witnesses has always been crucial.[2] When it comes to more serious and organized crimes, offenders will very often try to prevent witnesses from providing information they have by threatening or even eliminating them. Criminal justice systems have foreseen means to prevent that from happening, either by physically protecting witnesses or by diminishing or preventing the chance of them being identified during court proceedings.

When dealing with witness protection it is important to understand the purpose and forms of witness protection, legal instruments, governmental institutions that provide it, criteria to be met, services offered in this regard, rights and duties of the protected witnesses, etc.

Witness protection is provided for in international instruments, such as United Nations Convention against Transnational Organized Crime,[3] and European ones such as: Criminal Law Convention on Corruption,[4] Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,[5] Recommendation No.R (85) 11 On the Position of the Victim in the Framework of Criminal law and Procedure, Recommendation No.R (84) 4 On Domestic Violence, Recommendation No.R (87) 21 On Assistance to Victims and Prevention of Victimization, Recommendation No.R (97) 13 Concerning Intimidation of Witnesses and the rights of the Defence, Recommendation Rec (2001) 11 Concerning Guiding Principles on the Fight Against organized Crime, Recommendation Rec (2005)9 On The Protection of Witnesses and Collaborators Of Justice.

According to United States Office on Drug and Crime, a "witness" is a person in possession of information important to the judicial or criminal proceedings – that is relevant rather than his or her

---

2 *EU Standards in Witness Protection and Collaboration with Justice*, G. Vermeulen (ed), Maklu Publishers (2005), p.13.

3 Article 24 of the *United Nations Convention against Transnational Organized Crime* (15-th of November 2000), ratified by Albania the 22-nd August 2002.

4 Article 22 of the *Criminal Law Convention on Corruption* (27-th January 2001).

5 Articles 9, 10 of *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters* (8-th November 2001).

status or the form of testimony. Witnesses can be classified into three main categories: a) justice collaborators; b) victim-witnesses; c) Other types of witness (innocent bystanders, expert witnesses and others).[6] According to Appendix to Recommendation Rec(2005)9 of the Committee of Ministers to Member States On the Protection of Witnesses and Collaborators of Justice,[7] "witness" means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law), who is not included in the definition of "collaborator of justice". "Collaborator of justice" means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes.

Witness protection first came into prominence in the United States of America, in the 1970s, as a legally sanctioned procedure to be used in conjunction with a programme for dismantling Mafia-style criminal organizations. Until that time, the unwritten "code of silence" among members of the Mafia – known as omertà – held unchallenged sway, threatening death to anyone who broke ranks and cooperated with the police. Important witnesses could not be persuaded to testify for the state and key witnesses were lost to the concerted efforts of crime bosses targeted for prosecution. That early experience convinced the United States Department of Justice that a programme for the protection of witnesses had to be instituted.[8]

---

6 ibid, United States Office on Drug and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008, p.19

7 Recommendation Rec(2005)9 of the Committee of Ministers to Member States On the Protection of Witnesses and Collaborators of Justice, adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers' Deputies.

8 United States Office on Drug and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008, p.7, <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>, aksesuar më 06.02.2015. Joseph Valachi was the first member of the Italian-American Mafia to break with omertà, the code of silence, and profit witness protection.

Witness protection is offered in two distinctive forms: procedural protection and non-procedural protection. The first type relates to protective measures in the framework of the pre-trial investigation or the court trial and is specifically aimed at concealing the identity of the witness during criminal trial proceedings. The later type deals with non-procedural or material protection … aimed at witnesses who are effectively threatened and for whom the concealment of their identity during trial will not sufficiently safeguard their physical or mental integrity.[9] The making of a distinction between both types is especially important in relation to the rights of the defence, not to mention the financial consequences the choice for one of both types will imply.

Protection may be as simple as providing a police escort to the courtroom, offering temporary residence in a safe house or using modern communications technology (such as videoconferencing) for testimony. There are other cases, though, where cooperation by a witness is critical to successful prosecution but the reach and strength of the threatening criminal group is so powerful that extraordinary measures are required to ensure the witness's safety. In such cases, resettlement of the witness under a new identity in a new, undisclosed place of residence in the same country or even abroad may be the only viable alternative.[10]

Witness protection programs are based on the principle of neutrality, which means that participation should never be seen as a reward for testimony. Witnesses are admitted according to a set of predetermined criteria, including:

- The level of threat to the witness's life (the key element);
- The importance of the case;
- The decisive relevance of the testimony for the prosecution;
- The impossibility of obtaining the information from another source;
- The personality of the witness and their potential to adjust to a new life;
- The family situation of the person (in particular the number of family members to be covered by the programme).[11]

---

9 ibid, *EU Standards in Witness Protection and Collaboration with Justice*, G. Vermeulen (ed), Maklu Publishers (2005), p.19

10 *Good practices for the protection of witnesses in criminal proceedings involving organized crime,* United Nations Office on Drugs and Crime, 2008, p.1.

11 *Witness protection programmes, EU experiences in the international context*, Piotr Bąkowski,

The principle of open justice can sometimes act as a bar to successful prosecutions, particularly in homicides, organized crime and gun crime. Witnesses may fear that if their identity is revealed to the defendant, his associates or the public generally then they or their friends and family will be at risk of serious harm. The openness of judicial proceedings, a fundamental requirement enshrined in Article 6/1 of the European Convention on Human Rights (ECHR), may underpin the requirement for a prosecution witness to be identifiable not only to the defendant, but also to the open court. Article 6/1 supports the ability of the defendant to present his case and to test the prosecution case by cross-examination of prosecution witnesses.

Article 6/3 of the ECHR is particularly relevant when devising witness protection measures.[12] Such article entitles the accused, inter alia, to: a) examine or have examined witnesses against him; b) obtain the attendance of witnesses on his behalf; c) examine or have examined witnesses on his behalf under the same conditions as witnesses against him. This right secures the adversarial nature of criminal proceedings and requires that the defence be given a fair chance to test and challenge evidence against the defendant and to bring its own evidence. The latter must be granted under the same conditions as those applicable to the prosecution, therefore securing the principle of equality of arms, a principle which the ECHR long has held as integral and fundamental part of the fair trial.[13]

When determining what evidence can be classified as "witness evidence" for the purposes of the Convention, the European Court of Human Rights (ECtHR) is not bound with the domestic law. Instead, it has developed an autonomous concept of witness under Article 6.[14] The definition includes all depositions which might serve to a material degree as a basis for convictions, irrespective of whether it was made by

---

<http://www.europarl.europa.eu/document/activities/cont/201301/20130129ATT59967/20130129ATT59967EN.pdf> , aksesuar më 05.02.2015.

12 Article 6/3 of ECHR: "Everyone charged with a criminal offence has the following minimum rights: … d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; …".

13 *Procedural protective measures for witnesses, Training manual for law-enforcement agencies and the judiciary*, Council of Europe Publishing, 2006, p.43.

14 *Windisch v Austria*, Application no. 12489/86, pp 23.

a witness in a strict sense. It is therefore the function of the witness and the evidence he/she provides which matters, rather than his/her status or the form of the testimony, which could differ according to the national system. In order to be classified as a witness for the purposes of Article 6, it is not even necessary to be questioned in court. Again, what matters is that the statements, even indirectly (e.g. through a police report) have been taken into account by the court evaluating the case.[15]

Even though ECHR does not explicitly deal with rights of the victims and witnesses, some rights can be derived from different provisions of the Convention that are relevant to the position of a witness and in particular of a victim in criminal proceedings, such as: positive obligation of the State to protect life (Article 2); positive obligation of the State to protect the right not to be subjected to inhuman or or degrading treatment when giving evidence (Article 3); the right not to be detained without proper safeguards (Article 5); child witnesses and complainers have an implied right under the provisions to the requirement that the accused is entitled to a public hearing (Article 6); the right to respect for private and family life (Article 8).

ECtHR, in its jurisprudence, has stated that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case.[16]

---

15 *Procedural protective measures for witnesses, Training manual for law-enforcement agencies and the judiciary*, Council of Europe Publishing, 2006, p.44

16 *R.R. and others v. Hungary*, Application no. 19400/11), pp 28-29.

Regarding Article 6/3/d, ECtHR has stated that the right to a fair administration of justice holds so prominent a place in a democratic society that it cannot be sacrificed to expediency. The Convention does not preclude reliance, at the investigation stage of criminal proceedings, on sources such as anonymous informants. However, the subsequent use of anonymous statements as sufficient evidence to found a conviction, involves limitations on the rights of the defence which are irreconcilable with the guarantees contained in Article 6.[17] The evidence must in principle be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use as evidence of statements obtained at the pre-trial stage (by anonymous witnesses) is not always in itself inconsistent with paragraphs 3(d) and 1 of Article 6 (art. 6-3-d, art. 6-1), provided the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statement or at a later stage of the proceedings.[18]

ECtHR has confirmed, in a number of its rulings, that the guaranties of Article 6/3/d are not absolute. Limitations to such rights are classified in 4 categories:[19]

- absent witness (where the witness who made a prior statement to the police or to judicial authorities during pre-trial proceedings cannot be brought to court, cannot be located or is dead);[20]

- "precious witnesses" (witnesses for whom there exists a public interest not to reveal their identity such as for example informants and undercover agents);[21]

- vulnerable witnesses (witnesses whose testimony in open court and confrontation with the accused would cause her/him further significant trauma);[22]

---

17 *Kostovski v The Netherlands*, Application no. 11454/85 , pp 44.

18 *Windisch v Austria*, ibid. *Kostovski v The Netherlands*, ibid, pp 41; *Bonev v Bulgaria*, Application no. 60018/00, pp 43.

19 *Procedural protective measures for witnesses, Training manual for law-enforcement agencies and the judiciary*, Council of Europe Publishing, 2006, p.44

20 *Rachdad v France*, Application no. 71846/01.

21 *Van Mechelen and others v The Netherlands*, Application nos. 21363/93, 21364/93, 21427/93, 22056/93.

22 *Finkensieper v. The Netherlands*, Application no. 19525/92.

- intimidated witnesses.[23]

In the context of *absent witnesses*, the Court set out two considerations in determining whether the admission of statements was compatible with the right to a fair trial. First, it had to be established that there was a good reason for the non-attendance of the witness. Second, even where there was a good reason, where a conviction was based solely or to a decisive extent on statements made by a person whom the accused had had no opportunity to examine, the rights of the defence might be restricted to an extent incompatible with the guarantees of Article 6. Accordingly, when the evidence of an absent witness was the sole or decisive basis for a conviction, sufficient counterbalancing factors were required, including the existence of strong procedural safeguards, which permitted a fair and proper assessment of the reliability of that evidence to take place.[24]

In cases concerning *anonymous witnesses*, Article 6 § 3 (d) imposes three requirements: first, there has to be a good reason to keep secret the identity of the witness; second, the Court has to consider whether the evidence of the anonymous witness is the sole or decisive basis of the conviction; and third, where a conviction is based solely or decisively on the evidence of anonymous witnesses, the Court has to satisfy itself that there are sufficient counterbalancing factors, including strong procedural safeguards, to permit a fair and proper assessment of the reliability of that evidence to take place.[25] Unlike absent witnesses, when anonymous witnesses are confronted in person by defence counsel, who is able to press them on any inconsistencies in their account, the judge, the jury and counsel are able to observe the witnesses' demeanor under questioning and form a view as to their truthfulness and reliability, defence rights and the right to a fair trial are guaranteed.[26]

ECtHR has stated that the use of statements made by anonymous witnesses to found a conviction is not in all circumstances incompatible with the Convention. However, if the anonymity of prosecution

---

23 *Mbrojtja e Dëshmitarëve të Krimeve të Rënda: Manual Trajnues për Organet e Zbatimit të Ligjit dhe gjyqësorin,* Publikime të Këshillit të Europës, Botimet Dudaj, p.50.

24 *Ellis and Simms and Martin v. the United Kingdom,* Application nos. 46099/06 and 46699/06, pp 73.

25 *Al-Khawaja and Tahery v. the United Kingdom* (Grand Chamber), nos. 26766/05 and 22228/06.

26 *Ellis and Simms and Martin v. the United Kingdom,* ibid.

witnesses is maintained, the defence will be faced with difficulties which criminal proceedings should not normally involve. Accordingly, the Court has recognised that in such cases Article 6 § 1, taken together with Article 6 § 3 (d), require that the handicaps under which the defence labours be sufficiently counterbalanced by the procedures followed by the judicial authorities. With this in mind, an applicant should not be prevented from testing the anonymous witness's reliability. In addition, no conviction should be based either solely or to a decisive extent on anonymous statements.[27]

2. Witness protection in Albania

An important aspect of the protection of rights of the accused in Albania, as provided in the Constitution of Albania, is examination of witnesses.[28] Albania has signed and ratified and, according to Article 116 of the Constitution of Albania, recognizes and applies the rights guaranteed by ECHR.

Bearing in mind the seriousness of organized crime in Albania and the importance of the fight against crime on the protection of the rule of law and democracy, witness protection is considered very important in Albania. Albanian institutions have taken necessary steps, in collaboration also with European counterparts, on the protection of witnesses, rule of law, social welfare and justice.

Even though Albanian Criminal Code provides that intimidation of witnesses and victims of crime in order not to refer the offence to the authorities, or if referred to withdraw the application, is punishable up to four years imprisonment,[29] the fight against organized crime, terrorism and domestic violence required necessary steps to be taken for the protection of witnesses and collaborators of justice. It was only in 2004 that Albanian Criminal Procedure Code (ACPC)[30] provided for the protection of collaborators of justice, and procedural measures applied to

---

27 *Birutis and others v Lithuania*, Applications no.47698/99 and 48115/99, pp 29.

28 Article 31/"d" of the Constitution of Albania: *"During trial everyone is entitled to ...d) examine present witnesses or demand the presence in trial of witnesses, experts and other individuals who can explain the facts of the case".*

29 Albanian Criminal Code, Article 311.

30 Law no.9276, dated 16.09.2004 "On several changes and additions to Law no.7905, dated 21.03.1995 "Criminal Procedure Code of Albania"", Articles 37/a and 361/a

the interrogation of collaborators of justice and protected witnesses.[31] It was Law no.9205, dated 15.03.2004 "On the protection of witnesses and collaborators of justice" (Law no.9205) which initially lay down important measures on the protection of such individuals. This law was later abrogated by Law no.10173, dated 22.10.2009 "On the protection of witnesses and collaborators of justice", in force today.[32] ACPC also provides for the special measures to be taken while interrogating collaborators of justice and protected witnesses.[33]

Today's law "On the protection of witnesses and collaborators of justice" (Law no.10173) provides that in Albania witness protection is offered as procedural and non-procedural protection (through WPP). It also provides responsible organs for the preparation, evaluation, approval and application of WPP; special, temporary and extraordinary measures and procedures; rights and obligations of parties, etc. The law also provides the creation and organizational structure of the Department for the Protection of Witnesses and Collaborators of Justice (DPWCJ), as a special department within Crime Investigation Unit at State's Police General Department. Structure and composition of DPWCJ are approved by Minister of Internal Affairs.[34]

---

31 Article 37/a of Albanian Criminal Procedure Code: "1. The person under investigations or the defendant charged with a serious crime committed in cooperation, when he cooperates with the prosecutor or with the court, must give full information and without reserves or condition on all the facts, events and circumstances, that serve as a fundamental evidence for the discovery, the investigation, the trial and the prevention of the serious crimes and the repair of the damages caused by them" , added by Law no.9276, dated 16.09.2004 "On several changes and additions to the Albanian Criminal Procedure Code"; Articles 361/7, 361/a of ACPC (on interrogation, in distance, of witnesses and collaborators of justice).

32 Law no.10173, dated 22.10.2009 "On the protection of witnesses and collaborators of justice", changed by Law no.10461, dated 13.09.2011. Other legal instruments that protect witnesses and collaborators of justice are: Law no.9110, dated 24.7.2003 "On the organization and functioning of the court on serious crimes"; Law no. 9258, dated 15.7.2004 "On measures to combat fighting terrorism"; Law no.10192, dated 3.12.2009 "On prevention and fight against organized crime through preventive measures on property"; Law no. 9669, date 18.12.2006 "On measures against domestic violence"; Joint directives of the General Prosecution with Ministry of Internal Affairs, etc.

33 Article 361 of ACPC. The Criminal Code of Albania of 1995 provided that such offence was punishable by a fine or imprisonment up to two years. The changes made to the Code in 2007 provided a stronger punishment for such an offence.

34 Law no.9205 provided that such rights rested with the Minister of Public Order. This was later changed by Law no.10173.

DPWCJ has its own budget, as part of General State's Police Department budget. Administration of its funds, documentation of expenses and control of its financial activity are conducted in such a way that identification of such data is impossible.[35] Even though such Department prepares periodical reports regarding its activity, the reports contain only statistics. No provision of laws on the right to be informed puts the Department under the obligation to inform state institutions, press or the general public. The reports are given to the Commission on the Evaluation of Witness Protection and Collaborators of Justice Program (the Commission).[36] Vice Minister of Internal Affairs is the chairman of the Commission. The Commission is also composed of a judge, proposed by High Council of Justice, on the duty of deputy chairman; a prosecutor, proposed by the General Prosecutor, a judicial police officer proposed by the Chairman of State Police. The head of DPWCJ is also a member of the Commission.[37] Members are elected for a three year term with the right to be reelected. Department's employees are subject to verifications by Internal Control Service of the Ministry of Internal Affairs.

DPWCJ, when considers it necessary, while applying witness protection measures, can require information from other state institutions; formally asks them not to give certain information to individuals who, usually, are entitled to; and must be informed when individuals or entities require information on protected witnesses. DPWCJ can use and ask fake identities to be created for Department's employees or protected witnesses. When using fake identities in accordance with this law, public officials or protected witnesses are considered that they are acting in accordance with their rights or duties, as provided by Article 21 of Albanian Criminal Code.[38]

---

35 Law no.10173, Article 5. Previous Law no.9205 did not provide any limitations to the data and statistics prepared by DPWCJ (Article 5/g), nor the funds allocated to such Department.

36 In Italy, the respective Commission - Central Commission per the Application of Special Protection Measures - is composed of 7 members.

37 ibid, Article 9. Previous Law no.9205 provided that The Commission was composed of 7 members.

38 Article 21 of ACC: "An individual will not be held criminally responsible if he acts in exercise of his rights or duties provided by law, or while exercising an order of the competent authority, unless such order is manifestly illicit. If the offence has been

The right to propose the application of WPP rests with the General Prosecutor.[39] Such proposal is presented to the head of the Commission, who requires the Department to evaluate physical and psychological aspects of the individual proposed, the risks involved, whether or not the individual has committed any offences, etc.[40] The proposals of the Department are then evaluated by the Commission. Decisions of the Commission are valid when consent is given by at least three members. Within ten days of approval of acceptance in the program the Department draws up the agreement for the protection offered, which is signed by the person who will undergo witness protection, his parent or legal guardian in cases of minor witnesses. DPWCJ informs the General Prosecutor that the agreement has been signed, but content of the agreement; details on the location or the new identity of the witness are given neither to the General Prosecutor, nor to the prosecutor of the case or the Commission.[41]

The agreement provides rights and duties of protected witnesses, special measures for the protection, depending on the level of danger suspension or end of the protection program. The new Law no.10137 provides also for the right to complain against measures taken, which the previous Law no.9205 did not. It also provides for collaboration with international counterparts, transferring protected witnesses abroad or accepting witnesses from other countries.

Acceptance in the witness or collaborator of justice protection program requires three criteria: state of danger, suitability and free will

committed due to an illicit order, the person who gave the order will be held responsible."

39 Law no.10173, Article 15/1. In Italy, according to Law of 13 February 2001, n.45 "Changes to Law on the protection and treatment of witnesses and collaborators of justice", the proposal rests with the prosecutor of the case. In cases when investigation and proceedings are carried out by several prosecutors, due to simultaneous proceedings on the same case or cases related, the dispute is solved by District's Antimafia Prosecutor. In France, there is no specific law on witness protection. France introduced witness protection in its Criminal Procedure Code in 2001. According Article 706-58 of French Criminal Procedure Code, the request to enter witness protection program is presented by the prosecutor of the case or investigating judge *(judge d'instruction)*. The judge of liberty and detention can decide on the anonymity of the declarations of the person under witness protection. Such decision of the judge is entered on the *procès-verbal* of the testimony.

40 Law no.10173, Article 16.

41 ibid, Article 19/3.

of the person involved. Suitability means psychological, social and physical conditions of the witness or collaborator, who must show and create enough confidence to the state organs that he will obey the rules and not put his or other's life in danger.[42]

All documentation and information regarding proposal, acceptance, application of WPP and the agreements constitute "classified information" and are subject to the Law no.8457, dated 11.02.1999 "On information classified "state secret"".[43] Nevertheless, Law no.8457 has no provisions regarding protection of classified information, acquired while exercising a state function, by employees that retire, change their job, or are fired. Such obligations are neither provided by Law no.10173 "On the protection of witnesses and collaborators of justice". This is something to be taken in consideration by the legislator for future changes to Law no.10173. The changes should provide for classified information to be protected by these categories of employees (retire, change their job, or are fired), for a period of time, say 5-10 years, depending on the particular case and information.

3. **Conclusions**

Witness protection is a very important part of the rule of law, democracy and welfare of the state and its citizens. The war against crime, terrorism and the protection of the institute of family, require the development of effective mechanisms for a more effective criminal justice system. As an old saying goes "Justice must not only be done, but must be seen to be done"[44]. Yes in Albania there is a law for the protection of witnesses and collaborators of justice, but people must understand that the state and its institutions are working on helping such people. A website with general statistics helps them understand that the justice system is effective. The data on the statistic can be such as it

---

42 ibid, Article 10/2. According to Italian Law of 13 February 2001, n.4, Article 2/5, the individual to enter witness protection must be under grave, actual and concrete danger. The French Criminal Procedure Code, Article 706-58, provides that there must be danger to the life and physical integrity of the person involved, to his family or his relatives.

43 ibid, Article 14/1.

44 *R v Sussex Justices, ex parte McCarthy*, [1924] 1 KB 256, [1923] All ER 233.

won't allow identification of people entered in the program, the total number, etc. Let' say statistic can be prepared every two to three years. Case prosecutors should be directly involved with witness protection programs. Another aspect to be considered is the long term responsibility of everyone involved in such programs. Studies on witness intimidation and failed prosecutions as a result of intimidation or suppression of witnesses could also be useful. Having a good Witness Protection Program helps the protection of justice and legal order, encourages people to speak up against the criminal and other anti-social elements and helps improve the governance in the country and ensures security of the nation.

Bibliography

Books

Vermeulen, G. EU Standards in Witness Protection and Collaboration with Justice

Procedural protective measures for witnesses, Training manual for law-enforcement agencies and the judiciary, Council of Europe Publishing

Mbrojtja e Dëshmitarëve të Krimeve të Rënda: Manual Trajnues për Organet e Zbatimit të Ligjit dhe Gjyqësorin, Publikime të Këshillit të Europës

Reports

Díaz, A. Committee on Legal Affairs and Human Rights, Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe Report,

United States Office on Drug and Crime, Good practices for the protection of witnesses in criminal proceedings involving organized crime

Conventions and Recommendations

United Nations Convention against Transnational Organized Crime

Criminal Law Convention on Corruption

European Convention on Mutual Assistance in Criminal Matters

European Convention On Human Rights

Recommendation Rec(2005)9 of the Committee of Ministers to Member States On the Protection of Witnesses and Collaborators of Justice

Recommendation No.R (85) 11 On the Position of the Victim in the Framework of Criminal law and Procedure,
Recommendation No.R (84) 4 On Domestic Violence,
Recommendation No.R (87) 21 On Assistance to Victims and Prevention of Victimization,
Recommendation No.R (97) 13 Concerning Intimidation of Witnesses and the rights of the Defence,
Recommendation Rec (2001) 11 Concerning Guiding Principles on the Fight Against organized Crime,

Codes
Criminal Code of Albania
Criminal Procedure Code of Albania
Criminal Procedure Code of France

Articles
Witness protection programmes, EU experiences in the international context, Piotr Bąkowski,

ECtHR cases

Al-Khawaja and Tahery v. the United Kingdom
Birutis and others v Lithuania
Bonev v Bulgaria
Ellis and Simms and Martin v. the United Kingdom
Finkensieper v. The Netherlands
Kostovski v The Netherlands
Rachdad v France
R.R. and others v. Hungary
Van Mechelen and others v The Netherlands
Windisch v Austria

Laws

Law no.9205, dated 15.03.2004 "On the protection of witnesses and collaborators of justice"
Law no.10173, dated 22.10.2009 "On the protection of witnesses and collaborators of justice"
Law no.9110, dated 24.7.2003 "On the organization and functioning of the court on serious crimes";
Law no. 9258, dated 15.7.2004 "On measures to combat fighting terrorism";

Law no.10192, dated 3.12.2009 “On prevention and fight against organized crime through preventive measures on property”;
Law no. 9669, date 18.12.2006 “On measures against domestic violence”

The impact of social policy on the control of crime

by

*Valbona Nano**

Abstract

Law and order, social control, prevention and security policy are key terms that determine the relationship between the normal and the abnormal, legal and illegal, and relatively according to some authors, relationship between the interests of different social classes and those of the ruling elite. It is useful to make an analysis of changes in attitudes and policies towards problematic situations and social problems caused by the evolution and social or political transformation of contemporary societies.

It is clear to everyone that the social policy objectives include social justice (fairness, equality of opportunity), social security (protection against major risks of life), social peace, increase of prosperity and wider participation in this common prosperity. In general, the state of crime in a given time and place is seen as the result of social controls that unfold. Indeed, this finding could somehow help criminologists in their analysis, so that this latter could be deep, we should consider the volume, distribution and nature of crime and victimization as the consequences of what social actors decided to do or not about the crime, and interpret the characteristics of the crime in a given place and time as the effects of the strategic responses of offenders to an environment largely shaped by all preventive and repressive actions of the society. The first part of the paper aims to explain the concept of social policy and specifically social control that is manifested by criminal policy. The second part deals essential components of the criminal policy, highlights the theories of social control, the typology, and the evolution of

* V. Nano (✉)
PhD. Cand. Faculty of Law, University of Tirana, Albania
E-mail: nanovalbona@yahoo.fr

the form of social control. The third and final section presents the expected results.

Keywords: *security, crime policy, social control, prevention.*

Introduction

"Nothing is possible without men; nothing is lasting without institutions" said Jean Monnet in memoirs in 1976. We understand the meaning of these words, because these are the institutions that implement social policies resulting in the provisions and measures to prevent, remove or alleviate the distress and social problems at individual or collective level, or to seek the promotion of the well-being of the most vulnerable groups in society.
Currently the concept of "security" has become a need debated in public opinion and is characterized by the fact that it is now" a goal in itself." The problem that arises today is the reliability and certainty of protection and not specifically the object of protection. Now the most important is not the original object of protection, but the concept of protection, which is the subject of our thinking and our actions. Under these conditions, this paper aims to treat as objects of social policies prevention, control and redistribution of risks that put the society's continuity in danger and which are generated by modern industrial societies.

Purpose and Objective

The purpose of this paper is to assess the impact of social policies in the control of crime in national and international level.
The objective of this paper is to highlight the impact of social policies for crime control in modern society that is characterized by the decline of the traditional State-Providence and the process of globalization. In this context, the concepts of prevention, repression and control, not only refer to the crime in the strict sense, but also have acquired a broader social significance.

Hypotheses and Methodology

To answer the research question of this paper "What is the impact of

social policy on the control of crime?", I used a methodology that consists in evaluating the results of the analysis of social control theories, typology and the results so far of social control as a mean to prevent the negative consequences of a violation of law for the stability of the system and for the confidence of persons in law. They help to prove the correlation between empowerment of social policies of prevention and a more efficient design of all social control system for strategies, tactics and social sanctions in order to achieve optimal control of crime.

1. Birth and development of social policies

What is social policy? Beccaria said that ‘’the safest way, but more difficult to fight against crime is to improve education’’[158]. More than a century later, in 1882 Von Liszt pronounced this sentence became famous: "Good social policy is the best criminal policy."
Regarding the genesis, it was the german criminal lawyer Feuerbach in 1801 that used the concept of "kriminalpolitik" to mean "all repressive methods by which the state reacts against crime"[159] and advocated as Beccaria in 1764, legality of criminal Law: the written criminal law is the cornerstone of state criminal policy, a barrier against arbitrariness and can put pressure on the population (impact of the "sacred code of laws" of Beccaria, "psychological coercion" of Feuerbach) to restrain from committing offenses. It is obvious that social policy, education policy, criminal policy have commonalities rather common roots, because they are public policies, part of social control, whose relationship would be: politics, public policies, economic and social policies, social control policies, security policies, criminal and penal policies.
By the concept of "social control", Ross designated at the end of the 19th century the ability that a society has to regulate itself based on principles and values guides. Social control is defined as ‘’the set of values, norms and actions (prevention, intervention, response) that are implemented in

158 C. Beccaria, *Des délits et des peines*, Genève, Droz, 1965, p 78

159 M. Delmas-Marty, Les grands systemes de politique criminelle, collThemis Paris P.U.F., 1992, p 13

a society to regulate or discipline social life[160]. Social control therefore includes all the socialization process (education, integration) and re-socialization and reintegration (one of the goals of penal policies). Security policies, which are part of social control processes include ‘’action performed by a state to protect its citizens against external and internal dangers (conflicts, crises, terrorist attacks, accidents, crimes) threatening their safety and safety of life society’’[161]. So they are wider and should include criminal policy.

For Cusson, social control of crime "means the efforts of all to keep delinquency within controllable limits" or "all the means used by the members of a society specifically to contain or reduce the number and seriousness of offenses. As we can see, the definition excludes economic, social and demographic policies which produce this result, without their participants have the clear intention"[162]. This is a narrower definition of social control which corresponds to the concept of criminal policy.

If the crime is a problem in human societies is that the man does not automatically submit to the laws, as he does not give into temptations every turn. Since Malinowski[163], we stopped believing that men obey voluntarily the laws or customs. "Is it not contrary to human nature to accept any constraint, and do you ever see a man, whether civilized or primitive, comply with regulations and taboos unpleasant, painful, even cruel, without being forced and constrained by a force beyond his means of resistance? " Thus, the man is not naturally good, but that does not necessarily mean that he is naturally evil. This means that he can be tempted by theft or violence and that nature has not endowed him with an instinct might impede the temptation. As such, every human being is a potential offender. But what would be the solution to deal with this phenomenon? For some sociologists the solution would be the social control. The criminal impulses of each person are held in check by what Durkheim called social constraint and what contemporary sociologists

160 N. Queloz, La sociologie du contrôle social, *Revue internationale de sociologie*, 1988, p. 41.

161 Michel Bergès, “Notes de lecture. Traité de sécurité intérieure.” (2008)

162 M. Cusson, *La criminologie*, Paris, Hachette, 4e édition 2005, p. 119.

163 B. Malinowski, Crime and Custom in Savage Society, 1926, p. 12

mean by the terms "social control"[164]. This refers to all the ways in which members of a society impose themselves compliance necessary for life in common, or all the means specifically used by men to prevent or limit crime.

Social control is exercised when, an individual that is violating law, meets a social origin resistance which prevents him from taking action or, at least, make him hesitant. Since Durkheim, sociologists have often tended to think that social control is reduced to the influence of society on its members. In fact, this way of conceiving opposes categorically individual and society. For this, I think it is important to retain the concept of Crozier[165] which insists that men "impose themselves compliance". In this case, the key to social control should first be in the individual, and then in the game of interaction between members of the same group. Submission to the laws would then be explained by motivations that individuals develop in their relationships with others.

Finally, social control is based therefore, not on the influence of the group on its members, but on structuring interpersonal relationships in a way that compliance becomes profitable and rewarding for those involved.

2. Goals, major functions and action's means of social policy

In order to light the goals and major functions of social policy, we must first consider objects of criminal policy as crimes, criminals as criminal actors and social representations they generate, crime designed "objective" as all the crimes committed in a given time and space and "subjective" as the object of insecurity and fear feelings, and responses to these phenomena, including protection of victims of crime.

Goal criminal policy is to: prevent crime or to prevent its occurrence; to reduce and condamn where it exists; to protect society (public goods, security and public peace) and property of people and their fundamental rights, both victims and litigants authors.

To realize these goals, the criminal policy has the following major functions: prevention (within the meaning of true pro-action);

---

164 Émile Durkheim, Le suicide. Étude de sociologie, 1897. Les Presses universitaires de France, 2e édition, 1967. Collection: Bibliothèque de philosophie contemporaine.

165 M. Crozier et E. Fiedberg. L'acteur et le systeme: les contraintes de l'action collective", Editions du Seuil, 1981. Op.cit., f. 29-30)

intervention, which includes control action's, detection, referral and recording; reaction whose shapes are varied and concerns specifically two categories of actors: the punishment of offenders, with penalties that can hit various property of persons convicted and measures (monitoring, treatment, security); assistance to crime victims, in various forms of support and repair. It uses many action means as public policy, education, prevention and control; penal policies, with criminal law, the judiciary organisation, criminal procedure and the application's field of sanctions.

Maurice Cusson distinguishes three main categories of social control action of the crime: Informal: through education and developmental prevention (formation of conscience); situational: for self-protection (public and private); criminal: for sentences and criminal penalties, which can target neutralization, persuasion, rehabilitation and deterrence.
Together these three types of action have a crime limiting effect: "According to this logic, crime is in turn shaped by the decisions of the agents of social control, by the myriad of social actors who decide to do or not to do something against crime. Or, more precisely, it is the result of gathering of social control agents decisions and those of offenders»[166].

2.1 Social Control Theories

Social control theories can be summarized in five propositions:
1. Each individual has criminal potentialities simply because the man is a creature of desire for which crime can be a convenient expedient, an easy way to solve a host of problems and to satisfy certain needs.
2. To keep in check these disturbing impulses, societies impose rules to individuals and exert pressure to comply.
3. It is this pressure which is designated by the term social control. By this, we mean all the ways in which members of a society impose to each other necessary compliance with the rules of the social game.
4. Social control will be exercised even more strongly about an individual that he is highly integrated in society.

166 M. Cusson, La Criminologie, Hachette, 2005, p. 136

5. When society does not meet the necessary conditions for the exercise of social control, including integration with the group, antisocial impulses of individuals can occur freely. We witness an upsurge in crime.

A Tipology of Social Control. One of the most serious obstacles to the systematic study of social control is the fact that we have not been able to put some order in the diversity of its manifestations. We do not find typology that goes beyond the descriptive or administrative categories - prison, police or courts. By social control, we defined "all the means by which a society, a social group or rather the men who make up the group as a whole structured manage to impose themselves on maintaining a minimum of compliance and compatibility in their behavior. "
Cusson has built a theoretical typology of social control which consists on four types, each having its own logic: 1. treating 2. morality 3. deterrence 4. justice.

1. The treatment is a form of social control that, during the last half century, has had the favor of social scientists and the broad sectors of public opinion. The use of therapeutic measures to rehabilitate, retrain, resocialize offenders is based on the assumption that crime is a symptom of a psychological problem. So it is important to diagnose the disorder that is the cause of delinquent behavior and to treat it. The aim is to restore the psychological balance of the offender and to respond to individual needs. The patient is restored when the therapist is able to change the aspects of personality that drove him to crime.

2. Morality. It was long believed, and many people still believe, that crime is kept in check by strong moral convictions. The concepts of good and evil, supported by pressure from those who disapprove crime, form the bulk of what may be called the moral crime control. This is based on assumption that the disapproval of crime will influence the behavior of people. In fact, the individual who is convinced that crime is an unworthy act acquires, by extension, a motivation to resist temptation. The moral control relies on the need of human beings to be respected. It also focuses on their desire to be well seen by people whose opinion counts: those they believe and those to which they are attached. Thus, the person undergoing the

action of morality prevents crime, because he is convinced that if yielded to temptation, he would be dishonored to his eyes and to eyes of others.

3. Deterrence. The most visible social control mode and best known is based on force. The aim is to submit citizens to the laws by inspiring them a "healthy fear" or by making them unable to commit crimes. Through threats and effective implementation of punishment, the society puts citizens before a choice: submit or incur a penalty. Neutralization is a complementary measure to bullying: mainly by incarceration, the offender is physically unable to commit new crimes. The characteristic of force is that to be effective, it does not require the consent of the person on whom it is exercised.

4. Justice is a diffuse concept to which we constantly refer, but which has been little studied, except by philosophers. Justice established within the social body a method of allocating assets and costs, through various arbitrations, takes into account the rights of everyone. Prohibitions of theft and aggression can meet the demands for justice of the individual because it is in his interest to live in a society where everyone respects the life and property of others. He thus enjoys greater freedom compatible with that of others, is protected against attacks on his rights while respecting reciprocally those of others.

Principles of justice favor the emergence of alternatives to crime, essentially in the form of relations based on reciprocity. These relationships are sustained through self-regulatory mechanisms by which every citizen is taken to enforce the rules that he respects himself. The crime is then held in check because it puts into question the long-term interests of the author, and because it justifies the victims in reactions such as claims, breach or revenge which tend to restore the balance that is to say, a fair distribution of assets and costs.

3. The evolution of forms of social control

Social control aims to ensure compliance with the rules that govern life in society and to fight against deviant behavior. In a broad sense, it consists to enact social and legal norms based on a set of values and to

enforce them. In this sense, the socialization of individuals within a group or a society is part of this evolution and many institutions are the agents (family, school, justice ...) it then bears both on education, religion, law, or custom. Considered more restrictively, social control includes measures to enforce the rule and punish deviance. It is reduced to the set of penalties for perpetrators of deviant behavior.

If there exist an internal social control which implies a duty granted by the individual himself, penalties of transgression of norms, whether positive or negative, are an external social control that can take two forms: 1. the formal social control is that which is provided by social groups and specific institutions (labor inspection, justice...). The sanctions are enacted usually in writing and impersonal form (road Code, rules of a high school) and are varied in nature: administrative sanctions (reprimand, warning), religious (penance), legal and criminal penalties (fines, damages and interests, imprisonment); 2. Informal social control is exercised over the social interactions of every day life and has a non-institutional character. It is often predominant in primary groups like family. Social behaviors are regulated through and by social interactions. Sanctions may take the form of approvals (smile of acquiescence, congratulations, gifts) or disapproval (frown, mocking laughter, putting in quarantine ...). The border between these two forms of control is sometimes blurred: thus, in the family, at school or in the workplace, formal and informal control can coexist.

The predominance of social control by specialized bodies. Social control performed by specialized social bodies does not concern only crimes, because in modern societies it extends increasingly to other forms of deviance. Indeed, when certain offenses tend to disappear, we define new offenses because paradoxically, when security is growing, it still requires more protection. A repressive law is developing in areas where customs and morality once sufficed to govern ways of living together (no smoking in places open to the public or laws against the illegal downloading of music and /or movies by example). We are witnessing an expansion of law's volume in all areas of daily life. Many examples can be given: family law (criminalization of domestic violence), the fight against the risks of passive smoking, etc. Formal control will even protect the individual regarding itself against risky behavior.

4. The results of social control

Social control performs its function and helps to reduce the number of crimes. In fact this view is disputed by many specialists of the field. Thus positivist criminologists have consistently questioned the idea that social control, with the exception of therapeutic measures, could have a real impact on crime. According to them, the factors of biological, psychological or sociological character affecting crime do not have great thing to do with what we do in trying to prevent it. This constatation led criminologists to develop these theories in which social control was simply ignored as a relevant variable. It was considered so unimportant that in many of criminology treated, the specialists do not bother to talk about it, except to point out, in passing, that the crime has always existed although it always was cruelly punished.

For contemporary interactionist sociologists, social reaction against crime is a labeling process by which individuals who have the misfortune of getting caught are marked as criminals. A negative identity is thus imposed on them. The offender stigmatized, unable to regain his place in the social circuit, is forced to lead a pariah, activity that requires him to criminal activity from which we do not see how he comes out.
Even now, the reasoning dominates criminology is the following. Despite all efforts that are always made to control crime, it still exists. Social control measures are ineffective, or worse, they aggravate the problem. However, this analysis was recently challenged with growing force by a group of sociologists and new economists, who dare, at the end of their research, affirm that punitive measures contribute to reducing crime.
The idea that any form of social control can produce results is *a priori* quite defensible. Indeed, if we accept that men are tempted by crime and they do not have natural internal control that would prevent them from succumbing, we would expect from them to spend their time to rob and kill each other. However, this is not the case. Therefore, could not this fact be explained precisely by social control? While it is clear that it was never able to completely eliminate the crime, this does not exclude the possibility that it has a relative effectiveness. It would be surprising if all the measures which men used to fight against crime were totally ineffective. This presupposes a very pessimistic view of the ability of

humanity to provide solutions to its problems. We often used this as evidence that social control is doomed to failure. That may be true, but this remains unproven.

Contemporary theories differ from traditional analyzes by the importance they attach to the regulatory influence of society, which is why we refer them as "social control". The authorship of this notion can be traced to Durkheim who used the term "social constraints" to highlight the fact that society imposes its influence on its members and forces them, despite their agreement or disagreement, to submit to rules of law and morality.

The society has to face collectively the challenges of social cohesion: there are many problems and we must find specific solutions to local and global levels. The attitude of society that takes care collectively of its own cohesion is revealed by the articulation of these two levels - which comes to governance. In fact, although faced with specific problems, each of the global and local level of political action will lead to lasting effects only if the solutions developed are both consistent and relevant to the context. Where appropriate, global level would conflict with the requirements put forward by citizenship and local measures would not have the support and resources they need.

To combat urban marginalization, a reform of public administration actively including the different levels and actors has to be deployed in parallel with the collective organization and promotion of spontaneous citizens' initiative, the empowerment of residents cope with the demands of neighborhoods and, in general, the reconstruction of "the ability to act together". In the selected disadvantaged neighborhoods, it is necessary to stimulate voluntary work particularly to reflect the needs of the territory in"occupations" socially recognized and in creators of social ties. The first step towards self-management budget has been made in an approach integrating the concerns of development and those of social cohesion. Guided creation of on-line sites for neighborhoods has been designed to familiarize residents with web resources and to gradually boost the exchange of information or the means and the desire to be engaged in local development.

Beyond these projects to increase the quality of life, the most lasting result of the program consists of a network of collective action which has been supported and developed. A "team for the management of the neighborhood", consisting of experts including management and empowerment groups, began as an operational unit of the process,

gradually articulating in citizen forums, planning groups for setting implement projects, fund management and control of the results with representatives of local authorities. Furthermore, it is also on a global scale that dynamics deployed by a welfare society are the operative and consensual framework to stabilize. "In Europe, this scale is made by the European Union and the Council of Europe. Therefore the social impact of the market (only in the case of the Union) should be at the center of the political agenda, especially in the sense of a new assumption of responsibilities for universal access to rights. A fairly significant asymmetry is thus highlighted, namely between the absence of a European social policy similar to that of the States and the effects that liberalization can generate in terms of "tear of the social fabric" and "challenge the autonomy of the competent ministries''.

Faced with these challenges, the European Union has developed and continues to develop corrective responses (European Social Fund, etc.), or structural responses, as in the field of social security for workers moving (Regulation 1408/71, recently simplified) and in the field of services of general interest (green Paper from the Commission). In the same direction, the introduction of the Charter of Fundamental Rights in the Constitutional Treaty and the development of the "open method of coordination "in social policies are presented as examples of a social dimension increasingly important in action of the Union. Moreover, these principles of supervision and development rights risk remain very abstract in the absence of a deep reflection on the scope and relevance of the principle of competition in the various fields of life. Uncertainty in fact remain in the Constitutional Treaty and the Charter – which refer only to services of general economic interest - either in the Green Paper, which fails as well to make a clear distinction between services of general economic interest and services of general interest at all.

In this case, as ultimately in all contexts affected by insecurity, to affirm "the unconditionality of social rights as a public guarantee of equal enjoyment of civil and political rights" we will need to believe in the force of law, in its non-discriminatory vocation and his need for democratic legitimacy. At the same time, that reconstruction of citizenship seems to be the prerequisite for Europe to gain credibility and effectiveness as a global player and to agree with the other regions of the world, in a way that "globalization work for all ". Where appropriate, in the current system of interdependencies, the search for security appears infinite, as infinite turns out the possibility of justifying

through it all means deemed necessary to achieve it, even those that occur other insecurities[167].

5. Conclusion

We have every reason to think that the choices of offenders are structured by social controls and, therefore, that crime is shaped by the actions taken to address them. Real activity of offenders, not just the distorted image that give the statistics, is under the influence of the activity deployed for his regularization.
But to say that the social controls structure crime is not to say that the crime is under control. First, it is unquestionably under the influence of variables that have little to do with social control. Second, the impact of control measures is not the one that the authors hoped. Sometimes a crime control measure produces the intended effects, but more often, these effects are mixed or slow in coming. It is possible that these effects are adverse or null. In short, crime is structured by social control, but the resulting structure is not the same as social actors had anticipated.

Once the crime is seen as the consequence of the choice of social actors, it is important to understand the logic of these choices: that our contemporaries have decided to do and what they refused to do. For example, the growth of burglary in the second half of the twentieth century is largely the result of choices made by most of us. Instead of fortifying our houses to block the road to intruders, we preferred to cushion the impact of burglaries by ensuring against theft and entrusting our values.
The recognition of the fact that social actors contribute mightily to structure the crime can not inspire a sense of omnipotence. We have seen, indeed, that social control concerns many actors: potential victims, companies, associations, police schools, judges... In a liberal democracy, social control is not subject to central control. It remains diffuse and scattered. He escapes the power of a single person or even a team. Social actors who can act on crime are numerous and not coordinated. Neither the minister of justice, nor the interior minister of a democracy can not change the course of crime as they wish. Under these conditions, the role

167 Tendances de la cohésion sociale, N° 10, L'approche de la sécurité par la cohésion sociale : propositions pour une nouvelle gouvernance socio-économique, 28-30

of the criminologist should not be blowing made solutions, but to patiently build theories that would help civil society and governments to better understand the logic of crime and social control.

References

C. Beccaria, *Des délits et des peines*, Genève, Droz, 1965, p 78

M. Delmas-Marty, Les grands systemes de politique criminelle, coll Themis Paris P.U.F., 1992, p 13

N. Queloz, La sociologie du contrôle social, *Revue internationale de sociologie*, 1988, p. 41.

Michel Bergès, "Notes de lecture. Traité de sécurité intérieure." (2008)

M. Cusson, *La criminologie*, Paris, Hachette, 4e édition 2005, p. 119.

B. Malinowski, Crime and Custom in Savage Society, 1926, p. 12

Émile Durkheim, Le suicide. Étude de sociologie, 1897. Les Presses universitaires de France, 2e édition, 1967. Collection: Bibliothèque de philosophie contemporaine.

M. Crozier et E. Fiedberg. L'acteur et le systeme: les contraintes de l'action collective", Editions du Seuil, 1981. Op.cit., f. 29-30

M. Cusson, La Criminologie, Hachette, 2005, p. 136

http://www.coe.int/t/dg3/socialpolicies/socialcohesiondev/source/Trends/Tendances-10_fr.pdf

Social Wellfare, Governance and Ethics

by

*Katrin Treska**

*Engjell Likmeta**

Abstract

Social welfare is a sensitive topic in our society. The function of a government is good governance, in order to meet all the commitments undertaken at the start of a political mandate, to implement the policies for which it is engaged, or even new policies, but always with social welfare as a focus. This paper aims to givean overview on the origins and meaning of the concept of social welfare, specifically related to the quality of life of the society that includes such factors as the quality of the environment, the level of crime, the level of corruption, and availability of necessary social services. It means different services that a state should offer to its own citizens. Another issue treated in this paper is the necessity to make the government policies to be guided by the principle of social welfare basically. Priority should be given to the strengthening of transparency and participation of communities, business and civil society in public decision-making at central and local levels, ensuring a decent living for citizens, with the aim of achieving their overall wellbeing. On the optics of increasing social welfare in Albania, will be treated the mainareas where state intervention is needed to increase social welfare and good governance of Albania

* K. Treska (✉)
Law Drafting and Analysis Department, General Directorate of Codification, Ministry of Justice, Albania
E-mail: trkatrin@hotmail.com

* E. Likmeta (✉)
Department of Criminal Law, Faculty of Law, University of Tirana, Albania
E-mail: engjell.likmeta@fdut.edu.al

"Nothing that is morally wrong can be politically right"
William E. Gladstone,
Former Prime Minister of United Kingdom

1. History and origins

The origins of the concept of welfare, governance, ethics and law takes place deep in history. Thus, welfare and rights as a term come to us since the 1792 - 1750 BC, when The King Hammurabi of Babylon issues the Code of Hammurabi, the first code of Laws. We can see also signs in the period about 600 to 500 years before Christ, with Buddhism, founded by Siddhartha Gautama (Buddha), who teaches that: "all other forms of righteousness are not worth the sixteenth part of the emancipation of the heart through love and charity" or about 500-400 years BC in The Talmud, we can find a compilation of Vast Oral Laws of Jews. Those laws prescribe exactly how Charitable Funds are Collected and distributed, including the Appointment of Tax Collectors to administer the system. Clear signs of this kind of mutual cooperation are also noticed in Muslim and Christian religion in Coran and the Bible. Aristotle, many centuries ago, has declared that welfare is something that is needed and aimed by any individual and that, ethics deals with actions that could be called right or wrong, as well with a person's individual responsibility for the respect of the law (Stumpf, 2000: 3). History tells us that no society has progressed through immorality dot. There is no doubt that people who have been able to remain for a long time standing without being overthrown by history, are those who has respected moral values (Gylen., 2012, 9).

Civic duty is probably the dominant discours of responsibility within the workfare state ethos (Dean, 2007: 573 - 590). Also, history proves that governance as an essential agency through which are formulated and implementedthe functions of management in the society was created in regions with favorable geographical conditions for the period, as were the first civilizations in river valleys Neal, Gang, Euphrates, the Yangtze (Filo, 2001: 14-15).

The meaning of "social welfare" state is attributed to that kind of state that an undertakes and perfects the social functions in order to reduce the suffering of society, through a financial system adopted and aproovedby society and furthermore realizes social services at all levels of social structure (Filo, 2003: 11).

2. Meaning of social welfare state

Social welfare state can be called the state that takes care to ensure a decent living for citizens, with the aim of achieving their overall wellbeing. Social welfare state is characterized by two basic features. Firstly, by state intervention on a scale or in a large scale means that government should take the necessary measures in the sphere of economic and social life and by doing so, should achieve social welfare, that is an integral part of the state functions, and secondly by the identification of the category of individual rights in the economic and social sphere (Filo, 2003: 14).

According T.H. Marshall, social rights are directly related to social and economic functioning of the state, and as such,the state should not only guarantee them, it must also provide them through intervention in order to ensure their normal functioning, for the sake of the individual welfare and well-being (Filo, 2003: 14). Thus, if labor rights were won on the field of economic and social rights were won in the field of the state, human rights will be earned on the field of self-organization of society (Tarifaj, & Krisafi, & Danaj, 2009: 94).

In determining the meaning of a social welfare state great contributions have given world political personalities like Franklin Roosevelt, Winston Churchill, and Bismarck. Thus, US President stated that: "The government has a duty to use all its power and resources to cope with social problems with new socialcontrols – to provide people their economic and politicalrights, liberty and the possibilityto pursuit of happiness". In this context, Churchill gave a new vision for the country, with an emphasis on welfare, economics and social rights of individuals, whom should be provided within the state (Filo, 2003: 13).

The origins of American social welfare are found in the English Poor Laws (Glicken, 2011: 23). The essence of the Poor Laws across much of Western Europe was that they were locally administered, coercively enforced and yet retained an essentially paternalistic element by which the rich and powerful acknowledged pastoral responsibilities for the poor and dispossessed (Dean, 2007:573-590). The poor laws evolved and changed between 1601 and the new act of 1834, but unlike the old poor laws of 1601, the new act of 1834 differentiated between the deserving and the undeserving poor by a simple test: “Anyone prepared to accept relief in the repellent workhouse must be lacking the moral determination to survive outside it” (Glicken, 2011: 23). The other

principle of the new act was that of “less eligibility” or “that conditions in the workhouse should never be better than those of an independent labourer of the lowest class” (Glicken, 2011: 23).

The promotion of human welfare has been central to the activities of international governance since the creation, in the nineteenth century, of international public unions (McGrew, 2010:14). With rapid industrialisation new kinds of cross-border problems arose from communication to public health and humanitarian crises which required international cooperative solutions. Furthermore, in the aftermath of the First World War the welfare agenda was incorporated into the work of the League of Nations and institutionalised in bodies like the International Labour Organization, whose aim was to improve the working conditions and well-being of labour across the world (McGrew, 2010:14).

To reach then the Golden Age of During the trentes glorieuses, or Golden Age of welfare capitalism (1945-75), West European systems of social protection were based upon the assumption of full employment and implicitly on the complementary role of the family, and, in particular, of women’s unpaid work within households (Moreno, 2010: 5). Nevertheless, the European Golden Age evolved into a Silver Age of the welfare state showing limitations but also a high degree of resilience in resisting pressures of a diverse nature (Moreno, 2010: 6). During the 1980s and 1990s, a neo-liberal ideological offensive challenged the tenets and legitimacy upon which welfare states had previously developed. Fiscal crises and the erosion of the ideological consensus which gave way to a “mid-century compromise” (Moreno, 2010: 6) conditioned the subsequent recasting of welfare states in Europe (Moreno, 2010: 6).

3. Social welfare in Albania

Socio - economic and political changes in our country pulled in "seashore" many old and new problems of the Albanian transitional society (OSCE &Abazaj 2014: 69). Thus, in Albania, a large number of people live in conditions of absolute and extreme poverty. Many Albanian citizens do not have a proper diet and are living in unsanitary conditions, having short lifespan (Giddens, 1997: 241). Poverty reduction is one of the most important issues faced by elected officials in many countries, not only in our country (USAID & NDI, 2005: 3, 37).

Albanian Legislators play an important role articulating the need of their voters in the national debate on poverty reduction initiatives. Parliamentarians may find it helpful to see how poverty reduction initiatives combined to raise national and international interest for its reduction and ensure that the governing bodies involves in strategic processes the making of such policies (USAID & NDI, 2005: 3).

Also, such a process should be accompanied with wide participation of civil society, should be oriented towards positive results in a longer perspective and have a continuous cooperation between the legislative and the executive and civil society in order to solve this problem (USAID & NDI, 2005: 4, 40). Another point to be evaluated is the opening of the legislature to the public to such sensitive issues as health, reduction of poverty, unemployment, clean water, corruption. Those issues impact on the development of the Albanian public welfare (USAID & NDI, 2005: 77). Such a process can be accomplished starting with the institutional efforts to inform the public, participation in meetings of the parliamentary group of political parties in parliament, as well as efforts by individual legislators (USAID & NDI, 2005: 77-78).

Performance of such steps by Albanian lawmakers not only would strengthen democratic institutions in the country but would increase public confidence in the representative processes (USAID & NDI, 2005: 82).

Democratic movement in the early 1990s, the establishment of pluralism created the conditions and optimism for building the rule of law and social welfare, for the recognition and respect of human rights as political, civil, economic, and social (Zaganjori, 2002: 11). For a relatively short time was achieved the withdrawn of the county from deep poverty and isolation but, however, we witness the difficult process of democratization of the country and of the Albanian society, andthere are still shortcomings and weaknesses that impede development, welfare and progress of Albania (Zaganjori, 2002: 11).

On the optics of increasing social welfare, a better protection should be approaching children`s rights in order to prevent their use for black labor, begging, etc. (Hysi & Kaçupi, 2009: 160).

Although in a retrospective look at the history of human rights and fundamental freedoms, we will accept the fact that the Albanian society has undertaken some fast steps, its mentality was not ripe for the steps forward (Hysi & Kaçupi, 2009: 160). We say this because, protection of citizens' rights depends heavily on public administration

and its capacity. Recognition and respect of the standards laid down in international conventions and the laws are a condition for the respect and protection of social rights in particular and human rights in general (Hysi & Kaçupi, 2009: 164).

The Albanian doctrine of social welfare state argues that in the early concept of welfare was taken account of the poorest members of society, offering them additional tools to provide for their essential needs as food, clothing and shelter (Filo, 2003: 16). According to Professor Filo, to achieve a developed society, there is a need of providing minimal subsistence, protection and preservation of income level and commitment to a qualitatively better life (Filo, 2003: 16-17).

The Albanian Constitution has sanctioned a series of civil, political, and socialrights. Self inclusion of social rights in the text of the Constitution, in addition to other human rights, is a significant indicator of the sustainability of these rights (Anastasi & Çani, 2009: 173).

The laws on the other side are norms set by the state as principles that should be followed by the citizens. Where there are no laws and there are crimes, as offenses, felonies are defined as conducts that violates the law (Giddens, 1997: 125-126).

Another problem in Albania is migration. The phenomenon of Albanian migrantsin Europe is present and widely diffused, to those states that offer more generous social benefits (Santoro: 2006), Caputo). Also volunteering is an important interactive social phenomenon involving all groups of society and all aspects of human activity (Stjarnerklint: 2004, Dervishi, 2011: 4). As a result of abuse of the volunteering during the totalitarian socialist regime, during the last decade the spirit of volunteerism in Albanian society has atrophied to a considerable extent and has become anemic (Dervishi, 2011: 16).

Volunteering is essential in the development process and in meeting the millennium development goals in Albania, such as poverty alleviation, the strengthening of mental and physical health, increase of the life span the of members of society and increasing material welfare of humanity (Dervishi, 2011: 28 - 40).

4. Corruption and criminality

The level of criminality and of course of corruption also affects social welfare. Legislators can raise public awareness about the high costs of corruption and ways to combat it (USAID & NDI, 2005: 26).

However, to succeed in the fight against crime, in the beging, legislators need to clean their house (USAID & NDI, 2005: 26).

To achieve this they need to establish standards of official conduct for themselves - ie rules that define and promote appropriate behavior (USAID &NDI, 2005: 26). Standards incarnatedin rules reflect the consensus on the demands of society (USAID & NDI, 2005: 26).

Without them, legislators have nothing to guide their behavior, while the public has no way to judge the behavior of its representatives. However, quite often unethical behavior of some members could affect the whole organization – and this one is perceived more as part of the problem than its solution (USAID&NDI, 2005: 26). For example, the parliamentary ethics scandals have led to the lower confidence in public officials, showing that the public has lost confidence in the Albanian political system. The Albanian political system, in order regaining lost ground should aim in these moments of crisis of confidence a reform of the ethics rules (USAID & NDI, 2005: 26).

In these conditions, it is required as an immediate need for an effective regime of parliamentary ethics and governance (USAID & NDI, 2005: 26).

5. Medicine

Medicine is traditionally accompanied by an image of care, service and compassion (Giddens, 1997: 571). Health care is established by the principle of the need for treatment and not the ability to pay (Giddens, 1997: 569). It should be specified, however, that in all the European countries have a mixed presence (public and private) in both the financing and ownership of health benefits supplying structures. The level of presence is much differentiated: in Germany, for example, there is a substantial presenceof private sanitary structures and hospitals, while it is absolutely smaller in the United Kingdom. In all countries, therefore, the prevalence of the public or private structures determines significantly the degree of health coverageaccording to the three dimensions of the width (amplitude of the population to which it isguaranteed health coverage), depth (number and characteristics of the servicesincluded in the coverage), height (amount of costs incurred directly by health system (and therefore not directly paid by the patient) (Carenzi, & Cesana, & Vittadini, Rapporto CEFASS 2008: 231).

Welfare programmes do not only contribute towards enhancing social welfare throughhuman capital development and the alleviation of poverty, but also through the provision of merit goods. These programmes are an expression of a country's commitment to human and social rights. The policies of the past have resulted in social disintegration and consequent social problems. Social welfare services could contribute significantly to enhancing social integration (ILO, 1997:5).

6. Good Governance

Governance is about effectively implementing socially acceptable allocation and regulation and is thus intensely political. Governance is a more inclusive concept than government *per se*; it embraces the relationship between a society and its government. Governance generally involves mediating behaviour via values, norms, and, where possible, through laws (Rogers & Hall, 2003: 4). Governance is increasingly and uncritically “regarded as an effective and legitimate formof societal governance” (Eikenberry, A., & Nickel, :4).

In an ethical government the representatives of government carry out their duties for the maximum welfare of the society without any fear or favour keeping in mind the long term interests of the society. They do not refrain from, delay or abandon their duties or responsibilities for reasons of sloth, greed, ego, dilatoriness or vengeance and those who do so are punished quickly, fairly, sufficiently and transparently (Chaturvedi, 2015).

Welfare as one of the elements of the social welfare state can be labeled as welfare insurance (Filo, 2003: 16). Characteristics of a social welfare state are (Filo, 2003: 11-12):

- Performance of the social function to ensure appropriate livelihood of citizens and reducing suffering;
- The system of socially approved funds;
- Social services at all levels of the social structure;
- Welfare means prosperity and welfare in general.

The state may support politics which aim to including the establishment of a diverse economy, which bases its reason and essence on orienting principles such as solidarity, subsidiarity, relationality, sharing, reciprocity, building community and sense of belonging not only "national", but also local and international. Sectors which include

volunteering, social cooperation, nonprofit associations, foundations and social enterprises, but also the mutual aid societies and small prevalently mutual cooperatives should be sustained (Instituto nazionale di statistica).

7. Conclusions

The meaning of "social welfare" state is attributed to that kind of state that an undertakes and perfects the social functions in order to reduce the suffering of society, and realizes social services at all levels of social structure. Social welfare state can be called the state that takes care to ensure a decent living for citizens, with the aim of achieving their overall wellbeing.

Social welfare embraces laws, programmes, benefits and services which address social needs accepted as essential to the well-being of a society. It focuses on personal and social problems, both existing and potential. It also plays an important developmental role by providing an organized system of services and institutions which are designed to aid individuals and groups to achieve satisfying roles in life and personal relationships which permit them to develop their full capacities and to promote their wellbeing in harmony with the needs and aspirations of their families and the community. (Hong Kong Government, 1998: 3).

Social welfare is not the same as the standard of living, but is specifically related to the quality of life of the society that includes such factors as the quality of the environment, the level of crime, the extent of drug abuse, availability of necessary social services. It means different services that a state should offer to its own citizens.

A full understanting of the concept of social welfareshould make the government policies to be guided by the principle of social welfare basically. Priority should be given to the strengthening of transparency and participation of communities, business and civil society in public decision-making at central and local levels. Accountability of public administration and efficiency of the services should to be ensured through the establishment of a transparent system.

We trust that this paper will serve as a source for all those who are working to ensure Albania`s way towards stability, social justice and welfare.

Bibliography

- Alexander, C., & Weber, D., (1978). Distinctive Dates in Social Welfare History: A Chronological Listing *Volume 6 of Continuing educations series,* National Association of Social Workers. U.S.A. : National Association of Social Workers.
- Anastasi, A, & Çani, E., (2009). Guarantees of rights and fundamental freedoms. Tirana: UET. *Jus&Justicia 3.*
- Caputo, G, Welfare state e politiche penali nell'Europa contemporanea.
- Chartered Institute of Public Finance and Accountancy (CIPFA) and the International Federation of Accountants (IFAC). (2013) Good Governance in the Public Sector— Consultation Draft for an International Framework. U.K.
- Dean, Hartley (2007) The ethics of welfare-to-work. Policy and politics, 35 (4). pp. 573-590.
- Dervishi, Z., (2011). Volunteering, highly functional tissue of society. (3th). Tirana: EMAL.
- Eikenberry, A., & Nickel, P., Towards a Critical Social Theory of Philanthropy in an Era of Governance.
- Hong Kong Government "The Five Year Plan for Social Welfare Development in Hong Kong – Review 1998" by Social Welfare Department.
- Hysi, V, &Kaçupi, S., (2009). Freedoms and human rights. Reality and Challenges. Tirana: UET. *Jus&Justicia 3.*
- Filo, Ll., (2001). History of governance systems.Tirana: Afërdita.
- Filo, Ll., (2003). The history of social welfare.Tirana: EXTRA.
- Giddens, A., (1997). Sociology. Tirana: MÇM Çabej.
- Glicken, M., (2011). Social Work in the 21th Century. Arizona State University, Phoenix, USA: *SAGE Publications, Inc.*
- Gylen, M., (2012). From the seeds to the oak. (Family Education from another point of view). Tirana: PRIZMI.
- Lama, D., (2005). Heart advices. Tirana: DITURIA.
- McGrew, T., (2010). The links between global governance, UK poverty and welfare policy. JRF programme paper: Globalisation. UK: Joseph Rowntree Foundation.
- Moreno, L. (2010). Welfare Mix, CSR and Social Citizenship.Instituto de Políticas y BienesPúblicos(IPP), CCHS-CSIC, Working Paper, Number 5.

- OSCE Presence in Albania, (2014). The management of social institutions in the justice system. Tirana: GENT GRAPHIC PRINTING.
- Rogers, P., & Hall, A., (2003). Effective Water Governance. Sweden: Global Water Partnership Technical Committee (TEC).
- Rosen, M., & Wolff, J., (2007). Political thought. Tirana: UFO PRESS.
- Stumpf, S., (2000). Filosophy – History & Problems. Tirana: TOENA.
- Tarifa, F, & Krisafi, K., & Danaj, E., (2009). Globalization, human rights and the role of public sociology. Tirana: UET. *Jus&Justicia 3.*
- USAID&NDI, (2005). Parties in parliament. Series of legislative research. Tirana: Pegi.
- USAID&NDI, (2005). Parties in parliament. Strengthening Parliamentary Involvement in strategic process of poverty reduction and the Millennium Development goals. Tirana: Pegi.
- Zaganjori, Xh, (2002). Democracy and rule of law. Tirana: Luarasi.

Web site:

- http: hdl.handle.net/10261/24406
- http://www.ipg.vt.edu/papers/eikenberrynickelaspect.pdf
- http://web.hku.hk/~hrnwlck/introsocwelfare/welfareconcepts.htm,
- http://hm-treasury.gov.uk/d/whole_of_government_accounts_31-03-2011.pdf
- http://www.altrodiritto.unifi.it/ricerche/law-ways/caputo/index.htm)
- w.istat.it/it/archivio/119092http://censimentoindustriaeservizi.istat.it/istatcens/la-rilevazione-sulle-istituzioni-non-profit/#.VRE66fx4r-t)
- www.jrf.org.uk/publications
- http://eprints.lse.ac.uk/3453/
- http://www.ilo.org/public//english/region/asro/bangkok/ability/download/zaf_wp.htm
-

Criminal Law and the Welfare State Goals

by

*Saimir Fekolli**

*Alma Bela**

Abstract

The idea of human dignity, is as old as the history of humanity, which in different cultures and religions, appears in different forms. However, the idea of "human rights" is the result of the philosophical, thinking of modern times, based on the philosophy of rationalism and enlightenment, liberalism and democracy, but also of socialism. Although the modern concept of human rights mainly emanated from Europe, it must be stated that the notions of freedom and social justice, which are fundamental to human rights, are part of all cultures. But how important are the concepts of welfare state and criminal law in our daily lives?

In this paper we are trying to give a general presentation regard the welfare state and criminal law and how these two concepts are related to one another; also another important issue is the one about the theory of the welfare state and how it is organized nowadays. Nevertheless, the essence of this article is to set out the way for minimizing the crime through the social welfare state.

* Ph.D. Cand. S. Fekolli (✉)
Law Lecturer at "Alexandër Moisiu University", Durrës, Albania.
E-mail: saimirfekolli@hotmail.com

* M. Sc. Alma Bela(✉)
E-mail: alma7bela@yahoo.com

1. Criminal Law

"A body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare andthat establishes punishment to be imposed for the commission of such acts" .
The term criminal law generally refers to substantive criminal laws. Substantive criminal laws define crimes and may establish punishments. Crimes are usually categorized as felonies or misdemeanors based on their nature and the ma- ximum punishment that can be imposed. Afelony involves serious misconduct that is punishable by death or by imprisonment for more than one year. Most state criminal lawssubdivide felonies into different classes with varying degrees of punishment. Crimes that do not amount to felonies are misdemeanors orviolations. A misdemeanor is misconduct for which the law prescribes punishment of no more than one year in prison. Lesser offenses, suchas traffic and parking infractions, are often called violations and are considered a part of criminal law.

2. Understanding the welfare state

Every theoretical paradigm must somehow define the walfare state. How do we know when and if a wefare state responds functionally to the needs of industrialism, or to capitalis reproduction and legitimacy?[1] A question that makes us to return and find the answer in our everyday life. Welfare-state studies have been motivated by theoretical concers with other phenomena, such as power, industrialization or capitalist contradictions.[2] However, a welfare state is a concept of government. The state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth. The general term may cover a variety of forms of economic and social organization.

---

[1] Andersen, G.E, "The three worlds of welfare capitalism", Princeton University Press, New Jersey, 1990, pg. 18

[2] Ibid.

But which are the main interpretations of understangding the idea of a welfare state?[3] A model in which the state assumes primary responsibility for the welfare of its citizens. This responsibility in theory ought to be comprehensive, because all aspects of welfare are considered and universally applied to citizens as a "right". Meanwhile the other one is that the welfare state can also mean the creation of a "social safety net" of minimum standards of varying forms of welfare.
In the strictest sense, a welfare state is a government that provides for the welfare, or the well-being, of its citizens completely. Such a government is involved in citizens lives at every level. It provides for physical, material, and social needs rather than the people providing for their own. The real purpose of the welfare state itself is to create economic equality and equitable standards of living for everyone. What we should notice is thatthe welfare state provides a wide range of categories such as: housing, education, pensions, unemployment insurance, healthcare, sick leave, supplemental income in some cases. Also, it provides childcare, public transport and public parks as well public libraries and many other goods and services. Some of these items are paid for via government insurance programs while others are paid for by taxes.

There are two ways of organizing a welfare state:

According to the first model the state is primarily concerned with directing the resources to “the people most in need”. This requires a tight bureaucratic control over the people concerned, with a maximum of interference in their lives to establish who are "in need" and minimize cheating. The unintended result is that there is a sharp divide between the receivers and the producers of social welfare, between "us" and "them", the producers tending to dismiss the whole idea of social welfare because they will not receive anything of it. This model is dominant in the US.
According to the second model the state distributes welfare with as little bureaucratic interference as possible, to all people who fulfill easily established criteria (e.g. having children, receiving medical treatment, etc). This requires high taxing, of which almost everything is channeled back to the taxpayers with minimum expenses for bureaucratic

[3] http://gratzfeld.twoday.net/stories/welfare-state/

personnel. The intended – and also largely achieved – result is that there will be a broad support for the system since most people will receive at least something. This model was constructed by the Scandinavian ministers Karl Kristian Steincke and Gustav Möller in the 30s and is dominant in Scandinavia.

3. Theory of welfare state

The genesis and development of the concept of the welfare state lay in the interaction of ideas, in the unique British historical setting of a qualitative change from administrative to ameliorative legislation. The welfare state, conceived within the liberal framework, involved a social consensus on a wide spectrum of socio economic policies. Two sociological factors largely contributed to the growth of the concept: first, increasing prosperity that produced a revolution of rising expectations; and second, the hope and the fear generated by the newly acquired manhood franchise. The faith in piecemeal social engineering, bereft of dogma, set the precedent for expanding municipal activity and government's interest in social reform. This, indeed, was an ominous beginning.

State help and self- help, in this context, became the two focal points of the 'principled' discussion on the subject of the welfare state. Herbert Spencer's liberalism, an apotheosis of self help, as a deductive system, had deeper implications for welfare state activity. The notion that Spencer was opposed to welfare state is a false one. His doctrine of non-intervention and positivistic connotation, prima facie inconsistent with laissez- faire, but consistent with the view of state help as complimentary to self- help. In economics, ***laissez-faire*** describes an environment in which transactions between private parties are free from state intervention, including restrictive regulations, taxes, tariffs and enforced monopolies. The phrase is French and literally means "let do", but it broadly implies "let it be", or "leave it alone." The problem of the period was to search some criteria for judging the compatibility, or otherwise, of the various schemes of state welfare, vis a vis the idea of self help.

The process is sometimes associated with ideas of laissez-faire invidualism, but within the educational system it is a matter, not a laissez-faire, but of planning. The process through which abilities are revealed,

the influences to which they are subjected, the tests by which they are measured and the rights given as a result of the tests all planned. [4]

The problem of the period was to search some criteria for judging the compatibility, or otherwise, of the various schemes of state welfare, Vis a Vis the idea of self help.

The process of laying the foundations of the concept of the welfare state, the British political system acquired a remarkable capacity of preserving its liberal identity against the alien ideas of French and German socialism and Bismarckian model of the welfare state. British resistance to utopian ideals and adaptation to new challenges and responsibility was phenomenal. Political leaders of all hues and complexions were falling prey to democratic compulsions and were redefining their ideals. In relation to matters affecting the labour and the poor, they were abandoning their pitched positions in response to pragmatism. Transport, banking, agriculture, industry, trade; in a word, a large segment of economy, were subject to regulation.[5]

Although there never was at any time a laissez- faire state, as the existence of Elizabeth Poor Law and factory legislation indicate, it is true that the era of "collectivismstarted in the 1870's whose first lasting effect could be seen in an increased legislative activity in the last decade of the last century. By the time Great War intervened, the statutes had covered many areas of social reform and the pattern of change had set in by the 'people's budget', a landmark in the march towards the welfare state.

The basic element in the growth of the concept of the welfare state, was the two-fold realization of, one, the inadequacy of private charity, philanthropy and the poor law to meet the pressing demands of the poor who had acquired the new voting power; and the increasing capacity of the public exchequer to bear welfares burdens. The state helped both in the formulation and solution of the felt in the backdrop of the widespread fear of an impending revolution, which added urgency to efforts for solving these problems.

The interaction of empiricism and ideology, predicated the concept of the welfare state, embodying a consensus on a wide spectrum of socio-

---

[4] Marshall, T.H., "Citizenship & social class (and other essays), Cambridge University Press, Great Britain, 1950 pg. 66

[5] Sankhdher, M.M., "Yogashema: The Indian model of welfare state", Deep& Deep Publications Pvt.Ltd., Delhi, pg. 3

economic policies. The development had been distinctive in several ways. It occurred in a free society where men projected their interests and ideas into the arena of conflict and where governments tended to take decisions by discussions and empirical investigation of problems. The welfare state evolved in response to the peculiar conditions of a maturing economy, laissez- faire attitude and traditions of enlightened self- interest.

4. Minimising crime and the social welfare impact of crime

The justice and welfare implications of crime are categorically different, and yet they are mingled in contemporary criminal justice policy. Measures to prevent crime, to rehabilitate criminals, and to protect society against the dangerous are considered goals of criminal justice alongside retributive justice, with the result that justice is compromised, policy unfocussed, and public resources misspent and misdirected.
In fact, a disturbing fact nowadays is that the welfare system is inevitably and unfortunately linked with actions such as corruption, healthcare informality, money laundering and organized crime[6]. It is more like a "domino effect". If one of these actions affect negatively in the welfare system and penetrates through it, it is much easier for the other (actions) to gain territory.

Fig. 1

6 See below, .fig 1.

Criminal justice consists in vindicating the human rights that the criminal denied and in tying punishment to the choice of the criminal. This means that criminal justice has a symbolic and framing function, not a crime prevention one. It is about affirming rights and setting the justice parameters within which social goals may be pursued by punishing. But in that criminal justice has only a symbolic and framing function, it currently attracts a share of public resources grossly disproportionate to its practical importance, while responsibility for the welfare goals of crime policy are given to jurists whose competence lies in justice, not welfare. Accordingly, the social welfare impacts of crime and the measures for minimizing them should be the focus of a separate ministry parallel to the ministries of health and education. This would mean a massive shift in resources from the criminal justice system to what might be called the criminal welfare system. The new ministry would have responsibility for all aspects of crime as a social evil—for devising programs to eliminate its social causes. This ministry would also take over the sentencing function from judges. Once an accused was found guilty in court, sentencing would be remitted to an administrative body, which would determine, within the desert parameters set by legislation, the specific sentence required for deterrence and reform. There is no reason why such matters should be for a judge to decide. The end result would be a coherent policy toward crime reduction pursued within parameters set by a separate justice system.

References:

Andersen, G.E, "The three worlds of welfare capitalism"

Marshall, T.H., "Citizenship & social class (and other essays

Sankhdher, M.M., "Yogashema: The Indian model of welfare state"

http://legal-dictionary.thefreedictionary.com/Criminal+Law

http://gratzfeld.twoday.net/stories/welfare-state/