BALKAN CRIMINOLOGY

Anna-Maria Getoš Kalac
Hans-Jörg Albrecht
Michael Kilchling (eds.)

Mapping the Criminological Landscape of the Balkans

A Survey on Criminology and Crime with an Expedition into the Criminal Landscape of the Balkans

Research Series of the Max Planck Institute for Foreign and International Criminal Law

Publications of the Max Planck Partner Group for Balkan Criminology
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Volume BC 1

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Foreword

The book at hands on 'Mapping the Criminological Landscape of the Balkans' is the first volume opening the new 'Balkan Criminology' publication series of the Max Planck Institute for Foreign and International Criminal Law in Freiburg (MPI) and the University of Zagreb's Faculty of Law. The publication series will regularly publish research findings of the Max Planck Partner Group for Balkan Criminology (MPPG) – a joint venture between the MPI and the University of Zagreb's Faculty of Law. The topics to be addressed in this new publication series broaden the scope of the research programme of MPI's Department of Criminology, in particular the research focal points III. and V. on 'Homeland Security, Organized Crime, and Terrorism – Societal Perceptions and Reactions' and 'The Development of Criminal Policy and the Rule of Law in Transitional Societies', by combining them with the research focuses of the MPPG on I. Violence, Organized Crime and Illegal Markets; II. Feelings and Perceptions of (In)Security and Crime; and III. International Sentencing.

The publication series shall provide an adequate forum for discussing crime and criminal justice issues that can best be captured with the term 'Balkan Criminology'. This is not a general criminology *for* or *on* the Balkans, but rather a specialized European criminology focusing on *Balkan-relevant* topics that have so far been largely neglected in terms of research and publication, especially when it comes to research originating from the region itself. Filling this gap should therefore not only advance the research setting in the Balkans, but also contribute to European and even international criminology. The 'Mapping of the Criminological Landscape of the Balkans', by discovering the current situation regarding criminology and crime across the region, is a logical first step in introducing the new publication series, whereas in terms of research it provides a firm point of orientation for further 'Expeditions into the Criminal Landscape of the Balkans'.

The volume's first part deals with the Balkans as a European region *sui generis*. The 'Marking of the Territory' sets the stage for the following analyses of criminology and crime in the Balkans. The introductory chapter is opened by *Sundhaussen* who clearly defines the basic terms (e.g. the Balkans, Southeastern Europe, etc.) from a historical perspective, focusing on the Balkans' uniqueness regarding history, geography, religion, legal tradition, and migration. He also critically reviews the image of the Balkans as a 'violence-prone' region. The editors are particularly honoured to be able to present this excellent piece which is one of the last publications of this renowned expert on the history of Southeastern Europe and the Balkans who passed away on 21 February 2015, much too early, at the age of 72. An obituary for *Sundhaussen* has been published in issue 1/2015 of Balkan Criminology News, MPPG's regular online newsletter. The following contribution by *Getoš Kalac* concentrates more specifically on the Balkans as a *criminological* region *sui generis* and in this

context presents the concept of a 'Balkan Criminology' together with its regional key players – the MPPG and the Balkan Criminology Network (BCNet). Furthermore, the background, general idea, methodology, and scope of the 'mapping' are presented as well as some of the key findings on the state of art in criminology and current crime problems across the Balkans. The volume's introduction concludes with an analysis of the Balkan's criminological landscape in terms of networking and capacity building. *Winterdyk & Kilchling* put emphasis on the significance of – principled – comparative approaches in modern criminology and discuss the necessary steps for the development of sustainable research structures. They come to the conclusion that Balkan Criminology has the potential to gain a position within European criminology that can develop to become similar to that of Scandinavia.

In chapter II the 'country mappings' are presented. These capture the current situation in criminological education and research, but also basic crime trends and major criminal justice challenges in a total of 14 Balkan and relevant neighbouring countries. Renown scholars and experts as well as young academics from the region, all involved in the BCNet, joined in a collaborative research effort that provides for a clear picture of the criminological setting in their countries:

- *Kambellari* presents the situation in Albania and covers not only criminology and crime, but also the efforts to bring criminal law and criminal justice in accordance with European standards;
- *Maljević & Muratbegović* cover the development and state of art in criminology in Bosnia and Herzegovina, thus presenting basics of the criminal justice system and major criminal law reforms;
- *Margaritova-Vuchkova* deals with Bulgaria and presents in depth information on crime and criminal justice challenges;
- *Getoš Kalac & Karlović* analyse the setting in Croatia, with special emphasis on current crime trends and the situation in the Croatian prison system;
- *Lambropoulou* elaborates on the status quo in Greece, focusing on current shortcomings in the criminal justice sector;
- *Sárik* presents the situation in Hungary and elaborates on the major criminal law reforms giving special attention to changing attitudes towards juvenile offenders;
- *Savona* discusses the standing of criminology in Italy in the context of tradition and innovation;
- *Krasniqi* provides an overview of the setting in Kosovo;
- *Bužarovska* deals with the current crime situation and pending reforms in criminal law and criminal procedure in Macedonia;
- *Ratković* discusses criminology and crime in Montenegro with a special focus on corruption, including the measures taken to improve the justice system;
- *Trandafir* in her analysis of Romanian criminology gives special attention to the new Criminal Code;
- *Ignjatović & Lukić* elaborate on criminology and crime in Serbia while analysing basic patterns and trends in crime;

- *Zgaga* presents Slovenian criminology and research while providing detailed insight into the current crime situation;
- *Sözüer & Topçuoğlu* provide for detailed insight into criminology and crime in Turkey, focusing on the research setting as well as on crime trends and patterns.

As the listing shows, chapter II is not just a collection of simple 'country reports'. Each of the 'country mappings' is a unique scientific discovery trip into the criminological and criminal landscape of the respective country. Therefore the 'country mappings' not only provide for a vivid picture of the Balkans' criminological landscape, but are also essential readings on the specific crime and criminal justice situation in each country.

Last but not least, a selection of research projects of the MPPG and first findings are presented in chapter III. Here the members of the MPPG discuss their research questions, explain the designs chosen and present first findings from empirical, literature, and normative research. The wide scope of subjects addressed by MPPG's current Ph.D. projects covers issues on international sentencing and its enforcement (*Vojta*), juvenile delinquency (*Bezić*) and trafficking in human beings in the Balkans (*Ressler*), economic crime in periods of transition (*Roksandić Vidlička*) and adequately dealing with criminal offences committed by political parties (*Maršavelski*).

Selected theses and findings of most of the articles provided in this compilation were presented and discussed at the 1st Annual Conference of the MPPG on 28, 29 and 30 August 2014, which was also titled 'Mapping the Criminological Landscape in the Balkans'. This event that was hosted by the Zagreb Faculty of Law and financially supported by the Faculty and the Max Planck Society has been proof of the great potential of criminology in the region. The feedback from participants has further shown that the effort by the MPPG to initiate a sustainable network of researchers, academics, practitioners, policy-makers, and other experts in the field of criminology from all Southeastern European countries is more than timely. This 'Mapping' is meant to be a starting point which will find its continuation in themed publications to follow in the coming years.

With the setting-up of the MPPG – which is dedicated to stimulate, conduct, coordinate, facilitate, support, promote, and disseminate criminological research in and on the Balkan region – and its new BC publication series we hope to have prepared the ground for a dynamic and successful future of criminological research in the entire region.

Freiburg and Zagreb, December 2014

The editors

Acknowledgements

The editors would like to express their gratitude to all those who actively contributed to the successful realization of this volume. First of all, the contributors have to be mentioned here, many of them linked to the MPPG, either formally or informally, and committed to actively support its mission as members of the BCNet.

Not less valuable, as compared to the contents provided by the authors, is the related technical (background) work which is necessary to prepare, proofread, typeset and layout a book. This is particularly true when it comes to the setting-up of the standards of a new publication series. The editors explicitly thank *Katharina John*, *Ulrike Auerbach* und *Andrea Breitner* for their excellent work with proofreading and typesetting. Similarly complex were the correction and harmonization of the language as managed by Dr. *Chris Murphy* and *Katharina John*. Dr. *Jelana Ogresta* and *Johanna Jung* made great efforts in improving and synchronizing all the various tables and figures provided by our authors. *Thomas Breitner* was responsible for the cover design for which he reached a perfect combination of the house design of all publication series of the Max Planck Institute for Foreign and International Criminal Law and the corporate design of the MPPG which he also helped to develop. Special thanks also go to Prof. Dr. *Igor Gliha* who as the Head of the Publishing unit of the University of Zagreb's Faculty of Law handled all the necessary publishing steps.

Both contents and appearance of this volume are setting excellent standards for the new BC publication series which will hopefully increase the visibility and reception of criminological research related to the Balkans. Additional thanks have to go to Prof. Dr. *Hans-Jürgen Kerner* and Prof. Dr. *Helmut Kury* for providing the very first international reviews of this volume.

Contents

CHAPTER I

INTRODUCTION

Marking the Territory

The Balkan Peninsula: A Historical Region *Sui Generis*

Holm Sundhaussen

1. Preliminary Observations

The terms "Balkans", "Western Balkans", and "Southeastern Europe" continue to cause confusion. "Western Balkans", to start with the simplest example, is one of the *termini technici* introduced by the EU at the end of the 1990s to designate the post-Yugoslavian states (aside from Slovenia) and Albania – a terminological crutch that is neither academically nor historically justifiable and can be attributed to everyday political affairs. Political territorial concepts come and go. One is reminded of "Eastern Europe", which functioned as a collective designation for all the socialist countries of Europe during the "cold war" (usually aside from Yugoslavia with its independent model of socialism) and became obsolete after 1989. In contrast, *historical* territorial terminology enjoys more durability, but is by no means unambiguous. Hence, "Balkans" and "Southeastern Europe" are frequently used in German research with varying delineations. Both cases involve formulations or definitions that are not right or wrong *per se*. Definitions can be plausible, adaptable, and coherent. Or the opposite. But they cannot be right or wrong. To begin with: "Southeastern Europe" ranges from the western part of the former Kingdom of Hungary, the present Slovakia, over Hungary and the Republic of Moldova to approximately Odessa on the Black Sea. Everything that lies below this line is Southeastern Europe.[1] Thus regions exhibiting a large variation of development can be pooled into a putative entity that is characterized above all by its diversity. From a historical-structural perspective (I will return to the significance of structures below), however, one could differentiate between a broader Southeastern Europe and the narrower concept of the Balkans.

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1 *Müller* 2003; for the history of the region, cf. *Stadtmüller* 1950; *Bernath* 1973; *Grothusen* 1976; *Kaser* 1990; *Clewing & Schmitt* 2011; Reference work: *Hösch, Nehring & Sundhaussen* 2004.

2. Terminology and Borders of the Balkan Region

What are the Balkans? In contrast to those who study the Balkans primarily as an imaginary region or mental map,[2] the following discussion treats the Balkans as a real region. Whoever deals with them needs perseverance. For the Balkans are complicated like hardly any other European region.[3] During the Ottoman Empire, the Turkish word "Balkan" (mountain) served to designate a mountain range in Bulgaria, the "Stara Planina" ("Old Mountain") that was named "Haemos/Haemus" by ancient geographers. In 1808, the Berlin geographer *August Zeune* coined the expression "Balkan Peninsula". He shared the ancient geographers' misconception that the Balkan mountain range extended over the entire southeastern European region from the Slovenian Alps to the Black Sea and that the term had a similarly definitive meaning for the entire region like the Apennines for the Italian Peninsula. After the untenable nature of this assumption was recognized, the terms "Balkan Peninsula" or "Haemus Peninsula" met with increasing criticism. In 1893, the geographer *Theobald Fischer* recommended substituting the term "Southeastern European Peninsula" for "Balkan Peninsula",[4] but his suggestion was not fully accepted. The actual Balkan mountains, the Stara Planina, extend only over a length of 420 km (with an average width of 30–50 km) in an east-west curvature from the Danube, under the Iron Gates, in the direction of the Black Sea and separates the northern part of Bulgaria (Danubian Plain) from the southern half (Upper Bulgaria). In spite of its limited size and regardless of advances in geographic knowledge since the middle of the 19th century, the Balkan Mountains became the eponym for an entire region of the most eastern of the three southern European peninsulas that protrude into the Mediterranean (Pyrenean, Apennine and Balkan Peninsulas). The latter is bordered on three sides by five seas (Black, Marmara, Aegean, Ionic, and Adriatic Seas). Even so, the North lacks a precise geographic border. Usually the Sava-Danube line is used for this purpose, or more precisely, the lower stretches of the Sava and Danube, which have often also served as political borders. There are differing views on the boundaries of the extreme Northwest and the lower stretch of the Danube. Although the Kupa occasionally defined the northwestern border, it was usually the Una. In the first case, Central Croatia or the region of the former Habsburg military border in Croatia, known during the first half of the 1990s as the "Republic of Serbian Krajina," counts as Balkan, in the second case it does not. Occasionally, the term "Balkan" also extends (in light of structural similarities) to the former Romanian principalities of Wallachia and Moldova.[5]

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2 Cf. *Todorova* 1997.

3 For the following, cf. *Sundhaussen* 1999.

4 *Fischer* 1893.

5 The most important distinction between the former Danube principalities and the Balkan region is the fact that Wallachia and Moldova were never an integral part of the Ottoman Empire, but were just subject to the suzerainty of the sultan. While the nobility in the

The origin and proliferation of the term "Balkan Peninsula" occurred during a time when the Eastern Question increasingly occupied the public and the European superpowers. The incremental dissolution of the Ottoman Empire, the emergence of rival Balkan states, the Balkan Wars of 1912/13, and the diverse hotbeds of territorial conflict in the Balkans made the region appear as "Europe's powder keg" at the beginning of the 20th century. As a designation for the conflict-fraught national fragmentation processes, the political catchword "balkanization" became vernacularized after WWI. It soon spread to other parts of Europe and the non-European world (e.g. in the Near East). *Paul Scott Mowrer*, a long-standing correspondent of the Chicago Daily News, defined balkanization in 1921 as "the creation, in a region of hopelessly mixed races, of a medley of small states with more or less backward populations, economically and financially weak, covetous, intriguing, afraid, a continual prey to the machinations of the great powers, and to the violent promptings of their own passions".[6] And the murder mystery author *Agatha Christie* captured this point in a nutshell when she described her invented country "Herzoslovakia", a curious mix of Herzegovina and Slovakia, in 1925 with the words: "It's one of the Balkan States (…) Principal rivers: unknown. Principal mountains: also unknown, but fairly numerous. Capital: Ekarest. Population, chiefly brigands. Hobby: assassinating kings and having revolutions."[7] During the same period the Englishman *Archibald Lyall* had a conversation with a Persian Presbyterian in Athens. The latter asked him: "Why do you want to go to Albahnia, my dear sir? Zere is nothing to see zere, only black stones. And no houses, only little forts wiz cracks and holes in zem, wiz rifles peeping out of zem; and ze Albahnians, zey sit zere and zey go pop-pop-pop. It is worse zan ze Wild West. (…) It is Timbuctoo, my dear sir, ze very middle of Timbuctoo … I tell you zis, my dear sir, God'e made ze Albahnians after he'd just had a fight wiz his muzzer-in-law."[8]

Before I delve further into the Balkan Peninsula, I would like to address a question whose answer could fill several books: Why does the term "Balkans" exclude Slovenia, Croatia, Vojvodina (North Serbia) as well as Hungary, Transylvania, and the Romanian part of the Banat (aside from the Romanian Old Kingdom, which is an exception)? The division is based on the importance of long-standing (!) and differing courses of development to be discussed below. "Long-standing" refers to phenomena that have been formative over several centuries. The French historian *Fernand Braudel* coined the term "longue durée" (a long period of time) to describe this concept.[9] And the economist *Josef Schumpeter* compared the phenomena and struc-

Balkan region, for example, gradually disappeared following the Ottoman conquest, it continued in Romania up until the recent past.

6 *Mowrer* 1921.

7 *Christie* 1925.

8 *Lyall* 1930.

9 *Braudel* 1982.

tures of the "longue durée" with coins: they are not eternal, but they last a long time and are difficult to annihilate. "By *structure*, observers of social questions mean an organization, a coherent and fairly fixed series of relationships between realities and social masses," writes *Braudel*. "For us historians, a structure is of course a construct, architecture, but over and above that it is a reality which time uses and abuses over long periods. Some structures, because of their long life, become stable elements for an infinite number of generations: they get in the way of history, hinder its flow, and in hindering it shape it. Others wear themselves out more quickly. But all of them provide both support and hindrance."[10] Political actors are naturally frustrated by the phenomena of the "longue durée". The relationship between structures and actors has always been controversial. Sometimes the structures stand in the limelight, and sometimes the actors. Over the past two to three decades, the structures have usually stood in the shadows, and probably unjustly so, because actors operate neither in a social vacuum nor outside of structures. They act within the confines of structures. There have been actors in every time and space (although their numbers may have been small) who wanted to change a situation they perceived as unsatisfactory, cumbersome, and "backward". To this end they needed collaborators, had to organize themselves, required access to resources, and needed to try including or co-opting representatives of the structures they were fighting. In the course of their efforts, they usually had to compromise. The consequences were that they had to whittle down their original goals, that these goals became "corrupted", or that the actors completely gave up and came to terms with the existing situation. There are plenty of examples of these processes. Such a result can lead one to say that the structures were stronger than the actors. But then there are, of course, opposite cases in which the actors were stronger than the structures. On the question of when and under what conditions what result can be expected: thus, a "victory" of the structures or a "victory" of the actors seeking change, or partial victories, Pyrrhic victories, or defeats of one or the other side belong to the most exciting issues in the study of history. In short, structures emerge, change, and depart, but the speed of change remains comparatively slow. Even "revolutions" could enjoy longer lasting success only if they could tie into already existing trends. There is no such thing as a "zero hour" in history.

Slovenia and Croatia did indeed belong to the first and second Yugoslavian states for 72 years (with an interruption during WWII), as did Serbia, Bosnia-Herzegovina, etc., but 72 years are, from a historical perspective, a relatively short period. It was too short to smooth out or level the differences inherited at the founding of the Yugoslavian state at the end of 1918. Concerning all financial and social indicators, Slovenia yielded scores during the 20th century that clearly exceeded the Yugoslavian average. This fact cannot be explained by Slovenian politicians engaging in better politics than politicians in the other Yugoslavian republics. It can only be explained

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10 *Braudel* 1982, 31.

by a historical legacy: for centuries, modern Slovenia was an Austrian crown land (and historically belonged neither to the Balkans nor to Southeastern Europe), and Croatia and the present Vojvodina were part of the Hungarian half or the Habsburg monarchy (they belong to Southeastern Europe, but not to the Balkans), whereas the Balkan region was a part of the Ottoman Empire for four to five hundred years and differed in other respects to historical Hungary. With respect to the history of their religion, culture, civilization, and law, the regions of the northern part of Southeastern Europe blazed other paths than did the regions in the South, in the Balkans. The North became predominantly Catholic (to an extent also Protestant), the South is predominantly influenced by the Orthodox Church, and in parts, has been reshaped by Islam. Although the borders of the former multi-ethnic empires, the Ottoman and the Habsburg Empires, disappeared between the beginning of the 19th century and the end of WWI (not to mention the borders of the Eastern Roman/Byzantine Empire), they still surface as "phantom borders" in varying contexts. Phantom borders are borders that no longer exist, but still appear in certain human constellations or behaviours. At some point in time the phantom borders will also fade.[11] Yugoslavia united very different regions within its borders. The "leitmotif" for its foundation was the concept of lingual kinship developed by philologists of the 19th century and the "family of nations" concept derived from them, even if the members of the "family" had lived for centuries in completely different political, societal, economic, and cultural contexts. Yugoslavia was a result of this "family of nations" school of thought. And in light of the ethnic conglomerations, there was a good argument for a South Slavic union. That might have even succeeded, and occasionally (e.g. during the 1960s) there were even signs pointing in that direction, but the past, with its disruptive features, took the upper hand in the relevant national commemorative cultures and narratives and finally contributed to the collapse of the entire state with foreseeable catastrophic consequences.

We return now to the Balkans.[12] The area of the Balkan Peninsula east of the Una and south of the lower Sava and Danube amounts to about 473,000 km^2 and is thus larger than Germany (357,000 km^2), but smaller than metropolitan France (547,000 km^2). At the beginning of the 19th century, the entire Balkan region still belonged to the Ottoman Empire. Following the Congress of Berlin in 1878, six states shared dominion over the region: Serbia, Greece, Montenegro, Bulgaria, and the two empires: the Ottoman Empire and Austria-Hungary. After the Balkan Wars of 1912/13, Albania was added as a seventh state, while European possession of the Ottoman Empire shrunk to Eastern Thrace. Subsequent to WWI, the number of states decreased to five due to the dissolution of Austria-Hungary and the foundation of the first Yugo-

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11 The research project "Phantomgrenzen in Ostmitteleuropa" with the Centre Marc Bloch in Berlin, the Humboldt-Universität and other collaborators has focused on the phenomenon of phantom borders since 2011.

12 On the following, cf. *Blanc* 1965; *Carter* 1977; *Hupchick & Cox* 2001.

slavian State. And today – following the breakup of Yugoslavia (1991), the dissolution of the State Union of Serbia and Montenegro (2006), and Kosovo's Declaration of Independence (2008) – there are nine states: Bosnia and Herzegovina, Serbia (not including Vojvodina), Kosovo, Montenegro, the Republic of Macedonia, Bulgaria, the European part of Turkey (Eastern Thrace), Greece, and Albania. To this list we need to add the corridor between the Lower Danube and the Black Sea (Dobruja, split between Romania and Bulgaria). From north to south, the Balkan Peninsula measures some 1,300 km, and from east to west some 1,000 km (in the north) and 300 km (in the south). The peninsula is separated from neighbouring Asia Minor by the easily crossable straits of the Bosphorus and the Dardanelles. The wide northern portion of the peninsula resembles a trapezoid. The southern portion (essentially the Peloponnesian Peninsula) is considerably narrower and is demarcated by numerous bays cutting deeply inland. The Peloponnese, to the south, is surrounded on all sides by the sea and has only a narrow land bridge to the mainland. The Western Balkan Peninsula is characterized by the Dinaric Alps and Pindus mountain range that extend from the Northern Albanian Alps and the Pindus to the south of the Peninsula, from which they continue over the Peloponnese and Aegean islands to Asia Minor. Between the Dinaric Alps in the west and the Balkan Range in the east lies the Thracian Massif with the Rhodope Mountains. Only in Northern Bulgaria, the coastal regions of Albania and Macedonia, and south of the Balkan Range in the Marica Valley and in Eastern Thrace, are larger plains and valleys situated south of the Danube. Hence, the Balkan region is primarily mountainous and thus differs from the Romanian lowlands and the Pannonian Basin (Hungary) in the north.

At the turn of the 20th to the 21st century, approx. 45 million people of various national, ethnic, and religious affiliations (over 40% South Slavs, followed by Greeks, Turks, etc.) lived on the Balkan Peninsula. A total of nine official languages (six South Slavic: Serbian, Bosnian, Croatian [in Bosnia], Montenegrin, Macedonian, Bulgarian, and two further Indo-Germanic languages: Greek and Albanian, as well as one non-Indo-Germanic language: Turkish), written in three different alphabets (Cyrillic, Latin, and Greek). With respect to religion, the populace has been divided into three major faiths since the Early Modern Era (Orthodox, Muslim, and Catholic [especially in the Dalmatian, Bosnian-Herzegovinian, and Northern Albanian regions]). Up until the Holocaust, Jews (primarily Sephardic) represented the fourth major faith. The average population density of about 87 per km^2 is, as a consequence of the geographic realities, much lower than in Western or Central Europe (e.g. the Netherlands with 380 per km^2 or Germany with 225 per km^2). The Greeks, Albanians, and the remaining Romanized population (some of the Vlachs and Aromunians) belong to the oldest, still surviving population groups of the Balkan Peninsula. During the early Middle Ages the South Slavs arrived – often in close affiliation with nomadic horsemen (Avars, Khasares, Proto-Bulgarians). The youngest population groups (since the end of the Middle Ages) include the Turks, Sephardic Jews, Armenians, Romas, Tatars, etc.

3. The Balkans as a Religious and Legal Territory

During the course of the 20th century, academic approaches to a *structural* understanding of the Balkan region have emerged that have been supported by multiple disciplines (including linguistics, ethnography, anthropology, and history). From a comparative, historical perspective, the Balkans constitute a unique historical and cultural region – apart from detailed differences – of Europe or a sub-region of Southeastern Europe. As a consequence of the Balkan region's open borders in the Northwest, North, and East, toward Croatia, Hungary, Romania, and Asia Minor (Anatolia), the political geography has repeatedly changed. The Balkans were never a closed region, but rather a part of larger empires extending widely over the region, whose borders to neighbouring regions fluctuated over the course of centuries. Especially on both sides of the region's borders there were and still are transitional and overlapping zones. It is primarily the ethnic settlement areas that overlap in numerous places. Nevertheless, the Balkans exhibit a cluster of characteristics that exists nowhere else in that form. The emphasis here is on cluster, because the individual characteristics that make up the cluster can be found in the same or similar forms in other regions (but in differing cluster formations or in differing concentrations).

The history of the Balkans since the great migration of the Slavs (beginning at the end of the 6th century; the antiquity is beyond the purview of this analysis) can be generally divided into periods as follows:

1. the period of the Byzantine Empire and the medieval (Bulgarian, Serbian, etc.) Balkan states whose culture and civilization were shaped by the "Byzantine model",
2. the 400–500-year period of direct or indirect Ottoman rule, and
3. the period of modern state and nation building since the beginning of the 19th century to the present.

The Byzantine millennium (from the 4th to the 15th century) and the half-millennium of Ottoman rule (from the 14th to the 20th century) have lent the Balkans a special profile as a historical realm of action and experience (similar to large regions of Asia Minor). However, whereas the "Turkification" of inner Anatolia since the Byzantine defeat against the Seljuks (Battle of Manzikert, 1071) and as a consequence of internal Byzantine chaos progressed rapidly, it remained a fringe phenomenon in the Balkan region. For that reason, Anatolia is usually not considered part of the Balkan region. Amongst the long-term, structurally-formative characteristics of the region, the Byzantine legacy, including the medieval Balkan legacy, and the Ottoman legacy, emerges due simply to its long duration.[13] Although the rest of the Byzantine Em-

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[13] For a representative sample of a plethora of literature on this subject, see *Ostrogorsky* 1957, *Beck* 1978, *Obolensky* 1974 with respect to the Byzantine period and *Sugar* 1977, *Stavrianos* 1958/2000 and *Castellan* 1991 for the Ottoman period.

pire (and the medieval Balkan Slav states) foundered by 1453, at the latest, with the conquest of Constantinople by the Ottomans, the Byzantine legacy could still assert itself in diverse forms – in religion, in jurisprudence, and in culture in the broadest sense – and experienced a temporary renaissance in the Romanian principalities ("Byzance après Byzance").[14]

We next turn to the legal history. Not because it is more important than other aspects, but because special significance is assigned to it in the context of the present volume. It makes sense to compare the legal history of the Balkan region with that of Northern Southeast Europe (and Central and Western Europe as well). Until well into the 19th century, there existed an almost unmanageable plethora of legal systems whose relationships with each other were either loose or nonexistent, that had varying jurisdictional purviews, or that were interchanged repeatedly over the course of centuries.[15] Because they were often unsystematic, many of these legal systems cannot be characterized as legal *systems*. Along with (written) legal codices, institutionalized by the state and asserting national jurisdiction, there existed legal statutes for administrative districts, municipalities, churches and religious communities as well as a multitude of individual rules for specific population groups or for specific applications (animal husbandry, mining, etc.). Sources of the law were, along with formal legislation (in the form of individual statutes or statutory codes), customary law, the law of rulers, judicial case law, and religious precepts.

With respect to the legal cultures, pre-modern Southeastern Europe can be roughly divided into a Western Roman (Northern) and an Eastern Roman subarea. Pivotal for this division was the split of Christianity (with the "Great Schism" of 1054 and the conquest of Constantinople during the 4th Crusade in 1204 as high points). The denominational schism of Europe was significant for the cultural development as well as for the legal culture in a narrower sense.[16] This was due to the centuries-long interpretative monopoly of the Church and the trans-contextual interpretative authority of the priests, the political theology, and the environment in which the Churches evolved – an environment that shaped the Churches and that was also shaped by them. In particular, this process involved the configuration of spiritual and worldly authority as well as the reference system into which they were both integrated. It involved the "Byzantium Model" on the one hand, and the "Occidental Model" on the other. Over the centuries, the Christian dressed-up image of ancient emperors worshipped as divine, as well as the concept of "symphony" of Church and State in the Eastern Roman Empire, influenced the first model, and the rivalry between worldly and divine authority in the west influenced the second (i.e. the conflicting concepts of *Eusebios of Caesarea* and *Augustine*). The Eastern Roman ideal of secu-

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14 *Iorga* 1935.

15 *Sundhaussen* 2011.

16 *Sherrard* 1959.

lar power and Orthodoxy has remained closely meshed since the 4th century without becoming completely absorbed within each other (in this respect, the catchword "Caesaropapism" presents a simplified description). This "symphony" has stood in clear contrast to the two-sword theory of Pope *Gelasius I* in the West ever since the end of the 5th century and with the centuries-long struggle between secular and spiritual power. Contours of two differing legal cultures began to emerge quite early – a Latin one and Greek one – whose forms and/or instrumentalities received significant support from the Churches and religious communities. These legal cultures had momentous repercussions on all areas of public life: on the legitimization of authority, on the separation of powers, the position of individuals and groups within society, on the relationship between authority/state and society, on the development of property law, on the understanding of law and justice, on the evolution of philosophy and science, et cetera.[17] It is no coincidence that the theory of separation of powers or of property law crystallized in the west. And whoever studies the history of corporative states, the city, the Enlightenment and Secularization, the modern formation of institutions, or the history of education in a European-wide (east-west) comparison repeatedly encounters – aside from a few overlaps and seamless transitions – the watershed separating the spheres of influence asserted by the Orthodox and Western Churches (Catholicism and Protestantism). Even if the boundary in a few places (e.g. in Bosnia) has once meandered westward and then again eastward over the course of centuries, the main demarcation has proved to be remarkably constant. Probably the most important distinguishing features between the two jurisdictions were: (1) the differing ideals of dominion and their associated unity or separation of powers, (2) the emphasis on individual rights in the West as opposed to the priority for communitarian approaches in the East, as well as (3) the systematic, abstract character of the Roman law (both substantive and procedural) in contrast to the concrete, case-by-case character of the legal systems of the East and Southeast.

Roman law, which formed the basis of all modern legal systems in the Western world, was first codified in a comprehensive fashion, following early, sporadic attempts, during the reign of Emperor *Justinian I* by a specially appointed commission in Constantinople (528–535). The three parts it contains (Digest/Pandects, Institutes, and Codex) as well as the amendments enacted by *Justinian*'s successors (Novellae) have been united under the designation "Corpus Juris Civilis" (CIC) since the Middle Ages. *Justinian*'s efforts to enforce Roman law throughout the entire empire failed. Both the legislation of the Eastern Roman/Byzantine Emperor and customary law undermined the CIC (written in Latin), which had been gradually forgotten. At the beginning of the 12th century, it was rediscovered by lawyers at the University of Bologna and became the focus of revived legal studies (Glossae). Roman-Justinian civil law became known throughout Latin Europe and appeared as general law in business, legal, and judicial practices: first in the Roman Catholic ecclesiastical law

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17 *Benz* 1957.

and then – in the course of a long-lasting process of reception – in the secular law of the Central and Western European states, and finally in their modern legal codifications, above all in the Napoleonic Civil Code (1803–07) and the Austrian Civil Code of 1811. In the Kingdom of Hungary with its neighbouring countries, as well as in the coastal cities and island communities under Venetian rule or influence on the Adriatic Sea, Roman law was partially and gradually implemented already starting with the High Middle Ages. It also found acceptance in the famous legal collection of the Hungarian jurist *István Werböczy,* "Opus tripartitum juris", which was first printed in 1517 and was used by Hungarian courts until the Revolution of 1848 (and hence enjoyed the actual – if not formal – force of the law).

An additional characteristic of the Western legal sphere of influence in Southeastern Europe is the partial formation of constitutional law. The following are examples: the Pacta conventa of 1102, the purported – and historically controversial – treaty between the Hungarian King *Coloman* and Croatian nobility that founded the personal union between the Kingdom of Hungary and Croatia-Slavonia that lasted until 1918; in addition, the Pragmatic Sanction that established the indivisibility and inseparability of all the Habsburg hereditary kingdoms and lands, as well as the rules of succession that were adapted by the Hungarian parliament in 1722 (and that remained in force until 1867); furthermore, the Austro-Hungarian Compromise of 1867 and the Croatian-Hungarian Compromise of 1868 with which the constitutional position of the Cisleithanian and Transleithanian[18] halves of the Habsburg monarchy or the position of the Kingdom of Croatia were anchored within the Transleithanian (Hungarian) part of the empire.

In the Balkan region and the Romanian principalities, the reception of Roman civil law first started in the middle of the 19th century. It is a historical curiosity that Roman law was quickly forgotten in Byzantium, where it was codified, but then was rediscovered later in the West and through a long, complicated process, became the foundation of the entire occidental legal system, and was finally "re-exported" to its Byzantine-influenced region of origin in the 19th/20th centuries. South of the Sava and Danube and east of the Carpathian Arc, Byzantine law, in combination with the respective regional customary law, became accepted after the demise of the CIC (Corpus Iuris Civilis; Code of Civil Law). The medieval Bulgarian states, medieval Serbia, and the Romanian principalities relied almost exclusively on Byzantine law, especially the code (Ecloga) of Emperor *Leo III* of 726 and the "Basilicas" of Emperor *Leo VI* (originating around 888), the most comprehensive compendium after the CIC. As with secular law south of the Sava and Danube, the law of the Autocephalous Orthodox Churches was a creation of the Byzantine epoch. Under Emperor *Justinian,* canonical work reached its first apex. The most important canonist of this

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[18] The Leitha is a tributary of the Danube (east of Vienna). Cisleithanian designates the Austrian half of the Habsburg monarchy and the Transleithanian the Hungarian half.

period was *John Scholasticus,* who not only (in reliance on *Eusebius,* court theologian of *Constantine the Great*) regulated the relationship between Church and emperor or State in his "symphony model" (a type of *modus vivendi* between both societies), but also the spiritual and moral lives of the clergy, monks, and laity. The Slavic missionaries, *Cyril* and *Methodius,* translated the *John Scholasticus*' Synagoga of Fifty Titles into Old Slavonic and supplemented it with excerpts from the code of *Leo III.* Even the founder of the autocephaly of the Serbian Orthodox Church, *Saint Sava,* drew on Byzantine sources in his Nomocanon at the beginning of the 13th century. With the Ottoman expansion, Islamic law, the shari'ah (for Muslims) and sultanic law (Kanun) found their way into the Balkan region, while Byzantine civil law (in the form of Orthodox ecclesiastical law) and local customary law remained in force for major portions of the non-Muslim population or developed further, independently from Ottoman law. The comprehensive rights of self-government that the sultans granted the heads of the Christian and Jewish religious communities generated a complicated legal landscape in which Ottoman law, Islamic, Christian, and Jewish religious law as well as local customary law existed alongside each other. Customary law – to the extent it had not already been transformed into nationally institutionalized law during the pre-Ottoman period – was passed down only in a fragmentary fashion and – if it was passed down at all – was first reduced to writing much later. The most well known example is the Northern Albanian customary law, the Kanun of Lekë Dukagjini, named after the legendary ruler *Lek (Alexander) Dukagjini* (1410–1481). The material was first collected by the Franciscan priest *Shtjefën Gjeçovi* (1874–1929) at the end of the 19th century and partially published during the following period; the first complete publication appeared in 1933 in Northern Albanian Shkodra. Although almost 700 years passed between the transcription of the Kanun and the compilation of the Sachsenspiegel, both legal collections contain a striking number of similarities. Nevertheless, there are also clear differences. Both codices are an expression of the law of two different societies: the proto-national feudal society of Eastern Saxony, specializing in agriculture, on the one hand, and the pre-state, acephalous, primarily segmentary society practicing transhumance in the Northern Albanian region on the other hand.

Along with the legal systems mentioned above, a plethora of special rights emerged during the Middle Ages and Early Modern Era, such as those for the municipal communes on the Adriatic Sea (the statute of the city-state Ragusa/Dubrovnik of 1272 is cited as representative for many others), for the "free towns" of Hungary (e.g. municipal code of the city of Buda from the first half of the 15th century), for the Hungarian noble counties or for certain population groups. To the legally privileged groups in the Kingdom of Hungary belonged, among others, the three "Nationes" (Maygars, Székelys, Germans) that were granted autonomy; in addition, there were armed frontiersmen who settled on the Habsburg military border and who were usually Orthodox (e.g. those to which the Vlach Statute of Emperor *Ferdinand II* of 1630 granted autonomy). Even the Serbs who fled to Southern Hungary (today:

Vojvodina) in 1690 under the leadership of their Patriarch of Kosovo received autonomy with the decree of *Leopold I* of 1690 as did the colonists recruited to settle deserted estates toward the end of the 17th century (e.g. Settlement Patent of *Joseph II* of 1792) and many others. The efforts of absolutist-enlightened monarchs to reduce the confusing multiplicity of special rights bore only limited fruit. Only with modern state and nation building and its associated abolishment of privileges and special rights, national spheres of legal influence gradually emerged.

In the Balkan states and the Romanian principalities, the unification and "Europeanization" of law developed in the course of the 19th century and has lasted to the present. The transformation of the legal system was comprised of three sub-processes: 1. the gradual development of modern constitutional law, 2. the reception of Roman civil and criminal law, and 3. the systemization of the judiciary and procedural systems. In all three cases, they involved a legal transfer from West to East, the adaption of the new constitutional law (in reliance on French, Belgian, Italian, etc. paradigms) and the unfamiliar Roman civil and criminal law and its association with domestic legal traditions.[19] Overall, this process met with major resistance, both in large sectors of the population and in representatives of a historic (Romantic) legal doctrine, who – similar to the followers of the German jurist *Carl von Savigny* (1779–1861) – rejected the Roman legal system as "alien" and "artificial". The Croatian *Utješenović* wrote, following a critical illumination of the family law provisions of the Serbian civil code: "It is very advisable, that in Serbia, with respect to the rural community [the traditional South Slav extended family], one should also return to simple customary folk law and strike the learned §§ that are in opposition to the latter … 'Civilization' is making giant strides towards the east in destroying domestic law and outfitting the fezzed and turbaned Balkans [pun on the Turkish headdresses fez and turban] with a modern judicial top hat reaching to the heavens."[20] And when the Serbian princ *Alexander Karadjordjević* first recommended a systemization of the numerous detailed criminal laws and regulations to the State Council in 1855, the high council refused the request with these words: "Our people are still living in a patriarchal condition … A good person doesn't need laws. The law is a product of the compulsion to obstruct evil and is written for those who are evil … Our people's outlooks are so good and healthy like perhaps no other in Europe. So they don't need any cure …, rather, one should protect oneself against too many laws, from

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19 A case on point is the civil code of the principality of Serbia that was enacted on 25 March 1844. It was written by the Serbian *Jovan Hadžić* from Southern Hungary (Vojvodina) and is essentially a very short translation of the Austrian Civil Code of 1811. *Hadžić* had to make amendments in family and inheritance law to accommodate Serbian customary law, but in this endeavour, the systematic character of the code was damaged. The author was probably aware of the problem, but without such concessions the code probably would have not been enacted.

20 *Utiešenović* 1859, 50 et seq.

which a multitude of crimes can be learned."[21] This argument juxtaposed so clearly the fact that the State Council, a short time later, instigated on its own initiative the enactment of a criminal code that became effective on 29 March 1860 and whose provisions soon had to be toughened as a consequence of increasing crime. But for a long time, Serbia – like other parts of the Balkan region – was caught in a gaping abyss between written law and legal practice (in both the pre-socialist and socialist periods) and one could hardly describe it as a state founded on the rule of law. The popular trust in laws and jurisprudence was correspondingly so minimal that many resorted to the protection of patronage networks through which the already fragile legal system once again eroded. Only gradually has the notion that Roman law is the common foundation of all European law and hence a common European legacy begun to assert itself – accelerated by the collapse of the socialist regime in 1989 and the southeastern expansion of the European Union and its associated "transitional justice".

4. The Balkans as a Migration Region

Another striking characteristic of the Balkan region is the instability of settlement ratios and their resulting ethnic conglomerations within a small region: as the Balkans function as a bridge between Asia Minor and Central Europe, and due to the open borders in the peripheries (from the South Russian steppes and Anatolia in the southwestern or western directions), the Balkan Peninsula had been subject to major population movements ever since the end of the antiquity – and beyond the Migration period from about 376 to 800 AD. Those movements were amplified by successive waves of imperial state-building. Before and after the great migration of the Slavs, nomadic horsemen repeatedly infiltrated the region. Due to wars and coerced resettlements, like those that were systematically practiced in the Byzantine and Ottoman periods, and further due to socially, politically, or religiously caused migrations and the widely prevalent migratory animal husbandry that continued into modern times, the ethnic structures of major portions of the region found themselves in permanent fluctuation. The history of the Balkan Peninsula is, to a large extent, a history of migration.[22] This is especially the case when, by "migration" one understands not only movements within space, but also movement over cultural borders (e.g. in the form of religious or linguistic change). The Balkans are a region of displacement *par excellence,* in which groups and individuals have continually broken through the respectively existing national, ethnic, religious, lingual, and cultural boundaries. The perspective that has been focused on nation and nation-state in written history and in public memory ever since the 19th century eclipses the significance of migration movements and treats them only under the notions of "win"

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21 *Janković* 1960, 110.

22 *Sundhaussen* 2006/07.

or "loss" for the respective nation. This is ahistorical, especially for the Early Modern Era, because there were not yet any modern nations. The latter are (like almost everywhere) relatively young constructs of the 19th and 20th centuries. In contrast, the ethnic groups from which the modern nations arose are considered timeless. The characteristics most frequently included in their definition (common ancestry, common language, or common religion) prove in many cases, however, to be assumptions or fictions. Collective ancestry over centuries cannot be empirically proven with modern methodology. Language and religion are even less suited to substantiate the continuity of an ethnic group than is purported common ancestry. For one can change his or her religion and tongue. Namely, in those sections of the Balkan region that have, ever since the Middle Ages, stood in the crossfire between the Western and Eastern Churches and have been doctrinally ambivalent (e.g. in Bosnia and in the Albanian settlement region), conversion was very widespread: from Catholicism or from Orthodoxy to Islam. The Christian Balkan nations consider these converts and their descendents "renegades", "apostates", and "traitors": the individual had no right to abandon the societal place assigned to him by birth. Even a change of tongues or bilingualism appears to have been quite prevalent in some places in the Balkan region. From this situation emerged the "theory of the lost language" that was especially used by Greek nationalists to engross population groups that spoke no Greek as ethnic Greeks. In other words, neither faith nor tongue constitutes a sufficient indicator for establishing the existence of an ethnic group over a longer period. Of course people have spoken a language for time immemorial and have believed in something. But those who were Catholic a thousand years ago and who spoke a Shtokavian dialect are not necessarily the (biological) forefathers of those who today are Catholic and speak Shtokavian. It becomes especially problematic if the forefathers were migrants. For in the wake of migration, new experiences, new practices, and new hybridizations accrue that can contribute to a sense of identity, even if the migratory group has maintained its "original" language and religion.

Insofar as we can agree on specific traits constituting the existence of an ethnic group, there have always been ethnic groups, but they have continuously reconstituted themselves in the course of migrations: several members depart because they have changed religion and/or languages, and others join as new members. That does not mean that there was no biological continuity (e.g. at the family level), but collective continuity of an entire group is extremely doubtful. And – as already stated – it cannot be proved anyway. The conglomeration created by spatial and cultural migrations in a single area that is even smaller than France proved to be a hornet's nest of the first degree in light of modern state and nation building. Until that point, ethnicity (in contrast to religion) only played a subservient role, if any at all, in the formation of states. But now – in reliance on modern rights of self-determination of peoples – it has become a constitutive and "legitimizing" characteristic of new states. The consequences were more waves of coerced migration (population exchange) and ethnic cleansings.

The Ottoman-Islamic legacy is, along with the Byzantine-Orthodox legacy, one of the attributes of the Balkan region. The scepter of the Crescent ruled nearly half a millennium over the Balkan Peninsula, strongly shaping and changing the region. It was accompanied by the elimination of the medieval Balkan nobility, the settlement of new ethnic groups, the expansion of the Ottoman urban character, and the Islamization of a part of the native Balkan population (which was especially intensive in Bosnia and Herzegovina, Kosovo, Albania, and sections of Bulgaria). It underscored the significance of religious communities (division of society into Muslims and "infidels", internal autonomy of the tolerated "religions of the book", namely Christians and Jews, the strong position of the Greek Orthodox Patriarchate of Constantinople) and favored the conservation of inherited social forms on the local level (below the Ottoman administrative apparatus, especially intensive in the relatively inaccessible mountain regions of Montenegro and Northern Albania). Finally, it fortified the complicated ethnic and confessional conglomerations that already existed in some parts of the Balkans.

With the reception/adaptation of the Western and Central European models of nation and state, a more complicated, continually changing process of "Europeanization" finally began in the course of the 19th century.[23] The ethnicization of the national understanding (ethnic nation instead of political nation), the nationalization of religious affiliation, the relationship between the modern construct of nation and pre-Ottoman imperial concepts and the mixing of rights of self-determination and historical "rights" in nation building triggered, in light of the ethnic conglomerations, a highly explosive situation by the end of the 19th century.[24] The problems inherent in the assumption and adaptation of Western institutions and the reception of Roman law rent open societal fault lines everywhere and sparked heated conflicts between "Westerners" and advocates of indigenous models of development. The socialistic transformation of the northern part of the Balkan Peninsula following WWII once again delayed the process of democratization and pluralization.

5. The Balkans as a Region of Violence?

Is a propensity for violence an additional and especially salient characteristic of the Balkan Peninsula? Since the beginning of the 1990s, the term "Balkan Wars" has been on everyone's lips and has appeared in the titles of countless publications. What was meant were not the Balkan Wars of 1912/13 (even if the authors frequently refer to them), but rather the post-Yugoslavian wars between 1991 and 1999. That these "Balkan Wars" were occasionally designated as "new" or as "the third Balkan War" was misleading, because – in contrast to the beginning of the 20th century –

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23 Cf. the overall views of *Jelavich & Jelavich* 1977 and *Siljak* 2002, among others.

24 Brief and concise: *Mazower* 2002, 187 et seq.

only a small portion of the Balkan region was involved and one of the main participants (Croatia) is located outside of the Balkans. Geographic ignorance might have played a role. Historical ignorance added to the problem; above all, the universal tendency to "explain" events that appear incomprehensible or shocking by means of stereotyping and reducing complexity. In the case of the post-Yugoslavian Wars, the rediscovery of pejorative Balkan stereotypes seemed to be obvious. *Maria Todorova* has portrayed this vividly.[25] Many authors both within and outside of the region were persuaded during the 1990s that "history repeats itself", that conflicts "continue", and that they repeat themselves or continue especially often in the Balkan region. They were not only thinking of the Balkan Wars of 1912/13, of the mutual enmity of the Balkan states in both world wars, or of the ethnic civil wars in the context of WWII, but rather of the numerous crises and wars in the 19th and 20th centuries.

With the progression of nation and state building in the post-Ottoman Balkan region, conflicts and wars had accumulated. In the 126 years from the beginning of the "Eastern Crisis" of 1875 to the Kosovo war 1999, the Balkan region was entangled, in whole or in part, in twelve wars (either as a theater of war or in that at least one Balkan state was a leading party in the war). Following the Serbo-Turkish War of 1876 came the Russo-Turkish War of 1877/78, the Greco-Turkish War of 1897, the first Balkan War of 1912, the second Balkan War of 1913, WWI in 1914–1918, the Greco-Turkish War of 1920–1922, WWII during 1939/1941–1945, and the three post-Yugoslavian wars of 1991–1999 (the Serbo-Croatian, the Bosnian, and the Kosovo wars). Along with the regular military, paramilitary units played a significant role in almost all the wars.[26] These paramilitary units were associated with the tradition of those "outlaws" that were called "Hajduks" and "Klephts" during the Ottoman period. In the Balkan narratives, they are honored as "heroes", "warriors against feudal injustice", or "champions of national liberation". The Ottoman sources denote them simply as "robbers".[27] Beyond dispute is that the "banditry" was a mass phenomenon starting in the 17th century. How can that be explained? First, it must be assumed that every society develops specific forms of protest. What is meant here are not individual violations of the law, but rather violations of a mass character. If "robbers" (to remain with the terminology used in the Ottoman sources) become an epidemic phenomenon, it is an unmistakable sign that there is an enormous potential for insecurity and dissatisfaction in the relevant society. How this potential for dissatisfaction articulates itself depends on the specific circumstances and the type of society. Segmentary societies generate other forms of protest than do complex societies. The minuteness of segmentary groups, their low levels of organization, and their penchant for isolating themselves from neighbouring groups define the form a protest takes against the outer world or against others or strangers. It is

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25 *Todorova* 1997.

26 *Gerolymatos* 2002; *Sundhaussen* 2012a.

27 *Adanir*1982.

important to indicate that the dissatisfaction is directed toward outsiders, for problems within the segmentary society are solved according to the rules of its tradition or customary law. Possible reasons for dissatisfaction and conflicts of segmentary societies with their outer world primarily result from three sources: 1. from socio-economic upheavals, 2. from violations of what members of the society perceive of as justice, and 3. from encroachments in the mechanisms of self-regulation in the segmentary society. The subtle deterioration of the "pax Ottomanica", the erosion of classical Ottoman institutions, and the obliteration of the boundaries between justice and injustice created a situation that definitely provoked protest. Every society, postulated the Belgian statistician *Adolphe Quetelet* in the 19th century, carries within itself the seeds of wrongdoing that will be committed against itself. Every social condition presupposes a certain amount of crime that follows as a more or less inevitable consequence of its organization. Hajduks and Klephts were representatives of a provincial, wild social rebellion[28] that was triggered by the internal decomposition phenomena and social fermentation in the Ottoman Empire – a protest that quickly developed its own dynamic and increasingly captivated even ordinary criminals. What was special about the Ottoman Empire was the long-lasting decline of public legal practice and institutions, the gradual perversion of the social order upon which the empire was built, the increase of injustice, despotism, and corruption. Hajduks and Klephts were the idealistic reaction to these grievances. And the longer these grievances continued, the more often deviations from the ideal type of social rebellion occurred. Marauding soldiers or police squads as well as outlaws bent on vendetta, "ordinary" ambushers, or "classical" social bandits could disguise themselves under the labels "Hajduks" or "Klephts". The spectrum ranged from "noble" avengers of the oppressed, to robbers and sadistic criminals. Over the course of the 19th century, the fighter for national liberation (whatever that was supposed to mean) replaced the social rebel, but the sadistic criminals remained the same; their number increased rather than decreased. The post-Yugoslavian wars of the 1990s were not only ethnic/national wars (although they were that, too), but additionally social vendettas and pillaging. The black market and criminal networks knew no national or religious boundaries. All of that appears to indicate continuity. But it concerns continuity less than it does ubiquity. Even in other parts of the world, where no Hajduks and Klephts, and their like are glorified, one can find very similar scenarios. If one wants to speak of a continuity in this regard, then the continuity consists of the fact that the Balkan states and their neighbours have not come to terms with their own history and that "values" were established that were never questioned.

For the development of mass violence – in the Ottoman Empire of the 16th to 19th century as well as at present, in the Balkans, and elsewhere – it is primarily six factors that are decisive: 1. crises and societal disorientation, 2. the search for and labeling of guilty parties/scapegoats, 3. ostracism of the "guilty parties" and their

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28 As described by *Hobsbawm* 2007.

dehumanization, 4. staging of violence by groups that are initially small, 5. repeal of the previous body of rules and regulations, and 6. escalation of violence and its momentum.[29] A disposition to violence that is specific to the "Balkans" cannot be empirically demonstrated any more than "atavistic" hate between the population groups. *Robert Kaplan*'s "Balkan Ghosts"[30] has proved to be a mirage. Where and whenever rules and norms that people have negotiated for containing violence and for self-protection are eroded in reliance on hero or victim mythology or threat scenarios, or are replaced by rules that "justified" the use of violence for achieving certain goals, or where political and military authorities are not willing or in the position to enforce existing rules and to punish violations, the "appetite for evil" could be acted out; that can happen anywhere in the world and at any time. The differences are that in some societies, the rules for stemming violence and the control mechanisms for compliance to those rules are more deeply anchored than in other societies. In Germany, up until the end of WWII, they were instable, like in the young Balkan states or in former Yugoslavia at the end of the 20th century.

In a foreword to a report published in 1914 by the Carnegie Endowment about the causes and course of the preceding Balkan Wars, the following was written about those guilty of or responsible for violent crimes:

> "The real culprits in this long list of executions, assassinations, drownings, burnings, massacres and atrocities furnished by our report, are not, we repeat, the Balkan peoples …The true culprits are those who mislead public opinion and take advantage of the people's ignorance to raise disquieting rumors and sound the alarm bell, inciting their country and consequently other countries into enmity. The real culprits are those who by interest or inclination, declaring constantly that war is inevitable, end by making it so, asserting that they are powerless to prevent it. The real culprits are those who sacrifice the general interest to their own personal interest which they so little understand, and who hold up to their country a sterile policy of conflict and reprisals. In reality there is no salvation, no way out either for small states or for great countries except by union and conciliation" (Carnegie Report 1914/1993). Written on the eve of WWI.

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29 For details, cf. *Sundhaussen* 2012b, 391 et seq.

30 *Kaplan* 1993. *Kaplan*'s theory of "atavistic hate" between the population groups of former Yugoslavia and the Balkan region influenced many Western politicians at the beginning of the post-Yugoslavian wars.

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Mapping the Criminological Landscape of the Balkans

Anna-Maria Getoš Kalac

1. Introduction

The aim of this contribution is to provide for a general introduction into the whole volume by discussing its background, evolution, structure, basic concepts and methodological approach. Accordingly, some of the key findings of the volume's individual contributions will be presented and discussed in their overall Balkan-relevant context. This should set the stage for properly handling the more detailed descriptions and analyses throughout the volume's contributions, which each, in their own way, vividly present the Balkans' criminological landscape.

In its introductory section, this contribution will be *Marking the Territory* by elaborating on the Balkans as a criminological region *sui generis*. This shall include defining the Balkans and its criminologically relevant particularities, as well as emphasizing the need to focus European criminological research on the Balkans and its present research potential (see the volume's *Chapter I*). In this context, the regional key players of a *Balkan Criminology* – the *Max Planck Partner Group for Balkan Criminology* (MPPG) and the *Balkan Criminology Network* (BCNet) – will be introduced.

The contribution's second section will deal with the volume's centre piece – the *Mapping of the Criminological Landscape of the Balkans* – which aims to present a Survey on *Criminology and Crime* across the Balkans and most of the areas relevant neighbouring countries (see the volume's *Chapter II*). The volume's country-section offers a detailed and in depth analysis of the situation in question in a total of 14 countries. Before discussing some of its key findings, basic conceptual and methodological considerations will have to be briefly touched upon in order to demonstrate the value and challenges, but also possible shortcomings of the country analysis. The *mapping* is then divided into two subcategories: the *criminological mapping* that focuses on the current state of art in criminological education and research in all the analysed countries, and the *crime mapping* that captures the general crime picture, but also particular crime and criminal justice problems in each country. Here the contribution will provide for an overall snapshot of the regional situation regarding

both criminology and crime, whereby special attention will be given to discovering potential regional similarities, as well as country specific differences.

The third section presents the main results of *An Expedition into the Criminal Landscape of the Balkans* by summarising selected findings from the MPPG's first research projects (see *Chapter III*). This will be done in the broader context of the overall MPPG research agenda and planned vision, thereby ensuring that the volume presents not only the current MPPG's research and networking activities throughout the region, but also its own and inherent scientific achievements and concrete research endeavours.

Finally, this contribution, just as the entire volume, should be understood as a first attempt to capture the whole scope of the current state of art in criminology and current crime problems in the Balkans and relevant neighbouring countries. As such, it can only provide preliminary conclusions, not fully-fledged answers. That is why it will finish off rather with an outlook than with a conclusion. This will provide an incentive and basis for discussions of the BCNet with regards to future research and networking activities.

1.1 Marking the Territory: The Balkans as a Criminological Region *Sui Generis*

When dealing with the Balkans one has to be aware that "the Balkans are complicated like hardly any other European region"[1]. This goes not only for precisely 'marking the territory' in a stricter sense, but also applies to discussing its current and, even more, its past political, historical, sociological and criminological setting. Therefore it comes as a blessing that *Sundhaussen* clearly defines the relevant terminology and the borders of the Balkan region, hereby distinguishing between a broader 'Southeastern Europe'[2] and the narrower concept of 'the Balkans'[3]. There is no doubt that "from a comparative, historical perspective, the Balkans constitute a unique historical and cultural region – apart from detailed differences – of Europe or

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1 See *Sundhaussen* 2014.

2 "Southeastern Europe ranges from the western part of the former Kingdom of Hungary, the present Slovakia, over Hungary and the Republic of Moldova to approximately Odessa on the Black Sea. Everything that lies below this line is Southeastern Europe". Cit. *Sundhaussen* 2014.

3 The Balkans today include 9 states "Bosnia-Herzegovina, Serbia (not including Vojvodina), Kosovo, Montenegro, the Republic of Macedonia, Bulgaria, the European part of Turkey (Eastern Thrace), Greece, and Albania", whereas "Slovenia, Croatia, Vojvodina (North Serbia) as well as Hungary, Transylvania, and the Romanian part of the Banat (aside from the Romanian Old Kingdom, which is an exception)" are not part of the Balkans, but belong to the broader concept of 'Southeastern Europe', which in this contribution is also referred to as 'Balkan relevant neighbouring countries'. Cit. *Sundhaussen* 2014.

a sub-region of Southeastern Europe"[4]. To this should be added that the Balkans are, besides being a unique historical, cultural, religious and legal region, also a criminological region *sui generis*.[5] The Balkans lack the profile of a high crime region and have no conventional crime problem when compared to the rest of Europe, whereas security and stability are threatened by specific forms of crime like organized crime, economic crime and corruption.[6] Most of these crime phenomena are transnational in nature and can only be studied in their regional context, which makes it plausible to focus research attention on the region as a whole.[7]

Looking at European criminology, there seems to be no other European region that has received as little attention as the Balkans has, except perhaps for its occasional mentioning in the pejorative context of the term 'balkanization'.[8] This might partially be due to the complex and scattered research setting that indeed calls for extreme persistence and length of breath when undertaking regional research endeavours. However, and as this volume excellently proves, such endeavours are not only possible and eventually extremely fruitful, but also very well responded to by experts form the region. It seems that all that was needed in order to start off lively regional collaboration was a unifying initial force and a common denominator. These two, the initial impulse and the common denominator, in the form of the MPPG and the concept of a *Balkan Criminology*, managed to bring together an enormous research potential from the region. Through its two key players, the BCNet and the MPPG, the region has finally received a firm anchor that should, in the long run, boost Balkan focused research and secure its transmission into European criminology and beyond. For a full understanding of the 'Balkan Criminology concept' it is necessary to take a look at its key players – the MPPG and the BCNet.

1.2 The Max Planck Partner Group for Balkan Criminology

The institutional framework of the Balkan Criminology research concept is the MPPG that was established in January 2013 as a joint venture of the Max Planck Institute for Foreign and International Criminal Law in Freiburg (MPI) and the Faculty of Law at the University of Zagreb (PFZ). However, the 'Balkan Criminology concept' itself was developed back in May 2012 at the MPI by the editors of this volume with the aim of providing criminology in Southeastern Europe with a research concept that would be tailor fit to the region's specific needs (see *Section 2.1* of this contribution for detailed background information). A successful funding application

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4 Cit. *Sundhaussen* 2014.

5 See *Getoš* 2013 and *Getoš* 2012, 84–104.

6 UNODC 2008.

7 In more detail see *Getoš* 2012a.

8 For a more recent example see *Tonry* 2014.

with the Max Planck Society (MPG) then provided for the basics in order to set up a criminological research division, the MPPG, at the PFZ. One of the first networking activities the MPPG undertook was the gathering of experts in the fields of criminology, criminal justice and criminal law at the occasion of the official presentation of the MPPG in June 2013 in Zagreb.

But the MPPG's hosting of the BCNet is only one of its main tasks, since it is primarily a research group, comprised of junior Ph.D. researchers gathered around the concept of a Balkan Criminology. Their projects are briefly presented in *Section 3* of this contribution together with the MPPG's research agenda and its Head's vision for the future, whereas the in-depth discussion of their research comprises *Chapter III* of this volume. Here only the main features of the MPPG shall be presented. In short, the MPPG has four main tasks:

- first and foremost, conducting criminological research in line with the 'Balkan Criminology scientific concept' which is the basis for the MPPG's research agenda (see *Section 3.1* for details);
- second, establishing and hosting a network of relevant experts, the BCNet, that should enable a synergy of efforts in the field of criminology and criminal justice research in the Balkans, a field that can currently be best described as chaotic, uncoordinated, and overlapping;
- third, producing scientific publications on Balkan Criminology topics in the form of its very own publication series, i.e., the volume at hand;[9]
- and forth, organising regular Balkan Criminology events in the form of scientific conferences that gather experts from the region and beyond (collecting expertise),[10] as well as training courses for young researchers (disseminating knowledge).[11]

Although not even two years have passed since its establishment, the MPPG appears to be well on track and fulfilling all its main tasks. Much of this is owed not only to the enthusiastic work of the MPPG's members, but also to the constant and energetic support of its founders – the MPI and the PFZ as well as the MPG and all the colleagues and friends so committedly involved in the BCNet.

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9 Originally the idea was to initiate a 'Journal of Balkan Criminology', the 'Acta Criminologica Balcanica', but after careful consideration this (at least for the moment) appears to be an endeavour lacking not only funding and personnel, but also a broad criminological research community in the Balkans that would be interested in publishing in and consuming such a journal.

10 See the programme of the 2013 and 2014 MPPG conferences available online at www.balkan-criminology.eu/en/events/conferences [27.07.2014].

11 Details about the 1st 'Balkan Criminology Course' are available online at: www.balkan-criminology.eu/en/events/courses [27.07.2014].

1.3 The Balkan Criminology Network

Through the auspices of the MPPG, the BCNet, a small yet highly motivated group of experts from the region, first met in June 2013 to discuss the common thread of a 'Balkan Criminology' (see *Picture 1*). After this first gathering many members of the BCNet met again at the ESC[12] conference in Budapest where they continued the discussions started off in Zagreb and planned further research activities.

Picture 1 1st Meeting of the Balkan Criminology Network

From left to right and front to back: Dr. *Michael Kilchling* (MPI[13]), Prof. Dr. Dr. h.c. mult. *Albin Eser* (MPI), Mrs *Diana Kovačević Remenarić* (DORH[14]), Dr. *Anna-Maria Getoš Kalac* (MPPG), Prof. Dr. Dr. h.c. *Hans-Jörg Albrecht* (MPI), Prof. Dr. *Effi Lambropoulou* (BCNet Greece), Dr. *Almir Maljević* (BCNet Bosnia and Herzegovina), Mrs. *Sunčana Roksandić Vidlička* (MPPG), Dr. *Tuba Topçuoğlu* (BCNet Turkey), Prof. Dr. *Gordana Bužarovska* (BCNet Macedonia), Mr. *Aleksandar Maršavelski* (MPPG), Dr. *Ruža Karlović* (VPŠ[15]), Mrs. *Astrid Fischer* (MPI), Mr. *Filip Vojta* (MPPG), Dr. *Andra-Roxana Trandafir* (BCNet Romania), Dr. *Sárik Eszter Katalin* (BCNet Hungary), Prof. Dr. *Altin Shegani* (BCNet Albania), Mr. *Lavdim Krasniqi* (BCNet Kosovo), Mrs. *Reana Bezić* (MPPG), Prof. Dr. *Svetla Margaritova-Vuchkova* (BCNet Bulgaria), Mrs. *Katja Wirths* (MPI), Prof. Dr. *John Winterdyke* (Canada), Dr. *Claudia Hillinger* (MPG[16]), Mr. *Jan Stijačić* (PFZ[17] student assistant), Mrs. *Natalija Lukić* (BCNet Serbia), Mrs. *Andreja Gulič* (PFZ student assistant).

Slightly more than a year later, the BCNet will not only gather again in the framework of the MPPG's 1st Annual Conference in order to discuss the state of art in criminology and current crime problems in the Balkans, but it will also present the results of its first collaborative research undertaking – the core piece of this volume.

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12 ESC – European Society of Criminology.

13 MPI – Max Planck Institute for Foreign and International Criminal Law in Freiburg.

14 DORH – Office of the Croatian Public Prosecutor.

15 VPŠ – Police College of the Croatian Ministry of Interior's Police Academy in Zagreb.

16 MPG – Max Planck Society.

17 PFZ – University of Zagreb's Faculty of Law.

This is already a remarkable success and taken together with the detailed analysis provided by *Winterdyk & Kilchling*[18] in the context of creating a sustainable criminological landscape in the Balkans, the establishment and further development of the BCNet seems not only justified, but appears to have been far overdue. Now the next steps will have to focus on strengthening the BCNet by mutual cooperation agreements, including BCNet member profiles on the MPPG's homepage, discussing future meeting and conference topics as well as locations throughout the region, agreeing on the next topic for collaborative research action and publication, etc. Hopefully the following part of this contribution, as a sort of discussion paper, will be of use in determining future directions of BCNet research topics and educational activities that are not only appealing to all its members and the MPPG, but also reflect the essence of a 'Balkan Criminology'.

2. Mapping the Criminological Landscape of the Balkans

The following elaborations will deal with the background of the volume as regards the *mapping* of the *Balkans' criminological landscape*. The basic terms will be defined and methodological questions addressed in order to ensure proper interpretation of the key findings of the *criminological* and the *crime mapping*. Already at this point it has to be noted that the volume's centre piece, the *country mappings*, was never intended to be a comparative survey with fixed questions and stringent methodological rules to be followed. The goal was to initially obtain a detailed picture of the overall situation in each country, sort of a pilot survey, in order to detect basic common features and country specific issues, which could then at a future point serve as an analytic starting point for designing a comparative survey approach.

2.1 Basic Conceptual and Methodological Considerations

Background and Concept: The idea of 'Mapping the Criminological Landscape of the Balkans' and the establishment of a 'Balkan Criminology Network' was developed by the author in May 2012,[19] before the MPPG was even founded in December 2012/January 2013 and the BCNet met for the first time in Zagreb in June 2013.[20]

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18 See *Winterdyk & Kilchling* 2014.

19 This 'research concept' was first published on the Zagreb Faculty of Law's homepage (see *Getoš* 2012a), before later becoming the MPPG's basic scientific programme published on its own homepage in June 2013 (www.balkan-criminology.eu [22.07.2014]).

20 The scientific work on the 'Research Concept for Southeast Europe' was conducted in the framework of a Max Planck Society Post-Doc scholarship and research stay at the MPI. For the 'push' in this research direction, the continuous and generous support as well as the general scientific mentorship the author sincerely thanks Prof. Dr. Dr. h.c. *Hans-Jörg Albrecht*. Without his energetic endorsement and Dr. *Michael Kilchling*'s kind collegial assistance and constant encouragement there most probably would have been neither a MPPG nor a BCNet.

The necessity of a mapping became obvious after studying the criminological research setting in Southeastern Europe in 2008 and 2009 with regards to terrorism and organized crime.[21] The general finding in this regard was that:

> "The overwhelming majority of criminologically relevant research on issues such as for example organized crime and political violence in the Balkans is still being conducted by various research institutions, governmental agencies and NGOs from outside the region. At the same time domestic researchers usually rather focus on foreign and international trends in these areas, than to work on domestic and regional issues. This creates a strange situation, in which researches from outside the Balkans often seem to know more about it, than the researchers actually living and working there. Such a tendency inherits a number of risks concerning the research outcome. Besides the usual lack of local language proficiency, and differences in mentality, researchers from outside the Balkans almost inevitably have to rely solemnly on second-hand data (most commonly press clipping). Furthermore, effective ways of dealing with organized crime are dependent on local knowledge and the particulars coming with organized crime in a specific location (Rehn 2008). Same applies for other crime phenomena."[22]

However, in order to conduct such a necessary mapping from within the region itself, much more than just one enthusiastic researcher would be needed:

> "Any meaningful research undertaking, aiming to cover a region as large and complex as the Balkans, has to be able to rely on a solid network of relevant professionals and institutions, both from the region as well as from outside it. Considering the leading role and relative stability of universities, esp. their law faculties, throughout the region, and the strong European tradition of institutionalizing criminology at, or closely connected to, criminal law sciences at law faculties (Getoš 2009), it makes sense to focus on exactly these institutions in the creation of a 'Balkan Criminology' Network. However, since the majority of Balkan states during Communism also closely merged criminology with ciminalistics and criminal justice, commonly at faculties for criminalistic sciences or police academies, a 'Balkan Criminology' Network must include these institutions as well, esp. in light of the marginal position and extinction tendency of criminology at law faculties."[23]

Hence, the idea of the BCNet was born and inevitably became one of the major tasks of the MPPG in the framework of its *mapping mission*.

In accordance with research findings from 2009[24] the BCNet invitations went out primarily to colleagues at law and criminal justice (criminalistics) faculties across the region and everyone gathered in June 2013 in Zagreb at the occasion of the offi-

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21 Study published in *Albrecht & Getoš* 2010.

22 Cit. *Getoš* 2012a.

23 Cit. *Getoš* 2012a.

24 *Getoš* 2009.

cial 'Presentation of the Max Planck Partner Group for Balkan Criminology'.[25] All participants were asked beforehand to prepare a short outline of the criminological research setting and basic crime trends in their countries, as well as an expression of interest regarding participation in different areas of the MPPG's BCNet activities (teaching at the course, publications, research etc.). This outline served as the basic material for the discussions consequently led at the 1st BCNet meeting and, for many of this volume's authors, as initial drafts for their contributions to this volume. The BCNet discussions revealed first insights into the Balkans' criminological landscape which will be summarized in the following paragraph.

The Balkans' criminological landscape: Some common features like lack of funding, criminology's weak position at law faculties, unavailability of up-to-date domestic criminological text books and specialized scientific journals, underdeveloped criminological scientific communities on the national level, underrepresentation of Balkan-topics and researchers at the ESC annual gatherings, lack of specialized criminological graduate and post-graduate study programmes and as a consequence unavailability of criminological 'offspring', weak inclusion in European and international research projects etc. emerged as the core problems in the majority of countries and thus characterize the Balkans' criminological landscape. Of course, bearing in mind the large number of countries covered, national particularities were expected and not all of the countries are equally affected by the same problems. Another key feature that however turned out to be universally common was an extremely high interest in forming a lasting network of experts, the BCNet, that would facilitate regular exchange of knowledge and enable regional research collaboration. This volume and the mapping everyone so committedly participated in should therefore be taken not only as the MPPG's first big scientific output, but also as the first success of a collective research effort of the BCNet, which best proves the high level of interest and motivation of all its members. In the next paragraphs the mapping itself, its structure and topics as well as its scope shall be presented in more detail.

Mapping: The idea of investigating the current situation regarding criminology and crime in a given country is of course not new. This goes for the country level as well as for regional and international perspectives. So, for example, a few years back the European Journal of Criminology (EJC) started occasionally publishing so called 'country surveys' that provide basic information about criminology and crime in a specific European country. So far 18 countries have been covered by the EJC's 'country surveys', however only 3 of them deal with the Balkans or the broader region of Southeastern Europe.[26] Similarly, in 2008 the Slovenian Journal

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25 For details of the event see: http://balkan-criminology.eu/en/events/event/201308291.html [13.07.2014].

26 The list of countries covered by the EJC's country surveys reads as follows: France, Switzerland, Poland, Estonia, Ireland, Greece, Spain, Germany, Iceland, the Netherlands, Hungary, Scotland, Malta, Lithuania, Finland, Slovenia, Sweden, and Belgium.

of Criminal Justice and Security published several country surveys covering most of the successor states of the Former Yugoslavia.[27] What makes *this* mapping of the Balkans' criminological landscape unique and rather extraordinary is that it was accomplished not only in the same time span for all involved countries (2013/2014), but that it also managed to cover all of the Balkans and the majority of Southeastern Europe in a more or less consistent manner (see *Table 1*). This leads to the next topic – the structure and topics of the mapping.

Structure and Topics: In order to avoid the simple compilation of 'country reports' and to ensure the scientific value of the volume's contributions, it was left to the authors, who are best acquainted with the particular criminological settings in their countries, to freely decide which aspects of such a broad topic like 'criminology and crime' to cover. This meant from the very beginning that a comparative analysis would not be the primary focus of the overall mapping. Emphasis was rather to be put on gathering a solid overall picture of the situation in each country, thereby providing a broad snapshot of the Balkans' criminological landscape. The authors were provided with a 'general guideline' to ensure at least a basic level of uniformity regarding structure and topics to be addressed in the country mappings.[28] The structure was divided in two major parts, criminology and crime, though the focus was definitely put on the first part. The *criminological mapping* included the following topics:

- criminological education:
  - history and development of criminology;
  - major institutions providing criminological education and their areas of specialization;
  - description of criminological education (criminological under-, graduate and post-graduate study programmes and/or doctoral research schools);
  - criminology's position in the classification system of sciences;
  - bibliographical data on major criminological textbooks used for education, including information on whether they are simply a reprint/new edition of an older book, or a new textbook.
- criminological research:
  - major institutions conducting criminological research and their areas of specialization;
  - description of the criminological research (dominant approaches and major debates regarding criminological theory and research);
  - relationship between criminological theory and research and the government (involvement of criminologists in criminal policy decisions);

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27 The countries covered by the surveys are: Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Macedonia. See volume 10 issue 2 of the Journal of Criminal Justice and Security.

28 The structure and some of the topics partially fit the structure and topics covered by the EJC's country surveys and the country issue of the Slovenian Journal of Criminal Justice and Security.

- major domestic criminological studies that have been conducted (including topics addressed);
- areas that have not yet received appropriate research attention;
- involvement in major international and European surveys (ICVS,[29] ESB,[30] ISRD[31] etc.);
- full bibliographical data on domestic criminological journals, or if there are not any such journals, full bibliographical data on journals in which domestic criminological articles are published.

The second part, the *crime mapping,* concentrated on the following topics:

- crime trends and problems:
  - major sources of data about crime with assessment of access and reliability;
  - current levels, trends and patterns of crime and their relation to basic socio-demographic variables (if possible expressed as crime rates per 100,000 inhabitants);
  - country specific crime problems;
  - political and media discourse about crime.
- the criminal justice system:
  - basic facts about the criminal justice system (criminal law and procedure, policing, prosecution, courts, probation, prisons, recidivism etc.);
  - impact of the European Union on the criminal justice system;
  - recent major criminal law reforms (influenced by which legal tradition and due to what political reasoning);
  - major problems of the criminal justice system and measures taken in response.

As the above listing of the topics shows, the subject scope of the mapping was set extremely wide and rather comprehensively, fully covering 'criminology and crime' in the targeted countries. This explains the authors' need to focus on covering most, but not all of the topics in the country mappings (see *Table 1*). As a result, the country mappings covered the suggested topics in varying depth of detail, thus excluding some suggested and/or adding own topics in line with the country specific settings, which opens the last issue in this section: the scope of the mapping.

Scope of the 'Mapping': The term 'scope' in this context deals with both territorial coverage as well as subject coverage. First, regarding the *territorial scope*, as *Table 1* shows,[32] a total of 14 country mappings were conducted. These are presented in

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29 ICVS – International Crime Victims Survey.

30 ESB – European Sourcebook of Crime and Criminal Justice Statistics.

31 ISRD – International Self-Report Delinquency Study.

32 The distinction between 'Balkan proper' and a broader 'Southeastern Europe (SEE)' or 'neighbouring country' in *Table 1* became necessary in light of *Sundhaussen*'s stringent scientific argumentation in this respect. Some of the listed countries cannot be strictly classified in only one of the two categories, but may be 'mainly' put in one, whereas they are also part of the other. This applies to Romania, Serbia and Turkey. The 'x' indicates main category, whereas the '○' indicates secondary category, meaning that a part of the countries territory is also part of the respective other category. See in more detail *Sundhaussen* 2014.

Table 1 Scope of the 'Mapping'

Country	Territorial Coverage		Subject Coverage	
	Balkan proper	Neighbouring	Criminological Mapping	Crime Mapping
Albania	x		x	x
Bosnia a. Herz.	x		x	x
Bulgaria	x		x	x
Croatia		x	x	x
Greece	x		x	x
Hungary		x	x	x
Italy*		x	○*	n.d.*
Kosovo	x		x	x
Macedonia	x		x	x
Montenegro	x		x	x
Romania	○	x	x	x
Serbia	x	○	x	x
Slovenia		x	x	x
Turkey	x	○	x	x
overall scope	**100%**	**≈ 70%**	**86.5%**	**85%**
	≈ 85%		**≈ 85%**	

Notes: x = yes; ○ = partially; n.d. = no data provided; * Scope of subject coverage for Italy is not included in the overall calculation. – The analysis of criminology in Italy contributes to the volume as it provides an excellent overview of the Italian criminological setting. However, since it was not intended for it to focus on detecting the state of art in criminology and crime, like all the other country contributions, it made no sense to assess its subject coverage and therefore it is not included in the overall assessment.

country alphabetical order in *Chapter II*. The Balkans is fully covered; so too are the majority of the relevant neighbouring countries.[33, 34] Thus it seems justified to say that respective territorial scope the mapping does indeed cover *the Balkan*'s criminological landscape. Second, the *mapping's subject scope* is much more complex to determine, since it addresses the question of whether at least basic data about criminology and crime are provided by the country mappings. This is in no way an evaluation of the volume's single contributions, but merely an analytical tool in order to objectively assess the overall information gathered on the subject. Finally, it has to be noted that determining the overall scope is of course tainted by the interpretation of the findings in the country mappings and the fact that only some of the 'measurable' features could be analysed in this contribution (mainly those presented

33 Initially Austria was also to be included, but the corresponding author unfortunately had to cancel at the last minute.

34 Depending on whether one counts the 'partially also neighbouring' countries (Serbia's Vojvodina and Turkey's Asian part) the ratio is either 7 out of 10 (70%) or 5 out of 8 (62.5%) with Austria, Cyprus and Moldova missing.

in *Tables 2* to *12*). Besides, the real mapping value lies in all the single contributions and not in the tabular overview presented here.[35]

Table 1 shows that the overall subject coverage with approx. 85% is extremely high and consists of two separate subcategories, the *criminological mapping* and the *crime mapping*. Since the main focus of the mapping was the criminological one it comes as no surprise that this is much more comprehensive and covers almost all the issues targeted, whereas the crime mapping proved to be much more difficult and less comprehensive in some cases. The assessment for each single country mapping is not presented in *Table 1*, since the aim is to present the overall, and not the individual country scope of the mapping. It is left to the reader to determine to what extent the single country mappings facilitate basic understanding of criminology and crime in each country. At least the average score for the achieved overall scope of the mapping indicates that *Chapter II* as a whole manages to map the criminological landscape of the Balkans and relevant neighbouring countries in a highly valuable manner. The following two sections will summarize some of the key findings of the mapping and should thus provide an analytical overview of common regional features and areas of distinct differences.

2.2 Key Findings of the *Criminological Mapping*

The following elaborations deal with the first part of the mapping, the criminological one, which aims to detect the state of art in criminological research and education. A logical first step in this respect is the determination of a historical starting point of criminology in the different countries. This is done by focusing on the year in which an establishment was first created in each country to study the topic of criminology (see *Table 2*); this was not done with the aim to create a 'country ranking', but in order to present a concrete time frame in which criminological institutionalization in the Balkans began their work.[36]

The time range from 1906 until 1972 shows that criminology in an institutionalized manner took off across the region very differently and was mainly affiliated with academic establishments (either at faculties or in the form of criminological associ-

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35 The assessment of the scope in which the country mappings corresponded to the suggested questions was done in light of a max. 100% response, which would indicate that all of the targeted issues were addressed. It must, however, be pointed out that all the contributions hold additional information and data that were not strictly required, so that even a less than 100% coverage does not mean that the contribution does not perfectly reflect the state of art in criminology and current crime problems in the respective country.

36 Other indicators, like for example years of first major domestic criminological publications could have been used as well, or in addition to the criminological institutionalization. This would surely be a valuable additional 'measure' as it would also provide information about first domestic research activities and topics covered, potentially indicating an earlier start of criminology, even before the first criminological establishments.

ations). Thus, after having studied the country mappings, it becomes obvious that an early criminological starting point in history does not necessarily result in a rich and fruitful criminological development throughout history, as this was often hampered

Table 2 Criminological History

Country	First Criminological Establishments	Year
Croatia	Chair for Criminal Sciences and Sociology at Zagreb Faculty of Law	1906
Bulgaria	Society for Crime Control	1922
Greece	n.d.	1930s
Albania	Albanian Criminological Association	1942
Turkey	Institute of Criminology at the Law Faculty of Istanbul University	1943
Slovenia	Institute of Criminology in Ljubljana	1954
Bosnia a. Herz.	Criminology Institute of the Faculty of Law of the Sarajevo University	1955
Macedonia	Faculty of Law 'Iustinianus Primus' in Skopje	1950s
Hungary	National Institute of Criminalistics (since 1971 Criminology) - OKRI	1960
Romania	n.d.	1969
Montenegro	Faculty of Law at the University in Titograd (today Podgorica)	1972
Italy	n.d.	n.d.
Serbia	School of Law at the University of Belgrade	n.d.*
Kosovo	n.d.	n.d.

Notes: n.d. = no data provided; * for Serbia as point of criminological institutionalization it is only indicated 'after the Second World War'.

by social, political, ideological and personnel circumstances. As a general finding and when compared to the rest of Europe it can however be concluded that criminological institutionalization (with few exceptions) took off rather late in the Balkans. This might be one of the reasons why today, for example, specialized criminological education in many Balkan countries is still underdeveloped (see *Table 4*) or why criminology's position in the classification system of sciences in many instances is not yet clearly defined (see *Table 6*).

2.2.1 Criminological Education in the Balkans

Criminological education and research are without any doubt closely connected and it would be difficult to imagine a highly developed criminological research setting in a country that at least to some extent does not offer specialized criminological education. For determining the educational setting in the Balkans the country mappings on the one hand described the levels, subjects and range of education provided (see *Table 4*) and on the other hand identified the key actors offering criminological education (see *Table 3*).

The data gathered and presented in *Table 3* do not only list the major institutions providing criminological education, but also help to determine the primary areas

criminology is affiliated with in each country. This in return of course says a lot about the lead orientation of criminology in the different countries due to the educational background of its criminologists. Obviously criminological education in the Balkans is primarily linked to legal education and closely connected to criminal law. This finding fits in the overall picture of the broader European context, where criminology is predominantly linked to criminal law. However, there also appears to be a common Balkan feature in the form of teaching criminology within the framework of 'criminalistics' (criminal justice and security studies and/or policing). Only exceptionally is criminology linked to sociology or the so called 'educational and rehabilitation field' (as part of special pedagogy and/or behavioural disorders). The last one is rather unique as it does not appear throughout the rest of Europe and might therefore also be a Balkan speciality, perhaps linked to socialist ideology or a lack of interest in criminology at law faculties. Further analysis would be needed in this respect.

With regard to the level of criminological education provided in the Balkans (see *Table 4*), with few exceptions, this limits itself to under- and graduate study programmes (usually in the framework of police and/or criminal justice and security studies as 'criminalistics'). Criminological courses are offered much more frequently and by a broad range of institutions, commonly as electives or as part of criminal law modules in higher years of study. An interesting exception is Hungary, where criminology is a mandatory course for law students in their first year of studies. It is however generally possible for students to write their final (diploma or master) thesis on a criminological subject, but usually they do not graduate as 'criminologists', but as jurists, sociologists, criminalists, pedagogues, social workers, etc.

On the post-graduate level only three countries offer criminological Ph.D. study programmes (see *Table 4*). There are many courses at the post-graduate level and there is the possibility to conduct Ph.D. research on a criminological topic, but this is usually done in the framework of related fields of study. It should be considered whether and how the BCNet could fill this gap by offering a regional joint master and/or Ph.D. study programme in criminology, perhaps following the model of the International Max Planck Research Schools (IMPRS).[37] This would not only advance criminological post-graduate education, but at the same time boost criminological research and collaboration across the Balkans.

Another solid indicator of the state of art in criminological education is of course the domestic criminological study material – the university textbooks. Already a brief look at the data gathered shows that most of the countries do have such publications and, if focusing only on their number, the situation might appear just fine (see *Table 5*). However, when analysing the years of publication and whether the textbooks in

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37 See: www.mpg.de/en/imprs [10.07.2014].

Table 3 Criminological Education and Institutionalization

Country	Criminology Taught and Institutionalized at ...	Primarily
Albania	Fac. of Law and Fac. of Social Sciences at the Univ. of Tirana	law; social sciences
Bosnia a. Herz.	Fac. of CJS Studies, Fac. of Law and Fac. of Political Sciences at Sarajevo Univ.; Law Fac.; Education-Rehab. Fac. at Univ. Tuzla	CJS (criminalistics); law
Bulgaria	Academy of the Ministry of Interior; Chair of 'Security and Safety' at the Law School of Varna Free Univ.; Law Fac.; Pedagogical Fac. at Sofia Univ.; Fac. of Education	police (criminalistics); law; pedagogy
Croatia	Zagreb Fac. of Law; Police College; Law Fac. in Rijeka; Fac. of Education and Rehab. Sciences, Fac. of Humanities and Social Sciences and the Centre of Croatian Studies at the Univ. of Zagreb	law; police (criminalistics); behavioural disorders
Greece	Sociology Dep. Panteion Univ.; Law Fac. of Univ. in Athens and Univ. of Thessaloniki; Law Dep. and Dep. of Social Administration of Univ. of Thrace; School of Social Sciences at the Univ. in Mytilene; Fac. of Social Sciences of the Univ. of Crete, and at the Univ. of Peloponnese; Dep. of Mass Media at Univ. of Athens and of Psychology at Panteion Univ.; Police Academy	sociology; law
Hungary	all law fac., but esp. Fac. of Law at the Univ. of Miskolc – Institute of Criminal Sciences and the Fac. of Law in Budapest	law
Italy	n.d.	n.d.
Kosovo	public law fac. of Pristina, Peja and Gjilan; private law fac. of 'AAB', 'UBT', 'FAMA' and 'BIZNESI'; Kosovo Judicial Institute; Kosovo Academy for Public Safety	law; police (criminalistics)
Macedonia	Fac. of Law 'Iustinianus Primus' Skopje; law fac. at state univ. in Stip, Bitola and Tetovo; Fac. of Security in Skopje	law
Montenegro	Fac. of Law at Univ. Montenegro, Podgorica; Fac. of Law Univ. Mediteran, Podgorica; Fac. of Business Management in Bar; Fac. of Political Sciences at Univ. of Montenegro in Podgorica; Human Resources Management Administration; Judicial Training Centre; Police Academy; Regional School for Public Administration	law
Romania	Faculty of Law at the Univ. of Bucharest; other law faculties	law
Serbia	Schools of Law at Univ. of Belgrade, Novi Sad, Niš and Kragujevac; School for Special Education and Rehab., School of Security Studies and School of Philosophy (Sociology Dep.) at Univ. of Belgrade; Police Academy in Belgrade	law; sociology (social deviations)
Slovenia	Faculty of Criminal Justice and Security at Univ. of Maribor; Faculty of Law at Univ. of Ljubljana	law; CJS (criminalistics)
Turkey	Dep. of criminal law and procedure of law fac.; dep. of sociology at fac. of arts and sciences; institutes of legal medicine and forensics; Ankara Police Academy: Fac. of Security Sciences, Institute of Security Sciences, 27 police schools of higher education	law; security sciences

Notes: Univ. = University; Fac. = Faculty; Dep. = Department; n.d. = no data provided; CJS = criminal justice and security.

Table 4 Criminological Under-, Graduate and Post-Graduate Education

Country	Under- and Graduate			Post-Graduate		
	Study Program.	Courses	Thesis	Study Program.	Courses	PhD Thesis
Albania	x	x	x	/	x	x
Bosnia a. Herz.	x	x	x	x	x	x
Bulgaria	x	x	x	x	x	x
Croatia	x	x	x	/	x	x
Greece	x	x	x	/	x	x
Hungary	x	x	x	/	x	x
Italy	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
Kosovo	/	x	x	/	n.d.	n.d.
Macedonia	/	x	x	/	x	x
Montenegro	x	x	x	/	x	x
Romania	/	x	x	/	x	x
Serbia	n.d.	x	x	n.d.	x	x
Slovenia	x	x	x	x	x	x
Turkey	/	x	x	/	x	x

Notes: x = yes; / = no; n.d. = no data provided

question are completely new works or simply updated versions of older ones, the situation has to be assessed as much less satisfactory. Only a few of the countries have a solid collection of up-to-date criminological textbooks, whereas the majority lack such basic educational tools. In light of the finding that the academic criminological community in these countries is rather small it is no surprise that such big projects such as textbook writings are rare. The writing of a 'Balkan Criminology Textbook' would be another potentially fruitful collaborative project the BCNet could theoretically be tied-in with a joint master and/or Ph.D. study programme.

Table 5 Number of Criminological Textbooks

Country	Albania	Bosnia a. Herz.	Bulgaria	Croatia	Greece	Hungary	Italy	Kosovo	Macedonia	Montenegro	Romania	Serbia	Slovenia	Turkey
textbooks	5	2	8	6	41	4	n.d.	1	5	4	6	5*	15x	4

Notes: n.d. = no data provided; * in the edition 'Crimen' 27 criminological books have been published, including a collection of 58 translated texts from famous foreign criminologists; x from the 30 listed books it appears that 15 qualify as criminological textbooks in a stricter sense.

Last but not least, the issue of criminology's position in the classification system of sciences shall be briefly addressed, as this demonstrates not only the connection to related scientific fields, but also indicates criminology's standing as an independent science (see *Table 6*).

Unfortunately, information on criminology's formal position in the classification system of sciences was provided only by half of the countries. When analysing the findings as presented in *Table 6*, then there is no indication that criminology has achieved the position of a 'standalone' science. It is part of criminal law or criminal justice and security studies or, more exceptionally, sociology. Bearing in mind *Garland*'s stringent argumentation in favour of leaving criminology closely affiliated to its fundamental disciplines,[38] the detected situation seems to have more advantages than disadvantages. However, there is no doubt that criminology's position, esp. at law faculties, should be strengthened and specialized criminological education at all levels further developed.

Table 6 Criminology's Position in the Classification System of Sciences

Country	Regulated	Comment	Part of Area/Field
Albania	x	part of 'criminology and penology'	law/criminal law
Bosnia a. H.	n.d.		n.d.
Bulgaria	n.d.		n.d.
Croatia	x	own field 'criminal law, criminal procedural law, criminology and victimology'	law/criminal law
Greece	x	at law faculties part of 'penal (and criminological) science'	law or sociology
Hungary	n.d.		n.d.
Italy	n.d.		n.d.
Kosovo	/	some regulation, but criminology not mentioned	n.d.
Macedonia	x	law that refers to the ISCED 1997[1]	law or security
Montenegro	x	criminology is a section of criminal law	law/criminal law
Romania	x	classified at university level	law/criminal law
Serbia	n.d.		n.d.
Slovenia	x	for research purposes 'criminology with social work' is part of social science field; academic titles are regulated on university level	law/criminal law or criminal justice and security
Turkey	n.d.		n.d.

Notes: x = yes; / = no; n.d. = no data provided; [1] International Standard Classification of Education.

38 See *Garland* 2008.

Table 7 part 1 Major Domestic Criminological Studies and Research Institutions

C'try	Major Topics	Main Institutions
Albania	crime trends and factors; criminal associations; socio-demographic variables; performance of criminal justice bodies; corruption	Ministry of Justice; Ministry of Interior; General Directorate of Prisons; General Prosecutor's Office
Bosnia a. Herz.	domestic violence; juvenile delinquency; police and corruption; electronic monitoring; border security; intimate partner violence; safety feelings; trafficking in women	Inst. of Criminalistics, Crim. and Security Studies of the Faculty of Criminal Justice and Security Studies
Bulgaria	annual analysis on crime situation; victimization studies; prosecution of crimes affecting public finances; crime relapse rate 2006-2010; criminal activity analysis 2011; theoretical problems of crim.; organized crime; victimology; psychological studies on offenders and victims; juvenile delinquency; VAT fraud; cross-border crime; hooliganism; children as victims; national crime victimization survey	Council for crim. research at the Chief prosecutor's Office (1967-2002), then Crim. Research Sector at the Supreme Cassation Prosecutor's Office (until 2013); Research Inst. of Forensic Science & Crim.; Police Academy; General Directorate 'Execution of Penalties'; Central Commission for the Prevention of Offences of Minors; Centre for the Study of Democracy
Croatia	fear of crime and punitivity; corruption; juvenile delinquency; drug abuse; war crimes research; domestic violence; trafficking in human beings; restorative justice; violent juvenile delinquency; crime prevention; children as victims of crime	Croatian Bureau of Statistics; Zagreb Faculty of Law's Chair for Criminal Law; MPPG; Croatian Association of Criminal Law and Practice; Police Academy; Institute of Social Sciences *Ivo Pilar*; Faculty of Education and Rehab. Sciences
Greece	crime policy; corrections; drugs; police and policing; victimization (medical reports on children); fear of crime; human trafficking; youth violence; subcultures	National Centre for Social Research (EKKE); Department of Sociology at Panteion Univ.
Hungary	recidivism; juvenile delinquency; female offenders; crimes committed by Roma; Complex Examination of Social Conformity Problems (TBZ); hidden criminality; negligent crimes; victimology; analysis of criminal justice system; violent crimes; crime control; global crime; prevention; economic crime	OKRI; Hungarian Society for Crim.; Faculty of Law at the Univ. of Miskolc – Inst. of Criminal Sciences

Notes: crim. = criminological or criminology; Univ. = University; Inst. = Institute.

2.2.2 Criminological Research in the Balkans

The following analysis of the criminological research setting in the Balkans aims to present major topics that have so far occupied domestic researchers' attention (see *Table 7 part 1* and *2*). The goal is to determine whether there are common research interests present across the region and what the current gaps might be (see *Table 8*). The analysis will also investigate the state of art in disseminating domestic research findings through specialized criminological journals on the national level (see *Table 9*). A last issue to be discussed regarding criminological research in the Balkans is the participation in major international criminological studies (see *Table 10*), which should be a solid indicator of the region's inclusion in the European and international criminological research area.

When looking at the major topics of domestic criminological studies it immediately becomes apparent that domestic research in the Balkans covers a broad range of

various topics (see *Table 7 part 1* and *2*).[39] Nevertheless, certain common areas of interest can be detected. These include the study of corruption, organized crime in general and/or various forms of crime associated with it (esp. trafficking in human beings[40]), juvenile delinquency[41] and domestic violence.

It is, however, surprising that, for example, state and/or political crimes[42] and violence, as well as war crimes[43] or economic crimes committed in the process of privatising state owned assets[44] seem to have received little if any attention by domestic criminological studies, whereas the literature on some of these topics (esp. political and ethnic violence) by authors from outside the Balkans is quite common.[45] Apparently, the external perception of the Balkans and its major crime problems differs a great deal from the self-perception in the Balkans – the findings on crime trends and problems across the Balkans in *Chapter II* suggest that the self-perception is much more accurate than the external perception that in many ways still perceives the Balkans as a violent (and wild) region.[46] This also shows that what interests researchers from abroad regarding the Balkans does not really fit in the research agenda of current domestic criminological studies carried out across the Balkans. It would be prudent to include domestic re-

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39 The major topics presented in *Table 7 part 1* and *2* reflect the overall research topics in the different countries, but do not present the research setting in its full extent. For a complete list of domestic research topics please see the country mappings in *Chapter II*.

40 In line with this trend, *Ressler* is conducting a regional qualitative analysis on 'Trafficking in Human Beings in and through the Balkans'. The details of the research design are discussed in *Chapter III* of this volume.

41 Juvenile delinquency in the Balkans is currently being investigated by *Bezić* in the framework of the research project 'Juvenile Delinquency in the Balkans: A Regional Comparative Analysis based on the ISRD3-Study Findings', presented in more detail and with first empirical findings in *Chapter III* of this volume.

42 For a study into the 'Responsibility of Political Parties for Criminal Offences' which also focuses on the Balkans see *Maršavelski*'s Ph.D. project outline in *Chapter III* of this volume.

43 An extremely noteworthy exception regarding war crimes research in the Balkans is *Vojta*'s study on 'Punishment and Sentence Enforcement for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia' presented in detail together with first empirical research findings in *Chapter III* of this volume.

44 Although the change from communism and socialism to democracy and the inevitable conversion of state owned assets into private affected most of the Balkans, research on economic crime committed in the process of this 'conversion' is scarce. Therefore the Ph.D. research project conducted on 'Criminal Responsibility for Severe Economic Crimes Committed in Transitional Periods' by *Roksandić Vidlička* and elaborated in *Chapter III* of this volume could prove to be a first step into opening a region-wide discussion on the topic.

45 For an overview of this body of research see *Getoš* 2012, 116–118.

46 Regarding the misperception of the Balkans as a region prone to violence see also *Sundhaussen* 2014.

Table 7 part 2 Major Domestic Criminological Studies and Research Institutions

Country	Major Topics	Main Institutions
Italy	banditry and organized crime; economic crime; prison	n.d.
Kosovo	corruption; e-lectoral fraud; war crimes	Kosovo Judicial Inst.; Inst. for Crim. and Criminal Justice; Kosovo Law Inst.; Inst. for Researching War Crimes in Kosovo; FOL Movement; Kosovar Inst. for Policy Research and Development; BIRN Kosovo
Macedo nia	trafficking in human beings; family violence; Roma integration; sexual abuse of children	Inst. for Sociological and Political Research; various NGOs
Monte-negro	corruption; Serious and Organized Crime Threat Assessment (SOCTA)	Directorate for Anti-Corruption Initiative; Police Directorate
Romania	violence; corruption; juvenile delinquency; crime prevention; victimology; restorative justice; suicide as form of delinquency; prison studies; organised crime; students' attitudes on death penalty and perception of police and crime	National Inst. of Crim.; Romanian Society for Crim. and Forensic Sciences; Inst. of Legal Research, Inst. of Sociology and Inst. for Research and Crime Prevention of Ministry of Interior; Prosecutor's Office - High Court of Cassation and Justice
Serbia	crime prevention; serious types of crime; human rights; victims of human trafficking; analysis of crime in Serbia; criminal law reaction; crimes against police officers; actual types of crime; comparison of Serbian crime with crime in Europe; violent crime; corruption; terrorism; family violence; computer crime	Inst. for Crim. and Sociological Research; Inst. for Comparative Law; School of Law at Univ. Belgrade; Police Academy in Belgrade; Section of Crim. of Serbian Society of Criminal Law Theory and Practice
Slovenia	policing; criminal justice; execution of penal sanctions; organised crime; urban security; criminal policy; penology; fear of crime; juvenile delinquency; children's rights; criminal phenomenology, social pathology and deviancy; victimology; social control; criminal investigation; cyber-crime; road traffic safety; domestic violence	Inst. of Criminal Justice and Security Research in Maribor; Inst. of Crim. in Ljubljana
Turkey	retrospective studies of suspects, arrested and convicted offenders; (longitudinal studies of) self-reported juvenile delinquency;	Inst. of Crim. at Law Faculty of Istanbul Univ.

Notes: crim. = criminological or criminology; Univ. = University; Inst. = Institute; BIRN = Balkan Investigative Reporting Network.

searchers from the Balkans more intensively in the process of research planning from abroad, as they could surely provide highly useful information on topics that really need to be addressed in the respective national context.[47]

When analysing the list of identified domestic key players conducting research across the Balkans it can be noticed that the research setting is fairly equally divid-

[47] Of course the research agenda set for the Balkans from abroad is, like in other parts of the world, largely influenced by different funding bodies and their setting of research priorities. This issue is however a completely different topic and far too wide as that it could be discussed here in more detail. However, the low participation of researchers from the Balkans as evaluators and members of expert groups in these funding bodies surely does its part in creating research agendas that are of little appeal for the Balkans.

ed between academic and/or research institutions, various governmental bodies and NGOs (see *Table 7 part 1* and *2*).

The vast number and different type of various key players active in the Balkans' research landscape might cause duplication and overlapping of research efforts, since it appears that on national levels there is usually no coherent criminological research strategy or some sort of coordination among the various players. In light of *Winterdyk & Kilchling*'s suggestion to include not only academics, but also criminal justice practitioners in the BCNet activities,[48] it would make sense to comprise a detailed list of all the governmental research players as well as the NGOs involved in criminological research and to try to include some of them in the BCNet.[49] This would not only provide the BCNet with greater regional visibility, but perhaps even enable the national BCNet members to become attractive focal points in their countries, channelling research inquiries from abroad towards the different national research players, amongst the BCNet community, and towards the European research area.

The data gathered in this respect on the national research players, together with the data on key players in criminological education in the Balkans, could become a valuable tool for regional research purposes, especially if set up as a MPPG hosted *BCNet Database of Who's Who in Criminological Research and Education in the Balkans*. In this context it has to be mentioned that, for example, the 'World Criminological Directory' of the United Nations Interregional Crime and Justice Institute (UNICRI) does not even have country entries for Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Romania or Turkey.[50] A *BCNet Database of Who's Who* could not only fill this gap, but surely also provide much more detailed and up-to-date information on the current research and educational setting in the Balkans than any outside institution usually lacking local knowledge might be able to deliver.

Regarding the topics identified in the country mappings as lacking domestic criminological research attention, *Table 8* shows that only half of the mappings even addressed the issue. This might indicate that on a country level little attention is given to strategic considerations about necessary directions and topics of criminological and criminal justice or security research. Most of the country mappings address this issue and detect a lack in coherent criminological research strategy

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48 See *Winterdyk & Kilchling* 2014.

49 The MPPG in 2013 already started with collecting data on 'Balkan-Focused and Balkan-Positioned Actors' and publishing it on its website. See: www.balkan-criminology.eu/en/links [26.07.2014].

50 See www.unicri.it/services/library_documentation/criminological_directory [26.07.2014]. There is also the issue of regularly updating this directory. Serbia and Montenegro are still listed under 'Serbia and Montenegro' (with only 1 entry at all) and a listing inquiry by the MPPG from October 2013 is still waiting to be entered.

and missing or unsatisfactory inclusion of criminologists in the process of crime policy creation. More generally, many of the major criminal law and justice reforms across the Balkans have been undertaken without prior criminological investigation of the relevant crime situation and possible effects of planned reforms. This of course is no Balkan speciality, but as one of the findings from the country mappings, it has to be noted in this context. The expertise gathered around the BCNet could at least fill the gap related to research strategy and identify Balkan-relevant research topics in the form of a *BCNet Research Agenda for the Balkans*. This would not only serve as a working plan for future BCNet collaborative research endeavours, but could perhaps even find its way into the relevant policy making circles on the regional and European level.

The next question to be addressed in the context of the domestic research setting in the Balkans is the issue of disseminating criminological research findings. Surely not the only 'measurable' indicator, but definitely a good one, is the number of specialized criminological journals. *Table 9* provides an overview of the current situation: with a few exceptions, most of the countries have no or only one domestic criminological journal. Neither the argument that some of the countries are relatively 'small' nor that domestic scientific journals are in general scarce is applicable in the Balkan context. Even 'bigger' countries from the region like Albania or Bulgaria show zero criminological journals, whereas the 'smaller' ones like Croatia come up with a great number of journals in the 'related fields'. Probably the reason for the lack in specialized domestic criminological journals is linked to the size of the domestic criminological community, but it could also be the case that domestic re-

Table 8 Topics Lacking Domestic Criminological Research Attention

Country	Topics
Albania	domestic violence; juvenile crime; brutal crime
Bosnia a.H.	general crime and crime trends; cybercrime; ecological crime; victimization studies
Bulgaria	n.d.
Croatia	evaluation of criminal law reforms and impact on crime trends; organized crime; political corruption; economic crime
Greece	prison violence and prison management; crime trends and safety issues; development of local and international terrorism; youth violence; hooliganism
Hungary	n.d.
Italy	studies on the police
Kosovo	n.d.
Macedonia	n.d.
Montenegro	n.d.
Romania	n.d.
Serbia	n.d.
Slovenia	criminological theory and research
Turkey	onset of delinquency, persistence, desistance, recidivism; evaluation of correctional programmes; randomized experiments; evidence-based crime prevention

Notes: n.d. = no data provided.

searchers simply prefer to publish in renowned foreign criminological journals and therefore have no interest in establishing and maintaining domestic ones.

At least in the countries with no specialized criminological journals, papers of criminological substance are published in domestic journals from the 'related fields', primarily criminal law and legal journals hosted by the countries' big law faculties. In this context and in the more distant future the idea of the 'Journal of Balkan Criminology' (or 'Acta Criminologica Balcanica'), as initially envisaged by the MPPG, should be reconsidered, esp. in light of the lacking presence of authors from the Balkans in foreign criminological journals.[51] For now it seems that neither the MPPG nor any of the BCNet members would be able to publish, and even more importantly maintain on a regular basis and high quality level, such a journal with at least four issues per year. But with growing BCNet visibility and networking on all the national levels, funding could potentially be allocated as well as interested publishers and basic personnel found. What could be done immediately and will be

Table 9 Number of Domestic Criminological Journals

Country	Albania	Bosnia a. Herz.	Bulgaria	Croatia	Greece	Hungary	Italy	Kosovo	Macedonia	Montenegro	Romania	Serbia	Slovenia	Turkey
Criminological	0	n.d.	0	0	1	3	n.d.	0	1	0	1*	4	2	3
Related fields	5	n.d.	7	8	2	19	n.d.	1	2	4	3	5	n.d.	2
Total	5	n.d.	7	8	3	22	n.d.	1	3	4	4	9	2	5

Notes: n.d. = no data provided; * last issue of the 'Revista de criminologie, de criminalistică şi de penologie' was 1–2/2012.

discussed at the forthcoming conference is the publication of a *BCNet Newsletter* that would serve as a constant forum for exchange of information about important regional events, new publications, research projects and their key findings etc. This would fill the activity gap between the annual Balkan Criminology conferences and courses while simultaneously boosting BCNet visibility, esp. if distributed using the *BCNet Database of Who's Who*.

The last research related issue to be discussed deals with the involvement of the Balkans in major quantitative criminological studies. According to the information gathered through the country mappings and an author's background check (see *Table 10*) most of the countries in the Balkan region are involved in some of the major in-

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51 See for example *Smith*'s analysis of the papers published in the European Journal of Criminology. At least the data for country/author origin show a serious lack in contributions from the Balkans or the relevant neighbouring countries.

Table 10 Participation in Major International Criminological Studies

Country	ICVS		ESB		ISRD3	
	1	2	1	2	1	2
Albania	x	x	x	x	n.d.	/
Bosnia a. Herz.	n.d.	/	x	x	x	x
Bulgaria	x	x	n.d.	x	n.d.	/
Croatia	x	x	x	x	x	x
Greece	x 04/05	x	x	x	/	/
Hungary	n.d.	x	n.d.	x	n.d.	/
Italy	n.d.	x	n.d.	x	n.d.	x
Kosovo	/	/	/	x	/	x
Macedonia	n.d.	/	n.d.	/	n.d.	x
Montenegro	/	/	/	/	/	/
Romania	n.d.	x	n.d.	x	n.d.	?
Serbia	n.d.	/	n.d.	x	n.d.	x
Slovenia	x	x	x	x	/	/
Turkey	x	x	x	x	x	x

Notes: x = yes; n.d. = no data provided; / = no; columns marked with 1 = according to country mappings; ICVS column 2 = according to coverage of ICVS 1989–2000* and *van Kesteren et al.* 2014, 52; ESB column 2 = according to ESB homepage and author's knowledge; ISRD3 column 2 = according to author's knowledge and information provided by the courtesy of Prof. Dr. *Marshall,* ISRD Steering Committee; ? = contracted but no feedback on activities.

* Country coverage retrieved from the homepage of the Inter-university Consortium for Political and Social Research of the Institute for Social Research at the University of Michigan, see: www.icpsr.umich.edu/icpsrweb/ICPSR/studies/3803 [28.07.2014].

ternational studies and all of them at least in one of the here analysed surveys (ICVS, ESB and ISRD3), except for Montenegro.

Participation in the ESB is most common and covers almost all the countries analysed. ICVS participation is less frequent and shows fluctuations depending on the series analysed, but almost all countries participated at least in one of the ICVS series. But when it comes to ISRD3 participation, then approx. only half of the countries are part of the currently ongoing survey. In this context it has to be acknowledged that regional collegial networking as well as the BCNet activities already resulted in broadening the inclusion of Balkan countries.[52] A last observation deals with the national composition of the groups of lead researchers, steering committees and boards of experts etc. of the major international studies. Here researchers

[52] So for example Assist. Prof. Dr. *Maljević* (Bosnia and Herzegovina) introduced the author (Croatia) to the ISRD3, whereas the author suggested Assist. Prof. Dr. *Topçuoğlu* (Turkey) to the ISRD3 Steering Committee. Since both Croatia as well as Turkey are participating in the ISRD for the first time, this is worth noting here.

from the Balkans are clearly underrepresented when taking into account the scope of Europe's region they cover. This should be seen as problematic in the context of a holistic European criminology and again shows that Balkan focused collaboration through the BCNet is indeed needed in order to engage as a collective, rather than a hand full of individuals, much more energetically in the European criminological research arena. This should prove feasible not only for researchers from the Balkans, but likewise for European criminology as a whole.

2.3 About the *Crime Mapping* and Current Crime Problems in the Balkans

Although almost all the country mappings provide excellent and very detailed analyses of crime levels, trends and patterns, usually discussed in light of relevant socio-demographic data (age, sex, nationality, education, family background, etc.), the following elaborations will have to be limited to an analysis of the sources of data about crime, a few general remarks about crime in the Balkans and an overview of current crime and criminal justice problems in the Balkans.

Table 11 tries to analytically summarize the highly complex findings on the main sources of data about crime in the Balkans. It was challenging to exactly determine one 'main' source and only through further discussions of the findings with the country mappings' authors will it be possible to comprise a more definite analysis. However, a preliminary analysis reveals that most frequently used are the police statistics, followed by data from the national bureaus of statistics (see the grey fields in *Table 11*).

With the exception of Bosnia and Herzegovina all of the Balkans have at least some source of data about crime. The data publications are most commonly publically available. Some of the countries still struggle with unifying counting rules (esp. regarding the counting units) amongst the different data collecting bodies, so that analysis through the process 'reported, accused and convicted' would become possible.[53] In many of the country mappings it is pointed out that victimization studies are needed in order to better assess the crime situation, which has so far been mainly analysed using official data about crime.

The most commonly reported type of crime in the Balkans, just like in the rest of Europe, is definitely property crime. Violent crime seems to play a minor role in the overall crime picture and contradicts the stereotype of the Balkans as a 'violence prone' region. The overall impression from the country mappings is

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53 For an overview of the situation regarding crime and criminal justice statistics in many of the Balkan and neighboring countries see *Ilir, Maljević, Getoš et al.* 2010 and the relevant in-depth country reports available online at: www.unodc.org/southeasterneurope/en/cards-project.html [28.07.2014].

Table 11 Main Source(s) of Data about Crime

Country	NBS	Police	Prosecution	Courts	NMJ	Availability
Albania	/	x	x	x	**X**	yes[1]
Bosnia a. Herz.	/	/	/	/	/	no[2]
Bulgaria	x	**X**	x	x	x	no[3]/yes
Croatia	**X**	x	x	x	x	yes
Greece		**X**			**X**	yes
Hungary		**X**	**X**			yes
Italy	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
Kosovo		**X**	x		x	yes
Macedonia	x	x	x	x	x	yes[4]
Montenegro	x	x	x	x	x	yes[4]
Romania	**X**	x	x	x	x	yes
Serbia	**X**	n.d.	n.d.	n.d.	n.d.	yes
Slovenia		x	x	x	x	yes
Turkey	x	**X**		x	x	partially

Notes: / = no; x = yes; X = primary source; NBS = National Bureau of Statistics; NMJ = National Ministry of Justice including Prison administration; [1] no unified crime statistics collected by central body, the NMJ's 'Statistical Yearbook' is accessible after 2–3 years, but monthly police statistics are available for the first half of 2014; [2] no single body collecting crime and criminal justice statistics which makes analysis of crime trends impossible; [3] police statistics not publicly available; [4] different data collecting bodies use different counting units, 'reported, accused, convicted' comparisons no possible.

that conventional crime rates are rather low or at least not above a 'European average'. However, due to differences in data (reported, accused, convicted) and counting units (case or person) used, as well as countless methodological challenges the ESB usually struggles with, it is not possible to compare the crime levels and trends in the Balkan countries or to analyse them in the context of e.g. the ESB data. Anyway, this was neither set as the goal of this contribution, nor the purpose of the country mappings. The crime situation in the Balkans is best assessed by studying all the country mappings individually. Here, the focus is put on what was identified in the country mappings as current crime and criminal justice problems (see *Table 12*) in order to detect potential common features throughout the region.

The detected crime problems can be summarized around the issues named most frequently throughout the country mappings: corruption, juvenile delinquency and organized crime (THB, smuggling of illicit goods, money laundering etc.). Although the listing is long, covering a wide range of issues, these three crime problems could be marked as a common regional feature. Regarding criminal justice problems: besides the already noted issue of crime statistics and victimization surveys, many countries struggle with overburdened court dockets, corruption and a lack of transparency as well as prison overcrowding. In light of these first and very general find-

ings, the BCNet should consider addressing primarily some of these issues in future research collaborations.

However, the *crime mapping* would need to be readdressed in a more unified way in order to really be able to determine the Balkans' current crime and criminal justice

Table 12 Current Crime and Criminal Justice Problems

Country	Crime Problems	Criminal Justice Problems
Albania	domestic violence; juvenile crime; brutal crime; corruption; organized crime; illegal gambling establishments; drug cultivation and drug related crime	corruption; lack of transparency in the judiciary and prosecution service (appointments); overburdened court dockets; lack of special facilities for persons under court-ordered mental health treatment
Bosnia a. Herz.	migration; xenophobia; crimes against children; THB	lack of data about crime (crime statistics)
Bulgaria	increase in juvenile delinquency; decrease in age of early criminal activity; intellectualization of crime (economic and computer crime); criminal activity of Roma (street crime is an acute social problem); organized crime	lack of consistent crime countering policy; penal policy reduced to repression by criminal law; prison overcrowding
Croatia	corruption; economic crime; organized crime	corruption; overburdened court dockets; excessive use of pre-trail detention; prison overcrowding
Greece	n.d.	overburdened court dockets; prison overcrowding
Hungary	n.d.	n.d.
Italy	n.d.	n.d.
Kosovo	organized crime; corruption; financial crime; informal economy	high number of cases; lack of judges and prosecutors; corruption in the security and criminal justice sector; lack of database on the work of police, prosecution and courts (electronic case management system); crime statistics
Macedonia	human trafficking; domestic violence; sexual abuse of children; constant increase of overall crime; property crime; substance abuse; juvenile delinquency	crime statistics; situation in state prisons
Montenegro	organized crime – smuggling of narcotics, cigarettes, vehicles etc.; corruption; money laundering	crime statistics; backlog of court cases; long court procedures; inadequate judicial network
Romania	n.d.	corruption; prison overcrowding; length of trials; overburdened court dockets
Serbia	violent crime esp. robbery; corruption; drug offenses; organized crime	n.d.
Slovenia	economic crime; corruption	length of criminal proceedings; prison overcrowding; human rights
Turkey	increase in adult and juvenile crime over the last decades; increase in prison population	lack of unofficial crime and victimization surveys; human rights in criminal proceedings; lacking efficiency and case overload in investigation and prosecution phase; ½ of juvenile offenders being tried as adults

Notes: n.d. = no data provided; THB = trafficking in human beings.

problems. One thing is sure – transnational crime phenomena, like organized crime and illegal markets, that affect not only the Balkans as a whole, but also the rest of Europe – should be placed among the top priorities of a *BCNet Research Agenda for the Balkans*. This leads to the next part of this contribution and essentially introduces *Chapter III* of this volume, 'An Expedition into the Criminal Landscape of the Balkans'.

3. An Expedition into the Criminal Landscape of the Balkans

Whereas the *mapping of the Balkans' criminological landscape* in *Chapter II* deals with providing a general overview of the state of art in criminology and current crime problems in the countries of the region covered by the BCNet members, the contributions of the MPPG members in *Chapter III* present first scientific pathways exploring particular areas of the *Balkans' criminal landscape* (war crimes, juvenile delinquency, THB, economic crime and criminal activity of political parties). Before discussing each of the MPPG contributions in more detail, the MPPG's research agenda and vision shall be briefly addressed, in order to provide for a broader scientific context in which the MPPG projects are embedded in.

3.1 The MPPG Research Agenda and Vision

As mentioned at the beginning of this contribution, the MPPG's primary task is research, whereby its research agenda targets specifically those crime phenomena that have been identified as being of particular relevance for the Balkans, or threatening regional security and stability.[54] The concept of a Balkan Criminology was never envisaged as a general criminology *for* or *in* the Balkans, but rather a specialized European criminology focusing its research on *Balkan-relevant* crime phenomena. Some of these Balkan-relevant crime phenomena that have so far received little research attention throughout the region and which are, at the same time, part of the MPI's research priorities can be grouped around the following three areas of interest – the MPPG research focuses:

I. Violence, Organized Crime and Illegal Markets;[55]
II. Feelings and Perceptions of (In)Security and Crime;[56]
III. International Sentencing.[57]

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54 For a more detailed argumentation with relevant references see the MPPG homepage at www.balkan-criminology.eu, *Getoš* 2012a or *Getoš* 2013.

55 See www.balkan-criminology.eu/en/research/rf1 [01.08.2014].

56 See www.balkan-criminology.eu/en/research/rf2 [01.08.2014].

57 See www.balkan-criminology.eu/en/research/rf3 [01.08.2014].

Of course, further topics would have deserved to be addressed as well by the MPPG research agenda, but due to the current actual research capacities, strategic choices were necessary and resulted in the aforementioned research focuses. In addition to the research focuses, which are mainly covered by individual research projects (most of them presented in *Chapter III*), the MPPG also conducts so called *ad hoc* projects, aimed at involving the MPPG in the relevant European and international criminological research area. Currently ongoing MPPG *ad hoc* projects include: 'ISRD3 Croatia', 'TRAFSTAT Croatia: Tools for the Validation and Utilization of EU Statistics on Human Trafficking' and 'RJ Croatia: Restorative Justice at Post-Sentencing Level – Supporting and Protecting Victims'.[58]

In short, the MPPG aims at addressing its research focuses by conducting several research projects grouped around its research agenda. These research projects are predominantly set up as Ph.D. studies of MPPG members with a strong empirical (qualitative and quantitative) orientation. Currently, five such Ph.D. projects are on their way (see *Section 3.2* and *Chapter III*) and a sixth one on 'Prostitution in the Balkans' should start off by the end of 2014. The setting up of own MPPG research as Ph.D. projects has the advantage that, besides the research itself, it creates new criminological 'offspring' which already at an early stage has profound knowledge on the region as well as the topic. This also ensures continuity in the MPPG's work and opens new possibilities for young researchers at the starting points of their scientific careers. In the long run, the MPPG members should, after completion of their Ph.D. projects, take over the lead role in the different research focuses, further develop them and through their own projects attract new junior researchers from across the Balkans to conduct further Ph.D. projects. In essence, this is the vision for the MPPG – to become a self-sustainable regional research centre, involved in cutting edge criminological research of the highest quality and committed to creating career opportunities for young researchers from the Balkans.

3.2 MPPG Ph.D. Research Projects and Outputs

The MPPG research project conducted by *Filip Vojta* on 'Punishment and Sentence Enforcement for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia' is part of the MPPG's research focus III on 'International Sentencing'. Its focus is placed on empirically investigating the after-trial phase of the ICTY's (International Criminal Tribunal for the Former Yugoslavia) procedures, or to be more exact, the enforcement of its sentences – a field of study that has so far not been investigated. By undertaking a systematic empirical inquiry into punitive approaches that have been developed towards the ICTY convicts within the framework of introduced mechanism in the prison systems of different European states as well as their criminological and penological aspects, *Vojta* is on his way to fill this

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58 See for more details: www.balkan-criminology.eu/en/ad_hoc_projects [01.08.2014].

existing research gap. His findings will not only contribute to the current state of art in the field, but also result in a set of recommendations for improved treatment of international prisoners. *Vojta*'s research is not only of high penological relevance but might possibly even have an important impact on international criminal law and its further development with respect to international sentence enforcement. In his contribution to this volume he provides an overview of the established enforcement mechanism for international prisoners and the first results of his inquiry into various aspects of the ICTY's sentence-enforcement practice.

Reana Bezić heads the MPPG project 'Juvenile Delinquency in the Balkans: A Regional Comparative Analysis of the ISRD3-Study Findings' and is one of the lead researchers for the Croatian component of the ISRD3, one of the MPPG's most prominent *ad hoc* projects. Her contribution introduces her research topic and thesis, while at the same time presenting first ISRD3 results for Croatia (prevalence of self-report delinquency and alcohol consumption). Although her project has a regional approach, the methodology is based on the findings from the Croatian ISRD3 study. The cross-national comparison will cover all the Balkan countries participating in ISRD3: Croatia, Slovenia, Bosnia and Herzegovina, Serbia, Macedonia, Kosovo and Turkey. *Bezić* will use primarily quantitative research methods, but also qualitative ones, in order to investigate the causes and extent of juvenile delinquency across the Balkans as well as governmental response to it. The contribution highlights the importance of background variables in understanding and explaining the prevalence and patterns of juvenile delinquency in the Balkans. As many of the country mappings in *Chapter II* identify juvenile delinquency as one of the major crime problems in their countries, it may be expected that the project findings, esp. due to the broad regional approach, produce an impact not 'only' on the scientific level, but also on the level of criminal policy across the region.

The MPPG research project on 'Trafficking in Human Beings in and through the Balkans – A Qualitative Analysis', conducted by *Karlo Ressler* aims at enhancing the current understanding of trafficking activities in the region, which seems necessary in order to establish well-targeted anti-trafficking policies both on a national and regional level. This research project is being conducted under the MPPG's research focus I dealing with Violence, Organized Crime and Illegal Markets. Despite the considerable growth in literature on human trafficking, it is still challenging to define not only the extent of the problem, but also to identify the victims, understand the social dynamics between traffickers and trafficked persons and even to distinguish trafficking from other similar crimes, such as human smuggling and procuring. Because it seems that applying qualitative methods is most appropriate to answer these questions, it will be attempted to fill these knowledge gaps primarily by using interviews and case studies. Apart from presenting an overview of the research project, the contribution to this volume also examines a wide range of indicators which are commonly used to measure certain aspects of human trafficking, such as the number of trafficked persons and estimations of profits made in trafficking business.

Since qualitative methods will be dominantly employed in this research project, *Ressler*'s contribution also discusses advantages of utilizing qualitative methods and presents the proposed project methodology.

The next MPPG research project, conducted by *Sunčana Roksandić Vidlička*, deals with 'Criminal Responsibility for Severe Economic Offences Committed in Transitional Periods' and has its focus on the reasoning and background of invoking international criminal law to combat severe transitional economic crimes. The project also belongs to the MPPG's research focus I. Economic crime offences have often been neglected in criminal proceedings and the reports of truth commissions that followed economic transitions or conflicts, although such crimes resulted in substantial losses for the economy, society and rule of law. The Balkan region is no exception. Placing more emphasis on the indivisibility of human rights and their criminal adjudication could be seen as the next necessary step in order to respond to overall global developments and unfortunate experiences from transitional and post-conflict countries. Some possible approaches of how to address these crimes will be articulated in her project, i.e. amendments to the International Criminal Court's *ratione materiae* jurisdiction or prosecuting grand transitional economic offences as crimes against humanity. By applying a systematic inquiry into available research and approaches that have been proposed so far regarding the protection of economic and social rights, *Roksandić Vidlička* articulates her own path toward justification of prosecution of serious and systematic grand economic offences committed in transitional periods as crimes under international law. In her contribution to this volume, she presents for the first time some of the most important project findings. *Roksandić Vidlička*'s research could become of high relevance not only for the Balkans and other countries that are undergoing 'transitional periods', but also for the relevant international bodies that are applying transitional justice mechanisms. It could also serve as a valuable contribution to recently opened debates in the international justice arena, when it comes to finding effective responses to grave and systemic violations of economic and social rights.

Aleksandar Maršavelski heads the MPPG project 'Responsibility of Political Parties for Criminal Offences' within the scope of research focus I. This is the first research study which deals with different models of holding political parties liable for criminal offences. In particular, an original contribution of this project will be to evaluate the adequacy of criminal responsibility of political parties from the standpoint of the need to balance the colliding interests of justice and democracy. The results of the project will have particular relevance for the Balkan region because most countries in the Balkans (in particular the countries of former Yugoslavia) adopted criminal responsibility of political parties without any critical analysis of the consequences of such an approach. Different cases as examples of different models from Balkan and other countries shall be used for empirical evaluation of various effects of proceedings against political parties (e.g. the first case of convicting a political party in Croatia, constitutional dissolution of political parties in Turkey, prosecutions against

members of a neo-Nazi political party in Greece for participating in a criminal organization, etc.). *Maršavelski*'s contribution in this volume provides preliminary observations regarding the topic, points out the challenges of his project and brings to light certain controversial questions related to criminal responsibility of political parties.

Taken all together in the context of the overall MPPG research agenda, the MPPG research projects, although currently at differently advanced stages of progress, should contribute a great deal to the whole idea of a Balkan Criminology. Their first findings are highly promising and make *Chapter III* an extremely interesting 'Expedition into the Criminal Landscape of the Balkans'.

4. Outlook

The aim of this contribution was to provide an introduction into 'Mapping the Criminological Landscape of the Balkans'. In doing so it presented the concept of a Balkan Criminology, the MPPG and its BCNet, as well as the reasoning behind the necessity of the mapping and its methodology. In the process of analysing some of the key findings of the country mappings it turned out that the Balkans have a lot to offer in terms of expertise, education and inherent research potential. But it also became obvious that many gaps exist as well, be it specialized criminological Ph.D. study programmes, coherent research strategies and research coordination or criminological publications in the form of textbooks and journals. However, these gaps should not be seen as problems, but rather challenges put before the BCNet. Some of these challenges will surely be discussed in the framework of the BCNet: joint BCNet Ph.D. study programme, Balkan Criminology textbook, BCNet Database of Who's Who, BCNet Research Agenda for the Balkans, BCNet Newsletter and potentially even a Journal of Balkan Criminology. Depending on regional capacities and interests, maybe some of these initiatives could be accepted in order to further develop the current state of art in criminological research and education in the Balkans. So far, the BCNet has proven itself as a collective highly capable of engaging in collaborative research and networking activities.

Finally, the pejorative usage of the words 'Balkan' and 'balkanization' is widespread and commonly implies the divide of a region or body into smaller, mutually hostile states or groups. But as this contribution shows, the MPPG with its BCNet grouped around the concept of 'Balkan Criminology' achieved just the opposite. Does this mean the BCNet de-balkanized the criminological landscape of the Balkans? Well, probably not. It simply means that stereotypes are just stereotypes and as such should be avoided. Perhaps the BCNet's first successful research collaboration will do its part in this regard, so that at least in European criminology the word 'Balkan' when linked to 'Criminology' will create positive rather than negative associations.

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Winterdyk, J. & Kilchling, M. (2014). Creating a Sustainable Criminological Landscape: Building Capacity and Networking the Balkans. Chapter I of this volume.

Creating a Sustainable Criminological Landscape: Building Capacity and Networking the Balkans

John Winterdyk and Michael Kilchling

1. Introduction

Crime is a global phenomenon, and there are an array of international standards, conventions and agreements to combat crime at a local, national, and international level.[1] Within this realm there is also an increasing recognition of the necessity for the advancement of regional development policies and strategies to effectively combat crime. Policy decisions around crime control can not only have a direct economic impact on a region but also impact the quality of life.

In recognition of this, an initiative was mobilized through the partnership of the Max Planck Institute for Foreign and International Criminal Law in Freiburg and the University of Zagreb for the establishment of a Balkan Criminology Network in 2012 – the Max Planck Partner Group for Balkan Criminology (MPPG). The Network was founded on four key pillars which are discussed later in the article (see section 4 below). In order to provide an appropriate context, we will first present an overview of the importance of comparative criminology. This will then be followed by a discussion as to how, and why, the emergence and development of the Balkan Criminology Network (BCNet) is both important and necessary.

Instrumental to building any sustainable entity, especially within an economically, socially, culturally, and politically diverse region such as the Balkans, it is important to explore some of the challenges in building capacity within the region. Therefore, we will also provide an overview of the region, address some of its historic and existing challenges, and then explore the options how the BCNet can become a viable structure for the study of crime, victimization, and justice in the region. It will be argued that the BCNet has the potential to contribute to the social, economic, and political stability in the region.

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1 See, e.g., www.unodc.org/unodc/en/treaties [28.07.2014] and www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG [28.07.2014].

2. Criminology – an International and Interdisciplinary Science

A look at the United Nations Office on Drugs and Crime (UNODC),[2] the Centre for International Crime Prevention (CICP)[3] or the website of International Statistics and NationMaster.com[4] clearly shows that there is a substantial political and public demand for data on crime, crime prevention, and crime control. Nowadays, this demand more-or-less regularly includes the query for comparative data from other countries – independent of the question if such data are available and, even more important, if comparison even makes any sense. In addition to using international empirical data as the basis for rational, evidence-based criminal policy, data from abroad are often used by politicians and journalists in a relatively haphazard manner for illustrating and justifying internal/domestic purposes – without confirming whether the data referred to are in fact comparable or not. However, reality often is not that simple. Therefore there is an obvious need for having a solid scientific basis such as that which can be provided through criminological research.

As *Hans Joachim Schneider* once pointed out:

> "Criminology is [per se] an international science";[5]

and it is also an interdisciplinary science which draws primarily from the disciplines of sociology, psychology, law, social anthropology, and biology.[6] In fact, the term "criminology" was first coined by the Italian law professor *Raffaele Garofalo* as "criminologia" and a few years later the French physician and anthropologist *Paul Topinard* also used the French term "criminologie" when describing criminal types.[7] Therefore, as readers will recognize, although a crime may be simply defined as an act which violates the formalized norms and values of a country; to understand, predict and prevent such behaviour has always been heavily influenced by factors identified and refined through a range of disciplines by adaptation of ideas, theories, methodologies, etc. that were developed and tested, as well as replicated on occasion, either domestically or by colleagues in other countries, sometimes even other parts of the world.

Although the study of crime and criminology slowly emerged in the mid to late 1800s in Europe, it has only been since the 1950s with advancements in theory, data

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2 Cf. www.unodc.org [28.07.2014].

3 Cf. www.uncjin.org/CICP/cicp.html [28.07.2014].

4 Cf. www.nationmaster.com [28.07.2014].

5 *Schneider* 2010, 476 (original quote in German).

6 *Kaiser* 1996, 69; for more details, see also *Radzinowicz* 1991, 15 et seq.; *Winterdyk* (forthcoming).

7 *Deflem* 2006, 279.

collection and methodology that international and comparative studies have become a "core field"[8] of criminological inquiry.[9] For example, as recently as 1991, when *Freda Adler* and *Gerhard O.W. Mueller* attempted to include an entire chapter on comparative criminology and international criminology in their introductory criminology textbook, the publisher did not feel it was necessary to dedicate an entire chapter to the topic![10]

Currently, one of the main instruments and fields of activity of international comparative criminology have been quantitative studies[11] such as the International Self-Report Delinquency Studies (ISRD),[12] or the International Crime Victimization Surveys (ICVS).[13] These lines of inquiry, however, have become subject to critical debate in recent years. Comparative research is a methodological approach, and it needs a substantive basis, ideally concrete research questions, in order to avoid it being little more than providing descriptive comparison. Even more problematic is the collection and comparisons of statistical figures and other information collected on the basis of varying national traditions of data collection. The *European Sourcebook* project[14] clearly demonstrates a number of the methodological and substantive limitations of such projects as it includes data from a variety of different regions. Even more problematic are data collections gathered in the political arena with a clear political purpose. One of the more dubious examples in recent years has certainly been the so-called "evaluation report" launched by the European Commission about the practice of telecommunication data retention in the EU that was clearly interest-driven as it intended to produce better compliance with for this highly controversial piece of EU legislation.[15] Interestingly, however, there is one particular area of international comparison in which national data has been collected and used 'successfully' for the purpose of country ranking over the past number of decades.

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8 *Schneider* 2010.

9 *Szabo* 1976; *Winterdyk, Reichel & Dammer* 2009.

10 Cited in *Smith et al.* 2011, xxix.

11 For more details, see *van Dijk* 2011.

12 For basic information on the methodology and results of the first three waves of the project, see www.northeastern.edu/sccj/research/the-international-self-report-delinquency-project-isrd [28.07.2014]. The MPPG is the project partner for Croatia in ISRD3; see the contribution by *Bezić* (in this volume).

13 For basic information on the methodology and results of the four waves conducted so far, see www.icpsr.umich.edu/icpsrweb/ICPSR/series/175 [28.07.2014].

14 All relevant information about the project and the published editions is provided at http://wp.unil.ch/europeansourcebook/ [16.04.2015].

15 Report from the Commission to the Council and the European Parliament: Evaluation Report on the Data Retention Directive (Directive 2006/24/EC), Brussels, 18.04.2011, COM (2011) 225 final.

This is the comparative and critical criminology thematic subject pertaining to prisoner rates.[16]

Nevertheless, whether collected at a national or European Union, or even at the United Nations level (i.e., UNODC), the data is usually characterized by varying degrees of reliability and validity which compromise its accuracy. As *Brantingham* and *Brantingham*[17] pointed out this may be due to a number of reasons such as language barriers, definitions of crime types, the method in which the data is recording may vary between countries, etc. In addition, the UNODC has identified a host of other internal factors that may impact the reliability and validity of official crime data. They include such factors as:

- Population density and degree of urbanization,
- Victim reported crimes,
- Variations in composition of the population, particularly youth concentration,
- Stability of the population with respect to residents' mobility, commuting patterns, and transient factors,
- Economic conditions, including median income, poverty level, and job availability,
- Modes of transportation and highway systems,
- Cultural factors and educational, recreational, and religious characteristics,
- Family conditions with respect to divorce and family cohesiveness,
- Effective strength of law enforcement agencies,
- Administrative and investigative emphases on law enforcement,
- Policies of other components of the criminal justice system (i.e., prosecution, judiciary, corrections, and probation),
- Citizens' attitudes toward crime,
- Crime reporting practices of the citizenry, and
- Deviations in what is considered to be a crime.

Nevertheless, there are a growing number of academics who specialize in comparative criminology and/or criminal justice and rely on official data as a baseline for comparison. Again, as *Brantingham* and *Brantingham*[18] noted, official data is sometimes the only data available but that because of the factors identified above, it should be used and interpreted with caution. Also, increasingly, we are seeing a variety of new methodology techniques being introduced, and used, which assist in moderating the limitations of some of the limitations of official data.[19]

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16 Cf. *van Dijk* 2011, 47 et seq.

17 *Brantingham & Brantingham* 1984.

18 *Brantingham & Brantingham* 1984.

19 See *Winterdyk, Coates & Brodie* 2006.

Therefore, even though engaging in international and comparative research may be fraught with its challenges, the benefits can arguably out-weight the disadvantages and the fact that the idea of engaging in international and comparative criminology has a relatively long history suggests that it has a rightful place in criminology and criminal justice discourse. In fact, Swedish born *Thorsten Sellin* (1896–1994), one of the pioneers in scientific criminology, is often credited as one of the first scholars to use the term comparative criminology. *Herman Mannheim* (1889–1974) is another former European who emigrated from Germany to the United States and became a major scholar in the field of criminology. In 1965, *Mannheim* wrote the first textbook on comparative criminology. Then in 1983, *Barak-Glantz* and *Johnson* edited a popular textbook simply called "Comparative Criminology". More recently in 2005, *Sheptycki* and *Wardak*, from the United Kingdom, broadened the scope of study in their edited book titled "Transnational and Comparative Criminology", and in 2011 *Smith et al.* produced the first "Handbook of International Criminology". The most recent comparative criminology European handbook is that of *Body-Gendrot et al.* who in 2014 edited a book titled "Handbook of European Criminology". This is but a small snapshot of the range of books that have been published on comparative/international criminology. Comparative journals such as the International Criminal Justice Review, the International Journal of Comparative and Applied Criminal Justice, the International Journal of Offender Therapy and Comparative Criminology or the International Review of Victimology, and with an explicit focus on Europe, the European Journal of Criminology, the European Journal of Crime, Criminal Law and Criminal Justice, or the European Journal of Criminal Policy and Research serve to further reinforce this trend.

In addition to the books and journals that offer global overviews, there are an even greater number that engage in international and/or comparative examinations of specific issues, or topics. For example, *Winterdyk* has (co-)edited international and/or comparative books on juvenile justice systems (1997, 2002, forthcoming), international correctional systems (2004); international perspectives on human trafficking (2012); international and comparative border security issues (2010), and in 2004 a book titled "Lesson from international/comparative criminology/criminal justice". The book includes 14 different major international scholars who have made significant contributions to the study of crime and/or criminal justice. Complimenting this expanding list, there are now also a strong list of comparative criminology and criminal justice books that focus on such topics as policing,[20] corrections,[21] the judiciary,[22] criminal justice systems,[23] comparative criminology/criminal justice research

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20 E.g., *Haberfield & Cerrah* 2008.

21 E.g., *Ebbe* 2013; *Weiss & South* 1998.

22 E.g., *Ebbe* 2013.

23 E.g., *Reichel* 2012.

methods.[24] There are of course numerous other authors who have also published widely on comparative issues.

In essence, as pointed out by *Martin Killias* and *Sophie Body-Gendrot* in their commentaries during the Presidential address at the 2013 European Society of Criminology conference in Budapest, the practice of engaging in comparative criminology is essential to identifying "best practices" and also helps to ensure an evidence-based approach to tackling social issues.

Although awareness and use of the term "transnational crimes" emerged in the mid-1970s when the United Nations used the term to identify certain criminal activities which transcend national jurisdictions, it can arguably be said that since first being coined that we have witnessed an explosion of research interests in transnational/global crimes. For example, the list of crimes that are now classified by the United Nations as transnational include, among others: money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit arms trafficking, aircraft hijacking, sea piracy, insurance fraud, computer crime, environmental crime, trafficking in persons, trade in human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, and corruption and bribery of public or party officials. Each of these crimes while being global in scope, like all forms of conventional crimes, they have different patterns of expressions. For example, in relation to human trafficking, some countries are defined as being primarily countries of 'origin' – countries from which individuals are primarily trafficked. While other countries are seen as primarily countries of 'destination' – countries to where persons trafficked are brought to for exploitation in the sex industry, forced labor, or children even trafficked for the purpose of serving as child soldiers or to work on the cocoa plantation or to labor illegally digging for diamonds. A third category of countries are considered to be primarily 'transit' countries through which persons being trafficked are often moved in order to minimize detection or suspicion if the trafficking is originating from a country that is known to be a primary country of origin for trafficking.[25]

As noted earlier, during the second half of the 20th century criminologists became sensitized to the cultural and legal relativity of the concept of crime.[26] According to *Henry*,[27] the subject of crime is both *relative* and *evolutive.* In other words, it is a dynamic discipline that is subject to social, cultural, economic, and political conceptual and ideological thought. Furthermore, as the existing differences within Europe and their (potential) scientific contributions became even more visible in the course of European approximation, the growing 'grouping' of countries into regional catego-

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24 E.g., *Winterdyk, Reichel & Dammer* 2009.

25 See generally, *Winterdyk, Perrin & Reichel* 2012.

26 Cf. *van Dijk* 2011.

27 *Henry* 2012.

ries is going to become a useful and promising technique/method for criminological research and inquiry.[28]

One such region is the Balkans, as well as South-Eastern Europe as a whole. It neither belongs to Eastern[29] or to Southern Europe, nor is the Balkan region just a mixture of the two. It is a region *sui generis* as will be explained in the following section.

3. The Balkans – a Region *Sui Generis*

While most people may have an idea of what constitutes the geographic and cultural region known as the Balkans, ironically it does not have a uniformly defined list of countries. See, for example, *Sundhaussen*'s rich explanations in Chapter I of this anthology. According to *Todorova*, the Balkans today should include Greece, Albania, Bulgaria, Romania, Turkey, and all successor states of the former Yugoslavia (i.e., Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro, Kosovo, and Macedonia).[30] And although there are a number of other major ethnic groups the region is comprised mostly of people of (southern) Slavic ethnic origin who are an Indo-European ethno-linguistic group whose native language is amongst the oldest in the world.

Regardless of the nuances that surround the definition of the Balkan region, the region is an integral, yet unique, part of Europe. And despite its rich and varied past, the countries that make-up the Balkan region share many common cultural, political, historical, and structural traits:

> "Despite several particularities and differences, an empirically sound cluster of common characteristics can be identified that gives the Balkans a distinctive, fascinating and sometimes scary profile."[31]

Common patterns include crime and criminology – these can be summarized using the metaphor of a *criminological landscape*.

According to a UNODC report of 2008, the Balkans does not have a serious conventional crime problem. This has in part been attributed to the general level of transparency and sound government that currently characterizes the region. However, it is generally acknowledged that organized crime, corruption and transnational crimes, such as human trafficking, weapons smuggling, and illicit drug smuggling, are major

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28 *Body-Gendrot et al.* 2014, 12 et seq.

29 See, e.g., the study by *Lappi-Seppälä* 2014 about punitivity in Europe: Most of the graphs shown clearly indicate a broad variance amongst all the countries that were included into "Eastern Europe" category.

30 *Todorova* 2004, 13.

31 *Sundhaussen* 1999, 651; for more details see *Getoš* 2012, 86 et seq.

concerns. Similarly, there remain varying concerns about the relative stability and integrity of the criminal justice system and general levels of governance in a region where rapid progress has also been made with meeting standards that are comparable to those of the rest of most of Europe.

3.1 The EU/Non-EU Divide

One clear example of some of the social, political, and economic challenges is the fact that the region is currently characterized by a divide between EU members and non-members. For example in July 2013, Croatia joined the European Union while Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia (still) are not EU members. In fact, as of July 2014, some of these countries haven't even reached official candidate status yet. Meanwhile, other Balkan countries like Greece, Slovenia, Romania, and Bulgaria attained member states a number of years ago.[32]

Entry into the EU requires a country to meet three fundamental criteria:[33]

- Political: Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- Economic: Existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and
- Acceptance of the Community acquis: Ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

Many of these issues are closely related to crime and crime control.

3.2 Shared Characteristics

It is generally assumed and recognized that for the forming a network or organization there have to be some fundamentally shared characteristics. The most obvious of these for the Balkan region is that it already shares a common geographic location in the south-east of Europe and has long been referred to as the Balkans. Admittedly, the term Balkans has tended at times to have a pejorative connotation,[34] however, historically, there is also a rich and shared history that has also been defined by many notable accomplishments such as *Nicola Tesla*, and the Balkans have been described as having been at a crossroads of cultures and peoples throughout history.

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32 For a complete listing and date of when countries became an EU member, see: www.europa.eu/about-eu/countries/member-countries/index_en.htm [28.07.2014].

33 European Union: Accession criteria, www.europa.eu/legislation_summaries/glossary/accession_criteria_copenhague_en.htm [28.07.2014].

34 See *Daskalov & Marinov* 2013.

Although the geography throughout the Balkans is diverse and varied, one can also draw a number of parallels in terms of social culture, economics, politics, national and traditional orientations, shared values and political systems, fairly recent move towards democratic states, experiencing a fairly common sense of ethno-nationalism, and the region has been described as reformist and cosmopolitan.[35] Yet, as much as the Balkans may be characterized by certain objective criteria is it also the product of the social and cultural evolution, or process, national constructionism especially in the aftermath of the Balkan Wars (1912 & 1913) and more recently the political transformation of the former Eastern Block following the fall of the Berlin Wall in 1990, the break-up of former Yugoslavia (1980–1992), and the relative instability of such countries as Kosovo and Bosnia-Herzegovina.

4. Balkan Criminology

4.1 The Status Quo

The violent dissolution of former Yugoslavia affected a major part of the region. Even today, the on-going nation-building is influenced by the consequences of widespread ethnic conflict. Grounded in the past conflicts and ongoing simmering hostilities, resentments in day-to-day relationships amongst people linger in some regions more than others. Hence, any research efforts to establish new networks require time, patience, and a degree of diplomacy. Nevertheless, the potential for research collaboration remains enormous. Given the lack of scientific counterparts in the Balkans, comparative European surveys have so far, at best, covered only parts of the region. This has left a proverbial "empirical black hole"[36] within the Balkan region. To date, neither the *International* nor the *European Handbook*[37] provide any themed contribution that focuses on (an) issue(s) or aspect(s) of crime in the Balkan region.[38] This lack of criminological research from and on the Balkans has created a significant gap in the European Research landscape, affecting not only criminological research or education, but also the creation of modern evidence-based criminal policy both at a European and regional level. Any meaningful research effort that aims to cover a region as large and complex (i.e., socially, culturally, economically, and politically) as the Balkans needs to rely on a solid network of professionals and institutions, both from the region and from outside: This is something still missing in the criminological landscape of the Balkans.

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35 See, for example, *de Munck & Rsiteski* 2012; *Yavuz & Blumi* 2013.

36 *Getoš* 2014, 9.

37 *Getoš* 2014, 9.

38 For similar conclusions, see *Schneider* 2010; *Smith* 2014.

4.2 Balkan Criminology – an Integral Part of European Criminology

Worthy of noting is that the University of Zagreb Faculty of Law has one of the longest traditions in criminological institutionalization, teaching, and research in Europe, with the establishment of the Chair for "artes adiutrices juris criminalis et sociologia" in 1906 under the leadership of *Ernest Miler* (1866–1928). The school is not only geographically but also culturally well located at the crossroads between the Balkans and Central Europe.[39]

In addition, other (perhaps obvious) qualifications which apply equally to justifying the need for a Balkan Criminology Network include:

- A better opportunity to understand one's own circumstances (e.g., human trafficking in forced labor, corruption, smuggling, etc.),
- Help to improve the (better) 'understanding' of neighboring issues and the possible influences on adjacent countries (e.g., the increasing move towards stable nation-states),
- Facilitate the improvement of basic levels of cooperation between 'member' states (movement towards increased stable market economies),
- Help to harmonize proactive measures of control, preventing, or intervention in crime through such practices as policy transfers, bi- or multi-lateral agreements, etc.,
- Facilitate social and policy reform through common interest and needs,
- Setting and sustaining regional norms in criminal justice, human rights, and crime prevention,
- Joint ventures and project applications as a regional, European, or international level. For example, the University of Zagreb hosts an international school on a major criminal justice and/or criminological theme every fall in Dubrovnik. It attracts students and educators from throughout Europe and internationally, and
- An overarching advantage of cross-cultural research is that it has the potential to dramatically expand the breadth and scope of variation in the natural setting from which the researchers draw or formulate their scientific inquiry.[40]

While there is no shortage of rationales for the establishment of a regional network there are a number of challenges that can make cooperation and collaboration challenging. But given that criminal justice systems are, as *Duffy*[41] noted, an inseparable feature of human civilization, forming a regional criminology/criminal justice network can represent a step towards greater public safety and stable governments.

Even under the best of circumstance engaging in comparative work is not easy. However, in the case of the Balkans, various cultural and systemic factors will need

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39 For more details, see *Getoš* 2011; *Kaiser* 1996, 70.

40 See *Maguire et al.* 1998.

41 *Duffy* 2010.

to be considered. For example, there are language barriers that need to be overcome. Similarly, there are different legal codes that will need to be reconciled. There are also variations between the countries in terms of how they record data. Part of this is due to different technologies available as well as the social capacity to record the data. However, as early as 1967, the esteemed American criminologist *Marvin Wolfgang* (1924–1988) offered a number of 'simple' solutions, one of which involves relying on official data rather than subjective observations.

Another issue that will need to be resolved is the willingness to share crime and/or victimization data. Serbia has an active victimization research agenda led by the likes of *Vesna Nikolić-Ristanović* and her colleagues at the Institute for Criminology and Sociological Research in Belgrade. And finally, although not an exhaustive list of challenges, what is the accuracy and reliability of the data that is collected and shared. Given the relative instability of some of the Balkan countries, it is suspected that official data may not be as robust as in other parts of Europe (or North America).

The first attempt to establish a (new) regional criminology network (although limited to the successor states of the former Yugoslavia) was planted in 1989 in Skopje, Macedonia. However, the meetings and initiative lacked sufficient traction to evolve into a formal entity. A fixed term research project which focused on human security in the Balkans (HUMSEC) and which was funded under the Sixth EU Framework Programme, aimed to promote dialogue between academicians from the European Union and the Western Balkan region. Although the project was housed outside the Balkan borders, it nevertheless generated a considerable number of papers on security-related issues with a special focus on the region.[42] Unfortunately, the project was not continued after the funding term ended.

The present initiative for a Balkan Criminology Network was launched by the Zagreb-based Max Planck Partner Group on Balkan Criminology. The network was set up with a number of long term objectives. It has the potential for becoming more inclusive of the Balkan region. It builds on the fact that the majority of Balkan states during Communism also closely merged criminology with criminalistics and criminal justice, commonly at faculties for criminalistic sciences or police academies (e.g., Ljubljana/University of Maribor). Therefore, the BCNet should be comprised of a network of relevant professionals and institutions, both from the region as well as from outside it.

As *Dammer* and *Albanese*[43] note in their book on comparative criminal justice, the way countries administer criminal justice is reflective of their economics, politics, and historical realities. Therefore, as noted earlier, establishing an independent

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42 For more details regarding the project which had been launched and directed by the ETC Graz, Austria, and its findings, see www.humsec.eu [28.07.2014].

43 *Dammer & Albanese* 2014.

'think tank' parallels what many other parts of the established world are already engaged in. As the adage goes, in order for justice to be done, it must be seen to be done. What is sometimes overlooked when establishing stable governments and respected criminal justice systems is the perception of the public. *Winterdyk* and *Weinwrath*[44] have noted that the public is essentially the fourth element of the criminal justice system and their voice plays a key role in the level of support that the criminal justice system receives.

4.3 Contrary to Popular Opinion

According to various UNODC reports the Balkan Peninsula has been described as one of the safest areas within Europe. In fact in their report of 2008 they reported that the Balkans was:

> "Surprisingly, one of the safest [regions] in Europe. The report Crime and its Impact on the Balkans by the United Nations Office on Drugs and Crime (UNODC) belies enduring stereotypes of the region as a hotbed of organized crime and violence. People are as safe, or safer, on the streets and in their homes as they are in most parts of the world."[45]

By contrast, in the aftermath of the post-Communist break-up and regional ethnic struggles, opening of borders, and most of the countries being characterized as having transitional justice systems,[46] economic crimes (e.g., duty/tax evasion, money laundering, or corruption), organized crime, corruption and transnational crimes such as smuggling of migrants and the trafficking of drugs, humans, human organs, and firearms are more problematic in the region. These crimes are largely fuelled by a profit motive. Comparatively speaking, the Balkans average income is considerably less than that of its northern European neighbours and the region has long been seen as a transit route for illegal drugs from the Afghanistan region. Also the region has a long history of banditry and smuggling and with the fall of Communism police security all but collapsed and state security was heavily compromised opening the doors for crime, corruption, and organized criminal activity.[47]

However, as the region has evolved to being economically and politically more stable, the countries respective criminal justice systems are also aligning themselves with European standards. These efforts are being further enforced through the greater integration with the European Union.[48]

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44 *Winterdyk & Weinwrath* 2014.

45 UNODC, press release introducing the UNODC report of 2008; www.unodc.org/unodc/en/frontpage/greater-stability-in-the-balkans-is-lowering-crime.html [28.07.2014].

46 Generally, see *Kritz* 1995.

47 *Binder* 2014.

48 See above, section 3.1.

In summary, although the Balkan region is in many ways homogeneous, it is also a very diverse and complex region with multifaceted social, political, and criminal justice/crime issues.

4.4 The Four Key Pillars for a Sustainable Balkan Criminology Network

While the MPPG for 'Balkan Criminology' was approaching its first anniversary, it is not yet feasible to offer a 'report card', but some reflections can be shared that may help to ensure continued success, sustainability, as well as in attracting membership and participation from the partner institutions from the region. We can identify four main points for moving forward.

Bearing in mind their mandate and stated objectives, the first priority of the BCNet is research. The research activities conducted by the core group have already engaged in a remarkable range and quality of research projects. Several of these initiatives are discussed in Chapter III of this anthology. Over the next couple of years consideration should also be given to who is doing the research, and who should be involved in its projects: academics, practitioners, or some collaborative effort. International experience shows that cooperation and collaboration with NGOs and government stakeholders throughout the Balkan peninsula should become an additional focus. Therefore, there is a perceived need to form strong partnerships and a network not only within and across the academic community but also outside of academia. In order to do so, awareness has to be raised to inform and attract 'outside' participation. For example, the organization of thematic workshops can be as useful and informative as the transfer of information through scientific publications. The present anthology is just the first volume within the new publication series on 'Balkan Criminology'. Such a partnership is seen to be essential as each group tends to bring a different perspective and need to the issues in question. As an incentive to further support regional involvement, the venue of the annual BCNet conference it is already anticipated that the conference will be rotating amongst the partner institutions. For example, practices from the European Society of Criminology and the American Society of Criminology (i.e., the largest criminologists' conference in the world), among other regional and/or national associations, hold their annual conference in a different city each year. In addition to strengthening the BCNet partnerships this will also promote regional representation of both the Network itself as well as the other regional partners. Once established and recognized, the financial challenges of being able to attend the annual conference, consideration could be given to establishing and supporting regional meetings which could be linked and/or associated with the BCNet. Such an initiative would help to build stability for the Network and likely foster more capacity to support sustainable projects.

The second pillar for consideration is establishing priorities for the BCNet. Aside from the relevant themes that have been embraced in the existing research focuses

of the Partner Group programme,[49] further thought should be given to where on the 'crime control – crime prevention continuum' the Network wishes to align itself. During the opening conference in 2013, many constructive issues were discussed and explored. In the coming years at every annual meeting such issues should continue to be reviewed and prioritized to ensure that the Network continues to move forward and establish a clear focus that is sustainable and meets its overarching objectives. In addition, it would also be instructive to involve non-academic prospective partners in an effort to also seek their support and input to ensure that the Network is responsive to both academic and community/regional issues. Such an approach will not only help sustain the Network but also extend its sphere of influence to the broader community, governmental institutions, etc.

Further to the issue of priorities, it is being recognized across the international community that victims' rights, human rights, and crime prevention are 'hot topics'. Networking, or affiliating with such organization, can be helpful in order to not only build on international initiatives but also contribute to the global and comparative approach and understanding of crime and criminal justice issues.

The third pillar pertains to conducting an environmental scan of the region which can assist in helping to understand the broader context of what is/what is not happening in the region. Even though the MPPG has identified three main areas of research and a variety of additional ad hoc projects, an environmental scan of the Balkan peninsula could help to expand the understanding of the current factors that impact the social, demographic, economic and political stability of the region.

A scan, for example, could also provide vital insight into the possibilities of organizations (i.e., formal and informal) that provide similar services or that are competing for the same (limited) funds. The later point is deemed to be especially important when looking at NGOs that may be competing for the same funds but which may not be aware of what each other is doing. In this capacity the BCNet could serve not only as a network but also a repository where organization can refer to for assistance and information of what other competing services may already be operating and/or doing.

Once a scan is conducted then consideration to a SWOT analysis might also be considered. Developed by *Albert Humphrey* (1926–2005) at the Stanford Research Institute in California, a SWOT analysis which stands for strengths, weaknesses, opportunities, and threats could then help to inform the environmental scan and be more concrete and deliberate in its focus.[50]

The fourth pillar relates to sustainability through education and promotion of research for junior researchers who are the most important human resource for sustain-

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49 For details, see www.balkan-criminology.eu/en/research/index.html [28.07.2014].

50 *Pahl & Richter* 2007.

able and future-oriented capacity building. As noted above, the projects presented in Chapter III provide an overview of some of the current Ph.D. research conducted at the MPPG center and the Law Faculty in Zagreb. Educational activities promoted and coordinated by the BCNet include:

- Promotion of criminological higher education and specialization at universities (course and curriculum development, Ph.D. research schools, etc.);
- Promoting and encouraging collaboration between young researchers in the field of criminology and criminal justice research, and cultivate a coherent framework for future research in this area;
- Creation of a pool of prospective young researchers and Ph.D. candidates for regional brain circulation;
- Transfer of criminological knowledge and expertise from BCNet partners into the European criminological research community;
- Capacity-building actions to increase the quality of research and teaching in criminology; and
- Establishing opportunities for international mentorship and offer research and/or visiting opportunities for graduate students and scholars in the Balkan region.

In addition to the regular curricula at universities, a yearly summer course for advanced students, post graduates, doctoral students and post-doctorates will continue to be held at the Inter-University Centre in Dubrovnik. This is seen as an excellent initiative to further build capacity and sustainability throughout the Balkan region.

Finally, if an annual scientific conference is going to be held in a different region in the Balkans, it would seem both logical and prudent to explore the option of articulating all criminology, criminal justice, and security oriented programs so that students and academics might be able to move more freely between countries and institutions to strengthen the criminology and criminal justice movement. As once noted, the security of a state is reflected in the stability of its criminal justice system. Therefore, consideration should be given to establishing various (international) internships where colleagues and/or graduate students could work collaboratively on specific topics such as those offered through the United Nations, or the Fulbright program, the Humboldt program, DAAD scholarships, or their equivalents in other countries. Just as many universities around the world have formed partnerships with other schools and created opportunities for their students to broaden their sphere of influence and exchange of ideas, this could be a goal that the BCNet consider nurturing into viable option. The template for such an opportunity is already familiar to the MPPG as they are to date only the third research group worldwide to receive such a formal partner status within the Max Planck Society[51] in the area of social sciences and humanities.

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[51] Max Planck Society for the Advancement of Science, www.mpg.de/en [28.07.2014].

Drawing on similar initiatives elsewhere, there is no foreseeable reason why the BCNet cannot become a major research center that represents the Balkan peninsula – and one which can foster and support the development of existing and emerging scholars in the region as well as serve to inform criminal justice policies that will better serve the region.

5. Conclusion and Future Perspectives

This chapter set out to establish an informed justification for the establishment of a sustainable Balkan criminological network. While acknowledging the various challenges, we focused on the nature and the extent of the similarities within the region – in particular those in structure and quantity of crime which, at the same time, determine the differences of the region with a focus and emphasis towards most other European countries – to provide an objective justification that the criminological landscape of the Balkans may find a considerable parallel (and model) with Scandinavian criminology[52] which, since its establishment in 1962, has gained international recognition as a regional approach to criminology; regionally focused research structures and programs,[53] themed monographs and book series,[54] as well as an international journal[55] which often includes substantial comparative elements (internal as well as external comparison) underline its position and importance;[56] even the possibilities for establishing a Nordic Society of Criminology have been discussed.[57] In light of this, the Balkan Criminology Network certainly has the potential to become a second 'Scandinavia' in European criminology.

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52 See also *Getoš* 2014.

53 The Scandinavian Research Council for Criminology (SRCC) with its renowned annual seminars; cf. *Kyvsgaard* 2012.

54 Scandinavian Studies in Criminology, the first volume of which was published in 1965.

55 Since 2000: Journal of Scandinavian Studies in Criminology and Crime Prevention.

56 For further details, see *Schneider* 2010, 484 et seq. Similar efforts can be witnessed in the Baltic states which are, however, much more limited in terms of territory and capacity. Cf. *Aromaa* 1998.

57 Cf. *Kivivuori* 2014.

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CHAPTER II

MAPPING THE CRIMINOLOGICAL LANDSCAPE OF THE BALKANS

Survey on Criminology and Crime

Criminology and Crime in Albania

Evisa Kambellari

1. Criminological Education and Research

1.1 History and Development of Criminology in Albania

The first tracks of criminological thinking in Albania date back to the XIX century, when in many European countries the science of criminology and scientific criminological studies started to be developed. One of the founders of the scientific discipline of criminology in Albania is Prof. Dr. *Ismet Elezi.* In his works, *Elezi* presents some facts on the existence of Albanian criminological thinking in the writings of the Albanian writers of the National Renaissance period, who lived in the second half of the XIX century and in the beginning of the XX century.[1] The opinions elaborated by these writers did not yet meet scientific standards. They used to discuss crime matters along with other problems the Albanian society of that time was facing. Some of the main causes of crime of this period were considered to be poverty, low cultural and educational levels, and the burden of occupation by the Ottoman Empire.[2]

1.1.1 Criminological Thinking from 1912 to 1944

After the creation of the Albanian independent state in 1912, the penal thinking of Albanian scholars started to become evident. The Albanian professors used to publish their criminological articles in everyday journals until 1926, when the first scientific work named "The Punitive Law" (E drejta ndeshkimore) of the author *Terenc Toçi* was published.[3]

Among the ideas expressed in different papers of that time, the causes of crime were sometimes attributed to biological factors or to the disrespectful and evil nature of the people and their desire to "show off". Some authors supported and brought forward evaluations of *Lombroso*'s theory concerning the relation between one's anthropometric features and the inclination to criminality, whereas others expressed their doubts about the real value of the theory's scientific foundations.

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1 *Elezi* 1994, 26–32.

2 *Hysi* 2005, 100.

3 *Hysi* 2005, 100.

During the time of the Italian occupation, two Italian scholars created the Albanian Criminological Association on 26 September 1942, which was a branch of the International Association of Criminology.[4]

1.1.2 Criminological Thinking during the Dictatorial Regime (1944–1990)

In Albanian criminological thought of this period, the following peculiarities can be recognized:

- Criminology was not studied as an independent discipline at the Faculty of Justice and Political Sciences before 1983.[5] The reasons for this were seen to be of a 'technical nature' because it was claimed that social problems, along with crime problems, were handled within the context of historical materialism. In fact, in the view of some Albanian scholars, such a restriction was related to the fact that the development of the discipline of criminology could not happen without really studying the causes of criminality and without transmitting the criminological opinions of the most distinguished Western researchers of that time.[6]
- The only source available for conducting criminological research were the official statistics. They were very precise and provided complete information on criminal offences, but the possibility of using them was very low since they were classified as state secret and only authorized people could access them.
- The analysis of the causes of criminality was a politicized subject-matter. The explanation of the phenomenon of crime was limited to two arguments: remains of the past in people's education and state of mind on the one hand and the influence of the bourgeois-revisionist world on the other.
- Criminological thinking in the area of prevention of criminality was more advanced. In their scientific articles, different authors used to pay special attention to certain aspects of crime prevention, with a special focus on the role of the family, education, of the society, as well as to the popularization of law, etc.[7]

1.1.3 Albanian Criminological Research after the 1990s

From the beginning of the 1990s on, Albanian criminological thinking experienced many new developments. These can be summarized as follows:

- There are great and various possibilities to freely conduct criminological research, and criminologists themselves are free to express their ideas and points of view on the causes of criminality, preventive measures and their efficiency.

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4 *Elezi* 1994, 29.

5 *Hysi* 2005, 103.

6 *Elezi* 1999, 183.

7 *Hysi* 2005, 104.

- The official statistics on criminality are public and freely accessible so that every interested professional can use and interpret them.
- Albanian scholars established contacts with foreign researchers, which made comparative research possible. The opening up to the outside world provided expanded opportunities for further professional qualification of Albanian researchers. Consequently, new approaches were adopted to study crime-related data, and the most contemporary methodologies and practices can be properly applied in criminological studies.
- The new socio-economic reality led to the manifestation of new forms of criminality. Under these circumstances, criminological thinking focused on analyzing special crime trends such as organized crime, trafficking in persons and trafficking in narcotics, juvenile crime, specific forms of property offences, etc.

1.2 Criminological Education in Albania

The major institutions providing criminological education in Albania are the Faculty of Law and the Faculty of Social Sciences of the University of Tirana (UT).

The Faculty of Law of UT offers students the opportunity to obtain a university degree at the bachelor, master, or Ph.D. level in various areas of law, which will provide them with the knowledge, skills, openness, and confidence necessary to succeed in diverse legal professions. Through a consolidated legal tradition, the Law Faculty promotes legal values and a sustainable legal environment, which combines both respect of original methods of learning and of contemporary, high-quality study programmes. According to the curricula of the Law Faculty, bachelor students are provided with a basic criminological education within a specific one-semester course named "Criminology and Penology". Meanwhile, special and more advanced knowledge on European Criminal Policy and Restorative Justice is provided in a special course to master students enrolled in the Master's Programme "On Criminal Sciences".

The Faculty of Social Sciences of UT provides higher education and training of specialists in the areas of sociology, psychology, political sciences, and philosophy. The mission of the Faculty is to equip the students and future specialists of social sciences with adequate knowledge and practical skills in their areas of study. Within the activities of this institution, special attention is paid to the development of the necessary guidelines, the conduct of scientific research, and the maintenance of supportive activities for the purpose of properly implementing the theoretical aspects into practice. In the curricula of the Faculty of Social Sciences there are various courses related to criminological matters going on under an Interdisciplinary Master's Programme named "The Administration of Social Institutions in the Justice System". This Master's Programme is implemented by the Faculty of Social Sciences in cooperation with the Faculty of Law of UT. The programme started as an initiative assisted by the OSCE presence in Albania and its aim is to support Albanian institutions in the education and training of professionals of the criminal justice

system. The main objective of the programme is to contribute to capacity building in the field of the penitentiary system and probation service in conformity with the commitments of the OSCE and the related European standards. The courses that are conducted by the academic staff of the Faculty of Social Sciences mainly focus on studying urbanization and gender factors within the justice system, sociology of deviance, demography and statistical analysis, analysis of socio-economic developments, etc. On the other hand, as far as the courses provided as part of the Faculty of Law curricula are concerned, knowledge of criminological nature is transmitted within the courses of "Criminology and Penology" and "Human Rights in Criminal Proceedings".

In Albania, there is no doctoral research school related solely to criminological studies. A student who wants to conduct doctoral research in the field of criminology has to be enrolled in the general programme of the Doctoral School "On Criminal Sciences". During the first year, mandatory courses are provided on theoretical subjects such as substantive criminal law and procedural law, while the subject of criminology is listed as one of 6 elective courses, of which the students have the right to choose 3.

It is also worth mentioning that there is no specific law defining scientific areas, fields, and sections. Traditionally, such a classification is made according to the academic programmes approved by the Provost of the University of Tirana for specific faculties and specific departments. According to the approved programme "Bachelor in Law" offered by the Faculty of Law, criminology is part of the section called "Criminology and Penology", which is part of the field called "Criminal Law" within the area of Law.

The criminological textbooks that are used for education in Albania include research work conducted by Albanian authors. Full bibliographical data on the relevant major criminological textbooks are presented in the following list:

- *Gjonçaj, L. & Gjoncaj, G.* (2013). Kriminologjia [Criminology]. Shtëpia botuese Aldeprint, Tiranë, 510 pages. Revised and updated edition based on a previous one from 2009.
- *Latifi, V., Elezi, I. & Hysi, V.* (2012). Politika e luftimit të kriminalitetit [The policy of action against criminality]. Shtëpia botuese: Juridica, Prishtinë, 315 pages. Original edition.
- *Hysi, V.* (2010). Kriminologjia [Criminology]. Shtëpia botuese: Kristalina, Tiranë, 416 pages. Fully revised and updated edition based on a previous one from 2005.
- *Papandile, J., Papandile, E. & Hoxha, Z.* (2010). Kriminologjia [Criminology]. Shtëpia botuese Print 2000, Tiranë, 500 pages. Original edition.
- *Elezi, I.* (1999). Mendimi juridik shqiptar [Albanian Juridical Thought]. Shtëpia botuese: Albin, Tiranë, 326 pages. Original edition.

1.3 Criminological Research in Albania

1.3.1 General Considerations

The major State institutions conducting criminological statistics are the Ministry of Justice, the Ministry of Interior Affairs, the General Directorate of Prisons, and the General Prosecutor's Office.

The Ministry of Justice exercises its functions and competences in the areas of drafting and implementation of policies, preparation of laws and regulations related to the judicial system, the system of enforcement of criminal or civil court decisions, the performance of free legal professions, international cooperation in civil and criminal matters. Consequently, it plays a substantial role in the coordination, harmonization, and reformation of the Albanian legislation in its entirety. The Ministry of Justice has official control over the custody and detention system and monitors the enforcement of human rights in the penitentiary system. It is the only institution that provides unified statistical sources in the field of justice.

The General Directorate of Prisons is a central organ, under the supervision of the Ministry of Justice. Its main task is the organization, management, and monitoring of the institutions of execution of criminal decisions (custody and detention facilities). In its overall activity this organ aims to ensure the necessary conditions that guarantee the humane treatment of convicted and detained persons. The General Directorate of Prisons draws up special policies and guidelines in order to ensure that the internal rules and everyday practice of prison administration are in line with the standards set out in the relevant international legislation and with the international commitments of Albania.

The primary commitment of the *Ministry of Interior Affairs* is to guarantee public order and security, both at an individual and community level. The tasks of this institution relate to the overall implementation and monitoring of interior affairs policy, which concerns the fight against crime, the protection of citizens' rights by the operation of the state police service, management of national borders, issuing of identity documents, monitoring of road traffic, etc. In the area of criminal policy, its main duties are the prevention, detection, and preliminary investigation of criminal offences and offenders. The Ministry's current crime-related objectives are the fight against organized crime, drug trafficking, human trafficking, and confiscation of assets derived from criminal activity.

The methodological approaches used for empirical criminological research conducted by the State institutions are quantitative. Accordingly, most of the criminological studies in the country are essentially based on the collection of numerical data with the purpose of explaining a particular phenomenon. In this regard, researchers proceed in three stages: 1) collecting the data; 2) modelling and analyzing the data; 3) evaluating the results. Thus, measurable data are used to formulate facts and explain trends and patterns.

Research studies conducted by NGOs are characterized by the consistent application of a combination of both qualitative and quantitative approaches. In certain specific studies, small focus groups are used to apply the qualitative approach whereas in larger studies, in which the focus is on the examination of more general factors, more comprehensive analyses based on quantitative methods are carried out.

1.3.2 Criminological Research and the Government

It is not easy to find the proper word or expression when trying to define the nature of the relationship between governmental criminal policy initiatives and the criminological community. Generally speaking, there is not a consolidated practice of cooperation in this regard. On the one hand, the results generated by different criminological researchers can attract the interest of governmental agencies so that they become aware and initiate political activities or reforms on specific matters by considering such findings. On the other hand, however, when it comes to discussions about the possible solutions or steps to be taken when facing a particular criminal policy issue, the inclusion of experts specialized in the respective subject-matter is considerably low. Instead, such contributions are commonly substituted by the opinions held by members of the parliamentary commissions in charge or by the personal viewpoints of persons holding leading positions within central institutions.

An illustrative example of this practice is the recent debate concerning the appropriate measures to be adapted in the fight against corruption. The government proposed some important changes in the Code of Criminal Procedure[8] and in the special law "On the prevention of money laundering and the fight against organized crime through preventive measures on assets"[9] which aim to make the fight against corruption more effective. More precisely, the government proposed two main changes that represent a significant about-face from the traditional approach against corruption practices. First, jurisdiction for corruption offences should be moved from the ordinary courts to the Court for Serious Crimes. Second, it was proposed that the law "On the Prevention of Money Laundering" should be amended by a new provision which would allow criminal justice bodies to seize/confiscate the assets of a person suspected of having been involved in a corruptive affair who cannot present lawful justification on the origin of such assets.

Among some legal professionals it was considered that the proposed changes did not result from a proper consulting procedure involving all the relevant target groups. A similar criticism was voiced by foreign experts who assist the government in its

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8 Law no. 7905, dated 21.3.1995.

9 Law no. 10192, dated 3.12.2009.

criminal justice reforms. In its statement of 19 November 2013, OPDAT[10] noticed that no public consultation was held for the proposed legislative changes; it therefore asked the government not to approve the amendments, to undertake a more inclusive consulting campaign and to continue to evaluate the proposals of all the actors operating in the criminal justice sector. Notwithstanding, the amendments were approved by the Albanian Parliament in March 2014.

In 2012 and 2013 frequent and substantial changes were made to the Criminal Code of the Republic of Albania without any special consulting campaign involving legal scholars and university professors whose areas of expertise are directly linked with the criminal matters that were the subject of the new amendments.

The new provisions introduced in 2012 address several new phenomena of crime, related mostly to criminal practices that can happen within the framework of commercial companies. For the first time, a specific regulation concerning domestic violence was also inserted. Furthermore, the provisions criminalizing terrorist acts also underwent significant change. In 2013, further changes were made through which the type of sanctions for intentional homicide against public officials committed by state police officers during or because of their duty were significantly increased. A further new statutory provision for murder committed because of family conflicts was introduced.

Even though such changes reflect a more severe criminal policy towards the manifestation of criminal activity in the respective areas, the legislative procedure was conducted without retrieving the opinion of scholars and without being preceded by a comprehensive consultation campaign.

1.3.3 Criminological Studies

Various studies relevant for criminology have been conducted in Albania on different aspects concerning crime trends and factors, criminal associations, sociodemographic variables and the performance of criminal justice bodies. The list below shows some of the main studies:

- The 2013 Annual Report of the Albanian Helsinki Committee on the Human Rights Situation, with special focus on crime and access to the criminal justice system;
- Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, GRECO's evaluation report on Albania, June 2014;

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[10] OPDAT (Office of Overseas Prosecutorial Development, Assistance and Training) is a group of experts of the US Embassy in Tirana that has the central mission to assist the Albanian Government to develop criminal justice and law enforcement structures, with a particular emphasis on public corruption, organized crime and human trafficking. OPDAT is involved in reviewing criminal-justice legislation, training judges, police and prosecutors, providing law-enforcement equipment and providing technical assistance aimed at establishing more effective law enforcement structures.

- Corruption in Albania, Perception and Experience: Survey 2009, prepared by IDRA (Institute for Development and Research Alternatives, Albania);
- Crime and its Impact on the Balkans and Affected Countries, conducted by United Nations Office on Drugs and Crime, March 2008;
- Analysis of the Criminal Justice System of Albania, report by the Fair Trial Development Project. OSCE presence in Albania, Tirana 2006.

It is of great importance to mention that there are still very delicate areas that have not yet attracted sufficient scholarly attention. In this respect, crime trends such as the significant increase in domestic violence, juvenile crime and violent crime are noticeable, but no comprehensive research has been conducted to try and explain the main factors that have influenced such developments.

Currently, Albania is participating in the following international projects concerned with the collection and analysis of data:

- The European Sourcebook of crime and criminal justice statistics.[11]
- The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI).

In Albania, there are no journals that publish exclusively criminology-related articles. Authors of criminological articles thus publish their works in journals that cover issues of legal theory and practice in general. The most important journals are:

- Revista Shkencore "Studime Juridike", botim gjashtëmujor i Fakultetit të Drejtësisë, Universiteti i Tiranës [Scientific Journal *"Juridical Studies",* semi-annual publication of the Faculty of Law, University of Tirana] (no website available).
- Revista Shkencore "Jeta Juridike", botim tremujor i Shkollës së Magjistraturës [Scientific Journal *"Juridical Life"* of the School of Magistrates, published every quarter]; www.magjistratura.edu.al/85-rregullore-e-revistes-jeta-juridike.html#678 [14.07.2014].
- Revista "Jus & Justicia", botim Periodik Universitetit Evropian të Tiranës [Journal *"Jus & Justicia"*, published by the private higher education institution "European University of Tirana"]; www.uet.edu.al/index.php/kerkimi-shkencor-3/revista-shkencore/130-revista-jus-justicia [14.07.2014].
- Revista "Optime", botimi i Albanian University, Tiranë [Journal *"Optime",* published by the private higher education institution "Albanian University"]; www.albanianuniversity.al/al/kerkimi-shkencor/revista-shkencore-qoptimeq [14.07.2014].

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[11] In the role of national correspondent is Ms. *Vasilika Hysi,* who is a Professor at the Faculty of Law, University of Tirana.

2. Crime Trends and Problems in Albania

The major sources of crime data are the official statistics prepared by different state institutions. The main statistics are those compiled by the Ministry of Justice, the General Prosecutor's Office, the Supreme Court and the State Police. It should be noted that besides the annual statistics prepared by the Ministry of Justice, the other crime statistics are not unified. The current statistics that can be consulted are fragmented and provide data collected by different organs. Sometimes it is not possible to find a comprehensive statistic even for the activities that are performed by different units within the framework of a single institution.

When studying crime trends or patterns in Albania, it must be recognized that the official crime statistics provide information only for those crimes that have been regularly reported to official institutions. Another evident problem relates to the annual statistics prepared by the Ministry of Justice in its "Statistical Yearbook": the publi-

Table 1 Criminal Cases at First Instance Courts (per 100,000)*

	2008	2009	2010	2011
Intentional homicide	7,80	7,50	5,70	6,30
Serious intentional injuries	2,20	1,80	2,60	3,20
Sexual intercourse with minors	0,75	0,60	0,50	0,30
Rape of adult persons	0,40	0,13	0,20	0,10
Kidnapping & unlawful deprivation of freedom	0,70	0,60	0,50	0,30
Exploitation of prostitution	1,50	1,30	0,60	0,90
Trafficking of women	0,40	0,20	0,13	0,30
Trafficking of minors	0,13	0,03	0,03	0,10
Theft	42,50	36,40	43,40	48,60
Robbery	2,65	66,00	2,30	2,80
Aggravated robbery	-	-	-	0.20
Trafficking of motor vehicles	0,80	0,80	0,50	0,40
Fraud	6,70	9,00	8,80	12,40
Destruction of property	3,70	4,20	2,70	3,50
Corruption	0,72	0,75	0,80	0,65
Smuggling	2,52	2,00	1,60	1,90
Abuse of office	3,30	3,60	1,20	1,90
Drug offences**	8,20	10,20	8,50	12,20
Drug trafficking	1,00	1,20	0,90	1,34
Money laundering	0,07	0,30	0,20	0,13

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

* All cases adjudicated.

** The term drug offences refers to illegal acts of the cultivation, possession, and selling of drugs, excluding trafficking.

Table 2 Criminal Cases Registered by the Police for the Year 2014

	Jan.	Feb.	Mar.	Apr.	May	Total
Homicide	11	8	11	11	10	**51**
Attempted homicide	19	7	13	16	16	**71**
Serious health injuries	11	10	18	12	13	**64**
Non-serious injuries	118	121	118	112	139	**608**
Sexual crimes	9	5	2	8	3	**27**
Kidnapping & unlawful deprivation of freedom	4	2	4	4	4	**22**
Trafficking in persons	6	3	6	7	4	**26**
Theft	575	556	614	580	604	**2,929**
Robbery	28	30	14	26	30	**128**
Aggravated robbery	1	-	-	-	-	**1**
Trafficking of motor vehicles	29	21	13	24	14	**50**
Destruction of property	104	93	123	71	93	**484**
Corruption	44	48	54	69	50	**265**
Drug offences	99	78	105	125	126	**533**
Drug trafficking	22	10	16	16	14	**78**
Money laundering	24	14	9	15	50	**112**
Domestic violence	92	75	73	91	97	**428**

Source: Albanian State Police.

cation of the book takes a lot of time and one can access the statistics of a given year only two years later. In 2014, the latest available Yearbook published by the Ministry of Justice was that of 2011 meaning that no official statistic by this institution concerning the years 2012 and 2013 was available at that time. This creates considerable difficulties in designing the Albanian criminological map and in conducting a study based on recent data, since the Statistical Yearbook is the only comprehensive statistical resource in the country.

According to the official statistics of the Ministry of Justice for the year 2011, the number of adjudicated criminal cases in Albania is 8,590. The number of cases in which criminal liability for crimes could be established is 5,177 and the number of concluded cases related to contraventions is 3,473. 60% of all criminal offences are crimes and 40% contraventions.

According to the relevant data, the category of criminal offences related to property or the economic area is predominant. They made up 53% of the overall cases adjudicated by the courts in 2011. The same trend was also evident in the years 2010, 2009, and 2008.

2011 statistics show that there were 9,701 convicted persons, of which 5,970 or 66% were convicted for crimes and 3,101 or 34% were convicted for criminal contraventions. 501 or 6% were female offenders, 283 convicted for crimes and 218 for criminal contraventions. 683 or 8% were juvenile offenders, of them 610 convicted for crimes and 73

for criminal contraventions. *Table 1* shows the crime rates per 100,000 inhabitants for the period 2008–2011.

The most recent data we can use in order to make some general considerations on the actual crime trends are the monthly statistics compiled by the Ministry of Interior. *Table 2* illustrates the record of criminal offences registered by the Albanian State Police during the first five months of 2014. Considering the given data, it becomes clear that the predominance of property and economic crimes still prevails. The property offences are followed by non-serious injury offences and drug offences. The number of domestic violence cases and corruption offences is also considerably high.

3. The Albanian Criminal Justice System

3.1 Institutions

3.1.1 The Judicial System

Judicial power in Albania is exercised by the Supreme Court, the Appeal Courts and the District Courts. Although the Constitutional Court does not belong to the regular judiciary, any person who has exhausted other legal remedies may challenge the irregularity of the judicial process before the Court on the ground that his/her right to a fair trial was violated.[12] The Constitutional Court is composed of nine members, appointed by the President of the Republic with the consent of Parliament.

The Supreme Court is the highest judicial authority in the Albanian judiciary system. The judges of the Supreme Court are appointed for a nine-year term by the President with the consent of Parliament. The Supreme Court is organized in civil and criminal panels. The criminal panel tries military and criminal cases and the civil panel tries commercial, administrative, family, labour cases, and the like.

The Courts of Appeal are situated in six different regions of the country and review complaints against decisions of Courts of First Instance. These courts have a three judge panel.

Judges of the Courts of Appeal are nominated by the High Council of Justice and appointed by the President of the Republic. Persons may be nominated if they have worked for not less than five years as judges in the Courts of First Instance and have demonstrated "high ethical, moral and professional standards in the exercise of their duties".[13]

The Courts of First Instance operate according to rules provided in the Codes of Civil Procedure and Criminal Procedure. Courts of First Instance are organized and function in thirty-six judicial districts throughout the country. There are no jury trials

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12 Article 131(f) of the Constitution of Republic of Albania.

13 Article 12 of Law no. 9877 (17.02.2008) "On the Organization of Judicial Power in the Republic of Albania".

under the Albanian system of justice. A panel of three judges renders court verdicts. To be appointed a judge in a Court of First Instance, one must possess full legal competence, hold a law degree, and have no criminal record, have a "good reputation", and be at least twenty-five years old.

The First Instance Court for Serious Crimes became operational in January 2004. The court was set up for the purpose to increase the effectiveness in fighting organized and serious crimes, as well as to improve the quality of trials, conducted for criminal cases of this category.

The High Council of Justice operates according to law no. 8811 "on the organization and functioning of the High Council of Justice". It is an independent body that proposes to the President of the Republic the appointment of judges of the Courts of First Instance and the Courts of Appeal, decides on the dismissal of judges of these courts, decides on the transfer of judges, decides on the disciplinary measures taken against judges, and appoints and dismisses the Chief Justices and the Deputy Chief Justices of the Courts of First Instance and the Courts of Appeal. It is a constitutional body consisting of 15 members: the President of the Republic (Chair), the High Court Chief Justice, the Minister of Justice, 3 members elected by Parliament and 9 judges of all levels elected by the National Judicial Conference. The tenure of elected members is five years, without the right to immediate re-election.

3.1.2 Prosecution

The prosecution is organized and exercises its powers according to law no. 8737 "on the organization and functioning of the Prosecution Office". The Prosecutor's Office carries out criminal prosecution and represents the state in court. Article 148 (2) of the Constitution stipulates that "prosecutors are organized and operate as a centralized organ attached to the judicial system". The prosecutors are appointed and discharged by the President of the Republic upon the proposal of the General Prosecutor. The Prosecutor's Office operates on the principle of a single and centralized management. Its internal structure reflects the system of courts and consists of three tiers: the first instance is represented by 23 district offices (including one for serious crime) with 278 prosecutors, the second instance by seven appeal offices (including one for serious crime) with 28 prosecutors. The highest authority is the Office of the Prosecutor General who manages the Office's activities directly or through heads of the lower offices; the office is staffed with 24 prosecutors. The total number of prosecutors in Albania is 330, of whom 244 are male and 86 female.[14]

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14 GRECO June 2014, 33.

3.1.3 Police

The Albanian State Police is under the authority of the Ministry of Interior. The primary mission of police forces is the maintenance of public security and order and the protection of citizens' rights and freedoms. The State Police is subdivided into four units: (a) public order unit, (b) crime investigation unit, (c) border and migration unit, (d) immediate and special intervention unit. The number of police officers per 100,000 inhabitants was 331 in 2013.

3.1.4 The Prison System

The institutions for the enforcement of prison sentences are classified into five categories:

- high security prisons,
- ordinary prisons,
- low or minimum security prisons,
- detention institutions,
- special institutions.

The classification of prison facilities under one of these categories is decided by the Minister of Justice. Placement in *high security prisons* (HSP) is for those persons who have been convicted for organized criminal activities as well as other persons, who during the commission of their offence or during their imprisonment have shown such conduct that makes it impossible to place them in prisons of other categories. The placement of inmates in a HSP is made upon the decision of the court. When the court has not made an explicit order about the category of prison facility in which the convicted will have to serve his term, the placement in a HSP can be made according to a special request addressed to the court by a prosecutor.

Ordinary prisons are facilities where prisoners regularly serve their sentences when the court has not taken a decision about a specific institution of imprisonment.

Low or minimum security prisons are institutions designed for persons that are sentenced for the commission of criminal contraventions, recklessness offences or offences for which the imprisonment term does not exceed 5 years.

Detention institutions are facilities in which those individuals are placed for whom the security measure of "(protective) custody" has been ordered.

Special institutions consist of special health care institutions or special sections within prison facilities or within hospitals outside the prisons system, which are designed for providing medical care to convicted persons who are sick or suffer from a mental or psychiatric disorder.

Presently, 22 prisons are operational in Albania. While there is some overcrowding of prisons in the country, the Albanian government ameliorated the situation during

2012 through several measures: by opening the new facility in Elbasan, by implementing the new OSCE-supported probation system, and by granting amnesty to certain convicts. After the new Elbasan detention site with its capacity of 420 people was opened in 2012, overcrowding declined.[15] A representative picture of the situation in prisons and custodial facilities in recent years is shown by *Tables 3* and *4*.

*Table 3 Persons in Prison (2012–2014)**

		2012	2013	2014
Age	14 - 16 years		4	1
	16 < 18 years	13	18	2
	18 < 21 years	101	141	119
	21 < 25 years	296	524	393
	25 < 30 years	452	684	575
	30 < 40 years	846	832	693
	40 < 50 years	631	453	382
	50 < 60 years	295	195	243
	60 < 70 years	150	100	44
	70 < 80 years	8	7	9
Total		**2,792**	**2,958**	**2,461**
Type of criminal offence	Theft	578	667	462
	Homicide**	1,197	1,184	1,090
	Health injuries	59	66	53
	Rape	81	76	67
	Drugs related offences	579	602	516
	Fraud	22	37	28
	Exploitation of prostitution	43	72	53
	Criminal organization	5	9	15
	others	228	245	177
Imprisonment sentence	Less than 1 year	146	221	79
	1 < 2 years	197	241	96
	2 < 5 years	629	683	367
	5 < 15 years	1053	1036	988
	15 < 20 years	337	338	352
	20 < 25 years	289	294	434
	Life imprisonment	141	145	145
	Engaged in working activities	-	721	-

Source: www.dpbsh.gov.al [14.07.2014].

* One-day snapshot: 31 Dec. (2012), 30 April (2013, 2014).

** Homicide includes homicides caused by negligence/recklessness.

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15 Report on Conditions in Albanian Prisons and Recommendations for Reform. Rule of Law and Human Rights Department, OSCE Presence in Albania, 2013, 6.

*Table 4 Persons in Detention (2012–2014)**

		2012	2013	2014
Age	14 - 16 years	22	15	19
	16 < 18 years	62	76	81
	18 < 21 years	240	306	331
	21 < 25 years	375	416	513
	25 < 30 years	308	412	490
	30 < 40 years	370	442	604
	40 < 50 years	244	268	387
	50 < 60 years	90	133	175
	60 < 70 years	21	24	50
	70 - 80 years	3	3	10
	> 80 years			1
Total		1,735	2,095	2,661
Compulsory medical treatment		21		
Type of criminal offence	Theft	656	744	854
	Homicide	286	309	311
	Health injuries	72	83	118
	Rape	28	41	49
	Drugs related offences	399	459	531
	Criminal organization			5
	Fraud	11	12	14
	Exploitation of prostitution	36	32	39
	Others	247	415	740

Source: www.dpbsh.gov.al [14.07.2014].

* One-day snapshot: 31 Dec. (2012), 30 April (2013, 2014).

Concerning the level of education of the inmates and their criminal background, the most recent data are from April 2013 *(Table 5)*.

Table 5 Personal Characteristics of Prison Inmates

Characteristics of prison inmates		
Education	Without education	158
	Lower (elementary)	470
	8 years (primary education)	1,577
	High school	689
	Higher education	64
First time offenders/recidivists	First time	1,575
	Specific recidivist	351
	General recidivist	323

Source: Statistic of the General Directorate of Prisons (April 2013).

3.1.5 The Probation Service

The Probation Service is an institution that supervises the implementation of alternative sentences, collects information and reports to the prosecutor or courts and helps in the enforcement of alternative sentences. A further task is to provide assistance to released offenders to better reintegrate them into society and to re-establish contacts and relationships with their families, relatives and the community. The Probation Service collaborates with NGOs and mediation services, as provided for in detailed rules issued by the Minister of Justice. The Probation Service came into existence in 2009 and works under the authority of the Ministry of Justice. The main objective of its staff is the preparation of assessment reports for offenders, before and after conviction. Staff also evaluate the social background and family situation of offenders and offer concrete programmes in order to accomplish social integration. In addition, the Probation Service is responsible for the supervision of released offenders in order to protect public interests and avoid re-offending. It further gives offenders assistance for applying for parole to speed up their release and integration into the community.[16] In order to achieve successful results, the Probation Service collaborates with local services and welfare agencies to enhance and increase community inclusion. From the very beginning of the activity of the Probation Service until 2013, the number of convicted persons subjected to an alternative form of sentencing was 9,356.

As shown in *Table 6,* the alternative form of sentencing that is most commonly applied by the courts is the suspension of the execution of an imprisonment sentence and placement of the offender under probation (7,553 cases). This is followed by the conditional release in 823 cases and community work in 798 cases. The alternative sentence of "half-freedom" was only applied in one case between 2009 and 2013.

Table 6 Application of Alternative Forms of Sanctions (2009–2013)

	Types of alternative sanctions	Persons	Percent
1	**Suspension of sentence with probation**	7,553	80.72
2	**Conditional release**	823	8.80
3	**Suspension of sentence with community work**	798	8.52
4	**Stay at home alternative**	181	1.95
5	**Half-freedom**	1	0.01
	Total	9,356	100,0

Source: www.sherbimiproves.gov.al/index.php/al/aktiviteti-yne/te-dhena-statistikore [14.07.2014].

16 Retrieved from www.ncso-al.org/english/probation_service.html [14.07.2014].

3.2 Major Problems of the Albanian Criminal Justice System

Corruption and lack of transparency in the judiciary system and prosecution services seem to be the major problems of the criminal justice system. The problem of corruption is constantly addressed in the reports of international bodies.

In its Report of January 2014, the Commissioner for Human Rights of the Council of Europe expressed his concerns on the reportedly high level of corruption in the judiciary, which is considered to seriously impede the proper functioning of the justice system and undermine public trust in justice and the rule of law in Albania. While endorsing the 2012 amendment of the Albanian Constitution that put restrictions on the immunity of judges, the Commissioner strongly advised the authorities to reinforce their efforts to ensure that all cases of corruption in the judiciary will be effectively investigated and prosecuted. Another issue that came to the attention of the Commissioner was the reported lack of transparent and merit-based appointments and evaluations of judges. He also recommended that the independence of the High Council of Justice should be further strengthened by the necessary legislative amendments, which would provide for a qualified majority for the election of High Council of Justice members by the parliament. Considering the crucial role that the High Council of Justice has in the appointment and promotion of judges and in disciplinary proceedings, the Albanian authorities were required to take the necessary steps to guarantee that the Minister of Justice is no longer involved in disciplinary proceedings concerning judges. Furthermore, the Commissioner expressed his concern that the current system of appointment of Supreme Court judges and the General Prosecutor constitutes a serious risk of improper political influence. He appealed to the decision-makers to adopt the necessary constitutional amendments which would ensure the assignment of the leading role in the appointment of Supreme Court judges to the High Council of Justice. Moreover, the authorities were asked to take the necessary legislative measures which would provide for a qualified majority in the Parliament's vote and consent concerning the appointment of the General Prosecutor by the President of the Republic.[17]

In the same vein, in GRECO's fourth evaluation round in Albania crucial attention is paid to the problems of corruption and lack of transparency in the appointment of members of the judiciary and prosecution service. It is noted that for years, the Albanian judiciary has been suffering from low levels of public trust and high corruption perception rates. This is partly explained by its weak position vis-à-vis other branches of power. The judiciary lacks control over the selection of the High Court Judges, and the right to initiate disciplinary proceedings against district and appeal court judges belongs exclusively to the Minister of Justice. Additionally, the National Judicial Conference – the principle

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17 Report by *Nils Muižnieks*, Commissioner for Human Rights of the Council of Europe, following his visit to Albania from 23 to 27 September 2013, https://wcd.coe.int [14.07.2014].

judicial self-governing body – was not fully operational for a long time, which had a negative impact on the selection, career progression, training and disciplinary proceedings against judges, and last but not least, on judicial ethics in general.

Turning to the Prosecution Service, requisite objective and transparent criteria for evaluating whether candidates have the high ethical qualities expected have not been established, clear ethical standards or a code of professional conduct for the Service as a whole have not been set up, and mandatory regular training of staff on ethics has not been provided.[18]

Concerning the Albanian Judiciary System, *overburdened court dockets* are still a worrisome problem. The Albanian Helsinki Committee noticed practices of procrastination of proceedings in a number of civil and criminal processes. Postponements often lack reasonable grounds, what constitutes not only a violation of the criminal procedure legislation but also of the rights of concerned private parties and of the public interest in the delivery of justice within a reasonable time. The ACH states that even though such a problem has been noticed by the two major monitoring organs of the judicial activity, the High Council of Justice and The Ministry of Justice, it is still as present as before. The disciplinary measures taken on such grounds have not helped to improve the situation since they have been applied so rarely and in isolated occasions; in addition, they have not been followed by other organizational or legal measures.[19]

Further concerns relate to *people under court-ordered mental health treatment* who are mostly treated as if they were prisoners. In a 2013 report[20] of the OSCE it is noticed that the recently approved law on mental health provides for a separated regime dealing with this category of people, but there is still no appropriate facility where they may receive adequate treatment. They should not be detained in prisons, where they are subject to the same regime of rights and obligations as prisoners. Considering that, it is recommended that an action plan for the implementation of the law should be developed and an adequate facility be built as soon as possible.

3.3 Political and Media Engagement concerning Crime Trends

Criminal policy depends significantly on the political views of the members of Parliament. Representatives of the political force in power tend to explain some of the main criminal problems with reference to the failures and wrong policies of the previous government, whereas the representatives of the opposition parties criticize or put in question the current government's actions in the area of crime control.

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18 GRECO June 2014, 4.

19 Retrieved from www.ahc.org.al [14.07.2014].

20 Report on Conditions in Albanian Prisons and Recommendations for Reform. Rule of Law and Human Rights Department, OSCE Presence in Albania, 2013, 23.

The role of the media has to be considered, too. Everyone is aware of its great power in the portrayal of crime within society. The Albanian media play a dual role in presenting crime problems. First of all, it is to be noticed that the role of investigative media is indispensable in manifesting corruption practices among public administration officials as well as other serious criminal activities affecting the country. In another perspective, however, the media are considered to have negatively influenced criminal behaviour. The ethical rules in transmitting crime-related news are frequently disregarded. A journalist may usually be required to find a serious crime event in order to catch the attention of the public. The presentation of criminal cases in a newspaper's or magazine's first pages is seen as an attractive way for increasing profits from sales. The media tend to present the material aspects of criminal events separated from the surrounding circumstances and without worrying about finding a definite underlying cause. From such a perspective, it has active influence on the public's perceptions and opinions on crime and may create panic in the audience.

3.4 Impact of the European Union on the Albanian Criminal Justice System

The Impact of the European Union on the criminal justice system in Albania has been of crucial importance. Under the constant recommendations of the EU, Albanian criminal justice bodies have made significant steps forward in guaranteeing the rule of law and respect of human rights and freedom in their activities. Some concrete advancements of EU's assistance can be extracted from the last report of the European Commission to the Council and The European Parliament "On Albania's Progress in the Fight against Corruption and Organized Crime and in the Judicial Reform".[21] In the following, some of the main conclusions of the report are presented:

Since October 2013, the Albanian authorities have further strengthened the legal and institutional anti-corruption framework. In November of the same year, a National Coordinator for Anti-corruption (NCAC) was appointed, who coordinates the activities of state bodies and independent institutions, both at a central and local level. In order to facilitate this process, a network of *anti-corruption* focal points has been established in all ministries and independent institutions. The mandate of these focal points covers reporting to the NCAC, giving guidance to relevant officials and monitoring the implementation of the anti-corruption strategy in the respective institutions and ministries.

Through amendments to the Criminal Procedure Code (CPC) adopted in March 2014, competences for the prosecution of corruption offences committed by high-level state officials have been transferred, with the exception of abuse-of-power cases, to the Serious Crimes Prosecution Office (SCPO) and the Serious Crimes Court (SCC). All cases

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21 Report from the Commission to the Council and the European Parliament "On Albania's Progress in the Fight against Corruption and Organised Crime and in the Judicial Reform", June 2014.

of active and passive corruption of judges, prosecutors, justice officials, high-level state officials and locally elected representatives now fall within the jurisdiction of the SCC. This policy aims to further bring high-level corruption into the spotlight.

In order to improve *the fight against trafficking in human beings*, the Office of the National Anti-Trafficking Coordinator has revitalized the national referral mechanism, with an intensification of activities in the area of prevention and awareness-raising, and is finalizing the new national strategy and action plan for 2014–2016. In 2014, the ONATC has been endowed with its own budget for the first time. Three mobile units were established in Tirana, Vlora and Elbasan, resulting in increased identification of victims and potential victims. A special helpline for victims of trafficking was made operational in March. Nevertheless, the number of convictions for trafficking in human beings remained low.

As regards *economic crime*, a major police operation took place between October and December 2013, which targeted illegal gambling establishments. The operation resulted in the investigation of 720 criminal offences and the seizure of significant quantities of gaming equipment of a total value of EUR 8.5 million.

In the area of *drug crime*, the National Plan against Drug Cultivation is being implemented. Public destruction of seized drugs took place in March, April and May 2014. During June 2014, one of the largest police operations took place in Lazarat (the biggest drug producing village), where huge quantities of drug plantations and several tons of narcotic substances were destroyed.

4. Conclusion

Albania has demonstrated continued political will to implement measures related to reforms recommended by the EU, especially those concerning the country's candidate status. It has undertaken structural reforms in the prevention and prosecution of corruption through an approach that involves a wide range of institutions. In the fight against corruption, it is important to allocate resources on the enforcement of the legislation regarding asset declarations and conflicts of interest, to increase investigations into corruption cases and to introduce further measures to make investigations more efficient. In the fight against organized crime, Albania needs to further develop its track record through increased inter-agency cooperation, enhanced efficiency of proactive investigations and systematic use of financial investigations, as well as strengthening its international and regional cooperation.[22] It has to be underlined once more that the government should be committed to ensuring public order, fighting organized crime and corruption, en-

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22 Report from the Commission to the Council and the European Parliament "On Albania's Progress in the Fight against Corruption and Organized Crime and in the Judicial Reform", June 2014.

hancing the implementation of the rule of law by improving performance of judiciary and state administration and respecting the democratic principles enshrined in the Albanian Constitution.

5. Summary in Albanian

Punimi synon të japë një tablo të përgjithshme të kërkimit dhe edukimit kriminologjik në Shqipëri. Nëpërmjet një analize hap pas hapi, synohen të shpjegohen veçoritë kryesore që karakterizojnë sistemin e drejtësisë penale dhe problemet e lidhura me kriminalitetin. Punimi është i ndarë në disa seksione, ku secili prej tyre, trajton çështje specifike të politikës kriminale, kapaciteteve institucionale, studimeve statistikore, dhe problemet kryesore te sistemit të drejtësisë penale. Ky punim paraqet një pikë nisjeje për të reflektuar mbi situatën në të cilën ndodhemi dhe objektivat që synojmë të arrijmë për sa i përket politikës kriminale dhe çështjeve që lidhen me të. Vëmendje e veçantë i është kushtuar gjithashtu rekomandimeve të bëra nga aktorët ndërkombëtarë dhe masave me natyrë ligjore dhe institucioale të marra në këtë drejtim.

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Criminology and Crime in Bosnia and Herzegovina

Almir Maljević & Elmedin Muratbegović

1. Introduction

Despite over one hundred years of independence, response to criminology continues to be somewhere between acceptance arising from the real needs of modern societies and a refusal to recognize it as an independent academic discipline. This development is hampered by constant dilemmas about its origins, and legal and sociological roots. However, one thing is certain; criminology has recently been developing with great speed and primarily as an empirical discipline which treats its subject matter both inter- and multi-disciplinarily. It is a multi-methodological, descriptive and empirical academic discipline, because it describes the phenomena, observes them as they develop and contributes to the pool of knowledge, primarily by researching and generalizing the facts it gathers. Limiting the subject of criminology only to crime is clearly outdated (the so-called narrow or legal scope of criminology). Contemporary criminology explores all punishable acts (delinquency) and not only criminal offences, but deals with crime-related behaviours which are perceived as deviant.[1] Criminology is clearly not concerned with all deviant behaviours, but only those which are related to crime (prostitution, drug abuse, gambling, among others). Criminal law science only partially deals with these phenomena, leaving their further study to other scientific disciplines. That is exactly where the solution might be found to this dilemma about the nature of criminology.

Most contemporary experts from the West Balkan region perceive criminology as a non-legal science,[2] which relies heavily on crime policy to fulfil its mission of crime reduction. The primary way to achieve this is by contributing its knowledge to development of an efficient, social and human crime policy. Criminology is not limited to providing information about the source of problems and efficiency of crime prevention programmes. It can also act "ante delictum" by predicting and preventing crime. This aspect of criminology is reflected in its contribution to shaping and evaluating the system of norms, institutions, instruments and measures pertaining to

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1 *Siegel* 2006.

2 *Horvatić* 1993; *Petrović & Mesko* 2004; *Muratbegović* 2008.

social reaction to crime. It is thus that we can say that modern criminology reaches far beyond traditional criminal law science which once enjoyed the exclusive right to academic study of crime.

2. Criminological Education

The development of criminology in Bosnia and Herzegovina can be traced through the development of scientific-research work and the overall functioning of higher education institutions in the country. The above is in reference to undergraduate and post-graduate university programmes, production of textbooks, articles and discussions, as well as conducting surveys, initiating scientific conferences and pursuing specific scientific research projects. Two University Handbooks of Criminology were: Introduction to Criminology (1972) by *R. Mlađenović*, published by the Faculty of Law at University of Sarajevo, and Criminology, by *B. Petrović* and *G. Meško* (2004, 2008), published by the Faculty of Law at the University of Sarajevo. Criminology was initially studied only at the Faculty of Law of Sarajevo University before penetrating other law faculties in Bosnia and Herzegovina. Recently, it has also been introduced in a few additional institutions of higher education.

The first criminology institute in Bosnia and Herzegovina had been established as early as 1955 under the name "Criminology Institute of the Faculty of Law of the Sarajevo University". Work of this institute included: empirical research, establishment of its own library with a substantial collection of periodicals, not only in the field of criminology, but also from other fields of criminal justice related sciences such as criminal law (material and process), criminalistics and penology, among others. Empirical research included important projects such as "Homicides in Bosnia and Herzegovina (for the 1962–65 period)," published in 1971 by the Faculty of Law of the Sarajevo University; "Racial discrimination and models of fight on its eradication" published in 1972 by the Faculty of Law of the Sarajevo University and "Juvenile crime in industrial areas of Bosnia and Herzegovina (for 1968–72 period)" published in 1984 by the Faculty of Law of the Sarajevo University.

The Faculty of Law at the Sarajevo University, the oldest such educational institution in Bosnia and Herzegovina (founded in 1946), included a criminology course in its curriculum. It was an elective, one-semester course with two lecture hours and two practical training hours per week in the third or the fourth year of undergraduate studies. Development of higher education in Bosnia and Herzegovina included establishment of law faculties in all major urban centers, primarily in Banja Luka and Mostar which continue to be university centers. More recently, that is, over the past ten years, law faculties have been established also in Bihać, Zenica, Tuzla and Eastern Sarajevo. Since the above faculties had been established under patronage of the Sarajevo's Faculty of Law, they nearly copied its curriculum. The criminology courses taught at these faculties are similar to that provided in Sarajevo. Over the

sixty years that it has been studied in Bosnia and Herzegovina, criminology was both a core and an elective subject. Today, it is a core subject in the first year of study at the Faculty of Law administered in accordance with the so-called Bologna process to include three lecture hours and one practical training hour per week. It is necessary to stress that criminology had always been a core subject in the post-graduate programme of the Sarajevo's Faculty of Law. Criminology was among the studied disciplines in each of eight post-graduate courses offered by the Sarajevo's Faculty of Law. This is in reference to post-graduate programme in the field of criminal law which regularly included selected chapters from the following subjects: criminal law, criminal procedure law, criminology, criminal investigation, international criminal law and penology. The same is true for current postgraduate course which includes criminology as part of etiology and phenomenology of organized crime courses. Situation is similar in postgraduate programmes of other law faculties in Bosnia and Herzegovina. Having been included in the advanced programme of studying, criminological topics have been treated and explored within a number of doctoral theses, as well as master theses. These theses represent a modest contribution to development of criminology in Bosnia and Herzegovina.

Such understanding by contemporary science undoubtedly led to the establishment of academic institutes within the world's leading universities where criminology is studied in detail, as both a theoretical and empirical discipline. It is in that context that one needs to observe the establishment of the Faculty of Criminal Justice and Security at the Sarajevo University. The Faculty was founded in 1993, and as outlined in its curriculum, criminology reaches beyond the framework of legal studies. The curriculum includes all criminal justice subjects as does the curriculum of Sarajevo's Faculty of Law. Due to the enthusiasm of contributing professors of the Criminal Law Department of the Sarajevo's Faculty of Law,[3] "Criminal law" and "Criminal Procedure Law" are studied in as much detail as in the law faculties in Bosnia and Herzegovina. In addition to legal disciplines, the curriculum of the Faculty of Criminal Justice Sciences also includes about ten more disciplines directly related to the social, real content of delinquent and deviant behaviour. It is necessary to mention here disciplines, such as: sociology of violence, social anthropology, social pathology, victimology, penology, restorative justice, forensic psychology and forensics science in general. Of course, criminology is also included and outlined in five inter-related but separate criminology modules: Criminology 1 – Introduction to Criminology, Criminology 2 – Criminological Theories, Criminology 3 – Applied Criminology, Criminology 4 – Crime Prognosis and Prevention, and Criminology 5 – Research Methods in Criminology.

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3 In the early stages, Criminal Law, Criminal Procedural Law, International Criminal Law, Penology and Criminology were taught at the Faculty of Criminal Justice and Security by the distinguished Professor *Rajka Mlađenović-Kupčević* (1927–2012).

Starting in 2008, "criminology" transformed into an independent department which administers eight-semester bachelor's degree, two-semester master's degree and six-semester doctoral programmes. Some of the most distinguished criminologists from nine different (European Union & South-Eastern Europe) countries lecture the students of this department. Five doctoral dissertations in the field of criminology have so far been defended at the Faculty while two more are currently (2014) in the process; both in criminology. At this point, four Master's dissertations in the field of Criminology also deserve to be mentioned. However, nothing contributes more to development of criminology in Bosnia and Herzegovina as do the scientific-research projects some of which will be presented in the following text.

Further on, it is necessary to mention that the Faculty of Political Science of the Sarajevo University had in 1995 also included criminology in its curriculum; a one-semester course with two lecture hours and two practical training hours per week in the fourth year of study. The introduction of criminology course at this faculty was fully justified given the interdisciplinary nature of the studies at this faculty. Given the conceptual base of the Bologna process, criminology will, like other subjects, be organized as a one-semester course with two lecture hours and one practical training hour per week.

Finally, beginning in the 2005/06 school year, criminology had also been introduced at the Education-Rehabilitation Faculty of the University of Tuzla as a core one-semester course in the third year of study, with two lecture hours and two practical training hours per week. Curriculum of this faculty is also broadened by few more courses such as penology and basis of criminal law and procedure. Furthermore, this faculty introduced a post-graduate course in the 2006/07 school year covering selected chapters of criminology with focus on drug abuse, prostitution and alcoholism.

3. Criminological Research

Doctoral and Masters theses form a significant share of criminological research in Bosnia and Herzegovina. It is particularly true at the Faculty of Criminal Justice and Security of the Sarajevo University. Future plans of the Faculty of Political Sciences University of Sarajevo and Educational-Rehabilitation Faculty of the Tuzla University include conducting more scientific research projects in the field of criminology.

The analyses of post-1991 scientific research projects in the field of criminology in Bosnia and Herzegovina reveal a radical shift in the approach to the research subject. The shift is, of course, from the dialectic-material approach to a more modern approach of the new "west oriented criminology". Social transformation obviously provided an impetus to criminologists here to independently change the discourse of their research projects. Another reason for this might be found in the fact that the criminology was not developing with sufficient dynamics prior to 1991 but was instead studied in larger venues within the former Yugoslavia. However, and as will

be outlined further in the text, an increasing number of young researchers of different educational backgrounds became interested in criminology following the war in Bosnia and Herzegovina. The growing trend of socio-pathological phenomena in post-war Bosnia and Herzegovina, and particularly in the urban centers, generated a need for a more systematic approach to the problem: analyses, prognosis and prevention of asocial and antisocial behaviours.

Most scientific research projects in the field of criminology are conducted by the researchers of the Institute of Criminalistics, Criminology and Security Studies of the Faculty of Criminal Justice and Security in Sarajevo. A team of young professors and researchers: *Elmedin Muratbegović, Muhamed Budimlić, Almir Maljević, Darko Datzer, Azra Adžajlić Dedović, Irma Deljkić, Eldan Mujanović* and *Marija Lučić-Ćatić* from this Institute have conducted a number of studies in a relatively short period of time (between 10 and 15 years). Young criminologists here are slowly gaining acceptance into the "European Criminology" as confirmed by publication of their papers in relevant criminological journals and their cooperation with the leading criminologists of contemporary European Criminology.

Criminological research in Bosnia and Herzegovina is being conducted despite the fact that the State has not provided a "single Euro" for support of criminological research. Such research was possible either with the support of various donors (such as Swiss Agency for Cooperation and Development, Italian Agency for Cooperation, Open Society Fund Bosnia and Herzegovina, United States Department of Justice, Foreign and Commonwealth Office United Kingdom Embassy Sarajevo, etc.), or by researchers running projects in their free time, without any financial support.

Considering that these researchers' childhood and youth were set against the background of the "cataclysm of war in Sarajevo", the above can serve as a proof that "success incidents" in the form of independent development of criminologists and criminology are possible even in a quite disorganized country.

Some of the most significant projects and/or publications in Bosnia and Herzegovina over the past years are the following:

- *Adžajlić et al*. (2004). Domestic Violence Developing Study in Bosnia and Herzegovina;
- *Budimlić et al.* (2007). International Self-Reported Delinquency – ISRD 2;
- *Budimlić et al*. (2010). Enforcement of Alternative Measures for Juveniles: Legal, Institutional and Practical Issues;
- *Datzer et al.* (2007). Influencing Police Officers' Perception of Corruption: a Bosnian Perspective;
- *Maljević* (2014). International Self-Reported Delinquency – ISRD 3;
- *Maljević et al.* (2006). Overtly about Police and Corruption;
- *Maljević & Muftić* (2014); *Muftić et al.* (2014). Attitudes toward electronic monitoring;

- *Meško et al.* (2001). Comparing the Moral Values of Slovenian, American and Bosnian Criminal Justice Students, Police Officers and Jail Officers;
- *Muftić* (2014). Securing the border in Bosnia and Herzegovina: the impact of training on officers' knowledge and experiences related to sex trafficking;
- *Muftić & Bouffard* (2008). Bosnian women and intimate partner violence;
- *Muftić & Collins* (2013). Gender attitudes and the police in Bosnia and Herzegovina;
- *Muftić & Cruze* (2014). Policing intimate partner violence in post-conflict Bosnia and Herzegovina;
- *Muftić & Deljkić* (2012). Exploring the overlap between offending and victimization within intimate partner violence in Bosnia and Herzegovina;
- *Muftić & Rašić* (2013). Gender integration and the police in post-conflict Bosnia and Herzegovina;
- *Muftić et al.* (2014). The impact of life domains on juvenile offending in Bosnia and Herzegovina;
- *Muratbegović* (2006). Privatisation of the Security Sector as a Part of Crime Prevention Strategy in Bosnia and Herzegovina;
- *Muratbegović* (2011). Application of Alternative Measures for Juveniles in Sarajevo and Banja Luka;
- *Muratbegović & Guso* (2010). Primary Categories and Symbiotic Green Crimes in Bosnia and Herzegovina;
- *Muratbegović et al.* (2012). Neighborhood Social Disorder and Safety Feeling in Pristine;
- *Muratbegović et al.* (2012). Perceived Neighborhood Social Disorder and Attitudes Toward Safety Feeling in Sarajevo;
- *Nash et al.* (2011). Protective Effects of Parental Monitoring on Offending in Victimized Youth in Bosnia and Herzegovina;
- *Obradović* (2004). Trafficking in Women in Bosnia and Herzegovina;
- *Obradović* (2008). Role of the family in emergence and prevention of undesired behaviors of children and adolescents in the Sarajevo Canton – social support models (2005-2007);
- *Winfree* (2007). Youth-Gang Attitudes, Orientations and Outlooks: A Comparative Analysis of Five Nations (2007/2008).

4. Future Prospects of Criminology in Bosnia and Herzegovina

What are the future prospects of criminology in Bosnia and Herzegovina? First of all, it is hoped that the research efforts will extend to include other aspects of interest of contemporary criminology relevant for the needs of society. This primarily relates to research of etiology and phenomenology of various forms of contemporary crime, such as cybercrime, ecological crime and other deviant behaviours covered by contemporary European Criminology. This is of particular importance because problems such as migration, xenophobia, crimes against children, trafficking in human beings and other problems the country is facing that are hampering it joining the European

Union. Also, in addition to self-reported delinquency studies already conducted to unveil juvenile delinquency, victimization studies would be needed to approximate the dark figures of adult crime and victimization. Second of all, with the implementation of the Bologna process, merging of separate criminology departments of individual faculties within a single department should follow as this would contribute to further improvement in the quality of criminology education at the university level. Third of all, it is hoped that the governments in Bosnia and Herzegovina will recognize a direct link between criminological research as a process of fact finding and effective criminal justice and other policies. This, it is hoped, would lead to a dedication of budgetary funds for criminological research, which would provide a fertile ground for further development of criminology in the country as well as to evidence based policies. Finally, due to the Bosnia and Herzegovina's geographical position (positioned in the heart of the Balkans), the most recent history (the war), as well as to the flourishing of various forms of contemporary crime in the aftermath of the war, it is unfortunately an interesting market for criminologists. Because of that, involvement of the country in many of the international criminology research project would be necessary and welcome.

5. Crime Trends and Problems

As statistics on crime and criminal justice in the country are not collected by a single body, it is not possible to provide information about crime trends in Bosnia and Herzegovina. When it comes to police statistics, police agencies collect information based on their internal rules and procedures, and publish them in accordance with the relevant laws. In practice, police agencies do not utilize the same recording procedures, have different data flow processes, utilize different level of sophistication of data analysis and do not present to the public standardized information on processed crime reports. It is therefore impossible to present crime trends based on the police statistics.

Looking at the prosecution and judicial statistics, due to the fact that prosecutor's offices and courts apply different criminal codes, especially with regard to the special part of criminal codes, charging statistics as well as convictions statistics and punishment statistics are not collated on a state level. Instead, statistical breakdowns of charging and convictions are presented separately for each prosecutor's office and for each court. The data are collected and presented to the public once a year by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) in their Annual Report. The reports are available on the website of the HJPC. Here, also, it is impossible to present crime trends based on the statistics provided by the HJPC.

According to available statistics and studies,[4] the total prison population in the Federation of Bosnia and Herzegovina (FBiH) was 1,671, with 73 prisoners per 100,000 of population, with the occupancy level of 78.1%. Similar figures have been found in the

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4 World Prison Brief, 2010 est.

Republika Srpska (RS) where the total prison population[5] was 1,046 or 75 prisoners per 100,000 inhabitants, with the occupancy level of 96.4%.

6. The Criminal Justice System of Bosnia and Herzegovina[6]

6.1 Background

Bosnia and Herzegovina as a State is composed of two entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) and one district, the Brčko District of Bosnia and Herzegovina (BDBiH). While the RS is a centralized entity, the FBiH is a highly decentralized territorial unit with 10 cantons, each of which has its own scope of exclusive and concurrent competences. Each level of government has its own legislative, executive, administrative, and judicial institutions. As a result, there are a total of 14 governments (comprised of ca. 180 ministries) and 14 lawmaking institutions (parliaments, assemblies, etc.). The criminal justice system in Bosnia and Herzegovina is thus significantly influenced by the constitutional structure and the division of powers in the country.

Until 2000, the fight against crime was primarily the responsibility of the autonomous entities, each of which had its own criminal justice system, while the State had only limited competences deriving from the Constitution (Art. III/1/g Const.). From 2000 onwards, with the support of the international community more sustainable, efficient, impartial, and independent judiciary, law enforcement and criminal justice sector was starting to be shaped. New institutions, especially at the State level, such as law enforcement agencies and judicial institutions (Court of BiH, The Prosecutor's Office of BiH, State Investigative and Protection Agency [SIPA], the High Judicial and Prosecutorial Council [HJPC], and the Ministry of Justice of BiH) have been established. At the same time, criminal law, both substantive and procedural was reformed. New codes were passed in 2003 at all levels.[7] This reform brought

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5 World Prison Brief, 2010 est.

6 This section draws on *Maljević & Smailagić*, forthcoming 2015.

7 Criminal Code of BiH, Official Gazette of Bosnia and Herzegovina No. 3/03, changed and amended in No. 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10. Criminal Code of the FBiH, Official Gazette of the Federation of Bosnia and Herzegovina No. 36/03, changed and amended in No. 37/03, 21/04, 69/04, 18/05. Criminal Code of the RS, Official Gazette of the Republika Srpska No. 49/03, changed and amended in No. 108/04, 37/06, 70/06. Criminal Code of the BDBiH, Official Gazette of the Brčko District of Bosnia and Herzegovina No. 10/03, changed and amended in No. 45/04, 06/05. Criminal Procedure Code of BiH, Official Gazette of Bosnia and Herzegovina No. 3/03, changed and amended in No. 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09. Criminal Procedure Code of the FBiH, Official Gazette of the Federation of Bosnia and Herzegovina No. 35/03, changed and amended in No. 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07. Criminal Procedure Code of the RS, Official Gazette of the Republic of Serbs No. 50/03, changed

significant changes within the criminal justice system of the country. Whereas the changes within the substantive law relate to new institutions in both the general and the special parts of the criminal codes, more radical change took place within the criminal procedure. Namely, previously inquisitorially-oriented mixed system changed to an adversarial-oriented mixed system.

6.2 Investigation and Prosecution

With the adoption of the new criminal procedure codes in 2003, all investigative steps are now taken under the direction and close supervision of the prosecutor. Immediately after being informed of grounds of suspicion a criminal offence took place, the prosecutor must call for an investigation and lead all aspects thereof. During the investigation, the prosecutor can issue orders to law enforcement agents to perform specific investigative actions (such as taking witness statements, examining and interviewing suspects); issue orders and subpoenas in accordance with the law; file the indictment; and perform other duties in accordance with the law. However, despite being formally led by the prosecutor, the practice has shown that the investigation is in fact conducted by a number of agencies and authorized official persons (mainly criminal investigators) who assist the prosecutor. The organization of prosecutor's offices follows the organization of the criminal court system (see below) in three levels: State level, entity level, and BDBiH level. In order to become a prosecutor, a candidate must be a law graduate, must have passed a judicial examination, and must have at least three years of relevant professional experience. All appointments of prosecutors are made by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC), an independent body composed of distinguished judges, prosecutors, defense lawyers, and representatives of the Council of Ministers (government of Bosnia and Herzegovina), Ministry of Justice BiH, and the Parliamentary Assembly BiH.

6.3 Adjudication

As was the case with the prosecutors' offices, the judicial system of Bosnia and Herzegovina reflects the constitutional structure of the country. Thus, the system of criminal courts is structured in three levels: the State level, the entity level, and the Brčko District level. At the State level, the Court of Bosnia and Herzegovina has criminal jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other State laws and over certain criminal offences prescribed by entity laws. In the two autonomous entities, the criminal jurisdiction of the various courts (municipal and cantonal in the FBiH entity and basic and district courts

and amended in No. 111/04, 115/04, 29/07, 68/07, 119/08. Criminal Procedure Code of the BDBiH, Official Gazette of the Brčko District of Bosnia and Herzegovina No. 10/03, changed and amended in No. 48/04, 06/05, 12/07, 14/07, 21/07.

in the RS) depends on the gravity of the criminal offence. Supreme courts of the FBiH and RS are appeals courts respectively. Brčko has a Basic Court (court of first instance) and an Appellate Court. The Court of Bosnia and Herzegovina will act as a "supreme court" in cases where a person appealed the decision of an Appellate Court in BDBiH. Bosnia and Herzegovina, as a State, does not have a Supreme Court on the state level. In order to become a judge, a candidate must be a law graduate, must have passed the judicial examination, and must have at least three years of relevant professional experience. Appointments of judges are made by the HJPC.

6.4 Execution of Sanctions

Criminal sanctions, including punishment (long-term imprisonment, imprisonment, fines), security measures (mandatory psychiatric treatment; mandatory medical treatment for addiction; prohibition on the carrying out of certain occupations, activities or duties; forfeiture), and alternative sanctions (suspended sentence, judicial admonishment, community service) are prescribed in the criminal codes in BiH. The execution of custodial penalties is regulated by separate laws at the State level, entity level, and Brčko District level. Imprisonment and long-term imprisonment are executed in 11 penal and correctional institutions of different level of security throughout the country.

7. Conclusion

Compared to other countries, criminology is a relatively newly developed science in Bosnia and Herzegovina. Although initially developed within the curriculum of the Faculty of Law, University of Sarajevo, it is the Faculty of Criminal Justice and Security of the same university that is the leader in both criminological education and research nowadays. Topics that are in the criminological focus of the researchers from this faculty at the moment cover juvenile delinquency, corruption, organized crime, asset forfeiture, trafficking in human beings, and domestic violence.

Despite the fact that the country is burdened by some of the most sophisticated crime as well as by everyday crime, which makes the EU accession process complex and daunting, governmental response in terms of investing funds in criminological research has been lacking so far. As a result, although individual crime phenomena have been subject to research, more general information about crime and crime trends in the country are missing. The system of institutions generating crime and criminal justice statistics is fragmented. At the same time, institutions do not have standardized ways of data recording, collection, analysis and dissemination. It is exactly in these fields that researchers could most appropriately contribute to the governments by assisting them to develop a system of crime statistics collection and processing which will enable production of figures on crime trends and consequently provide for better, evidence based policies.

In the end, the criminal justice system of Bosnia and Herzegovina has been significantly reformed so as to be in line with the latest developments of a modern criminal justice system; a system which is hoped to be efficient in the fight against all forms of crime, but at the same time a system that serves as the best safeguard for human rights and basic freedoms. It is, however, not possible at moment to argue whether this mission has been accomplished already or is only yet to be accomplished. It is because an adequate overview of the functioning of the criminal justice system, an overview based on facts and figures is missing. Hopefully, in the years ahead further development of criminology in Bosnia and Herzegovina and in the Balkans will bring about the necessary change.

8. Summary in Bosnian

U ovom radu obrađena je nekolicina pitanja vezanih za kriminalitet I kriminologiju u Bosni I Hercegovini. U radu je najprije dat prikaz razvoja kriminologije kao nauke, kako sa stanovišta njenog uključivanja u programe dodiplomskih, postdiplomskih I doktorskih studija, tako I sa stanovišta naučno-istraživačkog rada. Kao vodećađu instituciju u obje ove oblasti, rad identificira Fakultet za kriminalistiku, kriminologiju I sigurnosne studije, Univerziteta u Sarajevu. Programi svih studija kriminologije na ovom fakultetu, od dodiplomskog do doktorskog, usklađeni su sa odgovarajućim programima sličnih studija u svijetu, a naročito sa onima u Evropi. Istovremeno, u radu su prezentirana neka istraživanja koja pokazuju da su istraživači sa ovog fakulteta uključeni u vodeće naučno-istraživačke projekte sa kriminolozima Evrope I svijeta, te da objavljuju radove u nekim od vodećih kriminoloških časopisa. Ipak, uprkos činjenici da su na gotovo istom nivou sa kolegama kriminolozima iz Evrope, ovaj rad pokazuje da kriminolozi u Bosni I Hercegovini još uvijek nisu uspjeli prikupiti pouzdane podatke o statistici kriminaliteta I funkcionisanju sistema krivičnog pravosuđa. U radu se konstatuje da je za to neophodna saradnja državnih institucija I volja da se raspoloživi podaci stave na raspolaganje. Tek tada bi, argumentira se u ovom radu, kriminolozi, a nakon provedenih analiza, biti u mogućnosti reći da li se novouspostavljeni sistem krivičnog pravosuđa u zemlji može posmatrati kao uspjeh ili kao neuspjeh.

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Criminology and Crime in Bulgaria

Svetla Margaritova-Vuchkova

1. Criminological Education and Research

1.1 Education

Access to higher education in Bulgaria is regulated by State law. The Higher Education Act is the primary legislation that provides the relevant state requirements for access to higher education.[1]

According to article 9 & 1 of the unified state requirements for receiving higher education in "Law" and acquiring the professional qualification "lawyer", adopted in 1996 and still in force, the universities must include criminology in the list of optional courses.[2] Besides law, only several majors in Bulgaria such as, e.g., medicine, dentistry, pharmacy or architecture, have such explicit requirements.

1.1.1 Major institutions providing criminological education in Bulgaria

The earliest study of criminology as a scientific discipline was delivered at the Academy of the Ministry of Interior in the late 1960s and early 1970s. Currently, the Academy prepares civil servants with a university education for the work in the specialized police structures and the directorates of the general and the specialized administration at the Ministry of Interior. The bachelor courses offered are: "Prevention of crime and public order maintenance" and "National security defence"; master courses offered are: "Combating crime and perseverance of public order", "National security defence", "Strategic management and security and public order maintenance" and "Public Administration". Criminology is a compulsory discipline for the students of the Academy. With regard to the specifics of these particular majors, the following disciplines are included as well: "Organized crime", "Organizing crime prevention" and "Juvenile delinquency". The school also offers a doctoral course in criminology.

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1 State Gazette no 112, 27 December 1995, last amendment – 9 August 2011.

2 State Gazette no 31, 12 April 1996, amended 24 November 2000, 3 July 2001, 17 December 2002, 23 August 2005.

The chair of "Security and Safety" has been established at the Law School of Varna Free University. It delivers extensive training not only in criminology but also in the various disciplines relevant in criminology as they are taught also at the Police Academy. The study of these disciplines is mandatory for completing the bachelor course.

Until 1989, there was only one Law School in the country − the Law Department of Sofia University "Kliment Ohridski" – which is the oldest university in Bulgaria, with a history of 120 years.

Criminology as a distinct discipline was firstly taught there in the mid-1970s. After 1989, more law departments were established at the state and private universities. These are the Law and History Department of Veliko Tarnovo University "Kiril and Metodii", the graduate faculty programme in Law of the New Bulgarian University, the Law and History Faculty of South-West University "Neofit Rilski" in Blagoevgrad, the Centre for Legal Studies at Bourgas Free University, the Faculty of Law at the University of National and World Economy, the Law Department of Plovdiv University "Paisii Hilendarski", and the Law Department of Ruse University "Angel Kanchev". In principle, criminology is taught by the departments of criminal law. It is offered as an elective discipline. Intensity of the courses varies between 30 and 60 hours.

Criminology and the related disciplines are further taught at teacher training faculties of all the universities in the country. For example, the schedule of the bachelor course "Preventive and corrective pedagogy" at the Pedagogical Faculty at Sofia University "St. Kliment Ohridski" includes lectures in subjects like "social adaptation and dis-adaptation", "family and deviant behaviour" and "prevention of anti-adaptive behaviour of children". Also the master course of the programme "Pedagogy of deviant behaviour" covers subjects like victimology, criminology, and resocialization of persons in post-remedial period. The major "Social Work" includes disciplines such as "victimology", "social work in protection and prevention of child abuse" and "social work with people with deviant and delinquent behaviours". It is common practice amongst students to continue research after completion of the master degree course and to proceed to a doctoral degree. According to a proposal by the chair "Theory of Education" the following Ph.D. programmes should be set-up at the Faculty of Education: "Preventive pedagogy", "Prevention of violence among children", "Family and child offences", "Working with children at risk", etc. The department of Philosophy at Sofia University offers the course "Sociology of Deviant Behaviour."

1.1.2 Major Criminological Textbooks

- *Stankov, B.* (2012). Criminologya. Teoretichni osnovi [Criminology. Theoretical Background], Varna Free University, fourth revised edition (first edition 1996), 503 pages;
- *Stankov, B.* (2011). Criminologya. Vidove prestapnost [Criminology. The types of crime], Varna Free University, second revised edition, 463 pages;

- *Stankov, B.* (2010). Organisirana prestapnost [Organized crime], Albatross Publishing, third revised edition (first edition 2000), 363 pages;
- *Stankov, B.* (2012). Maloletni, nepalnoletni, protivoobchtestveni proyavi, prestaplenia, otgovornost [Minors, Juvenile Offenders, Anti-social Acts, Crimes, Responsibility], Varna Free University, second revised edition (first edition 2008), 207 pages;
- *Aydarov, Y.* (2010). Criminologya [Criminology], Siela Publishing, Sofia, fourth revised edition, 500 pages;
- *Fotev, G.* (ed.) (2005). Sociologia na otkloniavachtoto se povedeni [Sociology of Deviant Behaviour – collection of articles], Education Publishing, 544 pages;
- *Stankov, B.* (2001). Victimologia [Victimology], Varna Free University, 263 pages;
- *Karakachev, V., Georgiev, G. & Tcankov, P.* (1995). Kriminologia [Criminology], Albatross Publishing, Varna, 360 pages;
- *Panev, B.* (1993). Criminologya [Criminology], Burgas Free University, 376 pages;
- *Panev, B., Stankov, B., Popov, V., Karakachev, V., Georgiev, G., Aydarov, Y., Bechkov, P. et al.* (1983). Osnovi na criminologyata v Republika Balgaria [Fundamentals of Criminology in Bulgaria], Nauka i izkustvo Publishing, translated into Russian in 1986, 297 pages.

1.2 Research

The process of institutionalization of criminology which gained explicit significance in Europe as a consequence of the increased activity of the United Nations in the development of prevention strategies in the late 1950s, had its beginnings in Bulgaria in 1967/68. In 1967, a Council for criminological research was established at the Chief Prosecutor's Office. Until 2002, this Council was the central research unit in the country, which conducted criminological research on the national and the regional level, both on general and on specific thematic issues; it also prepared an annual analysis of the crime situation. The relationship between theory and practice was very close and the recommendations resulting from these surveys were sent to the relevant government institutions. The Council participated in prestigious international research projects, mainly in the field of victimology. Major projects include the 1993 survey on victimization in the countries of Central and Eastern Europe, designed by the Humboldt University[3], a research on topics of victims of crimes among the population, conducted in cooperation with the United Nations Institute on Criminal Justice (UNICRI),[4] and a study on victims of crime among businesses and individuals.[5] Following the relocation of the Council for criminological research to the Ministry of Justice and its closure a few years ago, a Criminological Research Section was established at the Supreme Cassation Prosecutor's Office. Due to the very limited resource capacity the research was performed by the prosecution and

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3 *Ewald* 1993.

4 *Zvekic & Stankov* 1998.

5 *Stankov* 1999.

for their purposes, and based primarily on existing statistical data. The data were not available to the public. In 2012, three studies were finished: 1.) Problems countering crimes affecting public finances, 2.) Crime relapse rates in Bulgaria in the period 2006–2010 and 3.) Analysis of criminal activity in Bulgaria for 2011. Regrettably, at the end of 2013, also the Research Section was closed. On the website of the Prosecutor's Office of the Republic of Bulgaria a public report on the activity of prosecutors and investigators in 2012 the first half of the current year (2013) is available.

In 1968, a Research Institute of Forensic Science and Criminology at the Ministry of Interior was created.[6] Since 2002, the Institute has been a member of the European Network of Forensic Institutes (ENFSI). Its tasks include delivery of expert's opinions and carrying-out of research. Research is focusing on the following areas: theoretical problems of criminology, current issues of specific categories and types of crime, economic statistics and economic crime, the status and trends of organized crime, and problems of victimology. Practice-oriented activities include: working out of psychosocial studies of offenders and victims, preparation of recommendations, methodologies and guidelines, development of forecasts, support of operative and search activities and police investigations.

All sorts of research work conducted by the Institute aim at supporting the police work in combating crime; therefore it has merely an "institutional" character. In 2012, the following research projects were accomplished: juvenile delinquency and victimization, preventive action of the police, and survey of public opinion on crime and police in three regions of the country. In 2013, research projects addressed fraud relating to VAT and bank cards, the work of the police in limiting property fraud, and the prevention and reduction of domestic violence.

The main directions of research at the Police Academy in 2013 were: cross-border crime and international cooperation for its prevention and control, prevention of hooliganism by the authorities of the security police, the work of police officers with children as victims of crime, the main factors and causes determining the offending behaviour of minors. The Academy is a partner with the European Police College (CEPOL), the United Nations Office on Drugs and Crime (UNODC) and the International Criminal Police Organization (INTERPOL).

Two sections within the public administration also conduct research on specific criminological problems. These are the General Directorate "Execution of Penalties" of the Ministry of Justice, whose research is primarily focussed on prisoners (studying issues such as the characteristics of their personality, methods of re-socialization of prisoners, causes of suicide in prison, etc.). The second unit is the Central Commission for the Prevention of Offences of Minors. It is part of the structure of the Council of Ministers. Over the past two years it conducted research on the effec-

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6 www.nikk.mvr.bg/default.htm [16.07.2014].

tiveness of correctional measures on juvenile delinquents and on the "leisure time of students as a factor in the prevention of antisocial behaviour." Furthermore, some criminological problems are dealt with at the Institute for Legal Studies at the Bulgarian Academy of Sciences and at the faculties of law of the various universities.

Founded in late 1989, the Centre for the Study of Democracy (CSD)[7] is an interdisciplinary public policy institute dedicated to the promotion of the values of democracy and market economy. CSD is a non-partisan, independent organization fostering the reform process in Bulgaria by impacting on policy and civil society. Three recent studies of the CSD, reviewing various aspects of the crime situation, the prevention of crime as well as criminal policy on the whole, are:

"Assisting and Reintegrating Child Victims of Trafficking in Bulgaria: Legal, Institutional and Policy Framework (2012)". The report explores the legal, institutional and policy framework of countering child trafficking in Bulgaria and the possibilities for assistance and reintegration of its victims. It analyses Bulgarian criminal law and criminal procedure as well as other legal norms relevant to the subject-matter and the extent to which they are in accordance with international standards. The study describes the different stages of referral through which victims have to go, the various institutions and organizations involved in the process, and the policies and initiatives they pursue in improving child victims' situations. A number of recommendations have been put forward promoting possible legislative amendments that would strengthen the policy framework and further push capacity building of institutions that are entrusted with the combat of child trafficking.[8]

"Crime Trends in Bulgaria 2000–2010 (2011)". The study examines crime trends in Bulgaria between 2000 and 2010 based on a comparison of data from surveys of crime victims (National Crime Survey) and from police statistics. In addition to data on crime trends in general, the report analyses data on ten different categories of crime, as well as data on the regional specifics of crime in Bulgaria. Criminal justice and socio-economic data are also included in an attempt to explain the observed trends in more detail.

"Countering Organized Crime in Bulgaria: Study on the Legal Framework (2012)"[9]. The publication addresses and analyses the legal framework introduced to combat organized crime and examines the problems which arise in the practical application of the provisions. On this basis, recommendations have been formulated which are meant to improve the legislation and to bring it into conformity with international standards and existing good practices. In addition, they shall help to overcome the weaknesses in the application of the law which, on the one hand, hinder investiga-

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7 www.csd.bg/ [15.07.2014].

8 www.csd.bg/artShowbg.php?id=15692 [15.07.2014].

9 www.csd.bg/artShowbg.php?id=15984 [15.07.2014].

tion into and punishment of organized criminal activities and which, on the other hand, also have the potential to challenge fundamental principles of criminal procedure and to infringe the rights of suspected and accused participants.

More studies of the CSD in recent years are: "CSD Brief No 35: Corruption and Anti-Corruption in Bulgaria (2011–2012)"[10], "Assistance and Reintegration of Child Victims of Trafficking: Towards Improved Policy/Strategy and Practices in the EU Member States"[11], "Corruption and Anti-corruption Policy in Bulgaria (2012–2013)"[12], "Dynamics of Conventional Crime (2012–2013)"[13], "European Expertise in Countering Police Corruption (2013)"[14] and "The National Report on the Penitentiary System in Bulgaria (2013)"[15].

The Bulgarian Association of Criminology (BAC)[16] is another main actor in the field. Although it does not conduct criminological research, it has an important role, particularly in the area of criminal justice policy and crime prevention. The BAC was established in 1986 – more than 60 years after the first institutionalization of criminology in Bulgaria in 1922 when the Society for Crime Control was founded. The materials published in the magazine issued by the Journal of the Society of Crime Control were predominantly with a criminological focus. The foundation of the BAC was a logical and necessary step in the development of Bulgarian criminology. It satisfies the necessity of regular contacts and joint efforts of the specialists and the teams working in the scientific and the practice-oriented fields of crime prevention and control. A permanent seminar has been created at the BAC. The major seminar events during the year are the scientific forums. These include conferences, debates on crime prevention and crime control as well as the discussion of the draft bills such as the *Judicial System Act* (1992), the *Criminal Code* (2011, 2012) and the *Mediation Act* (2004). Meetings are held during which academics in criminology and related disciplines exchange viewpoints and experiences concerning the content of the educational programmes and the organization and methodology of the educational process. An annual bulletin is issued.[17] The bulletins provide information on criminological and criminology-related research activities including forensic and related topics that have been performed in the reviewed period and on the final,

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10 www.csd.bg/artShowbg.php?id=16122 [15.07.2014].

11 www.csd.bg/artShowbg.php?id=16444 [15.07.2014].

12 www.csd.bg/artShowbg.php?id=16730 [15.07.2014].

13 www.csd.bg/artShowbg.php?id=16666 [15.07.2014].

14 www.csd.bg/artShowbg.php?id=16689 [15.07.2014].

15 www.csd.bg/artShowbg.php?id=16825 [15.07.2014].

16 www.criminology.bg/ [15.07.2014].

17 www.criminology.bg/index.php?option=com_content&view=article&id=53&Itemid=56&lang=bg [15.07.2014].

ready-to-use scientific products. The scientific results are published on the website of the BAC and are available to the public.

Criminology in Bulgaria has a traditional orientation and has its main achievements in the area of applied criminology. Emphasis is on topical and regionally-oriented empirical research. The focus is not primarily on quantitative research but rather on the study of the specifics and the development of an efficient crime prevention strategy.[18] Some theoretical issues have been researched as well, including the application of mathematical methods in criminological studies, topics related to the personality of the offender and criminal behaviour, systems of prevention and different assets of the system[19], as well as police crime statistics[20].

In the past, Bulgarian criminologists made a serious contribution to the process of preparation of the national programmes for crime prevention. This links theory and practice together. Suggestions and recommendations for legal reforms and the introduction of successful practices by the administration is another example of how criminology and criminologists support criminal policy.

In most recent years, unfortunately, the executive and the parliament institutions have ignored the importance of criminology. This negative political trend led to the closure of the Science and Research Section of the Supreme Cassation Prosecutor's Office, the cancellation of the research positions at the Research Institute of Forensic Science and Criminology of the Ministry of Interior, and to budget cuts. Although some universities offer courses in criminology, they are generally not research-orientated. For example, in the year 2013, only two law faculties in the country embarked on such courses. Several science organizations sporadically conduct studies at the Forensic Science and Criminology Research Institute of the Ministry of Home Affairs and at the Sociology Institute of the Bulgarian Academy of Sciences. In addition, some research issues of interest are also subject of inquiries by individual nongovernmental organizations; however, their ideas and conclusions are not always unbiased (sometimes even biased in an essential way) and/or not so far-reaching and profound. The incoherent and often chaotic character of prevention policies makes this evident.

Traditionally, in Bulgaria of the 1970s, there were national as well as regional level crime control programmes. After the events of 1989, it became malpractice for any regional government to adopt its own programme. As a result of this development, there is a lack of continuity in the process of fight against crime. These national

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18 *Boyadzhieva* 2004; *Boyadzhieva & Traykova* 2010; *Miteva & Margaritova* 1994; *Kitanov & Belova* 2000; *Kitanov* 2005; *Margaritova* 2011; 1995; *Stankov* 1993.

19 *Boyadzhieva* 2005.

20 *Stankov* 1990.

crime fight agendas are often political propaganda tools without any real goals and implementations.

Finally, it has to be pointed out that in Bulgaria there exists no specialized periodical journal of criminology. Articles on related issues are published in various legal journals and in the annual compilations issued by each of the universities in the country. These include: the journal "Obchtestvo I pravo" ("Society and Law")[21], the journal "Pravna misal" ("Legal Thought")[22], the journal "Savremenno pravo" ("Contemporary Law")[23], the journal "Obchtestveno vazpitanie" ("Public Education")[24], the journal "Teza" ("Thesis")[25], the journal of New Bulgarian University[26], and the Bulletin of the Scientific and Methodological Board in Prison.

2. Crime, Victimization, and Fear of Crime

2.1 The Sources of Data about Crime

The main source of information on crime in Bulgaria are police data, which include data on registered and revealed crimes by type and region, as well as data on offenders by age, gender, education, employment and ethnicity. This statistic is not generally available. The most reliable source of information is the police database, but only with regard to conventional crime. As for economic crime, the information includes only crimes whose perpetrators were not revealed/known to the police and not the registered.

The National Institute of Statistics provides detailed information on crimes punished. However, it has only limited information on the crimes and the prisoners serving a sentence of imprisonment. The Institute further provides data on juvenile and minor perpetrators and typologies of their offences. The database of the National Statistical Institute further contains comparative general information on registered crime in Bulgaria, the EU member states and non-EU countries, for the period from 1993 to 2010.

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21 Edition of the Union of Lawyers in Bulgaria, Sofia, ISSN 0204-8515; ISSN 0204-85-23.

22 Publication of the Institute of State and Law Academy of Sciences; "Legal Thought" is part of the electronic database CEEOL, www.ceeol.com/aspx/publicationdetails.aspx?-publicationId=7a6f0422-58b6-4fb7-8d24-e33241ced670 [15.07.2014].

23 Edition of the Law Faculty of the Sofia University, www.law.uni-sofia.bg/LS/SP/default.aspx [15.07.2014].

24 Edition of the Central Commission for Combating Juvenile Delinquency of Minors, Sofia, ISSN 0204-8515.

25 Edition of the Association of Prosecutors in Bulgaria, www.apb.prb.bg [15.07.2014].

26 First electronic law journal, ISSN 1314-5797.

The Prosecutor's Office has its own database related to pre-trial proceedings, suspended ones and submitted bills of indictment. Still, this information is of an incomplete character. It is a work-related register that shows only the activities of the prosecution in submitting bills of indictment according to the types of crime of the Penal Code.

The General Directorate "Execution of Penalties" provides an information summary on the prison population. This includes the number of persons serving sentences, classified by place of imprisonment and by type of imprisonment/determinate prison sentence/life imprisonment, as well as the number of detainees. The statistical data are not publicly available and it is not published on the website of the Directorate.

The Centre for the Study of Democracy (CSD) commissions the annual National Crime Victimization Survey, based on the methodology of the International Crime Victims Survey, originally developed by UNICRI. CSD and its subsidiary social research company, Vitosha Research, have been conducting the National Crime Survey (NCS) annually since 2005. Before, surveys were done in 1997, 2001 and 2004. While the survey is still based on the methodology developed by UNICRI mainly, the concept has been advanced and extended by asking additional questions that are related to the specifics of the crime situation in Bulgaria. The NCS is presented annually as part of the regular meetings of the National Crime Prevention Council. All survey data are included in the reports published on the website of the Centre.

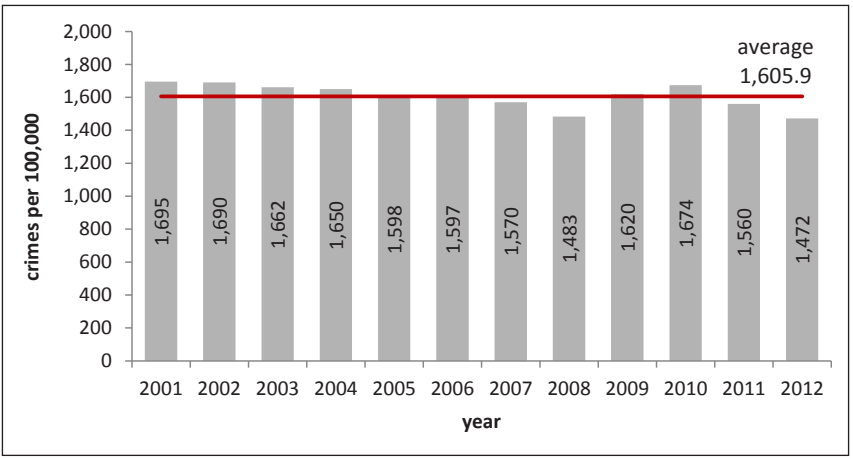
Transparency International Bulgaria ("Transparency without borders"-Association) was founded in Bulgaria in 1998 as the national chapter of the organization. Since its foundation, TI-Bulgaria is presenting the annual Corruption Perception Index to the Bulgarian public. The annual Global Corruption Barometer was added in 2003. Based on the methodology elaborated by Transparency International, TI-Bulgaria developed the Bulgarian Index for transparency in financing of political parties, the first index of this kind. Research based upon the methodology developed by Transparency International has been conducted in the years 2004 and 2005.

2.2 The Levels and Patterns of Crime

2.2.1 Crime Recorded by the Police

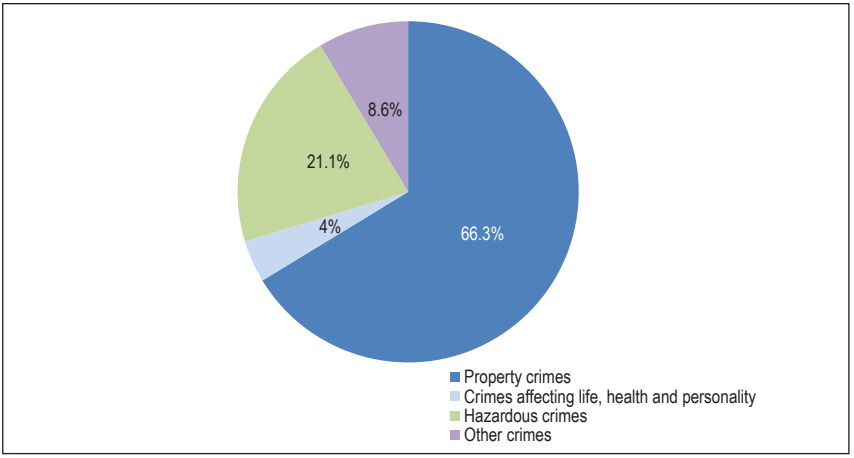
As regards, first of all, *conventional crime*, the rate of criminal offences in Bulgaria was 1,472 per 100,000 population in 2012, 1,560 in 2011, and 1,674 in 2010. According to the figures of police statistics over the last 10 years (see *Figure 1*), no abrupt change in the traditional crime rate was observed. This was different in the previous decade. It would be difficult to identify any clear trend. Three periods can be differentiated in the time span between 2001 and 2012: From 2001 up to 2008 a gradual decline in crime rates can be observed. Then, there was some increase up to the year 2010, followed by a new decline. This is clearly apparent from the intensity coefficient (numbers of registered crimes per 100,000 inhabitants) shown. The actu-

Figure 1 Number of Crimes per 100 Thousand of Population



Source: The police statistics 2012.

Figure 2 Structure of Conventional Crime for 2012



Source: The police statistics 2012.

al extent of crime, particularly "street" crime, is highest in the capitals and the other large cities. In 2012, four cities had the highest crime rates: Burgas – 1,996.2 per 100,000 population, Varna – 1,839.8 per 100,000 population, Vratza – 1,844.5 per 100,000 population, and Sofia – 1,871.7 per 100,000 population.

The data presented in *Figure 2* outline the structure of conventional crime – i.e., crimes against the person, property crimes, hazardous (generally dangerous) crimes

(including traffic crimes and drug crimes such as production and distribution of drugs). Property crimes have the biggest share in the total crime – two thirds. Second are hazardous crimes with a share of 21.1%. Crimes affecting life, health and personality (murder, bodily harm and sexual offences) traditionally have a low share – 4% only. This structure is typical and represents the picture of crime in the past few decades. Only respective numbers vary by 3–5%.

In 2012, the rate of offenders who were identified by the police was 863 per 100,000 of the population aged 14 years and above. Traditionally, men have significantly higher crime rates than women. About 90% of the crimes are committed by males and only about 10% by females. 11.7% of all known perpetrators in 2012 were women. The criminal activity of men (as indicated by the number of perpetrators per 100,000 men who are criminally liable) was 1,505; the number for women was only 201. Female criminality exhibits variable dynamics. There is a general trend of gradual increase in the number of female crimes.

Analysed by ethnicity, the largest group of offenders have been of Bulgarian ethnicity – 75.6%, followed by Roma – 17.4% and Turks – 2.6%. Only 3.5% of all detected perpetrators have been foreigners.

The largest proportion of offenders are aged 18 to 30 years − 41.1%, followed by the age group of those older than 40 years − 24.2%, and those of 31–40 years of age − 22.7%. Juvenile offenders have a share of 8.9%.

Due to incomplete data, the classification by educational status of the persons convicted has to remain incomplete. For nearly half of them – 42.6% – information is not available. 32.3% of the offenders are illiterate, those with primary education – 6.2%, persons with basic education − 7.6%, those with secondary education − 9.9%, and with higher education (college and university) − 1.6%.

Finally, more than one fifth of all registered offenders (23.8%) were unemployed, and 20.7% had prior convictions.

There are some discrepancies between police statistics and the National Crime Survey (NCS). According to the NCS 2013, there was a sharp increase in 2012 in victim numbers and crime rates, contrary to 2011. This occurs in a period of declining crime that lasted for a period of more than 10 years. The 2012 survey data show that reported crimes have been on decrease for the third consecutive year, as police have been informed of only 42.4% of overall crime. The NCS measures both the rate of crimes included in the survey, and the weight of the various reasons for not reporting the crime to police. The NCS handles a wide spectrum of reasons why victims do not report crimes: i.e., victims' believe that police would not do anything, victims' believe that the police cannot do anything, due to a lack of evidence, and victims' consideration of the crime as not serious and/or their consideration of the damages as minor. The share of unreported incidents varies according to the different types of offences. Serious crimes, such as car theft or threats/assaults tend to have much

lower rates of non-reporting. For some crimes such as burglary sometimes there exists fear of revenge.

In regard to *economic crime/fraud,* the report on registered and revealed traditional (conventional) crimes and criminals, even though incomplete, provides a general picture of this type of criminal activity. Therefore, it could be considered as a representative illustration of real crime. That is, however, not the case with economic crime when the degree of latency is too high. Therefore, the police data provide in no way a real picture of this crime. The police statistic shows only revealed crimes. In 2012, there were only 103 economic crimes per 100,000 revealed. Financial, tax, and social security system fraud crimes have the highest percentage − 47.8%; second is forgery − 29.5%; and third crimes against property – 13.7%. Like most other EU member states, modern economic crime in Bulgaria is closely linked to the antagonism between the legal and the "black economy".[27]

Organized crime in Bulgaria evolved after 1989 and has established itself until 1994/1995 as an intrinsic phenomenon. It was unprecedented in the history of the country. Its origin can be located in the "shadow economy", and it developed under conditions of severe social disruption and non-functioning of state institutions. In the early 1990s, the highest crime rate since the beginning of the past century was recorded. A total of 224,196 crimes have been registered which accounts to 2,646 per 100,000.[28] This situation is systematically infiltrating the legal economy from the very beginning.

Organized crime in Bulgaria is a complex system. It includes groups of diverse origin, structure, scope of activity, economic behaviour and their actual place within the society. They are all organized according to the principle of the criminal enterprise. Classic attributes of organized crime are: high mass level, complex structure, increase of serious crimes against the person, against property and against public order, new types of criminal offences such as racketeering, kidnapping for ransom, concealment of income for the purpose of tax evasion, bankruptcy fraud, sex trafficking, drug trafficking, arms trafficking, illicit antiquities trade and money laundering, corporate crime, corruption – all closely intertwined with organized crime.[29]

Organized crime data cannot be found in the official statistical records. This makes it problematic to determine its scale. The view of one of the most competent scholars of the phenomenon − Prof. Dr. *Boyan Stankov* – is:

"The state today is in a difficult situation. It has either to continue the ineffective fight against organized crime and to provoke capital outflow or to pursue a policy, protective for the national capitals, regardless of the capital sources. The presence of

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27 *Stankov* 2007, 153.

28 *Stankov* 2006, 176.

29 *Stankov* 2006, 175–200.

foreign, primarily offshore companies supports the thesis that foreign investments are sometimes more daring to the public interest. We shall not underestimate the risk of big international criminal organizations coming in."[30]

The legislation framework for the fight against organized crime is the Penal Code. Its current provisions related to organized crime have often been criticized.[31] Actually, the Republic of Bulgaria has ratified and implemented the UN Convention against Transnational Organized Crime; it came into force on 29.09.2003. However, both academics and practitioners, in particular magistrates, express the view that the Convention has not been transferred yet into the Penal Code in the most adequate manner. This makes it difficult to prove the existence specifically of an organized criminal group.[32]

As to *crime victimization*, National Police Statistics contain data on victims of crime, classified by crime category, gender, age, ethnicity, type of location and region. The information is not generally accessible, in some years the data are being included in the general statistical data and excluded in other years. For example, in 2012 they were part of the general conventional crime statistics whereas in the previous years they were not.

In 2012, the rate of crime victims was 797 per 100,000. Female victims make up 38.8% of all crime victims. The tendencies in Bulgaria follow the global trend of relatively low criminality and a high level of victimization among women. At highest is the female share of victims of sexual assault (88.9%) and of robbery (64.3%). More than one third of the victims of theft (37.4%) are females as well.

Age distribution of victims of criminal attacks indicates that more than half of the victims are mature and of advanced age of over 40 (53.2%). Unfortunately, the National Police Statistics do not offer any more age-related information (a few years ago data for specific age groups such as age 41–50, 51–60 and age over 60 were still available). Thus, it is difficult to ascertain exactly in what age victims aged 40 and older are most vulnerable. Victimization rates of young people aged 18–30 and 31–40 are almost the same (21.1% and 21.4%, respectively). For juvenile victims (14–17 years) the victim rate is 11.2%, and for minors (under 14) 1.9%.

2.2.2 Data on Crimes with Conviction[33]

Statistical data on crimes of those convicted (proceedings finished with a sentence) are structurally in accordance with the recorded crime statistics when it comes to

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30 *Stankov* 2006, 200.

31 *Paunova & Datzov* 2010.

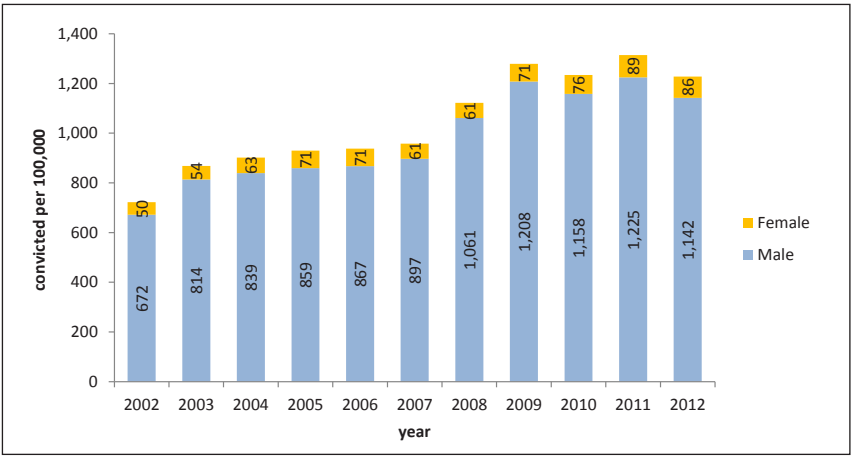
32 *Paunova & Datzov* 2010, 69.

33 Source: National Institute of Statistics, Statistical Yearbook 2013.

traditional (conventional) crimes. Here again, most frequent are the attacks against property, followed by generally dangerous crimes. The number of intentional offences against the person varies between 5.9% and 4.2% for the time period 2007–2012.

The average number of all convicted persons (by final judgement) for the period 2002–2012 was 33,932. It varied on a large scale from 27,771 (in 2002) to 41,013 (in 2011) persons that were found guilty or were convicted by final judgement. Gender classification data show a lower percentage of females amongst the offenders convicted (6.8%) compared to those revealed (11.7%). Generally, there is a tendency towards an increase not only in male but, to a lower extent, also in female crime. This is shown in *Figure 3*.

*Figure 3 Rate of all Convicted Persons with a Final Judgement**



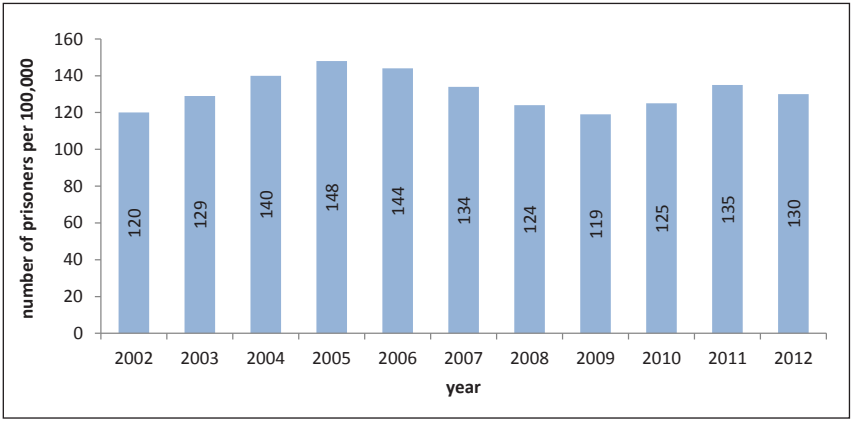
* The coefficient indicates the number of females sentenced per 100,000 of all females from the age of 14.

The information about the *prison population* provided in the official inmate statistics is rather scarce.[34] The average number of all prisoners for the period 2002–2012 was 10,027 (i.e., 132 per 100,000 of population). It varied on a large scale from 9,066 (in 2009) to 11,436 (in 2011). As can be seen from *Figure 4*, no distinct trend of increase or decrease in the prison population exists for the last 11 years.

A major problem in Bulgaria is prison overcrowding, accompanied by bad living conditions in prisons, and insufficient health care. This is the conclusion documented in the three sequential reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The reports are based on CPT's visits in Bulgaria in the time periods from 10 September to 21 Sep-

34 Source: Chief Directorate "Execution of Sentences".

Figure 4 Prison Population



tember 2006 (ensuing report of 28 February 2008), from 18 October to 29 October 2010 and from 4 to 10 May 2012 (ensuing report, published on 4 December 2012). The Committee identified some other serious problems, i.e., numerous indications for prison staff corruption, very low level of training and qualification of the administrative staff, signals of violence and even intimidating pressure on the prisoners by the administrative staff in order to inhibit face-to-face talks with the representatives of the Committee during the inspections. This sparked explicit criticism by the CPT that gave detailed recommendations to the government. Following the instructions of CPT's reports and the recommendations of the Council of Europe, as well as particular decisions of the European Court of Human Rights against Bulgaria in 2009, a new Act Governing the Execution of Punishments and Pre-Trial Detention has been passed. It provided that from 1 January 2013, the European norms according to which a prisoner must have a minimum of four square meters of living space shall come into force in Bulgaria. However, without taking any serious effort in this direction, Parliament decided in December 2012, upon the proposal of the Council of Ministers, to defer, through amendment of § 13 of the Transitional and Final Provisions of the law, the entry into force of this text to 1 January 2019. The postponement was explained by the economic situation in the country which would not allow raising the standard of living space of prisoners. Similar in meaning is the conclusion of the Ombudsman of the Republic, presented in his report for the year 2013 (Report of the Ombudsman as a National Preventive Mechanism, 2013). In fulfilment of the commitment to the Optional Protocol to the European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment it was set out in 2012 that the Institution of the Ombudsman shall act as an Independent Preventive Mechanism. This led to an amendment of the Law on the Ombudsman.[35]

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35 Section 19, para. 2 of the Law on the Ombudsman.

The Ombudsman of the Republic may recommend the Minister of Justice to close, reconstruct or expand a prison or a prison hostel if the level of overcrowding or the poor hygiene or material conditions prevent prisoners' rehabilitation or are prone to put the inmates' physical or mental health at risk (section 46[1] of the Law on the Ombudsman). The Minister must put the recommendation on the Council of Ministers' agenda within one month, and the Council of Ministers must announce the measures taken to resolve the problem (section 46[2]). However, "recommendation" does not mean "obligation" (that would be wishful thinking, still).

At its 1128th meeting from 29 November to 2 December 2011, the Committee of Ministers of the Council of Europe adopted a decision (CM/Del/Dec [2011] 1128) on the execution of eighteen judgements of the Strasbourg Court against Bulgaria in cases concerning conditions of detention in prisons and pre-trial detention facilities. In the following two reports of 2012 and 2013 decisions regarding the same matters were repeated (CM/Del/Dec [2012] 1144, CM/Del/Dec [2013] 1172). It is unlikely to expect that the situation will be changed in the near future due to the lack of sufficient financial resources for the construction of new places of detention.

3. The Criminal Justice System

3.1 Legislative Framework[36]

Contemporary development of the Bulgarian judicial system began on 12 July 1991 with the adoption of the new Constitution of the Republic of Bulgaria by the Grand National Assembly which introduced the principle of the separation of powers and independence of the judiciary. On 24 September 2003, the National Assembly adopted the first amendments of the 1991 Constitution. In order to comply with the requirements for the accession of Bulgaria to the European Union, provisions related to the reform of the judicial system were inserted through which the mandate for magistrates was introduced and their immunity was limited from a full to a functional one.

Further constitutional amendments adopted on 2 February 2007 sought to strengthen the independence of the judiciary, its impartiality and accountability. The revised Article 130 of the Bulgarian Constitution set out the competencies and attributions of the Supreme Judicial Council (SJC).[37] It confirmed its functions in regard to appointment, promotion, demotion, transfer and removal from office of magistrates,[38]

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36 In this section are used parts of a report from the Commission to the European Parliament and the Council (Technical Report) Brussels, 18.07.2012 SWD (2012) 232 final, 4–11.

37 The amendments of February 2007 introduced new provisions concerning the judiciary: Art. 130 (6), (7), (8), (9); Art. 84 (16); Art. 132, 132 (a).

38 See: Article 130 (6) reiterates powers already set out under Art. 129 (1) of the Bulgarian Constitution.

as well as its budgetary role. The Constitution now also requires reports to be made by the highest judicial bodies for debate in the National Assembly.[39] The scope and structure of these reports are determined by the SJC. Magistrates' immunity has been restricted to acts committed in performance of their official duties, but they can be held liable for civil or criminal action in relation to their judicial functions in situations when they commit an intentional indictable offence.[40] The composition of the SJC was maintained.[41] The Minister of Justice has the function of the chair of the SJC, though with no voting rights.

The legal framework set out by these constitutional amendments was complemented by a new Judicial System Act (JSA), adopted in July 2007, which defines key rules governing the organization of the Bulgarian judiciary.[42] These constitutional amendments have an important impact on the independence of the judiciary.

Bulgarian criminal justice suffers from an outdated *Penal Code*. The current code dates back to 1968, and many practitioners consider it ill-suited to modern types of crime. Serious crimes and petty offences are prosecuted according to the same procedures, irrespective of the social threat posed. Certain criminal offences such as the abuse of office need to be revised to ensure adequate protection of the public interest. Bulgaria applies the principle of legality, which obliges the prosecution to process all cases, irrespective of their objective threat to social order: a lack of discretion to prioritize leads to an increase of the workload of prosecution and courts and makes it difficult to concentrate on the more important cases. A possible shift to the principle of expediency has been held back by public concerns that such discretion would not be used objectively. Amendments to the Penal Code adopted in April 2007 introduced more severe penalties for certain serious crimes.[43] In 2009, Bulgaria initiated a more fundamental reform of the Penal Code. The original timeline for this legislative reform has been postponed on a number of occasions, but a draft section

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39 See: Art. 84 and Art. 130 – 7 of the Bulgarian Constitution: The Council submits annual reports from the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General on the application of the law and their respective activities to the National Assembly.

40 See: Art. 132 of the Bulgarian Constitution.

41 Its 25 members include three members by law, i.e., the General Prosecutor and the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, 11 members designated by Parliament and 11 members designated by the Magistracy (6 judges, 4 prosecutors and one investigating magistrate).

42 The JSA adopted in July 2007 entered into force on 10 August 2007. It was subsequently amended in April 2009 and in December 2010. The latest amendments entered into force in January 2011.

43 These include the crimes of inciting prostitution, inducing to use drugs for the purpose of acts of prostitution, involvement of organized crime group in inciting to prostitution.

on general provisions was published for consultation in January 2012[44] while the work on specialized provisions, including modern crimes such as cybercrimes and environmental offences, continued.[45] A revised Code would also give an opportunity to modernize definitions and sanctions for corruption and organized crime offences, with GRECO's recommendations on corruption offences to be taken into account.

The penal procedure rules of the *Penal Procedure Code*[46] were identified at the time of accession to be one of the key factors hampering the effectiveness of criminal justice in Bulgaria, in particular an excessive formalism which hampered court proceedings, as well as inconsistency. 2010 saw an important reform of the Penal Procedure Code (PPC). This reform extended the investigative powers of the police, clarified rules on the admissibility of evidence and introduced other provisions aimed at streamlining criminal proceedings. Decisions by courts to return cases to the prosecution for further investigation can now be appealed. Stricter rules were introduced on medical certificates justifying absence at court hearings, and the possibility to appoint reserve defence counsels was introduced to target the intentional absenteeism of defence lawyers. The reforms also helped to provide the legal basis for the establishment of a specialized court for organized crime and an attached specialized prosecution office. The 2010 amendments have helped to streamline and enhance the effectiveness of criminal proceedings.[47] The extension of investigative powers conferred to the police has reportedly had positive impact on the pre-trial phase.[48] Further amendments to the PPC extended the investigative powers of po-

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44 The general part of the draft Penal Code introduces notably the following changes: abolishing life imprisonment without the possibility of parole, changing the concept of probation, abolishing the sanction of deprivation of the right to receive honorary titles, distinctions and military ranks. It also reportedly increases the penalties for serious crimes, defines stricter terms for recidivist criminals, regulates the criminal liability of minors.

45 The draft special part of the Penal Code are being elaborated by working groups composed of experts and representatives of the Ministry of Justice. They will notably aim to redefine the categories of crime, abolish outdated offences and introduce some new offences. Some of the current criminal offences will be redefined as administrative violations. Some legal definitions and concepts will be better defined.

46 Adopted on 28 October 2005, entered into force on 29 April 2006. It was subsequently amended 22 times, last amendment – 21 February 2013.

47 Positive effects were achieved by the amendments on administration of evidence and the possibility to use testimonies of police operational staff. The application of reserve defence counsels has reportedly helped to improve some high-level cases. The possibility for an appellate court to return cases to the prosecution for further investigation has helped to reduce the number of such decisions.

48 The expanding powers to institute pre-trial proceedings to investigative bodies led to an increase in new pre-trial proceedings initiated (2010: 19,765; 2009: 13,360); increase in new cases decided by the prosecution: 2010: 19,208; 2009: 18,860; 2008: 12,985; decrease in cases unsolved by prosecution: 2010: 2,741; 2009: 5,655; 2008: 7,265. The Ministry of Interior reports an increase in the number of pre-trial proceedings finalized:

lice, allowed certain police officers to testify in court, and introduced the possibility for courts to hear covert witnesses. However, occurrences such as the absence of defence counsels which lead to postponement of hearings continued to be a cause of delay in some emblematic cases, suggesting that the new provisions have not been used to their full potential. In November 2011, additional amendments to the PPC reintroduced investigative powers of customs officers. Already before accession, the role of investigating magistrates (*sledovateli*) has been identified as a source of overlaps in competences among the police, the investigators and the prosecution – and thus as a factor increasing the complexity of criminal proceedings. According to the PPC currently in force, investigating magistrates are in charge of investigating crimes against the State, violations of State secrets, leakages of classified information and crimes against peace and humanity.[49] Commitments were made before accession to limit the competencies of investigating magistrates, but Bulgaria has argued that their status as magistrates would not allow their dismissal or transferral to other judicial roles, so their role has been perpetuated. They are now located within the Prosecutor's Office.

3.2 The Prosecutor's Office

The Prosecutor's Office is part of judiciary.[50] Constitutional guarantees for the independence of magistrates were introduced, for strengthening their inner motivation and their allegiance to the law alone. The President of the Republic of Bulgaria appoints and dismisses the Prosecutor General upon proposal from the Supreme Judicial Council. The main function of the Prosecutor's Office of the Republic of Bulgaria is to keep the observance of law. The Prosecutor's Office leads the preliminary investigation, brings persons to justice who have committed a crime, supports the charges in criminal cases of general nature, represents the State as accuser in the criminal proceeding, supervises the enforcement of the penal and other coercive measures, takes action for rescinding illegal decisions, and also, takes part in civil and administrative cases, as stipulated by the law.

The structure of the Prosecution's Office is in accordance with that of the courts. It includes the Prosecutor General, the Supreme Prosecutor's Office of Cassation, the Supreme Administrative Prosecutor's Office, five Appellation Prosecutors' Offices, the Military Appellation Prosecutor's Office, 28 District Prosecutors' Offices, including the Sofia City Prosecutor's Office, five Military District Prosecutors' Offices

2010: 57,834 cases; 2009: 51,690 cases. The number of cases finalized beyond the statutory deadline: in 2010: 4,200 delayed investigations; 2011: 1,068 delayed investigations. The number of criminal proceedings returned to the police by the prosecution or by court: in 2010: 20,139; in 2011: 13,112.

49 These offences are dealt with by a service of 400 investigating magistrates.

50 www.apb.prb.bg [15.07.2014].

and 112 regional Prosecutors' Offices. In total, about 1,120 prosecutors work country-wide. The Prosecutor General carries out legal and administrative control of the activity of all prosecutors in the country.

The Prosecutor's Office is a unified and centralized entity. Each prosecutor is subordinate to the respective superior prosecutor, and all of them are subordinate to the Prosecutor General. The superior prosecutor is responsible for the observance of law. He may rescind decisions of his subordinate prosecutors in the cases provided for by the law.

The development of the Prosecutor's Office was influenced by significant social and political incidents during the period of transition from a totalitarian to a democratic form of government.

Between 1999 and 2005, intense processes of denationalization and transfer of property in the country were initiated. The administrative-command function of the state was not still replaced by the necessary new system. Besides, the social and legal control was extremely reduced, which led to the emergence of high social and political tension. The transformation of state property into private hands in the absence of the necessary normative base to regulate the process was accompanied by a rapid rise in economic crime. Serious crimes in the financial sphere were perpetrated as well as in the field of privatization.

These developments press the Prosecutor's Office to cope with the high level of both the traditional, regular crime, and with the emergence of a new type of crime − organized crime.

In 2000, the process of prosecutorial specialization was started in accordance with the requirements for countering organized crime, terrorism, corruption. In April 2004, this specialization was expanded and the following specialized departments were established at the Supreme Prosecutor's Office of Cassation: crimes against the person and the rights of the citizens, organized crime and terrorism, economic crime, crimes of officials and corruption, general hazardous and other crimes, war crimes, international legal assistance, etc. Today, this specialization exists at the District Prosecutor's Office as well.

The newly introduced "principles of leadership and work" aim at raising the public trust in the Prosecutor's Office whose activity is to be transparent and efficient. As a part of the independent judiciary, it plays a defining role in the system of criminal justice and acts as a guarantor of the fundamental constitutional rights of the citizens.

Council of Europe Recommendation No. (2000)19 on the Role of Public Prosecution in the Criminal Justice System, adopted by the Committee of Ministers on 6 October 2000, is addressing the decisive role of the Prosecutor's Office in the system of criminal justice and in the international co-operation on criminal matters.

In compliance with this recommendation the Prosecutor's Office has developed a wide range of international activities. Bilateral agreements between the Prosecution services of the Republic of Bulgaria and those of Romania, China, Russia, Germany, Ukraine and Switzerland have been concluded. The Prosecutor's Office is in constant contact and takes part in international initiatives of the European Anti-Fraud Office (OLAF), of the Council Coordinating the Fight against the Infringements Affecting the Financial Interests of the European Communities (AFCOS), the European Police Office (EUROPOL), the EU Agency for Judicial Cooperation (Eurojust), the European Judicial Network, the Legal Initiative for Central Europe and Eurasia (ABA/CEELI), the Group of States against Corruption of the Council of Europe (GRECO), the Initiative for Central European Co-operation (SECI), the International Association of Prosecutors (IAP), the American Bar Association, the United Nations Office on Drugs and Crime (UNODC), in the regional project on the problems of trafficking in human beings within the AGIS 2005 Programme of the Directorate for Justice, Freedom, Security of the European Commission, the "Pericles" programme of the European Union for protecting the single currency from counterfeiting, and the Southeast European Public Prosecutors Advisory Group (SEEPAG).

3.3 Courts

The Republic of Bulgaria has regional, district and appeal courts; in addition, there exist military courts, the Supreme Administrative Court and the Supreme Court of Cassation. The structure of the prosecution is in line with that of the courts. Judicial proceedings have three instances: first instance, appeal and cassation, unless procedural law provides otherwise. The aim is to ensure a maximum protection of the rights and the legitimate interests of the subjects of law. In their decision-making, judges are guided by the law and their personal conviction. Extraordinary courts are not allowed. Specialized courts can be established by law.

The process of specialization was taken one step further with the adoption of legislation to establish specialized prosecutor offices and courts in charge of organized crime cases in December 2010 and January 2011. The original intention of this legislation had been to deal better with serious cases of organized crime and corruption. However, during the course of discussions in Parliament, the draft was amended to exclude corruption cases, except when committed by organized crime groups. The new specialized court and prosecution office for organized crime cases became operational in January 2012. The law foresees that they should deal with all "organized crime" cases. This includes the offence of participation in a criminal organization as well as crimes carried out by organized criminals. The scope of the work of the court is therefore defined by personal characteristics of the perpetrators, not by the seriousness of the crimes, which runs the risk that the structures will have to divert much of their resources to relatively minor offences.

3.4 Ministry of Interior

The number of employees at the Ministry of Interior in 2012 was 58,745. Data about the gender, age and the ethnicity of the police officials is not available.

Two directorates perform basic functions in the fight against crime. The first one is the Chief Directorate "National Police" − a special structural unit for operational, investigative and organizational activities as well as information in the areas of prevention, detection and investigation of crime, for the protection of public order, and prevention. It operates independently and in cooperation with other government agencies, with organizations and with citizens. The second one is the Chief Directorate "Combating Organized Crime" − a special police department of the Ministry of Interior for operative investigation which has the task to counter and neutralize the criminal activities of local and transnational criminal structures. The functions carried out by the department are related to the fight against organized crime in the following areas: economic and financial crime in the credit sector, terrorism, smuggling and trade in illegal arms, strategic raw materials, dual-use goods, motor vehicles, goods of historic and cultural value. Combating illegal entry into the country and expelling people in other countries is also part of the tasks of this office. Further activities are actions against production and illicit trafficking of narcotic drugs and psychotropic substances and raw materials for their production, as well as the prevention of the reinvestment of proceeds from such criminal activities. Another line of work is to prevent and curb crimes related to the use of force or threat aiming at obtaining illicit benefits by concluding disadvantageous transactions. In addition, the office has to deal with forgery, circulation of counterfeit currency and securities, incorporation or acquisition of improper benefits from gambling. Finally, it has a prerogative in the fight against corruption in state and local administration.

General Directorate Gendarmerie is a specialized, highly mobile police force for public security, which is responsible – through individual and joint actions with other services – for crisis management, restoration and maintenance of public order in the case of riots. In addition, it functions as a reserve force of the Ministry of Interior to ensure internal security.

In 2008, SANS (State Agency for National Security) was established, uniting some core tasks in the fight against organized crime from the Ministry of Interior as well as from the National Security Service, the Military Counter Intelligence Agency and the Financial Intelligence Unit. Two consecutive amendments to the Ministry of Interior Act (2009 and 2010) as well as amendments to the PPC (2010) led to important institutional changes in the Ministry of Interior with an impact on both the quality and speed of proceedings at the pre-trial stage. Structures were streamlined (doing away with the overlap of competencies between SANS and the Ministry of Interior) and the number of police investigators was substantially increased (from 2,000 to 8,000). Training was also enhanced. The reforms further included the re-establishment of the Chief Directorate "Countering Organized Crime" as an inde-

pendent police structure, specialized in combating serious and organized crime. As first results 2011 brought a substantial reduction of cases referred back from the prosecution to the police, the length of investigations was reduced and the overall quality of evidence improved. In addition, the number of cases overdue was substantially reduced, from 4,200 in 2010 to 1,068 in 2011.[51]

3.5 Chief Directorate "Execution of Sentences" (CDES)[52]

The Chief Directorate "Execution of Sentences" (CDES) is a specialized administrative legal entity under the Minister of Justice, based in Sofia. The Directorate exercises direct authority and control over the facilities for imprisonment and the probation services. Its activity is regulated by the Law on Execution of Sentences and Detention and is associated with the enforcement of life imprisonment, imprisonment and probation, as well as detention on remand in places for deprivation of liberty.[53] CDES governs 12 prisons and another 27 prison facilities, both of "closed" and "open" type, which are functionally linked to the prisons, one reformatory home for juvenile boys in Boichinovtsi and one reformatory for juvenile girls in Sliven (for persons aged 14–17 years), and 27 regional office sectors with "arrest" and "probation".

4. Conclusion

Contemporary crime in Bulgaria is a consequence of globalization, whose criminogenic effects were manifested most tangibly after 1989 when the division into ideological and military blocks (East–West) was abolished, national and regional isolation was eliminated, and crime went out of control. The scale of crime, particularly "street" crime, is highest in the capitals and the other large cities.

The main characteristics of contemporary crime in Bulgaria are: increased participation of minors in the commission of criminal offences and drop in the age of early criminal activity, intellectualization and sophistication of crime, especially in the area of economic and computer crime, dangerously increased criminal activity of Roma in street crime, especially offences against property which has become an acute social problem (in some areas of the country Roma people rob peoples' homes with impunity, even in their presence, attack trains, commit thefts in railway facilities), and the development of organized crime.

There is no targeted, consistent and insightful criminal policy that could be implemented consistently for an extended period of time and which will not be disrupted by the political changes of power. It is common to take media sensationalizing ac-

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51 Technical Report, Brussels, 18.07.2012 SWD (2012) 232 final, 31–32.

52 www.gdin.bg/ [15.07.2014].

53 State Gazette no. 25, 3 April 2009, last amendment no. 53, 27 June 2014.

tions and measures on just another serious criminal offence, as a kind of "flirting" of the political actors with the public. They give promises and implement measures, worsening penal repressions. It appears that penal policy is being more and more reduced to more severe repression by means of criminal law. Society is taught that the only effective way to fight crime is to increase the severity of punishments for criminal offences.

There is a total underestimation of the role of criminology as a science that could not only provide analysis of real crime but would assess the impact of the different laws on different crimes. Criminological research is needed to provide evidence about the possible effects of increased severity of sanctions on the crime rate and to demonstrate that crime reduction is linked to the consequent delivery and enforcement of punishment, not its severity. This conclusion was presented 250 years ago by *Cesare Beccaria*. The draft of the new Criminal Code banishes life imprisonment without parole as a form of crime punishment. This gives hope that the ideas of *Beccaria*, implemented in the contemporary criminal justice policy, are still alive. At the same time, uncertainty remains whether further steps to effectively combat crime will be taken or whether just another "crime prevention strategy" will be adopted.

5. Summary in Bulgarian

В исторически аспект криминологията в България се развива като наука в края на 19 век. В унисон с процесите на институционализация на криминологията в Енвропа и увеличаващата се активност на ООН в развитието на стратегии за превенция на престъпността в края на 50-те години на 20 –ти век, през 1967–1968 г. започва институционализацията на криминологията и в България. През 1967 г. е създаден Съветът за криминологически изследвания към Главната прокуратура, а малко по-късно – Институтът по криминалистика и криминология към Министерството на вътрешните работи. Отделни криминологични проблеми са имзследвани и в Правния институт при Българската академия на науките и в Юридическия факултет на Софийския университет, както и в Академията на МВР.

Едно от постиженията в утвърждаването на криминологията е и фактът, че тя започва да се чете като отделна дисциплина в юридическия факултет в края на 70-те години на 20-ти век. Днес тя е включена в учебните програми на всички 9 юридически факултети в страната. Това намира своето законово основание в чл. 9, ал. 1 от Наредбата за единните държавни изисквания за придобиване на висше образование по специалността „право“ и професионална кмалификация „юрист“ , приета през 1996 г. и в сила до настоящия момент. Университетите са длъжни да включат криминологията в списъка на избираемите дисциплини. Отделни криминологични курсове се преподават и във факултетите по психология и социология.

През 1987 г. е учредена и Българската асоциация по криминология. Тя допринася за поддържане и повишаване на кмалификацията на своите членове, за координиране на изследователските и учебните планове по криминология в юридическите факултети. Асоциацията организира постоянно действащ семинар, който представлява форум за дискусии по повод приключили криминологични изследвания и по различни проблеми на криминологията и наказателната политика. Асоциацията предоставя своите становища по различни законопроекти, свързани с борбата срещу престъпността, на компетентните институции.

Съвременната престъпност в България е силно повлияна от глобализацията, чийто криминогенен ефект ярко бе почувстван след 1989 г. след отпадането на разделението между отделните идеологически и военни блокове /изток–запад/, когато бе премахната националната и регионална изолация между отделните държави и престъпността излезе от контрол.

Основните характеристики на съвременната престъпност в България са следните: повишаване криминалната активност на непълнолетните и спад на възрастта на първите криминални прояви; интелектуализация на престъпността и по-специално в сферата на икономическата и компютърната престъпност; рязко нарастване криминалната активност на населението от ромски произход в уличната престъпност и по-специално – при извършването на посегателства скрещу собствеността, което се превръща в сериозен социален проблем ; ръст на организираната престъпност.

В същото време изглежда наказателната политика все повече се ожесточава чрез утежняване размера на санкциите. У обществото се насажда убеждението, че единственият ефективен път за борба с престъпността е да бъдат увеличавани наказанията и строгостта за извършените престъпления.

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Criminology and Crime in Croatia

Anna-Maria Getoš Kalac & Ruža Karlović

1. Introduction

Criminology and in more general terms 'crime research' have a very long tradition in Croatia, dating back in terms of formal institutionalization as far as 1906. Despite this long institutional tradition and especially when compared to other European countries (e.g. Germany), criminology as a serious and independent science has only rather recently started to take off in Croatia. This setting, its history, causes, and current developments in criminological education and research shall be addressed in order to *map* the Croatian criminological landscape accurately and in its necessary socio-political context. After this *criminological mapping*, a short overview of the Croatian criminal justice system with its key actors should facilitate a better understanding of detecting, prosecuting, dealing with, and even preventing crime. In this context, special emphasis will be put on the Croatian prison system and most recent prison statistics. Then follows the actual *crime mapping* which will focus on general crime indicators and violent crime in relation to age, sex, recidivism, etc. This section will also highlight some of the main crime-related discussions currently ongoing in Croatia (e.g. violent youth crime). Finally, after having studied this article, one should have a full picture of the current state of criminology and crime in Croatia, including its specific socio-political context.

Now, before heading off into the Croatian criminological and criminal landscape, some basic criminologically relevant facts about Croatia (population, ethnicity, religion and immigration) as well as a brief overview of its recent history shall be presented. This should facilitate a better understanding of all the following sections.

1.1 Basic Criminologically Relevant Facts: Population, Ethnicity, and Immigration

Croatia, located in Southeastern Europe, with a long coastline on the Adriatic Sea to the south, and borders with Slovenia and Hungary to the north, and Serbia and Bosnia and Herzegovina to the east, has a crescent-shaped area of 56,594 square kilometres and,[1] according to the most recent official estimate for 2012, a population of

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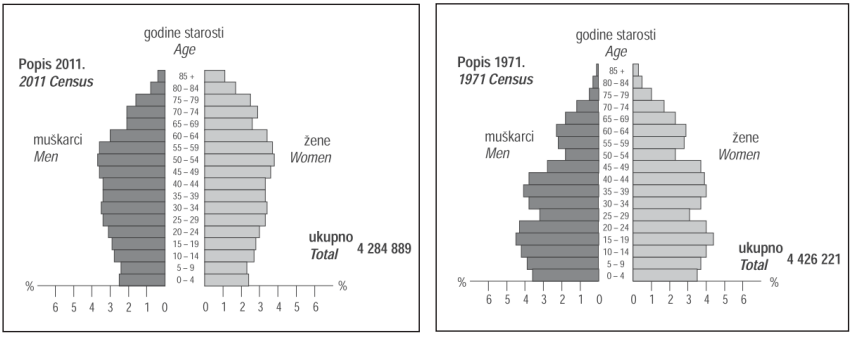
[1] EN 2014.

4,267,558.[2] Its capital, Zagreb, is located in the north-western corner of the country, and inhabited by 793,057 people.[3] The biggest share of Croatia's population lives in the City of Zagreb, followed by the County of Split-Dalmatia, County of Zagreb, County of Osijek-Baranja and County of Primorje-Gorski kotar.[4] Besides Zagreb, the largest Croatian cities are Split, Osijek and Rijeka, which are also important for the later context since these four cities host the main four universities[5] with the four Croatian law faculties.[6] But let us return to Croatia's population characteristics and the question why these are important.

Since *Hirschi & Gottfredson* (1983), the *age-crime curve* has become known as one of the most consistent findings in criminology, with huge methodological, theoretical, and policy implications.[7] And since age is a well-known and consistent correlate of crime, a country's age structure has to be taken into account when analyzing and comparing crime in time and across different countries (e.g. comparing crime in Turkey, which has an average population aged 28.8, with crime in Croatia, where the average age is 41.7[8]). Like in most European countries, the Croatian population shows a clear trend towards aging, as *Figure 1* shows, with an aging index of 115.0

Figure 1 Population by Age and Sex (2011 and 1971 Censuses)



Source: Census 2013b, 12.

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2 Croatian Bureau of Statistics (CBS) 2013.

3 CBS 2013.

4 CBS 2013.

5 University of Zagreb – www.unizg.hr; University of Split – www.unist.hr; University of Osijek – www.unios.hr; University of Rijeka – www.uniri.hr [16.07.2014].

6 Zagreb Faculty of Law – www.pravo.hr; Split Faculty of Law – www.pravst.hr; Osijek Faculty of Law – www.pravos.hr; Rijeka Faculty of Law – www.pravri.hr [16.07.2014].

7 *Bouffard* 2009, 28.

8 Census 2013b, 15.

in 2011 that has been continuously growing from 27.9 in 1953, to 34.3 in 1961, 47.2 in 1971, 52.6 in 1981, 66.7 in 1991 and 90.7 in 2001.[9] The current average age is 41.7, which places Croatia among the oldest nations in Europe.[10] With respect to sex the population counts a share of 48.2% men and 51.8% women, whereby the age-sex structure shows a disproportion in the number of men and women in particular age groups, as demonstrated in *Figure 1*.

The vast majority of Croatia's inhabitants in 2011 declared themselves as Croats by ethnicity (90.42%), followed by Serbs (4.36%[11]) and Bosniacs (0.73%).[12] Accordingly, most inhabitants are Catholics by religion (86.28%), followed by Orthodox (4.44%), not religious and atheists (3.81%) and Muslims (1.47%).[13] 'Accordingly', those who declare themselves as Croats by ethnicity most commonly are Catholics by religion (in 93% of all cases), whereas Serbs are usually Orthodox Christians (86%) and Bosnian Muslims (89%).[14] This clearly demonstrates how closely ethnicity and religion are tied together in Croatia, which is also of high criminological relevance when analyzing specific types of crime, for example hate crimes or war crimes. Even today in public and political discourse, religious and ethnic affiliations play an important role, as recent discussions and the outrage about the Serbian ethnicity of three ministers of the Croatian Government demonstrated. And although the overall share of the ethnic Serbian population is rather low (4.36%), in some Croatian regions their share at county and local level is much more significant (e.g. 15.50% in the County of Vukovar Sirmium[15]). This factor easily fuels old ethnic tensions, like those witnessed recently in Vukovar where, after installing bilingual public signs, large demonstrations, acts of vandalism and even violent incidents occurred.[16]

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9 The aging index is the percentage of the population aged 60 and over in relation to the population aged 0–19. The index exceeding 40% indicates that the population of a particular area has entered the ageing process. In the 2011 Census, the number of persons aged 65 and more outnumbered, for the first time, the number of persons aged 0–14 (Census 2013b, 9–11).

10 Census 2013b, 15.

11 There has been a significant decrease in the Serbian population in Croatia since 1991 due to the war. Compared to the current 4.36%, the share of the Serbian population was 14.16% in 1971, 11.55% in 1981, 12.16% in 1991, and 4.54% in 2001 (Census 2013a, 11).

12 Census 2013a, 11.

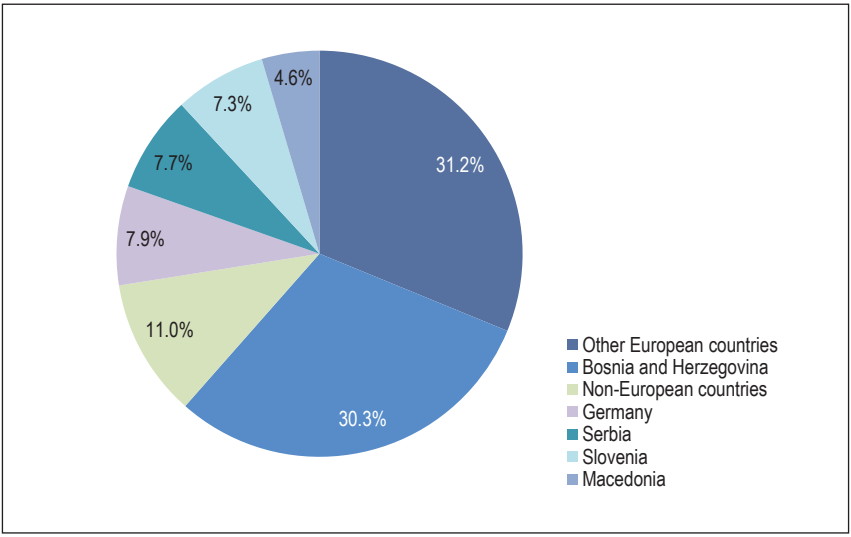
13 Census 2013a, 12.

14 Census 2013a, 15, 17.

15 Census 2013a, 20.

16 The issue still has not been resolved and the question about a referendum that was launched is pending before the Croatian Constitutional Court. As Minority Rights Group International (MRG 2014) reported: "The Committee for the Defence of Croatian Vukovar [www.stozerzaobranuhrvatskogvukovara.hr], a group of citizens and war veterans in Vukovar, Eastern Croatia launched a petition for a referendum in November 2013 and demanded that minority

Figure 2 Foreign Nationals Immigrated to Croatia by Country of Citizenship (2013)



Source: CBS 2014.

Immigration plays a relatively small role in Croatia, especially when compared to immigration problems and related to crime in other European countries (e.g. Germany). Croatia in 2013 had a negative net migration with foreign countries that amounted to – 4,884.[17] Only half of all the immigrants to Croatia in 2013 were aliens (the other half were Croatian citizens), whereby almost half of the alien immigrants had a regional citizenship background (Bosnia and Herzegovina, Serbia, Slovenia and Macedonia), as *Figure 2* shows.

Out of the total number of immigrants, there were 47.2% of persons who arrived from Bosnia and Herzegovina.[18] Obviously, Croatia has, at least so far, not achieved any significant level of immigration and therefore lacks the typical criminological

language rights, including installing bilingual public signs, should be granted only in local self-government units where at least half of the population is from an ethnic minority. Under the current legislation in Croatia, this ratio is one third. The Serbian minority community in the city of Vukovar meets the current requirement. […] MRG is concerned that so shortly after acceding to the EU, which required Croatia to realize certain standards with regard to the rights of minorities, these achievements may be discarded. It is also worrying that this referendum could set a precedent leading to a greater retraction of minority rights in Croatia and will set a negative example for other countries currently in the accession process."

17 In 2013, there were 10,378 persons that immigrated to the Republic of Croatia and 15,262 persons that emigrated from it (CBS 2014 [number 7.1.2.]).

18 CBS 2014 (number 7.1.2.).

discourse about immigration and crime. This should be taken into account especially when conducting international surveys with large questionnaires (e.g. ISRD3[19] or Fear of Crime studies[20]), which could be sized down accordingly without any apparent loss regarding methodology or even findings.

1.2 Brief Overview of Recent Croatian History

After the unified Communist Party of Yugoslavia fell apart in 1990, democratic elections became possible, and the Croatian Democratic Union led by *Franjo Tuđman* won the elections. In the referendum held in May 1991, over 90% of the people of the Republic of Croatia voted for independence from the Socialist Federal Republic of Yugoslavia, and a month later, the Croatian Parliament passed a decision proclaiming the independence of Croatia. In 1991, the Yugoslav People's Army, which in reality was a Serbian army, attacked Slovenia, immediately afterwards Croatia, and then Bosnia and Herzegovina. The Yugoslav People's Army was assisted in Croatia by a revolt of armed Croatian Serbs. The Croatian people, although unarmed, mounted a fierce resistance, defending Vukovar, Dubrovnik and other cities which were brutally attacked for months. During the war, villages were burned and people were expelled or killed, and although a fourth of Croatia was occupied, the Serbs realized that they could not subjugate Croatia easily, so at the end of 1991 they agreed to the mediation of the United Nations, and Croatia was recognized as an independent state on 15 January 1992.[21]

The briefly sketched war in Croatia was accompanied by an overnight transition to market economy; economic crime in the process of privatizing state-owned property and war profiteering; large population immigrations (primarily from Bosnia and Herzegovina) and emigrations (refugees from Croatia leaving to European countries and Serbs leaving for Serbia); widespread personnel changes in the judiciary, police, military and governmental offices; swift legal reforms; etc. The majority of the Croatian population has had personal experience with the past atrocities, the widespread violence, mass victimization and displacement of persons, to name just a few long-term consequences of the war. This, as well as the ongoing discussions on these topics in Croatia and the region, must be acknowledged as an influential factor when it comes to the overall socio-political context, and of course in this respect to crime, offending, and victimization.

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19 ISRD stands for International Self-Report Delinquency Study. Croatia participated for the first time in ISRD3, see: www.balkan-criminology.eu/en/ad_hoc_projects/isrd3 [13.07.2014].

20 See for example the cross-country fear of crime study coordinated by *Kury & Winterdyk* 2013 and the Croatian findings in *Getoš & Giebel* 2013.

21 Main source of historical data used for this paragraph: CARNet 2014.

2. Criminological Education and Research[22]

The close connection between criminology and the so-called *Kriminalwissenschaften* (crime-sciences), especially criminal law, sociology of criminal law, law of sanctions etc. is unchallengeable.[23] This is especially true in the European context and therefore in the Croatian context as well.[24] This close scientific and practical connection between criminology and the other criminal sciences has consequently led to a close institutional connection, which is quite obvious and predominant in Europe, and plays an important role for the *criminological mapping* of Croatia. Therefore, it should come as no surprise that criminology in Croatia first and foremost emerged at the University of Zagreb's Faculty of Law. However, particularities in the history of criminology in Croatia resulted in additional criminological lines that evolved outside the context of the Zagreb Law Faculty and in the framework of 'criminalistics' at the Police College of the Croatian Ministry of Interior's Police Academy in Zagreb and in the framework of 'behavioural disorder studies' in the field of 'defectology' (today called 'educational-rehabilitational sciences'). For this reason, this section will discuss all three approaches (the criminal law as well the criminalistic and the defectological one) in their historical and current context, before introducing the key players in Croatian criminology and highlighting what they have to offer in terms of education, research and publications.

2.1 Croatian Criminological History

According to *Kaiser, Radzinowicz* mentions the institutionalization of criminology at the University of Zagreb in 1906 – more than 100 years ago.[25] Although there is evidence that even before that time criminological work was being published and the happenings on the international criminological scene were being followed,[26] but the institutional year of birth of Croatian criminology was clearly the establishment of the 'Chair for Criminal-Complementary Sciences and Sociology' at the Zagreb Faculty of Law under the leadership of the first Croatian criminologist *Ernest Miler* (1866–1928).[27] This positions the University of Zagreb as one of the oldest

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22 The findings on Croatian criminological history, education and research are partially based on one of the authors' prior studies into the topics, which have so far been published in German (*Getoš* 2011) and Croatian (*Getoš* 2009).

23 *Kaiser* 1996, 4; *Derenčinović & Getoš* 2008, 22; *Horvatić & Derenčinović* 1998, 27; *Šeparović* 1987, 25.

24 *Kaiser* 1996, 103; *Getoš* 2009, 129.

25 *Kaiser* 1996, 70.

26 See for example *Miler*'s bibliography in *Pavić* 1997, 402.

27 *Miler* was installed in 1906 as Professor for Crime-Sciences and Sociology at the University of Zagreb's Faculty of Law (*Pavić* 1997, 396). As a student of Professor *Liszt*, in whose seminar he worked, *Miler* started his work in the field of criminal law, which

criminological institutions – older criminological institutions can only be found at the University of Ferrara (1905) and Lausanne (1906), while in Paris (1910) and Graz (1912) the founding of such institutions followed a few years later.[28] Starting from the winter semester 1906/07, *Miler* held mandatory two-semester lectures in 'crime-sciences and sociology',[29] but after his death the position of the Head of the Chair remained unfilled and eventually in 1934 was turned into the 'Chair for Sociology and Statistics'.[30] This led to the informal reallocation of criminology into the criminal law sciences, where criminal law professors continue criminological education and research, but mainly as an addendum to their work in the field of criminal law.[31]

Despite this early institutionalization of criminology at the Zagreb Faculty of Law, criminology was, until recently, dealt with as a side-project and gained little momentum in the shadow of the criminal law sciences. This, together with a clear monodisciplinary approach in selecting Ph.D. candidates and future academic and scientific staff at the law faculties almost exclusively from the legal sciences, led to the wandering off of criminology into the domains of 'criminalistics' and 'defectology'. Crime has been the subject of studies at high school and undergraduate level in the context of the Croatian police educational system for decades. Since 1971, criminology has been taught to criminalistics students at the Zagreb Police College which, for a period of time, even had the status of 'Faculty for Criminalistics' (1999–2004). For several decades, criminology has also been studied as 'behavioural disorder' at the former 'Higher School for Defectology' (established in 1962), where also today at the 'Faculty of Education and Rehabilitation Sciences' in Zagreb a lot of criminological education and research is underway.

The following sections will lay out in more detail the level and scope of criminological education, not only at the Zagreb Faculty of Law and the other three law faculties, but also at the Police College in Zagreb and the Faculty of Education and Rehabilitation Sciences.

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led him to the study of the causes of crime, and thus to the research into the causes and functioning principles of the society, which eventually carried him into the field of sociology (*Pavić* 1997, 399). Based on *Miler*'s academic and scientific carrier as well as list of publications, it is justified to proclaim him as the first Croatian criminologist, especially since he combined criminal law, criminology and sociology, as one would expect in such a multidisciplinary field.

28 *Kaiser* 1996, 70.

29 *Pavić* 1996, 408, 414.

30 *Pavić* 1996.

31 Prominent criminal law professors that must be mentioned in this context are Professor *Šilović* (1858–1939), Professor *Frank* (1883–1953), and Professors *Šeparović*, *Horvatić* and *Derenčinović*.

2.2 Criminological Education

2.2.1 Institutions and Courses

Besides the four Croatian Law Faculties in Zagreb,[32] Split,[33] Osijek[34] and Rijeka,[35] which all provide criminological education at a diploma and master's level (undergraduate) through courses in criminology, there is also the Zagreb Faculty of Law's Study Centre for Social Work[36] providing diploma and master's level (undergraduate) criminological courses (criminology with criminal law basics, juvenile delinquency etc.). However, only at the Zagreb Faculty of Law a broad variety of criminological(ly relevant) courses are offered to under- and postgraduate students in Croatian and English (criminology and victimology, penology, female delinquency, juvenile delinquency, etc.). There are also several one-week intensive international courses accredited and (co)organized by the Zagreb Faculty of Law and held at the Inter-University Centre in Dubrovnik[37] that focus on criminological(ly relevant) education: victimology, victim assistance and criminal justice; Balkan criminology;[38] crime prevention through criminal law and security studies.[39]

The Zagreb Faculty of Law has no specialized Ph.D. in criminology, but offers a Ph.D. in criminal law sciences. Within the framework of this Ph.D. it is possible to write a doctoral dissertation on criminological subjects; however, a strong legal perspective is mandatory and is usually complemented by the use of crime statistics or smaller empirical studies and case analyses (mainly court files). Generally, there is no specialized Ph.D. in criminology in Croatia, but criminological topics may be the subject of doctoral dissertations within the framework of other sciences (criminal law, sociology, psychology, educational-rehabilitational sciences, politology, etc.).

At the Law Faculty in Rijeka a postgraduate study programme in 'Criminal Investigation' has been established.[40] Although this study programme again focuses on criminalistics, a strong criminological component has to be acknowledged. As is elsewhere the case in Croatia, the academics holding most of these courses come from the Zagreb Faculty of Law.

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32 www.pravo.hr [17.07.2014].

33 www.pravst.hr [17.07.2014].

34 www.pravos.hr [17.07.2014].

35 www.pravri.hr [17.07.2014].

36 www.pravo.unizg.hr/scsr [17.07.2014].

37 www.iuc.hr [17.07.2014].

38 www.balkan-criminology.eu/en/events/courses [13.07.2014].

39 www.pravo.hr/KP/crimeprevention [13.07.2014].

40 www.pravri.hr/hr/studij/poslijediplomski/krimi [13.07.2014].

Besides the educational activities going on at the law faculties, there are several other institutions involved in criminological education in Croatia. First of all, there is the Zagreb Police Academy[41] with its Police College[42] which, since 1971, offers a broad spectrum of criminological courses and seminars. The Police Academy conducts programmes of basic police training, higher police education, professional development, vocational training and specialization, primarily for the needs of the Ministry of the Interior. Criminology is an obligatory course in the curriculum of police education at all levels.Their approach is mainly practice-oriented and focuses on crime detection and investigation, through what is known in many countries as 'criminalistics'. Currently, there are negotiations underway to establish a joint master's programme with the Zagreb Faculty of Law at the Police College. This programme will have a special focus on criminological education and research and might be able to fill the current gap in specialized criminological higher education in Croatia.

As mentioned earlier, the Faculty of Education and Rehabilitation Sciences at the University of Zagreb[43] offers criminological education through the study programme in 'behavioural disorders' at an undergraduate and graduate level. Again, it is possible to obtain a Ph.D. focusing on criminological topics, but only within the framework of the so-called 'behavioural disorders'.

The Faculty of Humanities and Social Sciences in Zagreb at its Department of Sociology[44] as well as the University of Zagreb's Centre of Croatian Studies at its Department of Sociology[45] also offer criminological courses and it is possible to obtain a Ph.D. with a focus on criminological topics, but in the field of sociology.

In conclusion, it can be noted that Croatia offers a broad variety of criminological educational opportunities at an (under)graduate and postgraduate level, but none of it is specialized in a stricter sense. The education focuses primarily either on criminal law, criminalistics, educational-rehabilitational sciences or sociology.[46] There have been several ideas and initiatives for establishing a criminological Ph.D. study programme, but so far these have not become operational – partly due to the strict regulations regarding scientific areas, fields and branches which imply that such a Ph.D. programme would have to be hosted at a law faculty and result with a Ph.D. in law. This, however, would pose a problem if Ph.D. candidates did not have a graduate background in law, but e.g. sociology or psychology. A solution to this problem

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41 www.policija.hr/main.aspx?id=4542 [17.07.2014].

42 www.policija.hr/6676.aspx [17.07.2014].

43 www.erf.unizg.hr/indexEng.html [17.07.2014].

44 www.ffzg.unizg.hr/socio [17.07.2014].

45 www.hrstud.unizg.hr/sociology/staff_and_courses [17.07.2014].

46 For a slightly different perspective, but similar findings see also *Mikšaj Todorović* 2008.

still is not in sight, but it might be bypassed by offering an interdisciplinary Ph.D. research school at university level, which would also bundle the academic teaching capacities of all involved faculties.

2.2.2 Criminological Textbooks

The main Croatian criminological textbooks[47] used for educational purposes at Croatian faculties are the following ones:

- *Derenčinović, D. & Getoš, A.-M.* (2008). Uvod u kriminologiju s osnovama kaznenog prava [Introduction to criminology with criminal law basics]. Pravni fakultet Sveučilišta u Zagrebu, Manualia Universitatis studiorum Zagrabiensis, Zagreb, 278 pages. Strongly revised and updated new textbook, partly based on an older one;
- *Derenčinović, D.* (2004). Uvod u kriminologiju i socijalnu patologiju s osnovama kaznenog prava [Introduction to Criminology and Social Pathology with Basics of Criminal Law]. Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 320 pages;
- *Horvatić, Ž. & Derenčinović, D.* (1998). Osnove kriminologije: temelji učenja o pojavnim oblicima i uzrocima kažnjivih ponašanja [Fundamental criminology: basics of the study of the phenomenology and aetiology of criminal behaviour]. Ministarstvo unutarnjih poslova, Policijska akademija, Zagreb, 210 pages, revised textbook based on an older one:
- *Horvatić, Ž.* (1992). Elementarna kriminologija [Fundamental criminology]. Manualia Universitatis studiorum Zagrabiensis, Zagreb, 154 pages, revised and updated textbook based on an older one:
- *Horvatić, Ž.* (1981). Elementarna kriminologija: osnove učenja o pojavnim oblicima i uzrocima kažnjivih ponašanja [Fundamental criminology: basic of the study of the phenomenology and aetiology of criminal behaviour]. Manualia Universitatis studiorum Zagrabiensis, Zagreb, 154 pages;
- *Singer, M., Kovčo Vukadin, I. & Cajner Mraović, I.* (2002). Kriminologija [Criminology]. Nakladni zavod Globus, Manualia Universitatis studiorum Zagrabiensis, Zagreb, 847 pages. 3rd revised and updated textbook based on an older one:
- *Singer, M.* (1994). Kriminologija [Criminology]. Nakladni zavod Globus, Zagreb, 739 pages;
- *Šeparivić, Z.* (1998). Viktimologija: studije o žrtvama [Victimology: studies about victims]. Informator, Zagreb, 299 pages, 3rd revised and updated textbook based on an older one from 1985;
- *Šeparivić, Z.* (1987). Kriminologija i socijalna patologija [Criminology and social pathology]. Narodne novine, Pravni fakultet, Manualia Universitatis studiorum Zagrebiensis, Zagreb, 340 pages.

Besides these domestic textbooks, foreign (primarily English language) criminological literature is usually part of course readings as well. It should come as no surprise

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47 The list could be a bit longer if one were to include publications that are of criminological nature, but are not used primarily as university text books. See for example *Mikšaj Todorović* 2008, 333.

that there are only a handful of recent domestic criminological textbooks in Croatia, since after all it is a relatively small country where also in other fields of education only one or two major textbooks exist. Therefore it is quite common in Croatia to proscribe as mandatory course literature single journal articles; at the Zagreb Faculty of Law such a practice enables students to get up-to-date knowledge on criminological research on the domestic as well as international level.

2.2.3 Criminology as a Scientific Branch

In Croatia, there is a regulation that defines scientific areas, fields, and branches.[48] In 2009, 'criminology' together with 'victimology' became part of the branch 'criminal law and criminal procedural law' in the field of 'law sciences' in the area of 'social sciences'. This was only after a dispute between the Zagreb Faculty of Law and the Faculty of Education and Rehabilitation Sciences about the Regulation defining scientific areas, fields and branches from 2008,[49] by which 'criminology' was for the first time ever mentioned in the classification, but as a branch in the field 'educational-rehabilitational sciences'. The 2009 classification 'criminal law, criminal procedural law, criminology and victimology' best reflects both tradition and scientific reality in Croatia, but still has not resolved the issue of mono-disciplinary positioning at the Croatian law faculties. Changes in this respect need time and patience, but such normative mono-disciplinary approaches will eventually become a relic of bygone times, as inter- and multidisciplinary approaches (even at the more conservative law faculties) become daily business as usual in the context of the European research area and the constant struggle for funding. Especially in this respect, criminology will more and more become of essential importance for criminal law (both substantive and procedural), since the vast majority of research funding looks for multidisciplinary approaches and empirical research. This brings us to the next section, in which criminological research and its key actors in Croatia shall be presented.

2.3 Criminological Research

2.3.1 Key Players and Major Domestic and International Studies

The key players conducting criminological research in Croatia are the Zagreb Faculty of Law's Max Planck Partner Group for 'Balkan Criminology' (presented in more detail in *Chapter I* of this book),[50] the Croatian Association of Criminal Law and

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48 The Regulation about scientific and artistic areas, fields and branches (Pravilnik o znanstvenim i umjetničkim područjima, poljima i granama) from 22 September 2009, Croatian Official Gazette (NN) 118/2009.

49 The Regulation about scientific and artistic areas, fields and branches (Pravilnik o znanstvenim i umjetničkim područjima, poljima i granama) from 20 June 2008, Croatian Official Gazette (NN) 78/2008.

50 www.balkan-criminology.eu [17.07.2014].

Practice,[51] and the Chair for Criminal Law,[52] the Police Academy with the Ministry of Interior, the Faculty of Education and Rehabilitation Sciences and the Institute of Social Sciences *Ivo Pilar*.[53/54] Regarding research, it has to be noted that the Croatian Bureau of Statistics[55] regularly publishes not only the official Croatian crime statistics, but also special analyses dealing with specific types of crime.[56]

The dominant approach to empirical criminological research in Croatia is quantitative, and there is an apparent lack of domestic debate on criminological theory and research. This has to do with the relatively small size of the Croatian criminological research community, where research projects and major criminological studies usually depend on single actors rather than research institutions. There are limited possibilities for organized criminological meetings and exchange in Croatia so that it is generally left to individual researchers and their networks to get involved in research projects (mainly from abroad). Therefore it should come as no surprise that criminologists are rarely consulted when it comes to criminal policy decisions.[57] There is, however, the opportunity for researchers and academics that are part of governmental working groups to influence criminal policy debates, but this is rather inconsistent and depends on the individuals involved in such working bodies.

The more recent major criminological studies in Croatia include fear of crime (and punitivity) research,[58] corruption,[59] the International Self-Report Delinquency (ISRD3) Study (presented in more detail in *Chapter III* of this book)[60] and the participation in the European Sourcebook of Crime and Criminal Justice Statistics.[61]

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51 www.pravo.unizg.hr/hukzp [17.07.2014].

52 www.pravo.unizg.hr/kp [17.07.2014].

53 www.pilar.hr [17.07.2014].

54 Similar key players in Croatian criminological research are identified in *Mikšaj Todorović* 2008.

55 www.dzs.hr [17.07.2014].

56 E.g. Domestic Violence, Corruption, Criminal Offences against the Judiciary, Crimes against Children and Juveniles, Criminal Responsibility of Legal Persons, Drug Abuse.

57 So for example the New Croatian Criminal Code that entered into force in 2013 was developed without any serious criminological background study. Similarly and prior to that, the New Croatian Criminal Procedure Act was also written regardless of any criminological analysis.

58 *Getoš & Giebel* 2013; UNDP & MUP 2009; *Meško, Kovčo-Vukadin & Muratbegović* 2008; *Šakić, Ivičić & Franc* 2008; *Glasnović Gjoni* 2006; *Meško & Kovčo* 1999.

59 UNODC 2011.

60 www.balkan-criminology.eu/en/ad_hoc_projects/isrd3 [17.07.2014].

61 The coordination has been continuously handled at the Zagreb Faculty of Law's Chair for Criminal Law.

Croatia participated in the International Crime Victims Survey (ICVS) for the first time in 1996/1997 and again in the ICVS 2000.[62]

Besides the research that is being conducted at faculties and scientific institutes, there of course is some research going on in the Croatian NGO sector (e.g. Transparency International Croatia,[63] Documenta – Center for Dealing with the Past,[64] etc.), but this has to be consumed with caution, just like NGO research in many other countries.

2.3.2 Criminological(ly Relevant) Journals

In Croatia, there are several journals with at least a fairly strong focus on criminology. However, none of these journals can be classified as a specialized criminological scientific journal in the stricter sense. The following list covers the vast majority of journal sources in which Croatian criminological articles may be found:

- 'Croatian Annual of Criminal Law and Practice' [Hrvatski ljetopis za kazneno pravo i praksu]: a publication of the Zagreb Faculty of Law, it publishes 2 issues annually since 1994 and is freely available online.[65]
- 'Police and Security' [Policija i sigurnost]: a publication of the Croatian Ministry of Interior and the Police Academy in Zagreb, it publishes 4 issues annually since 1992, actually since 1953 when it was named 'Manual for Professional Training of Law Enforcement Officers' [Priručnik za stručno obrazovanje radnika organa unutrašnjih poslova], and is freely available online.[66]
- 'Annual of Social Work' [Ljetopis socijalnog rada]: a publication of the Zagreb Faculty of Law, it publishes 4 issues annually since 1992 and is freely available online.[67]
- 'Criminology & Social Integration' [Kriminologija i socijalna integracija]: a publication of the Faculty of Education and Rehabilitation Sciences, it publishes 2 issues annually since 1993 and is freely available online.[68]
- 'Journal for General Social Issues' [Društvena istraživanja]: a publication of the Institute of Social Sciences *Ivo Pilar*, it publishes 4 issues annually since 1992 and is freely available online.[69]

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62 *Alvazzi del Frate & van Kesteren* (2004). The coordination of the Croatian ICVS has been continuously handled at the Zagreb Faculty of Law's Chair for Criminal Law.

63 www.transparency.hr/en [17.07.2014].

64 www.documenta.hr/en [17.07.2014].

65 http://hrcak.srce.hr/hljkpp?lang=en [15.07.2014].

66 http://hrcak.srce.hr/polsig?lang=en [15.07.2014].

67 http://hrcak.srce.hr/ljetopis?lang=en [15.07.2014].

68 http://hrcak.srce.hr/ksi?lang=en [15.07.2014].

69 http://hrcak.srce.hr/drustvena-istrazivanja?lang=en [15.07.2014].

Besides the journals listed above, the journals of the Croatian law faculties in Zagreb, Split and Rijeka occasionally also publish criminological texts,[70] as does the Journal of the Croatian Academy of Legal Sciences.[71]

3. Basics of the Croatian Criminal Justice System with Focus on Prisons

Today the Republic of Croatia is a parliamentary democracy, with a judiciary as independent as could be expected of a transitional society. During the Middle Ages, Croatian penal law was mostly customary, although some written sources of codification existed.[72] Throughout history the Croatian penal system was strongly influenced by the Austro-Hungarian and German legal tradition, and it undoubtedly belongs to the continental European family of criminal law systems. In 2009, a new Criminal Procedure Act entered into force,[73] and since 2013 a new Criminal Code has been enacted.[74]

Since any meaningful presentation of even the basics of both laws and the novelties they introduced with respect to the older ones would largely surpass the limitations set forth for this article, the following elaborations will focus on the key actors in the Croatian criminal justice system with a special emphasis on the prison system. Where necessary and appropriate, legal background information will be provided, but the focus of the analysis will be a criminological not a normative one.

3.1 The Criminal Justice System with Focus on the Prison System

Policing: The Croatian Police operate within the Ministry of Interior.[75] The overall organization includes 20 police districts and their respective police stations, which cover the territory of the Republic of Croatia. The police have several subspecial-

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70 'Collected Papers of Zagreb Law Faculty' [Zbornik Pravnog fakulteta u Zagrebu]; http://hrcak.srce.hr/zbornik-pfz?lang=en [15.07.2014]. 'Collected Papers of the Faculy of Law in Split' [Zbornik radova Pravnog fakulteta u Splitu]; http://hrcak.srce.hr/zbornik-radova-pfs [15.07.2014]. 'Collected Papers of the Law Faculty of the University of Rijeka' [Zbornik Pravnog fakulteta Sveučilišta u Rijeci]; http://hrcak.srce.hr/zbornik-pfsr?lang=en [15.07.2014].

71 http://hrcak.srce.hr/godisnjakapzh?lang=en [15.07.2014].

72 Written sources of penal codification include for example the "Vinodol Law" from 1288, and the "Statute of Korčula" from 1214 (*Novoselec* 2009, 47).

73 The expert group drafting the new law was first headed by Prof. Dr. *Davor Krapac*, then by Prof. Dr. *Berislav Pavišić*, and the main features of the new Croatian Criminal Procedure Act are explained in *Pavišić* 2008.

74 The novelties regarding the criminal sanctions system are explained in *Turković* 2009.

75 www.mup.hr [09.07.2014].

izations, but in the context of crime investigation the most important ones are the basic police (uniformed), the criminalistic police, and the specialized police unit for investigating corruption and organized crime (PNUSKOK[76]). In Croatia the police are usually the first point of contact when a criminal offence has been committed. Besides dealing with criminal offences, the police also handle misdemeanours, which comprises a significant share of their overall activities, especially regarding traffic regulation violations and disturbances of public order. The misdemeanours in Croatia are, together with criminal offences, part of the criminal law in a broader sense. The current national police programmes to which special attention is given include: trafficking in human beings, corruption, road traffic safety, and prevention of drug abuse.

Prosecution: The State Prosecutor's Office of the Republic of Croatia (DOHR)[77] is independent from the courts. It has the legal authority to initiate criminal proceedings. The Office for the Suppression of Organized Crime and Corruption (USKOK) has been established in 2001 as a separate prosecutor's office with a mandate to direct police investigations and conduct prosecutions in corruption and organized crime cases. It works closely together with the PNUSKOK. There are county and municipal prosecutor's offices. Prosecutors at the county and municipal level are appointed by the State Prosecutor, who in turn is appointed by the Croatian Parliament.

Courts:[78] Croatia has a three-tiered judicial system, which consists of the Supreme Court,[79] 21 county courts and 78 municipal courts. In addition, there are 12 commercial courts and 36 misdemeanour courts, the High Misdemeanour Court, the High Commercial Court, the Administrative Court and the Supreme Court. The municipal courts conduct first instance proceedings, the county courts first and second instance proceedings (first instance proceedings only for specific and especially serious offences), and the Supreme Court second and third instance proceedings. In particular, the Supreme Court of the Republic of Croatia is the highest court of justice and is responsible for ensuring uniform implementation of laws and equality of citizens.

Prisons:[80] The Croatian prison system consists of 8 *penitentiaries* (for sentence serving of adults and juveniles convicted for criminal offences and misdemeanours), 13 *prisons* (for investigative prison/detention and sentence serving regarding criminal offences and misdemeanours), 2 *correctional institutions* (for sentenced juveniles), a *centre for education* (conducting training for prison staff) and a *centre for diagnostics* in Zagreb (for processing of all adults sentenced to a prison sentence lasting

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76 National Police Office for the Suppression of Corruption and Organized Crime

77 www.dorh.hr [09.07.2014].

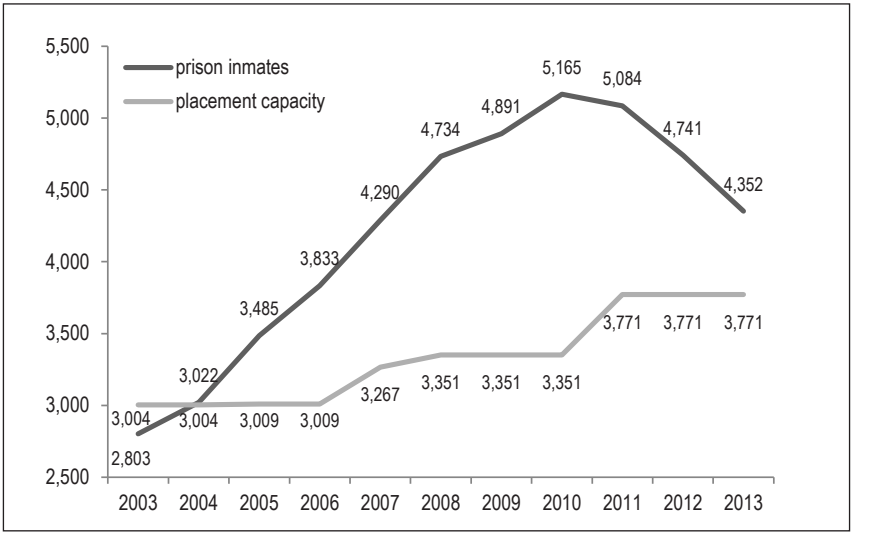
78 http://sudovi.pravosudje.hr [09.07.2014].

79 www.vsrh.hr [09.07.2014].

80 The main body is the Prison System Directorate of the Croatian Ministry of Justice; www.mprh.hr/uprava-za-zatvorski-sustav [09.07.2014].

more than 6 months, all sentenced juveniles, all convicts transferred to Croatia from abroad, and all convicts who are imposed the measure of mandatory psychiatric treatment).[81] Although the following analysis in this section could have been placed in section 4., dealing with Croatian crime trends and problems, it seems justified to discuss the prison system with the relevant data on the prison population separately and in the context of the Croatian criminal justice system. This makes particular sense since it does not only reflect crime problems and trends, but shows how the criminal justice system is dealing with offenders; for this reason it will be discussed throughout the next passages.

Figure 3 Overcrowding – Prison Inmates and Placement Capacities (One-Day Snapshots on 31 December)



Source: Ministry of Justice 2014, 10.

As *Figure 3* shows, the Croatian prison system has been struggling with severe overcrowding for almost a decade, but as of 2011 the situation improved, so that according to the newest data available for 2013, the placing of prisoners amounted to 'only' 115% of placement capacity, compared to the peak in 2010, when it was over 150%.

The overcrowding is closely connected to the high share of prison inmates that do not serve prison sentences, but are awaiting trial detained in so called investigative prison (26.80% of total caseload in 2013 or 21.67% of one-day snapshot), and inmates that are (supplementarily) sentenced or retained in misdemeanour proceedings (even

81 Ministry of Justice 2014, 6–10. See also www.mprh.hr/Default.aspx?sec=457 [21.07.2014].

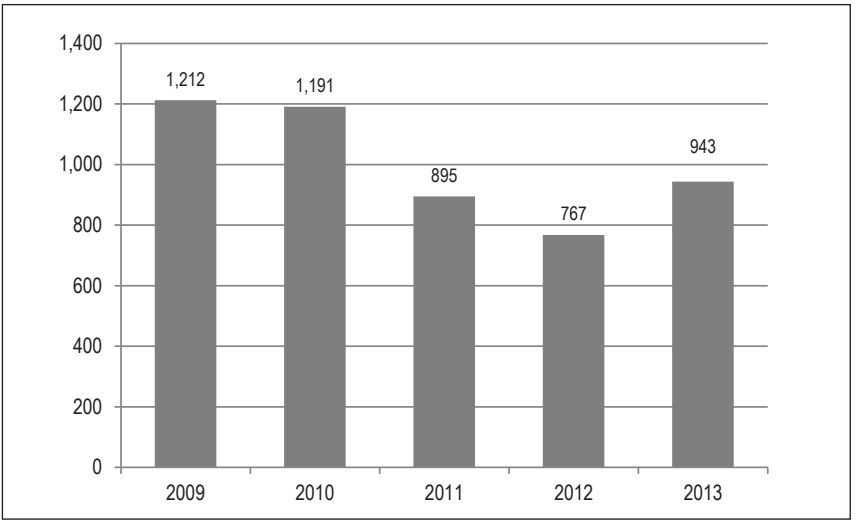
Table 1 Categories of Prison Inmates in 2013 (Total Caseload and One-Day Snapshot on 31 December)

Categories of prison inmates		Total caseload 2013			One-day snapshot 31.12.		
		Total	Male	Female (%)	Total	Male	Female (%)
Convicts		6,819	6,508	4.56	3,196	3,069	3.97
Investigative prisoners		4,225	3,946	6.60	943	887	5.94
Misdemeanour sentencing	**Prison sentence**	732	706	0.36	27	27	0.00
	Retained	2,534	2,428	4.18	65	60	7.69
	Supplementary	1,263	1,206	4.51	22	22	0.00
Educational measure		150	138	8.00	83	77	7.23
Juvenile imprisonment		43	43	0.00	16	16	0.00
Total		15,766	14,975	5.02	4,352	4,158	4.46

Source: Ministry of Justice 2014, 14.

28.73% of total caseload in 2013 or only 2.62% of one-day snapshot) – see *Table 1* and *Figure 4*.

Figure 4 Investigative Prisoners (One-Day Snapshots on 31 December)



Source: Ministry of Justice 2014, 27.

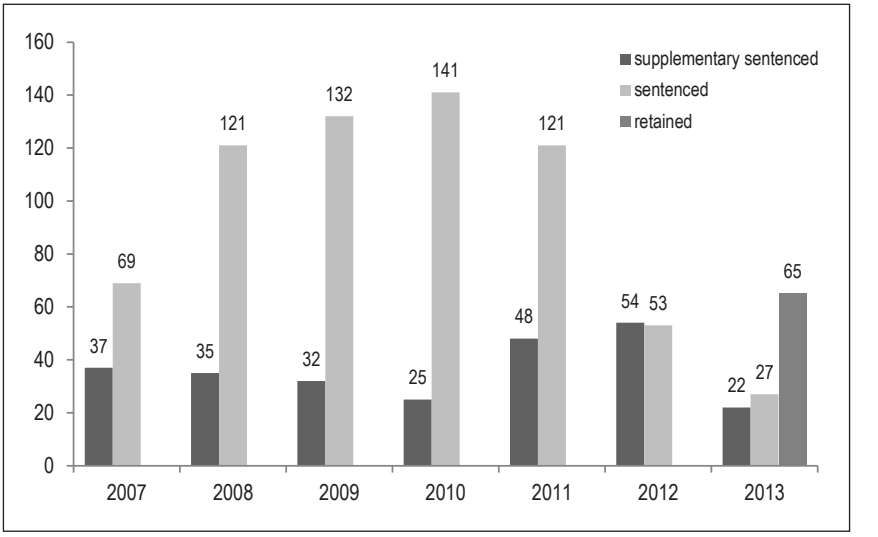
Approximately one third of investigative prisoners are detained due to criminal offences against property and the next most common group is detained for criminal offences related to drug abuse (14.31%).[82] For both these groups of detainees it

82 Ministry of Justice 2014, 27.

is questionable whether incarceration (even if only temporary) is really the most appropriate solution, not only with regards to the generic problem of prison overcrowding, but especially considering the nature of their alleged criminal offence (property crimes) and lack of proper addiction treatment possibilities in many of the prison institutions.

The new rise in the number of investigative prisoners in 2013 is problematic (see *Figure 4*), and if it should continue throughout the coming years, it will not only further continue to aggravate overcrowding of the prison capacities, but also clearly indicate the more general social and prosecutorial attitude towards suspected and accused persons that ought to be convicted in criminal court. Even in 2012, when the number of investigative prisoners was considerably lower than in 2013, almost 10% of all accused persons in criminal proceedings were detained but not convicted.[83] Here the Croatian media play an important role and follow closely who gets ordered to and released from investigative prison. The general impression from the media coverage of criminal proceedings in Croatia is that all suspected and accused persons should best be locked away, although investigative prison should of course be the exception and used only as *ultima ratio.* But the alternatives (e.g. house arrest) are perceived as 'far too lenient' and are still problematic in their practical implementation, especially for the police that fears the additional work load and potential responsibility if 'something should go wrong'.

Figure 5 Prison Inmates in Misdemeanour Proceedings (One-Day Snapshots on 31 December)



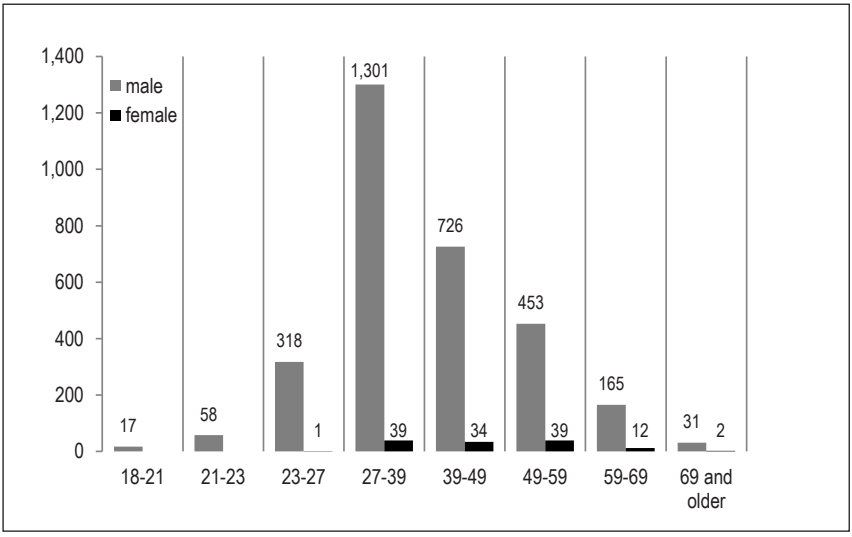
Source: Ministry of Justice 2014, 37.

83 CBS 2013 (statistical report 1504), 90.

When looking at prison inmates convicted in misdemeanour proceedings, then a dramatic change can be noted in 2013, when the number of sentenced misdemeanour offenders sharply dropped, as did the number of those who were serving a prison sentence supplementary to their actual misdemeanour sentence (mainly monetary fine) – see *Figure 5*. Instead, however, in 2013 a new practice emerged, as *Figure 5* shows – the high use of retention in misdemeanour proceedings. It is yet unclear whether the picture from 2013 will be a constant one or only the beginning of a growing trend. But since the ordering of retention in misdemeanour procedures offers far less protection of the accused's rights and is much easier to impose (especially when compared to investigative imprisonment in criminal proceedings), one can assume that its use will be rising throughout the years, so that further monitoring of this practice is necessary.

Looking at the sex and age structure of only the convicted prison inmates, *Table 1* and *Figure 6* show that female convicts participate with approximately 4% in the convict population, which is a very consistent finding throughout the years. The age distribution places the majority of male convicts into the age cluster 27–39, whereas the female convicts are older on average.

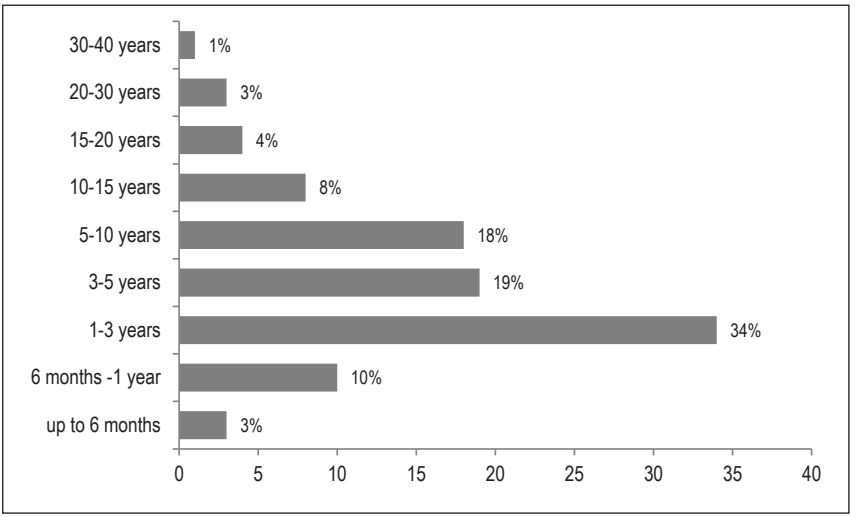
Figure 6 Age and Sex Structure of Convicted Prison Inmates (One-Day Snapshot on 31 December 2013)



Source: Ministry of Justice 2014, 37.

As far as the types of criminal offence are concerned, the structure of prison inmates has been stable throughout the years and is comprised of 36.06% inmates who committed a property offence (males 36.24%, females 29.06%), 19.76% who commit-

Figure 7 Length of Sentence of all Prisoners in 2013 Expressed in Percent (One-Day Snapshot on 31 December)



Source: Ministry of Justice 2014, 23.

ted a drug related offence, and 15.74% inmates who committed a criminal offence against body and limb.[84]

Looking at the length of sentence in 2013 displayed in *Figure 7,* one can see that approximately 13% of all convicts in the Croatian prison system served short-term prison sentences of less than 1 year. Compared to the four previous years[85], this share has been stable and has long been recognized as 'problematic' by the criminal justice system. Its reduction was one of the key notions in light of sentencing as foreseen by the Criminal Code and explicitly mentioned as one of the issues that has to be solved by the new sentencing regime implemented through the New Croatian Criminal Code that entered into force in 2013. Perhaps it is still too early to see the New Criminal Code's effects, but at least in 2013 nothing changed with respect to the continuously high share of short-term prison sentences.

Regarding recidivism, the share of prison inmates that serve a prison sentence for the first time has been stable throughout the years and amounts to approximately 60%, but this share varies largely regarding sex (women most frequently serve a prison sentence for the first time in approx. 82% of cases).[86] Put the other way around, the share of imprisonment-recidivists in Croatia in 2013 amounted to 40% in general,

84 Ministry of Justice 2014, 16.

85 Ministry of Justice 2013; 2012; 2011; 2010.

86 Ministry of Justice 2014, 14.

whereas for female convicts it was a bit less than 20%. When looking at recidivism rates in general, and not only limited to the prison population, then approximately 30% of all convicted individuals have, prior to their conviction, already been found guilty of a criminal offence (with regard to gender, females have roughly only half the recidivism rate of men).[87] See also *Table 3* in section 4.2.1 for Croatian recidivism rates in 2012. Although one set of data is for 2012 and the other for 2013, both recidivism rates have been stable throughout the years, with a slight rise. Therefore it can be noted that the recidivism rate of the prison population is approximately 20–25% higher for both sexes as compared to the convicted persons on the whole.

A last issue briefly to be mentioned in this section is conditional release in the Croatian prison system. Looking at the period from 2007 to 2013, the majority of convicted prison inmates were conditionally released prior to having served their full sentence. The trend has been stable with the share of approved conditional release requests by the Committee for Conditional Release amounting to 55–65%. In addition to this, the Prison Directors conditionally released (up to 2 months earlier) almost 15% of convicted inmates in 2013.[88] Based on the presented data, it appears that the possibility of conditional release is a very frequently used measure in the Croatian prison system.

3.2 EU Impact on the Croatian Criminal Justice System and Major Problems

The Croatian criminal justice system, like the whole Croatian legal system, has been under the strong influence of the EU *Acquis communautaire* during the last decade. Croatia's problems in this respect were not so much related to adjusting its legal and criminal justice system in line with the EU *Acquis*, but rather in doing this properly and then of course implementing the legal changes in practice. The last major criminal law reform dealt with the New Criminal Code and here the implementation of the EU *Acquis* as well as UN conventional obligations were some of the key goals of the reform. Now that Croatia is an EU member state, it will be interesting to see if and how EU standards will be further implemented into the criminal justice system. This should be particularly interesting in those areas in which the Croatian criminal justice system faces major problems, like for example corruption in all spheres of society including the judiciary, overburdened court dockets, excessive use of pre-trial detention, prison overcrowding, etc.

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87 Data source: *CBS* 2013 (statistical report 1504), 137.

88 Ministry of Justice 2014, 74.

4. Crime Trends and Problems

4.1 Major Sources of Data about Crime

The analysis in this section is based on experience from expert participation in the CARDS project "Development of Monitoring Instruments for Judicial and Law Enforcement Institutions in the Western Balkans", which provided valuable extensive insights into the process of collecting and using official crime statistics in Croatia by all the relevant key players.[89] The project's webpage[90] contains an English language 'Technical Assessment Report' for Croatia[91] with detailed information about the different actors, their collecting methods, counting units and the availability of crime statistics. Therefore the following elaborations will only deal with the basics of Croatian official crime statistics and some of the key institutions: the interested reader should consult the webpage for a more detailed analysis.

In *Table 2,* the main source institutions providing data about crime in Croatia are presented in an overview, with a note on the type of data they collect, the main counting units used and the reference to online available data. Basically all key actors involved in collecting crime statistics in Croatia (first four institutions listed in *Table 2*) use for classification purposes the Croatian Criminal Code (by code chapters, articles and paragraphs), which may best be described as classification by type of crime. Hereafter, the focus will be on the Croatian Bureau of Statistics, police statistics and the prison statistics of the Ministry of Justice.

The main source of data about officially recorded crime in Croatia is definitely the Croatian Bureau of Statistics (CBS). The CBS's main counting unit is 'persons/perpetrators'. The CBS annually publishes full 'statistical reports' and 'first releases' about reported, accused and convicted adults, juveniles and legal entities for criminal offences and misdemeanours. The data for 2009 and onwards are freely available online in Croatian and English and are very detailed (groups of offences, single offences, territorial distribution, recidivism, sentencing, perpetrator background information like sex, age, education, nationality, etc.). The CBS, as mentioned earlier, also publishes special analyses and reports about certain types of crime (e.g. domestic violence, corruption, criminal offences against the judiciary, crimes against children and juveniles, criminal responsibility of legal persons, drug abuse). But since the CBS 'only' centrally collects the statistical data about crime from other relevant sources of crime statistics, it often makes sense to go directly to the source and use these 'first hand data', especially since they are often also expressed in

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89 Assist. Prof. Dr. *Getoš Kalac* participated as a national expert in the project and conducted on-site research that was the basis for the project documentation and the relevant publications.

90 Available online at: www.unodc.org/southeasterneurope/en/cards-project.html [20.07.2014].

91 *Getoš, Vettori, Savona et al.* 2010.

Table 2 Main Sources of Data about Officially Recorded Crime

Source institution	Type of data	Main counting unit		Online
Croatian Bureau of Statistics	Crime statistics	Adult/juvenile reported, accused and convicted persons and legal entities for criminal offenses/misdemeanours		Yes[1]
	Special analysis and reports	Domestic violence, corruption, crimes against children, drug abuse, etc.		Yes[2]
Croatian Ministry of Interior	Reported crime	Criminal offenses, misdemeanours, reported persons and victims		Yes[3]
State Prosecutor's Office	Prosecution statistics	Monthly reports (cases)		Yes[4]
		Annual reports (cases and persons)		Yes[5]
		Special reports: war crimes		Yes[6]
Court Statistics	Conviction statistics	Convicted persons and cases		No[7]
Ministry of Justice	Prison statistics	Prisoners (detained and convicted)		Yes[8]
	Judiciary statistics	Courts/bodies, personnel, cases		Yes[9]
Anti-Money Laundering Office	Data on anti-money-laundering activities		Suspicious transactions	Yes[10]
Office for Human Rights	Statistics on trafficking in human beings, minorities		Perpetrators, cases, victims	Yes[11]
Office of the Ombudsman	Discrimination, hate crimes, bullying, prisoner's rights		Cases/ complaints	Yes[12]
Ombudsman for Children	Violence against children, children victims/witnesses in criminal proceedings		Cases/ victims	Yes[13]
Office f. Combating Drug Abuse	Data on drug abuse, drug related crime, drug markets		Perpetrators, cases	Yes[14]

Notes: [1]www.dzs.hr; [2]www.dzs.hr/Hrv/publication/studies.htm; [3]www.mup.hr/main.aspx?id=180991; http://www.dorh.hr/MjesecnaIzvijescaO; [5]www.dorh.hr/Default.aspx?sec=645; [6]www.dorh.hr/Default.aspx?sec=647, some data available in English: www.dorh.hr/fgs.axd?id=1342; [7]Though not available online, the data are included in the CBS statistics; [8]www.mprh.hr/godisnje-izvjesce-o-stanju-i-radu; [9]www.mprh.hr/uprava-za-organizaciju-pravosudja-statisticka-istr; [10]www.uljppnm.vlada.hr/images/pdf/iz vjesce_za_2011god.pdf; [11]www.uljppnm.vlada.hr/images/pdf/izvjesce_za_2011god.pdf; [12]www.ombudsman.hr/index.php/hr/izvjesca/izvjesce-pucke-pravobraniteljice; [13]www.dijete.hr/hr/izvjemainmenu-93/izvjeo-radu-pravobranitelja-za-djecu-mainmenu-94.html; [14]www.uredzadroge.hr/en/files/2013/06/Cro_Report_en2012.pdf [20.07.2014].

different counting units ('cases' or 'victims') and provide for additional information not available in the CBS publications.

The *Croatian Ministry of Interior* collects data about reported crime – *police statistics* – in all three counting units (perpetrators, cases, and victims) and also regularly publishes the so-called 'security indicators' online (by 'reported' and 'resolved' criminal offences or misdemeanours), but only in Croatian and without methodological background information. However, these statistics provide a highly useful insight into the phenomenology of certain types of crimes (e.g. robbery and theft),

as they usually also include data about the *modus operandi* (e.g. robberies according to their location, such as open space, shops, banks, post offices, etc.). For research purposes (e.g. for this article) it is also possible to obtain statistical data directly from the Ministry of Interior's central database. Another great additional feature of the Croatian police statistics is that every county's police administration (a total of 20[92]) has its own homepage where it publishes its territorial crime statistics. These range from very basic up to highly elaborate ones on specific types of crime, like organized crime or economic crime (although they lack the methodological explanation). In conclusion, it should be stressed that the Croatian police statistics are excellent and so far have not been used for research purposes to their full extent, especially not in a fashion that would go a step further than pure descriptivism.

The last type of crime-related statistics to be briefly discussed in this section are *Court statistics*. Although these are not publicly available, all courts are obliged before archiving a closed case file to fill out a statistical form and submit it to the CBS. Besides these conviction statistics that are then available in the CBS's publications, the courts also collect statistical information for the Ministry of Justice. These are primarily intended to track work efficiency of courts and judges, case load, etc. There have been several attempts to establish an electronic database and to connect all courts with the Ministry of Justice in order to implement a case-tracking system, and meanwhile many courts use the so-called 'eFile System'.[93]

4.2 Levels, Trends, and Patterns of Crime

This section will present an analysis of official crime statistics on levels, trends and patterns of crime in general, with a focus on gender, type of crime, recidivism and juvenile delinquency. It will also briefly discuss basic violent crime indicators, before taking a closer look at violent youth crime. In the last part of this section the current political and media discourse about crime shall be critically reviewed in light of the actual crime situation that usually contrasts the public discourse about it. In this context, violent youth crime is an excellent example that once again shows how misleading the media coverage can be, creating the impression that particular crime phenomena are urgent problems, although there are only few data that would confirm such perceptions. This is, however, not only a problem in Croatian society, but a worldwide phenomenon.

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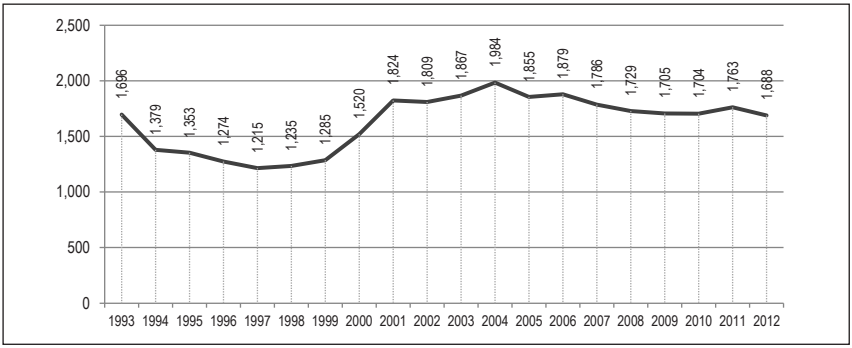
92 See: www.mup.hr/MainPu.aspx?id=1255 [20.07.2014].

93 The so-called 'eFile System' (eSpis sustav) is also intended to give access to citizens who could then easily track their cases online, see: http://e-predmet.pravosudje.hr [13.07.2014]. Currently, all commercial and county courts as well as 65 municipal courts are offering access to tracking information on court cases. Excepted from public online access are juvenile criminal cases, criminal cases in the investigation phase, organized crime and corruption cases, as well as war crime cases.

4.2.1 Crime in General

Croatia, like many other countries in the region, does not seem to have a 'conventional crime problem' and does not fit the profile of a 'high crime region' when compared to the rest of Europe.[94] This UNODC finding from 2008 is – in the case of Croatia confirmed by the official crime statistics (see *Figures 8* and *10*) and when comparing Croatian crime rates to Western European ones.[95]

Figure 8 Total Crime Recorded by the Police in Crime Rates per 100,000 Inhabitants



Source: Eurostat.

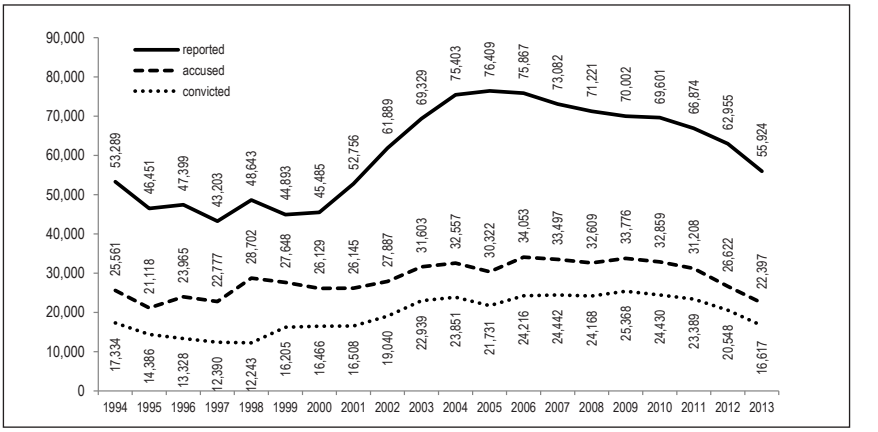
Note: The figures show only offences according to the criminal code – less serious crimes/ misdemeanours are not included.

Looking at the crime trend in general (*Figures 8* and *9*), several developments can be recognized. In 1999–2000, the number of adults reported for a criminal offence started to rise drastically, peaking in 2004–2005. However, the figures for accused and convicted persons remained rather constant throughout the years with a far less dramatic increase as compared to that observed for reported persons. During the last couple of years, a significant decrease in all three categories (reported, accused and convicted) can be noticed, and especially in 2013 the numbers dramatically dropped (see *Figure 9*). This decrease seems to be primarily related to the New Criminal Code's reformed provisions regarding drug abuse. As of 1 January 2013, drug possession for personal use is no longer a criminal offence according to the category 'offences against values protected by international law' (see 3rd row in *Figure 10*), but only a misdemeanour. Since usually more than 90% of all 'offences against values protected by international law' consist in drug possession, this makes perfect

94 UNODC 2008, 35 and 23.

95 See *Derenčinović & Getoš* 2008 and the data from the 'European Sourcebook of Crime and Criminal Justice Statistics'; www3.unil.ch/wpmu/europeansourcebook [10.06.2014].

Figure 9 Total Crime – Reported, Accused, and Convicted Adults



Source: CBS 2013 (statistical report 1504), 11 and CBS 2014 (number 10.1.1).

sense. Still, only after analyzing the forthcoming detailed crime statistics for 2013 it will be possible to definitely confirm this finding. This could, however, prove to be very challenging, since a lot of chapters and even more single offences in the special part of the Criminal Code changed, were removed or added.

When taking a closer look at the different types of crime being committed by men and women in Croatia (see *Figure 10*), the following picture emerges:

The by far most frequent crime is property crime, followed by offences against justice, which at first glance looks very strange, but makes sense when considering the different offences in the chapter and analyzing how common they are. It turns out that the criminal offence of 'thwarting prohibitions contained in security measures and legal consequences of conviction' is not only the single most common offence in this chapter, but that it holds a unbelievable share of even 8.37% in the total crime picture (a usually very common crime like e.g. larceny/theft participates with 'only' 8.09%) with a conviction rate of 96.41%.[96] These findings alone would deserve a thorough analysis of its own as they strongly indicate not only that Croatian convicts do not respect court judgements at all but, even more worrying, that the Croatian security measures and legal consequences of convictions are simply not enforceable and not reaching their goal – on the contrary they even contribute to generating new crime through that particular statutory offence.

As mentioned earlier, the 3rd most common group of criminal offences 'against values protected by international law' is actually drug abuse. 'Endangering road traffic'

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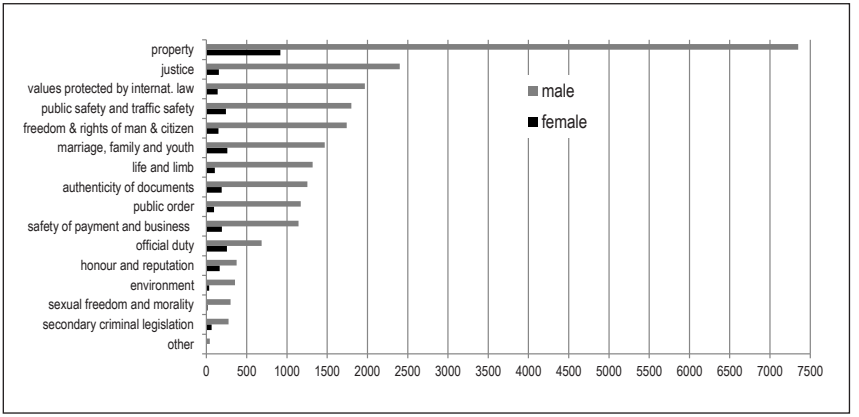
96 This has not always been like that – for a period of 11 years (1998–2008) there was only 1 person accused and convicted for this offence. CBS 2011, 73.

Figure 10 Accused Adult Persons by Group of Criminal Offence and Sex for 2012 (Criminal Offences Against ...)



Source: CBS 2013 (statistical report 1504), 84–89.

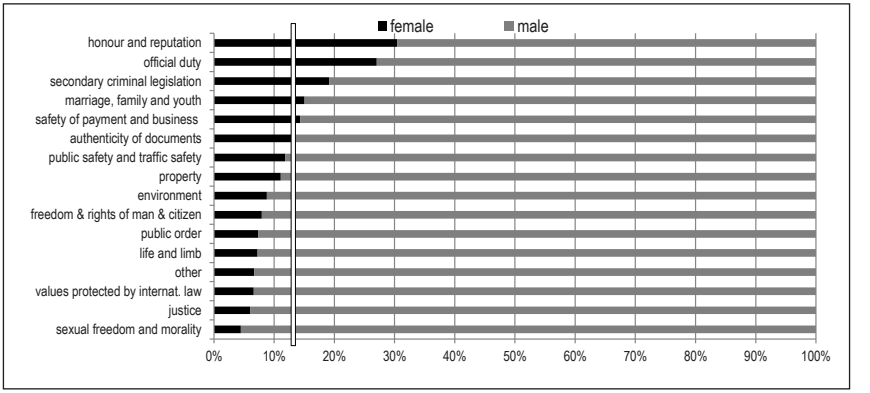
is the most common offence in the 4th group of crimes, whereas 'threat' is the leading offence in the 5th most common group of offences 'against freedom and rights of man and citizen'. The 6th most common group of offences are offences against marriage, family and youth. Here the usual offences are 'failure to provide maintenance', 'violent conduct within a family' and 'neglect and maltreatment of a child or a juvenile'. It should be noted that a large share of domestic violence cases is handled not through criminal, but misdemeanour proceedings. Furthermore, it should be pointed out that with almost 15%, women participate more than on average in this crime group (see *Figure 11*).

Figure 10 also shows that the share of female accused persons in the different groups of crime is neither consistent, nor does it follow the pattern of the 'sexless' or the 'male' distribution. Women, when looking at the total period of the last two decades, participate in the total adult crime with a share of approximately 8–14% regarding reported persons, 9–12% regarding accused persons and 8–10% regarding convicted persons.[97] Over the past two decades the share of female reported, accused and convicted persons has been continuously on the rise. For the last few years the share amounts to 10–13% for all categories, whereas in 2012 women on average made up a share of 11.2% among the accused population, as indicated by the vertical white line in *Figure 11*.

The crimes for which women are most commonly accused are related to verbal offences and misuse of official duty for financial gain. They also often engage in

97 CBS 2013 (statistical report 1504), 11.

Figure 11 Accused Adult Persons by Female Share in Different Groups of Criminal Offences for 2012 (Criminal Offences Against ...)



Source: CBS 2013 (statistical report 1504), 84–89.

domestic violence, fraudulent offences, forgery and endangering road traffic. This more or less is in line with general criminological findings on typical female crime.

When it comes to recidivism, it can be observed that during the past two decades re-offending has been growing, though slightly, but steadily,[98] up to a current average of approximately 30% (see *Table 3*). Of course the differences between the sexes are significant and recidivism is half as common in females as in males, but interestingly – when it comes to special recidivism – women show a somewhat greater affinity for relapse: Whereas the rate for males is approximately 22% (1,303 out of all the 5,757 recidivists), more than 32% of the convicted women with a prior record were special recidivists (97 of the total of 296).[99]

Table 3 General and Special Recidivism of Adult Male and Female Offenders in 2012

	Total		Male		Female	
Total convicted persons	20,548	100.00%	18,563	100.00%	1,985	100.00%
Prior convicted persons	6,053	29.46%	5,757	31.01%	296	14.91%
Special recidivism	1,400	6.81%	1,303	7.02%	97	4.87%
General recidivism	2,908	14.15%	2,769	14.92%	139	7.00%
Combined recidivism	1,745	8.49%	1,685	9.08%	60	3.02%

Source: CBS 2013 (statistical report 1504), 137.

98 *Derenčinović & Getoš* 2008.

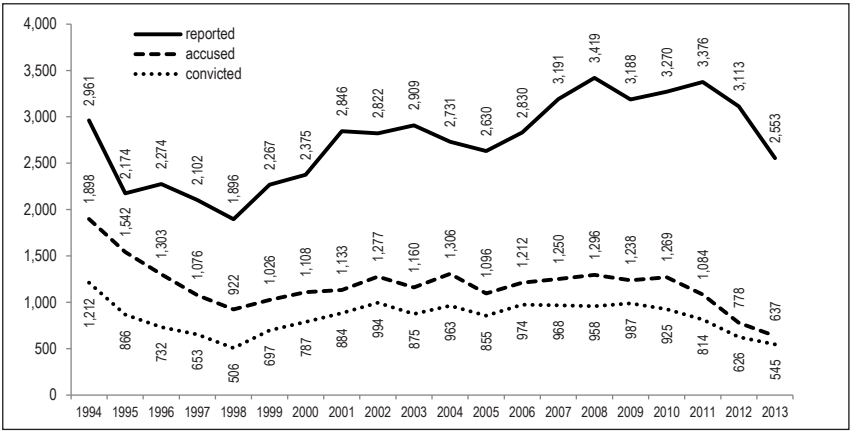
99 Percentages not shown in *Table 3*.

A last topic to be briefly touched upon in this section on general crime issues is juvenile offending. The minimum age of criminal responsibility in Croatia is 14 and the criminal law for juveniles applies to young people up to 18 (exceptionally 21, so-called 'younger adults') – subdivided into younger and older ones, the first ones being aged 14 and 15, the second ones 16 and 17. In 2013, accused juveniles participated with 2.77% in the total number of accused persons in Croatia. The typical juvenile offence in Croatia is property crime, which clearly dominates the juvenile crime type structure. The next most common type of crime is violent crime, closely followed by drug abuse and disturbing public order.[100] It should be noted that due to the relatively small number of juvenile offenders in Croatia, complex quantitative analyses are difficult and at least when it comes to accused or convicted juvenile numbers for different types of offences, a few cases can strongly influence the overall findings.

The family circumstances of juvenile offenders in Croatia (for the time period 2003–2012) are usually that they live with both parents (65.5%); less frequently they live only with their mother (22.1%) or father (5.3%) or with other relatives (3.1%), another 3.3 % live in a correctional institution.[101] These data on their own of course say little about 'dysfunctional' family circumstances and their impact on juvenile offending. Further analysis would be needed in order to correctly interpret the data, but at least the mere presence of both parents does not seem to have a positive effect.

The crime trend for juvenile offenders for the last two decades shows firstly that just like with the adult crime trend, the reporting curve is rather inconsistent as compared to accusation and conviction, and secondly that reporting behaviour probably de-

Figure 12 Total Crime – Reported, Accused, and Convicted Juveniles



Source: CBS 2013 (statistical report 1505), 11 and CBS 2014 (number 10.1.2).

100 CBS 2013 (statistical report 1505), 12.

101 CBS 2013 (statistical report 1505), 12.

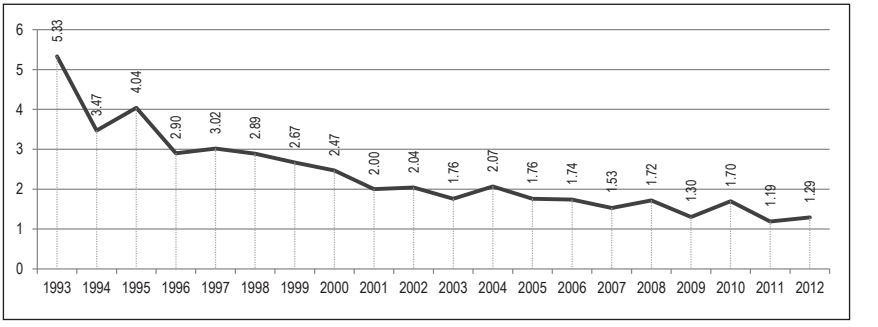
pends more on short-term social influences, whereas accusation and conviction are more reliable indicators. The trend clearly shows a significant drop since 2011 in all categories (see *Figure 12*), whereas the reports in 2013 went down even more drastically by almost 20%. There is little doubt that this recent drop in reported juveniles has to do with the changed drug policy in Croatia, according to which personal drug abuse is no longer a criminal offence, but a misdemeanour. And although the trend does not indicate any alarming incidents in the domain of juvenile delinquency, the Croatian public and political discussion on this topic, especially about violent juvenile crime, is very present.

The analysis of data on juvenile offenders will be concluded by presenting the sex ratio. The share of females in the total juvenile crime amounts to approximately 3–9% regarding reported persons, 2–6% regarding accused persons and 3–6% regarding convicted persons in the analysed time period. Over the past two decades the share of female juveniles reported, accused and convicted for criminal offences has been continuously on the rise and may be roughly summarized as 6–8% at the moment.

4.2.2 Violent Crime

Homicides are reported fairly consistently and definitions vary less between countries compared with other types of crime. They are normally counted by numbers of victims (rather than numbers of cases as is the case with other types of crime). As *Figure 13* shows, the recorded homicide rate in Croatia dropped significantly after a high period during the war and in its aftermath and has since then, over the last two decades, become relatively stable. When compared to other European countries, Croatia's violent crime rate is usually amongst the lower half or third of the counties' listings.[102]

Figure 13 Homicides Recorded by Police in Crime Rates per 100,000 Inhabitants



Source: Eurostat.

Note: The results presented are for completed homicides.

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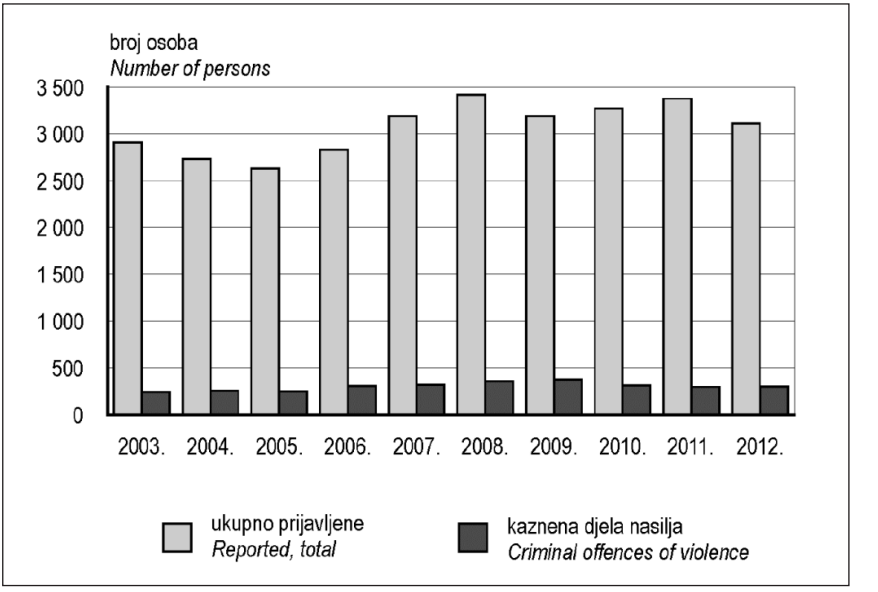
102 *Derenčinović & Getoš* 2008.

For several years there has been a rather lively ongoing discussion in Croatia regarding violent youth crime, with a focus on what has been perceived as 'far too lenient punishment' towards juveniles when it comes to the most serious criminal offences.

As one could expect, the discussion was fuelled by several cases that received huge media coverage and resulted in public and political outrage about the growing violence among Croatian youths. The by far most prominent of these cases was the brutal beating and subsequent death of 18-year-old *Luka Ritz* in June 2008 in Zagreb. Of the five perpetrators (only one of them was not a minor at *tempore criminis*) three were convicted in 2010, and only one of them was sentenced to a prison sentence (12 months). This of course brought up the topic again and fuelled the discussions.

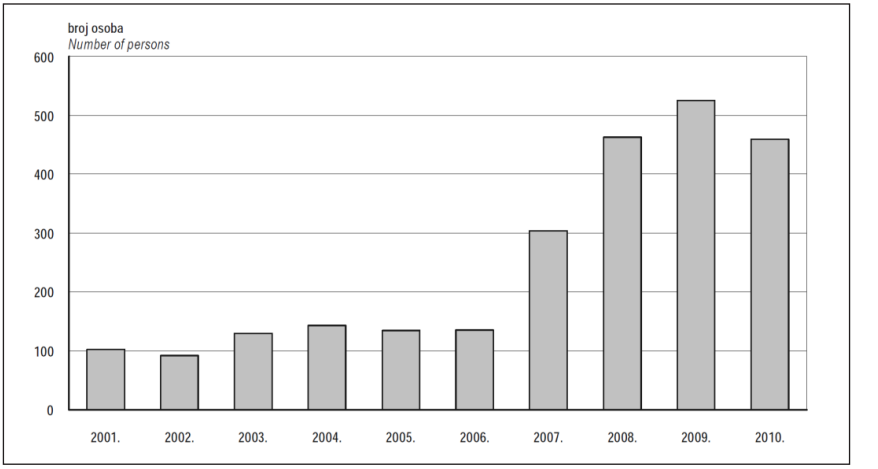
It is interesting to see how this public perception of juvenile violent crime is also reflected in the annual statistical reports (see *Figures 14* and *15*). *Figure 14* from the most recent statistical report shows a remarkably 'boring' graphic that does not raise major concerns about violent youth crime, as it appears to make up only a fairly small share of the total juvenile crime.

Figure 14 Reported Juvenile Perpetrators for Criminal Offenses of Violence



Source: CBS 2013 (statistical report 1505), 12.

Figure 15 Reported Juvenile Perpetrators for Criminal Offenses against Life and Limb



Source: CBS 2011 (statistical report 1452), 14.

But when looking a few years back, when the discussion about violent youth crime was at its peak, then *Figure 15* reflects the perception of the 'dramatic rise' in violent youth crime. There is no doubt that the number of reported juveniles for all offences against body and limb dramatically started rising in 2007, but this is most likely related to the lessened tolerance towards juvenile delinquency and the changed reporting behaviour of police and citizens, and not necessarily reflecting a rising dangerousness of Croatia's youth.

5. Conclusion

Croatian criminological education and research can build on a long and solid tradition closely connected to criminal law and dating back as far as 1906. The leading Croatian criminological personalities, in both research and education, have been and still are mainly grouped around the University of Zagreb's Faculty of Law. These already existing capacities are currently being strengthened and further developed through the 'Max Planck Partner Group for Balkan Criminology' (MPPG). This joint venture of the Max Planck Institute for Foreign and International Criminal Law in Freiburg and the Zagreb Faculty of Law should not only contribute to boosting coordinated regional criminological research and networking, but in the long run also produce a permanent source of 'new' Croatian criminologists – the members and junior researchers of the MPPG. This should definitely have an impact on Croatian criminological education and research, which could surely use 'fresh blood' and new energy.

Although the criminological education on offer at under- and post-graduate levels is solid and provided by various actors (Zagreb Faculty of Law, Rijeka Faculty of Law, Police College, Faculty for Education and Rehabilitation, sociology departments at the Faculty of Humanities and Social Sciences and the University of Zagreb's Centre of Croatian Studies), a coherent and multidisciplinary approach at university level is still missing, especially regarding a joint Ph.D. study programme in criminology.

Croatia, through the Zagreb Faculty of Law's Chair for Criminal Law and the MPPG, is now participating in most of the relevant European and international criminological studies, such as the ISRD Study, ICVS, European Sourcebook, etc., and is well represented in various European research projects (e.g. RJ Croatia – Restorative Justice at Post-Sentencing Level – Supporting and Protecting Victims;[103] TRAFSTAT Croatia – Tools for the Validation and Utilization of EU Statistics on Human Trafficking[104]). Currently, there are more incoming research cooperation requests than can be handled, so there still is more than enough room for all interested criminological actors in Croatia. This applies to all three major criminological lines that have throughout the last decades evolved in Croatia – the criminal law line, the criminalistic line, and the defectology line.

Finally, although the presented analysis of crime trends and problems is merely an overview of some of the basic crime characteristics, it can be concluded that Croatia indeed does not fit the profile of a high crime society and does not have a conventional crime problem. Whether and how this will change in the future, is an issue that has to be closely monitored, just as it is the case with particular Croatian crime problems, such as corruption, economic crime, organized crime, etc. There is a lot of work ahead, but the current state of art in Croatian criminology presents, without any doubt, a solid basis to further build upon.

6. Summary in Croatian

Autori analiziraju trenutno stanje u području hrvatskog kriminološkog obrazovanja i istraživanja, s težištem na kriminološkoj povijesti i kriminološkoj institucionalizaciji, ključnim igračima, najznačajnijim kriminološkim udžbenicima, časopisima i domaćim te međunarodnim studijama. Nakon takvog *kriminološkog mapiranja* slijedi rasprava osnova hrvatskog kaznenopravnog sustava s posebnim osvrtom na zatvorski sustav i najnovije statistike, prije nego što bivaju predstavljeni nalazi općeg *mapiranja criminala*. Ti nalazi pružaju osnovni uvid u glavne izvore podataka o kriminalu i najvažnije trendove kretanja i probleme kriminala u Hrvatskoj. Analiziraju se razine, trendovi i uzorci općeg kriminala te nasilnog kriminala, isti se raspravljaju u kontekstu dobi, spola, recidivizma, vrste kriminala itd. te se ocjenjuju s obzirom

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103 See: www.balkan-criminology.eu/en/ad_hoc_projects/rj [25.07.2014].

104 See: www.balkan-criminology.eu/en/ad_hoc_projects/trafstat [25.07.2014].

na aktualno sociopolitičko stanje u Hrvatskoj, uključujući i moguće efekte novog hrvatskog Kaznenog zakona. Cilj ovog rada je pružiti sveobuhvatan uvid u aktualno stanje stvari u području kriminologije i kriminala u Hrvatskoj, uključujući njihov specifičan sociopolitički kontekst.

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Criminology and Crime in Greece

Effi Lambropoulou

1. Criminological Education and Research

1.1 Education

The major institutions providing criminological education in Greece are:

1. the Sociology Department of Panteion University, where there is also a criminology section − unique in the country. The section has been operating since 1985/86;
2. the two Law faculties which can be found in the National and Kapodistrian University in Athens, and the Aristotle University of Thessaloniki/Macedonia;
3. the Law Department of Democritus University of Thrace (in Komotini), as well as the Department of Social Administration (Social Policy, and Social Work) at the same University;
4. the Department of Sociology of the School of Social Sciences at the University of the Aegean in Mytilene/Lesvos;
5. the Department of Sociology at the Faculty of Social Sciences of the University of Crete, and, to a lesser degree, the Department of Philosophy and Social Studies at the Faculty of Philosophy at the same University;
6. the Department of Social and Education Policy of the Faculty of Social Sciences at the University of Peloponnese;
7. the Department of Mass Media at the Kapodistrian University of Athens and of Psychology at Panteion University;
8. the Police Academy.

The Sociology Department of Panteion University offers a two-year master exclusively in criminology. The two Law faculties of the National and Kapodistrian University in Athens, the Aristotle University of Thessaloniki, and the Law Department of Democritus University of Thrace (in Komotini) offer a two-year master course under the title "Penal and Criminological Studies", with a separate criminology direction in the second year of studies.

However, students interested in a Ph.D. who have an M.A. in Sociology, Psychology, Philosophy, Law, Social Anthropology, Mass Media, Social and Education Policy or Social Administration and Social Work can apply for a Ph.D. in criminology to the appropriate professor. Those carrying out a Ph.D. in criminology hold the title of

the Faculty or the Department in which the programme is running, or in which their supervisor belongs, i.e., Sociology, Law, Mass Media and Communications, etc.

Scientific areas, fields and sections are regulated both by law and internal regulations of the universities.

The big universities are organized into faculties, departments, and sections; the smaller ones either into departments and sections, or into faculties and departments. Consequently, in Law Faculties where criminology is taught, the Section is usually called "of Penal Sciences" or "Penal and Criminological Science", while the rest are the Departments of Sociology (Panteion University, University of the Aegean, University of Crete), the Department of Social Administration (Democritus University of Thrace), the Department of Social and Education Policy (University of Peloponnese) and the Department of Mass Media (University of Athens). In 2013 under new laws for Higher Education (4009/2011; 4076/2012), some university sections became departments and departments integrated into faculties.

The criminological bibliography is big; in the listing below are referred some representative manuals used in the modules and courses; for example in the Sociology Department of Panteion University, more than 20 criminological lessons are taught per year with the corresponding books and bibliography. Depending on the faculty and the department the courses vary. Greek Criminological Textbooks (*indicatively*):

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- *Alexiadis, S.* (2011). Criminology. 5th Edition, Athens: Sakkoulas S.A., 424 p. [*Αλεξιάδης, Στέργιος Α*. (2011). Εγκληματολογία, 5η έκδ., Αθήνα: Σάκκουλα Α.Ε.];
- *Alexiadis, S.* (2006). Texts of European crime policy. 5th Edition, Athens: Sakkoulas S.A., 500 p. [*Αλεξιάδης, Στέργιος Α*. (2006). Ευρωπαϊκή αντεγκληματική πολιτική: Κείμενα αντεγκληματικής πολιτικής, 5η έκδ., Αθήνα: Εκδόσεις Σάκκουλα Α.Ε.];
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- *Andrianakis, E.P.* (2001). Victimology. 2nd Edition, Athens, Komotini: A.N. Sakkoulas, 190 p. [*Ανδριανάκης, Εμμανουήλ Π.* (2001). Θυματολογία, 2η έκδ., Αθήνα, Κομοτηνή: Α.Ν. Σάκκουλας];
- *Archimandritou, M.* (2000). Alternatives to imprisonment. Athens: Ellinika Grammata, 646 p. [*Αρχιμανδρίτου, Μαρία* (2000). Η ανοικτή έκτιση της ποινής: Μορφές ελαστικότητας στην ιδρυματική διαβίωση των κρατουμένων, Αθήνα: Ελληνικά Γράμματα];
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- *Papatheodorou, T.P.* (2005). Public safety and crime policy: Comparative approach. 2nd Edition, Athens: Nomiki Vivliothiki, 439 p. [*Παπαθεοδώρου, Θεόδωρος Π.* (2005). Δημόσια ασφάλεια και αντεγκληματική πολιτική: Συγκριτική προσέγγιση, 2η έκδ., Αθήνα: Νομική Βιβλιοθήκη];
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The curricula cover a wide range of topics, especially at Panteion University. In broad terms, the courses offered by Greek universities in the field of criminology can be grouped into three categories: (1) crime theory and deviance – aetiology, forms (e.g., economic, organized, juvenile delinquency), history, research; (2) criminal justice (e.g., prison law, juvenile criminal law), correctional and crime policy, alternatives to punishment, police and policing; and (3) various more specialized topics, such as victimology, restorative justice, penal investigation and human rights, drug issues and drug policies, gender criminality, law, mass media and crime, forensic psychiatry and psychology (law perspectives), public safety and security, critical criminology, European criminology, as well as topics related to the EU justice and crime policies.

Undergraduate courses in criminology or criminal justice are generally offered as options for students studying for certain degrees (e.g., psychology, social anthropology, and political sciences at Panteion University, mass media and communication at the University of Athens). However, *introductory courses* in criminology, penology, corrections, and crime policy are compulsory for students of most departments during the first two or three semesters of their studies. During the following semesters the students can choose criminological courses, among other courses, which they want to attend.

In Law faculties the courses are much less in number than in Sociology departments: criminological theory, penology, victimology, penal investigation, and human rights, as well as juvenile criminal law are the main courses offered in Law schools.

1.2 Research

Criminology was established in Greece in the 1930s but has lagged in its empirical development behind the science of criminal law. During the 1960s and 1970s, Greek criminologists mainly followed a conservative early positivist way of thinking. Over

the past 30 years, the situation has changed; although it is difficult to categorize them, three major schools have emerged:

a) Liberal juristic criminology, which groups criminology with "non-normative penal sciences" – penology, forensic psychiatry, investigative techniques – in analysing "real" crime as "human action that is dangerously antisocial".
b) Liberal positivistic criminology.
c) Critical criminology (influenced by the British view) that has remained rather unchanged from the mould of the late 1970s or combined with other tendencies. Critical and conflict perspectives are now *theoretically* dominant, although, in general, researches under the second school of thought are the most common.

Although the whole spectrum of theories, policy trends, and international state of discussion is known and depicted in textbooks and teaching, their concretization in national research topics and their realization is very limited.

Most criminological studies carried out in the country are quantitative, followed by secondary theoretical overviews; qualitative studies are rare. The major criminological studies which have been published in the country refer to crime policy, corrections and drugs, police and policing, victimization (medical reports on children), fear of crime and human trafficking, youth violence and subcultures.

Research interests also depend on European and international trends of the time (e.g., corrections in the nineties, organized crime, social exclusion, immigration after 2000, etc.).

Greece participated only once in the 2004/2005 sweep of the ICVS survey. Emeritus Prof. Dr. *Calliope Spinellis* from the Law Faculty of the National Kapodistrian University of Athens, and two more Ph.D. holders from the same Faculty (Dr. *Maria Galanou* and Dr. *George Papanicolaou*, the latter of whom is now working at the Teeside University in the UK) participated in the European Sourcebook. The country has never participated in the ISRD sweeps. The National Centre for Social Research has participated in four out of six rounds of the European Social Survey (ESS1 – 2002, ESS2 – 2004, ESS4 – 2008, ESS5 – 2010).

The Greek Documentation and Monitoring Centre for Drugs (EKTEPN), which is the National REITOX Focal Point of the EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) participates regularly in all reports and studies of the EMCDDA.

There are no major institutions conducting criminological research in Greece. Systematic research was carried out for a period of five years in the beginning of the eighties at the National Centre for Social Research/EKKE under the supervision of Prof. Dr. *Elias Daskalakis*, a criminology professor at the Panteion University. At the time of his death in 1986, and following the enactment of a new law (1514/1985) regulating the 'development of scientific and technological research',

the criminology group was dispersed and its members were redeployed to the Centre's four institutes, focusing on other topics. Some of them have occasionally participated in research programmes in the area of criminology; since the late nineties, there has been intensive involvement of the Centre in EU programmes, among them are those examining social exclusion issues (e.g., racism, reintegration of released prisoners) and immigration. EKKE is the national research institution in the social sciences with full time personnel, which is targeted to ensure the systematic application of EU research programmes. Their cooperation with the universities is very rare, at least as far as the field of criminology is concerned. Universities are used by EKKE as a pool for deriving auxiliary research personnel for projects.

Small research centres or laboratories, and practical training in criminology now exist in all three law schools that teach criminology. The largest concentration of research in criminology is found in the Department of Sociology (since 2013 has been integrated into the Faculty of Social Sciences and Psychology) at Panteion University; however, the Research Centre of Criminology which was instituted in 1990 at the Department is inactive, mainly due to financial and staff problems. In 2013, a laboratory of Urban Criminology was created. In EKKE, a laboratory of methodology and research in criminology centre operates, too, for the collection, processing, and analysis of qualitative and quantitative data on crime in the country, for the education of students in conducting criminological research and the participation of the laboratory in research projects and programmes.

Ph.D. theses cover a broad range of themes; many are based on self-contained research projects, for example on criminal careers, sexual abuse, correctional institutions, illegal gambling, etc. In general, criminological research has been more intensive after 2000. Personal or group research independent of centres and institutions has become more common, owing to the greater involvement of Greek criminologists in international discussions.

Yet the empirical research remains fragmented and unambitious. First and foremost, this can be attributed to a lack of resources, which arises from limited state awareness of the usefulness of criminological (and sociological) studies, funding and support. Inadequate backing for criminology by the state is accompanied by indifference to research in the social sciences within the private sector. The reluctance of public sector organizations to cooperate with the social sciences' departments of universities until the late 1990s, and the general lack of interest in cooperation between the universities themselves due to various practical reasons and shortcomings, have been contributing factors. Under the present fiscal crisis the financing of social and criminological research has become an arduous task.

In addition, the relevant departments and sections have no special planning about the priorities and significance of criminological topics that should be examined. Research topics are random depending on the preferences of the university personnel or

the students. In recent years, there has been some change with the Master's theses, because they have to follow certain themes/topics, focusing on curricula of the course.

The problems of criminology are also apparent in the huge difficulties confronting the regular publication of a journal. Since 1987, three criminology journals have been published in total. After some years of circulation (usually twice per year) each criminology journal became defunct. Since 2009, another journal (*Criminology-Eglimatologia*) is being released twice annually, depending much on publications of the studies of M.A. and Ph.D. students.

In general, criminologists in Greece publish their papers either in foreign journals in the English or French language, or in the two journals of criminal law (*Poinica Chronika* and *Poiniki Dikaiosyni*) that have been issued on a regular basis for decades.

Following a general increase in recorded crime and especially in more serious crimes in the 1990s, a growing demand for criminologists has emerged among state institutions. Criminologists have slowly started to participate in various governmental committees and in groups preparing new legislation, along with other professionals, such as criminal law professors, judges, and lawyers, who had been dominant in the field. Their competent handling of certain problems such as prison policy and juvenile delinquency, usually in the context of preparing legislative proposals, and their effectiveness in responding to requests for information from policy makers, promoted their 'legitimation' and enabled some to gain access to the media. After 2004, their participation in legislation committees has been strongly reduced and in general their impact upon crime policy has been declined. Yet, a small number of criminologists due to their party political affiliation have obtained certain positions in the state mechanism and independent authorities. The engagement of EKKE as an institution in governmental policies (mainly social policy) and of jurists in criminal legislation is generally higher than of criminologists, academics included.

2. Crime, Victimization, and Fear of Crime

The major sources of data about crime are Police (Ministry of Public Order) and Justice Statistics (Hellenic Statistical Authority/EL.STAT, alias ESYE), the European Sourcebook of Crime and Criminal Justice Statistics, the Council of Europe's Annual Penal Statistics, and until 2006 the Council of Europe's Penological Information Bulletin. Concerning fear of victimization and victimization rates, the only available data for Greece are from the European Social Survey(s).

The concerns about the reliability of the national official statistics are not different from the general concerns on statistics reliability in other countries and their impact on police effectiveness and the profile of the relevant minister (and government) (e.g., 1997–98; 2011–13). However, police effectiveness is dependent on clearance

Table 1 Registered Crimes (2010 and 2011)

		2010			2011		
		Total	**Rate per 100,000 inhabitants**	**% in relation to the total registered crimes**	**Total**	**Rate per 100,000 inhabitants**	**% in relation to the total registered crimes**
Offences against security of the State and its international relations, and public order		2,265		0.68	2,428		1.25
Property offences		115,414		34.56	115,288		59.42
Crimes in relation to the official duties of public servants		140		0.04	114		0.06
Offences against public welfare ("common dangerous crimes")		702		0.21	644		0.33
Violent offences (incl. crimes against personal freedom and sexual liberty)		38,480		11.52	27,078		13.96
Other offences		6,897		2.07	3,856		1.99
Violations of special criminal laws	All	169,645		50.79	44,344		22.85
	Drug offences	8,688		2.60	7,516		3.87
	(% of all special offences)	*(5.12)*			*(16.95)*		
Violations of the Military Penal Code		445		0.13	279		0.14
Total		333,988	3,036-3,181	100.00	194,031	1,763-1,847	100.00

Source: Police Statistics online; ESYE 2010, 2011, Table B1 online.

"Violent offences" include: assaults, homicides, domestic violence, child abuse, rape, sexual abuse, as well as crimes against the public order and religious peace. Offences against public welfare ("common dangerous crimes"): crimes against the security of traffic and public welfare (building regulations), violations of the labour welfare legislation (insurance and pension funds). Other offences include: crimes related to obstructing justice (e.g., withholding information, fostering of crimes, and/or criminals), court offences (perjury), bribery, extortion, crimes in relation to the security of the State and its international relations, begging ("mendicity"), some public order offences (using explosives in demonstrations, plundering, harassment by alarming, etc.) as well as against political parties, absconding (or attempt) from prison. Violations of special criminal laws: violations of anti-drug legislation, traffic regulations, market regulations; dishonoured cheques, illicit trade in antiquities, people smuggling, etc.

Table 1a Registered Crimes (1980–2011)

Year	Total number of registered crimes	Per 100,000 inhabitants (over 7 y.o.)	Felonies**	Per 100,000 inhabitants (over 7 y.o.)	Misdemeanours***	Per 100,000 inhabitants (over 7 y.o.)
1980	295,353	3,416	1,043	12	294,310	3,404
1981	309,267	3,541	986	11	308,281	3,530
1982	335,170	3,787	1,391	16	333,779	3,772
1983	393,506	4,440	1,306	15	392,200	4,426
1984	352,488	3,948	1,505	16	350,983	3,931
1985	291,355	3,242	2,560	28	288,795	3,213
1986	294,300	3,253	2,886	31	291,414	3,221
1987	303,182	3,331	3,332	32	299,850	3,294
1988	311,179	3,397	4,455	49	306,724	3,348
1989	287,177	3,113	4,624	50	282,553	3,063
1990	330,803	3,554	4,692	51	326,111	3,504
1991	358,998	3,802	6,551	69	352,447	3,733
1992	379,652	3,967	6,510	68	373,142	3,899
1993	358,503	3,731	6,348	66	352,155	3,665
1994	303,311	3,132	5,811	60	297,500	3,072
1995	329,110	3,385	8,244	85	320,866	3,301
1996	349,476	3,584	6,531	67	342,945	3,517
1997	377,871	3,863	5,467	56	372,404	3,807
1998	385,681	3,934	5,340	55	380,341	3,880
1999	373,306	3,809	4,994	51	368,686	3,758
2000	369,137	3,749	4,444	45	364,693	3,704
2001	439,629	4,308	4,867	48	434,762	4,260
2002	441,138	4,304	4,695	46	436,443	4,258
2003	441,839	4,293	5,131	50	436,708	4,243
2004	405,627	3,928	5,350	52	400,277	3,876
2005	455,952	4,436	5,672	55	450,280	4,381
2006	463,750	4,453	6,276	60	457,474	4,393
2007	423,442	4,053	6,203	59	417,239	3,994
2008	420,059	4,010	6,979	67	413,080	3,943
2009	386,893	3,687	8,550	82	378,343	3,605
2010	333,988	3,088*	8,817	82*	238,638	2,207*
2011	194,031	1,794*	9,149	85*	184,882	1,709*

Source: ESYE (1980–1996: Table I); Statistical Bulletin of the Greek Police (1997); 1998–2009 available online by ESYE.

* Calculated on the census of 2011 (10,815,197), all ages.

** Crime punishable by a prison sentence of 5–20 years or by a life sentence (GPC, art. 52). Alternatively, some misdemeanours can incur a fine (specific reference in GPC).

*** Crime punishable by a prison sentence of 10 days to 5 years (GPC, art. 53).

(All Tables and Figures contain data compiled by the author).

rates of arrests. Clearance rates depend in turn on the increasing demands on police, case overloads, technical support, policing techniques, sophisticated crimes, etc.

In relation to reliability, as can be seen in *Tables 1* and *1a* with the registered crimes by the police, the total number of crimes in 2011 is unjustifiable -42% lower than in 2010, while the offences against special criminal laws are -73% lower in relation to 2010 (*Table 1*). The author has serious reservations concerning this decrease.

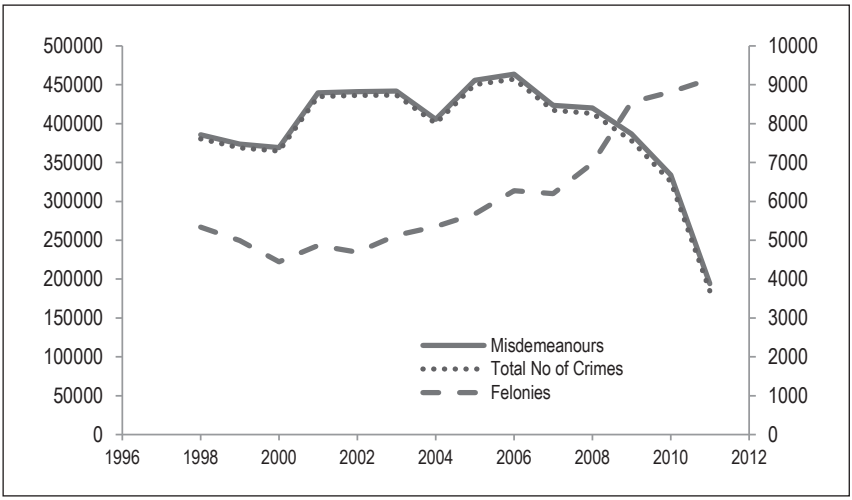
This aside, according to the official data, between 2010 and 2011 the offences against the security of the state, although proportionally very low, have doubled (0.68%–1.25%); the property offences have also significantly increased from 34.56% to 59.42%. However, the rates of violations of special criminal laws from 50.70% in 2010 decreased to 22.85% in 2011, but the proportion of drug crimes in the group of violations of special criminal laws rose the same period from 5.12% to 16.95%.

The comprehensive *Table 1a* shows statistics on recorded crime in Greece for the period 1980 to 2011. Total recorded crimes are divided into the more serious felonies (1.3% percent of all recorded crimes in 1999 and 2.6% in 2010) and misdemeanours (the remaining 98.7% and 97.3% the respective years). Between 1980 and 1998, as well as between 1998 and 2008, there was a significant increase in the absolute number of recorded crimes, but this has to be seen in the context of an increase in the permanent population until 2001, i.e., + 5.3% between 1981 and 1991 and +7% between 1991 and 2001. The rate of recorded crimes per 100,000 resident population increased approx. to 1,000 crimes over the 30-year period, in particular after 1998. There were, however, significant fluctuations in the total number of recorded crimes from year to year. In terms of the rate per 100,000 population, the recorded crime rate was considerably lower in 2010 (3,088) than at the peak in 1983 (4,440) and 2006 (4,453).

Trends for the more serious felonies were, nevertheless, entirely different from those for misdemeanours or for recorded crime in total. In terms of numbers, there were about 1,000 recorded felonies in 1980, compared with over 5,000 in 1998 and 9,149 in 2011, which is the year with the highest number of recorded felonies despite the sharp decrease of the total number of crimes the same year. In terms of the rate per 100,000 population, felonies increased about sevenfold between 1980 and 1995, before dropping back in 1999 to a rate four times the 1980 rate, to follow afterwards an upward trend again – see *Figure 1*.

To summarize these findings, there has been a significant increase in the number of recorded crimes over a 30-year period ending in 2008, with a complex pattern of ups and downs over the intervening period, and the rate of recorded crime per head of population has increased significantly after 1998. On the other hand, there has been a much more striking increase in felonies both in terms of absolute num-

Figure 1 Registered Crimes in Two Axes (Secondary: Felonies; 1998–2011)



Source: ESYE, 1998–2011 available online.

bers and in terms of rate per head of population. Crimes that have substantially increased in number are thefts, robberies, and homicides, as well as serious and violent offences involving drugs, arms, and counterfeiting. These are followed by violations of building regulations, and of the labour welfare legislation (insurance and pension funds), forgery, mendacity (systematic begging), and next by crimes in relation to the security of the State and against political parties, absconding (or attempt) from prison, and some public order offences (using explosives in demonstrations, plundering, harassment by alarming, etc.).

In contrast to the upward trend in recorded crimes, and especially in serious crimes, there was a considerable downward trend in convictions with substantial fluctuations in the number of convictions from year to year. The development of convictions is presented per gender in percent (1970–2010) in *Table 2* and *Figure 2*. At the beginning of the period, in 1980, there were 118,086 recorded convictions, which had dropped to 63,818 by 1998, further down to 59,262 in 2001, followed by an increase during the next years but with fluctuations. The highest number of convictions was reached in 1980 and 1990, a year when recorded crimes were rather low. Expressed as a rate per head of population, convictions dropped off still more sharply over the 30-year period (from 1,421 in 1980, to 962 in 1993, to 676 in 2003, and 417 in 2009).

The possible explanation for this development might be the overloading of police, prosecutors, and courts. This eventually means that police send more suspects to the prosecutor, the prosecutor does not have enough time for a thorough investigation,

Table 2 Development of Convictions in Total and per Gender in % (1970–2010)

Year	CONVICTED					
	Males	**% in relation to the previous year**	**Females**	**% in relation to the previous year**	**TOTAL**	**% in relation to the previous year**
1970	75,511		9,606		85,117	
1980	109,020	44.4	9,066	-5.6	118,086	38.7
1990	92,368	-15.3	11,494	26.8	103,862	-12.0
1995	80,746	-12.6	11,220	-2.4	91,966	-11.5
1998	55,369	-31.4	8,449	-24.7	63,818	-30.6
1999	54,327	-1.9	8,336	-1.3	62,663	-1.8
2000	51,360	-5.5	7,456	-10.6	58,816	-6.1
2000	**51,360**	**0.0**	**7,456**	**0.0**	**58,816**	**0.0**
2001	51,991	1.2	7,271	-2.5	59,262	0.8
2002	57,785	11.1	8,276	13.8	66,061	11.5
2003	64,038	***10.8***	9,123	***10.2***	73,161	***10.7***
2004	65,056	1.6	9,132	0.1	74,188	1.4
2005	50,054	-23.1	6,869	-24.8	56,923	-23.3
2006	60,741	21.4	9,445	37.5	70,186	23.3
2007	54,423	-10.4	7,923	-16.1	62,346	-11.2
2008	56,896	4.5	8,110	2.4	65,006	4.3
2009	57,386	0.9	7,662	-5.5	65,048	0.1
2010	54,737	-4.6	6,981	-8.9	61,718	-5.1

Source: ESYE Tables B4, 1998–2010 available online.

thus s/he consequently either suspends the case temporarily,[1] or forwards it to the court. Since the vast majority of those convicted lodge an appeal, it is possible that a percentage is acquitted from the charges by the appellate courts.

Apart from the previous notice, namely that crime rates increase while conviction rates decrease, is that prisoners' rates rise contrary to the drop of convictions to imprisonment (*Figure 3*). This can be associated with the longer prison sentences served by the convicts, due to the severity of their crimes, eventual changes in sentencing policy, or a higher number of foreigners for whom the unstable residence hinders courts from granting an early conditional release.

As to the individual characteristics of those convicted, both genders show a similar distribution in conviction ages with the highest increase between 2002–2004 for the

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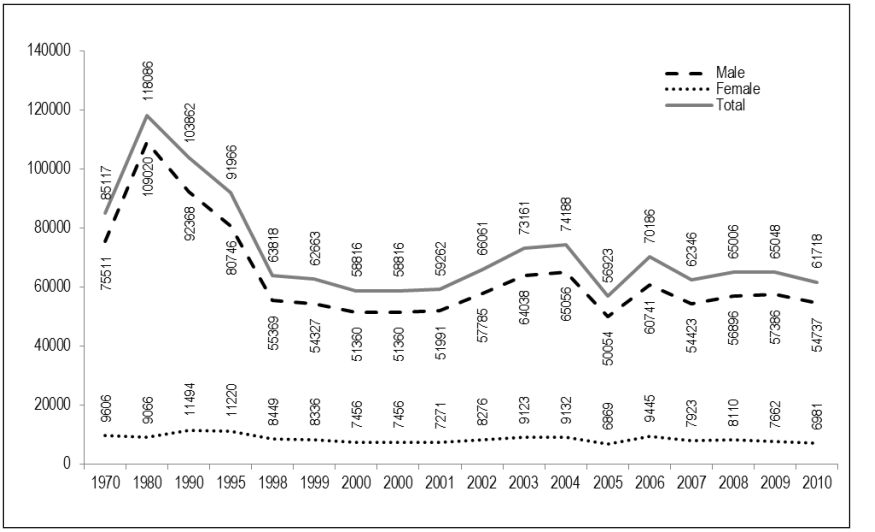
[1] Such cases are put on the archive without definite closing decision. If there is new information, the prosecutor can reopen the case.

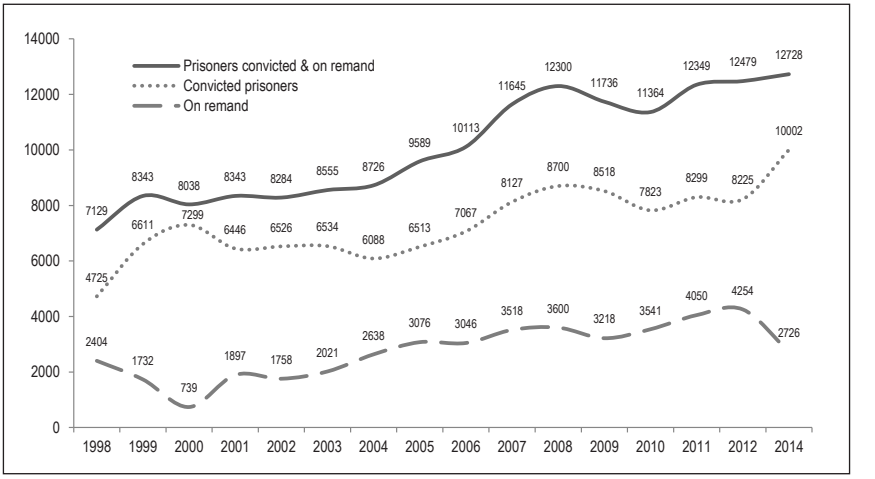
Figure 2 Convictions in Total and per Gender in Time Series (1970–2010)



Source: ESYE Tables B4, 1998–2010 available online.

ages 21–34 and 35–59 years. For both groups, the most significant increase has been noticed for the ages of 30–34 and 35–44 years of age. Moreover, men at the age of 18–21 show a higher increase in convictions than women at the same age.

Figure 3 Prisoners Convicted and on Remand (1998–2014, as of 31 December Each Year)



Source: ESYE Table G1, since 1998 G1a online.

Table 3 Male and Female Prisoners according to Their Crime(s) of Conviction in Time Series (in %)

Year	Violent offences		Property offences		Offences against the public welfare ('common dangerous crimes')		Other offences		Violations of special penal laws		Violations of the military penal code	
Gender	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**
1980	5.0	95.0	6.0	94.0	**9.0**	91.0	**10.9**	89.1	4.3	95.7	0.3	99.7
1985	4,6	95.4	4.0	96.0	5.8	94.2	4.9	95.1	5.7	94.3	0.0	100
1990	4.0	96,0	4.0	96,0	4.4	98,9	5.5	94,5	5.2	94,8	0.4	99,6
1995	6.7	93,3	4.1	96,0	6.4	93,6	**9.6**	90,4	**9.0**	91,0	0.3	99,7
1998	4.7	95.3	5.6	94.4	4.3	95.4	**9.7**	90.3	**8.5**	91.5	0.0	100
1999	5.2	94.8	6.1	93.3	1.9	98.1	**11.7**	88.3	**8.8**	91.2	0.0	100
2000	5.3	94.7	**7.1**	92.9	**7.1**	92.9	**9.3**	90.7	**11.9**	88.1	0.0	100
2005	5.8	94.2	**6.8**	93.2	5.8	94.2	**13.9**	86.1	**8.1**	91.9	0.0	100
2006	**6.2**	93.8	**6.7**	93.3	**12.8**	87.2	**13.9**	86.1	**7.7**	92.3	0.0	100
2007	**6.5**	93.5	**6.7**	93.3	**25.0**	76.0	**16.2**	83.8	7.1	92.9	**8.3**	91.7
2008	**6.7**	93.3	**8.0**	92.0	**7.0**	93.0	**12.5**	87.5	6.7	93.3	0.0	100
2014	4.9	95.1	4.8	95.2	4.0	96.0	2.8	97.2	5.0	95.0	0.0	100

Source: ESYE Table G1, since 1998 Table G1a online, 2014, Ministry of Justice, unpublished.

Due to data discontinuities in crime convictions the author has chosen for reliability reasons to refer to crimes for which the persons are imprisoned. From *Table 3* we see a remarkable increase in all crime groups committed by women and for which they serve prison sentences after 1999. An increase in the female proportion of crime rates for which prison is imposed reflects a decrease on the males' representation.[2]

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2 See also European Sourcebook of Crime and Criminal Justice Statistics 2010. The European Sourcebook refers that in 2006 among *convicted* prisoners in Greece 93.8–94.2% in the total stock were males and 6.2–5.8% females (*Table 4.2.1.3*), while in the total

The highest increase is in a) offences against the public welfare/"common dangerous crimes", i.e. building regulations; violations of the labour welfare legislation, i.e. insurance and pension funds; b) the group of "other offences", namely court offences (e.g. withholding information, fostering of crimes and/or criminals; perjury), crimes in relation to the performance of the official duties of civil servants (e.g. bribery), systematic begging ("mendicity"), and some public order offences as well as offences against political parties (e.g. harassment by threatening, intimidating, alarming, using explosives); and c) the violations of special criminal laws, i.e. dishonoured cheques, and drug crimes.

This development implies a more active participation of women in working life and their confrontation with the challenges of contemporary social conditions, which also contributes to the visibility of their crimes and their involvement with the justice system.[3]

As to the length of sentences in general, women serve at a higher rate than men a short sentence of up to three years, probably related to the severity of their crimes. The rates of women serving a sentence over 10 years to life have been constantly decreasing during the last three decades, while the rates of men show a slight gradual increase (90–95/96%). The opposite happens with prison sentence of 3–5 years, but especially of 5–10 years: men's rates show a small decrease (97–95%), while that of women double (2.7–5.4/4.9%) during the research period.

Regarding recidivists, the Justice statistics for 1980–1996 include information on *convictions* for the same or similar crime. After 1996, there are no available data. Only in 2006, 2007, and 2008 the information refer to *prisoners* serving a sentence for the same or similar crime and not to convictions. Consequently, the data groups cannot be compared. However, according to an M.A. study for the period 1960–1996 the convicted men commit more often than women a *new crime***,** while after 1980 an upward trend in recidivism of convicted women is noticed too. For a period of five years from the first sentence to the last offense both sexes have usually committed *one* crime. In more than five years men have committed approximately *five crimes* throughout the reporting period (1975–1996); the same applies to women after 1975, while before 1975 they have usually committed only *one crime*.[4] The three years (2006–2008) for which we have information about previously convicted

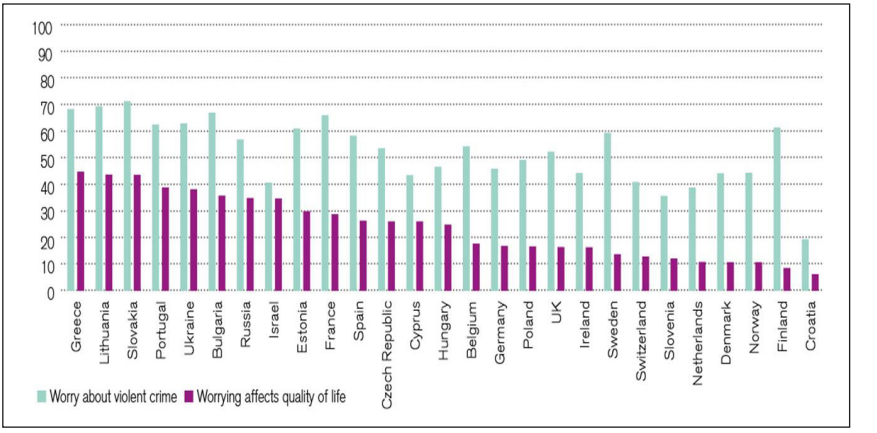
flow, 92.6–92.7% were males and 7.4–7.3% (*Table 4.2.2.3*) females. Their rates in certain crimes were respectively the following: 95.1% and 4.9% major traffic offences (*Table 4.2.3.2*), 94.6 and 5.4% intentional homicide – attempt (*Table 4.2.3.3*), 99.2% and 0.8% completed homicide (*Table 4.2.3.4*), 95.5% and 4.5% assault (*Table 4.2.3.5*), 98.1% and 1.9% aggravated assault (*Table 4.2.3.6*), 95.6% and 4.4% theft *(4.2.3.11*), 92.3% and 7.7% drug offences [total] (*Table 4.2.3.19*), of which 95.1% and 4.9% aggravated drug trafficking, e.g., selling drugs in schools, gyms, prisons, etc. (*Table 4.2.3.21*).

3 Similarly *Thanopoulou et al.* 1997, 46; *Fronimou* 2000, 368.

4 *Theodoropoulou* 2005, 98.

prisoners, show that 9.5–10.6% of the total ("flow") number of prisoners held during the whole year have already committed a (new) crime. 98.9–99.8% of them are men and 0.22–1.13% are women. 66% of the men have previously committed the same or similar crime and 34% a different crime. The proportion of women to the first group, "recidivists" as defined by law, is very low, ranging from between 0.6% and 1.2% (n = 6 – 12). The same applies to the female rates in the second group of prisoners, i.e., previously committed an irrelevant crime, ranging from 0.6–1%, while for the men it is around 99% of the total ("flow") number of prisoners held during the respective years.[5]

Figure 4 Proportion of Respondents Who Worry about Violent Crime, and Those Whose Worry Affects Their Quality of Life



Source: ESS 2013, 19.

Concerning fear of victimization and victimization rates, our references are based on the fourth (2008) and fifth (2010) ESS rounds.

ESS data collected in 2010/11 show that Greece belongs not only to the group of countries with high fear of crime, but also it is the country which the impact of fear upon quality of life is high. In Greece (and Lithuania) more than two out of five people feel that their well-being is affected by their fear of crime compared with around one in ten in Norway.[6]

According to the results of the 4th round of ESS, 15.9% from the Greek sample (2,566 in total) have themselves or someone else from their household been the victim of robbery or assault during the past five years, while the European average was

5 ESYE 2006, 2007, 2008, Table G6.3 online.

6 ESS 2013, 19.

little higher, 17.5% (total 43,099).[7] 42.5% of the Greek respondents feel unsafe and very unsafe in their neighbourhood at night, while the European average is 25.2%.[8] 12.9% (total 1,355) of the Greek sample also feel that the fear or their victimization experience has serious effect on the quality of their life, in comparison with 6.8% of the European average (total 23,899),[9] while 52.8% feel that it has some impact on their quality of life compared with 37% of European average.[10]

As far as *media engagement* is concerned, it cannot but be noted that the period (mid 1990s–2002) when criminality rates were not particularly high and not (yet) a serious issue of concern, the media referred to it with each opportunity with more or less sensationalist reports. In addition, their presentation depended on their preference firstly to the minister of public order at a time, and secondly to populism of prevention measures.

After 2008, when crime started spreading at an alarming rate and violent crimes multiplied, the media in general and in particular the private media organizations, referred only peripherally to them. Furthermore, whenever they did, they almost never mentioned the nationality of the offender(s) or the concern of the citizens. If it became known, the news was followed by commentaries against xenophobia and racism towards the foreigners. There was and still is a dominant, strict "political correctness" while the public discussion on crime issues is absent. Recent research by the Athens University of Economics and Business (May 2013, 24), which found that there is a high concern of the citizens of Athens' municipality (seven communities) regarding crime and safety (70.4% of the 1,032 respondents are worried, of which 29.2% very much) has hardly been presented or referred to apart from a few national private channels with low ratings.

A large part of MPs and their parties, along with local governments, systematically cultivate a sense of collective culpability in the citizens, and attempt to degrade the significance of criminality in order to extend citizens' tolerance of common crime (e.g., robberies, burglaries, and assaults), and anomie.

After May 2011, when cases of cruel murders became known and caused a sensation to the public, a slight shift has been noticed regarding the interest and the presentation of this issue by the media. Crime and criminality comes into the news, mostly after the arrest or the spectacular chase by the police of prison fugitives or members of organized criminal groups, after terrorist activities and respective arrests.

Inter-prisoner violence and the increasing violence against the prison staff is also an issue rarely touched on by the media. Few lines about violent clashes among inmate

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7 EKKE 2010, 45: Table 21.

8 EKKE 2010, 45: Table 22.

9 EKKE 2010: 59, Table 8b.

10 EKKE 2010, 59: Table 8b; see also EU ICS 2005.

groups of different nationalities can be found only in the press or sporadically in news' websites with some exceptions, such as the recent deaths of a prison officer and two prisoners. However, amendments in prison or criminal law attract more publicity if they have caused the reaction of prisoners, prison staff or certain political parties, and other interest groups affecting government's decisions, such as lately with the establishment of prison units for high risk offenders operating under a strict regime (June–July 2014).

Despite the crime trends and changes in quality of crime, criminality has never been high on the *agenda of politicians*, in particular now mainly because they focus on the debt crisis and the economy.

3. The Criminal Justice System

The triple pillars of the *criminal justice system* are the Constitution, the Penal Code, and the Penal Procedure Code. The new constitution after the restoration of democracy in June 1974 following the last dictatorship was amended in March 1986, in April 2001 and again in May 2008. The judiciary is divided into civil, criminal, and administrative courts. The highest judicial authorities are the five special courts: the Supreme Judicial Court and the Special Supreme Tribunal, along with three courts for administrative, financial, and criminal issues. The total number of judges as of end 2012 was 2,525 persons.[11] 1,534 (60.7%) of them serve on criminal and civil courts (Supreme Court is not included).

The Penal Code was enacted in 1950 (Law 1492/1950) and has been amended several times since then. A range of other activities, such as drug offences, contraband, illicit traffic in antiquities, traffic offences, public health, fraud, and money laundering, are covered by special criminal laws, which are expanding more and more. There is a separate Penal Procedure Code, also issued in 1950, which like the Penal Code has been amended and reformed many times. The organization of the prison system is based on the constitution, international conventions, the Correctional Code/GCC (also known as Prison Law), the Penal Code, and the Penal Procedure Code/GPPC, along with numerous ministerial and presidential decrees and European legislation. The Prison Law has a long history of major and minor amendments and reforms (in 1967, 1989, and 1999).

The Greek Prison Law (2776/1999) and the Internal Regulation(s) of the prison institutions are generally based on the UN Standard Minimum Rules for the Treatment of Prisoners (1955), the UN Basic Principles for the Treatment of Prisoners 1990, the European Standard Minimum Rules for the Treatment of Prisoners drawn up by the Council of Europe in 1973, the Recommendation Rec. (2006) 2, which updated

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11 Ministry of Justice 2012.

the European Prison Rules in 2006 and replaced the Recommendation No. R (87) 3 of the Committee of Ministers of CoE from 1987. Prison Law is also based on special Recommendations of CoE about the pre-trial detention (No. R (80) 11), the furloughs (No. R (82) 16), the detention and treatment of dangerous offenders (No. R (82) 17), the detention of foreign prisoners (No. R (84) 12), etc. All these rules constitute the context of prison policy in Greece. The maxim of the Prison Law is the legal and equal treatment of all prisoners irrespective of their race, sex, religion, ethnic origin, etc., and the respect of their dignity (Arts. 2, 3, 4 GCC).

The authorities responsible for crime control in Greece are the police (Ministry of Public Order), the coastguard (Ministry of Marine), the Customs Service (Ministry of Finance), and the Financial and Economic Crimes Office (Ministry of Finance). The administrative duties of the police are the maintenance of order and the investigation of criminal offences. In their crime investigation role, the police are supervised and guided by the public prosecutor. Crime control is also exercised by the criminal courts and correctional institutions, the latter under the supervision of prosecutors of the prison establishments and the ministry of Justice.

The Greek police force is a centralized, hierarchical organization, managed in military style. However, the special police groups or squads are decentralized and autonomous at an operational level. During the 1990s, the number of police per 100,000 resident population had increased from 370 to 425. Police numbers further increased between 2001 and 2004, during the build-up to the Olympic Games, to 48,000 or about 460 per 100,000 population (estimates). The contemporary number of police officers rises over 50,000, which is 462 per 100,000 population (Census 2011: permanent residents 10,815,197).

Since the late 1990s, assistance from state institutions offering social relief to vulnerable population groups, such as societies for the *aftercare of prisoners* or for the protection of juveniles, has declined. Until then, societies for released prisoners were mainly responsible and they were supported by few NGOs. These societies were envisaged for 63 regions of Greece, under the auspices of Courts of First Instance. They were originally the responsibility of the Ministry of Justice, but in 1997 (Law 2503), they were transferred to local authorities. Up to that time, only 33 of them had submitted annual budgets and presented reports (of varying degrees of usefulness) and 30 had been totally inactive. Financial shortcomings of local government along with low interest of local authorities decreased their number even more and finally all societies became inactive.

The in force Correctional Code (art. 81, paras. 2, 3) envisages a combination of the previous systems, involving back-up by local authorities and control by the Ministry of Justice. In 2004, the law on aftercare changed again and a new institution called EPANODOS ("Re-Entry") has been set up (Presidential Decree 300/2003). It started operating in 2007 as a legal entity of private law and it is subsidized by the state (Ministry of Justice), national and European resources, donations and grants.

In 2012, it published its first Report on the four years of its operation. From 2007 to 2011, EPANODOS has served 596 persons, which means an average of 119 persons per year.[12] EPANODOS has been assigned a multitude of responsibilities and tasks: in finding work, accommodation, addiction treatment, financial assistance, legal aid, psychological and social support, etc. to released prisoners. The organization is understaffed and it would not operate without the work of volunteers and professionals from various disciplines (criminology, law, psychology, sociology) working part time within a very low budget. Therefore, apart from counselling services, EPANODOS can hardly offer material resources. In general, it informs and facilitates the access of released prisoners to other services, while the participation of prison authorities despite their efforts and engagement in implementing comprehensive pre- and post-release reintegration programmes with EPANODOS is inadequate (2013). The major problem registered in the report is the high rate of unemployment of those released.

Other institutions involved in after-care are: (1) The Greek Manpower Employment Organization (OAED), which is the most important, since it supports financially unemployed ex-prisoners (financial allowance of 275 euro per month for three months); assists them to start their own small firm or business; organizes vocational training programmes and, above all, subsidizes employers to hire ex-prisoners for quite a long period, etc. In 2010, the subsidized positions for released prisoners were only 170, from which the number of women is unknown;[13] (2) the General Secretariat of Adult Education, the National Organization of Welfare, some local authorities, and few professional associations (e.g., Athens Bar Association); (3) the Greek Orthodox Church (Archdiocese) and the local parishes offering small financial allowance, short accommodation, clothing, food, addiction support, help for abused and battered women, family counselling; (4) some NGOs offer short term housing, food and counselling services, too; and (5) few Universities through the Social Fund of the EU have offered in the past vocational training and support.[14]

Educational, recreational activities or vocational training as well as participation in groups (counselling) for drug addicts, and *work* in prison are provided exclusively on a voluntary basis (art. 22[4]; cf. ECHR 1950/53, art. 4[3a]). The main *educational* programmes running in prisons for many years are the 'second chance' school, the Greek language courses, and the high school distant learning courses in juveniles and women prisons. The places of working programmes and vocational activities due to the overcrowding are not enough, while old and successful workshops were reduced. Additionally, the costs for recreational activities subsidized by the state have drastically decreased.

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12 EPANODOS 2011, 4.

13 *Kelidou* 2011.

14 *Spinellis & Spinellis* 1999, 51–52.

As to the usefulness of vocational programmes after release, most inmates believe that they cannot help, because they don't offer special knowledge or skills.[15] In general, the operating programmes do not correspond to the interest and needs of the prisoners because they have not examined them in advance. Furthermore, the programmes usually do not take into account the conditions prevailing in the labour market, to which the prisoners have to adapt after release.[16] The content of programmes is not only restricted by the education level of prisoners, but also by overcrowding.

Two studies examined the opportunities for reintegration for adult male and female offenders on release from prison, and for juvenile offenders. Both enquiries attempted to evaluate the training programmes provided for these groups. Both found that the problems of integration into the world of work had started long before imprisonment, and that deprivation of liberty intensified these problems and made them more acute. The authors then examined the 16 institutions charged with the education and training of released prisoners by interviewing representatives from each of the organizations. The majority of both groups, adults and juveniles, were working after release in the same sector as before their confinement, usually in unskilled or temporary jobs. This implies that their training had played no role. Therefore, the authors emphasized the need for better programme planning and aftercare.

The *major problems of Greece's criminal justice system* are overburdened court dockets and prison overcrowding. Various measures have been taken in response.

Regarding justice, the three member courts changed to a one member court (individual courts) to have more judges trying alone. Two laws have been issued and enforced in 2003, 2005, and 2010 introducing reforms such as mediation and plea bargaining in order to reduce courts backlog. Despite some success with individual courts, the reforms have not produced a substantial reduction in the number of pending cases nationwide. A lasting judicial reform with the cooperation of a wide range of actors involved in the judicial process is absolutely necessary.

Regarding prison overcrowding, new prisons have been established (during the last decade, from 26 facilities to 33). Efforts for expanding the monitoring of the implementation of community service have been carried out, and for juvenile delinquents, restoration and mediation programmes. Moreover, the limits for the suspension of the prison sentences decrease from time to time, similarly the limits for conversion of a prison sentence into a fine, for parole ("conditional release"), and more lenient regulations for early release because of work have been issued. For example, the rate of prisoners who have been released after having served their maximum sentence

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15 *Thanopoulou et al.* 1997, 145.

16 *Thanopoulou et al.* 1997, 166–167; *Mitrossyli & Fronimou* 2006, 64–65; *Paraskevopoulos & Spinellis* 1995.

has decreased from 28% in 1981 to 6.6% in 1998 (in relation to the total number of releases the same year), ranging between 3.7% to 12.7% the following years, while between 1998 and 2008, parole corresponds to 45–51% of early releases, followed by conversion of the prison sentence into a fine (downward trend, 25–16%), as well as by releases "because of other legal reason", such as acquittal, decrease of the length of the prison sentence, and reverse of the judgement by an appellate court (upward trend, 11–17%).

In addition, criticism on long sentences and remand time, the overcrowding in prisons and detention centres along with the prisoners' unrests in November 2008, resulted in the issuing of measures and legal amendments (December 2008). The *upper* level of *pretrial detention* was reduced from 18 to 12 months for felonies to which a prison sentence of five to ten years is foreseen. For felonies, for which either longer imprisonment (over ten years) or sentenced to life is foreseen, the upper level of pretrial detention did not change. It can be prolonged for six more months as before; however, only in *absolutely exceptional cases* (Law 3727/2008, art. 19[1]; art. 287[2] GPPC).

Furthermore, the *recent law* about electronic monitoring/home detention (Law 4205/2013) issued in November 2013 for a quite broad group of offenders (including juveniles) is one more measure against prison overcrowding. Its use even for serious offenders might operate against citizen's safety. The Decree with the guidelines for its enforcement has not yet been released.

Apart from electronic monitoring underway is the issuing of law about *maximum security prisons* (and units) for high risk offenders, i.e., convicted or suspects of terrorist acts, offences against the security of the state, members of organized crime groups who have committed serious violent crimes (homicides, robberies, extortions), and prisoners who have committed serious disciplinary offences in prison, such as aggravated assaults and homicide against the prison staff or other inmates, riot, abscond.

The *impact of the European Union on the criminal justice system* is significant through the integration in the national legislation and the ratification of its directives, regulations, and other acts. However, the participation and impact of the country in the creation of EU legislative acts is rudimentary, thus a number of directives are inadequate or superfluous (e.g. against racism).

4. Conclusions

Almost ten years after the country survey published by European Journal of Criminology[17], serious impediments still exist to the realization of extended research that

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17 *Lambropoulou* 2005.

advances theoretical discussion. The European programmes accomplished in the last fifteen years have not contributed much to our understanding of the significant issues that as yet demand research, since they had other objectives. Politicians who in the past neglected to take research results seriously when planning or implementing crime policy started for a while in the past decade to selectively request and promote short empirical studies in asserting their priorities, stopped again.

Criminologists have largely failed to make common cause in order to overcome these difficulties. Their interventions are still isolated and generally limited, consisting mainly in greater participation in governmental and ministerial committees, consultative groups and other organizations. No doubt they should engage more actively with policy, anticipating the needs of the country and their science, not just reflecting political demands. On issues such as crime and deviance on which everybody has a viewpoint, criminologists are not in the position to offer the distinctive contribution that would be needed to make a crucial difference. Although discourse is limited to a few hours' meetings once or twice per year, mostly during student's seminars, and despite the fact that funding for research is meagre, perseverance has occasionally achieved results. However, little interest is shown in plans not sympathetic to those of politicians, so that care and awareness are needed to find an opening for the application of really independent criminological knowledge.

Criminology continues to be regarded by public opinion and by many social scientists, particularly in the legal profession, as dealing more with the criminal mind or the criminal personality, and less with crime as a social phenomenon, whereas sociological models are regarded with understanding. Sometimes it seems that even criminologists themselves doubt their instruments, handling them as though they are dealing with an issue of ideology rather than solid academic work. Ideas about forms of crime, xenophobia, racism, 'organized' crime or policing methods are usually received from abroad without adequate examination. Such exchange and interaction occur in all countries, but in Greece there is a lack of reflection on and careful examination of the issues arising from the national context. This tends to reduce criminology to distorted national interpretations or to a general critique and trivial arguments without reference to specific local conditions. For example, there has been no discussion among the experts about the *prison violence and prison management, crime trends and safety issues*, or about the *development of local* and international *terrorism, youth violence and hooliganism*. Questioning voices that have been raised about government policies and the politically-dominant view on few issues remain unheard. Strategic research into the country's problems is lacking.

Summing up, the growing participation of criminologists, academics and practitioners, in committees and work groups of ministries and other institutions is encouraging. Nonetheless, the integration of criminological profession in the criminal justice system has not been achieved so far. It is also encouraging that the positions of criminologists in higher education are not being reduced, as is happening in some

other European countries. But this is not enough. Continuous and systematic efforts are needed on the part of criminologists in order to intervene more as a scientific community with their distinctive arguments and perspectives, in cooperation with other social sciences. Similar efforts are needed for the establishment of the criminological profession in social life. Otherwise, on the one hand criminology runs the risk of developing into a state criminology used as a pool for official positions, while on the other, of continuing struggling for research funds and interdisciplinary discourse in hope of timely meeting the needs of the country, without much success on the horizon.

5. Summary in Greek

Το άρθρο περιγράφει στο πρώτο μέρος την εξέλιξη της εγκληματολογίας στην Ελλάδα κατά τις τελευταίες δεκαετίες, και συγκεκριμένα, τις προπτυχιακές και μεταπτυχιακές σπουδές, δηλ. διδασκόμενα μαθήματα, βασικά διδακτικά εγχειρίδια και περιοδικά στα οποία δημοσιεύονται εγκληματολογικές μελέτες. Το άρθρο συνεχίζει με την κατάσταση της εμπειρικής έρευνας και τους φορείς πραγματοποίησης εμπειρικών ερευνών στην χώρα. Η εργασία αναφέρεται ακόμη, στον ρόλο της εγκληματολογικής θεωρίας και έρευνας στον σχεδιασμό δημόσιας πολιτικής: αντεγκληματικής, σωφρονιστικής, κλπ., στο γενικό επίπεδο του εγκληματολογικού διαλόγου, και την ερευνητική στρατηγική της εγκληματολογίας.

Στο τρίτο μέρος η εργασία παρουσιάζει την εξέλιξη της εγκληματικότητας κατά τη διάρκεια δύο χρονικών περιόδων, 1980–1998 και 1998–2010/11, την εξέλιξη των επιβαλλόμενων ποινών, και του πληθυσμού των φυλακών. Υψηλή αύξηση των κακουργημάτων (ληστείες, σοβαρές σωματικές βλάβες και επιθέσεις, και δολοφονίες), μεγάλη μείωση του αριθμού των καταδικαζομένων με αυξανόμενη συμμετοχή των γυναικών στην εγκληματικότητα και μεγάλη αύξηση του πληθυσμού των φυλακών είναι τα κύρια χαρακτηριστικά μετά το 1980. Τα δεδομένα της Ευρωπαϊκής Κοινωνικής Έρευνας χρησιμοποιούνται για την περιγραφή της θυματοποίησης και του φόβου του εγκλήματος, ο οποίος είναι από τους μεγαλύτερους στην Ευρωπαϊκή Ένωση. Το πολιτικό ενδιαφέρον και το ενδιαφέρον των ΜΜΕ για την εγκληματικότητα και τα ανακύπτοντα προβλήματα: ανησυχία των πολιτών, φόρτος του συστήματος ποινικής δικαιοσύνης, κατάσταση στις φυλακές, ποικίλλει, είναι επιλεκτικό και σε γενικές γραμμές μικρό.

Στο τρίτο μέρος παρουσιάζεται συνοπτικά το σύστημα ποινικής δικαιοσύνης και τα δυο σημαντικά προβλήματα που αντιμετωπίζει, ο μεγάλος φόρτος των δικαστηρίων από υποθέσεις και ο υπερπληθυσμός των φυλακών. Παρατίθενται συνοπτικά τα μέτρα που έχουν ληφθεί για την αντιμετώπιση αυτών των προβλημάτων, τα οποία μπόρεσαν να ανακουφίσουν μόνο περιορισμένα και βραχυχρόνια τα προβλήματα. Τέλος, η συγγραφέας τονίζει αφενός την ανάγκη για διαρκή και συστηματική προσπάθεια παρέμβασης των εγκληματολόγων με τις συγκροτημένες επιστημονικές

προτάσεις τους στην ανάλυση και αντιμετώπιση του εγκλήματος αφενός, και αφετέρου τις ίδιες προσπάθειες για την αναγνώριση του επαγγέλματος του εγκληματολόγου.

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Criminology and Crime in Hungary

Eszter Sárik

1. Introduction

In the following paper, I will briefly summarize the important facts in the past and present of criminology in Hungary, as well as the country's previous and current crime situation. The first part of the paper concentrates on the development of criminological thinking and criminology as a science from the beginning of the 20th century until the change of political regime, which was a colorful period not just in terms of politics but also in the terms of legal regulation, science and education. From 1989, general changes could be detected both in the criminal situation and in the opportunities of criminological research. It is crucially important to analyse the structure and quality of crime tendencies in the past 25 years because we can learn a lot from the criminal data and the related legal changes. In the last paragraph of my paper, current changes are shown in criminal legislation, education and research. In the constructive and detailed publication of *Miklós Lévay* and *Klára Kerezsi*,[1] more information is available on the topic.

2. History

Criminology as a scientific branch has a long and unique history in Hungary. Both legal regulation and scientific development rapidly followed mainstream tendencies in Western Europe in terms of criminal law at the beginning of the 20th century. Regarding the question of criminological education and research, it can be stated that Hungarian criminology had always been strongly linked with the relevant legal basis. The discipline was taught at the law faculties, and most of the scholars were qualified lawyers as well. Criminology was a science which was not particularly defined as such but was applied by criminal lawyers as background knowledge, both in enforcement and legal practice.

The very first legal product of criminological thinking was the so-called Csemegi-Act, which was enacted in 1878. It contained special laws for juveniles and established a four-level prison system. Offenders between the age of 12 and 16 were

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1 *Kerezsi & Lévay* 2009.

examined for whether they had the maturity upon which their criminal liability could be based. This Criminal Act – born more than a hundred years ago – already emphasized the importance of education as the aim of the punishment of youngsters, though the sanctions were sometimes even more serious than those applied against adults.[2]

This fruitful tendency in legal regulation had its peak in 1908 when the acting Hungarian Parliament adopted a modern Criminal Code. It was the time when the criminological schools started to dynamically influence criminal regulation, and classical criminological attitude was replaced with a positivist mentality. Within the positivist school, the sociologist attitude became the most popular in Hungary: *A. Quételet*, *A.M. Guerry* and *Tarde* were the most often quoted authors. This radical change in criminological thinking paved the way for the 1908 Criminal Novel.[3] The Act's novelty lied in the treatment of juvenile offenders who, from that time on, were treated as a separate criminal category, with lighter punishment possibilities and unique measures. The Novel created the legal basis for the separation of juveniles from adults within the prison-system as well, and extended the upper age limit of juveniles to the age of 18. In 1913, a special court system was established for offenders between the age of 12 and 18, and this was the period when the institutions for reformatory education were founded as well.[4]

After World War II, the undiminished evolution of criminal sciences, education and legal regulation was broken by the economic and social crisis. This was partly due to the social and moral tragedies caused by the war, and partly as a consequence of the social and political trajectories of the communist regime.

The political dictatorship was suspicious about the so-called "bourgeois" sciences − such as psychology and sociology – and especially about criminology, which was a consequence on the one hand, and a root on the other hand. The dominant philosophy of socialism was that criminality as a whole would fall into the dark grave of history, as the ideal type of socialist man would be able to step over the vestigial memories of deviances, and the lack of criminality would make criminology useless. This theory led to the total dismissal of criminal sciences – especially criminology – from universities but also caused a radical, negative switch in criminal practice and regulation: the strict and unjust punishing system became the only valid answer of ruling governments to social problems in the 1950s.

So the darkness of the 1950s was a radical step back from the earlier virulent periods of development – even from the late 1940s, when at least two major criminological works were published by *István Schäfer*, about drugs (!) and white-collar criminali-

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2 *Kapa-Czenczer* 2008.

3 *Kapa-Czenczer* 2008.

4 *Vigh* 1998.

ty.[5] The radical communist regime is only worth mentioning in order to highlight the difficulties of the following generation, who had to revive the scientific branch and thinking from a deep freeze.[6]

From the mid-1960s, an intensive and continuous development took place in the science of criminology: both in research and at the universities. The fate of the Institute of Criminology – currently also the only independent institute specially devoted to criminological research in Hungary – hallmarks the history of criminology in Hungary.

The National Institute of Criminology (OKRI), as the scientific research office of the Prosecution Office in Hungary, was established in 1960. At its "birth", the Institute was founded as the National Institute of Criminalistics (OkrI), because the prevailing ideological and political system had chosen a Janus-faced mentality towards criminology. It had given birth and legal credit to the Institute, on the one hand, and had disguised its function by placing criminalistics into the name of the Institute, on the other hand. Under the cover of legitimate research, legal ground was provided to camouflage real criminology: research efforts into explaining causes and tendencies within the framework of the ruling social and political system thus started.

The radical turn manifested itself in two major symbolic acts: from 1965, criminology became "a mandatory subject" at Hungarian universities and in 1971, the Institute took the name of National Institute of Criminology and Criminalistics (OKKrI), by which it was clarified that the political ideology had become more tolerant and accepting with the science previously labeled as "bourgeois pseudo-science".[7] Besides education and research, practical steps could also be mentioned in terms of criminological development: in 1964, legal data collection was launched by the legal association of Police and Prosecution (the Integrated Criminal Statistics of Law Enforcement and Public Prosecution), so from that time on, crime data were available for the police, prosecutors and of course the researchers.

Research efforts focused on the factual side both in practical and theoretical issues. The hot topics were the so-called casual examinations, concentrating on certain types of crimes and criminals, with the presumption that the phenomenon of criminality is so complex and heterogeneous that only individual reports and focused examinations could bring research closer to the solid facts of criminology. The official theoretical background was criminal sociology and the social determination of criminality. There were separate research programmes in the field of recidivism,[8] on

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5 *Schäfer* 1948; *Schäfer* 1946.

6 *Lévay* 1996.

7 www.okri.hu [16.07.2014].

8 *Gönczöl* 1980; *Patera & Tavassy* 1986.

juveniles,[9] on female offenders[10] and on crimes committed by the Roma.[11] Meanwhile criminology was enriched by some grand summary publications: within the topic of criminal geography[12] and an international comparison written by *András Szabó* using new research methods just like factor analysis. The classical criminological handbook was published in 1971 under the title "The Basic Questions of Criminology" (*A. Vermes*)[13].[14]

In the 1970s and 1980s, intensive developments in criminology occurred; the discipline stepped on the pathway of independence and started to return to the international mainstream and was on its way to reach the level of Western countries. *László Viski,*[15] *József Gödöny,*[16] *József Vigh*[17] and *András Szabó*[18] have hallmarked a very fruitful scientific period, with criminological handbooks, complex theories and heterogeneous research topics. The 1980s was also the decade when the National Institute of Criminology opened its doors for international relationships.[19]

In the last years of the decade, the crisis of the socialist regime started to influence the discipline of criminology. New tendencies in society shaped both crime and criminological thinking. The relative freedom of our country gave fuel to deviancies as well, and deviant behavior in general became part of criminological examinations. The so-called Complex Examination of Social Conformity Problems (TBZ) was a heterogeneous research programme, which was conducted based on a governmental "order" and was partly conducted by the National Institute of Criminalistics and Criminology. Crime and deviancy prevention such as examinations based on the theory of anomie became an important part of criminological thinking, represented by the works of *Iván Münnich,*[20] *András Szabó* and *Katalin Gönczöl.*[21] This is the time when a brand new criminological topic emerged as well, namely hidden criminality (or latent crime) examined and interpreted by *László Korinek,*[22] comparative victim-

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9 *Szabó* 1972; *Molnár* 1971.

10 *Raskó* 1978.

11 *Tauber* 1984.

12 *Vavró* 1976.

13 *Vermes* 1971.

14 *Lévay* 1996.

15 *Viski* 1974.

16 *Gödöny* 1976.

17 *Vigh* 1980.

18 *Szabó* 1979.

19 *Lévay* 1996.

20 *Münnich* 1977.

21 *Gönczöl* 1991a.

22 *Korinek* 1995.

ization surveys conducted in co-operation with the Max Planck Institute for Foreign and International Criminal Law, Freiburg/Germany, by *László Korinek et al.,*[23] negligent crimes by *Ferenc Irk,*[24] victimology (*Lenke Fehér,*[25] *Klára Kerezsi*[26]). The newest novelty of the late 1980s was the analysis of the criminal justice system within the scientific terms and framework of criminology and legal sociology.

It should also be mentioned that "[t]he most significant professional society acting in the field of criminal sciences was established on 26 May 1983, named the Hungarian Society for Criminology."[27] The Society still plays an active role in Hungarian criminology with experts from all areas of criminology, victimology and all other scientific and practical fields dealing with the problems of criminality, crime prevention and criminal policy. The society currently has nearly 500 members, including university lecturers and researchers, police officers, correctional officers, judges, prosecutors, attorneys, sociologists and social workers. "Besides the organization of regular professional debates on criminal justice bills, criminal policy plans and crime prevention programmes, the society reviews applications for financial assistance in criminological research. It also organizes bi-annual seminars."[28]

2.1 Text Books of Criminology

- *László, K.* (2010). Kriminológia I–II [Criminology I–II.]. Magyar Közlöny Lap – és Könyvkiadó, Budapest, 1437 pages;
- *Gönczöl, K., Kerezsi, K., Korinek, L. & Lévay, M.* (2012). Kriminológia – Szakkriminológia, Tankönyv, Szerkesztő(k) [Criminology and Special Fields of Criminology], Budapest, 708 pages;
- *Adler, F., Mueller, G. & Laufer, W.* (2000). Kriminológia [Criminology]. Osiris Publisher, Budapest, 588 pages;
- *Vigh, J.* (1998). Kriminológiai Alapismeretek, Nemzeti Tankönyvkiadó [Basic Concepts of Criminology], Budapest, 232 pages.

2.2 Main Journals of Criminology

- Kriminológiai Tanulmányok [Essays in Criminology], published by the National Institute of Criminology;
- Belügyi Szemle [Law Enforcement Review], published by the Ministry of Interior;

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23 *Arnold & Korinek* 1991.

24 *Irk* 1990.

25 *Fehér* 1999.

26 *Kerezsi* 1995.

27 *Kerezsi & Lévay* 2009.

28 *Kerezsi & Lévay* 2009.

- Kriminológiai Közlemények [Proceedings of Criminology], official journal of the Hungarian Society of Criminology.[29]

2.3 Other Journals in which Criminological Texts are published

- Acta Humana (1997–2009);
- Beszélő (1996–2010);
- Család, Gyermek, Ifjúság, Esély: társadalom- és szociálpolitikai folyóirat (1989–2010);
- Fórum: társadalomtudományi szemle (1999–2010);
- Fundamentum: az emberi jogok folyóirata (1997–2010) Háló;
- Ifjúságügyi Szemle;
- Információs társadalom: társadalomtudományi folyóirat (2001–2010);
- Kisebbségkutatás (1991–2010);
- Kritika: Társadalomelméleti és kulturális lap (1998–2010);
- Mozgó világ (1971–2010);
- Replika: szociológiai viták és kritikák: társadalomtudományi folyóirat (1990–2009);
- Szociális munka: a Szociális Munka Alapítvány folyóirata (1989–2006);
- Szociális Szemle (2008–2010);
- Szociológiai Szemle (1990–2010);
- Társadalmi szemle (1946–1998);
- Társadalom és gazdaság (1995–2005);
- Társadalomkutatás (1983–2010);
- Tér és társadalom (1987–2010);
- Világosság (1960–2009).

3. Regime Change

In Hungary – as elsewhere in Central-Eastern Europe – the fall of the Berlin Wall caused so many changes in the political system and in the society that everything from the sciences, legal regulation and education had to be redesigned and reconsidered. But these were just the consequences; the routes may be found in the lower and hidden parts of society. The influence of the revolutionary change could be seen in the economy, in society, in the way of life and in criminality as well. So when analyzing criminology and criminal legal regulation in Hungary from 1989 onwards, it is inevitable to describe the enormous changes in quality and quantity of criminality. Here it should be added that all numbers cited in the publication refer to crimes registered by the police, as the most important data source in Hungary regarding criminality is still the Integrated Criminal Statistics of Law Enforcement and Public Prosecution.

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[29] *Kerezsi & Lévay* 2009.

The crisis of socialism totally rearranged criminality in Hungary. In the socialist regime, unemployment was an unknown phenomenon: industry and agriculture operated on a state basis in 5-year plans, and though the economy was not sufficient and effective at all, social security was guaranteed. But with the political change, the pampering and safe backgrounds disappeared from the lives of many people. Those whose educational and professional qualities were not sufficient were exposed to criminality both in the form of victimization and as offenders. Uneducated and unemployed masses were affected by poverty, which automatically led to a definite growth in crime.

The most significant symptom was the radical growth in the number of crimes but the above-mentioned tendency was older than what was brought about by the 1989 change: it actually began in the late 1970s. Between 1966 and 1975 the average number of crimes committed in Hungary was 120,000 per year. In the next ten years (1976–1985), it reached 140,000, which was only the beginning of the explosion because the shock caused by criminality reached Hungary only in 1985, by which time the amount of crimes grew by 100,000 within 5 years.[30]

In 1990, the number of registered criminal acts was 341,000, which was twice as much as five years earlier. The problems and crisis caused by criminality were not just manifested in pure numbers but also in the quality of criminal deviancies and the proportion of the different types of crimes.

Table 1 Trends in Crime in Main Crime Categories (1980 = 100%)

Main crime categories	**1985**	**1990**
Crimes against the state and humanity	36.4 %	3.0 %
Crimes against the person	124.9 %	139.9 %
Violent crimes	143.7 %	154.5 %
Crimes against public order	163.5 %	157.5 %
Crimes against the safety of traffic	109.9 %	153.9 %
Economic crimes	84.8 %	162.9 %
Crimes against property	129.4 %	338.2 %

Source: Gönczöl 1991b; Original data source: The Integrated Criminal Statistics of Law Enforcement and Public Prosecution.

As evident from *Table 1,* there was only one category of crime in which a fall could be seen. This was the group of crimes against the state and humanity. This trajectory was logical in a gradually softening dictatorship, where the state became more and more lenient towards the offences and misdemeanors committed against it.

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30 Source: *Gönczöl* 1991b, 646–652; The State of Criminality in Hungary, Gondola, www.gondola.hu [16.07.014].

The other obvious thing which can be read from *Table 1* is that most of the crimes were 1.5 times higher in number than in the base year of 1980, and that the proportion of crimes against property tripled in 10 years, which is an enormous increase. We also have to add that in 1980, crimes against property totaled up to only a bit more than a half of all crimes in Hungary but in 1990 this proportion was 78%, which means that not only the amount of property-related crimes increased dramatically but also the proportion of material offences became a very important factor in the totality of criminality. As *Katalin Gönczöl* stated:

> "the overrepresentation of crimes against property clearly testifies the radical change in the value structure of the Hungarian society, as the material values, consumption and money became more important than anything else, after the social and political change in 1989. It is also remarkable that even among homicides those acts which were committed upon material grounds became more popular after 1989 than those which were triggered by passionate grounds."[31]

It should be mentioned as a relevant factor that juvenile delinquency was also peaking after the Berlin Wall had come down: the number of juveniles involved in criminality increased by 88%, as opposed to adults, whose growth was only 54%, which is a significant and symbolic rise, also indicating the moral vacuum and anomie described by *Katalin Gönczöl.*[32]

All in all, these criminal tendencies led to a serious fear of deviancies and criminality in the Hungarian society, which was reflected in the rapid and sometimes unsubstantiated twists in criminal legal regulation.

Considering these turns from 1989 until today, an interesting and colorful pattern can be drawn. The revolutionary change in the political system led to liberalization in the first decades of the country's newly built democracy, and it seemed at that time that the new political system, legislation, and ruling governments would mainly focus on human rights and would use a liberal, European attitude when touching upon the issue of criminality. Criminal enactment has tended to lean on the outcomes of criminology and criminal-sociology, and was to "tranquilize" people via modern prevention programmes instead of pure threats.

The theoretical and moral peak in this modern endeavour to cleanse the legal system was the abolition of the death penalty. Heated scientific and moral debates took place among criminal lawyers, criminologist, practitioners and academics but the final decision was made by the Constitutional Court in 1990. The decision that concluded in the abolition was partly a declaration to the European Union – by the manifestation of European values – and a "good-bye wave" and a turnover from the previous,

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31 *Gönczöl* 1991b; Original data source: The Integrated Criminal Statistics of Law Enforcement and Public Prosecution.

32 Source: The Integrated Criminal Statistics of Law Enforcement and Public Prosecution.

communist regime – by declaring the dismissal of all the reasons for taking anyone's life upon any criminal causes.[33]

The other significant legal product regarding crimes and criminality was the National Strategy for Social Crime Prevention adopted in 2003.[34] Though the Strategy was enacted 14 years after the change of the regime, it clearly represented the attitude favored by the democratic, regime-changing governments.

The Strategy was based on international patterns, and on the theoretical knowledge gathered by criminology. Its primary task was to examine and interpret the actual problems of criminality in Hungary with a broad-minded scope: by analyzing the heterogeneous phenomena of criminality and deviances, such as crimes against property, violent crimes, criminality linked to alcohol misuse and drug abuse. Within the framework of a three-level crime prevention system, problems were discussed from the constitutional level through the criminal justice system to the micro-level of towns and villages, and from theoretical issues to minor practical issues. Crime prevention was defined by 5 major focal points: juvenile delinquency, urban crime, victimization, recidivism and domestic violence.[35]

Regarding criminal legislation, we have been discussing questions outside the Criminal Code and Criminal Procedure Code. Without going into detail, I would just mention those modifications here which were put into force upon "liberal" grounds, with a theoretical background rooted in modern, international criminological knowledge.

The two modifications – which are expressly worth mentioning in the scope of liberalization and within the area of broadening diversion opportunities – are postponing the indictment and the legal opportunity for voluntary restitution, regulated by the Criminal Code in 2006.[36]

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33 *Gönczöl* 2010.

34 The National Strategy for Social Crime Prevention, decree No. 115/2003 of the Hungarian National Assembly, see in: BMK Sheets, Special Edition, Budapest, 2003/4.

35 Based upon the Text of the National Strategy for Social Crime Prevention, 2003.

36 § (1) Any person who has committed a misdemeanor offense or a crime against another person (Chapter II, Titles I and III), a traffic offense (Chapter XIII) or any crime against property (Chapter XVIII) punishable by imprisonment of up to three years, shall not be liable for prosecution if he has admitted his guilt before being prosecuted, and has provided restitution by way of the means and to the extent accepted by the injured party within the framework of a mediation process. (2) The punishment may be reduced without limitation if the perpetrator has admitted his guilt of having committed either of the crimes specified in Subsection (1), punishable by imprisonment of up to five years, before being prosecuted, and has provided restitution by way of the means and to the extent accepted by the injured party within the framework of a mediation process. The Penal Code, 2012. C.

The new procedural instrument gave the opportunity for prosecution to divert cases in an early phase, by suspending not just sentencing, but even the post-investigation, indictment-procedure. In case the indictment was postponed, the person under investigation is given another chance to avoid court, and in fact he/she does not even become an accused person. This instrument was originally created for drug-related cases but it has become rather popular in juvenile cases, too.[37]

Voluntary restitution was an inorganic texture in the body of the Criminal Code when it came into effect. By this legal institution, another opportunity was given to both prosecutors and judges to use strict and severe punishments. Voluntary restitution is special in the terms that the justice system waives the state's right to punish, and the situation generated by the criminal act returns into the hands and responsibility of the accused and the victim. They are to decide about their own cases, and if both parties are satisfied with the restitution by which the accused may compensate the damage he/she have caused, then the whole procedure can be terminated. This legal opportunity has widened the scope of diversion, and has stressed the importance of the victim in the criminal procedure.

4. Crime and Criminality: Trends in Crime in the Past 25 Years

Before following up the current modifications in criminal law – namely, before examining the new Criminal Code which came into effect in 2013 – the criminal tendencies in the past 25 years should be analysed, just to make the contradiction in legal regulation visible.

From 1990 until today, there are two crime-related periods to be separated. Until 1997/98, there was a continuous and significant rise in crime: from 1990, with 341,000 officially reported crimes, the number climbed up to 597,000 in 1998. The problem became more severe due to the fact that the number of unsolved crimes was generally very high, in the year of 1998, 268,258 of the crimes (45%) could not be cleared by police.[38]

The next period can be labeled as a time of slow and continuous decline: from 1998 to 2011, the number of crimes decreased to some 420–450,000 cases.[39]

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37 Postponing the indictment was used 6,095 times in 2007, 6,715 in 2008, in 6,974 cases in 2009, 8,168 in 2009, for 8,666 times in 2011 and for 9,103 in 2012, so a continuous development could be detected (Source: Statictical Report of Prosecution, 2012).

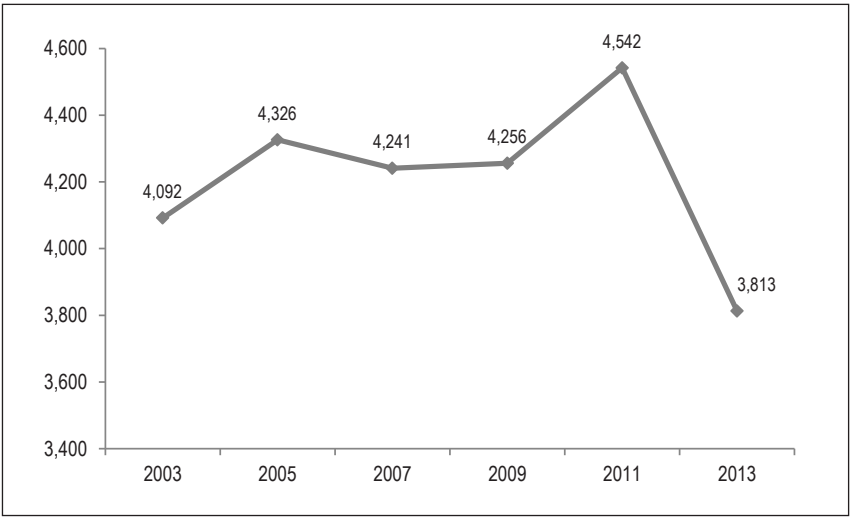
38 The State of Criminality in Hungary, Gondola, www.gondola.hu [16.07.2014], original data source: The Integrated Criminal Statistics of Law Enforcement and Public Prosecution.

39 The State of Criminality in Hungary, Gondola, www.gondola.hu [16.07.2014].

5. Current Situation Concerning Crime, Criminal Regulation and Criminology[40]

As is shown in *Table 3,* in 2011 the number of recorded crimes (see *Figure 1*) was 451,371 in total, which amounts to an average 4,542 per 100,000 inhabitants. It is inevitable to see that in 2013 there was a radical turn again: the number of criminal acts have declined to such a low level, which was last seen in 1990. As mentioned before, these numbers always stand for the registered crimes. If we have a look at the number of accused and convicted persons (see *Table 2*), there is a huge difference in between the outcome, and the discrepancy stems from two factors. On the one hand, the number of persons involved in criminality is always less than the volume of crimes committed by them and, on the other hand, as the criminal procedure advances the criminality numbers tend to decrease.

Figure 1 Registered Crimes Committed between 2003 and 2013



Source: Criminality and Criminal Justice, 2005–2013.

It is remarkable that – as it was mentioned previously – from the change of the regime until the past few years among all crimes, crimes against property have played the most important role. Thefts and burglaries have threatened Hungarian citizens most of all, and robberies also represented an important share in the total of criminality, especially in the field of youth crime.

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40 Source: Criminality and Criminal Justice, 2005–2013.

Table 2 Accused Persons and Convicted Persons

Year	2005	2007	2009	2011	2013
Accused persons	104,739	93,961	91,263	93,592	79,186
- per 100,000 inhabitants	*1,037.3*	*931.3*	*909.9*	*941.8*	*799.15*
Convicted persons	98,628	87,595	86,128	88,403	74,393
- per 100,000 inhabitants	*976.8*	*870.7*	*858.7*	*889.6*	*750.83*

Source: Criminality and Criminal Justice, 2005–2013.

But all these tendencies seem to have changed in the last years, especially from 2011 on when only 256,175 of all crimes were property crimes, which makes only 56.75% of the total of crimes of 2011. In 2013, on the other hand, only 240,368 crimes were counted in this category, which was closer to the regular proportion (63.1%) than the one measured in 2011. We should also add that theft has still remained the most common offence with 182,073 cases in 2011, and 167,657 in 2013, which meant 1,834 thefts in 2011 per 100,000 inhabitants and 1,692 in 2013.[41]

A remarkable change in crime trends appears in the second level of the criminal pyramid, in the group of crimes against public security, with a proportion of 23.9%. In this type of delinquency, a standard increase is visible, and surprisingly it is not drug-abuse that could be qualified as alarmingly high on average, though its rate has definitely increased over the last 10 years.

While summing up the problem of crimes against property, it should be mentioned that the figures available considering property crimes are always just the tip of the iceberg. It is an essential criminological axiom that the more serious the crime is, the more it is reported and investigated, therefore probably a vast majority of petty offences are hidden from official knowledge. It is also beyond doubt that by regulation and changing criminal categories, statistics can be radically changed. But still these numbers are sufficient to rely on and refer to, as tendencies usually run parallel with the crimes reported.

Table 3 Crimes against the Person – Registered Crimes

	2005	2007	2009	2011	2013
Crimes against the person of which	17,772	17,100	23,901	27,184	28,442
Homicide (including attempts)	347	332	304	328	264
Serious bodily harm	12,674	11,454	12,828	14,241	13,398
All crimes	436,522	426,294	394,034	451,371	377,829

Source: Criminality and Criminal Justice, 2003–2013.

41 Source: Criminality and Criminal Justice, 2005–2013.

Just the opposite can be stated about serious, violent crimes, especially regarding homicides. Such serious crimes are much more likely to be reported to police.

If one checks the numbers for 100,000 inhabitants per year, the trend in crimes against the person is even more visible (see *Table 4*).

Table 4 Crimes against the Person per 100,000 Inhabitants – Registered Crimes

	2005	2007	2009	2011	2013
Crimes against the person of which	176.00	169.90	238.30	273.60	287.00
Homicide (including attempts)	3.44	3.29	3.03	3.30	2.64
Serious bodily harm	125.50	113.85	127.90	143.30	135.20
All crimes	4,092	4,326	4,236	4,542	3,818

Source: Criminality and Criminal Justice, 2003–2013.

The rate of crimes involving direct attacks against a person was 4% in 2005 and 2007, it was 6% in 2009 and 2011, and it was 7.5% in 2013. Therfore it becomes obvious that crimes against the person have shown a slow but continuous increase in the distribution of crimes. Though the most violent and serious crime, i.e. homicide, including attempts, has decreased since 2003. So when discussing the frightening increase of violent acts, homicides should not be addressed as major concern.

We should also mention the proportion of robberies for two main reasons. Robbery was always unique in criminology because it is a phenomenon belonging to the category of crimes against property in the official police statistics (and in the Criminal Code) but having a violent feature when examining it from the criminological point of view. In the past few years, the number of robberies has rapidly increased: in 2003 the total number of registered robberies was 3,606, in 2005: 3,383, in 2007: 3,536, in 2009: 3,316, but in 2011 it topped at 4,687. These numbers mean 35.5 robberies per 100,000 inhabitants in 2003, 33.5 in 2005, 35.1 in 2007, 33 in 2009 and 47.16 in 2011. This rise in the number of robberies was clearly a symptom of the value change: both in the manifestation of violence and in the importance of material values, which can also be underpinned with data on violent and aggressive crimes (2003: 31,476, 2005: 32,760, 2007: 29,645, 2009: 32,046, 2011: 37,201).[42] But what really makes robbery explicitly striking is the fact that the crime is extremely

[42] This means 301.35 violent crimes in 2003 per 100,000 inhabitants, 324.4 in 2005, 294.5 in 2007, 319.46 in 2009 and 372.75 in 2011. Source: Criminality and Criminal Justice, 2003–2011.

relevant among youngsters, who are treated by the Criminal Code as children and juveniles.[43]

The age limit of criminal liability. When getting to the question of juvenile delinquency, we can clearly declare that it is one of those phenomena in criminology that could be labeled as ever-interesting, always remaining under the top five research themes. The reason why this issue is something that cannot be evaded is at least twofold and has a practical and a theoretical, partly symbolic aspect.

It is beyond doubt that the treatment of juveniles within the justice system is essentially important regarding the question of crime prevention, too. It is not at all indifferent whether a juvenile is imprisoned or is just sent on probation because this simple act can totally influence his/her whole life.

The issue of criminal liability is important because of the symbolic nature of the question. As discussed before, the treatment of juveniles has always clearly represented the ruling government's attitude towards criminality and criminals. When legislation is tolerant and forgiving with youngsters, it demonstrates the message that criminality – especially at a young age – is not necessarily something to be retaliated against; it can be prevented as well.

Considering the aim of the punishing or sanctioning of juveniles, we can say that the Hungarian Criminal Code declares that priority shall be given to special prevention rather than to general deterrence:

> 106. § (1) The aim of a punishment imposed on or a measure applied against a juvenile is primarily that the juvenile develop in the right direction and become a useful member o society. With regard to this, the measure or punishment should be selected with taking into consideration the education and protection of the juvenile.

The Code also emphasizes the importance of proportionality and individualization:

> 106. § (2) A punishment shall be inflicted when the application of a measure is not expedient. (3) A measure or punishment involving any length of incarceration may only be applied if the aim of the measure or punishment cannot be achieved otherwise (The Criminal Code, Act C of 2012)

But something crucially important was changed in the new Criminal Code, which was the age of criminal liability. The age of criminal responsibility was 14 years from 1978 to 2013. "Defendants aged between 14 and 18 are subject to the juvenile justice system, which, with its predominantly educational approach, differs from the adult criminal justice system."[44] – as *Klára Kerezsi* and *Miklós Lévay* stated in their publication.

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43 Source: Criminality and Criminal Justice, 2003–2011.

44 *Kerezsi & Lévay* 2009.

But in the new Criminal Code (Act C of 2012), which entered into force on 1 July 2013, the age limit of criminal liability was partially changed. From the Ministerial Preamble of the Act's relevant paragraph:

> "The lower age limit for punishability was not changed under the general rule, and will remain 14. In the event of committing exceptionally grave crimes, the law permits the reduction of the minimum age of punishability from 14 to 12 years in highly limited circumstances. These exceptionally grave cases include *murder* committed by minors, when it is, under any circumstances, necessary to examine the perpetrator's sanity and to ensure the availability of professional treatment. It is important to stress that, in these cases, perpetrators over the age of 12 years will not receive a punitive sentence but will be subjected to measures, and only in cases involving gravely violent offences *(e.g. homicide, grievous bodily harm or bodily harm resulting in death)*, and it is a further condition that sanity and accountability must be provable. Also in the future, these measures will not represent imprisonment but the court may order *the perpetrator's education in a correctional facility.* Education in a correctional facility will continue to remain the most serious sanction that may be imposed on perpetrators younger than 14 years."[45]

Table 5 shows that among children, the 12–13 year old generation is mostly exposed to criminality, which can be a valuable argument for lowering the age limit of criminal liability.

Table 5 Registered Offenders among Minors

Age group	Number of offenders	Percentage
0-10	600	22.11
11	424	15.62
12	663	24.34
13	1,027	37.84

Source: Criminality and Criminal Justice, 2003–2011.

But, considering all the facts examined above in the preambles of the Act, there is a remarkable contradiction we have to refer to. It is beyond doubt that the ruling government intended to convey a moral message, i.e. that extreme violence cannot be accepted even when the offender is a minor. We can say that this message in the field of juvenile criminality does not represent a tolerant attitude, though it is not expressively repressive either. But from a criminological point of view, punishing robbery committed by youngsters aged between 12 and 14 years is difficult to explain. On the one hand robbery is a kind of crime whose danger is not automatically obvious for most people. When someone threatens another person in order to get a relatively cheap object, then he/she probably would not be aware of the fact that it is

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45 Parliament has passed the New Criminal Code, Ministry of Public Administration and Justice, *Tibor Navracsics,* Dr. Deputy Prime Minister, Minister of Public Administration and Justice.

an act of robbery; this is particularly trueif such behaviour is not perceived as such within that age group. On the other hand, statistics among young offenders do not justify this amendment.

If we look at the number of minor offenders, we can easily identify a definite decline starting in 2007 (see *Table 6*).

Table 6 Registered Minor Offenders in Absolute Numbers and Their Proportion among Inhabitants

Year	Number of minor offenders (under the age of 14)	Percentage of all minors (in %)
2003	3,553	0.24
2004	3,963	0.27
2005	3,697	0.25
2006	3,565	0.25
2007	3,387	0.24
2008	3,433	0.25
2009	2,573	0.19
2010	2,607	0.19
2011	2,714	0.20
2012	2,604	0.19

Source: Criminality and Criminal Justice, 2003–2012.

But what we should consider as an even more telling argument is that the number of robberies among minors has also radically declined since 2008. In 2008 this number was 193 and 2012 a bit less than half of it, only 95.

So all in all we can say that some changes in the past few years of criminal regulation – such as lowering the age limit, three strikes[46], intermediate punishment or the wider scope of lawful self-defence – can be more easily underpinned with the inhabitants' needs and wants, rather than with criminal data and with criminological, scientific outcomes. As a symbolic remark, we can refer simply to the following paragraph:

> "As part of the discussion of the new Criminal Code, the issue of the *death penalty* was also raised in the course of the debate in Parliament; however, the application of

[46] "The new Penal Code adopts the 3 strikes law introduced in the summer of 2010 for the punishment of those committing violent crimes, thanks to which the number of apprehensions has increased by 30 per cent. The statutory rule passed in 2010 which made the denial of the crimes of the communist regime punishable the same way as the denial of the Holocaust will remain in force." (*Tibor Navracsics,* Dr. Deputy Prime Minister, Minister of Public Administration and Justice Parliament have passed the New Penal Code, Ministry of Public Administration and Justice).

> the death penalty will continue to remain excluded in Hungary in observance of Hungary's Fundamental Law, the Charter of Fundamental Rights of the European Union, the UN's International Covenant on Civil and Political Rights and other international commitments."[47]

It seems that the enthusiasm which was evident at the time when the Berlin Wall came down has lost momentum. The legislation is now not so optimistic, and considers liberal acts as something compulsory, rather than as a sign of freedom.

But to tell the truth, it should be added that it is not a specific phenomenon for Hungary, as most European countries and the USA are also struggling with problems like this. These countries also try to solve their economic problems generated by globalized markets through criminal policy, which makes people feel that social disintegration can be labeled as a sin rather than a social issue to be solved by democratic measures.[48]

6. Education and Research

If we make a short return to the topic of research and education, Hungary can still be proud of its opportunities, knowledge and of its professionals in criminology.

After the change of the regime, criminology became very important in the education of law enforcement officials, and within the framework of special courses, criminology also became part of the psychological and social sciences. At the Faculty of Humanities – mainly at the Department of Psychology – criminology courses tend to focus on child and family protection issues and the Department also runs a special course for criminal psychologists. All in all it can be declared that the science of criminology is not missing from psychologists' education, though it is taught voluntary and not as a mandatory course.

As *Klára Kerezsi* and *Miklós Lévay* state:

> "There are no separate undergraduate degree programs dedicated to criminology in Hungarian universities. Nevertheless, criminology is offered as a mandatory course at all law faculties and at the Police College. Among the eight law faculties in the country, only one (the ELTE University Faculty of Law) has a separate Department of Criminology. At the Faculty of Law of the University of Miskolc, it is the Department of Criminal Law and Criminology that is responsible for the courses in criminology, under the umbrella of the Institute of Criminal Sciences. The Institute of Criminal Sciences also offers a Ph.D. program. At the Faculty of Law of the University of Pécs, staff members of the Department of Criminology and Correctional Law are entrus-

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47 Parliament has passed the New Criminal Code, Ministry of Public Administration and Justice, *Tibor Navracsics,* Dr. Deputy Prime Minister, Minister of Public Administration and Justice.

48 *Gönczöl* 2010.

> ted with teaching criminology. The research in the department concentrates on crime prevention through environmental design (CITED), victim surveys and unreported crime. As far as the other law faculties are concerned, criminology is offered by their respective criminal law departments."[49]

An M.A. Programme in Criminology exists at the Faculty of Law in Budapest. The programme is an interdisciplinary course open to graduates in sociology, law, social work and psychology. Research focuses on restorative justice, non-custodial sanctions, crime prevention, minorities and crime, crime and social change, drugs and crime, comparative drug policy. The Faculty of Law also offers a Ph.D. programme in criminology.

We can also proudly say that from 2012/2013, the Doctoral Research School of the Faculty of Law launched a new programme called "Doctorate in Cultural and Global Criminology".[50] The programme is based on the cooperation of four universities – the University of Kent, Universiteit Utrecht, Universität Hamburg and ELTE Budapest. It functions as part of an international criminological doctoral school, to which the consortium of the four universities has won the Erasmus Mundus doctoral programme of the European Union and great financial support from the EU. ELTE has won a part of this unique doctoral programme in the field of social sciences.

And last but not least let me mention my own Institute. The National Institute of Criminology is still very active in all types of research, on different topics with various educational backgrounds among researchers, and with a broad-minded attitude in international terms, too. Currently, the main subjects are the following: violent crimes, the involvement of children and young people in crime, protection of society and crime control, global crime, risk and prevention, economic crime and crime against property and the structure of the state, public authority – regional issues.[51]

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49 *Kerezsi & Lévay* 2009.

50 www.elte.hu/en/phd/law [16.07.2014].

51 Latest projects run by NIC, www.okri.hu [16.07.2014]:

1. The social costs of penal justice;
2. New directions in 'court diversion' and restorative justice;
3. Affirming individualization and deciding on the degree of enforcement of incarceration. An examination of theory and an international perspective;
4. Opportunities for developing prevention-focused treatment programmes in penal enforcement;
5. Consequences in criminal law of overstepping the right to freedom of speech. Hate crimes in Hungary and Germany;
6. Forensic methods in prosecuting and investigating crimes of bribery (Penal Code Chapter XV Title VII). Law enforcement tools for prevention;
7. Embedding the study 'Analysing the mentality of the inhabitants of segregated estates' in the context of specialist literature;
8. Students of jurisprudence on crime and restorative justice. Empirical investigation;

And all the research relies upon the optimistic idea that the punitive tendencies of criminal policies – detected internationally – might be influenced by scientific outcomes and arguments.

7. Conclusion

Criminology has always played an important role in Hungarian scientific thinking and has usually intended to influence legislation with its – sometimes – restricted tools. Criminology is a science with an interdisciplinary and multidisciplinary attitude, with the perspectives of global thinking, and with the methods of local actions. With my paper, I tried to draw a picture of Hungarian criminology and criminologists, which clearly reflects – now for more than 100 years – the words of Prof. Dr. *Korinek* that

> "… the criminologist works with an open system. They do not have issues even temporarily closed, because both the human behaviour and the knowledge about it rapidly and continuously changes and grows. The criminologist is an official doubter, who is speculating over problems …"[52]

I am absolutely convinced that these words are real guidelines to criminologists, and upon these our role and task can be drawn up, as criminologists should always be open-minded, flexible and critical in order to make things work better.

8. Summary in Hungarian

A tanulmányban a kriminológia magyarországi fejlődését elemzem a 20. század elejétől napjainkig. A munka a tudománytörténeti kitekintésen túl részletesen foglalkozik a bűnözés alakulásával a 70-es, 80-as évektől napjainkig. Egyrészt azért, hogy felvázolja a bűnelkövetésben bekövetkezett rapid és radikális változásokat, amelyeket Magyarország a rendszerváltást követően megtapasztalt, másrészt azért, hogy rávilágítson a törvénykezés ellentmondásosságára. A szerző a tanulmányban hitet tesz amellett, hogy bár a jogalkotás populizmusa időről-időre ellentmondani látszik a tudományos eredményeknek, illetve a statisztikai adatoknak; a tudományos kutatás kitart az emberi jogok melletti elkötelezettségében, és abban a szándékában – hogy a nemzetközi, punitív tendenciák ellenére – a prevenciós szemlélet elsődlegességét hangsúlyozó és az individualizált büntetéseket favorizáló jogalkotói szándékokat támogassa.

9. The past and present of criminal psychology in Hungary, with special regard to criminological psychology;
10. GERN – Sexual deviance as signal crime;
11. Complaint mechanisms and control over penal enforcement in Eastern Europe and in the countries of the CIS.

52 *Korinek* 2002.

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Criminology in Italy between Tradition and Innovation

Ernesto U. Savona

1. Introduction

This article reflects on the situation of criminology in Italy, which the title summarizes as being "between tradition and innovation". By surveying what has been done to date in Italy in the criminological sector and considering countries other than Italy, it indicates future prospects which may prove useful to young Europeans wanting to invest in this sector and wanting to know more about criminology in Italy.

2. The Hybrid Origins

Already in the eighteenth century, despite a paucity of data, scholars like *Quetelet* (1847) and *Guerry* (1833) analysed crime in relationship to different social contexts. In particular, *Guerry* and the Italian *Andrea Balbi* (1829) studied the relationship between criminal phenomena and the education levels of criminals in the various French departments. They found that areas characterized by high levels of education and therefore of affluence recorded high rates of crimes against property.[1] In that period, the focus of analysis was on Europe and the changes ongoing in it: urbanization, the industrial revolution, and the latter's impact on social stratification. Crime was considered typical of the disadvantaged social classes, and throughout the nineteenth century the phenomenon indirectly entered the sociological debate through *Durkheim,*[2] *Marx,*[3] and scholars like *Bonger*[4], who treated the inevitability that members of the impoverished social classes would commit crimes. In short, everything was the fault of the division of society into classes. This argument was reiterated in different versions during the second half of the nineteenth century, when what is now called criminal sociology became a science studying criminal phenom-

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1 *Balbi & Guerry* 1829; *Weisburd et al.* 2009, 3.

2 *Durkheim* 1897.

3 *Marx* 1842.

4 *Bonger* 1916.

ena from a sociological perspective, or considering the social factors responsible for crimes. Criminal sociology is a mix of criminal law and sociology which pays particular attention to the functioning of penal systems and punishments.[5] In those years, immediately after the unification of Italy, brigandage spread through the Italian *Mezzogiorno*. The parliamentary commission of inquiry established in 1863 and chaired by the deputy *Giuseppe Massari* sought to understand more about the phenomenon and investigated its causes. The main question was whether the unification of Italy with its diverse cultures, economies and social models had in some way contributed to the growth of banditry.

Between the end of the nineteenth century and the beginning of the twentieth, as the positivist sociology of *Auguste Comte* intersected with the positivist school of criminal law, an attempt was made in Italy to consider crime, and above all the criminal, as a product of human development. Criminal anthropology, as defined by *Cesare Lombroso,* prevailed over sociology, and its spread in Italy and abroad signalled the desire to find an explanation other than social for criminal behaviour. In those years, in fact, criminal anthropology shifted its attention to the figure of the criminal and to the physical abnormalities, of an atavistic kind, that characterized, according to *Lombroso,* the so-called "born criminal". It thus eschewed the social dimension of crime that had been fundamental in the previous decade.[6] Those years saw the advent of clinical criminology, which, together with legal medicine, oriented many of the criminological studies conducted in Italy. It is no coincidence, in fact, that the first university chairs of criminology in Italy, and until the 1880s, were occupied by scholars with medical backgrounds, and that still today Italian criminology rests largely on psychiatry and legal medicine. This is an original feature that Italian criminologists have often revisited and updated, also drawing on the social sciences.

Whilst in Italy the social dimension was neglected for the positivist and medical one, in other countries, especially the English-speaking ones, rapid social changes set the research agenda. American sociology contributed greatly to the development of sociological studies on crime which still today serve as theoretical reference for all those concerned with the sector. Among its exponents to be mentioned in particular are the members of the Chicago School (most notably *Robert Park, Ernest Burgess, Clifford Shaw* and *Henry McKay*), *Merton*, and *Cohen*. The former, with the division of the city into concentric zones and identification of social disaggregation and cultural conflict, singled out two of the factors decisive in generating crime and deviance. *Merton* described the concept of tension between socially defined goals and institutionally recognized means in order to explain the onset of deviance.[7] *Co-*

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5 *Ferri* 1892.

6 *Lombroso* 1876.

7 *Merton* 1968.

hen, with the theory of delinquent subcultures, sought instead to explain the social reasons for the birth of juvenile gangs.[8]

These studies arrived in Italy, albeit with a certain delay with respect to the other sectors of sociology. The need to combine different perspectives – psychiatric, medical and sociological – often produced approximate analyses, the use of ambiguous scientific methods, and disappointing results. Italian sociologists only belatedly realized the importance of including deviance and crime in the Italian sociological discourse. Training was poor, and so too were the mechanisms of academic recruitment. Whereas in other countries, departments of criminology and criminal justice developed at universities, scientific journals improved in quality, in Italy applied sociology studies on deviance and crime were, and still are, meagre, with some praiseworthy exceptions. They were characterized by marked provincialism and a low level of internationalization, and they were entirely marginal in the academic sphere. This was a missed opportunity because Italy with its changes, also in terms of crime, was, and still is, a laboratory of analysis with great potential. It could furnish interesting insights into how to conjugate analysis with policies.

3. Some Research Topics

It cannot be said that there has been a lack of crime-related issues in Italy. First banditry and then organized crime in its various forms are research topics of great importance, and on these topics the social sciences, and particularly criminology, have had a great deal to say. This also applies to economic crime, which already at the end of the nineteenth century emerged in various banking scandals (exemplified by the political-financial scandal that embroiled the Banca Romana at the end of the 1800s). Corruption as the principal ingredient of these scandals and the corporate and banking frauds that occurred throughout the twentieth century reflected Italy's diverse political cultures and social and economic changes.

Because the criminology of the time had not yet developed such fundamental concepts as "white-collar crime", analysis of these phenomena was often deficient. Only during the 1950s did the criminologist *Edwin Sutherland* devise the concept of "white-collar crime" to point out that crimes were not only those committed by the non-affluent classes; crimes also were all kinds of illegal behaviour, even by persons of high social rank acting in the interests of their company by resorting to the abuse of trust.[9] These were offences envisaged by criminal law, but they were often perceived to be of minor importance in public opinion.

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8 *Cohen* 1955.

9 *Sutherland* 1983.

Whilst organized and economic crime are phenomena characteristic of both Italian and American society, other research areas gradually emerged in the complex panorama of what began to be an integrated discipline comprising sociology, law, psychology, and also economics. Not only must phenomena be understood, but institutions must be made to function, among them police forces and the judiciary. While Italian studies on the police are almost non-existent, a significant place in the criminological debate has been allocated to prison, a complex and totalizing institution, which has attracted the attention of a large body of criminological research for a variety of reasons: its custodial function, but also that of stigmatization and therefore social exclusion. This matter was of close concern to the scholars who, during the 1970s and 1980s, conceived criminology to be part of an intense political and social endeavour.[10] The concern shared by these studies was that of understanding crime, the criminal, and the individual and social causes of the phenomenon.

4. Macro and Micro

On conclusion of the conference of the American Society of Criminology held in November 2010 in San Francisco, the outgoing president *Richard Rosenfeld* emphasized the need to look simultaneously at the "big picture" of crime trends and the "small picture" with micro analysis examining the relations between crime and territory with techniques for the geo-referencing of crimes.[11] These techniques have made it possible to focus on the places where crimes occur, and to reason on the methods and techniques to prevent them: an excellent example of knowledge acquisition for policy-making purposes.

Rosenfeld thus highlighted the need to combine the macro approach used by the first criminological studies with the micro one. This latter, both because of its novelty and its enormous heuristic potential, has enjoyed much success and has had numerous applications ranging from petty offences to organized crime.

In Italy, the micro approach has been almost entirely neglected owing, firstly, to the difficulty of obtaining detailed urban data and secondly to the scant familiarity of Italian criminologists with geo-referencing techniques.

Italian criminology, in fact, is concerned more with the perpetrators of crime and their propensity for delinquency and less with the criminal event and the opportunities producing it, which arise in physical or virtual places. By long pursuing the "why" of criminal behaviour, Italian criminology has neglected the "where" and the "how". It has failed to understand that these are questions which are not mutually

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10 See the important study published in 1971 by *Ricci & Salierno* on the situation of Italy's prisons.

11 *Rosenfeld* 2011.

exclusive but complementary. Thus pursued has been a single-track line of inquiry driven by the paradigm of punishment as a deterrent. It has been generally believed, and for too long, that the prevention of crime requires the verification of guilt and then punishment of the perpetrator. But this is to neglect that, especially in Italy, most perpetrators of crimes remain unidentified, and that the scant deterrent capacity of punishment is made useless by delays in its application, often for reasons of justice. Also neglected is the fact that the majority of the opportunities to commit crimes concentrate in particular areas or places (hot spots), and that criminal behaviour arises when a potential perpetrator, a desirable objective (person or thing), and a non-existent or incapable guardian co-occur in the same place and at the same time.[12]

The result, confirmed by a large body of research, is that numerous crimes concentrate in a few places, and not by chance.[13] Crime can therefore be prevented by focusing on the places which produce opportunities and which, like the perpetrators, have "criminal careers", in the sense that as long these places are not dismantled with preventive action they will continue to generate crime.[14]

Setting the "why" aside for the moment and concentrating on the "where", i.e., the hot spots, there automatically arises the problem of the "how", that is, the methods with which criminals commit their crimes. These may be the methods used to commit a theft or a robbery or a homicide, or to organize a fraud or to traffic drugs. And with the term "method" it is necessary to refer to the set of strategies, actions, techniques, and tools that serve the purposes of criminal behaviour. Analysis of the characteristics of the "where" and the "how" is important because, on the basis of this knowledge and by augmenting it with increasingly precise data, interventions can be developed which hamper the formation of crime opportunities. If in a hot spot there develops a large amount of drug dealing and then, as often happens, alcohol-fuelled violent behaviour, preventive action by the police can discourage the demand for and supply of drugs, and thus dismantle the market. Likewise, a ban on selling alcohol drinks after a certain time, or the obligation to serve them in paper cups, can reduce the consequences for the victims of brawls. These are examples of situational prevention: that is, of techniques that, by relying on three base theories (rational choice, routine activities, and patterns of behaviour), identify ways to reduce criminal opportunities for every particular situation.

The practical successes of this approach to resolving crime issues have generated a circuit among increasingly precise data gathered on the ground, increasingly precise research on patterns of crime commission, the development of techniques with which to prevent them, and analysis of their impact to determine their effects. The

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12 *Cohen & Felson* 1979; *Felson* 1986; 1994.

13 *Sherman et al.* 1989.

14 *Sherman* 1995.

benefits of this virtuous circle have greatly influenced policing activities in numerous countries. The techniques were first applied to appropriative crimes and then to violent ones. Moreover, there has been discussion on their extension to complex offences such as organized crime[15] or terrorism.[16]

This approach has been treated with suspicion as excessively practical, and it has been criticized both for its cultural premises and the effects produced, which consist more in the displacement of crime than its reduction. Situational prevention conceives a direct link between explanations of crime and actions to reduce it. Precisely for this reason, it is considered to be sterile an approach concerned only with the "whys" of criminal behaviour, which are numerous and constantly change in time and space. It deals with factors which are not all empirically controllable and, when they are recognizable as predictors – like age and income distribution – of some forms of crime there is a lack of credible policies that can be used to intervene directly to change them. Special and general prevention become the two driving forces of prevention founded on the deterrent capacity of penal sanctions on those who have already committed a crime or intend to do so. These are interventions that in the USA have a custodial drift with massive use of incarceration and in Europe are mediated by the humanitarian principle of the offender's re-education. But in both cases they have high economic and social costs. In fact, the use of penal justice for the purpose of prevention often has a cost for the maintenance of the judicial apparatus; but it also incurs a social cost that derives from the consequences of the criminal event, which has often already happened and the repetition of which is to be prevented. In discussions on reducing crime opportunities, situational prevention seeks instead to forestall the event and therefore prevent its consequences for people and things.

The second set of criticism concerns the displacement of the effects of crime. It is often said that action on hot spots does nothing more than shift the criminal behaviour elsewhere, so that things remain as they were before. This is a prejudice that is slow to die. Research studies that have measured the effects of displacement have reached the conclusion that the interventions on hot spots more often diffuse the benefits in space and time than displace crime from one place to another.[17] In other words, direct action in certain places to reduce opportunities for robberies or violence or to dismantle local drugs and prostitution markets propagates the beneficial effects of this prevention to nearby places. In fact, the automatic displacement of crime opportunities contradicts all the research that explains how in vice markets (related to so-called victimless crimes) the sellers must establish trust relations with the buyers and with all persons working in that area or place. Such relations do not automatically repeat themselves in another place and require much time and effort. Moreover,

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15 *Savona* 2009.

16 *Clarke & Newman* 2006.

17 *Clarke & Weisburd* 1994, 169.

even when displacement occurs, this may have advantages in terms of the perception of security. It is one thing to sell drugs and consume them in a park frequented by families and children, moving this market to less innocuous places is quite another.

There is still a great deal of research to do in the sector, and this research can be undertaken if the statistical information on crime in particular places (neighbourhoods, blocks of flats, zones), and therefore at micro level, is accurate. The countries that engage in actions of this kind collect these data and make them available to all those wishing to know the criminal geography of their city, as happens for instance in London.[18] In Italy, where a centralized approach to security policy persists, the data are rarely disaggregated, and when they are, as in the SDI-system used by the Ministry of the Interior, the place of the event is recorded in a rather unreliable manner. Victimization surveys, moreover, apart from their five-year periodicity, are conducted mainly on regional aggregations – entirely useless for determining what happens in a specific place. But the problem is mainly cultural. As long as research seeks to explain the propensity to commit crimes, and police forces accordingly seek to capture criminals, the "where" of crime will be of no interest, and nobody will collect the data necessary to understand its meaning. Indeed, it is possible to imagine resistance to change is intended to leave everything as it is.

It is necessary, in fact, to realize that shifting the attention from the perpetrators of crimes to places entails large-scale cultural and organizational changes, especially in the organization of the law enforcement agencies. The latter are currently organized on provincial and municipal bases, with perimeters of action which, amid uncertainty about competences, often overlap and are duplicated. Instead, they should be organized with respect to demands for security which vary from city to city, and within the same city. Flexible organizational forms are needed to be able to understand the "where" and the "how" at micro level. Then interventions will be more immediate and efficacious, with a consequent improvement in the collection of more precise data. Perhaps those who enquire as to the "why" of criminal action will update their cognitive maps by integrating the "why" with the "where" and the "how". Criminologists started at the micro level of the individual criminal; they then moved to the macro level of the large-scale social phenomena that determine criminal behaviour; they have now returned to the micro level of places. The purpose of all this has been to understand more about crime and to improve action to reduce its consequences.

5. Conclusions

Criminology is the discipline that best summarizes the diverse analyses of the "crime problem", but it has been rather neglected at the Italian universities. Only recently does one note a reversal of tendency. In fact, in recent years the gap between the Ital-

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18 www.londonprofiler.org [17.07.2014].

ian approach to crime problems and that of other countries has diminished. Young Italian researchers write in international refereed journals; they chair sessions at international conferences; and they have learned to distinguish between the implications of research and those of policy without mixing ideology with ignorance. This recovery of international dignity by Italian criminology is a long process, and it has also required the production of better data and the ability to represent and analyse them satisfactorily.

There are numerous problems to be solved in Italy if this process is to continue: the reluctance of the universities to introduce new courses in criminology, for which there is increasing demand, the unwillingness of police forces to recast their organization in light of recent research findings in the "crime and place" field; the lack of dialogue among the psychiatric, legal and sociological traditions; and the disinclination to conduct interdisciplinary research. Finally, it is necessary to render the data on reported crimes more up-to-date by reducing the periodicity of victimization surveys, which today are conducted every five years.

6. Summary in Italian

In questo articolo l'autore descrive il cammino della criminologia in Italia dalla medicina legale e psichiatria forense alle scienze sociali di oggi, attraverso il diritto penale. Il risultato è quello di una disciplina sempre più aperta a contributi interdisciplinari che vuole negli ultimi anni svilupparsi sia sul piano teorico che applicativo a livello internazionale. I diversi problemi di criminalità che l'Italia ha attraversato nel corso di questi anni (criminalità organizzata ed economica) hanno permesso una riflessione ampia su questi temi, una conseguente raccolta di dati e lo sviluppo di *policy relevant research* sia a livello nazionale, che europeo ed internazionale.

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Criminology and Crime in Kosovo

Lavdim Krasniqi

1. Criminological Education and Research

1.1 Introduction

After 1999, Kosovo has gone through lots of socio-political developments which have had an impact also on the criminological aspects. In this regard, some crimes have been consolidated or new forms of it have been shown.

The new system established in 1999 by the international community has also impacted on the socio-cultural life here. Experts that came from different countries have brought their experiences in establishing institutions and drafting laws that were adopted by the Kosovo Parliament. Those laws were not always responsive to prevention and the fight against crime in Kosovo. On the other hand, due to the limited funds for public research institutions and the lack of experience of private institutions (non-governmental organizations), criminological education and research failed to contribute to policy making and to be the promoter of development in the field of criminology. More to the point, for individual researchers it is very difficult to conduct such research due to the lack of systematized data, reports, up-to-date books and scholarly journals, etc.

This paper strives to present the educational institutions in the field of criminology, policies regulating the field of research, the research institutions, the way of conducting such research, an analysis of criminological challenges and crime trends in Kosovo.

1.2 Education

Development of criminology in Kosovo has a modest history and is accompanied by various challenges. These challenges are part of the educational institution, lack of systematic criminological research, and lack of systematic databases which could be used by policy making authorities for the prevention and combating crime. The major institutions providing criminological education in Kosovo are:

1.2.1 Public Law Faculties

In Kosovo, there are four law faculties, but only three of them include criminology as part of their studies, as follows:

- Law Faculty of Pristina, in the fourth year of bachelor level, and the first year of master level, as a mandatory subject;
- Law Faculty of Peja, in the second year of bachelor level as a mandatory subject;
- Law Faculty of Gjilan, in the second year of bachelor level as a mandatory subject.

1.2.2 Private Law Faculties

Kosovo has quite a large number of private institutions licenced as "Colleges" which have included law faculties in their programme structure. Criminology is included as a subject within law faculties listed as follows:

- Law Faculty of "AAB" in the second year of bachelor level, and the first year of master level, as a mandatory subject;
- Law Faculty of "UBT", in the fourth year of bachelor level as an optional subject;
- Law Faculty of "FAMA" in the third year of bachelor studies and in master level in the second year, as a mandatory subject;
- Law Faculty of "BIZNESI" in the fourth year of bachelor studies and in master level in the first year, as a mandatory subject.

1.2.3 Other Public Institutions

Other public institutions which include criminology as an indirect subject on an ad hoc basis are the Kosovo Judicial Institute[1] and the Kosovo Academy for Public Safety.[2] These two institutions have foreseen discussion of criminological aspects within criminal law modules.

1.2.4 Regulation/Law Defining Scientific Areas

Kosovo adopted a new Law on Scientific-Research Activity in 2013. This law regulates the establishment, activity, organization, governance, rights and obligations of scientific workers and researchers, the position of the National Science Council, approval and implementation of the National Science Program and financing basis of scientific-research activity. The National Science Program adapted by the National Science Council determines its priorities, one of which is "social and economic study". This priority mentions different research activities, but not those related to the field of criminology.

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1 The Kosovo Judicial Institute is a public institution in charge of training sitting and future judges and prosecutors of Kosovo as it is described under 1.3.1 in this article.

2 The Kosovo Academy for Public Safety is an institution that trains police, customs and correction officers.

1.2.5 Criminological Textbook

The main criminological textbook used for education in Kosovo is: *Ragip, Halili* (1995), Criminology. University of Pristina, Law Faculty, 409 pages. This textbook is revised and updated with new textbooks based on the older one during 2000, 2002, 2005, 2007 and 2008.

1.3 Research

The main challenges in the area of social science research, including criminology, in Kosovo is the lack of official statistical data on economic and social development. Although it is expected to be difficult to have reliable data in a country where the informal economy level is high, the government and its agencies have failed to develop a reliable database pertaining to economic and social processes. One of the greatest difficulties facing research in Kosovo is the poor and outdated collections and the lack of international magazines in Kosovo's libraries. Institutions in Kosovo that conduct research are as follows:

1.3.1 Kosovo Judicial Institute (KJI)

As the main institution for training within the judicial system of Kosovo (Law nr. 02/L-25, Article 1.7), the KJI has the following responsibilities: Organization and assessment of the Preparatory Exam (Article 2.1.b and 7), Organization of training for the potential office holders – Initial Legal Education Program (Article 2.1.a, Article 7 and 8), Organization of training for office holders in judiciary – Continuous Legal Education Program (Article 2.1.a), Organization of special training courses for promotion of judges and prosecutors (Article 10), Organization of training courses for lay judges, Organization of training courses for other professionals in the area of the judiciary as identified by the KJI, that are closely linked to the justice system, Development of short, medium and long term plans for an efficient, effective and impartial judiciary (Article 2.2.a), Other professional activities as a professional and research institution for the development of the judiciary in Kosovo in line with the European standards (Article 2.2.b).[3]

1.3.2 The Institute of Criminology and Criminal Justice

The aim of the Institute of Criminology and Criminal Justice is to conduct and deal with: scientific researches in the field of criminology and criminal justice, to cooperate with local elected and foreign institutions, to publish scientific research journals, to organize conferences and symposiums in order to exchange its views and experi-

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3 www.igjk.rks-gov.net/en/about-us [17.07.2014].

ences in the professionalized field of criminology, criminal justice and issues related to security, in order to develop and train people who work in this area.[4]

1.3.3 Kosovo Law Institute (KLI)

The KLI conducts research, organizes events (roundtables/conferences) and engages in advocating in the following fields: judicial reform, rule of law, legislative initiatives, implementation of laws, compatibility of national legislation with the standards of EU and UN, legal education.[5]

1.3.4 The Institute for Researching War Crimes in Kosovo

The Institute is a public research institute within the Ministry of Justice with the purpose of coordinating, tracking and researching war crimes, crimes against peace, genocide crimes and other serious offences against international law.

Some of its key tasks are: collecting, processing, classifying and archiving cases of war crimes, crimes against humanity and values protected by the international law, starting from the year of 1990 until 1999. This includes the analysis of the crimes committed and other relevant events, processing them, verifying and developing a database, notes and other cases for criminal prosecution and for the use of other specialized institutions. Preparing the statistical data and the other relevant data on the results will be published and will be part of the research results conducted by national and international experts.[6]

1.3.5 FOL Movement (English meaning: Speak Up! Movement)

The FOL Movement is an independent NGO, based in Pristina, which focuses its work on public expenditure, fighting various forms of corruption and institutional negligence, as well as promoting accountability.

Through policy research, advocacy, technical and institutional support, monitoring of public institutions, conferences, seminars, roundtables and other forms of mobilization and networking, as well as debate and debate training programs, FOL increases public pressure on decision-makers to reduce abuse of public power. In addition to strengthening the transparency and accountability of decision-making authorities and public officials, FOL works to open up new channels of communication between government and citizens and reduce civic apathy.[7]

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4 www.iccj-rks.org [17.07.2014].

5 www.kli-ks.org/rreth-ikd/ [17.07.2014].

6 www.md-ks.org/?page=2,180 [17.07.2014].

7 www.levizjafol.org/?FaqeID=11 [17.07.2014].

1.3.6 KIPRED – Kosovar Institute for Policy Research and Development

KIPRED's mission is to promote and consolidate democracy and democratic values in Kosovo and the region through independent research, capacity development, and institution building. KIPRED's objectives are to conduct and develop independent public policy research in the fields of democratic governance, and regional and international affairs and security, to influence public policy-making processes, to build accountable public institutions, to provide lessons learned in peacekeeping, peace-building, institution-building, post-conflict development and transition; to provide resources for the development of professional research and quality analysis in public policy and social sciences.

1.3.7 The Balkan Investigative Reporting Network BIRN Kosovo

An independent non-governmental organization, BIRN Kosovo, exists to provide momentum to the democratic transition process, promoting accountability, rule of law and policy reform.[8]

1.3.8 The Dominant Approaches to Empirical Criminological Research

Having in mind that the criminological research in Kosovo is not advanced and that there is currently no research that would impose any change in policy in this field, the few researchers that have conducted studies at the above-mentioned institutions have relied on qualitative research methods. The researchers mainly focus on observations, narratives and documentary analysis. However, there are cases when surveys are used as well as statistical tools in the collection and interpretation of data.

In Kosovo, there is no major debate regarding criminological theory and/or research. Unfortunately, in Kosovo there does not seem to be a connection between, on the one hand, criminological theory and research, and, on the other hand, the government.

The major criminological studies which have been conducted in Kosovo are done through qualitative methods. Currently, corruption and electoral fraud are the only crimes that attract researchers.

Currently, Kosovo is not participating in ICVS, European Sourcebook, ISRD, etc., and there is no specific criminological journal in Kosovo. The only scholarly journal is "E Drejta" ("Law").[9]

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8 www.birn.eu.com/en/network/birn-kosovo-home [17.07.2014].

9 http://juridiku.uni-pr.edu/Revista--E-Drejta-.aspx [17.07.2014].

2. Crime Trends and Problems

The major sources of data about crime in Kosovo are reports of the Kosovo Police, State Prosecutor and Kosovo Judicial Council[10]. Access is not an issue, but there are no clear systems of providing harmonized information having in mind that a criminal case goes through different phases until final judgement and execution of it.

Table 1 Types of Criminal Offences, Number of Cases and Persons Suspected as Perpetrators

No.	Criminal offences	Cases		Suspects	
		N	Rate per 100,000	N	Rate per 100,000
1	**Murder**	47	2.57	267	14.63
2	**Human trafficking**	65	3.56	367	20.12
3	**Soliciting hatred**	3	0.16	16	0.87
4	**Domestic violence**	477	26.15	736	40.35
5	**Terrorism**	4	0.21	27	1.48
6	**Criminal offences against human rights and liberties**	1,010	55.37	2,052	112.50
7	**Criminal offences against sexual integrity**	32	1.75	117	6.41
8	**Criminal offences against marriage and family**	23	1.26	45	2.46
9	**Criminal offences against public health**	366	20.06	994	54.49
10	**Criminal offences against economy**	479	26.26	1,211	66.39
11	**Criminal offences against property**	359	19.68	711	38.98
12	**Criminal offences – merchandise smuggling**	120	6.57	374	20.50
13	**Criminal offences – organized crime**	11	0.60	248	13.59
14	**Criminal offences against environment**	3	0.16	8	0.43
15	**Criminal offences against human safety and property**	447	24.50	814	44.62
16	**Criminal offences against justice administration**	1	0.05	1	0.05
17	**Criminal offences against property**	1,445	79.22	3,456	189.47
18	**Criminal offences of falsification**	622	34.10	1,157	63.43
19	**Criminal offences against official duty**	376	20.61	1,670	91.57
20	**Criminal offences of money laundry**	21	1.15	167	9.15

Source: These data are taken from the State Prosecutor Report for the year 2013; rates by own calculation, based on Kosovo census 2013.

[10] Kosovo Judicial Council is an independent institution in charge with the administration of the judiciary in Kosovo.

Table 2 Corruption Cases during 2013 in Comparison with 2012

Special department – anti corruption	2012	2013	Change
Initiated cases	19	17	-11%
Concluded cases	8	9	+13%

Kosovo has particular crime problems especially with organized crime, corruption, financial crime and informal economy. Despite the fact that Kosovo's authorities have adopted a legislative framework and established different mechanisms to fight corruption and organized crime, in practice these two criminal activities are continuously present in the public and private sector. Public opinion on the extent of corruption is still high, but the number of cases registered by Kosovo Police shows that not a big number is reported.

3. The Criminal Justice System

According to the Kosovo Constitution and laws, courts and prosecution offices are independent, while the correctional and probation services are under the supervision of the Ministry of Justice.

Until April of 2004, criminal laws approved in the former Yugoslavia were applied in Kosovo. Thereafter, the Provisional Criminal Code, Provisional Criminal Procedure Code, Law on Execution of Criminal Sanctions and Juvenile Justice Law were approved. These laws created the basis for a substantial reform of the criminal system of the Republic of Kosovo. After several years of application, judicial practice identified a number of deficiencies and gap which led to numerous legal revisions.

The changes began with the Juvenile Justice Law, which in 2010 was transformed into a Juvenile Justice Code, while in the same year was issued a new Law on Execution of Criminal Sanctions. After numerous changes, from January 2013 the Kosovo criminal system has adapted the new Criminal Code and new Criminal Procedure Code.

According to this legal infrastructure, Kosovo's criminal justice system is a mix system, (accusatory-inquisitor) with significant elements drawn from the Anglo-Saxon system.

Based on the criminal legislation of Kosovo, the responsibility for developing and leading the investigation is that of the state prosecutor. In all criminal cases, police work under the supervision and orders of the state prosecutor. The court is a procedural subject and only has the role of serving justice, without the possibility to interfere with the investigation or evidence gathering.

The minimum age of criminal responsibility in Kosovo is 14, whereas there is no difference regarding gender, race or ethnicity.

Prior to the filing of an indictment, the minimum of detention on remand is 30 days, while the maximum is 18 months. After the filing of an indictment the detention on remand can be decided only by the court order until the end of the trial, but only after hearing the prosecutor[11].

Imprisonment sentences foreseen by the Kosovo Criminal Code are: punishment of lifelong imprisonment and punishment of imprisonment. The minimum of punishment of imprisonment is 30 days, while the maximum is 25 years. The term of juvenile imprisonment may not be less than six months nor more than five years. The maximum term of juvenile imprisonment shall be ten years for serious criminal offences punishable by long-term imprisonment, or if the minor has committed at least two concurrent criminal offences each punishable by imprisonment of more than ten years[12].

The European Union has supported various projects in order to improve the criminal justice system in Kosovo. In particular, it has supported the Ministry of Justice and the judicial system, with a focus on capacity building and the establishment of proper structure of laws and institutions. However, the main projects such as the Criminal Code and Criminal Procedure Code have been implemented by American projects through US-DoJ. As a result of these projects, reforms in our country's criminal system are implemented under the influence of the USA system. Policy-making authorities had no explanation for this, except expression of intent to increase efficiency in criminal proceedings and the aim to get support from positive experiences.

The main problem of the Kosovo criminal system is a big number of cases, insufficient number of judges and prosecutors and the existence of corruption in the security and justice sector. To address these problems there are many new laws and established mechanisms (institutions and task forces), but eliminating them remains a serious challenge.

One of the main problems remains the lack of a concrete database with information which would eliminate public doubts in the efforts of police, prosecutors and judges. The judiciary is currently working on a new electronic case management system which is foreseen to make the system more effective, efficient and increase public transparency.

The possibility for involvement or influence of politics and media in the criminal justice system is protected by legislation, but in reality happens through various forms. Being a small country, faced with comprehensive reforms, Kosovo still has an inadequate law enforcement culture.

The media in general have made some progress, though the media is not completely independent from politicians who, through media activities, try to put pressure on the judiciary, especially for high-profile cases relating to corruption and organized crime.

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11 Kosovo Criminal Procedure Code No. 04/L-123 13, December 2012.

12 Kosovo Juvenile Justice Code No. 03/L-193, July 2010.

4. Conclusion

In scrutinizing the criminal education and research for the purposes of this study, it is observed that there is a lack of original publications in the field of criminology and a lack of infrastructure for research in this field. Also, there are no efficient and harmonized databases which provide information needed for the purpose of criminological studies. This situation clearly shows the lack of vision expressed by the public authorities for the development of criminology as a science. Mainly private initiatives are in the initial phase of criminological research and they still need to be further developed. Criminology needs serious support in order to meet proper standards of the field and to contribute to policy making and the establishment of better responses to crime trends in Kosovo.

5. Summary in Albanian

Ky punim trajton edukimin dhe hulumtimin ligjor në Kosovë në njërën dhe kriminalitetin dhe trendët e tij në anën tjetër. Në kuadër të pjesës së parë 'zhvillimet e edukimit dhe hulumtimeve në fushën e kriminologjisë në Kosovë', fokusi është në elaborimin e institucioneve kryesore (publike dhe private) që ofrojnë edukim në këtë fushë, përfshirë burimet kryesore për edukim. Po ashtu në kuadër të kësaj pjese trajtohen sfidat kryesore në fushën hulumtimeve kriminologjike dhe institucionet që aktualisht angazhohen në fushën e hulumtimeve përfshirë fushat e specializimit të tyre dhe referencat të publikimet e tilla. Në pjesën e dytë prezantohen dhe analizohen të dhënat e institucioneve përgjegjëse për luftimin e kriminalitetit, duke u fokusuar në format e krimeve, rastet e iniciuara dhe ato të përfunduara përfshirë dhe numrin e të dënuarve. Një vëmendje e veçantë i kushtohet sistemit të drejtësisë penale ku analizohet struktura legjislative dhe zhvillimet kryesore në këtë fushë. Punimi përfundon me observimin se ka mungesë të publikimeve në fushën e kriminologjisë dhe në përgjithësi mungon infrastruktura për hulumtime në këtë fushë. Po ashtu konstatohet se nuk ka një databazë efikase dhe të harmonizuar për këtë qellim. Si konkluzë të fundit ky punim konstaton se Kriminologjia si shkencë në Kosovë ka nevojë për mbështetje të fuqishme me qellim të kontributit të saj në përcaktimin dhe përgjigjen në parandalimin dhe zvogëlimin e trendëve të kriminalitetit në Kosovë.

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Criminology and Crime in Macedonia

Gordana Bužarovska

1. A Brief Outline of the Demographic and Socio-Economic Background

According to a national census in the year 2002, Macedonia had 2,022,547 inhabitants at that time.[1] By the end of 2012, the population increased slightly to 2,062,294 inhabitants. In 2003, persons older than 65 represented 10.6% of the total population (with an increasing trend), while the age group between 0 and 14 years represented 21.1% (decreasing). The current population growth rate is 0.22%; in 2012, the birth rate was 11.4 live births per 1,000 inhabitants.

According to the 2002 Census, the ethnic composition of the country was comprised of: 4.2% Macedonians, 25.2% Albanians, 3.8% Turks, 2.7% Roma, 1.8% Serbs, 0.4% Vlachs and 1.9% others. As far as religion is concerned, the figures were: Macedonian Orthodox 64.7%, Muslims 33.3%, other Christians 0.37%, other and unspecified 1.63% (2002 Census).

Macedonia is a country with one of the lowest Gross Domestic Product (GDP) rates per capita in Europe.[2] The GDP real growth rate was 2.9% in 2010 and 2.8% in 2011. The GDP per capita in Euros was 3,434 in 2010 and 3,630 in 2011.[3]

Macedonia is in the "orange-red" zone of the corruption perceptions index: from 2011 to 2013 the index showed a slight change from 39 to 44 which means that the country was upgraded from rank 69 to 67. Nevertheless, corruption continues to be a serious concern and problem.[4]

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1 Census 2002.

2 www.tradingeconomics.com/macedonia/gdp-growth [18.07.2014].

3 www.epp.eurostat.ec.europa.eu/statistics_explained/index.php/GDP [18.07.2014].

4 cpi.transparency.org [18.07.2014].

2. Criminological Education and Research

2.1 Education, Bibliography, Publishing

The major institution providing criminological education is the Faculty of Law "Iustinianus Primus" in Skopje, where the subject has been taught for more than 60 years, in the early years in the context of a joint curriculum together with penology. In lack of a separate curriculum, victimology is included in the criminology programme. Criminology courses are also offered at the law faculties of the other three state universities in Stip, Bitola and Tetovo, as well as at the Faculty of Security in Skopje.

In the academic curriculum, criminology can be studied in the first (Bachelor of Laws), second (Master of Laws) and third (Ph.D.) cycles of legal education. Unfortunately, there is no particularly criminological master's course or doctoral research school in Macedonia.

According to the International Standard Classification of Education, there are two separate codes for criminology. One – 50826.Criminology – is a part of the area "5.Social science, field – 508.Law". The other one – 51603.Criminology – belongs to the "5.Social science, field – 518.Security".

Bibliographical data on major criminological textbooks:

- *Проф. д-р Љупчо Арнаудовски* (2007). Криминологија (Criminology). Скопје, Печатница: 2 Август С-Штип, 777 стр.
- *Кајзер, Гинтер* (1996). Криминологија (Criminology). Скопје, Александрија, Скопје, (превод од германски: проф. д-р Ѓорѓи Марјановиќ – translation from German: Prof. Dr. Gjorgji Marjanovic, Ph.D), 512 стр.
- *Проф. д-р Зоран Сулејманов* (2000). Македонска криминологија (Macedonian Criminology). Графохартија, Скопје, 845 стр.
- *Проф. д-р Татјана Велкова* (2009). Вовед во криминологија, учебно помагало, (Introduction in criminology, authorized lectures). Печатница: 2 Август С-Штип.
- *Стеван Алексоски* (2009). Криминологија (Criminology). Универзитет „Гоце Делчев", Штип.

The most important criminological journal is the "Macedonian Review for Criminal Law and Criminology", which is published by the Macedonian Association for Criminal Law and Criminology (Македонска ревија за казнено право и криминологија, Здружение за кривично право и криминологија на Република Македонија).[5]

Criminological articles are also published in following journals:

- E-journal "Iustinianus Primus Law Review". With articles only in English;[6]
- Годишник на Правниот факултет "Јустинијан Први" во Скопје (Yearbook of the Faculty of Law "Iustinianus Primus").

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5 Available at www.maclc.mk [18.07.2014].

6 www.law-review.mk [18.07.2014].

2.2 Criminological Research and Implemented Projects

There are very few criminological research projects in Macedonia, as research budgets have steadily decreased over the years. The Institute for Sociological and Political Research[7] has undertaken some research in the fields of criminology, penology and victimology.

Some of the criminological issues that are currently studied through the financial and organizational assistance of Non-Governmental Organizations (NGOs) are:

Trafficking in human beings:[8] Prior to 2004, Macedonia was considered to be, first of all, a transit country in terms of illegal cross-border smuggling, but also a final destination country for human trafficking, a trade primarily involving the movement of (mostly) women from Eastern Europe for the purpose of (mainly sexual) exploitation. In the period from 2005 to 2010, Macedonia faced a visible phenomenon of internal trafficking from different parts of Macedonia, mostly from the eastern to the western parts of the country. In almost all cases, the victims are young females with different ethnic backgrounds that originate from poor families with low economic status and have invariably experienced family violence either as victims or as witnesses. Completed primary school education is rare. Changes in the techniques used have been noticed over time: a potential lover or partner is now used as recruiter to fool the girls, meaning there is less physical violence and freedom of movement is not as limited. As far as places of exploitation are concerned, private apartments, weekend houses and beauty salons are now commonly used; in the past, sexual exploitation mostly occurred in nightclubs and restaurants.

Family violence:[9] In a patriarchal society where a father or husband had always the dominant role, there is a syndrome of trans-generational learned behaviour that has developed a high threshold for the tolerance of violence, with it being considered as something quite normal and acceptable. Victims of trafficking are from vulnerable groups that are poverty stricken, unemployed, poorly educated, uninformed, culturally and ethnically marginalized and without alternatives. Since 2004, the Criminal Code has specified "family violence" as an aggravating circumstance for imposing more severe criminal sanctions. According to ESE, every second woman in the country is a victim of psychological violence, every sixth woman has suffered physical violence, while every tenth has experienced sexual violence. Unfortunately, domestic violence has constantly increased over the last 10 years. The research for the "dark figure of domestic violence", conducted in 2000, determined the following

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7 www.isppi.ukim.edu.mk/ [18.07.2014].

8 NGOs – Open Gate, www.lastrada.org.mk/index_eng.asp [18.07.2014]; BMZ/GIZ supported Programme on Social Protection and Prevention of Human Trafficking (SPPHT), Macedonia.

9 NGOs – ESE, www.esem.org.mk/en/ [18.07.2014]; Кризен центар "Надеж", www.krizencentar.org.mk [18.07.2014].

levels of violence: psychological – 61.5%, physical – 23.8%, and sexual – 5%. Data derived from the survey "Life in shadow", conducted in 2007, brought slightly different figures than those indicated before; the figures presented are: psychological violence – 56.4%, physical – 17.7%, and sexual – 10.6%. Research conducted in 2010, finally, found the following: psychological violence – 64.8%, physical – 27.7%, and sexual – 13.8%. There is thought that the number of unreported crimes (dark and grey figures) is very high due to the fear of consequences through secondary victimization or because the victim is financially dependent on the aggressor.

Roma integration:[10] Under the Decade of Roma Inclusion 2005–2015 programme which was based on the approach that education is the best model for social integration, the Open Society Foundation Macedonia (SOROS) has been carrying out projects for almost a decade aiming at increasing the level of education among Roma people. These projects include: Roma Education Programme (2004–2010); Alliance for the Inclusion of Roma in Education (2005–2009); Equal Educational Opportunities for Roma Children (2006–2009) as well as annual scholarships allocated for Roma students for undergraduate, postgraduate and doctoral studies. A project on the quality of police services in Roma populated areas (2007–2008) had the purpose of overcoming potential stereotypes and prejudices of policemen by familiarizing them with the culture and history of the Roma and by offering them training courses on social justice designed to enable them to acquire an active approach towards overcoming stereotypes and prejudices. Enhancement of the socio-economic status of Roma was the main purpose of a set of further projects: one had the focus on Roma women, their socio-economic status and their possibilities for self-employment (2005–2006), a further project addressed techniques of micro-financing in order to improve the housing conditions of Roma people (2007), and specific training courses on financial literacy and entrepreneurial skills were offered to Roma (2008).

Sexual abuse of children (paedophilia):[11] The Republic of Macedonia has ratified the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and signed the Third Optional Protocol to the Convention on the Rights of the Child. Nevertheless, sexual abuse of children has increased over the last decade and is a widely acknowledged problem, addressed by the Ministry for Labour and Social Policy, Centres for Social Work, NGOs and the legislator. The impression that the public has received through media news and reports has unfortunately been confirmed by research into the sexual abuse of children conducted in 2010 with financial support of UNICEF Macedonia.[12] According to the research findings, child victims are: most often girls aged between 10 and 13 (87%, the youngest victim was only 4 years old); born in wedlock with both

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10 Foundation Open Society Macedonia, www.soros.org.mk/en [18.07.2014].

11 UNICEF Macedonia; NGOs – First Children's Embassy in the World "Megjashi", www.childrensembassy.org.mk/ [18.07.2014].

12 www.unicef.org/tfyrmacedonia/UNICEF_Sexual_Abuse_Study_ANG_za_WEB(1).pdf [18.07.2014].

parents alive (69% of child victims lived with both parents); tend to live in larger families than the general population. The profile of perpetrators consists of the following facets: The majority of them (93%) were male, aged 18 upwards; 52% had only completed elementary education; 45% were either married or were in an extramarital relationship; and 83% were first-time offenders. When it comes to the steps taken by the legislator – sentencing policy for perpetrators of sexual abuse of children under 14 years has been drastically intensified: until 2008 imprisonment of at least four years; from 2008 to 2014 imprisonment of at least 10 years; since 2014 imprisonment of at least 12 years and, depending on the consequences (severe bodily injury, death, if the crime was committed in a cruel way), imprisonment of at least 15 years. The Ministry for Labour and Social Policy has, since 2012, established an online register of those convicted of child sexual abuse and paedophilia.[13] Every user is able to search for persons convicted of paedophilia by name, place of residence, judicial decision, and type of criminal offence. Pictures of convicted paedophiles are also posted. Along with the online register, since 2014 the Criminal Code has stipulated the use of chemical castration (known as "Medical-pharmacological treatment" (Art. 65-a, CC)). Its implementation has not yet started, as additional provisions in the Law on the Execution of Sanctions are first required.

3. Crime Statistics

3.1 Available Statistical Data

Due to the absence of uniform methodology for gathering statistical data, no comparable statistical data are available. Statistical data from the State Statistical Office are based on the number of perpetrators. On the contrary, statistical data from judiciary institutions are based on the total number of criminal offences committed. This means that the statistics are not at all comparable and are a major problem when analysing particular details of crime in Macedonia.[14]

The major source of data about tendencies and characteristics of crime is provided in the State Statistical Office's Annual Reviews,[15] the Annual Reports of the Directorate for Execution of Sanctions,[16] the Annual Reports from Public Prosecution Offices and from some primary courts. Data is also available from daily bulletins for reported criminal offences at the official website of the Ministry of Interior.[17] Regarding juveniles as perpetrators or children at risk, data are also available at the website of the State Council for Prevention of Juvenile Delinquency.[18]

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13 www.registarnapedofili.mk/ [18.07.2014].

14 *Foucault* 1977; *Maguire* 2007.

15 www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6 [18.07.2014].

16 www.pravda.gov.mk [18.07.2014].

17 www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=392 [18.07.2014].

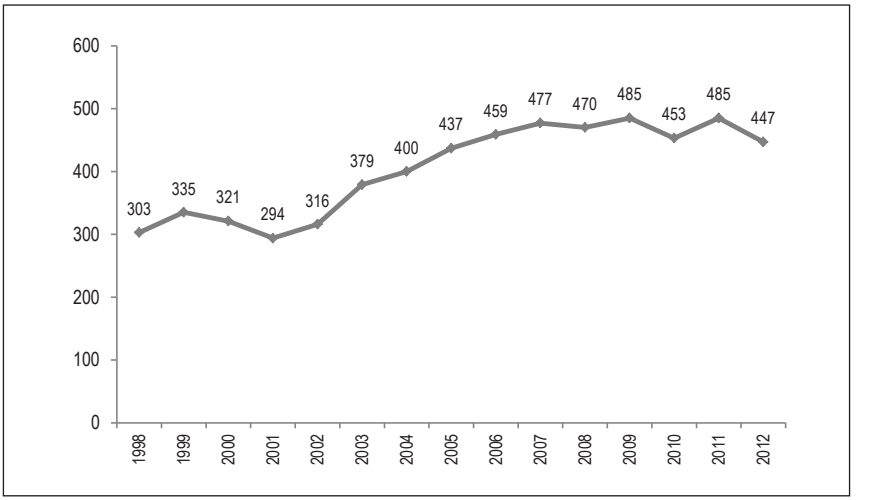
18 www.dspmp.com.mk/ [18.07.2014].

3.2 Convicted Adult Perpetrators by Different Risk Factors

3.2.1 Overall Crime Rates and Crime Trends

Analysis of the data from the State Statistical Office's Annual Reviews indicates that over a period of fifteen years (1998–2012) the number and percentage of convicted adult perpetrators has been increasing. Accordingly, the number of convicted adults per 100,000 inhabitants increased by 47.5% within the analysed period (*Figure 1*). The data are calculated at 100,000 inhabitants with total population of 2,022,547 (according to the 2002 Census).

Figure 1 Convicted Adults per 100,000 Inhabitants



Source: www.stat.gov.mk [18.07.2014].

Official statistics should be taken with caution due to the fact that they are not reflecting the real picture of crime. A decreasing number of convicted perpetrators does not necessarily indicate that crime has decreased. In addition, the "dark figure of criminality", i.e. unreported crimes, have to be considered, as well as the "grey figure of criminality" that encompasses reported criminal offences that have not been formally tried before a court due to difficulties collecting relevant evidence by the police, authorities with investigative powers (financial police, custom office, revenue office, etc.) and the Public Prosecution Offices.[19]

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19 *Arnaudovski* 2007; *Konstantinović-Vilić & Nikolić-Ristanović* 2003; *Ignjatović* 1996.

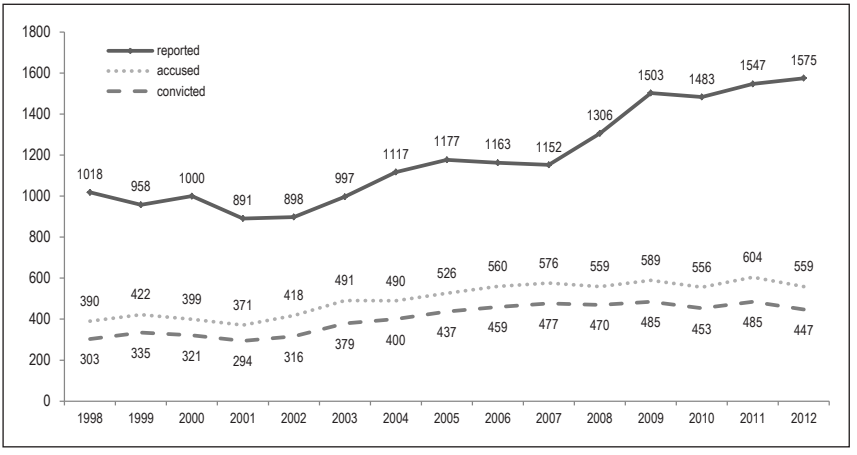
Whether or not a crime is reported to the police is dependent on many factors. Non-reporting might be explained by several circumstances such as, in particular, type of crime, period of day/night when it happened, connection with family life, relationship issues, etc. Self-report studies and victim surveys can help to understand reasons for reluctance to report crime. Modern types of criminal offences (cyber-crimes, organized economic crime, financial misconduct outside the country) are sometimes difficult to discover, and even if they came to the attention of the police they are often difficult to successfully prosecute (i.e., to be brought to courts and to be convicted) since they require special knowledge, skills and techniques to detect and gather evidence.

Many victims fear secondary victimization by community members (for example in case of rape at night, sexual abuse of children by a family member), and/or revenge by the perpetrator (especially in cases of family violence). They also express low confidence in the commitment and the ability of the police to take the necessary actions to trace the perpetrator and gather evidence. Fear may also become evident when anticipating the judicial procedure where the victim cannot avoid facing the truth, the media, confrontation with own mistakes or even a possible contribution to the commission of the crime. They are also worried about the protection of their private life and, in some cases, want to avoid meeting the offender and his/her family as this could have a burdensome impact on the victim.

Figure 2 shows the rates of reported, accused and convicted adults per 100,000 inhabitants.

The statistical data show that only 43% of reported perpetrators have been accused and 80% of those accused have been convicted. When comparing the rate of convicted per-

Figure 2 Reported, Accused, and Convicted Adults



Source: www.stat.gov.mk [18.07.2014].

sons out of the total number of reported perpetrators, only 1/3 of all reported perpetrators have been convicted. This implies that there are 2/3 of reported persons against whom the public prosecutor was not able to gather evidence about their alleged criminal responsibility. In addition, for 20% of the accused perpetrators the public prosecutor was not able to prove their guilt beyond reasonable doubt (for absolute numbers see *Table 1*).

Table 1 Reported, Accused, and Convicted Adults

Year	Reported	Rep. per 100,000 inhab.	Accused	Accused per 100,000 inhab.	% of accused out of rep.	Convicted	Convict. per 100,000 inhab.	% of accused out of convict.	% of convict. out of rep.
1998	20,582	1,018	7,891	390	38	6,128	303	78	30
1999	19,383	958	8,533	422	44	6,783	335	79	35
2000	20,220	1,000	8,078	399	40	6,496	321	80	32
2001	18,018	891	7,509	371	42	5,952	294	79	33
2002	18,171	898	8,450	418	47	6,383	316	76	35
2003	20,161	997	9,926	491	49	7,661	379	77	38
2004	22,591	1,117	9,916	490	44	8,097	400	82	36
2005	23,814	1,177	10,639	526	45	8,845	437	83	37
2006	23,514	1,163	11,317	560	48	9,280	459	82	39
2007	23,305	1,152	11,648	576	50	9,639	477	83	41
2008	26,409	1,306	11,310	559	43	9,503	470	84	36
2009	30,404	1,503	11,905	589	39	9,801	485	82	32
2010	30,004	1,483	11,239	556	37	9,169	453	82	31
2011	31,284	1,547	12,219	604	39	9,810	485	80	31
2012	31,860	1,575	11,311	559	36	9,042	447	80	28
Total	359,720	1,186	151,891	475	43	122,589	404	80	34

Source: www.stat.gov.mk [18.07.2014].

3.2.2 Type of Criminal Offences

Adult perpetrators most frequently commit criminal offences against property − theft, burglary, robbery, armed robbery, fraud and extortion (see *Table 2* and *Figure 3*). This aetiology can be explained by increased alcohol misuse and illicit drug use with the main purpose behind the crimes to get money or valuable goods that can be quickly and easily sold. Perpetrators usually use violence and show a lack of respect for the age or medical condition of their victims.

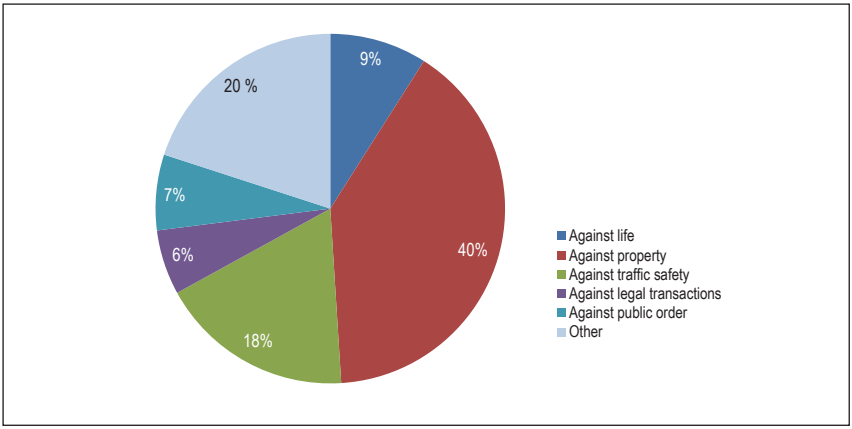
Available data from Local Strategy (2008–2013) on drug use show that in 1990 the total number of persons registered for having misused drugs was as low as 314; in 2000 the number had grown to 4,569 persons and increased in 2007 to a total of 8,345 people registered. According to the information provided by the Ministry of Interior for 2007, out of 8,345 registered drug addicts, 90% were unemployed and between 20 and 40 years of age, 75% were Macedonians and 15% Albanians. Infor-

Table 2 Convicted Adult Perpetrators by Types of Criminal Offences (in %)

Type of criminal offence	2007	2008	2009	2010	2011	2012	%
Total	**9,639**	**9,503**	**9,801**	**9,169**	**9,810**	**9,042**	
Against life	9	9	9	9	10	9	**9**
Against property	41	40	42	38	41	38	**40**
Against traffic safety	18	19	19	18	18	16	**18**
Against legal transactions	7	6	6	5	5	4	**6**
Against public order	7	6	7	6	7	7	**7**

Source: State Statistical Office.

Figure 3 Convicted Adult Perpetrators by Types of Criminal Offences



Source: State Statistical Office.

mation about addiction and alcoholism (2008) indicates that from 1990 to 2006, the number of registered drug users has increased 25 fold.

According to the strategy for reducing the harmful consequences of alcohol abuse (2008–2012) the number of patients treated for alcoholism increased from 803 in 2001 to 1,082 in 2005 or by 34.7%. The morbidity rate per 10,000 inhabitants shows an increase in the rate from 3.9 in 2001 to 5.3 in 2005. Those aged 35 and above form the largest group of patients treated for alcoholism.

External factors that have led to these trends include, on the one hand, poor economic conditions, high unemployment rates, but on the other hand also an erosion of morals and confidence, misuse of trust and friendship, lack of good business relations and a desire to obtain benefits, no matter if unlawful or not.

3.2.3 Convicted Adults by Age, Education, Occupation, and Ethnic Background

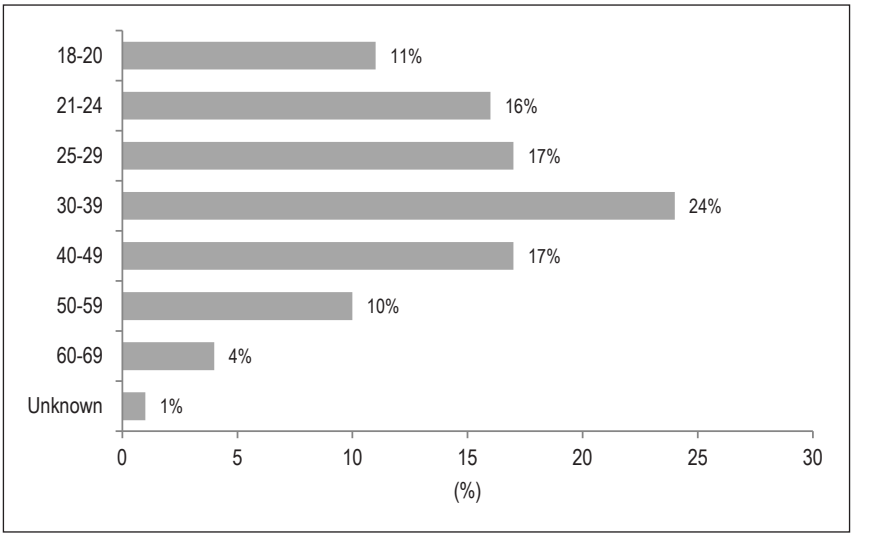
Age is considered a static risk factor for criminal behaviour, whereas factors such as unemployment, recidivism and drug or alcohol addiction are classified as dynamic risk factors that are strongly connected to the personal characteristics of perpetrators.

Statistical indicators can show differences between crimes committed by perpetrators that belong to different age and ethnic groups, but to obtain an overall picture of crime, statistical indicators should be supplemented by education and occupation data.

The age of perpetrators has long been recognized as an important risk factor for offending. This indicator shows whether and to what extent the population from different age groups is involved in illegal activities, whether they are successfully integrated into society, whether they manage to overcome socioeconomic disadvantages, to improve access to services et cetera. Involvement in criminal activities starts to increase from about the age of 21, reaching a peak during the mid-30s, before declining in the late 40s. The most dominant group are perpetrators aged 30 to 39 (24%; see *Figure 4*). 58% of all convicted adults are aged 25 to 49. These are actually in the most productive years of their life, but unemployment, poor social connections, erosion of family values, corruption and setbacks unfortunately lead to their participation in criminal activity.

According to the statistical data, there are differences between crimes of younger perpetrators and crimes of older ones. Younger perpetrators (18–24) usually commit criminal offences against: life and body, property, human health (connected with produc-

Figure 4 Convicted Adult Perpetrators by Age (in %)



Source: State Statistical Office.

tion and release for trade of narcotics, psychotropic substances and precursors), public order and public traffic. The oldest perpetrators (60 and more) are usually involved in crimes against life and body, honour and reputation, property and public traffic.

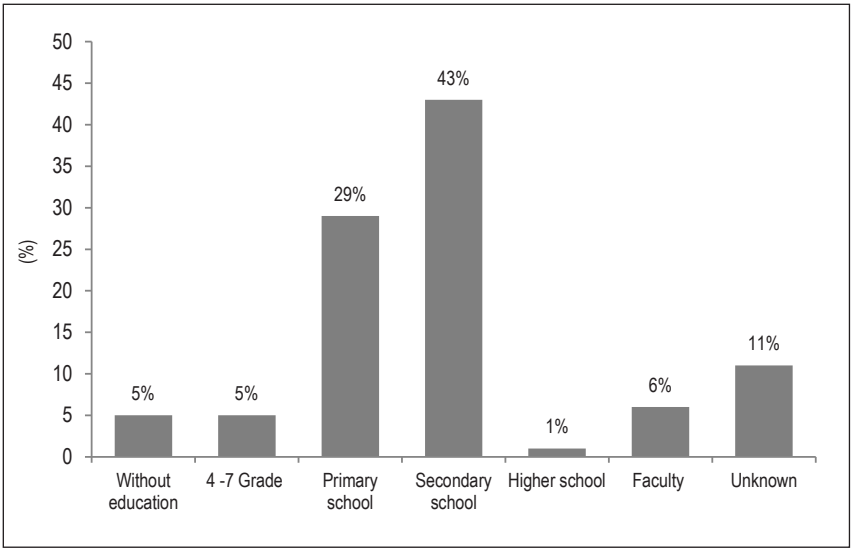
Concerning education, *Table 3* and *Figure 5* show that convicted perpetrators have a poor educational level – 72% of them have finished primary and secondary school though they have been unable to find work. This is one of the reasons why they become vulnerable to be involved in criminal activities and groups.

Table 3 Convicted Adult Perpetrators by Educational Status (in %)

Educational status	2007	2008	2009	2010	2011	2012	%
Total convicted	**9,639**	**9,503**	**9,801**	**9,169**	**9,810**	**9,042**	
Without education/ 1-3 grade primary school	5	5	5	5	5	6	**5**
4-7 grade primary school	5	5	5	5	5	5	**5**
Finished primary school	31	28	29	30	28	29	**29**
Secondary school	45	44	43	43	44	40	**43**
Higher school	1	1	1	1	1	1	**1**
Faculty education	6	6	6	6	6	6	**6**
Unknown	7	11	11	10	12	14	**11**

Source: State Statistical Office.

Figure 5 Convicted Adult Perpetrators by Educational Status (in %)



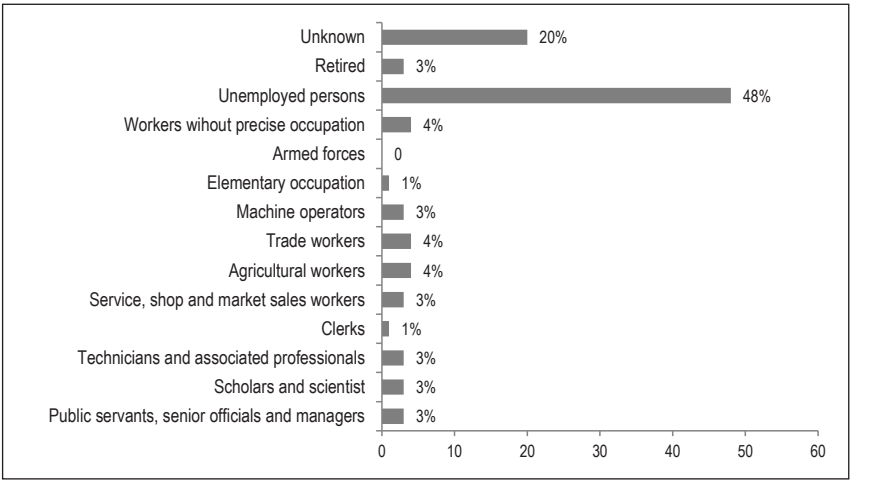
Source: State Statistical Office.

Table 4 Convicted Adult Perpetrators by Occupation

	2007	2008	2009	2010	2011	2012	Total	%
Total convicted	9,639	9,503	9,801	9,169	9,810	9,042	**56,964**	
Public servants, senior officials, managers	316	308	315	295	343	305	**1,882**	**3**
Scholars and scientists	330	287	298	234	229	230	**1,608**	**3**
Technicians and associated professionals	309	244	276	309	310	267	**1,715**	**3**
Clerks	116	65	90	100	94	104	**569**	**1**
Service, shop and market sales workers	273	261	274	232	244	178	**1,462**	**3**
Agricultural workers	427	429	370	337	343	376	**2,282**	**4**
Trade workers	359	399	367	304	477	493	**2,299**	**4**
Machine operators	354	349	371	270	253	238	**1,835**	**3**
Elementary occupation	78	79	308	174	70	95	**804**	**1**
Armed forces	25	25	31	23	33	25	**162**	**0**
Workers without precise occupation	427	332	136	330	808	282	**2,315**	**4**
Unemployed persons	4,818	4,556	4,560	4,403	4,798	3,950	**27,085**	**48**
Retired persons	277	245	260	263	236	203	**1,484**	**3**
Unknown	1,530	2,024	2,145	1,895	1,572	2,296	**11,462**	**20**

Source: State Statistical Office.

Figure 6 Convicted Adult Perpetrators by Occupation (in %)

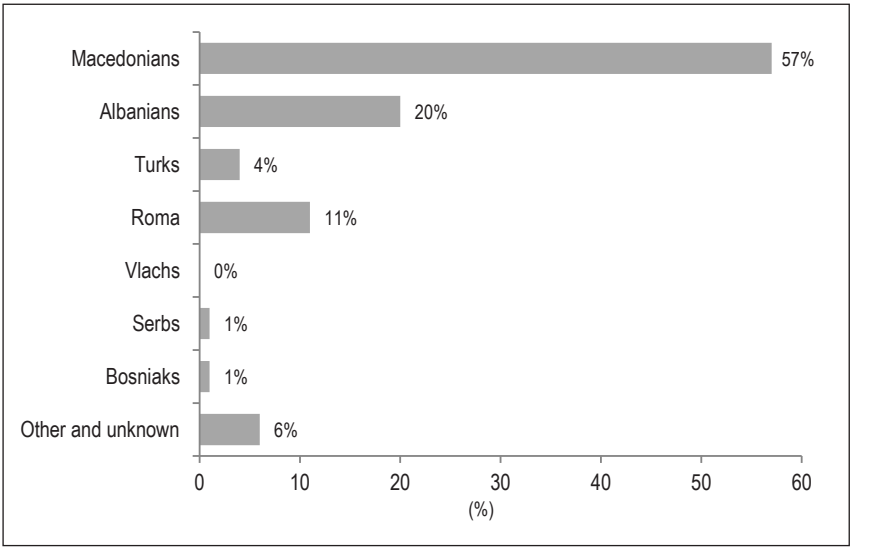


Source: State Statistical Office.

In 2010, according Laeken Poverty Indicators (survey on income and living conditions 2010), 27.3% of Macedonian citizens were a risk of falling into poverty. In regard to age groups, at risk of poverty were 26.9% aged 18–64, as well as 20.6% of citizens aged 65 and over. Other data show that in the first quarter of 2014 the number of unemployed was nearly 300,000 citizens of which 61.4% were male and 38.6% female, with most of the unemployed aged between 15 and 24 (53.5%), from 25 to 49 (28.3%) and from 50 to 64 (24.8%). According to data from the International Monetary Fund, the unemployment rate in Macedonia in 2012 was 31.3%.[20] Unemployment and crime rates closely correlate. Whole industries and occupations have disappeared as a mixture of "free-market" reforms, new global production and distribution strategies as well as information technologies have come to the fore.[21]

A person's ethnicity is also an important risk factor. Data provided in *Table 5* and *Figure 7* indicate that Macedonians are most often involved in criminal activities (57%), the second most likely ethnic group are Albanians (20%) and third are citizens with a Roma background (11%). Other ethnic communities have negligible participation in the criminal activities. *Figure 7* shows the average percentage of convicted adult perpetrators by ethnic background within a period of six years (2007–2012), *Table 5* shows the absolute numbers for each of the years.

Figure 7 Convicted Adult Perpetrators by Ethnic Background (in %)



Source: State Statistical Office.

20 www.indexmundi.com/macedonia/unemployment_rate.html [18.07.2014].

21 *Watts et al.* 2008.

Table 5 Convicted Adult Perpetrators by Ethnic Background

	2007	2008	2009	2010	2011	2012	%
Total convicted	9,639	9,503	9,801	9,169	9,810	9,042	
Macedonians	62	60	58	60	54	51	**57**
Albanians	19	19	29	21	20	21	**20**
Turks	4	4	4	3	3	5	**4**
Roma	11	11	11	10	12	11	**11**
Vlachs	0	0	0	0	0	0	**0**
Serbs	1	1	1	1	1	1	**1**
Bosniaks	1	1	1	1	1	1	**1**
Other and unknown	4	4	6	4	9	10	**6**

Source: State Statistical Office.

3.2.4 Criminal Sanctions Imposed on Adults

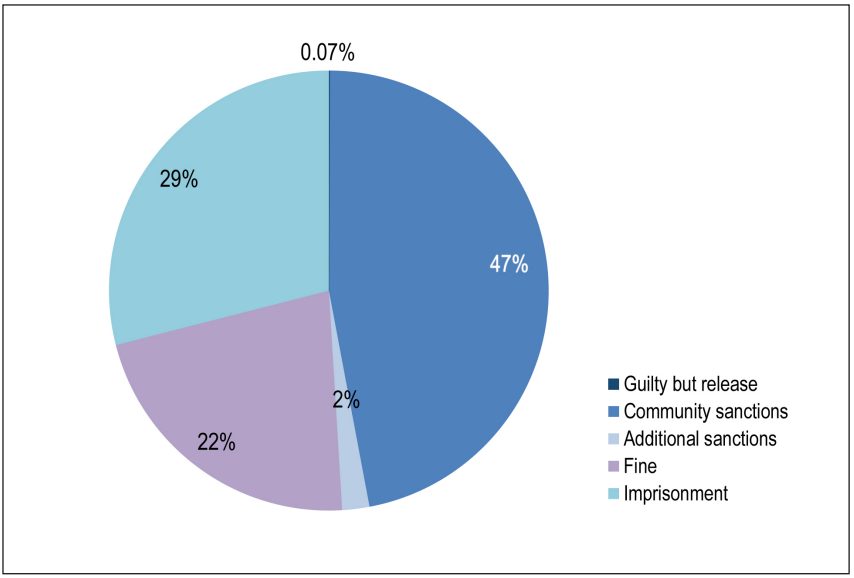
Data on the criminal sanctions imposed for the same period (2007–2012) shows that adult perpetrators were convicted mostly to three types of criminal sanctions: community sanctions, imprisonment and fines (see *Figure 8*). This is despite the fact that a 2004 amendment to the Criminal Code introduced new types of alternatives to prison, including community service, house confinement and conditional termination of criminal procedure,[22] along with the previously well-known options of a conditional sentence or court reprimand. Newly adopted community sanctions were unfortunately not accepted by the judges and almost never determined as criminal sanctions. This is the main reason why conditional sentences account for nearly 60% of all community sanctions. There are only a few examples of community sentences with protective supervision (which is very similar to probation); concerns about effective execution of supervision are most often referred to as the main reason for not using this type of sentence.

When analysing the duration of imprisonment (see *Figure 9*), 35% of all prison sentences are under 1 year. Although Council of Europe Recommendation No. R (92) 17 concerning consistency in sentencing and Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners point out that a custodial sentence should be regarded as a sanction of last resort and that there should be legislative restrictions on the use of custodial sentences, in particular short-term sentences, such provisions do not exist in Macedonian criminal legislation.

On the other hand, if analysing short-term imprisonment according to the Council of Europe's attitude that imprisonment of up to 5 years should be considered as short-

22 *Lažetić-Bužarovska* 2003.

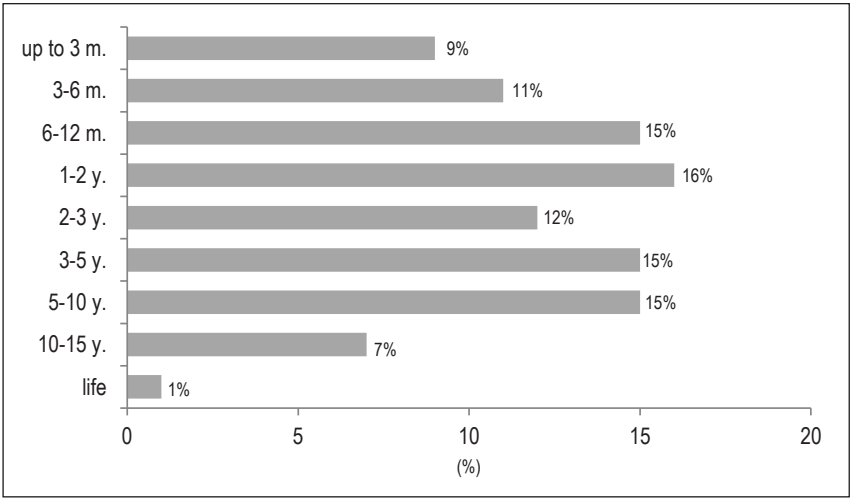
Figure 8 Convicted Adult Perpetrators by Criminal Sanction 2007–2012 (in %)



Source: State Statistical Office.

term imprisonment, Macedonia belongs to one of the countries where imprisonment of up to 5 years dominates – 78% of all imposed prison sentences are under 5 years.

Figure 9 Duration of Imprisonment 2008–2012 (in %)



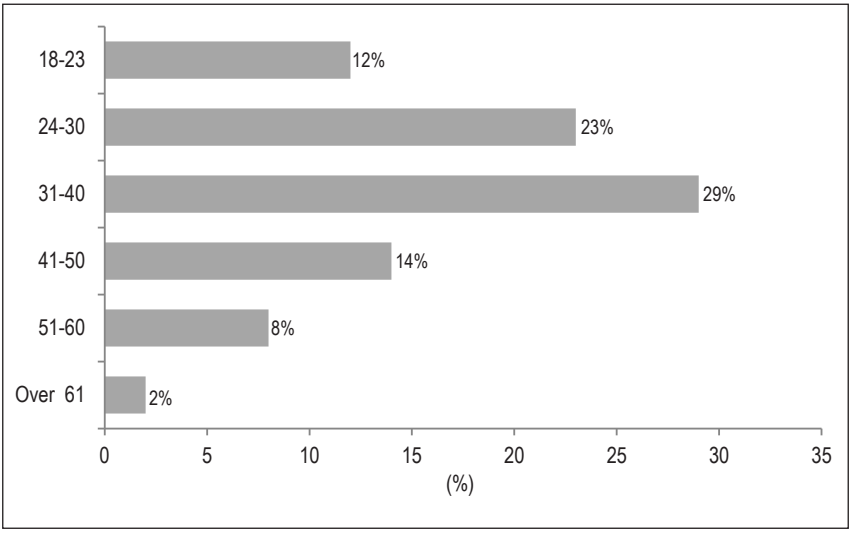
Source: Directorate for Execution of Sanctions.

Table 6 Inmates by Age (in %)

Year	18 - 23	24 - 30	31 - 40	41 - 50	51 - 60	Over 61
2008	14	25	31	18	9	3
2009	17	21	35	16	9	2
2010	10	26	36	17	8	3
2011	15	21	38	16	10	2
2012	18	23	33	15	9	2
%	**12**	**23**	**29**	**14**	**8**	**2**

Source: Annual Reports of the Directorate for Execution of Sanctions.

Figure 10 Inmates by Age (in %)



Source: Annual Reports of the Directorate for Execution of Sanctions.

The socio-economic situation, unemployment rates and addiction to alcohol and narcotics are reasons that explain why prisoners aged 23–50 are serving time in prison instead of enjoying the most productive period of their life and contributing toward the development of the community. For more details, see *Table 6* and *Figure 10*.

3.2.5 Recidivism Rate

Penology differentiates between several types of recidivism, i.e., persons who previously committed a criminal offence, persons with previous judgement for committed criminal offence, and persons who previously served a prison sentence.[23] The latter is most closely linked to the penological explanation of recidivism.

The increasing trend over the analysed years especially for same offences should be emphasized as a very serious problem in Macedonia. Re-socialization is not effective at all and imprisonment makes former inmates "more skilled", e.g., in the modus operandi of property offences. The high percentage of short-term imprisonment (of up to 5 years) inevitably has negative effects toward recidivism rates since, from the one side, those sanctions do not offer possibilities for effective treatment and re-socialization, but from the other side they enable "criminal" contamination and negatively impact the future prospects of convicted persons. Perhaps this can be accepted as an explanation for the high percentage of same offence relapse (see *Table 7* and *Figure 11*).

Research on recidivism[24] and the impact of prison sentences on recidivism for the period of 1998–2007[25] has come to the conclusion that the number of recidivists has grown 2.3 times, while in the same period the number of first time offenders has grown 1.5 times and the total number of convicted offenders has grown 1.6 times. Therefore, total crime has an increasing trend, but recidivism has an even higher increasing trend. Based on the data, 22.2% of those who had previously served a prison sentence, started to re-offend within 4–6 months of release from prison, for 16.7% relapse appeared in a period of 6 months to 1 year and for 31% of previous inmates recidivism became manifest in the period of 1–3 years. The profile of a Macedonian recidivist is as follows: male; aged 30–39; married; living in an urban area; unemployed; drug addict; committed a property offence.

Table 7 Rates of Recidivism

	Total	With prior convictions	% of recidivists from total convicted	Same offences	% of recidivists with same offences
2007	9,639	1,825	19	713	39
2008	9,503	1,581	17	676	43
2009	9,801	1,830	19	808	44
2010	9,169	1,945	21	990	51
2011	9,810	2,093	21	1,193	57
2012	9,042	1,239	14	517	42
	56,964	10,513	18	4,897	47

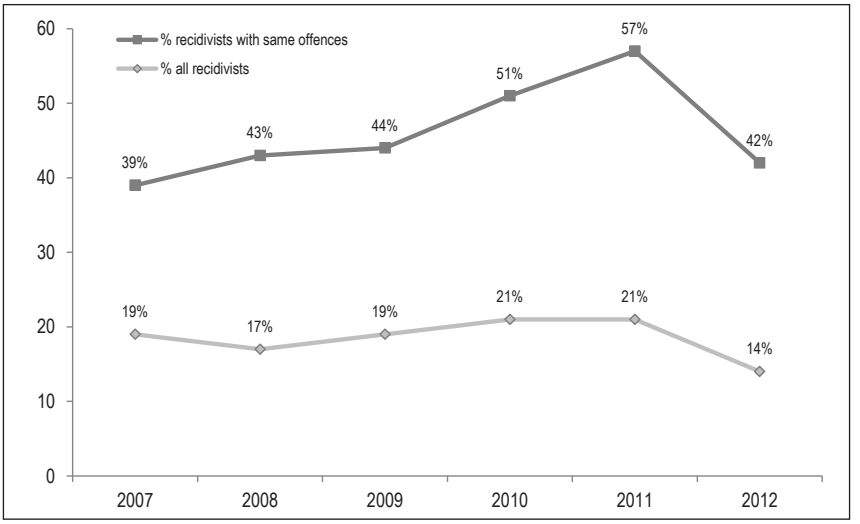
Source: State Statistical Office.

23 *Gruevska-Drakulevski* 2009.

24 *Arnaudovski & Caceva* 1979.

25 *Gruevska-Drakulevski* 2009.

Figure 11 Rates of Recidivism



Source: State Statistical Office.

3.2.6 Conditional Release

Although it is recognized that conditional release is one of the most effective and constructive means of preventing re-offending and promoting resettlement by providing inmates with planned, assisted and supervised reintegration into the community such a treatment cannot be automatically determined. Early release can be granted to prisoners only after certain objective and subjective criteria have been fulfilled (Art. 36, paras. 1–4, CC). When half of the prison sentence has been served the prisoner has the right to file a request for early release.[26] Respecting Council of Europe Recommendation Rec (2003) 22 on conditional release (parole) according to which conditional release should make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision, there is a legal provision that makes it possible for conditional release to be determined together with protective supervision, comprised of special measures of assistance, care, supervision or protection specified by the Centre for Social Work. In practice, however, there are not enough financial and human resources available for effective implementation of such a provision.

Prior to February 2014, a person sentenced to life imprisonment could not have been conditionally released before a minimum term of at least 15 years had been served. Based on new amendments to the Criminal Code, this period of time has been extend-

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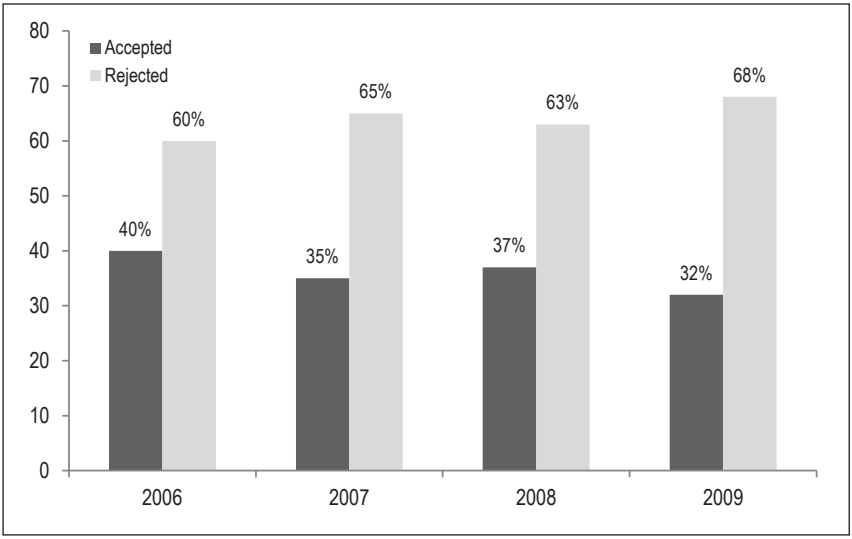
26 *Arnaudovski & Gruevska-Drakuleski* 2013.

Table 8 Conditional Release

	Number of requests	Accepted	%	Rejected	%
2006	874	350	40	524	60
2007	885	313	35	573	65
2008	845	309	37	536	63
2009	846	274	32	672	68

Source: Directorate for the Execution of Sanctions.

Figure 12 Conditional Release

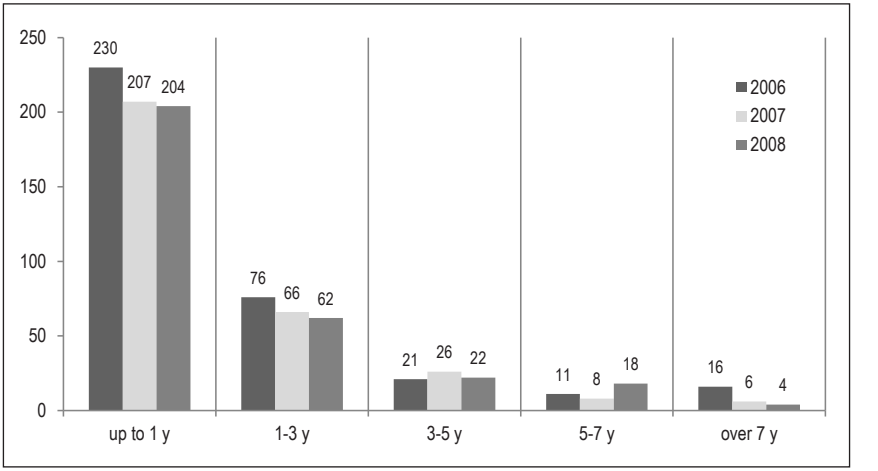


Source: Directorate for the Execution of Sanctions.

ed to at least 25 years of imprisonment. Since there was no public debate about the reasons for this amendment, one wonders how it can be reconciled with the Council of Europe's recommendations for counteracting the damaging effects of long-term and life sentences.

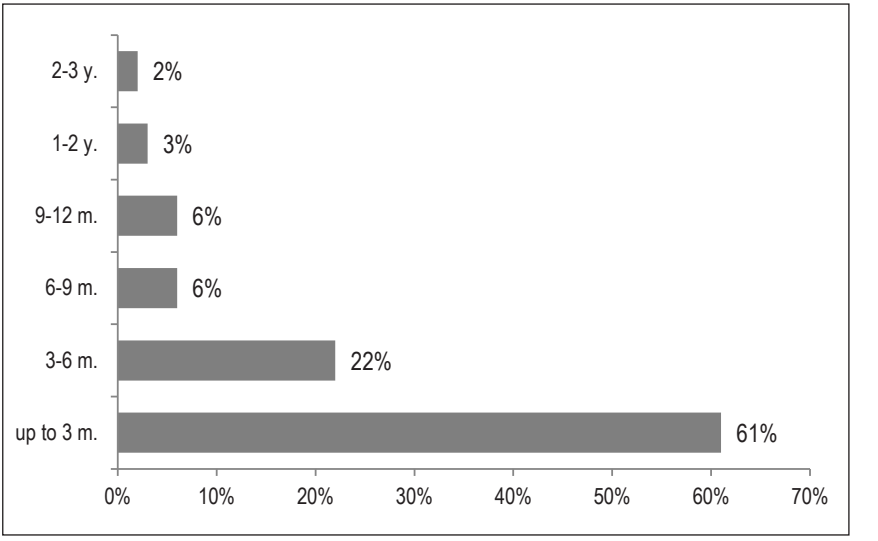
The number of accepted requests has decreased over the years (from 40% in 2006 to 32.4% in 2009). When discussing with practitioners about reasons for such a decrease, they mentioned several points. The key one is related to the attitude of judges that all aggravating and mitigating circumstances were already taken into account when deciding upon the type and duration of the sentence, so usually there are no (legally relevant) grounds for accepting a request for conditional release. There are some data available from the Directorate for the Execution of Sanctions showing the number of accepted and rejected requests for conditional release for the period of 2006–2009 (see *Table 8* and *Figure 12*).

Figure 13 Number of Conditionally Released Inmates according to Duration of Imprisonment



Source: Directorate for the Execution of Sanctions.

Figure 14 Extent of Remission in Cases of Conditional Release 2006–2008



The decreasing trend of accepted requests for conditional release is rather general; it appears in regard to all different intervals of duration of imprisonment – except for the group of prisoners with a prison term of 5–7 years (see *Figure 13*). Most often, i.e., in 65% of cases, conditional release was granted to persons who have been sen-

tenced to imprisonment of up to 1 year whereas only 14% of accepted requests were for inmates sentenced to imprisonment of more than 3 years.

When taking into account the frequency of short-term imprisonments there is no surprise that in most cases the extent (length) of remission of sentences conditionally granted is not more than up to 3 months – this happened in 61% of all conditionally released prisoners (see *Figure 14*).

3.3 Project for the Establishment of a Probation Service

There is no probation service in Macedonia, but there are many activities that have been taken by the Ministry of Justice and Directorate for Execution of Sanctions (body within the Ministry of Justice) to establish the Department for Probation within the Directorate for Enforcement of Sanctions. The experience of probation services in all countries where they have been established shows very promising and positive results in reducing the prison population, improving re-socialization and reducing recidivism. These too are the aims for establishing a probation service in Macedonia.

Financial support is provided by the EU IPA Funds for 2010 and the Embassy of the United Kingdom of Great Britain and Northern Ireland. The development strategy and the action plan for implementation (not yet adopted by the Government) were developed within this project. Integral components of the strategy are: Exploring treatment, sanctions and the position of adult offenders in Macedonia; analysing the legal basis for the creation and development of a probation service with attached list of laws that need to be amended; the organization of a probation service; the status and educational profile of probation officials in Macedonia; fiscal implications for the establishment of a special probation service as well as communication and promotion strategies.

3.4 Female Offenders

Aside from the stereotype that criminal behaviour is "for males" and that data on female criminality have the status of a footnote in the papers and research dedicated to crime,[27] female participation in overall committed criminal offences should not be underestimated.[28]

Emancipation and participation in business and social activities – as an endeavour to enter into the male world and to achieve equality in almost all spheres of life – have, in some cases, led to adverse effects. In past decades, female participation in the overall crime was around 4%, but in the analysed period it was nearly 7% out of all convicted

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27 *Klein* 1973.

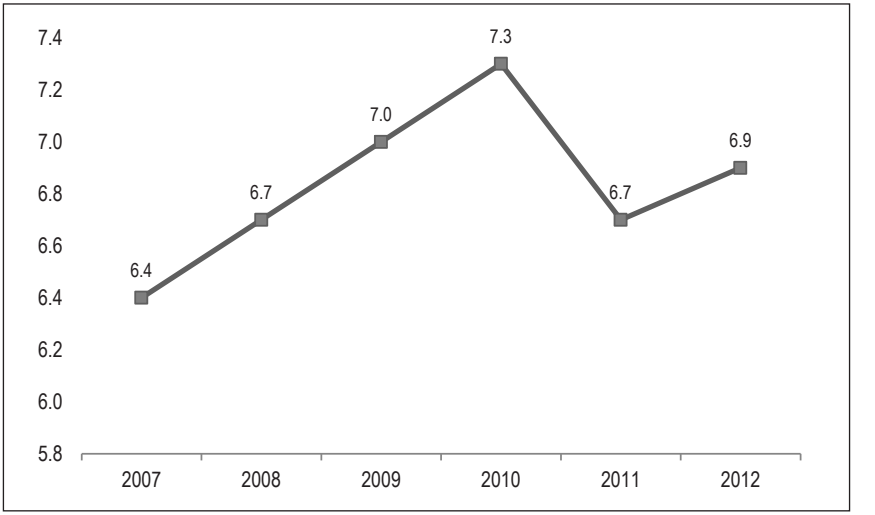
28 *Heidensohn & Gelsthorpe* 2007.

Table 9 Convicted Females

	Total	Female	%
2007	9,639	622	6.4
2008	9,503	635	6.7
2009	9,801	695	7.0
2010	9,169	669	7.3
2011	9,810	661	6.7
2012	9,042	624	6.9

Source: State Statistical Office.

Figure 15 Convicted Females (in %)



perpetrators (compare *Table 9* and *Figure 15*). This increasing trend can, unfortunately, be seen globally.[29]

When analysing female criminality, the type of criminal offences that are mostly committed is an interesting issue. The presented data in *Table 10* and *Figure 16* show that there are six types of criminal behaviour linked to female perpetrators. Under the "crimes against life" heading, the most frequent is bodily injury (Art. 130, CC).

Insult is the most common crime against honour and reputation (which might be linked to talkativeness and a desire to "get in the last word"). After amendments to the Criminal Code,[30] defamation and insult are no longer criminal offences but rather civil delicts.

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29 *Derenčinović* 2004.

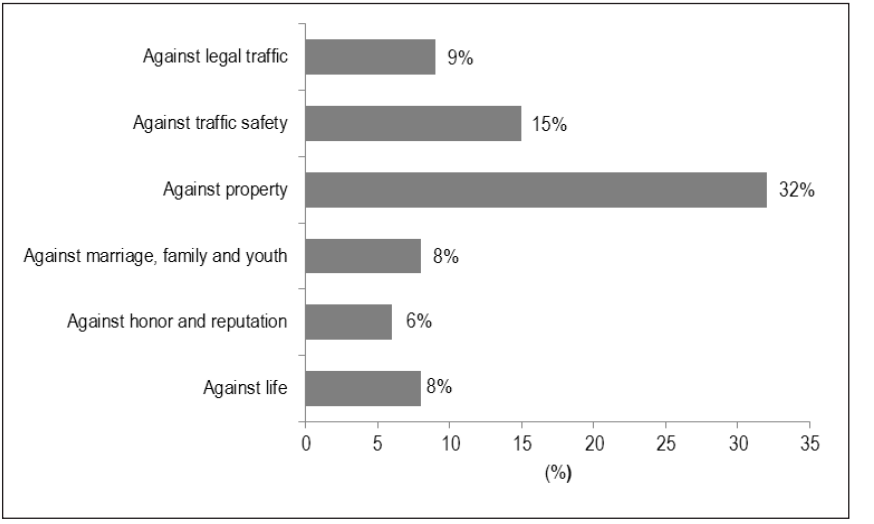
30 Official Gazzete, No. 142/2012, 13.11.2012.

Table 10 Convicted Females by Type of Criminal Offence

	2007	2008	2009	2010	2011	2012	%
Total convicted females	622	635	695	669	661	624	
Against life	5	6	9	9	8	10	8
Against honour and reputation	6	7	5	6	5	6	6
Against marriage, family and youth	9	8	6	9	8	8	8
Against property	29	31	35	34	32	30	32
Against traffic safety	17	17	16	14	15	13	15
Against legal traffic	10	7	7	9	10	8	9

Source: State Statistical Office.

Figure 16 Convicted Females by Type of Criminal Offence



Source: State Statistical Office.

Females are also convicted for crimes against marriage, family and youth – mostly for criminal offences connected with disregarding parental duties for caring and upbringing a child (abandoning a helpless child, Art. 200 and neglecting and maltreating a child, Art. 201, CC). Regarding crimes against property, most frequent are theft (Art. 235, CC), burglary (Art. 236, CC) and fraud (Art. 247, CC). Females also commit numerous traffic safety crimes (Art. 297, CC); counterfeiting documents is the most common offence under the "against legal traffic" heading.

It is very interesting to consider the educational status of female perpetrators. The data provided in *Table 11* below show that most convicted females have finished

Table 11 Convicted Females by Educational Status

	Total females convicted	Finished primary school	% of total females convicted	Secondary school	% of total females convicted	Faculty education	% of total females convicted
2007	622	123	20	282	45	73	12
2008	635	101	16	260	41	101	16
2009	695	123	18	284	41	104	15
2010	669	144	22	280	42	83	12
2011	661	112	17	261	39	94	14
2012	624	103	17	250	40	100	16
	3,906	706	18	1,617	41	555	14

Source: State Statistical Office.

secondary school; there are very similar percentages of convicted females with elementary school (18%) and with faculty education (14%).

Research on the impact of imprisonment on female recidivism has been undertaken.[31] The following results were reached: almost all female inmates were unemployed prior to imprisonment; 40% of them were married; 20% were divorced; 38% had finished secondary school. Inmates with higher education levels committed more sophisticated crimes – forgery, fraud, abuse of official position and authority, etc. According to official statistics, 3% of all recidivists were female. Most of them (54%) committed the same type of offence and 42% out of all female recidivists committed different types of criminal offences (for more details, see *Table 12*).

Table 12 Rates of Female Recidivism

	Total recidivists	Total female recidivists	% of female recidivists	Same offence	% of total female recidivists	Different offence	% of total female recidivists
2007	1,825	50	3	28	56	19	36
2008	1,561	32	2	18	56	13	41
2009	1,830	48	3	19	40	26	54
2010	1,945	41	2	25	61	16	39
2011	2,093	49	2	27	55	19	39
2012	1,239	43	3	25	58	18	42
	10,493	263	3	142	54	111	42

Source: State Statistical Office.

31 *Gruevska-Drakulevski* 2010.

3.5 Criminal Offences Committed by Juveniles

The Law on the Rights of Children[32] encompasses juvenile justice and child welfare. There are several categories of children: children at risk (7–18 years), children in conflict with the law (14–16 and 16–18 years), children as victims and younger adults (18–21 years). Today, the Law promotes informal forms of treatment, restorative justice, social inclusion; it also emphasizes the role of parents, schools, peer groups and NGOs. It also insists on special prevention and can be assessed as a law with a child-centred orientation. These changes in juvenile legislation were inevitable after analysing increasing trends of juvenile delinquency and recidivism. Given the apparent powerlessness of the retributive approach to deter young people from committing crimes, since the introduction of the changes a slight decline in juvenile delinquency has been recorded (for more details, see *Table 13*).

Table 13 Participation of Juvenile Delinquents in Overall Crime

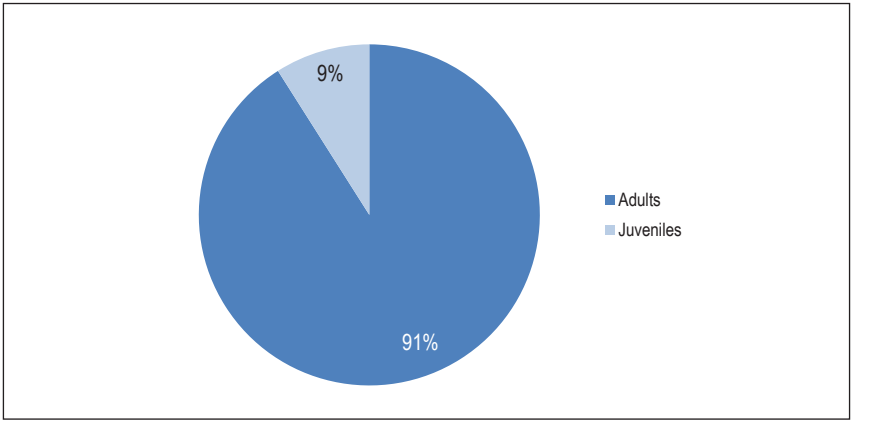
Year	Total number of convicted (adults & juveniles)	Convicted adults	Convicted juveniles	%
2000	7,435	6,496	939	14
2001	6,829	5,952	877	15
2002	7,159	6,383	776	12
2003	8,487	7,661	826	11
2004	8,974	8,097	877	11
2005	9,213	8,451	762	9
2006	10,124	9,280	844	9
2007	10,315	9,639	676	7
2008	10,218	9,503	715	8
2009	10,587	9,801	748	8
2010	9,716	9,169	547	6
2011	10,532	9,810	722	7
2012	9,598	9,042	556	6
total	119,149	109,284	9,865	9

When analysing the decreasing trend of juvenile delinquency, the role of the abovementioned grey figure needs to be taken into consideration, as well. During the period 2000–2012, there were a total of 17,566 reported juvenile delinquents. A high percentage, 71% or 12,528 of all reported juveniles, were accused, and 79% (total 9,865) were convicted. On the overall, 9 percent of all convicts were juvenile delinquents (*Figure 17*).

The aetiology of juvenile delinquency can be explained by social exclusion and identity crises due to different social, political, and economic circumstances, dis-

32 Official Gazette, No. 148/13.

Figure 17 Participation of Juvenile Delinquents in Overall Crime



Source: State Statistical Office.

crimination, stigmatization and intolerance, erosion of family values, drug and alcohol addiction or misuse.[33]

Globalization, urbanization, increased connectivity, technological development and poor possibilities for parental control should also be treated as risk factors of modern society.[34] In this regard, three interrelated "domains of informal social control" exist: family, school and peers. Weak ties to these institutions contribute to post-adolescent criminal activity by facilitating a delinquent lifestyle.

In the World Youth Report (2003), juvenile peer groups are noted for their high levels of social cohesiveness, hierarchical organization and certain codes of behaviour based on the rejection of adult values and experiences. The sub-cultural aspect of juvenile group activities is rarely given the attention it deserves. Schools should help children to learn about social values, understanding diversities as well as encouraging talents, skills and different aspirations.

A serious problem in Macedonia is the mass urbanization of the capital city of Skopje, where there are many new settlements and, due to internal migration, neighbours do not know each other. The consequences of this are fear of crime and alienation where strangers live next to one another.

Regarding the phenomenology of juvenile delinquency, statistical data indicate that young perpetrators in Macedonia mostly committed criminal offences against property; some juveniles were convicted for crimes against life and body, traffic offences and offences against public order, too (*Figure 18*).

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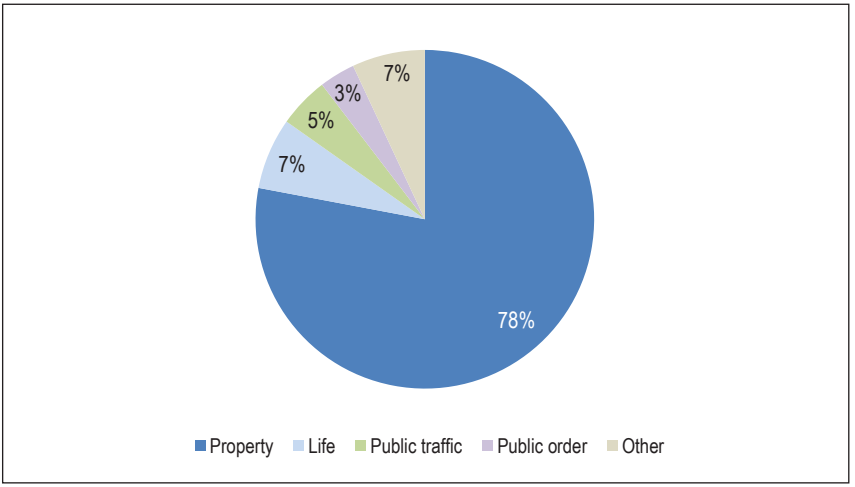
33 *Nanev* 2003.

34 *Mickovik* 2008.

Figure 18 Convicted Juveniles according to Type of Crime



Source: State Statistical Office.

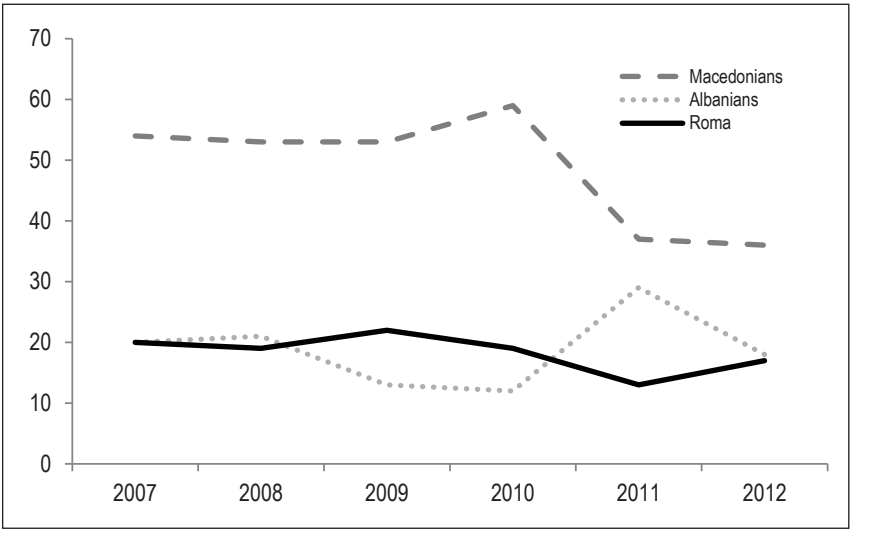
Within crimes classified as crimes against property, the most frequent criminal acts are theft (including theft of motor vehicles), burglary and robbery. Bodily injuries are the most frequent crimes against life and body. Acts of violence and obstructing an official in the performance of their official duties (the later mostly connected with sport events) are offences with which juveniles usually violate public order. Public traffic is disturbed when juveniles commit a crime of endangering traffic safety. In this context, the 2013 decision of the Macedonian legislator to permit older juveniles aged 16 years to get a driving license for B-Category vehicles under specified conditions and restrictions is problematic.

Aside from the abovementioned crimes, juveniles were also convicted for committing other criminal offences such as: sexual assault on a child under 14 years, counterfeiting money, falsification of documents, unauthorized production and release of narcotics, psychotropic substances and precursors.

Statistical data in *Figure 19* indicate that there are similarities between convicted adults and convicted juveniles regarding their ethnic background. There is only one difference − rates of criminality among juveniles with Albanian and Roma ethnic background has very similar values, unlike among adults where Roma have a 50% lower rate compared with Albanians.

The role of the family to hinder juvenile delinquency is most important, bearing in mind the capacities of parents and their ability to establish relationships of respect and authority with their children, to recognize their needs as young people and to educate and help them to develop into useful members of the society. The family environment is also the most important risk predictor concerning the

Figure 19 Convicted Juveniles by Ethnic Background (in %)



Source: State Statistical Office.

future behaviour of a child if one takes into consideration bad parental care and support, more family members in a single household, conflicts between parents, etc.

Table 14 Family Circumstances of Convicted Juveniles

	Convicted juveniles	Living with parents (%)	Living with mother, separated (in %)	Not living with parents (in %)
2000	939	95	6	5
2001	877	96	7	4
2002	776	97	6	3
2003	826	96	6	4
2004	877	96	6	4
2005	762	97	6	3
2006	844	95	3	5
2007	676	96	3	3
2008	715	93	6	7
2009	748	89	7	6
2010	547	94	6	6
2011	722	93	5	7
2012	556	90	6	10
Total	9,865	94	6	5

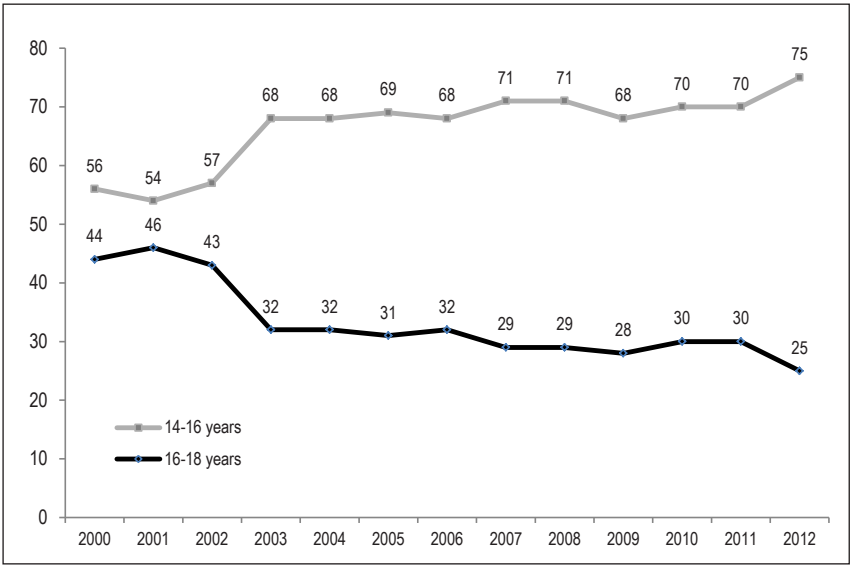
Source: State Statistical Office.

Data presented in *Table 14* raises serious concerns. Do we have functional families? What should be understood under this term – total family members in household or capability of being a good parent? There are several preconditions for achieving the aim of a functional and steady family with internal cohesion and harmony between its members. Families become more dysfunctional due to high rates of unemployment and low family income. One has to admit however that statistical data alone cannot explain what a "functional family" is. For example, a family where both parents are at home but are unsuccessful at achieving their parental duties is a dysfunctional family.

A new law on the rights of children promotes informal proceedings and possibilities for taking some measures of help and protect children at risk starting from age 7 until the age of 18. The main reason for such an approach is to protect children at risk from becoming victims of a crime or coming into conflict with the law. The perception in Macedonia is that the age when a child begins with criminal activities is getting lower from year to year.

The younger juveniles or children in conflict with the law from 14 to 16 years participate in 1/3 of overall juvenile delinquency. *Figure 20* shows that until 2002, the values regarding both age groups were very close to each other – age group 14–16 years with a share of 43% versus 57% for the 16–18 year olds. After 2002, the values are constantly different, with a declining trend related to younger juveniles and an increasing trend regarding older juveniles.

Figure 20 Convicted Juveniles by Age



Source: State Statistical Office.

The representation of females in the total number of convicted juveniles is very low. After an interim peak of 4 to 5% between 2006 and 2010 it decreased to 2% in 2012 (for more details, see *Table 15*).

Table 15 Convicted Juveniles by Gender

Year	Convicted juveniles	Male (in %)	Female (in %)
2000	939	98	2
2001	877	98	2
2002	776	98	2
2003	826	98	2
2004	877	97	3
2005	762	97	3
2006	844	96	4
2007	676	96	4
2008	715	95	5
2009	748	95	5
2010	547	96	4
2011	722	97	3
2012	556	98	2
Total	9,865	97	3

Source: State Statistical Office.

Table 16 Sanctions Imposed on Juveniles

Year	Total	Juvenile imprisonment	Educational measures							
			All	Reprimand	Disciplinary centre	Parents	Foster family	CSW	Educational institutions	Correctional institutions
2007	676	15	661	64	0	376	0	203	1	17
2008	715	11	704	118	0	352	0	209	4	21
2009	748	14	734	85	0	368	0	266	3	12
2010	547	9	538	107	0	245	0	164	7	15
2011	722	2	720	92	0	393	0	215	2	18
2012	556	7	549	57	0	298	0	173	2	19
	3,964									
%		1	99	13	/	51	/	31	0.5	3

Source: State Statistical Office.

3.6 Prevention of Juvenile Delinquency

Every society should put greater attention on the primary prevention of juvenile delinquency. However, measures will only be successful if preventive policies can be developed which facilitate the socialization and integration of young persons as full and equal partners. Since 2010, a State council for the prevention of juvenile delinquency[35] has been in place in Macedonia, with the financial support of the EU and UNICEF. There are currently eleven local councils for prevention of juvenile delinquency in the following cities: Kavadarci, Stip, Kratovo, Rosoman, Negotino, Strumica, Ohrid, Kumanovo, Prilep, Kisela Voda and Bitola. Every local council has annual programmes. They conduct measures and sports activities at the local level, seek to involve juveniles in NGOs projects and deliver projects and activities aiming at raising awareness and educating young people and their parents about drugs, alcohol, AIDS and other sexually transmitted diseases.

4. The Criminal Justice System

There is a pending criminal law reform in Macedonia. The main focus is on the Code of Criminal Procedure (CCP) that was enacted in 2010 and its implementation has started since 1 December 2013.

There has been a significant impact of EU's *acquis communautaire* upon the position of the victim in the criminal justice system as well as provisions regarding mutual cooperation in criminal matters in the Code for Mutual Cooperation in Criminal Procedure that started with its implementation at the same time as the new CCP came into force. The EU greatly impacted on the adoption of restorative justice into the Macedonian criminal and procedural justice system, with the purpose of improving the position of victims and enhancing the possibilities for their compensation.

According to the US Department of State's Country Reports on Human Rights Practices for 2013, for Macedonia[36] the most critical human rights problem is the government's failure to fully respect the rule of law, interfering in the judiciary and the media, and selective prosecution of political opponents as well as significant levels of government corruption and police impunity. Political interference, inefficiency, favouritism toward well placed persons, prolonged judicial processes and corruption characterize the judicial system. Physical mistreatment of detainees and prisoners by police and prison guards and poor conditions and overcrowding in some of the country's prisons and mental institutions constituted a third broad area of concern.

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35 www.dspmp.com.mk/ [18.07.2014].

36 www.state.gov/documents/organisation/220516.pdf [18.07.2014].

4.1 New Code of Criminal Procedure

According to the strategy for the reform of the criminal legislature,[37] reforms to the criminal justice system would only be successful if they were based on a clear and consistent concept and supported by solid comparative and empirical research. The current reforms in Macedonia are based around the influence of German experiences and legislative solutions. Reforms in Croatia (and Croatian literature) have also been influential over the years. Italian concepts were studied, too. The main purpose behind the new CCP from 2010 was to overcome targeted problems of the judiciary, including: slow procedures and inaccessibility to justice, overburdened judicial institutions with minor cases and unorganized case management. There were also weakness of judicial independence, judicial efficiency and judicial accountability. General aims of the CCP reform included the wider application of the opportunity principle of criminal prosecution, promotion of out-of-court settlement agreements, acceleration and simplified procedures, abandonment of judicial paternalism, transfer of procedural initiative to the parties, abolishment of court investigations and provision of an active and managerial role for the public prosecutor.

Macedonia has gone through a long period of reform of criminal procedure. Indeed, the new CCP from 2010[38] introduced a new concept of criminal procedure.[39] The public prosecutor now conducts the investigative procedure and files orders to the authorities with investigative competences (MOI, financial police, customs police and revenue office). The function of the investigative judge has been abolished. There is now a preliminary procedure judge (judge of freedoms) who ensures the legality of evidence gathering, prosecutorial proposals for special investigative measures, pre-trial detention, searches and seizures. The control of the indictment is a separate phase of the procedure where a single judge or a three member panel decides upon the justification of the indictment. There is no preliminary hearing, but the judge has an opportunity to have a meeting with both parties during the preparation for the main hearing with the purpose of deciding which evidence proposals are to be accepted, to challenge the legality of some evidence, etc. The role of procedural fairness and the principle of contradiction (*audiatur et altera pars*) at the main hearing are emphasized. In this manner, there are a few new adversarial elements adopted during the main hearing: introductory words at the beginning of the main hearing, direct and cross examination, opportunity for the parties to propose additional evidence, closing statements, etc. There is now a possibility for sentence bargaining between the public prosecutor and the accused and his defence lawyer. The parties can bargain during the investigation (a guilty plea is not a precondition)

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37 *Krapac, Kambovski, Kalajdziev & Buzarovska* 2007.

38 Official Gazette of the Republic of Macedonia, No. 150/2010.

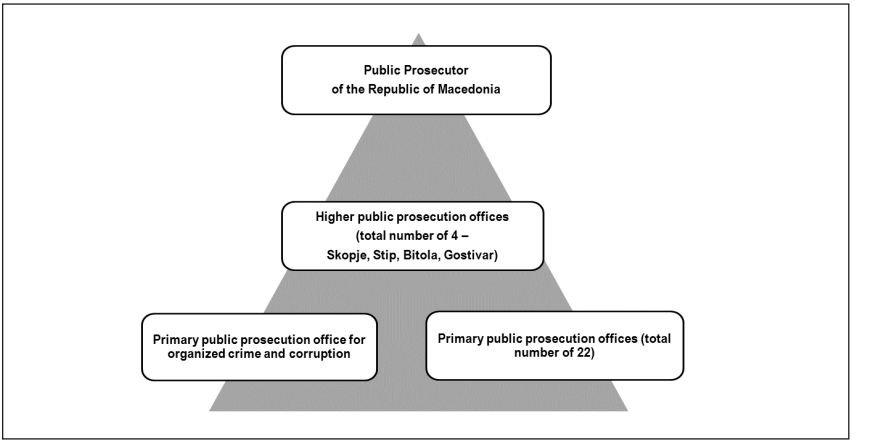
39 *Lažetić-Bužarovska & Kalajdziev* 2010; *Matovski, Lažetić-Bužarovska & Kalajdziev* 2011.

and during the indictment (a guilty plea is a precondition then). A guilty plea can be given at the beginning of the main hearing and if it is accepted, the rationalized evidence procedure is conducted – only evidence related to the sentence is heard.

4.2 Public Prosecution Office

The legal basis of the prosecution service is the Law on public prosecution office.[40] A new law is expected to be enacted by the end of 2014. The organizational structure of the public prosecution office is presented in *Figure 21*.

Figure 21 Organizational Structure of the Public Prosecution Office



4.3 Courts

The legal basis is the Law on courts.[41] Courts are structured as shown in *Figure 22*.

According to the European Commission's Progress Report for Macedonia from 2013,[42] some progress has been made in the field of the judiciary, notably with the introduction of stricter professional requirements for judges and the elimination of court backlogs. However, further improvements are needed to ensure the independence of the judiciary in practice, notably as regards the systems for the evaluation and dismissal of cases, as well as to ensure that all judicial appointments are based on merit and to address the problem of lengthy court proceedings.

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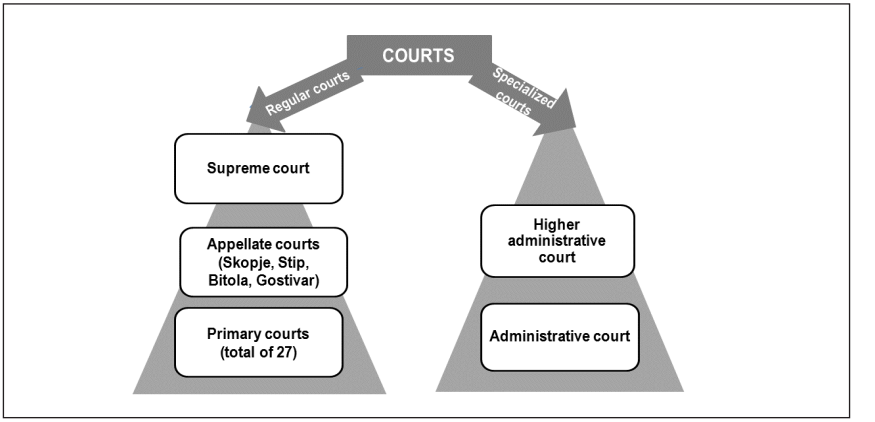
40 Official Gazette of the Republic of Macedonia, No. 150/2007 and 111/2008.

41 Official Gazette of the Republic of Macedonia, No. 58/2006, 62/2006, 35/2008 and 150/2010.

42 www.ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf [18.07.2014], SWD (2013) 413 final, Brussels, 16.10.2013.

Figure 22 Organizational Structure of the Courts



4.4 Prisons and Pre-Trial Detention

According to the US Department of State's Country Reports on Human Rights Practices 2013 for Macedonia, the country's prisons and detention centres for both sexes failed to meet international standards. Problems included overcrowding, violence among prisoners, intimidation from guards, violence by staff, dilapidated and unhygienic conditions, lack of educational and recreational opportunities for juveniles, and some reports of sexual abuse of female prisoners.

The Ombudsman's Office of the National Prevention Mechanism, after visiting the biggest detention prison in Skopje, cited overcrowding due to a constantly increasing number of detainees and poor conditions, resulting in the failure to meet minimum human rights standards.[43] The status of overcrowding as of October, 2013, is shown in *Table 17*.

Table 17 Overcrowding in Detention Facilities

Detention facility	Capacity	Situation on 31.10.2013	Percentage of overcrowding
Prison in Skopje	290	378	130 %
Prison in Bitola	11	30	270 %
Prison in Prilep	17	29	170 %
Prison in Tetovo	11	27	245 %
Prison in Gevgelija	6	2	/
Total	335	466	139 %

Source: Directorate for Sanctions Execution.

43 www.ombudsman.mk/en/national_preventive_mechanism/reports/annual_reports.aspx [18.07.2014].

According to the European Commission's Progress Report for Macedonia from 2013, greater efforts are needed to ensure that any orders for pre-trial detention and extensions thereof are in line with the European Convention on Human Rights and the jurisprudence of the European Court on Human Rights concerning Article 5 of the Convention. Additionally, efforts are still needed to improve the material conditions for detained persons as degrading conditions persist in a number of detention facilities.

The European Union also insists on the harmonization of legislation and the establishment of standards in relation to cases of restriction of freedom, the status of detainees, the attitude of the judiciary towards them and the rights and opportunities detainees should have.[44]

There is also huge criticism regarding the frequency of the determination of pre-trial detention that is considered more as a sanction than as a measure for providing the presence of the accused during the trial. Major concerns raise opinions that grounds for determining detention are not examined enough in practice; judges are not critical enough in assessing whether proposed grounds by the public prosecutor are justified and whether detention is inevitable; the likelihood of re-offending without referral to any concrete fact is often taken as proof of a detained person's propensity to commit criminal offences; judicial decisions for determination of detention are very similar to each other regarding their explanations where only a narrative approach of legislative provisions can be found (type, gravity and nature of the criminal offences).

All these shortcomings have been recognized for several years. There were proposals for overcoming the misuse of pre-trial detention, but they were without any crucial effect.[45] Unfortunately, alternatives to pre-trial detention like bail, house arrest, precautionary measures or short-term detention are hardly used in practice. There are cases where detention is ordered although a long time has passed since the commission of the offence, especially when all necessary evidence is already collected; cases where it is impossible to repeat the offence since the detainee is no longer acting as a responsible person; cases where an official seal of a notary or enforcement agent has been seized; controversial; or cases where the defendants were sentenced to imprisonment for the identical duration as the time spent in custody, etc.[46]

In the case of *Vasilkovski et al*. vs The Former Yugoslav Republic of Macedonia,[47] the Strasbourg Court points out that although the severity of the sentence faced is a

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44 The Hague Programme: Ten priorities for the next five years: a partnership for European renewal; Strategic objectives 2005–2009, Europe 2010: a partnership for Europe renewal, COM(2005)12, 26.01.2005; Green Paper on criminal proceedings, http://europa.eu.int/scadplus/leg/en/lvb/l33214.htm; Green Paper on mutual recognition of non-custodial pre-trial supervision measures, COM(2004) 562 final, Brussels, 17.08.2004.

45 *Buzarovska et al.* 2009.

46 *Buzarovska & Uzunov* 2010.

47 Application No. 28169/08, Judgement, 28 October 2010.

relevant element in the assessment of the risk of an accused absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial. Nor can continuation of the detention be used to anticipate a custodial sentence.[48]

In the same line are considerations of the Macedonian Helsinki Committee[49] about cases when determination of detention is contrary to the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, because there are cases where a judge decided collectively for all accused without giving clear and specific arguments which justified detention instead of other measures that can ascertain the presence of the accused. There is a most recent case where two accused persons were in detention for nearly two years; they were eventually acquitted. In this case, the European Court of Human Rights held that there was a violation of Article 5 para. 3 of the Convention on account of the lack of concrete and sufficient reasons for the applicants' detention on remand.[50]

Regarding the duration of pre-trial detention, the data presented below (see *Table 18, Figure 23*) indicate that the duration of up to 30 days is most frequent in Macedonian judicial practice. It is provided in the CCP that the duration of pre-trial detention is limited to 30 days when determined for the first time. There are only very rare cases where the duration of pre-trial detention is less than 30 days. When it comes to an extension of detention it is usually for another 30 days. Pre-trial detention during the evidence gathering period cannot be longer than 180 days before the investigation procedure comes to its end. After submission of an indictment, the duration of pre-trial detention can be no longer than 1 year for offences punishable with imprisonment of up to 15 years and not longer than 2 years for offences punishable with imprisonment of 15 years and more as well as offences punishable with life imprisonment. It can be considered as a great handicap that there are no data available about the duration of detention after the submission of the indictment.

When it comes to compensation for unjustified detention, appropriate fair compensation according the attitude of the Supreme Court is between 50 and 100 euros per day. Analysing Macedonian jurisprudence regarding this issue leads to the conclusion that fair compensation in most cases is around 50 euros per day. Available data

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48 See *Letellier* v. France, 26 June 1991, § 43, Series A No. 207; *Muller* v. France, 17 March 1997, § 43, Reports 1997-II; *Yağcı & Sargın,* cited above, § 52; and *Korchuganova* v. Russia, No. 75039/01, § 73, 8 June 2006.

49 www.mhc.org.mk/ [18.07.2014].

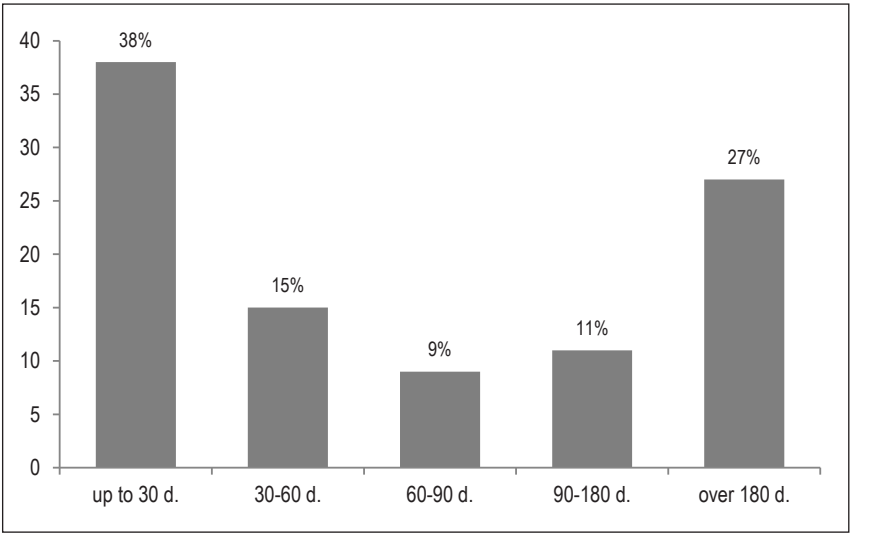
50 Case of *Miladinov et al.* v. The Former Yugoslav Republic of Macedonia, Application No. 46398/09, 50570/09 and 50576/09, Judgement, 24 April 2014.

Table 18 Duration of Detention (in %)

Year	Total detainees	Up to 30 days	30 - 60 days	60 - 90 days	90 - 180 days	> 180 days
2007	486	38	19	8	8	27
2008	547	33	16	12	16	24
2009	512	44	15	8	12	21
2010	408	51	10	9	9	20
2011	463	30	14	11	10	34
2012	423	30	13	7	12	37
%		38	15	9	11	27

Source: State Statistical Office.

Figure 23 Duration of Detention (in %)



from the Ministry of Justice, for the period from 1997 to 2008, show that more than ten million denars (1 euro = 61 denars) or nearly 170,000 euros were paid to citizens for unjustified detention. In 2001, nearly five million denars were paid in two cases; in 1997, there was one case amounting to 815,233 denars; and in 2003, 1.66 million denars were spent for two cases).

There are also some calculations that show the increasing costs of detention. In 2006, Macedonia spent a total of over 58 million denars (nearly 950,000 euros) for a total of 80,083 detention days. In 2007, expenses amounted to almost 70 million denars (1,135,000 euros) for a total of 79,173 detention days. Hence, the total costs for implementation of detention in Macedonia in 2007 amounted to 93% of the budget-

ary costs invested for the construction of primary schools in the same year, or 65% of the budgetary costs invested for the construction and reconstruction of secondary schools, while in terms of budget restructuring costs of college buildings, budget costs for implementation of detention were 10 times greater (997%).[51]

5. Concluding Remarks

Due to incomparable statistics of the different judicial authorities, only statistics from the state authorities which are officially available were used as the main data source in this paper. Macedonia must improve the comparability of statistics of different state bodies and judicial institutions. It is necessary to allocate a bigger percentage of the state budget for purposes of scientific research.

Concerns should exist at all political, judicial and societal levels about human trafficking, domestic violence and the sexual abuse of children. It is necessary to re-examine whether and to what extent existing measures for preventing child abuse, particularly the existence of a special online internet register of convicted paedophiles and chemical castration help, and to also examine whether such measures may seriously jeopardize basic human and legal rights. The overall situation of crime in the country also raises serious issues, especially with regard to the increase of crime in general, the widespread occurrence of property crime and the abuse of alcohol, drugs and other illicit substances.

The stereotypical male convict in Macedonia is: unemployed, of Macedonian nationality, convicted of theft, single, aged 30–39 years, secondary school educated.

The female "contribution to crime" has increased in recent years. A stereotypical profile of a female convict is very similar to that for a male convict, except: 14% of all females convicted have a faculty education, 40% are married and, besides crimes against property, females are most often convicted for more sophisticated crimes such as forgery, fraud, abuse of official position, etc.

Problems with juvenile delinquency suggest the need for a different approach in penal policy and judicial practice such as the application of preventive, informal and diversion proceedings, restorative justice procedures and outcomes as well as community sanctions and measures. It is very important to have a child-oriented policy where all possible punitive reactions toward the child are aimed at eliminating sources and reasons that have contributed to criminal behaviour. One should focus upon special prevention and participation of the child in the process of facing consequences of the committed offence and the creation of a proper system of values necessary for a lawful lifestyle. It is important to involve the family in the earliest stage of such measures.

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51 *Buzarovska & Uzunov* 2010.

6. Summary in Macedonian

Овој труд содржи краток преглед на основните податоци поврзани со криминологијата, трендовите во криминалитетот, стапките на рецидивизам, најчести видови на кривични дела, изречени кривични санкции, профили на затвореницитe и можности на условниот отпуст. Постои анализа на злосторствата извршени од страна на возрасни машки и женски сторители, како и главните карактеристики на малолетничката деликвенција. Карактеристики на системот на кривичната правда се претставени преку последната реформа на Законот за кривична постапка, шематски приказ на организацијата на судовите и јавните обвинителства, како и ситуацијата на државните затвори и изречените мерки притвор.

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Criminology and Crime in Montenegro – Focus on Corruption

Vesna Ratković

1. Introduction

Similar to other modern countries, the situation of crime in Montenegro, especially crime marked as organized, attracts attention and is subject to the action of numerous entities, primarily competent state authorities and other institutions that undertake suppressive, preventive and educational measures to reduce crime in our country. Some of these activities will be presented in this paper, so as to provide an insight into criminological education and research, crime trends and issues, as well as to provide basic information on the criminal justice system in Montenegro. Bearing in mind this complex system and interdependent relations of its components, criminology has an important place, but not as prominent as required by contemporary needs and perspectives of scientific study of crime. In this article, we will address, both from a normative and practical empirical point of view, some of the main efforts and debates and criticisms of crime in Montenegro and conclude by offering some insights about its possible future applications.

The practitioners, who, on a daily basis, encounter crime, criminals and victims, obtain significant knowledge on crime. However, to supplement this knowledge and obtain complete information, it is necessary to provide a scientific aspect, i.e., scientific perspectives of study that help to discover multiple causal links of crime.[1] The provision of appropriate legislation and practice of judicial authorities in applying the regulations, with the critical scientific approach to the study of crime, can help provide for a significant crime reduction in a society. In this sense, we can say that Montenegro is continuously working on this concept, however, it still significantly lacks in the scientific aspect of the study of crime.

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1 *Ignjatović* 2010, 13.

2. Criminological Education and Research

2.1 Education

History and development of criminology as a science in Montenegro stem back from the era of socialist Yugoslavia and establishment of the Faculty of Law at the University *Veljko Vlahovic* in the former Titograd in 1972. It established the Department of Criminal Law, and subject courses of Criminal Law and Criminal Procedure Law. In addition to the aforementioned state university, now called the University of Montenegro, upon the adoption of the Bologna Declaration in 2003, several private universities and faculties have been founded that in their programmes offer subject courses in the field of criminal law, including criminology. These are: Faculty of Law at University of Montenegro − Podgorica (graduate studies − criminology and economic crime; specialist postgraduate studies − criminology); Faculty of Law at University *Mediteran* − Podgorica (specialist postgraduate studies − criminology, organized crime and corruption); Faculty of Business Management − Bar (graduate studies – criminology; specialist postgraduate studies − organized crime and economic crime); Faculty of Political Sciences at University of Montenegro − Podgorica (specialist postgraduate studies − criminology), Faculty of Law at University *Donja Gorica* − Podgorica (no criminology).[2] The above brief overview indicates that criminology as a subject of study is present at a number of universities in Montenegro, especially at the Law Faculty of the University of Montenegro in Podgorica, Department of Security and Criminology.

The study of criminal law subjects, including criminology, is important, because a large number of students who graduate from these faculties are employed in the judiciary (judges, prosecutors, lawyers and notaries), public administration (police, customs, tax administration, private security services) and many other services and professions. As for the criminology master courses or doctoral research schools, Montenegro is lacking in this department. However, further specialization and development of knowledge and skills in the public sector is organized in the three most important centres: the Human Resources Management Administration, the Judicial Training Centre (judges and prosecutors) and the Police Academy.[3] Judicial education is stipulated by law, as a right and obligation. The independence of judges and prosecutors, in addition to providing for certain rights, imposes obligations as well, first and foremost, to perform their functions professionally, which includes knowledge, but also a number of skills. Annual programmes of the mentioned institutions

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2 The information was obtained from the official websites of the mentioned faculties: www.pravni.ucg.ac.me [18.07.2014]; www.pf.unimediteran.me [18.07.2014]; www.fpm.me [18.07.2014]; www.fpn.co.me [18.07.2014]; www.udgedu.me/fpn/ [18.07.2014].

3 Human Resources Management Administration, Podgorica, www.uzk.co.me [18.07.2014]; Judicial Training Centre, Podgorica, coscg@t-com.me; Police Academy, Danilovgrad, www.policijskaakademija.me [18.07.2014].

include initial, continuous and other specialist trainings in all legal fields, including a number of training courses related to the field of criminal law and criminology; the issue in the application and implementation of procedures related to criminal offences with elements of corruption; implementation of integrity principle in the public sector, etc. Law school teachers, particularly those from criminal justice departments, are enrolled as trainers in the training courses of the institutions mentioned. In order to further enhance the specialization in the judiciary and strengthen the position of the Judicial Training Centre, a Law on Judicial Education is currently being drafted.[4]

As an important educational centre, we should note here the Regional School for Public Administration – ReSPA,[5] headquartered in Danilovgrad, Montenegro. ReSPA is an international organization which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans. As such, ReSPA is a unique historical endeavour, established to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession, including the issues of anti-corruption, conflict of interest and integrity. ReSPA seeks to achieve this mission through the organization and delivery of training activities, high level conferences, networking events and publications. The overall objectives are to transfer new knowledge and skills as well as to facilitate the exchange of experiences both within the region and between the region and the EU Member States.

As regards the legislative regulation of scientific fields, it is done by the Law on Scientific Activity (Official Gazette of Montenegro, 80/2010), of which Article 6 stipulates that, in addition to other, scientific and research activity is to be implemented in social areas as well. Furthermore, the OECD's Frascati Manual (Edition 2002) was adopted, which includes Law under the social sciences. The Ministry of Science recognizes further elaboration within the social sciences, a subfield of Law is Criminal Law, and Criminology is a section of Criminal Law. The curricula at law schools determine the disciplines that are taught.

Bibliographical data on the major criminological textbooks used for education are not particularly abundant:

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4 www.pravda.gov.me [18.07.2014].

5 ReSPA, www.respaweb.eu. While primarily targeting officials from those countries which have signed and ratified the Agreement Establishing the Regional School of Public Administration and are thus members of ReSPA (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia) as well as other entities in the Western Balkans region, ReSPA's activities may also be open to officials from other countries and institutions.

- *Bošković, M.* (2009). Privredni kriminalitet (Trade crime). Bar, 320 pages;
- *Rakočević, V.* (2007). Kriminologija (Criminology). Pravni fakultet Univerziteta Crne Gore, Podgorica, 442 pages;
- *Rakočević, V.* (2004). Otkrivanje i suzbijanje zloupotrebe opojnih droga i organizovani kriminalitet (Investigation and repression of abuse narcotics and organize crime). Podgorica;
- *Perović, K.* (1998). Kriminologija (Criminology). Nikšić.

In addition to the listed ones published in Montenegro, a number of criminology textbooks prepared by professors from the region, mainly the Republic of Serbia, are used in law schools in Montenegro.[6]

2.2 Research with Special Focus on Corruption

In Montenegro, there are no independent or faculty-established or state institutes or centres for criminological research, thus we cannot determine a dominant approach to empirical criminological research, especially not a qualitative one. However, for years now, there is a practice when preparing laws, in any field, including criminal law (Criminal Code, Criminal Procedure Code, Law on Liability of Legal Persons for Criminal Offences, Law on Misdemeanours), that working groups established by the competent ministries comprise not just the representatives of state authorities but also representatives of academia from law schools in Montenegro or the Republic of Serbia, so as to provide for further improvement of the quality of criminal legislation.

That practice involves the participation of NGO representatives in the legislative work in preparing and developing new laws and amendments thereof, as well as organizing public hearings, once the draft law is adopted.[7] The involvement of representatives from the NGO sector is essential for their critical attitude towards perceived irregularities, on account of which they are seeking legislative action or application; sometimes they are also required to point out moral condemnation, for example, in the conflict of interest of public officials. The media in Montenegro are included and monitor the entire legislative process, until the adoption of legislative solutions. Covering daily activities, the media also raises issues concerning corrupt activities in general or in specific areas (urban planning, health care, "whistle blowing", etc.), through certain "investigative" journalism projects.

We should also note the action of the judicial authorities upon requests for free access to information, which has improved compared to the situation of several years ago. For example, during 2012, the Supreme State Prosecutor's Office and Prose-

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6 For example, *Ignjatović* 2010 and *Bošković* 2009.

7 Regulation on Manner and Procedures for Cooperation between State Administration Bodies and NGOs, Official Gazette of Montenegro 7/12.

cutorial Council received 301 requests for free access to information. Within the statutory deadline, 91% of the decisions were adopted, and others were brought following complaints concerning "the silence of administration". Dissatisfied parties have filed two complaints with the Administrative Court of Montenegro, one of which proceedings was suspended, and one remained unresolved at the end of the reporting year.[8] The data indicate that the publicity and quality of the judicial work has been improved significantly through effective action upon requests for free access to information, and that both citizens and the media form their perceptions of the judicial work based on this criterion. However, generally speaking, the citizens' perception of the work of the judiciary is quite negative.[9]

At the moment, preparation of regulations on procedures, methods and deadlines for collection of statistical data, in accordance with the CEPEJ guidelines, is underway in the Ministry of Justice and the Judicial Council. Specifically, under the project "Strengthening the Judiciary in Montenegro", an expert has been provided to support the Ministry of Justice to build capacity to use statistical reports and their analytics.[10]

Opinion polls and surveys on the perception of corruption are fairly frequent in Montenegro, due to the facts that the fight against corruption has been a top priority for all three branches of government, particularly since 2007,[11] and that negotiation process with the European Union on the Montenegro's membership in the EU began in 2013 with the opening of chapters 23 and 24, which concern the rule of law and issues of effective action against corruption. These surveys are organized by state authorities, certain NGOs and regional and international organizations. The results are presented to the citizens through the media, and usually include the views of citizens or representatives of certain groups (entrepreneurs, the judiciary, civil servants) on the issue of corruption in Montenegro in general or in specific sectors (health, education). All surveys are conducted on a representative number of respondents, and for Montenegro it means over 1,000.

When it comes to opinion polls carried out by the national authorities, the Directorate for Anti-Corruption Initiative (DACI), as of 2008, has organized various types of research on the issues of corruption. One of them is "Capacity and integrity of

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8 www.tuzilastvocg.me [18.07.2014]; Annual activity report of the Supreme State Prosecutor's office for 2012, Annual activity report of the Prosecutorial Council for 2012.

9 www.antikorupcija.me [18.07.2014]; Survey "Familiarity with the work of the Directorate for Anti-Corruption Initiative and public opinion on the issue of corruption", published in January 2014.

10 CEPEJ Studies, No. 18, European judicial systems, Edition 2012 (2010), Montenegro is one of responding countries of CEPEJ; www.pravda.gov.me [18.07.2014]; this is one of the activities under the negotiation chapter 23 of Montenegro with the EU.

11 *Ratković & Nikolić* 2008, 6.

the state administration in Montenegro."[12] All segments of the survey indicated a reduction of corruption compared to the previous three-year period, while the quality of services provided by the state administration is perceived as better than in the previous three-year period. Furthermore, the complexity of the procedures for provision of services turned out to be a greater problem than corruption: too much time spent walking from bureau to bureau, complicated procedures, poor organization of work, inability to get things done in one place, a lot of paperwork. It seems that all these issues in the work of public administration at central and local level identified by the citizens are actually the causes of corrupt and illegal conduct. Most respondents highlighted the plight of employees in the state administration and the inadequate reward and motivation system, as key causes for the corrupt conduct of public servants.

In addition, at the end of each calendar year, DACI carries out a corruption survey aiming to reveal the opinions of the citizens on DACI and its work, as well as of other sectors in the state administration. For example, the results of the "Familiarity with the work of the Directorate for Anti-Corruption Initiative and public opinion on the issue of corruption" in 2013 showed that majority of respondents (43.9%) believe that the level of corruption in 2013 was the same as in 2012. Should they opt to report corruption, the citizens would refer to the Police Directorate (23.6%) and DACI (22.6%), and then to the media (20.2%), NGOs (17.5%), Prosecutor's Office (7.5%), etc. The objective of the survey is to assess the perception, awareness, attitudes and experiences relating to corruption in Montenegro. Specific objectives of the public opinion survey include assessing: the public's familiarity with DACI and its activities; perception of the level of corruption in different sectors and institutions; personal experiences with corruption, as well as differences in perceptions, attitudes and experiences of discrimination with regard to socio-demographic characteristics of respondents (gender, age, education, ethnicity, financial status, and region).

According to the results of this study, more than 80% of the respondents have heard of DACI, while 17.8% of them answered the opposite. The largest number of respondents believes corruption is most prevalent in the healthcare sector (30%), then the police (15.9%) and inspection services (10.6%). One in ten respondents believes that corruption is most prevalent in the judiciary, as well as in the public administration. Results of these surveys are used in defining the measures and policies aiming to further increase the public awareness about the damaging effects of corruption, as well as in defining DACI's further prevention activities. The results also provide DACI with a detailed insight into how familiar citizens are with the

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[12] www.antikorupcija.me [18.07.2014]; Survey carried out by *Ipsos Puls*, Zagreb, supported by UNDP in Montenegro, survey included 1,604 respondents, May–July 2010, the findings were presented in December 2010 along with recommendations submitted to the relevant state authorities, as well as working groups for the reform of the state administration and reforms to reduce barriers to business.

work of the institution and the public awareness of the level, forms and causes of corruption. The survey results are published on the DACI's website and its bulletin "ANTICORRUPTION". In addition to the findings, the survey reports also contain recommendations for concrete action aimed at improving the situation in particularly vulnerable areas, according to the citizens.[13] Similar surveys are carried out by other government bodies, such as, for example, the Ministry of Health, as well as NGOs, especially those involved in the legislative work or drafting and evaluating of strategies for the fight against corruption at both a national and local level. These are: Network for Affirmation of NGO Sector (MANS), Centre for Monitoring (CEMI) – for education and healthcare;[14] Centre for Democratic Transition (CEDEM), and others. Sometimes the surveys are carried out through cooperation between the governmental and non-governmental sector; for example, the Ministry of Health[15] has actively participated in the preparation of the CEMI's report "Corruption Risk Assessment in the Healthcare System of Montenegro", the results of which had shown it was necessary to carry out activities aimed at improving the quality of healthcare service and protection of patients' rights, thereby preventing corruption in the healthcare system of Montenegro. The results were presented at the National Conference "Combating corruption in healthcare – the potential risks and measures to overcome them", in October 2013. Furthermore, the National Commission for the implementation of the Strategy for the fight against corruption and organized crime, at its XI session, held on 20 November 2013, discussed anti-corruption activities undertaken in the healthcare sector and adopted a conclusion with reference to the CEMI's report.[16]

It is also worth noting regional corruption surveys, such as the regional study "Integrity and resistance to corruption of the criminal judicial system in South East European Countries," carried out by Transparency International Romania, in the member countries of the Regional Anti-Corruption Initiative for SEE (Albania, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia), which included three target groups: judges, prosecutors and police officers.[17] In 2013, the United

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13 www.antikorupcija.me [18.07.2014]; Survey "Familiarity with the work of the Directorate for Anti-Corruption Initiative and public opinion on the issue of corruption", published in January 2014.

14 www.mzd.gov.me [18.07.2014].

15 www.cemi.org.me [18.07.2014].

16 www.antikorupcija.me [18.07.2014], National Commission, XI meeting, Conclusion: It is proposed that the Ministry of Health integrate the recommendations given in the CEMI's study "Corruption Risk Assessment in the Healthcare System of Montenegro" and recommendations from the XI session of the National Commission into the planning documents and future activities of the Ministry of Health in this area."

17 Survey findings available on the website of the Regional Anti-Corruption Initiative for SEE, http://www.rai-see.org/doc/Integrity_and_Resistance_to_Corruption_of_the_Law_Enforcement_Bodies_in_South_East_European_Countries-Survey_Report.pdf [18.07.2014].

Nations Office on Drugs and Crime carried out a regional survey "Business, corruption and crime: The impact of bribery and other crimes on private enterprise,"[18] which, generally speaking, does not indicate Montenegro as a country in which corruption is most prevalent compared to the rest of the region.

In the Corruption Perceptions Index (CPI) of the respectable organization Transparency International (TI), Montenegro has been assessed since the country renewed its independence in 2007, when Montenegro had CPI 3.3 and was ranked 84th. According to the TI report, Montenegro improved its position and was ranked 67th with CPI 4.4. This is an improvement compared to 2012, when Montenegro was ranked 75th with CPI 4.1. In the latest report, Montenegro shares the same place with Macedonia. Slovenia and Croatia are ranked higher, while other countries in the region are ranked lower than Montenegro (BiH 72 – CPI 4.2, Serbia 72 – 4.2 CPI, Kosovo 111 – 3.3 CPI, Albania 116 – CPI 3.1). Additionally, according to the latest TI report, Montenegro ranks better than few EU countries (Italy 69 – CPI 4.3, Romania 69 – CPI 4.3, Bulgaria 77 – CPI 4.1, Greece 80 – 4.0 CPI). Having opened one third of the negotiation chapters with the EU, Montenegro has the ambition to obtain as soon as possible TI CPI 5.0 or more, which would put it among nations that provide effective resistance to corruption. Montenegro has had similar positive results in the Doing Business report.[19]

Montenegro has so far not participated in any of the major international or European quantitative surveys like ICVS, European Sourcebook of Crime and Criminal Justice Statistics, or the ISRD study.[20]

There is no specialized criminological journal in Montenegro. However, we can say that there are several professional journals in which many authors publish articles from different fields of law, including criminal law and criminology. "Law Almanac", a journal of legal theory and practice has been established in 1933 by the Association of Legal Professionals of Montenegro, which, according to its editor in chief, Dr. *B. Radulović,* is considered to have "witnessed the duration of Montenegrin legal thought" ("Law Almanac").[21] "Perjanik",[22] established 13 years ago, is another journal of theory and practice in the field of police, security, criminology and law, published by the Police Academy in Danilovgrad ("Perjanik", journal for theory and practice in the field of police, security, criminology and law).[23] This journal targets

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18 UNODC Regional Survey "Business, corruption and crime: The impact of bribery and other crime on private enterprise", http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Montenegro_Business_corruption_report_ENG.pdf [18.07.2014].

19 www.doingbusiness.org/data/exploreeconomies/montenegro [18.07.2014].

20 Comment by the editor.

21 E-mail: baner@dri.co.me.

22 Perjanik, a member of police forces in the era of Prince-Bishop *Petar I Petrović Njegoš*.

23 E-mail: scolamup@t-com.me.

and brings together a number of authors from Montenegro, the region and beyond. "Almanac of the Faculty of Law" of the University of Montenegro in Podgorica was established in 1976;[24] Montenegrin Review of the Criminal Law and Criminal Policy, established in 2008 by the Association of Criminal Law and Criminal Policy.[25] Considering the above, it can be said that in Montenegro there are several reputable journals in which theorists and practitioners can publish their professional and scientific papers, including those relating to the issues in the field of criminology.

3. Crime Trends and Problems

As for the sources of data on crime in Montenegro, there are numerous sources published by the competent state authorities. These include: annual activity reports of courts,[26] public prosecutor's office and police, Institute of Statistics[27] and other bodies, such as the Tripartite Commission of the National Commission for the implementation of the Strategy and Action Plan for the Fight against Corruption and Organized Crime.[28] Reports always contain a part on statistical data on crime in general, as well as for certain types of crime, including criminal offences with elements of corruption. All of these reports are available on the websites of the respective authorities. The dynamics of their publication are different, annual reports are published for the period from the beginning to the end of the previous calendar year, while the Tripartite Commission reports are published biannually on the websites of the Directorate for Anti-Corruption Initiative[29] and the Government of Montenegro. The reports of the Tripartite Commission are particularly important, as they contain aggregated data on criminal offences with elements of corruption and several more specific criminal offences (see Appendix).

Each of the three institutions (court, prosecutor's office, and police) individually collect data in different manner, e.g. prosecutor's office by criminal offenders, courts by

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24 E-mail: bpfpg@ac.me.

25 E-mail: bvvuckovic@t-com.me.

26 Annual Activity Report of Courts for 2012, www.sudovi.me [18.07.2014]; Annual Activity Report of Supreme State Prosecutor's Office for 2012, www.tuzilastvocg.me [18.07.2014].

27 www.monstat.org [18.07.2014], Statistical Yearbook, Podgorica, 2011.

28 www.antikorupcija.me [18.07.2014]; the Part of National Commission, National Commission was established by the Government of Montenegro in 2007, with the aim of evaluating results of the implementation of the Strategy and Action Plan for the Fight Against Organized Crime and Corruption. The National Commission is composed of the highest representatives of all three branches of government and two representatives of the NGO sector.

29 DACI, Directorate for Anticorruption Initiative, is a body within the Ministry of Justice, responsible for preventive anticorruption action.

cases, which often include two or more persons, etc. For years now, the judiciary in Montenegro has been creating and improving the system for registering and processing electronic data, i.e. PRIS (Judicial Information System), which was designed to enable the electronic exchange of data among the Ministry of Interior, Ministry of Justice, police, courts, prosecutors' offices and the system for execution of criminal sanctions.

Publication of judgement summaries and other useful information should also be noted here. The access to information is enabled through publishing information on current events and press releases, adopted decisions and legal views on websites.[30] The most efficient in publishing their decisions are the Supreme and Administrative Court of Montenegro, as they have published all decisions since the establishment of their respective websites, as well as a large number of decisions taken before that moment. Press releases concerning the meetings of the Judicial Council are published immediately after they are held. The decisions are published in accordance with the Regulations on the anonymization of data in judicial decisions, thus, the personal data of the parties therein are protected. Decisions are published on the day of their dispatch from the court. Since the aforementioned websites do not meet all the requirements for providing information and do not allow for the upload of the volume of data necessary, a new judicial web portal has been designed, which provides for publishing of statements, decisions, jurisprudence and data on all courts in Montenegro. The portal, which should contribute to the transparency of courts, has been implemented in two phases. The first phase consisted of development of websites of all courts, with a primary objective to enable publishing of news, statements and decisions of the courts. The data from the existing websites have been transferred; personnel in courts have been trained and all courts in Montenegro begun publishing their decisions. The second phase involves the implementation of the "dynamic" part of the portal, its integration with the PRIS, which will enable presentation of information about specific cases, court schedules, statistical reports, etc. However, there is a constant requirement from the media for the more complete and readily available information from the judiciary, and at the same time, judges recognize the media as the greatest source of pressure during their work on complex cases.[31] For that purpose, there is a position of the court spokesperson, while the establishment of an office for reporting on the work of the courts has been planned as well. It is expected to provide timely and accurate information to the media and the public on the activity of the courts in Montenegro.

It has also been assessed that it is necessary to carry out an analysis of the possibilities to use the existing PRIS to monitor the statistics on criminal offences with

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30 www.sudovi.me [18.07.2014].

31 Integrity and Capacity Assessments of the Judiciary in Montenegro, October 2008, www.antikorupcija.me [18.07.2014].

elements of corruption; from the moment an indictment is made until the final judgement (Measure 2.2.5.1 in the AP for negotiating chapter 23).[32] It is possible to do so using PRIS at the moment; however, PRIS is not used for statistical reporting on prosecutorial work. For this reason, PRIS is used to record criminal offences with elements of corruption from the moment an indictment is made to the final judgement.

Recognizing that a modern, efficient and transparent judiciary is the key feature of modern European democracy, the Ministry of Justice implemented the Strategy to reform the judiciary 2011–2014. In June 2014, the Government of Montenegro adopted the Strategy for the next four-year period,[33] which provides for a continuous and organized achievement of the reform goals for the judiciary in Montenegro. Such an approach has so far shown good results; e.g., in 2012, the number of resolved cases from the 2012 and earlier years, increased by 68.89%.[34] In 2012, one of the major priorities of the judiciary was to work on cases concerning corruption, organized crime, money laundering, human trafficking, abuse of narcotics, thereby reducing the backlog.

General information on crime trends, with reference to the cases against adult perpetrators, dealt with by basic and higher state prosecutor's offices show that the decreasing trend from several previous years has continued. Thus, in 2012, about 5.5% less perpetrators of those crimes had been reported compared to the previous year; in 2011, it decreased by 6.86% compared to 2010, and in 2010, it decreased by 2.21% compared to 2009.[35]

In 2012, of the total number of perpetrators in this category, only 3.16% of them committed serious and most serious crimes, for which the Criminal Code stipulates severe prison sentences of more than 10 years, which is 4.26% less than in the previous year.

In the overall crime, juvenile crime makes up for 2.09%, while the crime of minor persons who are not criminally responsible makes up for 0.23%. Compared to the previous year, crimes among children – minors not criminally responsible – in the overall juvenile crime is approximately 4.12%, which is more compared to 2007, 2008, and 2009, when these percentages were 3.65%, 2.28% and 1.4%, respectively; but less than in 2010, when the percentage was 5% and 2011, when the percentage was 4.61%.[36]

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32 Action Plan for Chapter 23 Judiciary and Fundamental Rights, www.gov.me [18.07.2014].

33 www.pravda.gov.me [18.07.2014], Annual Activity Report and situation in the administrative area of the Ministry of Justice, with the report of the Institute for execution of criminal sanctions for 2011.

34 Annual Activity Report of Courts for 2012, www.sudovi.me [18.07.2014].

35 www.tuzilastvocg.me [18.07.2014], Annual Activity Report of the Supreme State Prosecutor's office for 2010 and 2011.

36 www.tuzilastvocg.me [18.07.2014], Annual Activity Report of the Supreme State Prosecutor's office for 2012.

Data on juvenile crime in general are not a reason for particular concern, although several cases of juvenile violence and data on crime among children may certainly present a warning for families, schools and authorities. At the end of 2011, the Parliament of Montenegro adopted the Law on the Treatment of Juveniles in Criminal Proceedings, which entered into force on 1 September 2012. This Law regulates the treatment of minors in criminal proceedings, based on the respect of their human rights and fundamental freedoms and their best interest, taking into account their maturity, level of development, abilities and personal characteristics and the severity of the crime, with the aim of their rehabilitation and social reintegration. The intention is to apply alternative measures to a greater extent in resolving criminal cases in which minors are involved, and in all stages of the proceedings.

In 2012, the downward trend continued with respect to the perpetrators of the crime of unauthorized production, possession and distribution of narcotics, which was 25.97% less than in the previous year. If one takes into account the fact that in 2011 that percentage was 20.81% lower than in 2010; in 2010 it was 17.21% lower than in 2009; in 2009 it was 23.11% lower than in 2008, and in 2008 it was 9.27% lower compared to 2007; then it is clear that competent authorities made significant progress in combating crime in this area.

During the reporting period, there has been a decline in the number of reported perpetrators of crimes against official duty, which were dealt with by basic and higher state prosecutor's offices, by 3.68% compared to 2011, when it was 4.32%. The data could indicate that the efforts of the competent authorities in combating this type of crime have given some results.

In any case, it is necessary to continue anti-corruption campaigns and efforts of the competent authorities aimed at effective detection, prosecution and trial of the perpetrators of these types of crimes. Citizens should be encouraged to report cases of corruption, although the quality and basis of such corruption complaints more often than not do not meet the requirements for further action, as evidenced by the data that in the reporting year 548 decisions was brought dismissing criminal charges against the alleged perpetrators of these crimes.

There are many obstacles for detecting and prosecuting perpetrators of these types of offences, which makes it necessary to further enhance inter-institutional cooperation of those in the system responsible for the detection and prosecution of all, but primarily, the most serious forms of corruption offences.

In the reporting period, there were no reports of perpetrators of the criminal offence of money laundering. However, according to the indictments by the Special department, there are ongoing court proceedings for cases "Saric" and "Kalic", as well as another 36 accused perpetrators of this criminal offence, who are seconded to the jurisdiction of the High State Prosecutor's Office in Podgorica.

In the same period, the number of perpetrators of criminal offences against legal traffic or legal dealings (forging documents, forging official documents, and securing certification of false information) has decreased by 8.89% compared to the previous year. Such a declining trend has been recorded in the last several years. So, in this area as well we can evidence a tendency of decline, which is very important from the aspect of the safety of legal traffic.

The number of perpetrators of criminal offences against public order and peace has decreased by 21.34% compared to the previous year. Particularly important here is the decrease in the number of perpetrators of the criminal offence of illegal possession of weapons and explosive materials by 27.09% compared to the previous year.

However, the percentage of criminal offences against life and limb has increased by 5.08% compared to the previous year. That is the result of the increase in the number of perpetrators of the criminal offence of serious bodily injury by 9.5 % compared to the previous year.

In 2012, the statistics of the Department for combating organized crime, corruption, terrorism and war crimes has shown that the number of registered perpetrators of criminal offences of organized crime and corruption remained at the level of the previous year. In the reporting year, the courts brought 87 judgements against the perpetrators of these criminal offences. A total of 82.75% of indictments resulted in conviction, 12.64% were acquitting judgements and 4.59% were abandonment judgements. In organized crime cases, the percentage of convictions was 92%, while one acquitting judgement and one abandonment judgement were brought in relation to two persons. In the area of corruption that percentage is less favourable − 79.05% are convicting judgements, 16.12% acquitting and 4.83% abandonment judgements, which is explained by the fact that, according to the Law on Courts, the Department received under the actual jurisdiction corruption cases that had been investigated and prosecuted for several years under the jurisdiction of basic courts and basic state prosecutor's office, and that had been those cases which were terminated in the appeal proceedings and returned for retrial.

For verification of indications reasonable doubts on existence of criminal offences of organized crime and serious corruption offences, the Department has established 223 cases. This information indicates that significant efforts invested by the Department to verify any information that may lead to the initiation of criminal proceedings for the most serious as well as other offences. The cases were established mainly on the basis of anonymous reports from citizens and non-governmental organizations, and in 104 cases they resulted in an initiation of proceedings in the Department and the relevant lower instance prosecutor's offices, which is 57.69% more than in the previous year. Criminal charges were dropped in relation to three offenders, while in 53 cases they were archived because after checking a number of indications and reasonable doubts it was established that there are no grounds for initiating criminal proceedings. The Department continues to check indications and reasonable doubts

in 71 cases, because the information in them is insufficient to identify the perpetrator and the offence.

At the end of the reporting year, the courts had a large number of pending indictments – 310, those made by the Department, as well as those sent to the Department by the lower instance prosecutors. This fact makes it difficult to complete the analysis of the quality of criminal proceedings and criminal policy of specialized judicial panels.

However, this year's results show a much better flow of criminal proceedings in the field of organized crime and corruption. Overall, in the reporting year, the number of convicting judgements increased by 11.33%, with the percentage of convicting judgements in the field of organized crime increasing by 12.59%, and in the field of corruption crimes by 0.48%. The latest Serious and Organized Crime Threat Assessment (SOCTA) in Montenegro was carried out by the Police Directorate,[37] with a view to assist in better perspective on the situation in the country and identify factors that could significantly influence the change of the situation in Montenegro in this area. Reports and analysis of regional and international police organizations and other law enforcement authorities in the countries of the region, as well as the practice of the Montenegrin police, indicate that organized and serious crime is difficult to detect. It is increasingly multinational, heterogeneous and very flexible. Organized and serious crime in the region and in Montenegro includes a large number of various criminal activities such as drug trafficking and illegal migration, smuggling and trafficking in persons, economic criminal activity – smuggling of cigarettes/excise, forgery and money payment cards, murder, robbery and vehicle theft, corruption, etc.

According to the UNODC survey[38] conducted among citizens of the Western Balkan countries, corruption is third in the list of the most prominent problems, after unemployment and poverty. Problems, such as crime and safety, the citizens of the Western Balkans put only in fifth place. The most common cause of corruption is the bureaucratic system, where bribes are offered mainly for relatively quick benefits of the one who pays it, usually to overcome delays or accelerate certain inefficient provision of

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37 www.mup.gov.me [18.07.2014], Serious and Organized Crime Threat Assessment of Montenegro (SOCTA), Police Directorate of Montenegro, November 2013. This assessment was carried out by the working team for preparation of strategic documents of the Police Directorate of Montenegro, composed of strategic and operational police analysts, based on the data obtained on the situation, dynamics and trends of serious and organized crime from police reports and assessments, intelligence, analytical reviews, surveys and other reports, developed by relevant national institutions and international and regional police and other organizations, as well as using a wide range of publicly available sources.

38 www.unodc.org/unodc/en/frontpage/2011/May/corruption-in-the-western-balkans.html [18.07.2014].

a public service. According to the citizens, statistically speaking, corruption occurs most for: providing better treatment and accelerating procedures – 28%; avoiding payment – 16%; completion of a procedure – 12%, etc. In most cases, corruption means are money, exchange of services and offering various kinds of goods. Corruption, as a method of work of organized criminal groups, is not present only in Montenegro, but also abroad, where they carry out parts of their criminal activities. In the upcoming period, prevention activities of all government institutions should focus on removing bureaucratic barriers to the provision of public services to citizens, as these barriers have been recognized as one of the main causes of corruption.

4. The Criminal Justice System

Judicial power in Montenegro is executed by the courts, which are autonomous and independent. Their establishment, jurisdiction, organization, operation and proceedings in the courts are regulated by law. The Supreme Court is the highest court in Montenegro, which provides for the uniform application of the law by 15 basic courts, two high courts, one Commercial Court, Appellate Court and Administrative Court.[39] Court hearings are public, judgements are pronounced publicly and the decisions are made in the panel, unless the law provides that a single judge is to decide. The office of a judge is permanent and judges enjoy functional immunity. Judicial function in Montenegro is executed by 257 judges, of which 56.3% are women.[40] The Court decides on the basis of the Constitution, law and confirmed and published international treaties. Establishment of court-martials and extraordinary courts is prohibited. The matters concerning organization and regulation of the courts in Montenegro are primarily governed by the Law on Courts, such as the establishment of courts, organization of actual jurisdiction, conditions and procedure for the election of judges, termination and dismissal of judges, matters concerning actual jurisdiction of the courts, including the competencies relating to the criminal field.

According to the Article 16 of the Law on Courts, the *basic courts* have jurisdiction in criminal cases: a) to judge at first instance, criminal offences for which a fine or imprisonment up to 10 years is prescribed by the law as the principal punishment, regardless of the character, profession and position of the person against whom the proceedings are instituted and regardless of whether the criminal offence has been committed in peace, extraordinary circumstances, in a state of imminent war danger or in a state of war, if for the particular types of these criminal offences the jurisdiction of another court has not been provided for; b) to judge at first instance those criminal offences which are by special legislation prescribed to be within the

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39 Law on Courts, Official Gazette of Montenegro 5/2002, 49/2004, 22/2008, 39/2011, 46/2013 & 48/2013.

40 Annual Activity Report of Courts for 2012, www.sudovi.me [18.07.2014].

jurisdiction of basic courts; c) to conduct proceedings and decide upon requests for cancellation of a sentence, termination of security measures or legal effects of a sentence; d) decide on those matters when it has pronounced such measures or sentence.

Article 18 of the same law defines the jurisdiction of *high courts in the first instance* to: 1) judge in the criminal proceedings for criminal offences for which, as a major penalty, imprisonment for over 10 years is prescribed by law, regardless of the character, profession and position of the person against whom the proceedings are instituted and regardless of whether the criminal offence has been committed in peace, extraordinary circumstances, in a state of imminent war danger or in a state of war, and for the criminal offences: manslaughter, rape, endangering the safety of an aircraft in flight, unauthorized production, keeping and selling narcotic drugs, instigating violent change of constitutional order, disclosure of secret data, instigating ethnic, racial and religious hatred, discord and intolerance, violation of territorial sovereignty, associating for anti-constitutional activity, preparing acts against the constitutional order and security of Montenegro; 2) judge in the criminal proceedings for criminal offences of organized crime, regardless of the severity of prescribed punishment; 3) judge in criminal proceedings for criminal offences with elements of corruption: violation of equality in the exercise of economic activity; abuse of monopoly position; causing bankruptcy; causing false bankruptcy; trading in influence; false balance; abuse of appraisal; disclosure of trade secrets; disclosure and use of stock exchange secrets; receiving bribe; giving bribe; abuse of office; abuse of position in business operations; fraud in office and abuse of authority in economy, punishable by imprisonment of eight years or more severe punishment; 4) judge for criminal offences which are by special legislation prescribed to fall within the jurisdiction of high courts; 5) conduct proceedings and decide on requests for extradition of accused and sentenced persons and on recognition and enforcement of foreign court judgements in criminal matters; 6) perform other duties as prescribed by law.

High Courts in the second instance decide on appeals against decisions of the basic courts, out of trial: 1) rule on conflict of jurisdiction between basic courts from its territory; 2) decide upon requests for cancellation of a sentence based on a judicial decision and upon demand for termination of security measures or legal effects of a sentence in relation to the prohibition of acquisition of certain rights, if it has pronounced such a measure or decision; 3) perform duties of international legal assistance in criminal matters; and 4) perform other duties as prescribed by the law.

The Appellate Court 1) decides on appeals against decisions of high courts in first instance, as well as appeals against decisions of commercial courts; 2) decides on conflict of jurisdiction between: basic courts from the territory of several high courts; between basic and high courts; between high courts; between commercial courts; and 3) also performs other duties as provided for by the law.

The Supreme Court 1) decides in third instance as provided by law; 2) decides on extraordinary legal remedies against decisions of the courts in Montenegro; 3) decides

against decisions of its panel of judges, as provided by law; 4) decides on transfer of territorial jurisdiction when it is obvious that another court that has subject-matter jurisdiction will be able to conduct proceedings more efficiently or for other important reasons; 5) decides which court shall have territorial jurisdiction when the jurisdiction of the courts in Montenegro is not excluded, and when, in accordance with the rules on territorial jurisdiction, it is not possible to reliably determine which court has territorial jurisdiction in a particular legal matter; 6) resolve conflict of jurisdiction between different types of courts in the territory of Montenegro, except when the jurisdiction of another court has been established; 7) perform other duties laid down by law.

In matters relating to the transfer of territorial jurisdiction, designation of the court having territorial jurisdiction and conflict of jurisdiction, the *Supreme Court* decides in a panel of three judges without a hearing. Legal position of principle is a rule on a point of law of general significance to proceedings in legal matters decided by the Supreme Court and points of law which have impact on equality of persons before the law and respect for other rights and freedoms guaranteed by the Constitution and international treaties. Every court may request the adoption of or amendment to a legal position of principle.

Legal opinion of principle is delivered in relation to a particular point of law, which has arisen from the case law of the Supreme Court or lower courts and one that has impact on uniform application of the Constitution and laws in the territory of Montenegro (Article 28 of the Law on Courts). It is particularly important to emphasize the development of mediation as an alternative dispute resolution method, which is not yet sufficiently taken hold in practice. Also, the introduction of notaries as of July 2011 is also significant. As regards the issues in dealing with executive cases, the Law on Execution and Security, as well as the Law on Public Executors, have been adopted in December 2013, on the basis of which 13 public executors have been appointed and the Chamber of Executors established.

Streamlining the *misdemeanour system* is ongoing. The Register of fines and misdemeanour records has been established, while the development of solution to the current issue of appointment of misdemeanour judges by the executive power is in progress. The Law on Protection from Domestic Violence and Strategy for Protection from Domestic Violence have been adopted, the latter includes an assessment of the situation and identifies key issues in the social care, as well as the objectives and measures for its improvement, especially relating to: raising awareness of citizens on the issue of violence and establishing zero tolerance for violence, developing violence prevention programmes, supporting family in violence prevention, improving systems for collecting and analyzing data and reporting of cases of violence. The Law on Treatment of Juveniles in Criminal Proceedings has been put in place.[41] The new Criminal Procedure Code was adopted and has entered into full force as

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41 Official Gazette of Montenegro 64/11, dated 29.12.2011, entered into force 1 September 2012.

of 1 September 2011. It provides for the concept of prosecutorial investigations and includes improved provisions concerning delayed prosecution, as well as introduces the plea agreement. The Criminal Procedure Code[42] regulates issues relating to criminal court in general, e.g. the composition of the panels of judges, rules for determining the territorial jurisdiction of the courts, functional jurisdiction of the criminal court, etc. Amendments were made to the Criminal Code, which provided for complete harmonization of criminal offences with elements of corruption with the Council of Europe's Criminal Law Convention on Corruption and its Additional Protocol, as well as the provisions concerning the criminalization of the UN Convention against Corruption.[43] Now, the emphasis is on efficient application of these provisions, especially relating to the high-positioned public officials.

The *State Prosecutor* is a state authority and a party in criminal proceedings. Powers, responsibilities and organization of the State Prosecutor are regulated by constitutional and legal provisions.[44] The State Prosecutor's Office is a unique and independent authority that performs the function of prosecuting natural and legal entities for criminal offences prosecuted ex officio, as well as the function of prosecuting perpetrators of other criminal offences. The function of the State Prosecutor's Office is executed by the Supreme State Prosecutor's Office, with two high and 13 basic state prosecutor's offices. The Supreme Public Prosecutor's Office is composed of two departments: for combating organized crime, corruption, terrorism and war crimes, as well as for international cooperation, civil and administrative fields. In accordance with differently set constitutional responsibilities of the State Prosecutor's Office, representing the state in property law disputes has been transferred to a special body − Protector of property and legal interests of Montenegro. The organization has 248 employees, of which 43.55 % are prosecutors (59.26 % female), 16.53 % are law graduates with passed bar exam and interns, and 39.92 % are public servants and employees.

The *Supreme State Prosecutor* supervises the operation of high and basic State Prosecutor's Office, as well as the work of the Special Prosecutor. Supervision of State Prosecutor's Offices is done through annual and special activity reports, through regular annual controls, through the work in the second instance and individual consultations in major first and second instance cases, and complaints regarding the operation of lower prosecutors. During the annual control, the control of prosecutorial administration is also carried out by the Ministry of Justice.

In order to strengthen the rule of law, particularly in a de-politicized and criteria-based selection of members of the Judicial and Prosecutorial Council and state

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42 Criminal Procedure Code, Official Gazette of Montenegro 57/09, 49/10, 43/13.

43 Criminal Code, Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

44 Law on State Prosecutor's Office, Official Gazette 40/2008, 39/2011 and 46/2013.

prosecutors, as well as to strengthen the independence, autonomy, efficiency and accountability of judges and prosecutors, the Analysis of needs to amend the Constitution in this area was carried out, and resulted in amendments to the Constitution in 2013. According to the constitutional changes in the same year, amendments were made to the aforementioned Law on Courts, Law on Judicial Council, Law on Constitutional Court, and Law on State Prosecutor's Office. Pursuant these laws, the new composition of the Constitutional Court of Montenegro (December 2013), Judicial and Prosecutorial Councils (June 2014) have been elected. The election of the Supreme State Prosecutor is carried out in the Parliament of Montenegro, for the second time, where certain weaknesses of the new constitutional solution came into light, in terms of strong influence of political parties in the election of this important state function.

Efficiency of justice – a number of activities have been undertaken to achieve this objective, especially relating to reducing the backlog of court cases, revision of substantive and procedural legislation, encouraging alternative dispute resolution, freeing courts from cases which by their nature are not judicial, reorganization and rationalization of the court network. The Law on Right to Trial in Reasonable Time was adopted, introducing two legal remedies, the control request and complaint for just satisfaction.

The main problems that still decrease the efficiency of the judiciary are a backlog of cases, long court procedures and inadequate judicial network. To this end, the court network is being rationalized based on the CEPEJ indicators on the number of judges, prosecutors and other court employees in courts and prosecutor's offices, as well as on geographical distribution of the courts. Centralization of jurisdiction is expected to increase efficiency. The current misdemeanour authorities should become part of the judicial system, and reorganization of their structure is underway.

5. Conclusion

Montenegro is an attractive area for many organized criminal activities, such as smuggling of narcotic drugs, cigarettes, vehicles, corruption, money laundering, etc.[45] Due to the social and economic and political circumstances of Montenegro, organized crime has been strengthened through the work of mafia clans and criminal groups, which represent an extreme danger for the country. As a country engaged in an intensive process of the EU integration, striving to become a part of developed Europe and world, Montenegro has identified the latest trends in the fight against organized crime and has begun to implement them independently or in cooperation with countries from the region primarily. The continuation of consistent implementation of the activities foreseen by laws, national strategic documents and action plans for negotiation in line

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45 *Bošković & Skakavac* 2009, 88–96.

with the EU's chapters 23 and 24 will provide for a further decrease in the level of organized crime, including corruption, the latter of which has made Montenegro particularly vulnerable to the spread of organized crime since the 1990s.

6. Summary in Montenegrin

Kriminalitet, posebno njegovi organizovani oblici, uključujući korupciju u Crnoj Gori su prepoznati kao prioritetni problem, koji traži i prioritete u rješavanju. U radu je veoma kratko ukazano na djelovanje nadležnih državnih organa i drugih institucija koji preduzimaju represivne, preventivne i edukativne mjere u cilju smanjenja kriminaliteta kod nas. Dakle, stvoreni su neophodni preduslovi za sprečavanje i sankcionisanje korupcije i organizovanog kriminala i pravosanžno presuđenje, prevenciju, edukaciju i uspostavljen sistem monitoringa za praćenje realizacije strateških dokumenata. Pored navedenog od izuzetnog je značaja i kontinuirano jačanje nezavisnosti i integriteta ključnih organa i institucija, kao i snaženje njihovih ukupnih resursa (administrativnih, tehničkih i materijalnih). U narednom periodu fokus preventivnih aktivnosti državnih institucija treba usmjeriti na uklanjanje birokratskih barijera u pružanju javnih usluga građanima, kao jednog od glavnih identifikovanih uzroka korupcije.Jačanje institucionalnog administrativnog okvira predstavlja ozbiljan izazov, pogotovo za „male države", kod kojih postoje limiti u mogućnosti obezbijeđenja kadrova, pogotovo viskokospecijalističkih. To je vidljivo ne samo kada su u pitanju državni organi, već i visoko obrazovene ustanove, jer je evidentno da sa te strane još uvijek značajno izostaje naučni aspekt izučavanja kriminaliteta.

Upravo od kvaliteta obezbijeđivanja odgovarajućeg zakonodavstva i uspješne i efikasne prakse pravosudnih i drugih organa, uz kritični naučni pristup izučavanju kriminaliteta, zavisi i smanjenje kriminaliteta, posebno onog najtežeg, organizovanog. U tom smislu možemo reći da se u Crnoj Gori u kontinuitetu radi na navedenom konceptu, ali da je od posebne važnosti i faktor vremena u kojem je potrebno postići što mjerljivije rezultate.

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Appendix

Report of the Tripartite Commission on Case Analysis in the Field of Corruption and Organized Crime for the Period 01/01 – 31/12/2012

Podgorica, January 2013

Introductory Section

The Tripartite Commission for analysis of cases in the fields of corruption and organized crime, as well as for reporting and developing a uniform methodology of statistical indicators in the fields of corruption and organized crime was set up on the basis of the Decision of the President of the National Commission No. 03-1493 of 16/02/2011.

The task of the Tripartite Commission is to lay down a unified methodology of statistical indicators, that the police, prosecutors and courts take as the basis for monitoring and follow up on criminal charges and criminal cases, to perform statistical and analytical processing of data on the number of criminal charges and cases in the fields of corruption and organized crime that are pending or have been finalized, with special emphasis on the structure of perpetrators of these offences, the fields in which these offences are committed, as well as to report and make recommendations to the National Commission in line with the adopted methodology, in order to improve the efficiency of the judiciary.

On the basis of data obtained from the police, prosecutors and courts, the report presents a statistical overview of the number of persons against whom criminal proceedings for criminal offences with elements of corruption and organized crime are pending, the structure of perpetrators of these offences, the fields in which these offences are committed, including recommendations to the National Commission on how to boost the efficiency of the judiciary.

Criminal Offences with Elements of Corruption

This report includes the following corruptive criminal offences:

- Money laundering referred to in Art. 268 of the Criminal Code;
- violation of equality in performing economic activities referred to in Art. 269 of the Criminal Code;
- abuse of monopoly power referred to in Art. 270 of the Criminal Code;
- misuse of position in business activity referred to in Art. 272 of the Criminal Code;
- causing bankruptcy referred to in Art. 273 of the Criminal Code;

- causing false bankruptcy referred to in Art. 274 of the Criminal Code;
- abuse of authorizations in economy referred to in Art.276 of the Criminal Code;
- fraudulent balance sheet referred to in Art. 278 of the Criminal Code;
- abuse of evaluation of assets referred to in Art. 279 of the Criminal Code;
- disclosing a business secret referred to in Art. 280 of the Criminal Code;
- disclosing and using a stock-exchange secret referred to in Art. 281 of the Criminal Code;
- abuse of office referred to in Art. 416 of the Criminal Code;
- negligence in discharging one's duties referred to in Art. 417;
- trading in influence referred to in Art. 422 of the Criminal Code;
- passive bribery referred to in Art. 423 of the Criminal Code;
- active bribery referred to in Art. 424 of the Criminal Code;
- disclosure of an official secret referred to in Art. 425 of the Criminal Code;
- fraud in the conduct of an official duty referred to in Art. 419 of the Criminal Code.

In the period from 1 January until 31 December 2012, the Supreme Public Prosecutor's Office of Montenegro – Division for suppressing organized crime, corruption, terrorism and war crimes received for further processing a total of 26 criminal charges against 75 persons in the field of corruption. Out of that number, Police Directorate filed 9 criminal charges against 26 persons, citizens filed 10 criminal charges against 25 persons, the High Court in Podgorica filed 1 criminal charge against 2 persons, NGO MANS filed 2 criminal charges against 5 persons, attorneys filed 3 criminal charges against 11 persons, and a bank filed 1 criminal charge against 6 persons.

The breakdown of criminal offences by criminal charges filed is as follows:

- misuse of position in business activity referred to in Art. 272 of the Criminal Code — 10 persons
- abuse of authorizations in economy referred to in Art. 276 of the CC — 6 persons
- abuse of office referred to in Art. 416 of the CC — 34 persons
- trading in influence referred to in Art. 422 CC — 1 person
- passive bribery referred to in Art. 423 of the CC — 8 persons
- active bribery referred to in Art. 424 of the CC — 16 persons

The breakdown of perpetrators of criminal offences per charges filed:

- mayor — 2 persons
- deputy mayor — 1 person
- president of the Basic Court — 1 person
- judge of the Basic Court — 2 persons
- director of a state-owned company — 1 person

- president of the council of a public institution 1 person
- director of a public institution 1 person
- director of a business organization 5 persons
- responsible person in a business organization 7 persons
- employee of the Real-Estate Administration 6 persons
- customs officer 1 person
- employee of the MoI 3 persons
- police officer 2 persons
- physician 2 persons
- basic public prosecutor 1 person
- deputy basic public prosecutor 2 persons
- employee of the Historic Royal Capital 1 person
- President of the Commercial Court 1 person
- judge of the Commercial Court 2 persons
- judge of the Appellate Court 2 persons
- judge of the Basic Court 2 persons
- bankruptcy manager 1 person
- bank director 1 person
- bank employee 1 person
- owner of a private company 3 persons
- head of a local government body 1 person
- other persons 22 persons

Acting upon the criminal charges filed, the Supreme Public Prosecutor's Office dismissed 13 criminal charges against 30 persons on account of lack of reasonable doubt that they had committed either the reported CO nor another criminal offence prosecuted ex officio, of which 2 police charges against 2 persons, 2 MANS charges against 5 persons, 7 citizen charges against 19 persons and 2 charges filed by attorneys against 4 persons. Out of this figure, charges were dismissed against:

- mayor 1 person
- director of a business organization 3 persons
- responsible person in a state-owned company 1 person
- employee of the Real-Estate Administration 4 persons
- physician 1 person
- police officer 1 person
- director of a public institution 1 person
- president of a council in a public institution 1 person

- basic public prosecutor 1 person
- deputy basic public prosecutor 2 persons
- responsible person in a business organization 2 persons
- president of the Commercial Court 1 person
- judge of the Commercial Court 2 persons
- judge of the Appellate Court 2 persons
- judge of the Basic Court 2 persons
- bankruptcy manager 1 person
- other persons 4 persons

On the basis of the preliminary investigation results, an order to conduct investigation was issued against 27 persons; bill of indictment was lodged against 4 persons, while preliminary investigation procedure is conducted against 14 persons.

In addition to cases opened on the basis of criminal charges filed in 2012, during the reporting period Division for suppressing organized crime, corruption and war crimes took over from lower instance prosecutor's offices 7 cases based on indictments against 58 persons.

The breakdown of these cases by criminal offences is:

- CO money laundering referred to in Art. 268 of the CC 3 persons
- CO misuse of position in business activity referred to in Art. 272 of the CC 2 persons
- CO illicit trade referred to in Art. 284 of the CC 2 persons
- CO abuse of office referred to in Art. 416 of the CC 33 persons
- CO passive bribery referred to in Art. 423 of the CC 2 persons
- CO active bribery referred to in Art. 424 of the CC 16 persons

In the field of corruption, financial investigation is on-going in view of extended confiscation in 2 cases against 18 persons, against 7 persons for money laundering referred to in Art. 268 of the CC, and against 11 persons for abuse of office referred to in Art. 416 of the CC.

Out of that number, decisions on seizure of assets were issued in 2 cases involving 7 persons, on account of money laundering:

- In the case against the accused *Khvan Valery Evgenjevič* – Russian national, financial investigation includes apart from him, 3 more persons.

The following was seized from those persons:

- land having the total surface area of 2,496 m^2, in the territory of Herceg Novi municipality,

- structures having the total surface area of 1,534 m^2, in the territory of Herceg Novi municipality, and
- funds amounting to EUR 3,469,591.86.

In the case of the accused *Kalić Safet et al*. the following were seized:

- land having the total surface area of 193,003 m^2, in the territories of Rožaje and Ulcinj municipalities,
- structures having the total surface area of 11,192 m^2, in the territories of Rožaje, Ulcinj and Podgorica municipalities,
- funds amounting to EUR 66,500.00,
- shares 713,381.00,
- 13 passenger vehicles,
- 2 heavy goods vehicles.

The total value of all seized assets in these two cases amounts to approximately EUR 31,000,000.00.

In the period from 1 January to 31 December 2012, the Supreme Public Prosecutor's Office-Division for suppressing organized crime, corruption, terrorism and war crimes received for a total of 2 criminal charges and one supplement to the existing charge against 21 persons in the field of *organized crime.*

Criminal charges in this field were filed by the Police Directorate, as follows:

- Against 11 persons on account of *unauthorized production, keeping and releasing into circulation of narcotic drugs* referred to in Art. 300 of the CC, concurrent with the crime *creation of a criminal organization* referred to in Art. 401a of the CC, and
- against 10 persons on account of the crime *creation of a criminal organization* referred to in Art. 401a of the CC concurrent with the crime *forging a document* referred to in Art. 412 of the CC and crime *unauthorized state border crossing and smuggling of persons* referred to in Art. 405 of the CC.

The following was seized from the suspects:

- 140 kg of skunk.

As regards the decisions taken on the basis of these charges, the Supreme Public Prosecutor's Office-Division for suppressing organized crime, corruption, terrorism and war crimes issued an order to begin investigation against 21 people.

Prosecutor-led investigation was finalized against 21 people and an indictment was raised against 21 people. Out of that figure, criminal procedure was finalized against 1 person by concluding a plea bargain. The plea bargain served as a basis to pass a judgement sentencing him to one year and 10 months in prison.

As regards the field of organized crime, financial investigation is conducted only in the case of Duško Šarić et al., on account of money laundering referred to in Art. 268 of the CC and crime referred to in Art. 300 of the CC.

The following was seized from the accused *Duško Šarić* and others:

- structures having the total surface area of 9,269 m^2,
- land having the total surface area of 45,547 m^2,
- shares 29,424,
- 12 passenger vehicles,
- 26 construction machines,
- 48 heavy goods vehicles and freight vehicles and
- concrete manufacturing plant.

The total value of assets seized is approximately EUR 13,000,00000.

In the period from 1 January to 31 December 2012, *3 investigations against 20 persons were conducted in high courts in Montenegro in the field of corruption*, in cases opened before transferring investigation from the jurisdiction of courts to the jurisdiction of the Supreme Public Prosecutor's Office – Division for suppressing organized crime, corruption, terrorism and war crimes.

Out of that number, investigation was finalized in 1 case against 1 person.

Investigation was not finalized in 2 cases against 19 persons In these cases, the Supreme Public Prosecutor's Office withdrew from prosecution, and subsidiary prosecutors took over prosecution by lodging a request to continue conducting investigation.

The Supreme Public Prosecutor's Office – Division for suppressing organized crime, corruption, terrorism and war crimes conducted 4 investigations against 27 persons.

Investigation was finalized in 2 cases against 19 persons, whereas in 2 cases against 8 persons investigation is underway.

There were a total of 50 open criminal cases in the field of corruption against 207 persons based on indictments in the period from 1 January until 31 December 2012 and from earlier years.

Out of that number, 25 cases were resolved against 78 persons. A total of 45 persons were convicted, 16 persons were acquitted, charges were dismissed against 12 persons, indictment was rejected against 1 person because the subsidiary prosecutor passed away, criminal proceedings were discontinued against 1 person as the public prosecutor withdrew from prosecution, whereas 2 cases against 3 persons were referred to the Basic Court as the one having jurisdiction.

A total of 25 cases against 129 persons remain unresolved.

In 14 cases against 42 persons the judgements became final.

A total of EUR 2,000 was seized on the basis of non-final judgements in the field of corruption.

A total of EUR 66,300 was seized on the basis of final judgements in the field of corruption.

The Supreme Public Prosecutor's Office-Division for suppressing organized crime, corruption, terrorism and war crimes *conducted 3 investigations against 65 persons* in the field of organized crime and all of them were finalized.

In the field of organized crime, 25 criminal cases against 249 persons were pending based on indictments from the period 1 January to 31 December 2012 and from the previous years.

A total of 15 cases against 95 persons were finalized.

A total of 44 persons were convicted, 22 persons were acquitted, charges were dismissed against 3 persons, whereas in 1 case against 26 persons indictment was returned to the prosecutor in view of supplementing the investigation.

There remain 10 cases pending against 154 persons.

In 3 cases against 13 persons the judgements became final.

The following were seized pursuant to final judgements in the field of organized crime: 1 pmv make "Passat", 1 mobile phone, 2 packages of asphalt cover, and 28,251 grams of cocaine and 3,582 ml of liquid cocaine.

The following were seized pursuant to non-final judgements in the field of organized crime: 2 pistols, 7 pieces of pistol ammunition, 88 pieces of hunting rifle ammunition, 3 automatic rifles, 1 hunting carbine, 1 automatic gun and a number of pieces of ammunition of various calibres.

Offenders in the field of corruption are mostly directors and responsible persons in business organizations, finance and accounting professionals in business organizations, private entrepreneurs, bank employees, broker dealers, customs, taxation and police officers, physicians, MPs, local officials, judges and prosecutors, civil servants and state employees, civil servants and state employees from the Real-Estate Administration, inspectors, national and local level civil servants and state employees and others.

The most common criminal offences in the field of corruption are: passive bribery, active bribery, abuse of office, abuse of authorizations in economy, negligence in business activity and fraudulent balance sheet.

Criminal offences in the field of corruption are most common in business organizations, joint stock companies, state-owned companies, public institutions, Customs Administration, Real-Estate Administration, Police Directorate, judicial authorities, state administration and local government.

The most frequent criminal offences in the field of organized crime are: criminal enterprise, unauthorized production, possession and releasing into circulation of nar-

cotic drugs, trafficking in persons, human smuggling, smuggling, pandering, abuse of office, aggravated theft, aggravated murder, counterfeiting money, forging documents, money laundering, fraud, illegal crossing of state border and illicit possession of weapons and explosives.

The structure of criminal offences in the fields of corruption and organized crime, their perpetrators and the fields in which these offences are committed, are presented in more detail in the tabular overview of all closed and open cases that is an integral part of this report.

The Commission made an assessment that progress has been achieved in resolving cases in the fields of corruption and organized crime.

In order to achieve even greater efficiency and timeliness in resolving these cases, competent staff with highly specialized knowledge in detecting, prosecuting and adjudicating criminal offences from the fields of corruption and organized crime needs to be provided. With a view to broaden the knowledge in these fields, it is necessary to continue the training courses of existing staff by local and foreign experts. Over and above, entities responsible for these activities need to be provided with technical, material and all other forms of support in order to successfully carry out their activities.

TRIPARTITE COMMISSION

Radule Kojović, Judge of the Supreme Court of Montenegro

Veselin Vučković, Deputy Supreme Public Prosecutor of Montenegro

Olivera Popović, Police analyst, Division for Planning, Development and Analytics, Police Directorate

Criminology and Crime in Romania – Focus on the New Criminal Code

Andra-Roxana Trandafir

1. Criminological Education and Research

When speaking about criminological education and research in Romania, one cannot ignore the political history of the State. Romania escaped the communism era after the Revolution in December 1989 and began its transition towards democracy and a capitalist market economy. After a decade of post-revolution economic problems and living-standards decline, extensive reforms fostered economic recovery. Romania joined NATO in 2004. In June 1993, the country applied for membership in the European Union and became an Associated State of the EU in 1995, an Acceding Country in 2004, and a Full Member on 1 January 2007.[1]

1.1 Education

At the beginning of the 20th century, criminology was quite absent from the Romanian faculties, with only one exception: the Faculty of Law of the Babes Bolyai University of Cluj (located in Transylvania, Western Romania). While there is little information about how it was decided, legal literature in the field of criminology shows that after the communists came to power and they have restructured the whole educational system, criminology was prohibited in universities like in other countries in Eastern Europe,[2] as well as other disciplines such as the sociology of deviance.

It was not until 1969 that criminology became an academic discipline, being taught for only one semester within the law faculties. Nowadays, very few of the law faculties (e.g. Faculty of Law of the University of Bucharest) include criminology among their mandatory disciplines. Other faculties have criminology as an optional discipline. It is also rarely taught in sociology faculties.

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1 See www.europa.eu/about-eu/countries/member-countries/romania/index_en.htm [17.07.2014].

2 *Simion* 2008; *Preda* 2012.

Within law faculties, criminology is traditionally taught in the second semester of the second year of study, after the students already achieved basic knowledge of general criminal law. For example, within the Faculty of Law of the University of Bucharest, there are 28 hours dedicated to the course and 14 hours dedicated to the seminars. Normally, the course is divided into three parts: the criminological research, etiological criminology and dynamic criminology. Some studies are also conducted.

Most master degrees, as well as doctoral research schools focus on criminal law and not on criminology. The possibility to draft a thesis in criminology exists however within law faculties as well as within the framework of the Romanian Academy,[3] namely within the Institute of Legal Research.[4]

Based on methodologies of each university, criminology is classified at a university level within the area "social sciences", the field "law", being included in the specialty disciplines in the section of criminal law. For example, within the University of Bucharest, criminology is classified with the code D.D.2.4.30.[5]

It should be stated that there are not many major criminological textbooks used for education in law schools. Faculties of Law in Bucharest and Cluj mostly use these textbooks:

- *Bogdan, S.* (2012). Criminologie (Criminology). Ed. Universul Juridic, Bucuresti. Revised textbook, the third edition of the same book, first published in 2009;
- *Cioclei, V.* (2011). Manual de criminologie (Criminology textbook). Ed. C.H. Beck, Bucuresti. Revised textbook, the fifth edition of the same book, first published in 1999.

Other textbooks which are being used in faculties or quoted more often are:

- *Butoi, T.* (2009). Criminologie (Criminology). Ed. Solaris, Bucuresti, First edition;
- *Cercel, A.C.* (2009). Criminologie (Criminology). Ed. Hamangiu. First edition;
- *Tanasescu, C.* (2013). Criminologie (Criminology). Ed. Universul Juridic, Bucuresti. First edition;
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3 The Romanian Academy was established under this name in 1879 and its purpose is to support and develop research in various areas of science. For more information, see www.acad.ro [17.07.2014].

4 See www.icj.ro [17.07.2014].

5 See www.drept.unibuc.ro [17.07.2014].

1.2 Research

At the end of 2002, the Romanian National Institute of Criminology was established.[6] The Institute was designed to take on an active direction: studying crime phenomenon, undertaking surveys and contributing to the designing of strategies and prevention policies, working with other governmental bodies such as the Public Ministry and the Ministry of Interior, as well as with NGOs. After 4 years of effective functioning, the Institute ceased to exist, due to a governmental restructuring process. Initially, the Institute concentrated its efforts on three major themes: violence, corruption and juvenile delinquency. In time, it expanded the object of its preoccupation to other fields such as crime prevention, victimology, and restorative justice. The idea of the Institute was to get together specialists from various fields, keeping pace with the interdisciplinary approach of criminology. As a consequence, personnel were made up of law graduates, sociologists and psychologists. The Institute managed to organize different national and international events, which were extremely important in the context of the continuous training of the judges and prosecutors and other criminal law professionals.[7]

There are also other organizations involved in criminological research: the Romanian Society for Criminology and Forensic Sciences (affiliated with the International Society of Criminology) aiming to continue the activity of the Institute; it organizes seminars and elaborates on studies in the field, including the publication of a journal on criminology (last number was 1-2/2012, to be referred to below). There were other academic bodies such as the Institute of Legal Research and the Institute of Sociology or the Institute for Research and Crime Prevention within the Ministry of Interior and Administrative Reform. There is also a small unit that concentrates on criminological studies also in the framework of the Prosecutor's Office by the High Court of Cassation and Justice.[8]

Regarding the relationship between, on the one hand, criminological theory and research, and, on the other hand, the government, as mentioned above, the Romanian National Institute of Criminology was working with other governmental bodies such as the Public Ministry and the Ministry of Interior. The Society for Criminology and Forensic Sciences aims to re-establish the Institute and maintain ties with the Government.

In 2007, the Government adopted the National Strategy in the domain of research-development and innovation for 2007–2013.[9] This Strategy established a National

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6 For more information about the Institute, see www.criminologie.ro/INC/Lang/Romana/Home/ [17.07.2014].

7 *Simion* 2008.

8 See for all these aspects *Simion* 2008.

9 Available on www.uefiscdi.gov.ro/userfiles/file/ROST/1188314177strategia%20ro.pdf [17.07.2014].

Institute of Research and Development, which could have a major role in the field of criminology. Other than these initiatives, it could be stated that the relationship between criminological theory, research and the government is not very developed in Romania.

With respect to major criminological studies (qualitative and/or quantitative), it is the Society for Criminology and Forensic Sciences which conducted various studies in Romania, such as: violence in Romanian society, corruption in Romania, juvenile delinquency, restorative justice, prevention of crimes, suicide as a form of delinquency, prison studies[10], etc.

Within the context of EU accession, there were various studies made with respect to corruption and organized crime.[11] It is also important to mention that some research studies have recently started to be developed by the Ministry of Justice itself, involving other authorities in Romania (e.g. a study which is currently being conducted on causes and consequences of corruption, together with National Direction Anticorruption, National Authority of Prisons, Law and Sociology Faculties).

There was recently a questionnaire conducted among law students from the University of Bucharest with respect to their attitude on the death penalty.

Also, an international survey was conducted in December 2012 among law students regarding their perception of police and crime related matters, aiming also to test the importance of perception of legal cynicism of law students in Romania (as well as in other countries). In addition, factors such as procedural justice, distributive justice, police effectiveness, police trust, police authority, moral credibility, deterrence, police cooperation and legal compliance were analysed for by the Romanian law students. Similar surveys were conducted in Slovenia and Russia. The results of the international survey show that legal cynicism in all three countries is quite low but still significantly different. At least according to the results of the survey, legal cynicism is lower as we look at Europe from its eastern part to its center (Russia − Romania − Slovenia), or from a state which is not a member to the European Union to a state which became a member a longer time ago (same direction). Legal cynicism can be predicted by a series of factors pertaining to the way in which the police and criminal justice are perceived. While the factors are common for the three countries, their influence is different, which leads to the conclusion that three different countries, irrespective of the fact that they have a different economic growth, political culture, history, population characteristics, etc., cannot be put together in a single model in order to diminish legal cynicism. Nonetheless, a general conclusion can be drawn, which is that working on each of the variables relevant for each country can have an impact on legal cynicism and, consequently, on the efficiency of legal norms in each

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10 All studies are available on www.criminologie.ro [17.07.2014].

11 See for example, studies available on www.criminologie.ro [17.07.2014].

specific case. The result of the study was presented at an International Conference in Romania and published in the conference proceedings.[12]

With respect to criminological journals, the Society for Criminology and Forensic Sciences edits the Journal on Criminology, Forensic Sciences and Penology (Revista de criminologie, de criminalistică şi de penologie).[13] There are also other law journals in which criminological articles can be published.[14]

2. Crime Trends and Problems

When it comes to major sources of data about crime in Romania, the courts, the prosecutors' offices and police departments annually provide for data regarding crimes to the Superior Council of Magistrates (until 2004, the Ministry of Justice was responsible in this field). Also, the Romanian Institute of Statistics (RIS) gathers all this information, which is published on their website[15] and given to Eurostat. The information is public, provided that an account on the website is created. Of course, as this information is provided by the judicial organs, such data measure only apparent criminality.

Regarding levels and patterns of crime, victimization and/or fear of crime, the last official statistics available date back to 2011. The source is RIS, based on the information provided by the Superior Council of Magistrates. *Table 1* shows the number of reported persons in 2011, based on different categories.

The number of persons convicted (out of 100,000 inhabitants) was 195 (in 2010) and 223 (in 2011) – see *Table 2*. The crime rate is therefore increasing. Political and media engagement underline the data regarding some crimes (such as corruption cases), which could lead to the impression that the major problem relates to such facts.

Looking at the most frequent crimes for which convictions were given in 2011 (*Table 3*), it can be seen a great number of crimes against property (37.29%), driving related crimes (28.75%) and crimes against persons (16.62%). Such data are meant to offer an important picture about the situation of criminal law in Romania, as well as on some of the problems which the society is facing.

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12 See for all these aspects *Ilie et al.* 2013.

13 Available online on www.criminologie.ro/SRCC/Lang/Romana/Publications/EditorialBoard/ [17.07.2014].

14 E.g. Criminal Law Notebook (Caiete de drept penal), ed. Universul Juridic, www.law.ubbcluj.ro/rev3.php [17.07.2014]; Legal Currier (Curierul Judiciar), ed. C.H. Beck, www.curieruljudiciar.ro/revista/ [17.07.2014]; Law (Dreptul), edited by the National Union of Jurists, www.internationallawreview.eu/ [17.07.2014], or Annals of the Bucharest Law University – Law Series (Analele Universitatii din Bucuresti − seria Drept), ed. C.H. Beck, www.drept.unibuc.ro/Informatii-s70-ro.htm [17.07.2014].

15 See http://statistici.insse.ro [17.07.2014].

Table 1 Reported Persons in 2011

Reported persons	Total number	Per 100,000 inhabitants
Total persons	212,875	998.0
Urban	109,281	515.0
Rural	102,923	483.0
Foreigners	671	3.0
Minors	11,295	53.0
Up to 14 years	531	2.0
14 - 17 years	10,764	5.0
18 - 30 years	79,453	37.0
Unemployed	102,351	483.0
Past employees	107	0.5

Source: Romanian Institute of Statistics (RIS).

Table 2 Convicted Persons in 2011

Persons convicted	Total number	Per 100,000 inhabitants
Total persons	47,577	223
Males	45,010	211
Females	2,567	12

Source: Romanian Institute of Statistics (RIS).

Looking at the sanctions applied to major persons (*Table 4*), it can be seen that more than half of the total convictions led to a suspended sentence, while in almost a third of total convictions, imprisonment was applied. The few situations where a fine was applied led to a reconsideration of the rules regarding this penalty in the new Criminal Code (nowadays, the fine is provided for a larger number of crimes and the system allows a better individualization of this penalty). Also, the low application of the suspended sentence under surveillance represented a reason for the elimination of this penalty from the new Criminal Code.

Last, looking at the total number of inmates in 2011 (*Table 5*), we can easily see that approx. 68% have sentences between 2–10 years. This led to a major modification of the penalties provided by the Criminal Code especially in the case of crimes against property.[16]

16 See infra, Chapter 3.2

Table 3 Convicted Persons by Type of Crimes in 2011

Type of crimes	Total number	Per 100,000 inhabitants
Total number of crimes	47,577	223.00
Crimes against persons – total	7,910	3.70
Crimes against persons – homicide	658	0.30
Crimes against persons – manslaughter	120	0.60
Crimes against persons – serious injuries	613	2.90
Crimes against persons – involuntary manslaughter	980	4.60
Crimes against persons – crimes against protection of work	119	0.60
Crimes against persons – rape	483	2.30
Crimes against property – total	17,746	83.20
Crimes against property – theft	13,416	62.90
Crimes against property – robbery	2,490	11.70
Crimes against property – embezzlement	362	1.70
Crimes against property – fraud	1,406	6.60
Crimes against forest regime – total	1,421	6.70
Crime related to work – offering bribery	82	0.40
Crime related to work – taking bribery	63	0.30
Crime related to work – trafficking influence	107	0.50
Crimes against authority – total	414	1.90
Economic crimes	9	0.04
Crimes related to social life	1,765	8.28
Crimes related to driving	13,682	64.11

Source: Romanian Institute of Statistics (RIS).

It is however obvious that some of the major problems the criminal justice system is facing refer to corruption, prison overcrowding, length of trials and overburdened court dockets (the last two being related). The government took various measures in response, such as the establishment of a specialized body to fight corruption, the organization of several courses for becoming a judge and the establishment of more positions for magistrates. EU funding has all helped in these domains.

Table 4 Type of Sanctions Applied in 2011

Type of sanctions	Total number	Per 100,000 inhabitants
Total number of sanctions	44,204	207.00
Fine	2,678	13.00
Execution at workplace	9	0.04
Imprisonment	13,435	63.00
Suspended sentence	25,014	117.00
Suspended sentence under surveillance	3,068	14.00

Source: Romanian Institute of Statistics (RIS).

Table 5 Persons in Prisons in 2011 by Length of Imprisonment

Length of imprisonment	Total number	%
Total	27,381	100.00
Less than 1 year	884	3.22
1 - 2 years	2,277	8.31
2 - 5 years	11,693	42.70
5 - 10 years	6,925	25.29
10 - 15 years	2,535	9.25
15 - 20 years	2,008	7.33
More than 20 years	910	3.32
Life imprisonment	149	0.54

Source: Romanian Institute of Statistics (RIS).

3. The Criminal Justice System

The Romanian judicial system (criminal and civil field) comprises the High Court of Cassation and Justice and the other legally established courts. Romania's court system is structured as follows: Judicial Courts and Prosecutor's Offices; Level 1: Courts of First Instance (178) and Prosecutor's Offices; Level 2: Tribunals (41), Minors and Family Tribunal (1) and Prosecutor's Offices; Level 3: Courts of Appeal (15) and Prosecutor's Offices; Level 4: High Court of Cassation and Justice Prosecutor's Offices.[17]

3.1 Access to Legislation and Justice

All legislation is published in the Romanian Official Journal, which is also available online. However, there is no free data base with respect to updated legislation, which normally makes research in this respect very difficult. All information regarding the criminal justice system is normally found on the websites of public institutions competent in this field. Political and media engagement are also involved in this process.

3.2 Criminal Regulations

Romania's previous Criminal (Penal) Code dated from 1968 and was substantially amended in successive rounds. The Criminal Code was divided into two parts: a general and a special part. The general part was further subdivided into nine titles: the first covered the foundation of penal law, the second covered the general forms of crimes, the third covered sanctions and their applications, the fourth juvenile delin-

[17] See in this respect https://e-justice.europa.eu/content_ordinary_courts-18-ro-en.do [17. 07.2014].

quency, the fifth covered legal safeguards, the sixth covered situations in which there is no criminal responsibility, the seventh and the eighth described situations in which criminal responsibility and sanctions did not apply, and the ninth title contained a description of various criminal terms. The special part was further subdivided into twelve titles, each one describing the regime (elements, responsibility and sanctions) applicable to specific types of crimes.[18]

The *previous Criminal Procedure Code* dated also from 1968 and was divided into two main parts: a general part and a special part. According to this Code, the Romanian criminal trial consists of three stages: the criminal investigation, the trial, the enforcement of decisions. The *investigation* was the first stage of the criminal process. Its purpose was to gather conclusive evidence and it was carried out by the prosecutor and by the criminal investigation bodies, judicial police or special investigation bodies. Following a criminal investigation and depending on its findings, a decision would be taken not to proceed with prosecution or to prosecute by indictment issued by the prosecutor. The *trial* was the second stage of the criminal process. This only occurred when, following a criminal investigation, the prosecutor decided to prosecute. According to this Code, the trial was public. The court (the judge) directly conducted all actions necessary for this stage of the trial, and was in direct contact with the evidence. All the evidence could be discussed by the parties, prosecutor, court and lawyer. At the end of the trial, the judge pronounced the judgement. The *enforcement* of the judgement was the third and last stage of the criminal trial. This stage was reached after trial, when the court issued a final judgement of conviction. It included the entire procedure of implementation of the final judgement (issuing the arrest and detention warrant with a view to executing the punishment of imprisonment, issuing the order to execute the punishment of imprisonment, issuing the order prohibiting the defendant from leaving the country, etc.).[19]

Temporary release and conditional release were regulated by Romanian law, the conditions being strictly provided by the Criminal Code and Criminal Procedure Code.

In 2009 and, respectively, in 2010, a new Criminal Code and Criminal Procedure Code were published in the Official Journal. Both Codes entered into force on 1 February 2014 and led to some important changes in the Romanian judicial system. The legislators of the two Codes were inspired by various legal systems, such as the French Codes, traditionally, Germany, Italy, Spain, Belgium, but also Nordic countries, keeping at the same time some provisions specific to the Romanian legal

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18 See for more information www.nyulawglobal.org/globalex/romania1.htm#_5.12_Criminal_Law [17.07.2014].

19 See https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-ro-en.do?member=1 [17.07.2014].

system. While the main pillars of the previous Codes have not been modified, there are some novelties which have already led to problems for legal professionals.

Regarding the *new Criminal Code,* the main modifications of the General Part consist in: eliminating social danger as a condition for the existence of a crime, introducing two new conditions in this respect (unjustified character of the illicit deed and imputable character), of more severe regulations regarding sanctions in case of plurality of crimes and recidivism, and of new complementary penalties, elimination of judicial aggravating circumstances, giving up on penalties applicable to minors (only educative measures can be taken against them) and introducing new ways of individualizing sanctions (adjourning penalty or giving up penalty). Concerning the special part, the new Code expressly forbids euthanasia (seen as a mitigating form of homicide), introduces less severe conditions in order to punish involuntary injuries and, for the first time in the Romanian system, adds crimes against the foetus, violation of headquarters of a legal person, violation of private life of a person and harassment (non-sexual).[20] Prostitution is no longer a crime under this new Code, as the problematic drafting of the previous Code led to no more than 15 women being imprisoned and with particular difficulties to convict pimps. The main reason of this decision was that prostitution is a reality and women who prostitute are regularly forced to do so or they are being exploited. Consequently, the legislature believed that it is better for them to at least have the chance to ask for help without facing the risk of criminal charges. This solution was also based on some statistical evidence, which showed, for example, that 9% of the prostitutes in Romania in 2005 were minors and about 60% were aged between 20–29 years. 12% of the prostitutes have never been to school and 50% ceased to go to primary school. About 30% of the prostitutes had been sold/bought, most of them having been raised in orphanages. 50% of the women were abused by their clients. It must be mentioned that this idea created many debates among Romanian citizens, as well as within the Orthodox Church (which pronounced itself against prostitution and, thus, against abolition of this crime).[21]

As a general line, the penalties in the new Criminal Code are less severe, which is well explicable by the fact that the former Code, being a socialist regulation, provided enormous sanctions for crimes against property (i.e. 25 years of imprisonment for aggravated theft) which were never applied by the judges. Also, many offences were brought from special laws in the new Criminal Code, which makes this regulation easier to read.

The major problem which appeared after the entering into force of this Code was related to the more favourable law (which is mandatory, according to the Constitution), as the courts had contrary interpretation in this respect (i.e. whether to apply

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20 *Bogdan* 2014; *Udroiu* 2014.

21 *Ilie* 2014.

the law universally or by institutions). This also led to a conflict of interpretation between the High Court of Cassation and Justice and the Constitutional Court, which finally issued a mandatory decision stating that the law shall be applied universally (which means that if the penalty of the new Criminal Code is chosen – generally, less severe, than the rules regarding recidivism must also be taken from this Code – generally, more severe).

With respect to the *new Criminal Procedure Code,* the main modifications are related to the introduction of the preliminary chamber procedure and of the possibility to have a plea agreement.

It should be stated here that, other than the adoption of new Codes, Romania's EU accession in 2007 brought many changes in the criminal law system. For instance, all the EU legislation had to be integrated. The Romanian legislator decided to amend existing laws or to issue new regulations, modifying at the same time the Criminal Code and the Criminal Procedure Code before the adoption of the new ones. This led to the existing of more than 200 laws containing criminal provisions and also to EU legislation which was not transposed or was not properly transposed, but the problem was partially solved with the adoption of the new Codes.

For example, one of the problems which appeared immediately before the entering into force of the new Codes was indeed related to the need to align Romanian law with European regulations, specifically Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings. Although adopted in 2010 (three months after the official publication of the new Criminal Procedure Code), it was not until 2013 that the Directive was transposed, by means of a law modifying the new Criminal Procedure Code, namely Law no. 255/2013, which also entered into force on 1 February 2014. While some of the rules set forth by the Directive already existed in the former Criminal Code, there were some provisions which lacked legal consecration. For example, the previous Code did not contain any mention of the right to challenge a decision finding that there is no need for the translation of documents or the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings. Consequently, between 27 October 2013 (the date set for transposition) and 1 February 2014, the Directive was directly applicable in the Romanian legislation. Nonetheless, even after 1 February 2014, the transposition of the Directive still raises some problems, such as interpretation for communication between suspected or accused persons and their legal counsel which is not available in all cases, translation of essential documents of a file, use of authorized translators, the decision on the necessity of interpretation or translation and the possibility to complain directly on this aspect.[22]

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22 *Ilie & Pargaru* 2013.

3.3 Prisons and Imprisonment

Romania's prison system has 21 units for preventive arrest, 15 closed and maximum security prisons, 16 prisons with open and semi-open regimes, two prisons for minors and one for women-only. The number of inmates in Romania's prisons has risen constantly in recent years. In 2013, a report of the National Administration of Prisons showed that Romania had over 31,800 prisoners today and the number had risen by over 5,000 in the last five years. According to the Romanian representatives, Romanian jails still fall below European standards with inadequate toilet and washing facilities. Many are difficult to renovate because of the way they were built and few have set-aside dining rooms. There are social, cultural, educational and medical programs developed in each prison, depending on the inmates' needs.

In Romania, the percentage of former inmates that repeat criminal acts is about 54% (according to reports published in 2011). Most recidivists committed crimes of theft and robbery, though homicide, attempted murder, blows causing deaths, rape and fraud are also present. Antisocial acts against individuals predominate, most of them having robbery as their purpose. As regards the number of imprisonments, the investigated subjects have an average of 4.5 imprisonments, from 2 up to 13. As per the reasons for committing offences, a study showed that most recidivists suggested elements associated with poverty. Other reasons given were: alcohol consumption, peers and associates, the desire for entertainment and jealousy. The shortest period of time spent in prison among recidivists was 3 years, whilst the longest was 17 years, resulting in an average of 10 years and 2 months. The analysis of the occupational exclusion theme reveals some interesting data such as: more than half of the persons interviewed had no professional qualification, while the others had skills of low complexity (tractor driver, shoemaker, carpenter, locksmith, plumber and welder); only a few recidivists worked prior to their imprisonment, the others had never been really employed (some of them being only day laborers).[23]

4. Conclusion

Almost 25 years after the fall of communism, criminological education and research in Romania still has a lot to do in order to align with European studies and projects in this respect. While criminology is still being taught in law and, sometimes, sociology faculties, the practical part is little developed, as there are no specialized bodies or structures to conduct criminological studies. A lack of funds and absence of specialization among the few criminologists in the country prevent important studies from being developed, although there are sufficient areas

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23 *Tica & Roth* 2012.

of study which could present a major interest for criminology. However, with the adoption of the new criminal codes, with initiatives from the Ministry of Justice and implications of other public authorities and with the possibility of European funds, there is hope that extended research and new projects in this field can be conducted. Also, international cooperation at the university level or within public institutions is meant to provide a fresh and necessary approach in this respect.

5. Summary in Romanian

Lucrarea îşi propune să ofere o idee generală cu privire la cercetarea şi educaţia în domeniul criminologiei în România, precum şi la sistemul de justiţie în materie penală, cu privire specială asupra provocărilor aduse de noul Cod penal şi de noul Cod de procedură penală care au intrat în vigoare în februarie 2014. Adoptarea acestor reglementări este şi o consecinţă a mai multor probleme apărute după căderea comunismului şi a aderării României la Uniunea Europeană. Din aceste motive, lucrarea prezintă pe scurt problemele cu care s-a confruntat România în ultimii ani, precum şi studiile şi proiectele în domeniul criminologiei desfăşurate la nivel naţional. Este evident că orice reformă în acest domeniu nu poate fi făcută de o singură instituţie, ceea ce înseamnă că doar o cooperare susţinută între toate structurile implicate în prevenirea şi pedepsirea infracţiunilor poate conduce la soluţii adecvate.

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Criminology and Crime in Serbia

Đorđe Ignjatović and Natalija Lukić

1. Introduction

Criminology has undergone a rapid development as a scientific discipline in Serbia. After the Second World War, criminology became part of the educational programme at School of Law at the University of Belgrade and the first textbook on the topic was published. During the 1960s, interest in this science became visible. At that time, the Institute for Criminology[1] was founded as well as the Yugoslav Society for Criminology and Criminal Law. The trend of development continued until the 1980s when a period of stagnation ensued. During the transitional period, criminology followed suite.[2] However, in recent years the situation has improved – the first Society of Criminology[3] was founded, the Ministry of Science accepted to finance several projects from this field, edition 'Crimen' was created and within it many books on criminology topics were published. In this article the authors examine the development of criminology as a scientific discipline and assess research in this area. Also, information about textbooks, the already mentioned edition 'Crimen', a selective bibliography, journals and the Society of Criminology will be presented.

In the second part of the article, general crime trends in Serbia are presented. The authors have analysed data for adult offenders, both suspects and convicted persons. Analysis of crime trends in Serbia is very interesting for criminologists, considering that the country has changed its constitutional status several times over the past three decades. Crime trends are analysed for the period 1991–2012. The assumption for analysis of crime trends is that the subject of examination is the same territory and the same population. Although the population fluctuations were significant in the period 1991–1993,[4] the territory of examination is the same for the period until 1999. Considering that Serbian state authorities do not have effective power in the

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1 www.iksi.ac.rs [18.07.2014].

2 *Ignjatović* 2008.

3 http://kriminolog.sekcija.tripod.com [18.07.2014].

4 According to the official data of the Statistical Office of the Republic of Serbia, in the period from 01.05.1991–31.08.1993, 438,926 persons have received the status of a refugee in Serbia (Information n. 24 from January 1995).

province of Kosovo and Metohija from that year, it is difficult to analyse statistical regularities. The article examines crime trends by using data of both the former Federal Statistical Office and Statistical Office of the Republic of Serbia. It is important to note that judicial statistics in Serbia contain data of offenders, not crimes. The last available statistical data are for the year of 2012.

2. The Status of Criminology in Serbia

2.1 Criminology as a Scientific Subject

The term 'Criminology' was first used in Serbia by Prof. Dr. *Toma Živanović* at the beginning of the 20th century as a generic concept for all criminal law sciences.[5] Criminology became a scientific discipline in Serbia after the Second World War, firstly at the School of Law at the University of Belgrade. Criminology has had the status of being a scientific discipline at the School of Law at the University of Novi Sad and at the School of Law at the University of Niš since the foundation of these Institutions. At the School of Law at the University of Kragujevac, criminology became part of the educational programme at the end of the 1980s. Also, this scientific discipline is included in the educational programme at the School for Special Education and Rehabilitation and at the School of Security Studies at the University of Belgrade and one segment of criminology is part of the scientific discipline i.e. 'Social Deviations', a subject at the School of Philosophy (Department for Sociology) at the University of Belgrade. In the meantime, criminology has become a well-established scientific discipline and many master and Ph.D. theses have been written on criminology. Also, this science is a part of the educational programme at several private universities and the Police Academy in Belgrade.

2.2 Textbooks

The author of the first textbook on criminology, which was published in 1946, was *Janko Tahović,* Professor at the School of Law at the University of Belgrade.[6] This textbook represented a collection of his lectures on criminology and it consisted of several parts: I – Introduction; II – Development of criminology doctrines before the appearance of schools on criminology; III – Development of criminology doctrines, appearance and development of schools on criminology: anthropological explanation, positivism, biological theories and historical materialism; IV – Systematics of contemporary criminology. The author defined criminology as a science of crime as a real phenomenon. For decades, the most influential textbook on criminology was the one of Prof. Dr. *Milan Milutinović* (six editions, the first was published in 1969

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5 *Živanović* 1910.

6 *Tahović* 1946.

and the last one in 1990).[7] The first four editions included chapters from the field of Penology and Crime Policy, which were not part of the last two editions, as Prof. Dr. *Milutinović* published textbooks on Penology (1977)[8] and Crime Policy (1984)[9]. The textbook on criminology consisted of three parts: I – Introduction; II – Types of crime; III – Explanation of crime. The author did not explicitly define criminology, but he considered the subject of this science to be crime as a mass phenomenon and individual criminal behaviour.

The first textbook that was published after Professor *Milutinović*'s book was the work of Prof. Dr. *Đorđe Ignjatović* (the first edition was published in 1992, the eleventh in 2011). The author defines criminology as an "independent science that, by using knowledge and research methods from other sciences of man and society, empirically analyses criminal phenomenon i.e. a crime, an offender, a victim, crime as a mass phenomenon and the way society reacts to criminal behaviour."[10] Systematics of the textbook is as follows: I – Introduction; II – Concept and subject of criminology; III – Methods in criminology; IV – Theories in criminology; V – Three dimensions of criminal phenomenon (phenomenology, etiology, victimology); VI – Social reaction to crime.[11]

In the textbook 'Criminology' of Prof. Dr. *Slobodanka Konstantinović* and *Vesna Nikolić* (four editions) this discipline is defined as an independent, theoretical, empirical and interdisciplinary science that explores phenomenology and etiology of crime as a mass phenomenon and as an individual criminal behaviour, with the aim of better explanation and suppression of crime. Systematics of the textbook is as follows: I − Concept, subject, classification and methods in criminology; II − Position of criminology among other social sciences; III − Criminal phenomenology; IV − Etiology of crime; V − Victimological approach in crime explanation.[12]

In the textbook 'Criminology with Penology', Prof. Dr. *Milo Bošković* defines this discipline as a science that researches criminal offences, offender and crime as a mass phenomenon. Systematics of the textbook is as follows: I − Concept and development of criminology; II − Theoretical grounds of crime etiology; III − Criminogenic factors (internal and external).[13]

The textbook 'Criminology with Social Pathology' of the author *Zlatko Nikolić* is divided into two parts. In the first one the author discusses: I − Concept and subject

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7 *Milutinović* 1990.

8 *Milutinović* 1977.

9 *Milutinović* 1984.

10 *Ignjatović* 2011.

11 *Ignjatović* 2011.

12 *Konstantinović & Nikolić* 2010.

13 *Bošković* 2000.

of criminology; II − Methodology; III − Historical development and current condition in criminology; IV − Crime and social structure (crime etiology); V − Crime phenomenology; VI − Crime victims (victimology); VII − Crime suppression. The author's attitude towards the definition of criminology is that a definition is unnecessary. Hence, the assertion that it is a science about crime is enough.[14]

2.3 Research

The main institution for research on criminology is the Institute for Criminological and Sociological Research,[15] founded in 1960 in Belgrade. In the period from 2006 to 2010, the Institute conducted research under the title "Prevention of Crime and Social Deviations"[16] and from 2002 to 2006 the research "Serious Types of Crime in Serbia in Conditions of Transition".[17] Also, research related to criminology was conducted by the Institute for Comparative Law in Belgrade.[18] For example, in the period from 2001 to 2002, the research "Compatibility of the Yugoslav Law with the European Convention on Human Rights" was conducted. In 2007, the project "Comparative Analysis Research on Temporary Residence Permits Legal Instruments Established in the Western Balkan Region" was realized and it was important for criminology because of the analysis of the protection of human trafficking victims. At the School of Law at the University of Belgrade a project under the title "Crime in Serbia and Legal Means of Reaction" was realized from 2006 to 2010 (as a result of this project four collections of papers were published with more than 60 articles, written by researchers who worked on the project as well as by several foreign authors)[19] and currently the project "Criminal Law Reaction in Serbia" (Kaznena reakcija u Srbiji) is being conducted. Until now, three collections of papers were published as a result of this project.[20] The project will end in 2015. Both projects are financed by the Ministry of Science, headed by Prof. Dr. *Ignjatović* and both projects have influenced the work of the legislative body and criminal justice system. At the Police Academy in Belgrade, from 2003 to 2005 the research "Crimes against Police Officers" was conducted and from 2006 to 2010 researchers at this institution were engaged in the project "Suppression of Actual Types of Crime". The most recent quantitative research was conducted by Prof. Dr. *Ignjatović* and published in the

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14 *Nikolić* 2000.

15 www.iksi.ac.rs [18.07.2014].

16 The results of this project were published in a collection of papers: *Blagojević & Stevanović* 2009.

17 The results of this project were published in a collection of papers: *Radovanović* 2004.

18 www.comparativelaw.info [18.07.2014].

19 *Ignjatović* 2006–2010.

20 *Ignjatović* 2011–2013.

book "Comparison of Crime and Criminal Reaction: Serbia − Europe".[21] In this book the author compares the data in the last of four books under the title "European Sourcebook of Crime and Criminal Justice Statistics" (2010) for more than 40 European countries with the data collected by formal social control agencies in Serbia, published in domestic and international records.

The main interests of criminologists in Serbia in the past decade have been violent crime, human trafficking, corruption, terrorism, family violence and computer crime. On the other hand, there are many scientific fields that should be researched in the future such as corporate and white collar crime (especially in connection to processes of privatization in the past years), ecological crime, etc.

2.4 Serbian Section of Criminology

In November 2006, the first Society (Section) of Criminology in Serbia was founded. It is a part of the Serbian Society of Criminal Law Theory and Practice. The aims of the Section of Criminology are the development of this and related sciences and the improvement of criminological research. Members of the Section's Presidency are Prof. Dr. *Djordje Ignjatović* (President), Dr. *Jovan Ćirić* (Vice-president), Prof. Dr. *Snežana Soković*, Prof. Dr. *Biljana Simeunović-Patić*, Assistant Lecturer *Aleksandra Ilić* (members of the Presidency) and Assistant Lecturer *Natalija Lukić* (Secretary).

The Section has made special efforts to gather young people interested in criminology. Thus, every two years the Section gives a prize for the best essay (until now, three prizes have been given for essays on the following topics: "Applicability of Criminological Theories in Controlling Crime in Serbia", "Influence of Cultural Factors on Crime" and "Young People and Crime"). Currently, the reward competition for essays on the topic "Ecological Crime" is open. The Section is also engaged in publishing activities, mainly by giving support for publishing books in the edition 'Crimen' and for the journal 'Crimen'. Presidency of the Section places great significance on the fact that among its honoured members are some of the most famous criminologists from all around the globe.

2.5 Journals

There are several important journals for criminology and other criminal law sciences. Among them, the most important are certainly the journal 'Crimen',[22] published by the School of Law at the University of Belgrade and the Institute for Foreign Law and 'Review for Criminology and Criminal Law',[23] published by the Institute for

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21 *Ignjatović* 2013.

22 www.ius.bg.ac.rs/crimenjournal/default.htm [18.07.2014].

23 www.scindeks.ceon.rs/journaldetails.aspx?issn=1820–2969 [18.07.2014].

Criminological and Sociological Research. Also, of great importance are the journals 'Temida',[24] published by the Victimological Society in Serbia and 'Science – Security – Police',[25] published by the Police Academy in Belgrade.

Beside these journals, texts from the field of criminology are published in other journals of the social sciences: 'Archives for Legal and Social Sciences',[26] 'Annals of the Faculty of Law University of Belgrade',[27] 'Law Life',[28] 'Foreign Law Life',[29] 'Sociological Review'[30], etc.

2.6 Edition 'Crimen'

Edition 'Crimen' was created within the project "Crime in Serbia and Legal Means of Reaction" in 2006, and since then it has become the most significant library of criminological sciences in Serbia.[31] Until now, 27 books have been published: Penal Sanctions Execution Law (*Ignjatović, Đ.*), Corruption – Basic Concepts and Mechanisms of Suppression (ed. *Ilić, G.*), Methodology of Research in Criminology (*Ignjatović, Đ.*), New Solutions of General Institutes in Serbian Criminal Code (*Delić, N.*), Terrorism (*Simeunović, D.*), Plea Bargaining, Comparative Approach (*Bajović, V.*), Criminal-Law Responding to Serious Crimes (*Stojanović, Z. & Kolarić, D.*), Victimology (*Ignjatović, Đ. & Simeunović-Patić, B.*), Comparative Analysis of Crime and Penal Reaction: Serbia – Europe (*Ignjatović, Đ.*), New Solutions of Special Part in Serbian Criminal Code (*Delić, N.*), Suppression of Organized Crime, Comparative View (*Lukić, N.*). Special attention has been paid to the translation of books from English (*Clark, R.,* Crime in America: Observations on Its Nature, Causes, Prevention and Control, *Felson, M.,* Crime and Everyday Life, *Wolfgang, M. & Ferracuti, F.*, Subculture of Violence), from French (*Pradel, J.*, Histoire des doctrines pénales, *Pradel, J.*, Droit pénal comparé, *Szabo, D.,* De l'anthropologie à la criminologie comparé, *Hulsman, L. & Bernat de Celis, B.*, Peines Perdues), and from Italian into Serbian (*Zolo, D.*, Chi Dice Umanità). Also, already mentioned collections of papers (7 books) are from this edition. The book that is of particular importance for all readers interested in modern and classical tendencies in criminology is "Theories in Criminology" (ed. *Ignjatović, Đ.*). It represents a collection of 58 texts translated into Serbian of the most famous and influential criminologists

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24 www.vds.org.rs/Temida.htm [18.07.2014].

25 www.kpa.edu.rs/cms/akademija/izdavackadelatnost/nbp [18.07.2014].

26 www.scindeks.ceon.rs/journaldetails.aspx?issn=0004–1270 [18.07.2014].

27 www.anali.ius.bg.ac.rs [18.07.2014].

28 www.scindeks.ceon.rs/journaldetails.aspx?issn=0350-0500&lang=en [18.07.2014].

29 www.comparativelaw.info/publikacije.html [18.07.2014].

30 www.socioloskipregled.org.rs [18.07.2014].

31 www.ius.bg.ac.rs/Naucni/knjige/13crimen.htm [18.07.2014].

– starting from works of *Beccaria, Bentham, Lombroso* to *Barak, Braithwaite, Robinson,* etc.

2.7 Selective Bibliography of Criminological Works in Serbian

Beside the mentioned textbooks and books published in the edition 'Crimen', some of the other monographs from the field of criminology and related disciplines, published in Serbian are:

- *Atanacković, D.* (1988). Penologija (Penology), Beograd;
- *Atanacković, D. et al.* (1978). Krivična dela ugrožavanja javnog saobraćaja na putevima (Criminal Offences of Endangering Public Traffic on Roads), Novi Sad;
- *Begović, B.* (2004). Korupcija u pravosuđu (Corruption in Judicial System), Beograd;
- *Bošković, M.* (2003). Transnacionalni organizovani kriminalitet: oblici ispoljavanja i metodi suprotstavljanja (Transnational Organized Crime: Phenomenological Aspects and Methods of Suppression), Beograd;
- *Bošković, M.* (2000). Osnovi penologije (Postulates of Penology), Novi Sad;
- *Bošković, M.* (2000). Socijalna patologija (Social Pathology), Novi Sad;
- *Čubinski, M.* (1937). Kriminalna politika (Crime Policy), Beograd;
- *Ćirić, J.* (2001). Društveni uticaji na kaznenu politiku sudova (Social Influence on Penal Policy of the Courts), Beograd;
- *Ćirić, J.* (2001). Ljudska prava u senci organizovanog kriminaliteta (Human Rights in the Shadow of Organized Crime), Beograd;
- *Ćirić, J. et al.* (2006). Javni tužioci i njihova uloga u uspostavljanju vladavine prava (Public Prosecutors and Their Role in Establishing the Rule of Law), Beograd;
- *Ćirić, J., Đorđević, Đ. & Sepi, R.* (2006). Kaznena politika sudova u Srbiji (Crime Policy of the Courts in Serbia), Beograd;
- *Đurić, S.* (1989). Osveta i kazna: sociološko istraživanje krvne osvete na Kosovu i Metohiji (Revenge and Punishment: Sociological Research of Blood Feud on Kosovo and Metohija), Niš;
- *Fatić, A.* (1997). Kriminal i društvena kontrola u Istočnoj Evropi (Crime and Social Control in Eastern Europe), Beograd;
- *Ignjatović, Đ.* (1998). Organizovani kriminalitet (Organized Crime – Criminological Analysis of the Situation in the World), Beograd;
- *Jakovljević, V.* (1971). Uvod u socijalnu patologiju (Introduction into Social Pathology), Beograd;
- *Jašović, Ž.* (1983). Kriminologija maloletničke delinkvencije (Criminology of Juvenile Delinquency), Beograd;
- *Jovanović, S. & Lukić, M.* (2001). Drugo je porodica: nasilje u porodici − nasilje u prisustvu vlasti (Something Else is Family: Family Violence – Violence in the Presence of the Authorities), Beograd;
- *Jović, R. & Savić, A.* (2004). Bioterorizam: biološki rat I biološko oružje (Bioterrorism: Biological War and Biological Weapons), Beograd;

- *Lazarević, L.* (1969). Kazne i mere bezbednosti (Penalties and Security Measures), Beograd;
- *Lazarević, L.* (1974). Kratkotrajne kazne zatvora (Short Prison Sentences), Beograd;
- *Marić, B. & Radoman, M.* (2001). Pobune u zatvorima Srbije (Riots in Prisons in Serbia), Beograd;
- *Mijalković, S.* (2005). Trgovina ljudima (Trafficking in Human Beings), Beograd;
- *Milosavljević, M.* (2003). Devijacije i društvo (Deviations and Society), Beograd;
- *Milovanović, R.* (2005). Psihologija kriminaliteta (Psychology of Crime), Beograd;
- *Milutinović, M.* (1957). Kriminalitet kao društvena pojava (Crime as a Social Phenomenon), Beograd;
- *Mrvić, N. & Đorđević, Đ.* (1998). Moć i nemoć kazne (Power and Weakness of the Penalty), Beograd;
- *Nikolić, D. & Dimitrijević, D.* (2002). Nasilna smrt u Jugoslaviji 1950–2000 (Violent Death in Yugoslavia 1950–2000), Beograd;
- *Nikolić, V. et al.* (2004). Trgovina ljudima u Srbiji (Trafficking in Human Beings in Serbia), Beograd;
- *Perić, O.* (1998). Izvršenje krivičnih sankcija izrečenih maloletnicima (Execution of Penal Sanctions Imposed on Juvenile Offenders), Beograd;
- *Petrović, S.* (2001). Kompjuterski kriminal (Computer Crime), Beograd;
- *Radovanović, D.* (1992). Čovek i zatvor (Man and Prison), Beograd;
- *Radulović, D.* (2006). Psihologija kriminala – Psihopatija i prestupništvo (Psychology of Crime – Psychopathy and Delinquency), Beograd;
- *Radulović, L.* (1999). Kriminalna politika – politika suzbijanja kriminaliteta (Crime Policy – Policy of Crime Suppression), Beograd;
- *Simeunović-Patić, B.* (2003). Ubistva u Beogradu (Homicides in Belgrade), Beograd;
- *Simović-Hiber, I.* (2009). Okviri viktimologije (Framework of Victimology), Beograd;
- *Škulić, M.* (2003). Organizovani kriminalitet: pojam i krivičnoprocesni aspekti (Organized Crime: Concepts and Criminal Law Aspects), Beograd;
- *Simović, V.* (1966). Kriminalitet žena (Crime of Women), Beograd;
- *Soković, S.* (2003). Pravo izvršenja krivičnih sankcija (Penal Sanctions Execution Law), Kragujevac;
- *Špadijer-Džinić, J.* (1973). Zatvoreničko društvo (Prison Society), Beograd;
- *Stambolović, V. et al.* (2005). Zatvor i zdravlje (Prison and Health), Beograd;
- *Stojanović, Z.* (1987). Granice, mogućnosti i legitimnost krivičnopravne zaštite (Boundaries, Possibilities and Legitimacy of Criminal Law Protection), Beograd;
- *Todorović, A.* (1971). Uzroci maloletničkog prestupništva (Causes of Juvenile Delinquency), Beograd;
- *Vasilijević, V. & Radovanović, D.* (1975). Saobraćajni prestupnici (Traffic Offenders), Beograd;
- *Vuković, S.* (2005). Pravo, moral i korupcija (Law, Moral and Corruption), Beograd;
- *Zvekić, U.* (2001). Žrtve kriminala u zemljama u tranziciji (Crime Victims in Countries in Transition), Beograd.

3. Crime in Serbia – Analysis of Statistical Data

3.1 Trends in Reported Crime of Adult Offenders

Firstly, data for the total number of adult offenders are presented, followed by the territorial distribution of committed crimes, data about the structure of committed criminal offences and data about some characteristics of these offenders.

In the present article, data about suspected and convicted offenders, older than 18, are analysed. Offenders charged with criminal offences are excluded, considering that they have a transient status. In criminology, it is generally accepted that statistics of suspects correspond mostly to the real number of committed crimes, and according to legal perspective only convicted persons can be regarded as offenders.[32]

3.2 Data about Reported Crime

Trends of suspects in the period from 1991 to 2012 are presented. An overview of the data show that the total number of persons suspected of a crime was as follows (see *Table 1*):

3.2.1 General Trends

In the period of 22 years, around 105,000 adult suspects were reported for criminal offences annually (see *Table 1* and *Figure 1*). The highest number of suspects was recorded in 1993 with 160,062 persons counted whereas the lowest number was in 2010 with 74,279 persons reported for criminal offences. It is, of course, not easy to make conclusions based only on statistical data but it could be assumed that the highest number of suspects in 1993 was related to the effects of the civil war that began in 1991 on the territory of ex-Yugoslavia. The lowest number of suspects, recorded in 2010, can be explained by the fact that Serbia went through a process of judicial reform in this year. Hence, the number of trials at the courts was significantly lower. Also, lower number of suspects in 1999 and 2000 could be in relation to the military intervention of the NATO against the Federal Republic of Yugoslavia and to extraordinary circumstances as a consequence. It is also important to notice that the data for the period 1991–1998 include the number of suspects for the territory of Kosovo and Metohija, which is the reason of the higher number of suspects in the mentioned period. In 2003 and 2004, the number of suspects was also lower, which is rather questionable considering that in 2003, after the assassination of the Prime Minister of Serbia, the police action "Saber" was conducted and more than 11,000 persons were in detention.

3.2.2 Territorial Distribution

Reference year is 2012 as the last complete data are available for this year. From the total number of suspects (92,879), around 34% of the suspects were reported in the capi-

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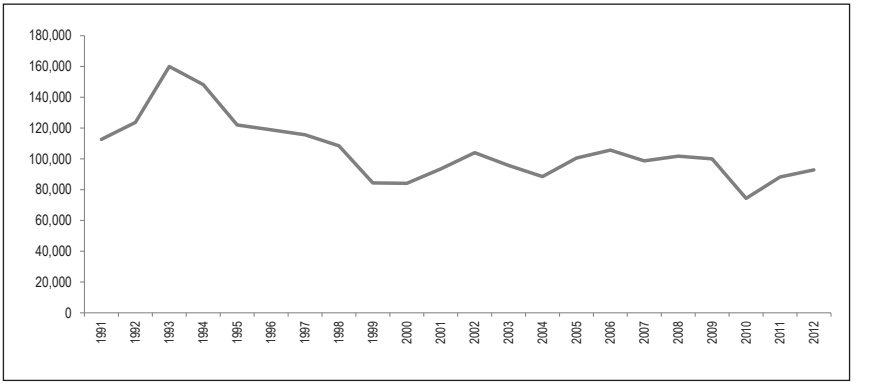
32 *Ignjatović* 2007.

Table 1 Number of Suspects in the Period 1991–2012

	Total number of suspected persons
1991	112,678
1992	123,709
1993	160,062
1994	148,220
1995	122,030
1996	118,917
1997	115,637
1998	108,474
1999	84,365
2000	84,143
2001	93,431
2002	104,061
2003	95,733
2004	88,453
2005	100,536
2006	105,701
2007	98,702
2008	101,723
2009	100,026
2010	74,279
2011	88,207
2012	92,879

Source: Statistical Office of the Republic of Serbia.

Figure 1 Number of Suspects in the Period 1991–2012



Source: Statistical Office of the Republic of Serbia.

tal city of Belgrade, 23.9% in the region of Vojvodina and 41.8% in the south region of the country. Data for Kosovo and Metohija are not available. One of the criminological constants is that crime rates in big cities exceed those in other types of settlements. Belgrade is the biggest urban environment in Serbia in which approximately one third of the nation lives (approx. 1,639,000 inhabitants)[33]. That is the reason for the analysis of the number of suspects who commit criminal offences on the territory of the capital city. If the percentage of suspects in 2012 is compared with the one in 2011 (29.4%), in 2009 (32.6%), or in 2003 (42.6%), it can be concluded that the relative number of suspects in Belgrade has decreased in relation to the state as a whole in the past period.

3.2.3 Structure of Reported Crimes

In *Table 2* the structure of reported criminal offences of adult offenders in 2012 is presented, and for the purpose of comparison, the table also contains data about reported crimes in 2003.

As can be seen from *Table 2*, the dominant category of offenders was reported for crimes against property. This group of criminal offences includes nearly half (48.7%) of all reported crimes in 2012. If criminal offences against property and industry are analysed together, considering that the economic gain is also the main characteristic of crimes against industry, it can be concluded that more than 50% of all adult offenders commit crimes in order to obtain profit.

Table 2 Structure of Reported Crimes in 2003 and 2012

Crimes against…	2012	2003
Life and limb	4.20%	5.30%
Human rights and liberties	2.88%	1.10%
Industry	3.46%	5.60%
Property	48.70%	56.10%
Safety of public traffic	7.73%	6.70%
Human health	3.87%	2.14%
Public order and legal transactions	7.28%	7.60%
Other crimes, formulated in special codes	1.50%	4.60%

Source: Statistical Office of the Republic of Serbia.

Regarding the frequency of specific criminal offences, data show that offenders were first and foremost reported for criminal offences of aggravated theft (17,191) and theft (15,102). These and other criminal offences, which were reported in more than 2,000 cases, are presented in *Table 3*.

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33 Source: Statistical Office of the Republic of Serbia, http://webrzs.stat.gov.rs [18.07.2014].

Table 3 Frequency of Specific Criminal Offences in 2012

Offence	N
Aggravated theft	17,191
Theft	15,102
Endangering public traffic	7,140
Family violence	3,624
Robbery	3,211
Fraud	2,544
Arrogation	2,509
Unlawful taking of a motor-vehicle	2,393
Endangering personal security	2,181
Non-payment of support for a family member	2,141
Abuse of official power	2,110
Violent behaviour	2,108

Source: Statistical Office of the Republic of Serbia.

It is interesting to point out that criminal offences presented in *Table 3* make up more than 2/3 (67%) of all reported crimes in 2012.

3.3 Data about Offenders

3.3.1 Offenders Not Known to the Police

Before assessing the description of some characteristics of adult offenders, it is necessary to point out that in many cases of reported criminal offences the offender remains unknown to the police. *Table 4* contains data about this fact.

As can be seen, the percentage of offenders unknown to the police is significant. It is important to notice that this percentage is the lowest in the southern part of the country (in 2012 it was 16.25%), and the highest in the capital city (50.8%).

Table 4 Offenders Not Known to the Police

Year	2008	2009	2010	2011	2012
Serbia (%)	33.73	35.3	31.5	32.3	33.4

Source: Statistical Office of the Republic of Serbia.

3.3.2 Gender of Offenders

As for the adult offenders, participation of women is much lower than their relative number in the population structure (in most countries women count for more than half of the entire population). This can also be observed in Serbia. Women participated in the commission of all reported crimes with 11.7% in 2012. The situation was similar in the past years as well as can be seen in *Table 5*, which

for the purpose of comparison contains data that show the trend of the relative participation of women in reported crimes in the last three decades. The second regularity refers to the participation of women in recorded criminal offences in relation to the part of the territory of the state. The percentage, as can be seen in *Table 5*, is higher in Vojvodina than in the rest of the territory, which could be related to the higher level of development of the territorial units. However, data for the last two presented years show higher relative participation of women in the central part of the state (including the capital city) than in Vojvodina.

Table 5 Trends of Relative Participation of Women in Reported Crimes in the Last Three Decades

Territory	1982	1987	1992	1996	2003	2008	2012
Serbia (%)	9.5	9.6	7.3	7.7	9.7	10.6	11.7
central part of the Republic (%)	10.0	10.6	8.0	8.1	9.4	10.8	11.8
Vojvodina (%)	10.4	10.8	9.3	8.5	10.9	10.0	11.0

Source: Statistical Office of the Republic of Serbia.

Table 6 presents the participation of women according to different groups of criminal offences. On the left side of the table are categories of crimes in which the participation of women exceeds their relative participation in 2012 (11.7%), and on the right side are crime categories in which women's participation is below their average participation. Groups with no statistically relevant data are ignored.

Table 6 Participation of Women according to Different Groups of Criminal Offences

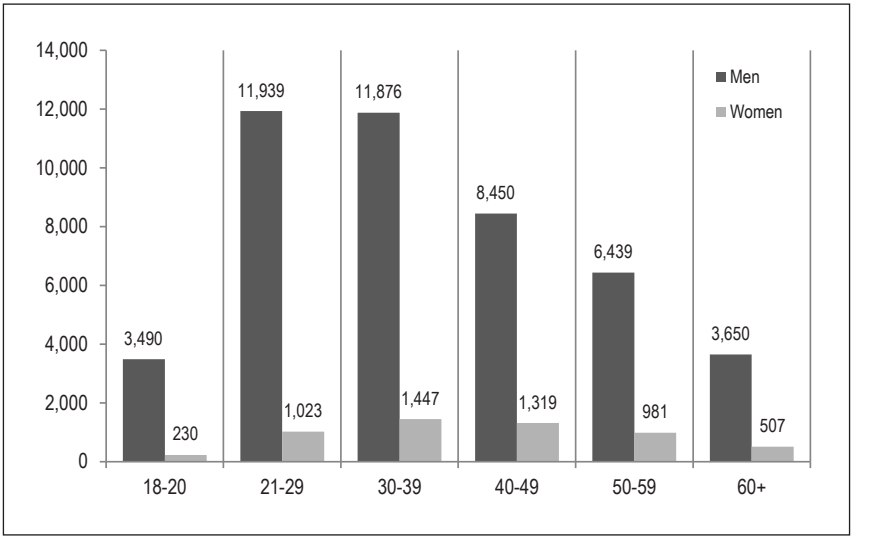
Crimes against…	Percent
Official duties	27.90
Jurisdiction	24.90
Humanity	22.30
State authorities	16.50
Industry	16.20
Legal transactions	13.80
Intellectual property	12.70
Property	11.30
Family	11.30
Honour and reputation	10.00
Human rights and liberties	9.03
Life and limb	6.70

Source: Statistical Office of the Republic of Serbia.

3.3.3 Age of Offenders

Judicial statistics categorize all adult offenders into the following age groups: 18–20; 21–24; 25–29; 30–39; 40–49; 50–59 and 60+ years old. In criminology, it is important to determine "age group of maximum crime", considering that this information shows at what age the largest number of offenders can be recruited. The age group of maximum crime for men is 21–29 years old, and according to the *Figure 2*; with every decade thereafter, male participation in criminal activities decreases. The age group of maximum crime for women is 30–39 years old – the number of female offenders gradually increases and after the age 39 it gradually decreases.

Figure 2 Age of Offenders

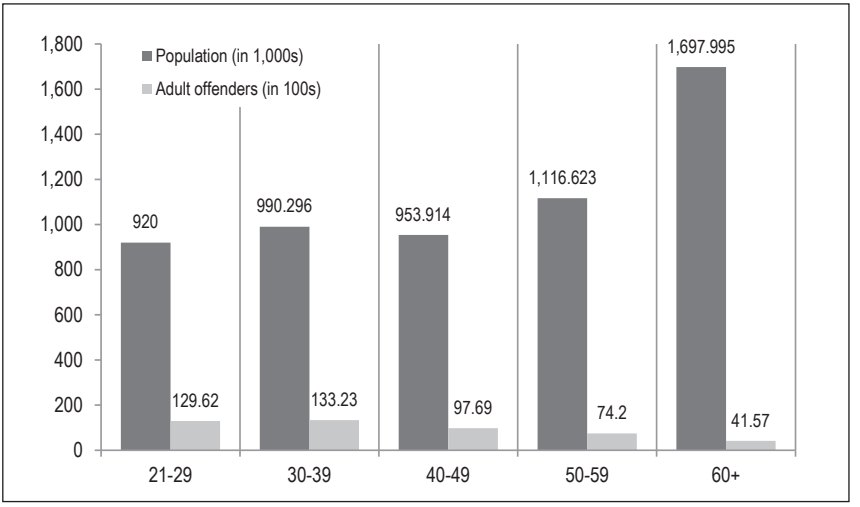


Source: Statistical Office of the Republic of Serbia.

It is also of great importance to compare data about the age of adult offenders with the population structure in Serbia. In *Figure 3* this comparison is presented. Data for population structure are presented in thousands and for adult offenders of both genders in hundreds.

It can be seen that aging represents the most efficient factor in decreasing involvement in criminal activities. Participation of the population older than 60 years old is far higher in comparison to other age categories of general population. Contrary to this, their participation among adult offenders is negligible.

Figure 3 Comparison of Data about the Age of Adult Offenders with the Population Structure in Serbia



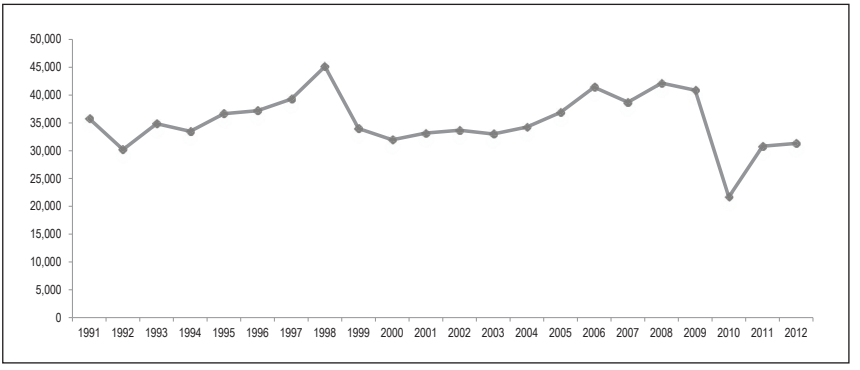
Source: Statistical Office of the Republic of Serbia.

3.4 Adult Convicts

3.4.1 General Trends

As in *Table 1*, it is important to mention that in the period from 1999 data for the territory of Kosovo and Metohija are not available. However, this fact did not have a significant influence on the number of convicts in the Republic of Serbia. In *Figure 4* trends of convicted persons for the mentioned period are presented.

Figure 4 Number of Convicted Persons in the Period 1991–2012



Source: Statistical Office of the Republic of Serbia.

3.4.2 Territorial Distribution

The reference year for these data is also 2012. From the total number of convicts (31,322, see *Table 7*), most of them were convicted in the central part of the state (together with the capital city – 69.7%) and around 30% on the territory of Vojvodina. In Belgrade, 6,593 persons were convicted in 2012 and that is 21% respectively.

Table 7 Number of Adults Convicted in the Period 1991–2012

	Total number of convicted persons
1991	35,756
1992	30,197
1993	34,855
1994	33,461
1995	36,664
1996	37,206
1997	39,301
1998	45,127
1999	33,967
2000	31,949
2001	33,168
2002	33,675
2003	33,017
2004	34,239
2005	36,901
2006	41,422
2007	38,694
2008	42,138
2009	40,880
2010	21,681
2011	30,807
2012	31,322

Source: Statistical Office of the Republic of Serbia.

3.4.3 Structure of Adjudicated Criminal Offences

As can be seen from *Table 8*, the structure of crimes of convicted persons is different in comparison to reported criminal offences. Obviously, the most visible change is for crimes against property (decrease from 48.7% to 26.6%), then for crimes against human health (increase from 3.87% to 9.9%), crimes against public order and legal transactions (increase from 7.28% to 11.9%) and for crimes against life and limb (increase from 4.2% to 7.3%). It is difficult to explain all the reasons for this change of crime structure, but some of them can be mentioned: the complexity of some criminal offences which makes the investigation and collection of

Table 8 Structure of Adjudicated and Reported Criminal Offences in 2012

	Crime structure of adult offenders (in %)	
Criminal offences against…	**Convicted offenders**	**Reported offenders**
Life and limb	7.40	4.20
Human rights and liberties	2.08	2.88
Industry	2.97	3.46
Property	26.60	48.70
Human health	9.90	3.87
Safety of public traffic	10.60	7.73
Public order and legal transactions	11.90	7.28
Other crimes, formulated in special codes	3.25	1.50

Source: Statistical Office of the Republic of Serbia.

the evidence more difficult; giving priority to some criminal offences by the state authorities, etc. All in all, if it can be said that reported crimes are usually committed in order to obtain profit (crimes against industry and property count more than 50%), this claim is true for adjudicated crimes in only 29.57%.

3.4.4 Phases in the Commission of Crime – Complicity

From the total number of convicted offenders, around 4.4% were responsible for attempted criminal offence. In comparison to 1990s, that is an increase of more than 2%.

Participation of more persons in committing a crime is, from the aspect of criminology and crime policy, of great importance as this can indicate an organizational element of a criminal offence. Furthermore, this is also important because judicial statistics in Serbia contain data about persons, and not crimes. Therefore, the determination of the complicity is an important element for a more realistic assessment of visible crime.

Data for 2012 show that ¾, or more precisely 74.8% of convicts commit crimes alone. In 7,872 cases (25.1%) the criminal offence was committed in complicity. In 30% of these cases the offender had the role of a perpetrator, in 66.9% the role of a co-perpetrator, in 0.5% the role of an abettor and in 1.9% the role of an aider. Statistics also contains data about the number of accomplices. In 52.1% two persons committed a crime, in 23.6% three persons, in 9.4% four persons and in 14.8% five or more persons.[34]

In relation to groups of criminal offences, complicity was the most often in crimes against property (around 45% of convicts committed a crime together with someone

[34] Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

else) whereas complicity was the lowest in crimes against safety in public traffic – only 1.28%. On average, offenders had accomplices in 30% of the cases.[35]

3.4.5 Concurrence of Crimes – Recidivism

Considering that our statistics records offenders, it is important to determine the number of persons who have cumulative convictions. Like complicity, this information could deform the general picture of registered crime. Therefore, the data about crime concurrence are important in assessing the validity of judicial statistics. An effect of "inflation" exists in complicity because statistical records contain as many units as there are accomplices despite the fact that all of these offenders have committed only one criminal offence. A crime concurrence leads to diminution because one person is convicted and that creates the impression that only one crime, instead of more, is committed.

From the total number of convicts in 2012, around 97.4% committed one crime. The rest of the 2.6% committed more than one criminal offence.

Recidivism rates are not only an indicator of crime policy success, but also of a danger of registered crime that society encounters. The number of recidivists in 2012 was, according to statistical data, 38.6% and that is a significantly higher percentage than in the past decade (for example, in 2003 around 24.7% of all convicts were recidivists whereas in 1990s that percentage was even lower – around 18%). Difference between special (the same crimes and their privileged and qualified forms), general (different crimes) and mixed recidivism exist. The first one accounted for 16.25%, the second 55.1% and the third for 28.5%. Of special importance for criminology is the first group, considering that these offenders are specialized (or even professional) in crime commission.

The relative percentage of recidivism among convicted persons is the highest for crimes against property, human health, family, life and limb. Relative percentage of special recidivism is the highest for criminal offences against family, human health and property.[36]

3.4.6 Gender, Age and Marital Status

The percentage of convicted women in 2012 in the Republic of Serbia was 9.9% (in Vojvodina 10.4%, in the central part of the country 9.7%). As for the type of crimes, women were in 27% of the cases convicted for criminal offences against honour and reputation, in 18% for crimes against state authorities and for crimes against

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35 Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

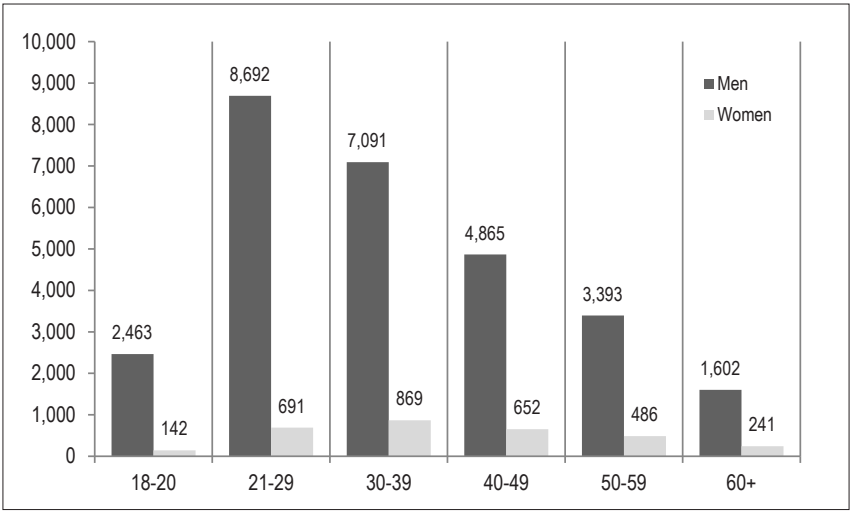
36 Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

jurisdiction, in more than 10% for crimes against family, in 9.3% for crimes against property and in 6.9% for crimes against life and limb.

In *Figure 5* data about age groups of convicted men and women are presented. As can be seen, the situation is similar to the one of reported offenders (*Figure 2*).

In most cases (44.9%) adult convicts are married, followed by single (36.3%), divorced (10.8%), widows and widowers (2.5%) and in 5.4% this information is unavailable.[37]

Figure 5 Convicted Men and Women in Age Groups



Source: Statistical Office of the Republic of Serbia.

3.4.7 Education and Employment Status of Convicts

Among adult convicted persons, most of them have finished secondary school (53.1%), then primary school (23.7%), incomplete (1 to 7 grades) primary school (7.6%), university (3.8%), college (2.5%) and in 6.6% this information is unavailable.

Almost half of the convicts in 2012 were unemployed (44.2%) whereas 33.7% were employed in the moment of conviction. In 9.8% of the cases convicted persons had

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37 Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

a status of a student, a pupil, a housewife, a pensioner or other non-active status. In 12.1% this information is unavailable.[38]

3.4.8 Nationality

The dominant category among adult convicts has Serbian nationality. From the total number of convicted persons, around 65.9% have chosen to declare their nationality. Most of them are of Serbian nationality (89.4%), Roma (5.5%) and Muslims (1.1%). Participation of convicts from Montenegro, Albania, Hungary, Romania, Slovakia and Croatia is less than 1%. Convicts who have nationality of some other country, which is not among the above mentioned, have participated in the total number of those who declared their nationality with 0.9%.[39]

3.5 Global Data about Crime in Serbia – Crime Rate and Crime Clock

3.5.1 Crime Rate

In criminological literature opinions are different regarding the data that are used in calculating the crime rate. According to the realistic approach, it is the most appropriate and precise to use data from police records. Despite the fact that sometimes suspected persons did not actually commit a crime, there are, on the other hand, plenty of criminal law and procedural mechanisms and factual circumstances that exclude responsibility of a person who committed a crime. Advocates of the legalistic approach assert that one person could be regarded as an offender only if he/she was convicted. This dispute, in which two different arguments are confounded (the real number of committed crimes and the legal aspects of sanctioning), can be resolved by calculating both – crime rate for suspects and for convicts.

The Number of crimes (persons) that is calculated is related to the number of citizens of the same age. Therefore, the crime rate will be calculated by using data for adult offenders and adult citizens (older than 18).

The total number of suspects in Serbia in 2012 was 92,879 and the number of adult citizens in the same year according to the Statistical Office of the Republic of Serbia was 5,930,009. Therefore, the crime rate is 1,566.

The total number of convicted persons in Serbia in 2012 was 31,322. Therefore, the crime rate is 528.

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38 Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

39 Punoletni učinioci krivičnih dela u Republici Srbiji 2012 – prijave optuženja i osude, Republički zavod za statistiku, br. 576.

3.5.2 Crime Clock

The crime clock is one of the most popular methods of crime calculation in the USA, which is understandably criticized in the literature considering that it enables manipulations with people's fear of crime. This is especially true for countries with enormous populations in which the frequency of all human actions, not just criminal, is higher than in countries with small populations.[40] Despite these objections, it is useful, as an illustration of the state of crime, to present the results of this method of crime calculation. With regard to suspects, the conclusion is that in 2012 every six minutes one criminal offence was committed in Serbia. As for the convicts, in 2012 every seventeen minutes one criminal offence was committed.

4. Instead of a Conclusion

In the comparative research, published in the book 'Comparative Analysis of Crime and Penal Reaction: Serbia – Europe' by Prof. Dr. *Ignjatović*, several conclusions have been made. The author has compared the data published in the last of four books entitled 'European Sourcebook of Crime and Criminal Justice Statistics (2010)' for more than 40 European countries with the data collected by formal social control agencies in Serbia, published in domestic and international records.

Firstly, the general crime rate in Serbia (the reference year in this research is 2006 and transversal strategy has been applied) compared with the European average and especially in relation to the neighbouring countries and the republics that formerly comprised the Yugoslavia is not among the higher crime rates.

However, the data show that several criminal activities in Serbia represent a serious problem: violent crime – especially robbery (the rate of 50.6 is among the highest in Europe), corruption, drug offences (rate of 66.4), and other offences relating to organized crime.

On the other hand, contrary to the image created by the media and public opinion, sexual crimes (including rape – rate is 2.4 – and sexual abuse of minors with the rate 0.8) are, comparatively, not present in a large number. The situation is similar with major traffic offences.

Although it was difficult to compare the rate of convicted persons (imprisonment), considering that penitentiary records in Serbia are not compliant with the standards that are applied internationally, it is concluded that the rate of convicted persons (81) recorded in Serbia in 2006 is lower in comparison with other countries of the Old continent.

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40 *Kappeler, Blumberg & Potter* 2000.

5. Summary in Serbian

Rad je podeljen u dve celine. U prvom delu se izlaže o statusu kriminologije u Srbiji. Posle kratkog osvrta na razvoj ove nauke, prikazan je njen status kao naučne discipline na univerzitetima u Srbiji, a navedeni su i osnovni izvori iz kojih se mogu steći znanja iz ove oblasti. Najpre je dat pregled udžbenika uz navodjenje njihove sistematike kao i stavova autora udžbenika po pitanju definisanja kriminologije. Pored toga, ukazano je i na najvažnije časopise iz ove oblasti, a dat je i pregled selektivne bibliografije na srpskom jeziku koja obuhvata samo dela monografskog karaktera. U radu se izlaže i o Sekciji za kriminologiju Srpskog udruženja za krivično pravnu teoriju i praksu koja predstavlja prvo udruženje kriminologa u zemlji. Posebno je ukazano na cilj Sekcije da okuplja mlade ljude zainteresovane za ovu naučnu oblast, shodno čemu se svake dve godine raspisuje konkurs za nagradni temat. Do sada su nagrade dodeljene tri puta, a u toku je konkurs za nagradni temat na temu „Ekološki kriminalitet". Od posebne važnosti je i okolnost da se među počasnim članovima Sekcije nalaze mnogi poznati kriminolozi iz svih delova sveta. U radu je takođe ukazano značaj edicije Crimen koja je u međuvremenu prerasla u najznačajniju biblioteku iz oblasti kriminoloških nauka u Srbiji.

U drugom delu rada je na osnovu podataka iz pravosudne statistike dat pregled stanja kriminaliteta u Srbiji. Obrađeni su statistički podaci za period 1991–2012 godine. U trenutku pisanja rada poslednja godina za koju su bili dostupni kompletni podaci Republičkog zavoda za statistiku bila je 2012 (Bilten br. 576). Analizi su podvrgnuti samo podaci o punoletnim učiniocima krivičnih dela, i to podaci o licima koja su prijavljena za izvršenje krivičnih dela kao i podaci o osuđenim licima (pravosudna statistika u Srbiji se, po ugledu na francusku koja je i poslužila kao uzor, bavi učiniocima a ne delima). Dakle, izostavljena su optužena lica jer smo pošli od stava da je njihov status tranzitoran. Pored podataka o ukupnom broju prijavljenih i osuđenih lica, dat je pregled i njihove teritorijalne distribucije, potom strukture krivičnih dela koja su izvršena, a analizirane su i određene karakteristike učinilaca krivičnih dela. Naposletku, izračunata je stopa kriminaliteta za prijavljena kao i za osuđena lica. Pored ovog podatka, izračunat je i časovnik zločina bez obzira što se ovakvom načinu izražavanja kriminaliteta mogu uputiti brojni prigovori.

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Criminology and Crime in Slovenia

Sabina Zgaga

1. Introduction

Criminology in Slovenia has been closely intertwined with various institutions and fields of science and has had a long tradition. Criminological study and research originated within the Faculty of Law, University of Ljubljana, with *Aleksander Vasiljević Maklecov.*[1] The Institute of Criminology in Ljubljana[2] was established in 1954. Members of the chair for criminal law at the Faculty of Law, University of Ljubljana, and researchers from the Institute of Criminology in Ljubljana have taken a combined criminological and criminal law approach and implemented their (mostly qualitative) research at the Faculty of Law in Ljubljana and in broader fields of practice.[3]

Their work has been importantly supplemented by mainly quantitative research at the Faculty of Criminal Justice and Security, University of Maribor,[4] established in 1973 as the Department of Internal Affairs at the Higher School of Administration, University of Ljubljana. In 2004, the Institute of Criminal Justice and Security Research in Ljubljana was established as well.[5]

Three anniversaries that were celebrated in the last two years mark Slovenian criminological evolution as well; the fortieth anniversary of the Faculty of Criminal Justice and Security, the seventieth jubilee of Prof. Dr. *Alenka Šelih* and the ninetieth jubilee of Prof. Dr. *Ljubo Bavcon,* who combined criminological and legal research in pursuit of human rights protection and balanced and rational responses to criminality.[6]

The following paper presents the state of art in criminology and criminal justice in Slovenia. It consists of three parts. The first part outlines criminological education

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1 *Meško & Jere* 2012.

2 Homepage: www.inst-krim.si [10.07.2014].

3 *Meško & Jere* 2012.

4 Homepage: www.fvv.uni-mb.si [10.07.2014].

5 *Meško & Jere* 2012; *Meško & Šelih* 2012; Fakulteta za varnostne vede 2012.

6 See *Petrovec & Ambrož* 2014; *Bavcon et al.* 2013.

and research in Slovenia; the second part focuses on main crime trends and problems; the third part includes a rough sketch of the Slovenian criminal justice system.[7]

2. Slovenian Criminological Education and Research

2.1 Education

As already mentioned, criminology has been mostly taught in two institutions in Slovenia; at the Faculty of Criminal Justice and Security, University of Maribor, and at the Faculty of Law, University of Ljubljana.

The Faculty of Criminal Justice and Security has developed three levels of education; undergraduate programmes, an M.A. postgraduate programme and a Ph.D. postgraduate programme. There are three undergraduate programmes; two professional study programmes (security and policing[8], information security[9]) and one academic study programme (criminal justice and security[10]). All programmes include criminological courses. Professional study programmes therefore include a compulsory course in basic criminology with penology in their second year and a specialized elective course on ecological criminology with basics of protection of environment. The undergraduate academic study programme includes two compulsory courses; criminology and victimology in its first year, and also a wide selection of elective courses, such as penology and social control.

The M.A. postgraduate programme also contains a compulsory course of criminology and criminal policy (in its first year) and an elective course of critical criminology. The Ph.D. postgraduate programme does not stray away from this path; it too includes an elective criminological course depending on the topic of the doctoral dissertation.[11] It must also be emphasized that selected chapters of criminology are naturally included in other courses as well, such as organized crime, transnational crimes, deviance at work place, white-collar crime, etc.

Criminology has also had a long tradition at the Faculty of Law, University of Ljubljana.[12] Their master programme in law currently includes criminology as an elec-

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7 See also *Meško & Jere* 2012; *Meško & Šelih* 2012; Fakulteta za varnostne vede 2012; *Šelih* 2012.

8 Slovenian Varnost in policijsko delo.

9 Slovenian Informacijska varnost.

10 Slovenian Varstvoslovje.

11 See www.fvv.uni-mb.si/files/fvv/userfiles/dokumenti/Predmetniki/PREDMETNIK-DR.pdf [10.07.2014].

12 *Meško & Jere* 2012; Criminology as such cannot be found in the curriculum of the Faculty of Law, University of Maribor, except selected chapters of criminology in the framework of other courses.

tive subject. This applies also to the criminal law module of the doctoral programme in law. Completely new is the criminology module of the doctoral programme, which just started in 2013. It lasts three years; with exams in its first year and individual research in the following two years. Besides the compulsory general course (theory of law and methodology of scientific work) the students must also pass compulsory courses of the criminological study module (criminology and crime policy, criminological research) and two elective subjects (social construction of normality, the fundamental assumptions of the discourse on crime and punishment, white-collar crime, deviance and literature, psychoanalysis and crime, punishment-philosophy and practise, therapeutic intervention in criminology).

The study of criminology in Slovenia does not, however, end with these two faculties. Students can listen to the basics of criminal law and criminology in their second year at the Faculty of Social Work, University of Ljubljana, or to the theories of deviance in their fourth year. At the Faculty of Education, University of Ljubljana, notice should be given to the module social pedagogics, in which courses of basics of criminal law and criminology and deviant behaviour represent a compulsory part of the undergraduate study, whereas in the master's programme penology is available as an elective course.[13]

The development of various criminological study programmes has of course also produced the need for criminological textbooks. The following Slovenian textbooks[14] are mainly used for teaching criminology and related courses at the Faculty of Criminal Justice and Security:

- *Meško, G., Sotlar, A. & Eman, K.* (eds.) (2012). Ekološka kriminaliteta in varovanje okolja – multidisciplinarne perspektive [Eco crimes and protection of the environment – multidisciplinary perspectives]. Fakulteta z varnostne vede UM, Ljubljana, 482 pages.
- *Bučar Ručman, A.* (2011). Potrošniška demokracije: Analiza politično-medijskega diskurza sodobnih, "demokratičnih" družb [Consumer democracy: the analysis of political and media discussion in modern democratic societies]. Fakulteta za varnostne vede, Ljubljana, 410 pages.
- *Meško, G.* (2010). Kriminologija [Criminology]. Fakulteta za varnostne vede, Ljubljana, 336 pages, reprint.
- *Meško, G., Cockcroft, T., Crawford, A. & Lemaitre, A.* (eds.) (2009). Crime, media and fear of crime. Fakulteta za varnostne vede, Ljubljana, 200 pages.
- *Meško, G.* (ed.) (2007). Izbrana poglavja iz viktimologije. 1. Mala čitanka viktimologije za varstvoslovce: (študijsko gradivo) [Chosen chapters of victimology – little

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13 *Meško & Jere* 2012; *Meško & Šelih* 2012.

14 Besides foreign textbooks, monographs, Slovenian research (conducted by the Institute of Criminal Justice and Security Research or Institute of Criminology) or foreign research, Slovenian and foreign articles.

reader for criminal justice students]. Fakulteta za varnostne vede, Ljubljana, 320 pages.

- *Meško, G., Pagon, M. & Dobovšek, B.* (eds.) (2005). Izzivi sodobnega varstvoslovja [The challenges of modern justice and security]. Fakulteta za policijsko-varnostne vede, Ljubljana, 337 pages.
- *Meško, G.* (ed.) (2004). Preprečevanje kriminalitete – teorija, praksa in dileme [Prevention of crimes – theory, praxis and dilemmas). Inštitut za kriminologijo pri Pravni fakulteti v Ljubljani, Ljubljana, 559 pages.
- *Meško, G.* (ed.) (2003). Vizije slovenske kriminologije [The visions of Slovenian criminology]. Visoka policijsko-varnostna šola, Ljubljana, 326 pages.
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- *Meško, G.*(1998). Uvod v kriminologijo [Introduction to criminology]. Visoka policijsko-varnostna šola, Ljubljana, 266 pages.
- *Petrovec, D.* (1998). Kazen brez zločina: prispevek k ideologijam kaznovanja [Punishment without crime – contribution to the ideology of punishment]. SH Zavod za založniško dejavnost, Ljubljana, 241 pages.
- *Meško, G.* (1997). Družinske vezi na zatožni klopi?: o kriminalnem življenjskem stilu in o moči in nemoči obravnavanja kriminalnih prestopnikov [Family ties being prosecuted? About criminal lifestyle and strengths and weaknesses in dealing with offenders]. Educy, Ljubljana, 230 pages.
- *Pečar, J.* (1991). Neformalno nadzorstvo: kriminološki in sociološki pogledi [Informal control: criminological and sociological aspects]. Didakta, Radovljica, 400 pages.
- *Pečar, J.* (1992). Institucionalizirano nedržavno nadzorstvo: kriminološki, kriminalnopolitični in sociološki pogledi [Institutionalized informal control: criminological, criminal policy and sociological aspects]. Didakta, Radovljica, 499 pages.
- *Pečar, J.* (1988). Formalno nadzorstvo: kriminološki in kriminalnopolitični pogledi [Formal control: criminological and criminal policy aspects]. Delavska enotnost, Ljubljana, 449 pages.
- *Brinc, F.* (2009). Penologija. Študijsko gradivo: Učni pripomoček za študente Pedagoške fakultete v Ljubljani [Penology: study materials for students of the Pedagogical faculty of Ljubljana]. Ljubljana, 60 pages.

At the Faculty of Law, University of Ljubljana, the following Slovenian textbooks are used:

- *Žvelc, M.*, *Možina, M. & Bohak, J.* (eds.) (2011). Psihoterapija [Psychotherapy]. IPSA, Ljubljana, 607 pages.
- *Završnik, A.* (2009). Homo criminalis. Inštitut za kriminoligijo, Ljubljana, 237 pages.

- *Bregant, J. & Vezjak, B.* (2007). Zmote in napake v argumentaciji [Mistakes in argumentation]. Subkulturni azil, Maribor, 280 pages.
- *Kanduč, Z.* (2007). Subjekti in objekti (ne)formalne socialne kontrole v kontekstu postmodernih tranzicij [Subjects and objects of (in)formal social control in the context of post-modern transitions]. Inštitut za kriminologijo pri Pravni fakulteti, Ljubljana, 316 pages.
- *Salecl, R.* (2007). O tesnobi [On anxiety]. Založba Sofija, Ljubljana, 151 pages.
- *Milenković, M.* (2005). Leposlovje in kriminologija [Literature and criminology]. Cankarjeva založba, Ljubljana, 305 pages.
- *Ule, M.* (2005). Socialna psihologija (Social psychology). FDV, Ljubljana, 453 pages.
- *Kanduč, Z.* (2003). Onkraj zločina in kazni [Beyond crime and punishment]. Študentska založba, Ljubljana, 350 pages.
- *Kanduč, Z.* (1999). Kriminologija: (stran) poti vede o (stran) poteh [Criminology – sideways of the science of sideways]. Inštitut za kriminologijo pri Pravni fakulteti, Ljubljana, 306 pages.
- *Ule, M.* (ed.) (1999). Predsodki in diskriminacije [Prejudice and discrimination]. Znanstveno in publicistično središče, Ljubljana, 342 pages.
- *Petrovec, D.* (1998). Kazen brez zločina: prispevek k ideologijam kaznovanja [Punishment without crime – contribution to the ideology of punishment]. SH Zavod za založniško dejavnost, Ljubljana, 241 pages.
- *Salecl, R.* (1998). (Per)Versions of love and hate. Verso, London, 184 pages.[15]

According to the Slovenian Research Agency, which adopted the codebook of research disciplines, fields and subfields for the purpose of granting projects, junior researches, co-financing publications, etc., criminology (with social work) is classified as a social science (social science field 5.07).[16] This definition is relevant for research purposes in the framework of the Slovenian Research Agency, whereas the scientific areas for the purposes of academic titles in Slovenian academia depend on the regulation of each university and/or faculty. The Faculty of Criminal Justice and Security, University of Maribor, therefore awards academic titles for criminology, criminal justice and security. The Faculty of Law, University of Ljubljana, covers the field of criminology as well.[17]

2.2 Research

Slovenian institutions that provide criminological education also conduct criminological research. The task of the Institute of Criminal Justice and Security Research

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15 Authors from the Institute of Criminology in Ljubljana are currently preparing a complete textbook on criminology.

16 Source: Slovenian Research Agency 2010.

17 There are no academic titles awarded for criminology at the Faculty of Law, University of Maribor.

is therefore to "carry out research in the field of criminal justice. It includes examination and development of theories, structures, processes and procedures, causes and consequences of societal responses to criminality, delinquency and other security issues. In terms of content, research areas of the Institute of Criminal Justice and Security Research overlap those in the Faculty's study programmes."[18] Generally, the approach of the institute's researchers is quantitative. The Faculty of Criminal Justice and Security and/or the Institute of Criminal Justice and Security are currently involved in the following ongoing projects (all headed by Prof. Dr. *Gorazd Meško*):

- Legitimacy and legality of policing, criminal justice and execution of penal sanctions (2013–2016);
- ARIEL – Assessing the risk of the infiltration of organized crime in EU MSs legitimate economies: a pilot project in 5 EU countries (2013–2015);
- EEMUS – European diploma in urban security (since 2012);
- URBIS – Urban manager for security, safety and crisis management (since 2012);
- Legitimacy of policing and criminal justice – comparative perspectives (2014–2015) – scientific cooperation between Slovenia and USA;
- Legitimacy and effectiveness of criminal justice systems in Russia and Slovenia (2014–2015) – scientific cooperation between Slovenia and Russia.[19]

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18 See the homepage of the Institute www.fvv.uni-mb.si/en/research.aspx [10.07.2014].

19 Past projects, led or cooperated by the Faculty of Criminal Justice and Security are among others: Position of law and social science students towards criminality, perpetrators, victims and legitimacy of criminal justice and punishment (2012–2013); Protecting Women from the New Crime of Stalking: a Comparison of Legislative Approaches within the EU (Daphne III project), the first such research on the European level on legal issues of how to deal with stalking in EU (2007); Pathways to Survive Stalking for Women Victims (Daphne II project), the first research on stalking, allowing for comparability of data within the European framework (2004); research on the prevention of crime in Slovenia (local level) and cooperation in CRIMPREV – assessing deviance, crime and prevention in Europe: new challenges and evolutions of crime and deviant behaviour in Europe (2006); EU/Australian Cooperation Programme in Higher Education entitled "Governance and Security: Challenges to Policing in the 21st Century" (2007); NATO Advanced Research Workshop: Managing Global Environmental Threats to Air, Water and Soil – Examples from South Eastern Europe; Youth deviance and youth violence: a European multi-agency perspective on best practices in prevention and control (Daphne III project, 2011–2012); E-SEC – competency based e-portal of security and safety engineering (2009–2012); ACCESS – against crime: care for elders support and security (2011–2012); Environmental crime – criminological, crime-preventive, psychological and legal aspects (2009–2012); The influence of the EU law on Slovenian tax and legal system (2004); Economic analysis of legal regulation of Slovenian as the EU member (2004); The overview of state of art and potential development of strategies of crime prevention and attempts for a safer life in community (2002); The phenomenon and responses to modern terrorism (2003); Computer crime in Slovenia (2003); The concept of psychological defence and crisis communication (2004); An analysis and amendments of the Slovenian education system while discussing violence issues in the light of drug

The Institute of Criminology in Ljubljana, whose approach is mostly qualitative, has so far conducted 147 research projects, dealing with the most diverse areas of crime and criminal justice: operation of substantive and procedural criminal law, administration of criminal justice, international and European criminal law, criminal policy, penology and corrections, juvenile delinquency and juvenile justice, children's rights, criminal phenomenology, social pathology and deviancy, victimology, social control, criminal investigation and other related research areas.[20] Currently, the Institute of Criminology conducts its research under the framework research project, approved by the Slovenian research agency "Social control, criminal justice system, violence and prevention of victimization in highly technological society" (2009–2014), headed by *Renata Salecl.* The major projects, mostly within this framework have been:

- Law and the brain (2011–2014, *Renata Salecl*);
- Control and punishment in information society: Cyber-crime and control effects of the information society (2008–2011, *Renata Salecl*);
- Factors related to road traffic safety in Slovenia (2008–2010, *Dragan Petrovec*);
- The extent and responsiveness to violence in the domestic sphere and in partnerships (2008–2011, *Katja Filipčič*);
- Consideration of emotional aspects in the identification and treatment of violent behaviour in school (2008–2009, *Katja Filipčič*);
- Juvenile justice systems in Europe (2008–2009, *Katja Filipčič*);
- Slovenian judiciary in numbers: the comparative system and recommendations (2008–2009, *Marko Bošnjak*).[21]

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abuse (2004); Digital forensics and its role in judicial proceedings (2006); Digital library for distance education (2006); The definition and protection of critical infrastructure in Slovenia (2006); The culture of security and dealings with secret data in the Slovenian Armed Forces and Ministry of Defence (2007); The fear of crime and the role of the police in ensuring security on the local level (2010–2012); Analyses on the distribution patterns of some deviant behaviour in Ljubljana (2002); Road traffic accident participants' and road traffic code offenders' assessments of and views on procedures performed by police officers (2005); Property crime offenders' assessments of and views on procedures performed by police officers and crime investigators (2005); Border area residents' assessments of and views on procedures performed by police officers at the Schengen border (2005); Research on viewpoints on police work (2005); Job satisfaction in the police (2009); Research on road traffic accident participants' and road traffic code offenders' assessments and views (2005).

20 For more details see Homepage of the institute: www.inst-krim.si [10.07.2014].

21 There have also been various others projects in the past, for example: Social climate in correctional institutions in the Republic of Slovenia (2001); Deviance, violence and crime – an analysis of the situation of young second generation immigrants in Ljubljana (2001); Victims, victimisations and victimological perspectives (2001); Cultural aspects of violence (2001); Violence in the media (2001); Development of contemporary biomedicine and criminal law (2002); Invisible violence: normativity and normalisation of violence against people with motor, sensorial and intellectual disabilities (2002);

Mostly opposite approaches (quantitative v. qualitative) infer the division of fields, methods and consequently complementary criminological research between the institutes. However, there has not yet been any major debate regarding criminological theory or research in Slovenia, despite the fact that criminological or more general social science methodological courses are compulsory at the Faculty of Criminal Justice and Security in every study programme and that they are also a part of the curriculum of the Faculty of Law's criminology module. There has been cooperation between the Institute of Criminology and the Faculty of Criminal Justice and Security. Mostly, researchers from the mentioned faculty were employed as part-time researchers also at the Institute of Criminology in the framework of the Institute's projects. Lately, it has become more frequent that researchers from the Institute of Criminology lecture criminology and related courses at the Faculty of Criminal Justice and Security as external lecturers. The author of this paper has been closely cooperating with the Institute of Criminology, especially in two projects; Law and the brain, which is slowly closing, and Law in the age of big data: Regulating privacy, transparency, secrecy and other competing values in the 21st century, which has recently been approved by the Slovenian research agency.

Research is also conducted through international surveys, in which Slovenia has been actively participating. For example, the International Crime Victims Survey (ICVS) was firstly conducted by Dr. *Zoran Pavlović,* afterwards it was taken over by the Faculty of Criminal Justice and Security, whereas now the relevant data are

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Conceptual apparatus of theoretical and applicative criminology in post-modern society (2003); Starting points for the modernisation of criminal procedure in Slovenia (2003); Analysis of the course and duration of criminal proceedings in the Republic of Slovenia (2004); Harm principle and the continental legal system (2004); Psychoanalysis and crime (2004); Local safety efforts and the work of local safety councils in Slovenia (2004); Impact of social changes on the enforcement of penal sanctions (2004); Road traffic offences – basic concepts and their application in practice (2004); Theoretical and methodological aspects of corruption research (2004); A cult of victim (2004); Introduction of social skills training and work to the benefit of local community as types of educational measures (2005); Contemporary orientations of substantive criminal law (2005); Analysis of the effectiveness of police investigation of crimes from the aspect of development of crime investigation and standards of evidence in criminal procedure (2006); Security and co-operation in Eastern and South Eastern Europe in response to organised Crime (2006); Computer/cyber-crime in Slovenia (2006); The logic of changes and developmental tendencies of (in)formal control mechanisms (in a post-modern social context) (2007); Crime and punishment in literature – a criminological perspective (2007); Cybercrime – emergence of new criminal offences (2007); Ensuring presence of parties and other participants in court proceedings (2007); Contemporary orientations of substantive criminal law II (2007); Relationship between psychoanalytic and criminal law conception of subject (2007); Structural contingencies of emotional phenomenology of interpersonal violence (2008); Victim-offender mediation (2008); European arrest warrant – Comparative law and national law aspects (2008); Evidence law and organizational aspects of a main trial in criminal procedure (2008); Quantitative analysis of road traffic safety (2008); Standards of evidence in criminal procedure (2008).

gathered by the Statistical Office of the Republic of Slovenia. Slovenia is also involved with the European Sourcebook of Crime and Criminal Justice Statistics. The liaison position for Slovenia was taken over by Mag. *Jerneja Šifrer*[22] from the Faculty of Criminal Justice and Security last year. Slovenia is, however, not involved in the International Self-Report Delinquency Study (ISRD) despite efforts in the past.

Findings from the quantitative and qualitative research are also published in two central Slovenian journals. The first is the Journal of Criminal Investigation and Criminology, which is published by the Ministry of the Interior of the Republic of Slovenia (Slovenian National Police) since 1959 and is the leading Slovenian professional scientific journal covering the area of criminology and criminal investigation and connected sciences (criminal law, victimology, penology, etc.).[23]

The other is the Journal of Criminal Justice and Security, published by the Faculty of Criminal Justice and Security as a scientific magazine fostering "interdisciplinary discussion and exchange of findings in the field of safety and security studies. In its effort to shed light on legal, organizational, criminological, political science, sociological, psychological, and criminal-policy aspects of security-relevant concepts and phenomena, it facilitates a deeper understanding of the roles and the functioning of society, organizations, and individuals cooperating in the provision of security."[24]

3. Crime Trends and Problems in Slovenia

Data on crime trends and related problems can be gathered mostly from the official data of certain state authorities, especially in the annual reports of the police,[25] the Office of the State Prosecutor of the Republic of Slovenia,[26] Prison Administration[27]

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22 Assistant at the Faculty of Criminal Justice and Security, University of Maribor, Kotnikova 8, Ljubljana, Slovenia.

23 *Meško & Jere* 2012; Slovenian 'Revija za kriminalistiko in kriminologijo', ISSN 0034-690 X, indexed by SSCI Social Science Citation Index, Thomson Reuters, Philadelphia, US, Scopus, Elsevier, Philadelphia, US, CSA Worldwide Political Science Abstracts, Bethesda, Maryland, US, Criminal Justice Abstracts, Thousand Oaks, California, US, NCJRS Abstracts Database, Rockville, Maryland, US and CSA Sociological Abstracts, San Diego, California, US. See also the Homepage: www.policija.si/eng/index.php/publications/1257-journal-of-criminal-investigation-and-criminology [10.07.2014].

24 Slovenian 'Varstvoslovje', ISSN 2232-2981 (online), ISSN 1580-0253 (print), indexed in CSA Worldwide Political Science Abstracts, CSA Sociological Abstracts and Criminal Justice Abstracts. See also the Homepage: www.fvv.uni-mb.si/rV/index-E.html [10.07.2014].

25 See www.policija.si/index.php/statistika/letna-poroila?lang= [10.07.2014].

26 See www.dt-rs.si/sl/vrhovno_drzavno_tozilstvo/porocila_o_delu_drzavnih_tozilstev [10.07.2014].

27 See www.mp.gov.si/si/o_ministrstvu/ursiks_organ_v_sestavi/dokumenti/letna_porocila [10.07.2014].

and in judicial reports.[28] Data not included in reports, or raw data could be requested for research purposes according to specific regulations[29] or the Public Information Access Act (2014). Its main problems are the dark figure of crime (unreported crime), perpetual amendments to legislation and statistical units, which make the comparison of results from various years difficult, and differences in reporting the crime (per criminal act or per perpetrator).

Tables 1, 2 and *3* show the main trends regarding reported crime, suspects and sentencing in Slovenia for the last ten years. The first table focuses on the data on reported crime per 100,000 Slovenian inhabitants (crime rate).[30] According to it, the number of all crime reports has been rising in the last few years, as well as the number of reported crime against economy (financial crime).[31] The crime rate for crimes against life and limb has been decreasing. The crime rate for crimes against sexual integrity has been stable, with the exception of certain years, in which there was a decrease of these crimes. Property crime decreased between 2006 and 2010, when its crime rate started to rise. No tendency could be explained for computer and organized crime, where crime rates vary from one year to another. On the other hand, despite a contrary outcry in the media, the number of reports for corruption and crimes with elements of corruption has decreased since 2011. Only in 2009 there was a significant increase in corruption crimes.

Table 1 Reported Crime Rates in Slovenia (2004–2013)

Year	All crimes	Crimes against life and limb	Crimes against sexual integrity	Crimes against property	Crimes against economy	Organized crimes	Computer crimes	Corruption, crimes with elements of corruption
2013	4,557	96	18	3,000	793	23	12	3
2012	4,340	107	18	2,896	625	25	7	5
2011	4,328	106	23	2,687	622	16	13	5
2010	4,372	116	23	2,654	638	17	5	4
2009	4,304	118	22	2,749	256	20	6	11
2008	4,044	118	19	2,760	368	18	15	1
2007	4,387	138	22	3,114	396	15	6	1
2006	4,510	136	18	3,258	423	25	2	2
2005	4,224	130	20	3,185	306	20	3	1
2004	4,336	139	22	3,280	292	11	1	1

Source: Police.

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28 *Brvar* 2013; see www.sodisce.si/sodna_uprava/statistika_in_letna_porocila [10.07.2014].

29 For example article 181 of the State Prosecutor Act 2013.

30 On 1 July of each year.

31 *Keršmanc* 2014.

Table 2 Reported Suspects according to Age and Sex in Slovenia (2004–2013)

Year	Sex		Age						
	Male	Female	14-17	18-20	21-30	31-40	41-50	>50	Un-known
2013	14,500	3,809	1,083	1,191	4,314	4,708	3,468	3,519	26
2012	14,930	3,450	1,200	1,229	4,523	4,632	3,478	3,288	30
2011	15,602	3,320	1,301	1,294	4,865	4,627	3,526	3,295	14
2010	16,417	3,543	1,440	1,473	5,196	4,830	3,638	3,362	21
2009	15,855	3,100	1,525	1,473	5,227	4,302	3,465	2,949	14
2008	14,479	2,692	1,439	1,644	4,728	3,743	3,066	2,532	19
2007	14,749	2,729	1,508	1,679	4,987	3,725	3,037	2,535	7
2006	14,898	2,867	1,550	1,790	5,279	3,731	3,087	2,312	16
2005	14,842	2,724	1,631	1,851	5,169	3,694	3,039	2,166	16
2004	15,551	2,996	1,912	2,045	5,447	3,689	3,210	2,239	5

Source: Police.

The age structure of reported suspects shows an increase of suspects over 51 years and between 31 and 50 years and a decrease of reported minors (14–17) and young adults (18–20). Overall, the number of reported female suspects has increased.

Table 3 Adult Convicts in Slovenia (2005–2013) by Type of Sentence

Year	All convicts	Prison sentence	Monetary sentence	Conditional release	Judicial admonition	Other
2013	10,162	2,049	495	7,354	51	213
2012	9,296	1,623	380	7,067	107	119
2011	8,223	1,231	442	6,297	101	152
2010	8,509	1,243	383	6,571	120	192
2009	8,893	1,524	406	6,720	104	139
2008	8,893	1,308	714	6,625	83	163
2007	7,800	1,074	678	5,766	69	213
2006	8,017	1,096	836	5,830	76	179
2005[1]	7,490	1,069	860	5,311	108	142

Source: Office of the State Prosecutor of the Republic of Slovenia.

[1] As there is no annual report of the State Prosecutor Office for 2004 online, data for this year are not included in the paper.

The table on sentencing of adult convicts hints at repressive trends; prison sentence is more frequent, monetary sentence has decreased, but data for 2013 show an explicit rise of this form of sentence.[32] Conditional release and judicial admonition have decreased.

[32] According to the annual report of the State Prosecutor Office for 2013 there has been a prosecutorial policy to increase the number of monetary sentences.

These statistical data could be compared to the fear of crime, which has been vastly researched in Slovenia by Prof. Dr. *Gorazd Meško*. Surveys have been conducted in Ljubljana and other capitals of South-Eastern Europe in the framework of a comparative study[33], and the results have been compared to the previous studies.[34] The results show that the importance of fear of crime has not changed tremendously in the last 10 years in Slovenia.[35] In Ljubljana, factors like disorder in a neighbourhood, worry about crime, consequences of victimization, low ability of self-defence, impact of victimization on one's life and precaution have been found to influence people's fear of crime.[36] The results of the comparative study imply that in the majority of capitals, that trust to public institutions does not influence fear of crime,[37] that fear of crime depends on weak social networks, that women and physically weaker people who believe that they are unable to defend themselves express more fear of crime and that previous victimization has an impact on one's fear of crime.[38]

The media, politicians, the general public and experts[39] have in the last few years especially emphasized the problem of economic crime and (systematic) corruption in Slovenia, exposed mostly due to financial and economic crises and worsened social circumstances. The official statistics support the assumption of the rise of economic crimes, but not of corruption (since 2011). This public and expert outcry has led to amendments of the legislation,[40] new powers of state bodies,[41] human resources empowerment of the police and State Prosecutor Office and to a much more focused investigation of these crimes, especially by the National Bureau of Investigation and the Specialized Office of the State Prosecutor. These measures should in time have an impact on official statistics. The media, however, report about any crime and especially about economic crime and corruption in a violent and populist manner, with a commercial, or maybe even with a political agenda, in order to serve the politicians directly via media ownership or indirectly via political interest. Politicians have in fact always had an increased interest in the criminal justice system, especially lately with the open agenda to reduce or even destroy the reputation and credibility of the criminal justice system to put the value of any potential judicial decision against pol-

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33 *Meško et al.* 2008a.

34 *Meško et al.* 2012a; *Vošnjak et al.* 2011; *Meško et al.* 2012b.

35 *Meško et al.* 2008.

36 *Meško* 2012; *Meško et al.* 2008.

37 *Meško et al.* 2008.

38 *Meško et al.* 2012a; *Meško et al.* 2008; See also *Meško et al.* 2008c.

39 For example, the Commission for the prevention of corruption.

40 For example, the Criminal Procedure Act.

41 For example, the Assets of Illicit Origin Forfeiture Act 2014.

iticians in question.[42] There have been certain attempts to understand the relationship between the criminal justice system, media and politics,[43] even round tables on the relationship between the media and the criminal justice system, at which the economic pressure on journalists, their precarious and unstable form of employment and lack of (legal) knowledge have been exposed as the main deficits. Important work has also been done by the PR service of the Supreme Court of Slovenia.[44]

4. The Slovenian Criminal Justice System

The effectiveness of the criminal justice system is also based on effective, clear, up-to-date and safeguarded legislation on substantive and procedural criminal law, the execution of criminal sanctions and the organization of the criminal justice system.

After the independence of Slovenia in 1991, the 'Criminal Code and Criminal Procedure Act' have been enacted on 1 January 1995. The 'Criminal Code' was amended several times and in 2008 finally replaced by the 'Criminal Code-1' (2011). Both are based on the former Yugoslav federal 'Criminal Code' (with omission of political elements) and German substantive criminal law theory.[45] The 'Criminal Code' was complemented by the Liability of Legal Persons for 'Criminal Offences Act' (2012). The 'Criminal Procedure Act' was originally also based on the former Yugoslav 'Criminal Procedure Code' and on the model of the mixed procedure,[46] but gradually moved towards the adversarial model of criminal procedure under the influence of the case law of the 'Constitutional Court of the Republic of Slovenia' due to a modern and very protective 'Constitution of the Republic of Slovenia' (2013). The 'Criminal Procedure Act' has therefore been amended several times due to the Constitutional Court's decision that certain regulations or omissions contradicted the Constitution.[47] Also, a completely new 'Criminal Procedure Act-1', based on the adversarial model of criminal procedure, is now being proposed, including the already existing plea-bargaining[48] and the abolishment of judicial investigation. Procedural legislation has been complemented by, among others, the 'Assets of Illicit Origin Forfeiture Act' (2014) and the 'Cooperation in Criminal Matters with the Member States of the European Union Act-1' (2014).

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42 See for example some responses of the judiciary: www.sodisce.si/sodni_postopki/objave/2014060616053789/ or www.dt-rs.si/sl/informacije_za_medije/180/ [10.07.2014].

43 *Meško et al.* 2009.

44 For example, a round table at the Institute of Criminology in Ljubljana on 30 January 2014.

45 *Bavcon et al*. 2014.

46 *Šugman* 2000.

47 *Zgaga* 2014.

48 Criminal Procedure Act 2013.

State prosecutors are becoming an increasingly important and responsible factor in criminal procedure – as a party to the procedure and as a state authority, responsible for the legality of the procedure. The office of the State Prosecutor is regulated by the State Prosecutor Act-1 (2013), according to which its organization follows the organization of the judiciary; there are eleven circuit offices of the state prosecutor and the supreme office of the state prosecutor, which includes also the specialized office of the state prosecutor with jurisdiction for organized crime, corruption, economic crime, etc., with the jurisdiction for the territory of the whole state, currently organized as a separate circuit office of the state prosecutor.

State prosecutors are assisted by the police, especially in pre-trial procedure. Police legislation has been amended lately as well. The 'Police Organization and Work Act' (2014) regulates police organization and the position of policemen, whereas the 'Police Tasks and Powers Act' (2013) regulates the authorities of the police in criminal and other procedures.

The Slovenian judiciary is organized on three levels; forty-four district[49] and eleven circuit[50] courts on the first level, four higher courts[51] on the second level with jurisdiction for appeals against the decisions of district and circuit courts and the Supreme Court of Slovenia on the third level with the jurisdiction for extraordinary legal remedies and appeals against the decisions of the higher courts.[52]

It is clear already from this short overview of Slovenian legislation that it has been amended several (even too many?) times. The amendment of legislation has in fact also been influenced by the European Union, especially the procedural and substantive criminal law.[53] In connection to this, the newest 'Act on International Co-operation in Criminal Matters between the Member States of the European Union-1' (2014) should be mentioned, which regulates all existing forms of cooperation in criminal matters in the European Union. Further, the 'Criminal Procedure Act' is currently undergoing amendments, also due to requirements by European Union law. The most relevant directives to be mentioned here are: Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings and Directive 2013/48/EU of the European Parliament and

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49 With jurisdiction for criminal cases carrying as principal penalty a fine or a prison term of up to three years.

50 With jurisdiction for criminal acts that carry a sentence of more than three years of imprisonment, judged by panels of one professional judge and two juror judges or panels of two professional judges and three juror judges.

51 Ljubljana, Maribor, Celje and Koper.

52 Courts Act 2013.

53 *Zgaga* 2010; *Zgaga* 2007; *Zgaga & Ambrož* 2007.

of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities while deprived of liberty. European law was the reason for amending the 'Criminal Procedure Act' also in the past, especially in the field of witness protection and cooperation in criminal matters.[54]

Slovenian criminal substantive law has been influenced by the European Union as well. Especially its impact on the special part of the 'Criminal Code-1' should be emphasized, for mostly criminal acts against the sexual integrity (grooming, child pornography, etc.), crimes against the environment, terrorism and related criminal acts.[55]

The European Union, however, has not been the main reason for past major reforms of Slovenian criminal legislation, but mostly for fragmented amendments of certain criminal law issues, depending on the interests of the European Union. The 'Criminal Code-1' was in fact adopted in 2008 mainly due to political and ideological reasons, whereas the proposal for the 'Criminal Procedure-1' is based on a completely adversarial model of criminal procedure with a higher degree of human rights protection, but also with a desire for a more pragmatic, efficient and simply managerial paradigm of criminal procedure.[56] Especially the past criminal procedure amendments have in fact tried to address one major problem in criminal procedure in Slovenia: the lack of its efficiency or the overburdened police, prosecutors' and courts' dockets.

Slovenia has in fact already been convicted by the European Court of Human Rights (ECtHR)[57] for violating article 6: the right to a trial within reasonable time.[58] This was also one of the main reasons for implementing plea-bargaining, admission of guilt at the pre-trial hearing, punitive order, etc. in the 'Criminal Procedure Act' in the past.

The annual report of the State Prosecutor Office for 2013 already shows that almost one third of all convictions[59] have been achieved through plea-bargaining[60] and admission of guilt at the pre-trial hearing,[61] the latter being a far more frequent ending

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54 *Zgaga & Ambrož* 2007.

55 Criminal Code-1 2011.

56 Such as the plea-bargaining procedure.

57 *Bošnjak* 2005.

58 For example, Lukenda v. Slovenia, 23032/02, 6 October 2005, which is not a criminal case, but was the first Slovenian case regarding this issue, served as the model for similar cases.

59 10,162 convictions total in 2013.

60 84% of all plea-bargaining procedures were successful and ended with a confirmed agreement in 2013.

61 42% of all pre-trial hearings ended with admission of guilt in 2013.

of criminal procedure, which is not surprising, since the pre-trial hearing is compulsory in regular criminal procedure. Thereby, time and money have been saved.[62]

It is also becoming clearer every day that prison overcrowding has become a major problem in Slovenia, too. Slovenia has already been convicted by the ECtHR for violating the prohibition of inhumane and degrading treatment and punishment due to improper prison conditions resulting from overcrowding,[63] but has managed to improve the conditions slightly. However, as an effect of plea-bargaining and admission of guilt it is to be expected that there would be more convictions with prison sentence, which would have an influence on prison conditions as well.

The execution of criminal sanctions lies under the jurisdiction of the Prison Administration according to the Enforcement of Criminal Sanctions Act-1 (2012). The Prison Administration is a body within the Ministry of Justice. Slovenia has six prison facilities operating in fourteen locations for the serving of prison sentences and juvenile prison sentences, prison sentences in misdemeanour procedures and under other regulations. The Prison Administration also operates a correctional facility for minors who have been sent to the correctional facility as an educational measure. The largest prison is in Dob, near Ljubljana, where sentenced male prisoners serve sentences that are longer than one and a half

Table 4 Structure of Prisoners (Pre-Trial Detentions, Persons Sentenced to Prison in Misdemeanours Procedures, Sentenced Prisoners, Gender Structure of Admissions and Releases) in Slovenia (2004–2013)

Year	All prisoners (average number)	Pre-trial detention (average number)	Misdem. procedure (average number)	Sentenced prisoners (average number)	Admissions of sentenced prisoners		Releases of sentenced prisoners	
					male	female	male	female
2013	1,430.3	248.4	29.9	1,126.1	1,692	98	1,647	85
2012	1,418.4	314.2	38.6	1,042.5	1,675	98	1,579	94
2011	1,337.4	305.3	33.8	967.8	1,414	76	1,364	71
2010	1,373.7	351.7	19.5	975.0	1,446	56	1,468	44
2009	1,415.8	354.6	23.5	1,010.6	1,341	48	1,401	61
2008	1,264.1	308.9	26.4	1,002.0	1,395	58	1,341	53
2007	1,339.3	342.3	40.8	930.6	1,271	58	1,189	50
2006	1,267.9	340.9	11.2	882.2	1,301	66	1,233	66
2005	1,137.3	323.7	5.4	722.9	1,226	45	1,157	50
2004	1,131.5	279.6	41.6	778.6	1,117	48	1,158	41

Source: Prison Administration.

62 State Prosecutor Office 2013.

63 For example, Mandić and Jović v. Slovenia, 5774/10 and 5985/10, 20 October 2011; Štrucl and others v. Slovenia, 5903/10, 6003/10 and 6544/10, 20 October 2011.

Table 5 Structure of Sentenced Prisoners: Gender and Recidivism in Slovenia (2004–2013)

Year	Male sentenced prisoners		Female sentenced prisoners	
	First time	Recidivist	First time	Recidivist
2013	495	603	53	17
2012	514	573	57	14
2011	439	494	43	16
2010	426	552	45	8
2009	427	483	32	15
2008	544	451	47	9
2007	540	412	39	15
2006	518	472	42	20
2005	455	475	31	14
2004	436	415	31	10

Source: Prison Administration.

year, and up to 30 years. The central women's prison for all forms of prison sentences is in Ig, outside Ljubljana; the juvenile prison is in Celje and there are regional prisons, where sentenced prisoners serve up to a year and a half long prison sentences in Koper, Maribor and Ljubljana. The correctional facility for minors is in Radeče.[64]

Table 4 shows the gradual rise of the average number of all incarcerated prisoners in Slovenia, as well as of the average number of sentenced prisoners. Admissions of sentenced prisoners have increased for both male and female sentenced prisoners, as well as releases.

As the statistics show (see *Table 5*), the relationship between male first-time offenders and recidivists is unstable, with slight growth of the latter in the last couple of years. The same applies to female sentenced prisoners.

According to the yearly reports of the Prison Administration (see *Table 6*), more and more prisoners serve the whole prison sentence, and release on parole is generally less common.

There is also a general trend towards longer prison sentences; the number of longer prison sentences has increased (30, 15–20, 5–10 years), whereas the number of shorter sentences has declined or stayed more or less the same (see *Table 7*).

Release of sentenced prisoners is connected also to prisoner re-entry programmes. According to the 'Enforcement of Criminal Sanctions Act-1' (2012), such programmes are compulsory; rehabilitation courses for life outside the prison walls

64 See www.mp.gov.si/en/about_the_office/prison_administration_bodies_of_the_ministry [10.07.2014].

Table 6 Reasons for Release of Prisoners in Slovenia (2004–2013)

Year	Complete sentence	Release on parole[1]	Early release[2]	Pardon[3]	Sent to other states	Death	Other
2013	333	304	427	0	4	4	30
2012	402	256	341	0	0	5	45
2011	290	282	328	3	0	3	37
2010	308	342	339	0	1	2	43
2009	329	337	318	2	2	3	35
2008	291	384	286	1	2	5	16
2007	300	297	301	0	2	3	19
2006	236	356	356	5	0	4	26
2005	164	374	326	0	2	19	4
2004	176	395	332	2	0	1	/[4]

Source: Prison Administration.

[1] According to the Criminal Code-1 (2011), an offender who has served half of his/her sentence of imprisonment may be released from a penal institution under the condition that until the term for which he/she was sentenced has lapsed, he/she does not commit another criminal offence. He/she may be put under custodial supervision and instructed to perform certain tasks.

[2] According to the Enforcement of Criminal Sanctions Act-1 (2012), the warden may release a sentenced prisoner early on the basis of an expert opinion.

[3] Pardon is under the jurisdiction of the President according to the Pardon Act (2005).

[4] No data available according to the annual reports of the Prison Administration.

should be conducted throughout the prison sentence, as well as a specific programme for each prisoner, at a minimum of 3 months before the release in order to resolve relevant legal and practical issues, arising after the custodial release. This programme should combine the efforts of the Prison Administration and other

*Table 7 Sentenced Prisoners by Length of Sentence (2004–2013)**

Year	Up to 1 mon.	1-3 mon.	3-6 mon.	6-12 mon.	1-2 yrs.	2-3 yrs.	3-5 yrs.	5-10 yrs.	10-15 yrs.	15-20 yrs.	30 yrs.
2013	0	14	48	122	207	147	189	188	65	37	11
2012	3	14	51	99	195	154	164	189	62	33	8
2011	2	12	44	125	205	115	134	183	69	31	9
2010	1	5	36	99	162	161	168	192	76	27	9
2009	3	9	46	119	214	142	184	188	73	21	9
2008	1	12	36	114	237	108	177	176	67	19	7
2007	1	16	71	119	166	106	143	157	68	12	6
2006	3	15	63	114	167	111	112	137	56	10	4
2005	1	12	39	96	152	92	124	142	60	8	2
2004	2	16	68	127	139	93	130	129	52	5	1

Source: Prison Administration.

* One-day snapshot (1 January)

authorities.[65] The practice, of course, shows a different picture. The annual report of the Prison Administration for 2013 for example states that for only 22.6% of all released sentenced prisoners employment was arranged, that in 33.8% of cases employment of sentenced prisoners was not possible despite his or her application to the Employment Service of Slovenia, that the number of former sentenced prisoners not able to get employment increased, that there is still no organized accommodation policy for former sentenced prisoners without accommodation, despite the fact that many of the convicts lost their accommodation and that many of the convicts received material help (especially clothing) on the basis of general social legislation. According to the Prison Administration, it is also very difficult in practice to conduct counselling for former sentenced prisoners through the Social Service. Most counselling is conducted by volunteers – social science students, who perform it in the framework of social services, NGOs or religious organizations.[66]

5. Conclusion

Criminological research and education has had a long tradition in Slovenia and has developed into complementary work mostly between the Faculty of Criminal Justice and Security, University of Maribor, on the one side, and the Faculty of Law, University of Ljubljana, and the Institute of Criminology on the other. The researchers have poured the findings from their research with student involvement, conducted in the framework and under (co-)financing of Slovenian state and also the European Union, into the curriculum of the relevant study programmes and thereby connected criminological research and education. Criminological experts have also been invited to participate as active members of bodies, drafting criminal policy strategies or criminal legislation. However, if in the past such membership had a real impact on the drafting procedure (for example the process of drafting the Criminal Code from 1994),[67] nowadays one cannot suppress a bitter feeling that such expert membership serves only as an alibi to the legislator.

The issues arising in the Slovenian criminal justice system (prison overcrowding, length of criminal procedures, human rights issues, etc.), however, demand from the legislator thoughtful, clear and decisive actions. Such actions should be based on the needs of the practice, on clear understanding of the state of art of the practice, its causes, problems, also in accordance with the theoretical background. In contradiction to this, the reality shows a developing practice of populist, rash and

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65 Enforcement of Criminal Sanctions Act-1 2012.

66 Source: Prison Administration 2013.

67 *Meško & Šelih* 2012.

hasty decision-making by the Slovenian legislator, not rarely rejected by both – the practice and the Constitutional Court of the Republic of Slovenia.

6. Summary in Slovenian

Kriminologija ima v Sloveniji dolgo tradicijo in je bila vedno tesno prepletena z različnimi ustanovami in področji znanosti. Kriminološke raziskave in preučevanje lete se je začelo na Pravni fakultete Univerze v Ljubljani z Aleksandrom Vasiljevićem Maklecovom. Nato je bil leta 1954 ustanovljen Inštitut za kriminologijo v Ljubljani. Člani katedre za kazensko pravo Pravne fakultete in raziskovalci z Inštituta za kriminologijo so tako tesno sodelovali, združevali kriminološki in kazenskopravni pristop in vpeljevali (večinoma kvalitativna) znanstvena spoznanja v študij in prakso. V zadnjem obdobju njihovo delo močno dopolnjuje večinoma kvantitativna raziskava sodelavcev Fakultete za varnostne vede Univerze v Mariboru, ki je bila ustanovljena 1973 in kjer je bil 2004 ustanovljen tudi Inštitut za varstvoslovje.

Prispevek predstavlja stanje kriminologije in kazenskopravnega sistema v Sloveniji in je sestavljen iz treh delov. Prvi del definira temeljne okvire kriminološkega izobraževanja in raziskav v Sloveniji. Kot rečeno, kriminologijo poučujejo na Fakulteti za varnostne vede in na Pravni fakulteti v Ljubljani s pomočjo Inštituta za kriminologijo, na omenjenih institucijah pa potekajo tudi najpomembnejše kriminološke raziskave v Sloveniji, sofinancirane tudi s strani države in Evropske unije. Na Fakulteti za varnostne vede kriminološke predmete vključujejo vsi dodiplomski programi, magistrski program vsebuje obvezen predmet kriminologije in kriminološke politike ter kritične kriminologije, medtem ko doktorski študij pokriva tudi izbirne kriminološke predmete, odvisno od teme doktorske naloge. Tudi na Pravni fakulteti v Ljubljani ima kriminologija dolgo tradicijo. Trenutno je izbirni predmet v magistrskem študiju, doktorski študij kazenskega prava omogoča tudi izbirni predmet kriminologije, popolnoma svež pa je doktorski študij kriminologije, ki je začel s študijskim letom 2013/2014. Kriminološke predmete pa je v Sloveniji mogoče poslušati še na Fakulteti za socialno delo ter Pedagoški fakulteti Univerze v Ljubljani.

Drugi del prispevka se osredotoča na glavne trende kriminalitete in njene probleme. Dosegljiva uradna statistika kaže skupno povečanje kazenskih ovadb, vključno s kaznivimi dejanji zoper premoženje, gospodarstvo in računalniško kriminaliteto. Statistika kaznovanja polnoletnih obsojencev kaže represivne trende, saj se je povečala frekvenca zaporne kazni, zmanjšala pa stopnja izrekanja pogojne obsodbe in sodnih opominov. Iz nje izhaja tudi postopna rast povprečnega števila zaprtih oseb v Slovenija, vključno s povprečnim številom obsojencev, in splošen trend podaljšanja zaporne kazni, ki jo zapornik prestaja.

Učinkovitost kazenskopravnega sistema je odvisna tudi učinkovite, jasne, moderne in garantistične zakonodaje, zato tretji del prispevka grobo skicira kazenskopravni

sistem Slovenije. Kljub drugačnim željam znanosti in prakse je slovenska kazenska zakonodaja pogosto žrtev stalnih spremembe brez strokovne osnove, ki seveda vpliva tudi na učinkovitost delovanja sistema. Problemi, ki se v zadnjem času izpostavljajo (prenatrpanost zaporov, trajanje kazenskih postopkov, itd.) pa od zakonodajalca zahtevajo drugačen pristop, ki bo premišljen, jasen in odločen in bo temeljil na potrebah prakse, jasnem razumevanju stanja stvari, razlogih za to in problemov, ter na teoretičnih spoznanjih.

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Criminology and Crime in Turkey

Adem Sözüer and Tuba Topçuoğlu

1. Introduction

There have been extensive legal reforms in Turkey in the past decade, which in turn have led to significant changes within the Turkish criminal justice system. With these reforms, Turkish positive criminal law underwent a complete transformation, including the promulgation of a new Criminal Code, Criminal Procedure Code, and Act regarding the Execution of Sanctions, an Act regarding the Administrative Offences and an Act to Protect Minors. Based on the principles of the legality of crime and punishment, equality, culpability and humanism, the new Criminal Code now adopts modern European standards in line with the criminal laws in many European countries. However, no matter how good these laws are in terms of the ethical, legal and moral standards they meet, criminal justice policy and practice guided by the criminal law must still be shown empirically to work and produce the outcomes they are intended to have, such as the prevention and control of crime and delinquency. Criminology, as the scientific study of the extent, nature, causes and prevention of crime, has significant implications for criminal law and criminal justice policy and practice. However, criminology as a discipline is in its infancy in Turkey, and with regards to the relationship between, on the one hand, criminological theory and research, and on the other hand, government, criminology is not accepted as a policy-making tool that can guide criminal law and criminal justice policies and practices. This article provides an overview of the state of art in Turkish criminological research and education. It also provides a brief outlook into the many facets of the criminal justice system in Turkey. More generally, this paper aims to contribute to an urgent necessity – a sound analysis of the current state of art in the whole Balkan region – which will in turn help identify current needs and plan future activities for the whole region.

2. Criminological Education and Research

2.1 Education

The first Institute of Criminology in Turkey was established at the Law Faculty of Istanbul University in 1943, and after ten years criminology, for the first time, has

been taught as an elective undergraduate course in 1953.[1] As of 2014, almost 60 years after the establishment of the first Institute of Criminology in Turkey, there is still no undergraduate or postgraduate degree programme in criminology in Turkey. Within the Turkish education system, students who graduate from high school must pass a national university entrance exam, and then, based on the score they get from this exam, they choose the department and the faculty they would like to enter. There is a regulation in Turkey defining scientific areas, fields and sections that prospective undergraduate students can choose among; however, criminology is not mentioned within these areas. Criminological education is partly provided through undergraduate and graduate elective courses taught within the departments of criminal law and criminal procedure law (Faculty of Law), departments of sociology (Faculty of Arts and Sciences), and within the institutes of legal medicine and forensic science. The Turkish National Police Academy in Ankara is one exception. Initially founded as a higher education in-service training agency with one year curriculum in 1937, the Academy was reorganized and gained university status in 2001 with the Faculty of Security Sciences, the Institute of Security Sciences and 27 police vocational schools of higher education. While the Faculty of Security Sciences offers a B.A. degree in Security Sciences, the Institute of Security Sciences offers a two-year master course in eight areas (Forensic Sciences, Criminal Justice, Security Strategies and Administration, Intelligence Studies, Crime Studies, Transportation Security and Management, International Security, and International Terrorism and Transnational Crimes) and a four-year Ph.D. programme in two areas (Security Strategies and Administration, and International Security). Despite the achievements in the field in most developed countries and the significance of the discipline in developing effective crime prevention and intervention strategies, however, a full-fledged education in criminology and criminal justice in terms of theory, research and practice is absent throughout Turkey.

There are also not many university textbooks on criminology, and a majority of the existing ones need to be seriously updated with contemporary developments in criminological theory and research and criminal justice. Major criminological textbooks used for education in Turkey are:

- *Demirbaş*, *T.* (2012). Kriminoloji (Criminology*)*, 4th Edition/Revised. Ankara: Seçkin (introduces students to criminology by examining various issues such as criminological research methods, measurement of crime, theoretical perspectives and a variety of crime types), 464 pages;
- *Dolu*, *O*. (2012). Suç teorileri: Teori, Araştırma ve Uygulamada Kriminoloji (Criminological Theories: Criminology in Theory, Research and Practice), 4th Edition/Revised. Ankara: Seçkin (a comprehensive overview of key theories in criminology with a focus on empirical evaluation and practical application), 504 pages;

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1 *Dönmezer* 1994.

- *Günşen İçli*, *T.* (2013). Kriminoloji (Criminology), 8th Edition/Revised. Ankara: Martı (a comprehensive overview of key issues in criminology, such as measurement of crime, research methods used in criminology, theoretical perspectives, juvenile delinquency, domestic violence against women, honour crime, organized crime and terrorism), 584 pages;
- *Sokullu-Akıncı*, *F.* (2011). Kriminoloji (Criminology), 9th Edition/Re-print. İstanbul: Beta (a very concise introductory textbook for students in law), 215 pages.

2.2 Research

Research into criminology started in Turkey between the 1940s and 1950s with the pioneer works of leading legal scientists who established the Institute of Criminology in 1943 at the Law Faculty of Istanbul University.[2] Over the years, and especially during the 1990s, increasingly more researchers from other disciplines, such as sociology and psychology, were involved with criminological research. However, a vast majority of the studies carried out in Turkey were based on the study of individuals who were already under the control of the criminal justice system, such as suspects, arrested and convicted offenders.[3] These studies, which are retrospective in nature, usually do not have a control group and examine the prevalence of different types of crimes committed by the offenders together with certain social and demographic characteristics of these offenders. It is well known that retrospective and prospective approaches ask different questions and hence might yield completely different results.[4] While retrospective studies look back into the history of the offenders or suspects and examine their backgrounds, only prospective studies help identify risk factors which increase the likelihood of later offending.[5]

Later on, criminological research in Turkey started to focus on student populations outside the criminal justice system.[6] These studies are often based on cross-sectional samples of students in mid or late adolescence and examine the correlates of un-official self-reported delinquency. Few test traditional criminological theories such as social bonding theory, self-control theory and general strain theory.[7] These cross-sectional analyses do not allow for within-individual analyses into the causes of juvenile delinquency, and because they disregard the development of antisocial

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2 *Dönmezer* 1943; İstanbul Üniversitesi Türk Kriminoloji Enstitüsü 1953; İstanbul Üniversitesi Ceza Hukuku ve Kriminoloji Enstitüsü 1964.

3 *Bal* 2007; *Bayındır, Özel & Köksal* 2007; *Erdoğmuş* 1993; *Hancı, Dülger, Toy, Demirçin, Ertürk & Coşkunal* 1993; *İçli, Arıkan, Bayrakçı, Maden, Asker, Öztürk & Özkan* 2007; *Kızmaz & Bilgin* 2010; *Kocadaş* 2007; *Tuğ, Doğan & Hancı* 2002; *Uluğtekin* 1991.

4 *Maxfield & Babbie* 2012; *Widom, Weiler & Cotler* 1999.

5 *Kazdin et al.* 1997; *Murray, Farrington & Eisner* 1999.

6 *Demir, Baran & Ulusoy* 2005; *Duyan & Duyan* 2007; *Özbay* 2003; 2004; *Ulusoy* 2006; *Ulusoy, Demir & Baran* 2005a; 2005b.

7 *Özbay* 2003; 2011; *Özbay & Özcan* 2006.

behaviour that is manifested early in childhood, they do not allow us to identify the early risk and protective factors which lead to a criminal path.[8]

Prospective longitudinal studies which follow same groups of children repeatedly over time are limited in Turkey. Funded by the Scientific and Technological Research Council of Turkey, there are a few longitudinal criminological studies recently conducted in Turkey.[9] *Ünal, Çukur & Özbayrak* (2010), for instance, used self-reported methodology to study 2,025 students (mean age = 17 years) drawn from 11 high schools in İzmir city centre. They investigated how family, peer groups and school factors were related to deviance and violent behaviour in youths within the context of social learning theory. However, attrition was severe and the longitudinal data collected one year later included data on about 500 students only who participated at the first wave of the study.

Despite the fact that methodologically sounder studies are being conducted over the recent years, existing criminological research in Turkey is flawed in various ways due to issues related to sampling, measurement, data collection, interpretation, generalization; hence sound policies cannot be recommended based on the results of these research findings. Furthermore, there are quite a large number of areas in criminology that have not yet attracted scholarly attention in Turkey, including developmental issues (such as the onset of delinquency, persistence, desistance, recidivism), scientific evaluation of the effectiveness of the correctional programmes and rehabilitation for criminals, randomized experiments and evidence-based crime prevention.

Turkey has recently been involved in some major international European studies. For instance, Turkey, for the first time, participated at the International Crime Victims Survey in 2005 with a city-based sample (Istanbul). This research was conducted by *Galma Jahic* (Istanbul Bilgi University) and *Aslı Akdaş* (Doğuş University). Turkey also contributed to the publication of the European Sourcebook of Crime and Criminal Justice Statistics in 2000 (Prof. Dr. *Feridun Yenisey*), 2003 (Prof. Dr. *Yusuf Ziya Özcan*) and in 2010 (Dr. *Galma Jahic*). Turkey did not yet participate in the International Self-Reported Delinquency Study; however, the Faculty of Law at Istanbul University is planning to take part in the third wave of the study in 2014 with a city-based sample drawn from Istanbul and Ankara.

Criminological journals are also a rarity in Turkey; major ones in the field include:

- *Kriminoloji Dergisi* (Turkish Journal of Criminology and Criminal Justice), www.adaletyayinevi.com/yazar/yzrdty.asp?yzid=577 [14.07.2014];
- *Polis Bilimleri Dergisi* (Turkish Journal of Police Studies), www.pa.edu.tr/?app=ED77B64B-C77A-47E1-89ED-FB78A53019E4 [14.07.2014];

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8 *Farrington* 2002; *Murray, Farrington & Eisner* 1999.

9 *Kumru* 2011; *Ünal, Çukur & Özbayrak* 2010.

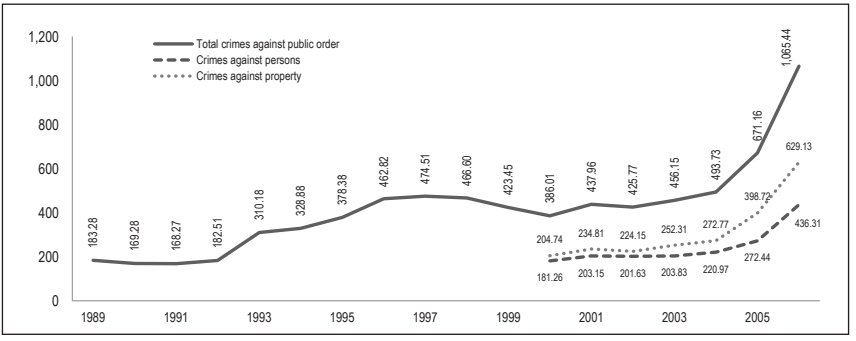
- *Annales de la Faculté de Droit d'Istanbul* (Annals of the Faculty of Law of Istanbul), www.journals.istanbul.edu.tr/tr/index.php/hukuk [14.07.2014];
- *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* (Istanbul University Law Faculty Journal), www.journals.istanbul.edu.tr/tr/index.php/hukukmecmua [14.07.2014];
- *Ceza Hukuku ve Kriminoloji Dergisi* (Journal of Criminal Law and Criminology), www.journals.istanbul.edu.tr/tr/index.php/cezahukuk [14.07.2014].

3. Crime Trends and Problems

One of the main areas of focus in criminology relates to the measurement of crime, the very fact that it tries to explain. As in most countries, measurement of crime is highly problematic in Turkey, too. Traditionally, official statistics constitute the major source of crime data and these include police statistics on suspects and arrests, judicial statistics on defendants and convicts, and prisoner statistics. Police statistics are collected by the General Directorate of Public Security (GDS); until 2003, they were published annually on their website. However, police statistics are regarded as highly unreliable and the GDS is currently working on improving the quality of the available statistics. Today, police statistics are only partially available upon request and therefore it is not possible to study crime trends over long periods of time using data obtained from the police.

Although police statistics for the recent years are not available, previously obtained data on police-recorded crime rates indicate significant increases in police-recorded crime rates over the last decade. *Figure 1* displays police-recorded crimes against public order within the years 1989–2006 which include crimes against persons and crimes against property. Data on all crimes committed against public order indicate that the number of police-recorded crimes per 100,000 population was rather stable from 1989 to 1992, but jumped by 70% in 1993. While

Figure 1 Police-Recorded Crimes against Public Order 1989–2006, Rates per 100,000 Population



Source: General Directorate of Public Security.

the number of crimes was 183.3 per 100,000 population in 1989, this increased to a rate of 474.5 in 1997, suggesting an increase of 159%. After some fluctuations, crime rates display a continuous and significant increase until 2007. The sharp increase in overall crime rates was more evident in 2005 (36%) and 2006 (59%). Overall, crimes against public order increased from a rate of 183.3 in 1989 to 1065.4 per 100,000 population in 2006, indicating almost a six-fold increase. As can be seen in *Figure 1*, the increase in crime rates after 2003 was higher for crimes committed against property than crimes against persons. While crimes against persons increased by 141% between 2000 and 2006 (from a rate of 181 crimes per 100,000 population in 2000 to 436 in 2006), the increase in crimes against property was 207% during the same time period (from a rate of 205 crimes per 100,000 population in 2000 to 629 in 2006).

A recent study used police statistics to investigate regional dispersion in four different types of crime (e.g., theft, robbery, homicide and assault) in Turkey, and examined whether macro-level variables explained the geographic variation in these crimes in a way predicted by the routine activities theory proposed by *Cohen* and *Felson* (1979).[10] Findings in this study indicated significant similarities in both the regional dispersion and the correlates of thefts and robberies. The gross-domestic product per capita, the level of industrialization, household size and unemployment rate emerged as the strongest correlates of thefts and robberies. Person crimes, on the other hand, displayed different patterns across the country. While the household size, the per cent unemployed and urbanism were the strongest correlates of assault rates, none of the variables examined explained the regional variation in homicide rates. It is however important to note that the GDS is responsible for the maintenance of public security in provincial and district centres, and hence crimes recorded by the police cover crimes committed in urban areas only. The Turkish Gendarmerie is responsible for recording those crimes committed in sub districts and villages, but statistics referring to crimes committed in rural areas (where almost 23% of the total population and even more during the summer reside) are not being published.

However, sources of data on juvenile crime can be obtained from the juvenile departments of both the police and the gendarme. Since 1997, data on juveniles received into security units led by the General Directorate of Security and the General Commandership of Gendarme are compiled and published annually by the Turkish Statistical Institute.[11] This study initially covered 27 provinces, but since 2007 the coverage was extended to 81 provinces. As indicated in *Table 1,* data for the period 1997–2006 indicate that (with a slight decrease in 1999) the number of juvenile suspects brought into security units continuously increased over the years and more than doubled from 22,305 juvenile suspects in 1997 to 46,791 in 2006. The increase

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10 *Topçuoğlu* 2013.

11 TurkStat, kutuphane.tuik.gov.tr/yordambt/yordam.php [14.07.2014].

Table 1 Juvenile Suspects Brought into Security Units Led by the General Directorate of Security and General Commandership of Gendarme, 1997–2006 (27 Provinces Only)

Year	Juvenile suspects brought into security units			Juvenile suspects sent to judicial organs
	Male	Female	Total	Total
1997	20,850	1,455	22,305	21,546
1998	24,613	1,854	26,467	25,547
1999	22,967	1,832	24,799	24,224
2000	23,337	1,857	25,194	24,576
2001	24,080	2,102	26,182	25,557
2002	29,585	3,031	32,616	31,656
2003	34,428	3,673	38,101	37,077
2004	41,130	4,195	45,325	44,109
2005	40,574	3,925	44,499	43,033
2006	42,393	4,398	46,791	44,685

Source: TurkStat. Juveniles Received into Security Units (various years).

Note: 27 provinces covered by the data are: Adana, Ankara, Antalya, Bursa, Çorum, Denizli, Diyarbakır, Elazığ, Erzurum, Gaziantep, Isparta, İçel, İstanbul, İzmir, Kars, Kayseri, Kocaeli, Konya, Malatya, Manisa, Muğla, Sakarya, Tekirdağ, Samsun, Trabzon, Şanlıurfa, Zonguldak.

in the number of juvenile suspects also continued between 2008 and 2012 (see *Table 2*). While 62,430 juvenile suspects were brought into security units in 2008, this number increased to 100,831 in 2012, suggesting a 61.5% increase.

Overall, of the 100,831 juveniles received into the security units in 2012 because of an offence charged, 87,036 (86.3%) were sent to judicial organs for further processing.[12] Of the total number of juveniles received into the security units in 2012, 89,667 (88.9%) were male, 324 (0.3%) were foreign nationals, 4,632 (4.6%) were below 12 years of age, 25,785 (25.8%) were aged 12–14 and 70,349 (69.8%) were aged 15–17. More than half of these juveniles (52.8%; 53,238) had been received into the security units more than once before. Further, when data on the number of juvenile suspects are examined by the type of offence charged, it is observed that among juveniles assault ranks first, with 39,048 (38.7%) charges, followed by theft (28.3%; 28,506), use, sale and purchase of drugs (5.8%; 5,809), damage to property (3.6%; 3,654), threat (3.5%; 3,524), sexual offences (3%; 2,997), robbery (1.9%; 1,911), kidnapping (1.6%; 1,624) and homicide (0.45%; 457).

Other sources of data on crime in Turkey can be obtained from the Turkish Ministry of Justice. Data obtained from various stages within the criminal justice system (e.g.,

12 TurkStat 2013b.

Table 2 Juvenile Suspects Brought into Security Units Led by the General Directorate of Security and General Commandership of Gendarme, 2007–2012 (All Provinces)

Year*	Juvenile suspects brought into security units			Juvenile suspects sent to judicial organs
	Male	Female	Total	Total
2007	25,470	2,716	28,186	24,076
2008	56,465	5,965	62,430	54,592
2009	61,151	7,193	68,344	57,859
2010	74,251	9,142	83,393	72,087
2011	76,396	8,520	84,916	74,215
2012	89,667	11,164	100,831	87,036

Source: TurkStat. Juveniles Received into Security Units (various years).

* Data in 2007 cover the six months between July and December only.

data on the number of defendants and convicted persons) are published in Judicial Statistics Yearbooks by the Turkish Statistical Institute. General limitations of official crime statistics are well known.[13] First, these statistics are obtained through different stages of the criminal justice system and measure different things and hence are incomparable.[14] For instance, not all crimes committed in a society are reported to the police. Even once reported, not all crimes are recorded by the police. Even once recorded by the police, not all suspects are prosecuted. Even once prosecuted, not all defendants are convicted and found guilty. Even once found guilty, not all convicts are sent to prison. Therefore, not all crimes committed in a society are reflected in the official statistics, and the persons who enter the criminal justice system are further filtered out not only by the crimes committed but also by social, demographic and economic factors or even by discrimination.[15]

Furthermore, several points should be highlighted with regards to the interpretation of the available official crime statistics in Turkey. First, a new Criminal Code[16] was enacted on 26 September 2004 and has been in force since 1 June 2005. There have been a number of important changes under the new TCC. For instance, the age of criminal responsibility was raised from 11 to 12 years. Second, there have been changes in the provisions and the definitions of certain crimes with the TCC. Equally important, the counting rule employed by the General Directorate of Criminal Records and Statistics has been changed in 2009, and this further limits the comparability of the crime rates referring to the period before

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13 *Coleman & Moynihan* 1996; *Polat & Gül* 2010.

14 *Farrington & Jolliffe* 2005.

15 *Cohen* 1988; *Smith* 2005.

16 Turkish Criminal Code, TCC Law No. 5237.

and after 2009. Until 2009, in the case of multiple offences, only one crime was included in the calculation of the number of defendants. That is, if a defendant was accused of multiple offences in a case, the defendant was counted once for the most serious offence type. After 2009, however, when a defendant was accused of multiple offences, each offence was given a distinct number and included in the statistics separately.

Although it is often disputed as to which data source better reflects the actual crimes committed in a society, some researchers regard police statistics as more valid indicators of crime.[17] Police statistics however are highly sensitive to the reporting behaviour of victims and witnesses and to the targeting and recording practices of the police officials; hence they might indicate significant changes in crime rates even if there is not much change in the actual number of crimes committed.[18] At this stage, crime victimization studies are crucially important as a tool for measuring both victims‘ reporting behaviour and those crimes that are not reported to the police and hence not reflected in the official crime statistics.[19] Further, it is also well known that police statistics are limited not only in terms of measuring crime but also in testing theories of individual criminal behaviour.[20] Several countries such as the US, England and Wales and Canada have long ago initiated crime victimization studies at the national level and they undertake these studies at regular intervals.[21] Unfortunately, despite the great public concern about the rise in crime rates in Turkey, and particularly juvenile crime, over the last decade, measurement of crime in Turkey is solely based on official police statistics and no victimization study is currently being conducted at the national level. Given the enormous costs of crime on societies and the limitations of official crime statistics in the assessment of actual crime levels,[22] Turkey urgently needs unofficial surveys on crime and victimization at the national level so that more reliable analyses of the crime rates can be conducted in the future.

4. The Criminal Justice System

Turkey has been a member of the Council of Europe since 1949 and a candidate for full membership of the European Union since 1999. The decision in 1999 on Turkey’s candidate status for European Union membership has paved the way for Turkey to adopt numerous important Constitutional and legal reforms intended to

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17 *Aebi & Linde* 2012; *Sellin* 1931.

18 *Coleman & Moynihan* 1996.

19 *Coleman & Moynihan* 1996.

20 *Coleman & Moynihan* 1996; *Polat & Gül* 2010.

21 *Coleman & Moynihan* 1996.

22 *Coleman & Moynihan* 1996.

ensure that democracy, the rule of law and the protection of human rights is strengthened. Many of these reforms have related directly to the functioning of the Turkish judicial system. The influence of the European Union on the criminal justice system in Turkey is most evident with the realization of the recent and major criminal law reforms in 2005. With these reforms, Turkish positive criminal law underwent a complete transformation, including the promulgation of a new Criminal Code, Criminal Procedural Code, an Act regarding the Execution of Sanctions, an Act regarding the Administrative Offences and an Act to Protect Minors.

The 2005 criminal law reform differed substantially from earlier reforms brought about in the period of the Ottoman Empire and that of the pronouncement of the Turkish Republic. This holds true for both the 'content' of the reforms and the 'method' thereof. Most of the laws which were brought about by previous reforms were either taken from or leaned heavily on foreign law. For instance, the Turkish Criminal Code of 1926 was simply a translation of the 1889 Italian Zanerdelli Codice Penale and the 1929 Turkish Code of Criminal Procedure of the 1877 German Code of Criminal Procedure. This is not the case for the 2005 criminal law reform. Of course, the laws of other countries and the results of their reforms were taken into account in the 2005 reforms in Turkey, and also sometimes used as inspiration. However, no law has been directly transposed. Instead, the 2005 reforms in Turkey were based on universal principles of Criminal Law and Human Rights and founded on experience and insights obtained within the criminal justice system in Turkey. Another important difference between the criminal law reform of 2005 and those which came before relates to the fact that the former are adapted to the principles of democracy and participation and are based on a broad political consensus. The previous legal revolutions were not driven by popular will, but rather were technocratic reforms brought about in a top-down manner by the elite powers. As a result, the reforms in the revolutions of the Turkish Republic met with resistance. Thus, for the first time in Turkey, reforms came about with the participation of the people and by a democratically chosen parliament.

Not only was the method of bringing about reforms different, but also the values and philosophies underlying them. Essentially, Ottoman reforms were oriented on strengthening the Empire, even if rights and freedoms were accorded the people in that process. During the period of the Republic, reforms were likewise aimed at fortifying the Republic. Generally speaking, up until the reforms of 2005, in the practice of criminal law, the rights and interests of the political, bureaucratic and societal elite were held at the fore. With the 2005 reforms, the wish was to depart radically from this mentality, the primary drive behind these bottom-up reforms being to protect the rights and freedoms of the individual.

Consequently, the new Criminal Code brings progressive definitions and higher sentences for sexual crimes, criminalizes marital rape; brings measures to prevent sentence reductions granted to perpetrators of honour killings; eliminates all references

to patriarchal concepts like chastity, honour, morality, shame or indecent behaviour; abolishes previously existing discriminations against non-virgin and unmarried women; abolishes provisions granting sentence reductions in rape and abduction cases; criminalizes sexual harassment at the workplace and considers sexual assaults by security forces as aggravated offences. However, whilst recent reforms generally seem positive and progressive on paper, a number of problems emerge in the course of application of these new laws. These problems mostly relate to provisions that are closely linked to human rights, such as the right to liberty and security, and the right to a fair trial, misapplication of arrest, apprehension, detention and judicial control, which in turn resulted in an increased number of judgements of the European Court of Human Rights against Turkey. In response, the Turkish Ministry of Justice initiated a project in 2012 to improve the functioning and the efficiency of the Turkish criminal justice system in line with the European standards and to improve the application of human rights standards in the Turkish criminal justice system. Jointly funded by the European Union, the Turkish government and the Council of Europe, this project aims to redesign the pre-service and in-service training curricula of the Justice Academy [who delivers training to judges, prosecutors, lawyers, law enforcement officers and other actors of the criminal justice system on issues related to the European Convention on Human Rights (ECHR) since 2004] in line with the ECHR and strengthen the capacity of the judiciary and prosecution services to apply the ECHR in delivering justice. The project focuses on three specific areas: (1) actions of police and prosecutors in the pre-trial phase, (2) actions and decisions of judges in trial phase, and (3) organized crime, crimes related to terrorism and corruption and cybercrime. The first stage of the project which includes an extensive needs assessment analysis has been finalized and the project will be completed in December 2014.

Overall, Turkey has made revolutionary reforms in order to fulfil its democratization process and has shown great commitment in speeding up the pace of legal reforms that have brought considerable changes to the political and legal system. Turkey will continue to develop further reforms to ensure human rights and fundamental freedoms are fully protected in law and practice, for all its citizens throughout the country. Having said this, such changes will necessitate the continuing education programmes for judges, prosecutors and lawyers in Turkey to ensure the new Code is fully implemented.

4.1 Investigation Stage: Activities at the Chief Public Prosecutors' Offices

When the working trend of the Chief Public Prosecutors' Offices in the last decade is examined, it is observed that the total number of cases brought within the year (including both the new cases and the cases transferred from the preceding year) increased from 2,935,300 in 2002 to 6,285,102 cases in 2012, indicating an increase

of 114%.[23] In a similar vein, the number of suspects in the new cases brought within the year also indicates an increase during the same time period. The number of suspects per 100,000 population increased by 53% from a rate of 3,803 in 2002 to 5,822 in 2012.

In investigations conducted by the Chief Public Prosecutors' Offices in 2012, of the total of 6,285,102 cases brought within the year, less than half have been judged (2,989,939); the remaining has been either postponed until the following year or returned (under the article 174 of Turkish Criminal Procedure Code). The judged cases included 4,191,265 suspects of which 545,102 (13%) were women and 27,637 (0.6%) were foreign nationals. Overall, in accordance with the Turkish criminal law and special laws, 5,754,219 decisions were rendered for these suspects at the investigation stage at the Chief Public Prosecutors' Offices in 2012. Of all the decisions rendered for suspects in 2012, 49.9% (2,871,615) have been judged as filing a public case and 37.8% (2,175,809) as no need for prosecution, while the remaining included decisions such as lack of venue, lack of jurisdiction, joinder or transfer to another department. Of the 2,871,615 decisions rendered to file a public case, offences against physical integrity (593,849; 20.7%) ranked first, followed by offences against property (557,144; 19.4%), offences against liberty (462,526; 16%) and offences against dignity (401,809; 14%).

When the cases pending at the Chief Public Prosecutors' Offices due to unknown offenders are examined during the last decade, it is observed that the number of cases with unknown offenders brought within the year (including both the new cases and the ones transferred from the preceding year) more than tripled from 961,153 cases in 2002 to 3,059,735 in 2012. In 2012, the number of cases with unknown offenders constituted 48.7% of all the cases brought to the Chief Public Prosecutors' Offices within the year. Of the 3,059,735 cases with unknown offenders, only 417,216 cases (13.6%) have been judged, with the remainder transferred to the following year. In only 5,110 judged cases (1.2%) was the offender found, with the cases filed within the year after finding the offender.

4.2 Prosecution Phase: Criminal Courts

Within the Turkish judicial system, there are seven different types of criminal courts for adults and two for juveniles (see *Table 3*). The figures in *Table 3* indicate that overall a total of 3,180,194 cases were brought to the criminal courts in 2012, and 100,121 (3%) of these cases were filed at the juvenile criminal courts. Of all the cases brought to the criminal courts in 2012, 64% (2,042,675 cases) were judged within the year, and of all the cases judged at the criminal courts, 52,622 (2.6%) were judged at juvenile courts. The total number of accused persons (defendants)

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23 TurkStat 2013a.

Table 3 Number of Cases at the Criminal Courts, by Type of Court, 2012

Type of court	Total cases brought	Cases judged	Cases judged/cases brought (%)	Sentence decision
High criminal court (Art.10 of law on fight against terrorism)	16,701	11,225	67.2	52,044
High criminal court	152,261	85,811	56.4	180,307
Basic criminal court	1,340,207	814,726	60.8	668,844
Criminal court of peace	1,245,960	819,883	65.8	420,404
Court of criminal enforcement	312,695	251,417	80.4	150,898
Criminal court of literary and industrial rights	12,249	6,991	57.1	4,034
Traffic court	0	0	0	0
Juvenile high criminal court	5,118	3,032	59.2	3,020
Juvenile criminal court	95,003	49,590	52.2	29,274
Total	**3,180,194**	**2,042,675**	**64.2**	**1,514,825**

in all the cases judged at the criminal courts (2,042,675) was 2,744,157 in 2012, of which 90% (2,435,254) were male, 0.6% (17,859) were foreign national and 5.7% (156, 322) were juveniles aged 12–17.

When the types of decisions rendered at all the criminal courts for accused persons are examined, it is observed that in total 1,514,825 sentence decisions were rendered in 2012 (see *Table 3*). Of the total sentence decisions, 268,071 (17.7%) included imprisonment, 288,760 (19%) were judicial and administrative fine, 85,174 (5.6%) were suspension of imprisonment, and 266,518 (17.6%) included imposing security measures. Again of the total 1,514,825 sentence decisions, offences against property ranked first with 289,595 (19%) decisions, followed by offences against physical integrity (138,015 decisions; 9%), offences against public health (135,867 decisions; 9%) and offences against liberty (106,844 decisions; 7%).

Furthermore, although only 2% (32,294) of all the sentence decisions were rendered at the juvenile courts, there were in total 63,243 (4.3%) sentence decisions for juveniles because not all juvenile cases have been tried and judged at the juvenile criminal courts. *Table 4* indicates the sentence decisions rendered for children by type of sentence. Overall, 26,372 (42%) of the sentence decisions imposed judicial and administrative fine and 16,518 (26%) decisions imposed imprisonment. While in 5,768 (9%) decisions imprisonment was suspended, 2,216 (3.5%) decisions imposed security measures for juveniles.

When all the 32,294 sentence decisions rendered at juvenile criminal courts are examined with respect to the type of offence, it is observed that offences against property rank first with 15,574 (48%) sentence decisions, followed by offences against

Table 4 Number of Sentence Decisions for Accused Juveniles by Type of Judgement, 2012

Type of sentence	Age 12 - 14			Age 15 - 17			All
	Male	Female	Total	Male	Female	Total	
Imprisonment	5,456	250	5,706	10,412	400	10,812	16,518
Judicial and administrative fine	10,362	534	10,896	14,960	516	15,476	26,372
Suspension of imprisonment	2,293	108	2,401	3,241	126	3,367	5,768
Security measure imposed	985	86	1,071	1,107	38	1,145	2,216
Other sentence decisions	3,858	222	4,080	8,016	273	8,289	12,369
Total	**22,954**	**1,200**	**24,154**	**37,736**	**1,353**	**39,089**	**63,243**

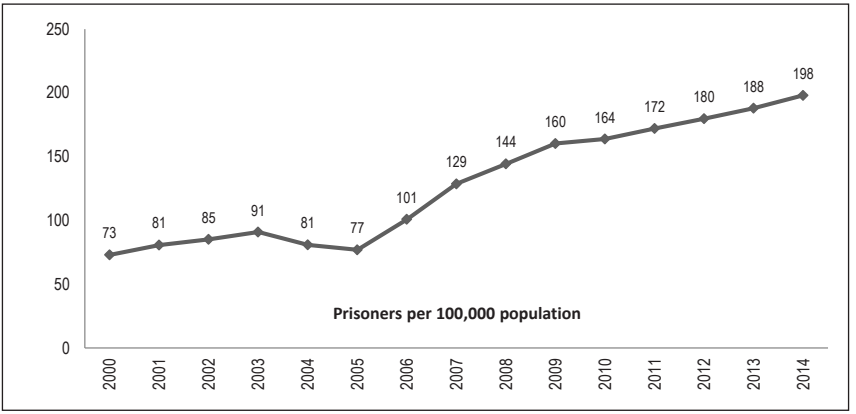
public health (6,227; 19%), offences against liberty (3,947; 12%) and offences against physical integrity (2,552; 8%).

4.3 Execution Phase: Prisons

As in many countries, the prison population in Turkey includes both those who have been convicted of a crime by the decision of court and remand prisoners who are being held in pre-trial detention. The number of prisoners in Turkey displayed a significant trend over the last decade. The prison population increased by 25% from a rate of 73 prisoners per 100,000 national population in 2000 to a rate of 91 in 2003. This rate displayed a decrease during the years 2004–2005 and then started increasing rapidly again in 2006. The prison population continuously increased during the period 2006–2014. Overall, the number of prisoners almost doubled and increased from a rate of 100.8 prisoners per 100,000 population in 2006 to a rate of 198.1 in 2014 (see *Figure 2*).

There are three types of prison in Turkey: closed, semi-open and open. A further distinction is made between ordinary closed prisons and high-security prisons. Many prisons have separate blocks for women and some also for juveniles, but there are also prisons which are exclusive to women or children. According to the General Directorate of Prisons and Detention Houses (GDPDH, part of the Ministry of Justice), as of 28 March 2014 there are 366 prisons in Turkey with a total capacity of 157,063 prisoners. These include 306 closed prisons, 49 open prisons, 5 closed and 1 open prison for females, 3 closed prisons for juveniles and 2 correctional facilities for juveniles. As of 30 May 2014, there are 151,841 prisoners in prisons, of which 131,148 (86.4%) are convicts and 20,693 (13.6%) are on remand. Of these prisoners, 144,850 (95.4%) are adult male, 5,352 (3.5%) are adult female and 1,639 (1.1%) are juveniles aged 12–17. When the age structure of the prisoners in 2014 is examined, it is observed that more than half of the prisoners (63.8%) fall within the ages 21–39.

Figure 2 Prison Population (Convicts and Remand Prisoners), 2000–2014 (Per 100,000 Population)



As shown in *Figure 3*, this is followed by 44,767 (29.5%) prisoners aged 40 to 64 years, 6,947 (4.6%) prisoners aged 18 to 20 years, 2,047 (1.3%) prisoners aged 65 to 79 years, 1,639 (1.1%) prisoners aged 12 to 17 years and 125 (0.1%) prisoners above 80 years of age.

Table 5 indicates the educational level of all the prisoners in 2014. According to these figures, of the 1,639 juvenile prisoners aged 12–17, 292 (18%) are either illiterate or literate but have not completed school. Of the 150,202 adult prisoners, 11,504 (8%) are either illiterate or literate but have not graduated from a school, 80,308 (53.5%) have completed primary school, 26,706 (17.8%) have completed secondary school, 22,014 (14.6%) have completed high school, and 4,085 (2.7%) had a higher degree.

Figure 3 The Age Structure of the Prison Population in 2014

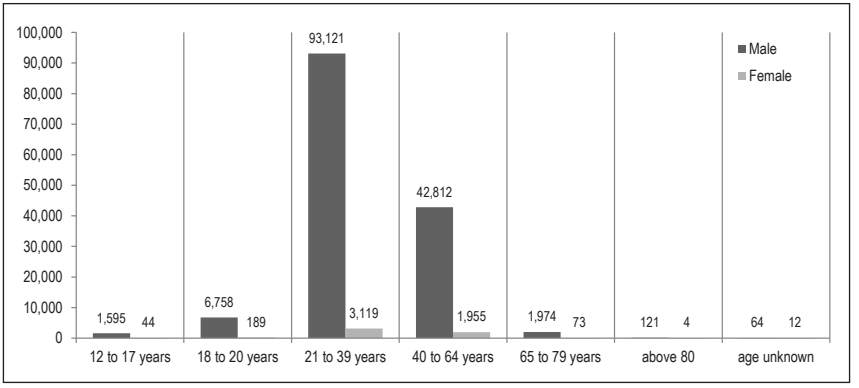


Table 5 Educational Level of the Prisoners in 2014

Education level	Juveniles	Adults	Total
Illiterate	58	5,072	5,130
Literate, not completed a school	234	6,432	6,666
Primary school	861	80,308	81,169
Secondary school	401	26,706	27,107
High school	65	22,014	22,079
University and higher	0	4,085	4,085
Unknown	20	5,585	5,605
Total	**1,639**	**150,202**	**151,841**

5. Conclusion

This paper provides an overview of the state of art in Turkish criminological research and education. It also provides a brief overview of the many facets of the criminal justice system in Turkey. Despite the fact that criminology, as the scientific study of the extent, nature, causes and prevention of crime, has significant implications for criminal law and criminal justice policy and practice, the analysis throughout this paper suggests that criminological education and research, though developing, is in infancy in Turkey and that criminology as a discipline is not accepted as a policy-making tool that can guide criminal law and criminal justice policies and practices. Despite the significance of the discipline in developing effective crime prevention strategies, a fully-fledged education in criminology and criminal justice in terms of both theory, research and practice is absent throughout Turkey. With regards to criminological research, although methodologically sound studies have recently begun to be conducted, existing criminological research in Turkey is flawed in various ways due to issues related to sampling, measurement, data collection, interpretation and generalization; it is difficult to recommend sound policies based on the results of these research findings. There are quite a large number of areas in criminology that have not yet attracted scholarly attention in Turkey, including developmental issues, scientific evaluation of the effectiveness of the correctional programmes and rehabilitation for criminals, randomized experiments and evidence-based crime prevention.

No crime victimization studies have been conducted in Turkey at the national level and the measurement of crime relies solely on unreliable sources of official data produced by the police and the gendarme. Available data on both adult and juvenile crimes suggest significant and worrisome increases over the last decades. An examination of the judicial statistics published by TurkStat further suggests that the efficiency of the criminal justice system is also in question. The working trend of the Chief Public Prosecutors' Offices and the Criminal Courts points to the significant and increasing case overload at both the investigation and the prosecution phases. Another issue which is of great concern in Turkey relates to the fact that although it is required by law that all juveniles be tried at juvenile criminal courts, available

statistics indicate that almost half of the juveniles are being tried as adults at adult criminal courts.

Finally, the continuous increase in the prison population over the last decade is another matter of concern in Turkey that calls for urgent and effective solutions. Over the years, there have been a number of national and international projects to promote better standards of care and effective rehabilitation for prisoners in Turkey. Within the framework of these projects, various programmes have been implemented including general offending behaviour programmes, anger management programmes, alcohol and drug abuse treatment programmes, pre-release programmes as well as programmes for training prison staff and establishing educational facilities and vocational training workshops for prisoners.[24] However, although these programmes led to significant progress within the Turkish prison system, no scientific study exists which evaluates the process, impact and cost of these programmes and whether they are effective in reducing recidivism.

Given a lack of sound measurement tools and empirical criminological research in Turkey, it is not surprising that criminology cannot realize its potential and achieve its ultimate purpose, which is developing, implementing and evaluating evidence-based crime prevention and intervention strategies. In sum, an overall outlook of the state of art in crime and criminology in Turkey significantly points to the urgent need for the scientific development of the criminology discipline in terms of theory, research and practice, which in turn initially requires the presence of comprehensive criminological education programmes at universities.

6. Summary in Turkish

Bu makale Türkiye'de kriminoloji alanında verilen eğitimin ve yapılan araştırmaların genel durumunu ortaya koymaktadır. Bu çalışma ayrıca Türk ceza adalet sistemini de birçok yönüyle kısaca değerlendirmektedir. Genel olarak, bu çalışma ülkemizde kriminoloji eğitimi ve araştırmalarının gelişme kaydetmekle beraber henüz gelişim aşamasının çok başında olduğunu göstermektedir. Türkiye genelinde kriminoloji ve ceza adaleti alanında teori, araştırma ve pratiğe dönük olarak tam teşekküllü bir eğitim verilememektedir. Suçun nedenlerine ilişkin yapılmış olan araştırmalar hem sayıca yetersiz olmakta hem de metot açısından kusurlar barındırmaktadır; dolayısıyla mevcut araştırmalar ülkemizde etkin politikalar üretilmesinde yol gösterici bir rol oynayamamaktadır. Ülke bazında suçun ölçümü pek de güvenilir olmayan resmi kaynaklara dayanmakla birlikte elimizdeki veriler ülkemizde son on yılda hem yetişkin hem de çocuk suçluluğunda önemli ve endişe verici bir artış olduğunu göstermektedir. Mevcut adli istatistikler de ülkemizde soruşturma ve kovuşturma aşamalarındaki iş yükünde yıllar içinde önemli oranda bir artış yaşandığı-

[24] GDPDH 2014.

na işaret etmektedir. Son olarak, cezaevi nüfusunun son on yılda gösterdiği sürekli artış da Türkiye'de ciddi endişe yaratmakta ve acil ve etkin çözümler gerektirmektedir. Sonuç olarak, ülkemizde bugün kriminolojinin geldiği nokta değerlendirildiğinde kriminoloji disiplininin teori, araştırma ve uygulama açısından bilimsel olarak gelişmesi yönünde acil bir ihtiyaç bulunduğu ortaya çıkmakta ve bu da ilk aşamada üniversitelerimizde kapsamlı kriminoloji eğitimi verilmesini gerektirmektedir.

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CHAPTER III

AN EXPEDITION INTO THE CRIMINAL LANDSCAPE OF THE BALKANS

Research Projects of the Max Planck Partner Group for Balkan Criminology

Punishment and Sentence Enforcement for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia

Filip Vojta

1. Introduction

Punishment, in its essence, represents violence, which can be understood as the most elementary form of power.[1] Like every violent act, this exertion of power carries the stigma of tyranny and might entail the risk of violent retaliation from the subject upon whom it is imposed.[2] In order for punishment to nullify this risk and become a legitimate instrument of social control, it must be grounded in accepted, codified rules which are guided by valid purposes and principles.

This rationale can particularly pertain to the area of international criminal justice. Notwithstanding the scope of its sentencing practice, when it comes to the imposition of international sentences the issue of legitimacy is considered to have largely overshadowed the work of the ICTY[3] and its "contribution to the restoration and maintenance of peace in the former Yugoslavia" throughout twenty years of its existence. Next to the public reactions and victims' statements in all the affected states after each and every judgement passed, a wide academic debate has generated a critical view towards the ICTY's sentencing practice – mostly regarding the application of conventional sanctions and sentencing in cases of mass atrocities, disproportionate sentencing ranges, as well as inconsistency in decisions and argumentation due to what is considered to be undeveloped sentencing framework.[4]

Surprisingly enough, this discourse has in its analysis rarely encompassed the after-trial phase of the ICTY's proceedings, namely the enforcement of its sentences. Considering that the way in which convicted persons are treated has a huge impact

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1 *Popitz* 1992.

2 *Fromm* 1973.

3 International Criminal Tribunal for the Former Yugoslavia.

4 In depth see *Ohlin* 2008, *Drumbl* 2007 and *Henham* 2005.

on the public's opinion about the Tribunal's work and the achievement of its aims,[5] it might be even considered as "the backbone of the system of international criminal justice" whose "nature and application in practice must form part of a complete judgement about the legitimacy of this system."[6] This is all the more important as the ICTY, being a successor to the Nuremberg and Tokyo tribunals, has introduced a distinctive enforcement mechanism, which to a large extent requires the assistance of individual states with the incarceration of international prisoners and which was subsequently adopted by other international tribunals (Rwanda and the ICC – International Criminal Court) as well as recently activated MICT.[7]

The existing literature has so far mostly adopted a normative approach to the topic. Notwithstanding its significance, especially in terms of raising the awareness of this particular aspect of international criminal justice and the conundrums it might entail,[8] authors have mainly focused on the narrow analysis of the ICTY's normative framework thus largely dismissing the need to assess the correlation between the underlying penological issues of such an enforcement and its modalities as well as outcomes in practice. The aim of the research project on the enforcement of the ICTY sentences, embedded within the research cluster on international sentencing of the Max Planck Partner Group for 'Balkan Criminology' (MPPG), is to contribute to filling the existing gap by carrying out a systematic empirical inquiry into punitive approaches that have been developed towards the ICTY criminals within the framework of the introduced mechanism in the prison systems of different European states as well as their criminological and penological aspects. The inquiry will consequently result in a set of recommendations for an improved treatment of international prisoners.

First, an overview of the established enforcement mechanism is presented – together with an insight into certain penological issues that bear exploration and that can help clarify some of the practical problems currently inherent in the enforcement of international sentences. The second part will analyse these problems on the basis of an inquiry into aspects of the ICTY's sentence-enforcement practice. This will be supplemented with empirical data gathered through the analysis of sources such as media reports, judgements, decisions on the designation of the State of enforcement and decisions on the early release of prisoners, as well as information gained through correspondence with defence attorneys and conducted exploratory (semi-structured) interviews with prison officials and released prisoners. The article will conclude by offering a preliminary assessment of the established mechanism.

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5 *Nemitz* 2006, 144.

6 *Kress & Sluiter* 2002a, 1753.

7 Mechanism for International Criminal Tribunals.

8 For example, see *Hoffmann* 2011, *van Zyl Smit* 2005, *Tolbert* 1998, *Klip* 1997.

2. The Enforcement System for International Prisoners – Issues under Scrutiny

Given the absence of an international prison system, the ICTY has to negotiate enforcement agreements with individual states in order to imprison its sentenced offenders within national prison systems. To date[9], agreements have been made with 17 European countries and 51 prisoners have been effectively incarcerated in 14 of them (see *Table 1*).

Table 1 Allocation of Transferred ICTY Prisoners

State	Year of first transfer	Number of prisoners
Austria	2002	6
Italy	2003	5
Spain	2001	5
Finland	2000	5
Norway	1998	6
Denmark	2005	4
France	2004	4
Germany	2000	4
United Kingdom	2004	3
Sweden	2003	3
Estonia	2009	3
Belgium	2008	1
Poland	2014	1
Portugal	2012	1

While Article 27 of the ICTY Statute indicates that the imprisonment shall be in accordance with the applicable law of the state concerned, it explicitly gives the right of supervision over the enforcement to the Tribunal, thus theoretically ensuring that the international character and retributive nature of the sentence are being upheld.[10] In practical terms, however, the function, extent and impact of this supervision remain unclear, especially considering that states have, through their respective agreements, been able to make a number of adjustments to the

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9 June 2014.

10 *Erdemović* Sentencing Judgement (1996, 29 November; IT-96-22-T). Point 71: "Accordingly, a State which has indicated its willingness and has been designated will execute the sentence *on behalf of the International Tribunal*, in application of international criminal law and not domestic law. Therefore, that State may not in any way, including by legislative amendment, alter the nature of the penalty so as to affect its truly international character."

terms of international criminals' incarceration in accordance with their own prison policies.[11]

This indicates the principle issue pertaining to the enforcement of international sentences: a fundamental conflict of purposes of enforcement.

2.1 The Conflict of Purposes of Enforcement

Under the influence of international and regional human rights law, many national prison systems (especially in Europe)[12] have adopted progressive goals of rehabilitation and re-socialization for the treatment of prisoners. These penological purposes have deep criminological roots[13] and they are embedded as principles in international legal instruments, such as the International Covenant on Civil and Political Rights (i.e., Article 10 [3] states that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation").[14] Furthermore, they are echoed in international (i.e. Standard Minimum Rules for the Treatment of Prisoners,[15] Basic Principles for the Treatment of Prisoners)[16] as well as regional (European Prison Rules)[17] prison standards which, although not legally binding, serve as influential guidelines in shaping domestic prison

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11 For example, agreements with the United Kingdom (A. 3, para. 3), Austria (A. 3, para. 3) and Poland (A. 3, para. 8) note that "the conditions of imprisonment shall be equivalent to those applicable to prisoners serving sentence under domestic law …".

12 *Snacken & van Zyl Smit* 2009.

13 *Merton* 1938.

14 International Covenant on Civil and Political Rights, Dec. 16, 1996, Art. 10 (3); entered into force Mar. 23, 1976; www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [19.07.2014].

15 Article 61 indicates that "the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it." UN Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nation 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 2067 (LXII) of 13 May 1977; https://unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf [19.07.2014].

16 Article 8 declares that "conditions shall 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." Basic Principles for the Treatment of Prisoners as adopted by General Assembly resolution 45/111 of 14 December 1990; www.ohchr.org/EN/Professional Interest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx [19.07.2014].

17 Article 6: "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty." European Prison Rules. Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules; https://wcd.coe.int/ViewDoc.jsp?id=955747 [19.07.2014].

policies. In case of certain countries, such as Germany, Spain or Italy, these goals are explicitly recognized in constitutional provisions and thus levelled to the rank of a constitutional imperative.[18]

The majority of those convicted are people who are socially or otherwise disadvantaged,[19] therefore it is deemed that their positive personal change – for which the rehabilitation strives and which should result in "curing" the offenders of their criminal tendencies, thus subsequently reducing or cancelling the risk of recidivism, – can be achieved by approaches which foster "law-abiding" habits, such as work and education programmes in prisons, drug and alcohol treatment, anger management, counselling, improvement of family relations, etc.[20] On the other hand, it has been argued that in the cases of so-called "macro-criminality"[21] – crimes committed by war criminals and genocidaries who bear responsibility for the biggest atrocities imaginable, but who, paradoxically, do not express "excessive" crime aetiology nor do they resemble the aetiology of ordinary criminals – this approach can be considered neutral at least, if not manifestly inappropriate.[22] As opposed to "ordinary" criminality, different aetiological traits of genocide, crimes against humanity and war-crimes are most prominently expressed in terms of the context within which these "crimes of the powerful"[23] are committed. The crime is conditioned by a conflict in which the whole society is involved; hence, it is embedded into certain developments and events on the macro level which are shaped by political elites.[24] Official state policies which are grounded in nationalistic ideology and invoke past victimization, absolutistic worldview and utopianism[25] can strongly promote dehumanization and scapegoating of a certain group thus leading to an overall change of moral framework (which can happen very rapidly), where, for example, the prohibition to kill a person, suddenly becomes a desirable goal. Furthermore, these "extraordinary circumstances" (or situational aspects)[26] by which ordinary people become engulfed can strongly facilitate neutralization techniques[27] and reduce the cognitive dissonance which individuals encounter when facing the prospect of mass violence. For example, under the influence of genocidal ideology, indoctrinated perpetrators can easily deny

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18 *Snacken & van Zyl Smit* 2009, 79.

19 *Ashworth* 2009.

20 *Knežević* 2008.

21 *Jäger* 1989.

22 *Jäger* 1995.

23 *Kaiser* 1993.

24 *Jäger* 1989, 12.

25 *Alvarez* 2008.

26 *Harrendorf* 2014.

27 *Sykes & Matza* 1957.

victim-status to members of a target group by blaming them to be an enemy who attacked first, therefore deserving what happened to them. Furthermore, by appealing to prevailing ideology which allows for atrocities and demands them (in some cases, this justification can even be embodied within national laws), perpetrators are prone to group conformity and denial of responsibility, which helps distancing a person from any moral judgement. Finally, denying humanity to victims will undoubtedly have a significant impact on overcoming the innate inhibition to kill or exterminate members of one's own kind.

This explains why, in the context of a genocidal conflict, neighbours who have known each other and lived in peace and harmony for years, suddenly turn with murderous intent one against the other. Together with other members of the "power-apparatus", i.e. high-ranking state or military officials – people of good education, strong internal discipline and high social skills are not considered to be disadvantaged as they do not deviate from the policy of their state but act in conformity with it, thus lacking a sense of criminal identity.[28] Within the prevalent concept of rehabilitation, one could argue they are integrated and need not to be re-integrated or re-socialized. Moreover, given that their crimes are committed within a distinctive framework of a conflict which is often limited in time they cannot be considered career criminals who would afterwards pose a clear threat to their immediate environment.

This conflict of purposes, conditioned on one side by the extreme gravity and consequences of international crimes, and on the other by fundamental aetiological differences between "ordinary" and "macro-criminality", raises the question about finding a right penological approach in the prison treatment of international criminals. For example, which approach could adequately address the most serious nature of international crimes and its specific aetiology while at the same time maintain basic respect for human dignity as defined by international and regional prison standards? Given that the "macro-criminality" is a system-infested criminality, it is considered to be the purpose of criminal law to change (or rehabilitate) the system which enables and/or supports mass atrocities.[29] This "instrumental" role of criminal law should contribute to a development of a new reconciliatory narrative between conflicting parties in which the break with those things and those people who were the chief actors in the conflict is implemented.[30] To that end, certain discourses propose to approach the change of a system in a "symmetrical" manner, wherein "the most radical desolidarization" towards perpetrators could be considered as a legitimate answer.[31] Historically, this approach might be recognized in the infamous Nuremberg trials,

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28 *Harrower* 1976.

29 *Jäger* 1995, 340.

30 *von Trotha* 2004.

31 *Jäger* 1995, 340–341 and 345.

as well as in the treatment of surviving Nuremberg convicts within Spandau prison in Berlin – which can be considered an archetype of the international prison facility.

2.2 Spandau – Archetype of the International Prison

On 1 October 1946, the International Military Tribunal (IMT) at Nuremberg rendered its judgement on twenty-two major German war criminals. Of those accused, three were acquitted,[32] twelve were sentenced to death[33] and seven to different terms of imprisonment.[34] The IMT Charter did not recognize a right of appeal, therefore the enforcement of sentences followed immediately.[35] Those sentenced to imprisonment were transferred to the allied military prison at Berlin Spandau. Even though the prison was built for hundreds of prisoners, the enforcement of sentences was confined to the seven Nuremberg war criminals. Spandau administration was under the joint responsibility of the four occupation powers (France, Britain, United Sates and the Soviet Union). In addition to the general directorate body, in which every occupying power had a representative, each power had a chief guard and six guards in the prison. While the external control of the prison alternated on a monthly basis amongst the troops of the four powers, the internal arrangement demanded that guards from three powers were present at all times, which made it impossible for any occupying power to unilaterally influence the prison conditions. Any change of the allied prison rules needed the consent of all four directors.[36]

The lack of information makes it difficult to fully assess the conditions and treatment of those imprisoned in Spandau, however, some insight can be obtained from the diary kept by *Albert Speer*[37] during his imprisonment, which he, with the help of a guard, managed to smuggle outside the prison. The prisoners were kept in separated cells, with no communication between them allowed except during the mutual working activities. The communication with prison staff was not supposed to go beyond the reception of orders, and prisoners were addressed by numbers instead of names. Contacts with the outside world were also extremely reduced. Letters to families were limited to one page every month; there was a ban on newspapers and family visits were allowed every two months, amounting up to fifteen minutes. Despite rules becoming more lenient in 1954 (i.e. ban on communication was lifted, prisoners were allowed to exchange letters with their lawyers and newspapers were

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32 *Fritzsche*, *von Papen and Schacht*.

33 *Göring, Ribbentrop, Keitel, Kaltenbrunner, Rosenberg, Frank, Frick, Streicher, Sauckel, Jodl, Seyß-Inquart* and – in absentia – *Bormann*.

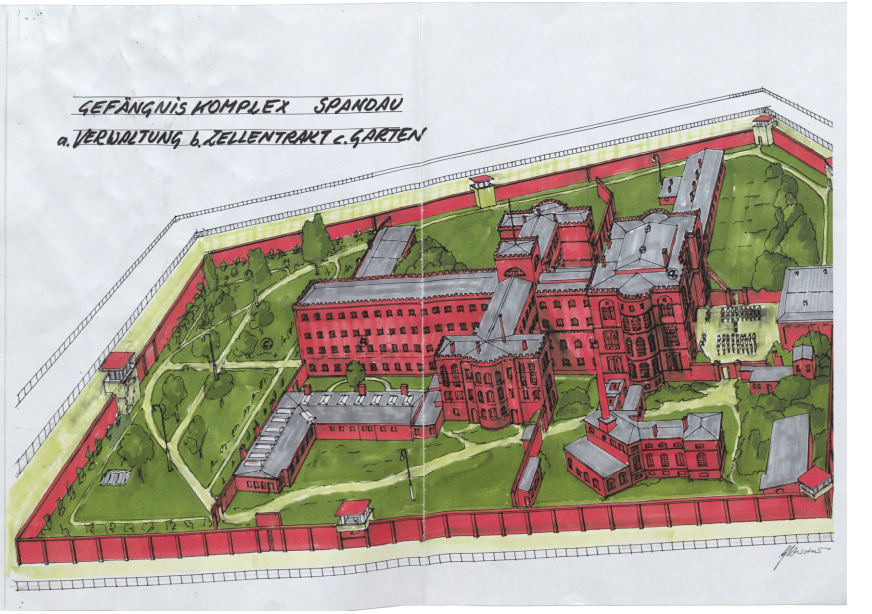
34 *Heß, Funk* and *Raeder* – life imprisonment; *Schirach* and *Speer* – twenty years; *Neurath* – fifteen years; *Dönitz* – ten years; *Kress & Sluiter* 2000b, 1758.

35 Cf. *Kress & Sluiter* 2000b, 1759.

36 Cf. *Kress & Sluiter* 2000b, 1761.

37 *Speer* 1975.

Architectural Drawing of the Former Spandau Prison



Drawing by Götz Weidner; copyright by Archiv Breloer Deutsche Kinemathek.

available to detainees), the overall regime was clearly deviating from the emerging international prison standards (i.e. UN Standard Minimum Rules for the Treatment of Prisoners) – particularly with regard to the prospect of social reintegration of prisoners. Three prisoners were early released for health reasons,[38] while three others served the full terms of their sentences.[39] Between 1966 and 1987, *Rudolf Heß* was the only inmate in Spandau. Immediately after his suicide in 1987, the prison was demolished.

The overall organization of the Spandau prison and the treatment of inmates emphasized their exclusion from society, rather than their belonging in it.[40] This can be particularly highlighted with reference to the issue of early release of prisoners which, despite appeals from their families and even the general public, was constantly denied. While the consolidating organization and introduced treatment clearly had a symbolic significance in terms of the dissolution and intolerance towards the Nazi regime, it was also criticized on the basis of being negligent towards prison-

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38 *Neurath* – released on 6 November 1954; *Reader* – released on September 26, 1955; *Funk* – released on 17 May 1957.

39 *Dönitz* – released on 1 October 1956; *Schirach* and *Speer* – released on 1 October 1966.

40 *Kress & Sluiter* 2000b, 1759.

ers' rights as well as highly politicized. There was no independent monitoring of the prison conditions and repeatedly voiced opposition of the directors and guards of the Western powers to the stricter regime was constantly vetoed by the Soviet Union, which found the harsher approach justified. In the periods while the Soviets were in command, prison conditions were more rigorous than under Western command; even the provided food was more spartan then. In a way, the Soviet Union implemented the confinement as a form of retaliatory justice for the large number of Soviet civilians who died in the Second World War. True enough, the enforcement of the sentences of imprisonment of the Nuremberg war criminals in Spandau was never exclusively legal matter, but one of politics, too. This had a significant impact on some observers' overall judgement of the Nuremberg trials and their aftermath as "victors' justice".

2.3 Equal Treatment

As opposed to the consolidation model of the Spandau prison, where the Nuremberg convicts were kept in a dedicated, stand-alone facility with a distinctive security regime and specially trained staff, the ICTY enforcement-mechanism is based on a policy of dispersion, which envisages that international prisoners serve their sentences in different states. This setup would require a necessary level of standardization of their treatment in accordance with the principle of equal justice, as in practice penal policies can vary greatly depending on the state.

Comparative penology[41] indicates major differences in national penal systems, which are directly related to the form of economic organization and social structure of the respective state. In Europe, for example, three prevailing types of political economy, *neo-liberal*, *conservative corporatist* and *social democratic*, encompass certain clusters of states and heavily influence their punishment practices. The neo-liberal states (i.e. England and Wales), which are characterized by conservative politics and free-market capitalism, tend to have a minimalist or residual welfare system, which promotes limited social rights and displays extreme income differentials among citizens. This can result in a high-level of "social exclusion" in terms of poverty, but also in a denial of full and effective rights of citizenship in civil, political and social life, which, in return, can lead to increased crime rates. Consequently, the increase in criminality can result in higher "fear of crime" rates among the general population and an overall demand towards the ruling party to tackle the problem effectively. It is noted that a policy which has a pronounced tendency towards social exclusion also features more restrictive penal indices.[42] The mode of punishment is exclusionary, with prison policies more oriented towards risk-management and dealing with offenders in a quantitative manner, rather than providing them with

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41 *Cavadino & Dignan* 2006.

42 Cf. *Cavadino & Dignan* 2006, 15.

effective prison programmes or alternative treatment. Imprisonment rates and receptiveness to prison privatization are in states of this type recognized as high. On the other hand, states with a socio-democratic political economy (i.e. Sweden, Finland), which have rather developed welfare systems, where the income and status differentials as well as the tendency towards social exclusion are relatively limited, feature a "rights-based", inclusionary penal ideology, which is oriented towards reduction of imprisonment rates and offering better prison conditions to offenders.

Indicated differences between penal regimes as well as the relative absence of a standardized approach to the treatment of international prisoners are illustrated in the following two examples: *Biljana Plavšić*, a former Bosnian Serb leader convicted of crimes against humanity, served her sentence in the plush Swedish Hinseberg prison which boasts a sauna, solarium, horse-riding paddock and offers inmates classes in salsa-dancing and photography.[43] *Radislav Krstić*, a high-ranking military official in the Bosnian Serb Army, was incarcerated in England, in the maximum-security Wakefield prison famously dubbed "the monster mansion" due to its high-profile inmates, where he suffered a violent attempt on his life.[44]

In the case of states with a federal structure, this could complicate things even more because the enforcement of imprisonment lies in the capacity and proficiency of their federal states. For example, the Federal Republic of Germany has not signed a general agreement but has entered into different agreements for each of the four prisoners who were incarcerated in four of the federal states.[45]

Next to the issue of so-called "external" (in)equality of treatment, based on differences in prison regimes among different states, another topic of concern is the one of "internal" (in)equality or of how the international prisoners are treated in a national prison system as opposed to the ordinary prison population. Namely, it is a question of whether, how and to what extent the international prisoners are recognized as a special group of prisoners in demand of their own penology, which is guided by distinctive purposes and principles and implemented through a unique, but among them equally applied approach.

The fact that it is usually the states which bear the costs of incarceration of the ICTY convicts can hypothetically diminish the efforts of actually developing a penologically valid, standardized approach on the national level to the treatment of international prisoners.

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43 *McLoughlin* 2003.

44 *Ahmetasevic* 2010.

45 Agreements for *Tadić* (IT-94-1), *Kunarac* (IT-96-23& 23/1), *Galić* (IT-98-29) and *Tarčulovski* (IT-04-82).

The issue of purposeful enforcement of international sentences as well as the level of standardization in developed approaches to the treatment of international criminals bear further exploration which shall be provided in the following chapter.

3. Enforcement of the ICTY Sentences in Practice

This chapter displays certain realities which pertain to the enforcement of the ICTY sentences. It will provide a successive description of different phases encompassed within the mechanism, which will then be used as a "backdrop" for the preliminary assessment of the nature of the established system.

3.1 Designation of the State of Enforcement

As seen before, international sentences are being served in states with which the ICTY has made the enforcement agreements. According to the "Practice Direction on the Designation of the State in which a Convicted Person is to Serve his/her Sentence of Imprisonment", the President of the Tribunal decides on the particular state to which the convict shall be sent.

The rationale for this decision on the state of enforcement can be analysed with comparative insight into the established system for international transfer of sentenced persons, or the "inter-state system".[46] Usually, persons convicted in a foreign state shall, on the basis of bilateral or multilateral agreement, be transferred to the state of their nationality or a state with which they have familiar, cultural, social, lingual or economic ties. It is argued that serving the sentence in a known surrounding highly improves the chances of successful rehabilitation, lowers the possibility of sentence aggravation due to lingual and cultural barriers, benefits diplomatic relations between states and has an indirect positive effect on crime prevention and law enforcement.[47] This "focus on the individual" is further fostered with a prerequisite that in the cases of potential transfer, convicted persons should give their consent, or at least their opinion should be taken into account (Article 3 [1d] of the 1983 Council of Europe Convention on the Transfer of Sentenced Persons)[48].

As opposed to the "inter-state system", the ICTY-established system, in accordance with the report of the UN Secretary General from 3 May 1993, excludes the possibility of transferring convicted persons to the countries of the former Yugoslavia.[49] While the rationale for this is based on the fact that at the time of the ICTY's estab-

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46 *Mulgrew* 2011.

47 UNODC 2012.

48 Council of Europe Convention on the Transfer of Sentences Persons, 21.03.1983 Strasbourg; www.conventions.coe.int/Treaty/en/Treaties/Html/112.htm [19.07.2014].

49 ICTY/UNICRI 2009.

lishment there was an ongoing conflict in the former Yugoslavia which would have impermissibly risked the lives of convicted persons as well as interfered with the enforcement of sentences,[50] it has nowadays due to the changed situation encountered certain criticism, especially in the light of the introduction of Rule 11bis in 2002, which gives a possibility to refer the case to the State in whose territory the crime was committed. However, Rule 11bis provides that only cases involving intermediate and lower rank accused may be transferred to competent national jurisdictions, thus leaving the enforcement of the ICTY sentences against the most senior leaders to the states other than the states of the former Yugoslavia.[51]

This, somewhat "exclusivist", sentence-oriented approach is reflected in the first stage of the designation procedure, where the Registry of the Tribunal makes, by means of diplomacy, a preliminary approach to a potential state of enforcement on the basis of certain criteria which pertain to the ability of a state to enforce the sentence; namely, the national law of the relevant state in relation to pardon and commutation of sentence, the maximum sentence enforceable by the state and the equitable distribution of convicted persons among all the states.[52] If the state preliminarily agrees on accepting the convict, the Registry will approach the President of the Tribunal who should consequently approve or decline the transfer of the convict to the particular state on the basis of examined criteria such as the location of the convict's family, their monetary resources for visiting, the linguistic skills of the convicted person, general conditions of imprisonment and rules governing security and liberty in the state concerned. Special attention is said to be given to the proximity of the prisoner's relatives, which would indicate, as opposed to the preliminary

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50 The Report of the Secretary General indicates that "given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia (para. 121)." While not explicitly mentioned, not even in the ICTY Manual on Developed Practices (ICTY/UNICRI 2009, 156), the rationale behind this can easily be deduced. As *Safferling* states: "First the practical point that, if the judiciary is not working, it is likely that prison service is not working either. Secondly, and more theoretically [...] the national population and authorities were feared to be not partial enough [...] to supervise the convicted person serving a sentence inflicted upon him by a foreign (international) court. This is especially true in cases of civil strife and unrest. The former Yugoslavia is a perfect example of this: the difficulties are far too great for the convicted person to be sent back to his home state. Either he ends up in an area which might almost treat him as a war hero, which would destroy any effect of the punishment, or his life expectancy might be severely reduced, if he found himself in an environment mainly governed by his former enemies" (*Safferling* 2001, 352).

51 ICTY/UNICRI 2009, 156.

52 These conditions are not included in the ICTY "Practice Direction on the Designation of the State" from 1998, nor are they included in the new "Practice Direction" of recently established *Mechanism for International Criminal Tribunals* (MICT); a comprised body intended to carry out a number of essential functions (including the enforcement of sentences) of both ICTY and ICTR after the completion of their mandates.

stage of designation, the rehabilitative 'individual-oriented' approach of the second stage. However, as the Practice Direction disregards the opinion of the convict in this matter, thus making him or her dependent on the discretionary decision of the President, it is actually ambiguous whether and how this rehabilitative policy is reflected in practice, especially considering practical conundrums on the way to its fulfilment such as the fact that states are not obliged to accept the convict, even after the preliminary consent is given; furthermore, that holding such a prisoner entails high pressure on the government, who risks popular and political opposition, as well as that states alone carry the monetary burden of such an enforcement.[53]

These conundrums might play the crucial role in the designation procedure as in practice, according to one interviewed released prisoner;[54] the ICTY does not make the initial approach to a certain state, but waits until one of the states which have signed the agreement indicates its availability to accept a certain number of convicts. That would mean that convicted persons, regardless of the criteria listed above, are being transferred to the first state which would signal availability. This can happen on a rapid basis where the convict, after the appeals judgement is passed, can immediately be transferred to the state of acceptance, or it can take very long time, possibly years, until some state indicates its availability. After the attack in 2010 in England, *Radislav Krstić* had to be transferred back to the UN Detention Unit (UNDU) in Scheveningen in 2011, before some other state would indicate its willingness to accept him. Since in the UNDU prisoners pending transfer are being kept separated from prisoners on remand,[55] he had to wait, with possible periods of prolonged isolation, until 2014 when Poland indicated its willingness to accept him. These periods of prolonged isolation could have a negative effect on the individual's mental situation, thus potentially aggravating the punishment and being in direct violation of international instruments for the protection of prisoners' rights (i.e. 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,[56] 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

Furthermore, the described practical development of the designation procedure could also risk its politicization, as states with political elites who were or still are inclined to certain sides in the conflict could easily offer "havens" to some international prisoners, i.e. through better accommodation and treatment than they would,

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53 ICTY/UNICRI 2009, 152.

54 Interview with a released ICTY prisoner, 20.05.2014.

55 ICTY/UNICRI 2009 154.

56 Article 3 declares that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950; www.conventions.coe.int/treaty/en/treaties/html/005.htm [19.07.2014].

perhaps, receive elsewhere, thus diminishing standardization and legitimacy of the established system.

The lack of coherent penal justification for the designation of the state can also be recognized in the case where the ICTY had at the same time sent two convicted persons, the one of whom testified in the process against the other, not only to the same state, but to the same prison within the state. This eventually led to threats and physical abuse of the prisoner who testified, after which he had to be relocated to another prison institution.[57]

3.2 Certain Aspects of Treatment and Conditions in Prison

When transferred to the designated state, international prisoners are allocated either on a consolidation or dispersion basis. This means that in certain states (i.e. Austria, Spain, Finland, and Estonia) all international prisoners serve their sentences in the same prison institution, while in others they are dispersed among different institutions. The latter serve their sentences among regular prisoners in what are mainly considered closed-type institutions, which often carry the label of maximum-security units. However, types of maximum-security institutions can differ among states. Usually, the admittance to a certain type of institution is based on the length of the enforceable sentence, as well as on the status of a prisoner. This would mostly pertain to the level of risk which a prisoner poses for safe and orderly life inside as well as outside of prison (safety/security aspect). In regular cases, maximum-security institutions would admit violent or unstable prisoners; however, when it comes to international prisoners, prison staff is usually uncertain as to how to adequately approach them. The director of a German penitentiary where one of the ICTY's prisoners is incarcerated openly admitted doubt and confusion with regard to an adequate way of approaching the prisoner.[58] He explained that "the prison staff were uncertain how to approach this person who, while being a mass-murderer, on the other hand shows immense social intelligence, has extremely well adapted to the prison life where he is in a good manner accepted by all the prisoners and has never caused any trouble or disobedience. Since we haven't received any instructions from the Tribunal on how to approach him, we decided to treat him as any other prisoner. He has managed to learn foreign language to a pretty decent extent and has also been working in the prison."

In other cases, this ambiguousness regarding the penological approach might cause certain issues which could pertain to a violation of basic prisoner's rights. As indicated by one interviewee,[59] upon arrival in prison, he and the other ICTY convict were

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57 Interview with a released ICTY prisoner, 20.05.2014.

58 Interview with the director of a German prison, 22.02.2013.

59 Interview with a released ICTY prisoner, 20.05.2014.

placed in solitary confinement for assessment which every prisoner has to undergo prior to the placement in a particular prison section. While the usual timeframe for this assessment is one week, they were held in the solitary cell for two months, without being given the reason why. Eventually, the prison director appeared, expressing his apologies for the delay, which apparently occurred due to the uncertainty of the prison staff with regard to the question of "what to do with them".

This would indicate that, next to the length of the imposed sentence, the stigma of being a convicted international criminal has an influence on the allocation choice. The extent to which this stigma might remain or have the impact on other aspects of prison life bears further exploration.

While serving their sentences, the ICTY prisoners have the opportunity to engage in the same working (i.e., laundry, catering, woodwork, cooking, gardening, etc.), educational (i.e. language and art classes, alternative medicine, etc.) and recreational activities (i.e. gym, football, jogging, table tennis, etc.) as any other ordinary prisoner. Where allowed by national law, some prisoners have due to their good behaviour and discipline progressed through the "prisoner-gradation categories" which allowed them to be placed in semi-opened institutions with a more lenient regime.[60] In other instances, some ICTY prisoners were denied commodities such as furlough to which they would be entitled like ordinary prisoners (i.e. cases in Finland and France).[61]

With regard to contacts with the outside world, especially the family and friends, international prisoners are usually under the same regime as ordinary prisoners. In practice, however, there are discrepancies among international prisoners, which mostly pertain to the distance of the place where they serve their sentences from their countries of origin. For example, *Dario Kordić*, a former Bosnian Croat politician, who was sentenced to 25 years of imprisonment for war crimes and sent to Graz-Karlau prison in Austria, broke the prison "record" with regard to the number of visits as at certain point there were around 300 persons on the list waiting to visit him.[62] On the other hand, prisoners serving their sentences in distant countries such as Spain, Portugal or Scandinavian countries received visits from their relatives once, maybe twice per year while some during the whole time of their incarceration were never visited at all.[63] Neither the ICTY nor the states of enforcement provide monetary support for families and relatives to visit the prisoners. As the travel and accommodation expenses can be very high, especially in the case of more distant countries, some families cannot afford to visit or they can do it only scarcely. Some

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60 Interview with a released ICTY prisoner, 20.05.2014.

61 Interview with a released ICTY prisoner, 20.05.2014.

62 *Gaura* 2011.

63 Decisions of President on Early Release of *Darko Mrđa* (IT-02-59-ES) and Commutation of Sentence of *Zoran Vuković* (IT-96-23&23/1-ES).

help might be obtained through monetary foundations or diplomacy, but these sources are mostly cancelled with the change of the ruling political elite.[64]

When it comes to the supervision of the ICTY prisoners, each enforcement agreement entitles certain body, such as the International Committee of the Red Cross (ICRC), the European Committee for the Prevention of Torture (CPT; in cases of Portugal, Ukraine and the UK), or the Parity Commission composed of ICTY and the state officials (i.e. Spain), to a prerogative of monitoring the conditions of imprisonment. The procedure directs a monitoring body to submit its findings directly to the President of the Tribunal, who then requests that the Registry follows up with national authorities on any recommendations or concerns arising from the submission, and then report back.[65] The practice shows discrepancies on a case-by-case basis. In certain instances, prisoners received inspection from several monitoring bodies (i.e. CPT, ICTY officials), which were mostly interested in the adequacy of the prisoner's accommodation, whether he was in good health, and whether the prison provided for a good working environment.[66] In other instances, prisoners did not receive any inspections during the whole period of their stay in prison.[67]

3.3 Release from Prison

The issue of releasing international prisoners has raised concerns with regard to the possible violation of the principle of equality as different states might have different rules on the prisoners' eligibility for release. Through its practice, the ICTY has established a particular procedure to address this issue.

Article 28 of the Statute deals with the issues of pardon and commutation of sentences, which is supported by Rules 123–125 (Rules of Procedure and Evidence; RPE) and by the "Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal", all of which outline different aspects of the procedure.

The rules state that if pursuant to the applicable law of the state in which the convicted person is imprisoned he or she is eligible for pardon, commutation of sentence or early release, the state concerned (or the prisoner) shall notify the ICTY accordingly, upon which the President of the Tribunal, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, shall decide whether pardon, commutation or early release are appropriate on the basis of the interests of justice and general principles of law. These rather vague criteria are supplemented by Rule 125 (RPE) which indicates *inter alia*

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64 Interview with a released ICTY prisoner, 20.05.2014.

65 ICTY/UNICRI 2009, 160.

66 Interview with the director of a German prison, 22.02.2013.

67 Interview with a released ICTY prisoner, 20.05.2014.

the gravity of the crime or crimes for which the prisoner was convicted, the handling of the similarly-situated prisoners, whether the prisoner has been rehabilitated and whether the prisoner has provided substantial cooperation with the Prosecution, as relevant factors in deciding on prisoners pardon, commutation or release.

To date, out of 51 transferred ICTY convicts, more than half have already been released prior to serving the full extent of their punishments in foreign prisons. To determine the hierarchy of factors which have or might have prevalent influence on the President's decision in this matter, 26 decisions on early release[68] were analysed by the method of positive and negative attribution.

Table 2 Factors Referred to in Early Release Decisions

Rank	Established hierarchy of factors
1.	Other relevant factors (i.e. health and age)
2.	Treatment of similarly-situated prisoners/rehabilitation
3.	Substantial cooperation with the prosecution
4.	Gravity of crimes

The established hierarchy (see *Table 2)* might seem contrary to what could be expected; particularly if keeping in mind the historical example of Spandau prisoners, where the high gravity of committed crimes and culpability of prisoners were held in highest regard against their release. Another notable example of this practice stems from the national level: in 1978, "Oberlandesgericht" (Higher State Court) in Karlsruhe, Germany, ruled that a leave of absence to a convicted Nazi war-criminal, culpable for eight acts of murder as well as aiding the murder of approximately 18,900 men, can be denied on the basis of extreme gravity of crimes, high guilt of the perpetrator, and in this particular case, the release being in collision with the retributive purpose of punishment.[69]

In all the analysed ICTY cases, *the gravity of committed crimes* was taken as a factor which weights against granting an early release. While it might be argued that taking

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[68] Decisions on early release for: *Furundžija, Anto* (IT-95-17/1); *Landžo, Esad* (IT-96-21-ES); *Delić, Hazim* (IT-96-21-ES); *Plavšić, Biljana* (IT-00-39 & 40/1-ES); *Blagojević, Vidoje* (IT-02-60-ES); *Erdemović, Dražen* (IT-96-22-ES); *Kovač, Radomir* (IT-96-23 & 23/1-ES); *Obrenović, Dragan* (IT-02-60/2-ES); *Vuković, Zoran* (IT-96-23 & 23/1-ES); *Josipović, Drago* (IT-95-16-ES); *Mrđa, Darko* (IT-02-59-ES); *Rajić, Ivica* (IT-95-12-ES); Šantić*, Vladimir* (IT-95-16-ES); *Bala, Haradin* (IT-03-66-ES); *Banović, Predrag* (IT-02-65/1-ES); *Radić, Mlađo* (IT-98-30/1-ES); *Tadić, Duško* (IT-94-1-ES); *Tarčulovski, Johan* (IT-04-82-ES); *Krnojelac, Milorad* (IT-97-25-ES); *Martinović, Vinko* (IT-98-34-ES); *Naletilić, Mladen* (IT-98-34-ES); *Nikolić, Dragan* (IT-94-2-ES); *Došen, Damir* (IT-95-8-S); *Sikirica, Duško* (IT-95-8-S); *Krajišnik, Momčilo* (IT-00-39-ES); *Simić, Blagoje* (IT-95-9-ES).

[69] Ruling of OLG Karlsuhe of 25.11.1978 (2 Ws 230/77), see Juristische Rundschau 1978, 213.

into account the gravity of crimes to a decision on early release is unnecessarily stigmatizing since it has already been acknowledged as an important factor in determining the length of the imposed sentence,[70] in practice this factor almost never had a significant impact on any of decisions on early release.

Substantial cooperation with the Prosecution as a factor (see *Figure 1*) has also never been attributed much significance. The majority of released prisoners (19 prisoners – 73%) never actively cooperated with the Prosecution, nor was their cooperation asked for. In cases where there has been cooperation, it was regarded as weighting in favour of the prisoners' release. Generally, willingness to cooperate (i.e. providing information in order to establish the truth, serving as a witness in other proceedings, etc.) and to contribute to the ICTY's mandate can be considered as a positive indicator of a prisoner's repentance, desire for repairing the harm done and rehabilitation. It is, however, necessary to discern what is considered by the President as the substantial cooperation, as among seven cases (27%) where it was affirmed, initial plea bargain of five prisoners was considered as the substantial cooperation, while during the imprisonment none was given nor asked for. Similar to the "gravity of committed crimes", it could be argued whether it is appropriate to consider the substantial cooperation with the Prosecution prior to conviction as a factor of relevance for earlier release, since it has already been regarded as one of the factors determining the length of the sentence.[71] The practice clearly illustrates the discretionary nature of this provision, as, for example, one President of the Tribunal opposed to acknowledge the cooperation prior to conviction as a relevant factor for early release,[72] while the other affirmed it.[73]

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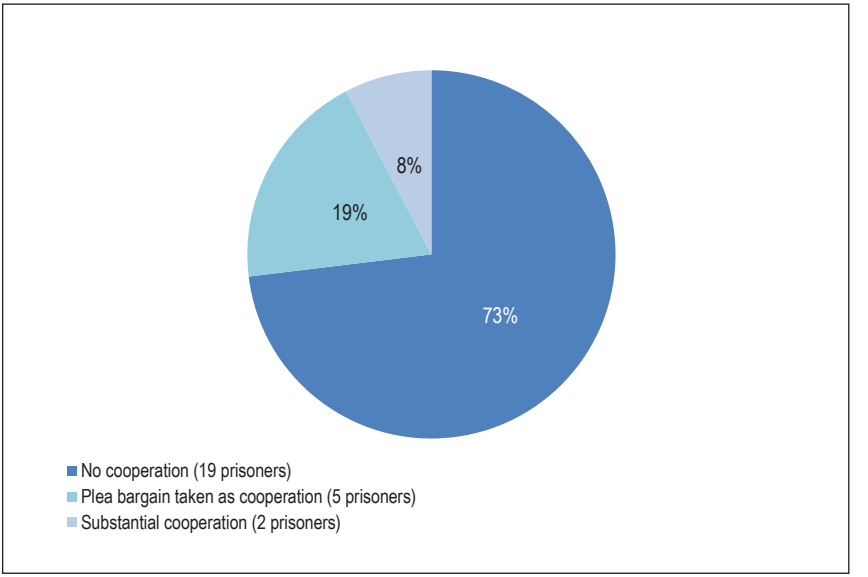
70 Article 24, para. 2, of the ICTY Statute indicates: "In imposing the sentence, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person." Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, September 2009, United Nations.

71 Rule 101 (Bii) of the ICTY Rules of Procedure and Evidence states: "In determining the sentences, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as [...] any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction." Rules of Procedure and Evidence, IT/32/Rev.46, 20 October 2011, United Nations.

72 Prosecutor v. *Radić*, IT-98-30/1-ES, Decision of the President (*Fausto Pocar*) on the Commutation of the Sentence, 22 June 2007, para. 15: "As for Radić's response, I do not take his cooperation prior to conviction into account under Rule 125 and Article 2 of the Practice Direction, and given that it was already weighted by the Trial Chamber when determining Radić's sentence."

73 Prosecutor v. *Mrđa,* IT-02-59-ES, Decision of President (*Theodor Meron*) on Early Release of *Darko Mrđa*, 18 December 2013, para. 30: "I first note that the entry of a guilty plea by an accused person pursuant to a plea agreement with the Prosecution constitutes cooperation with the Prosecution, due to the impact of such a plea on the efficient administration of justice."

Figure 1 Substantial Cooperation with the Prosecution



In practice, *treatment of similarly-situated prisoners* and *achieved rehabilitation* usually has the biggest impact on the decision whether to release a prisoner. Treatment of similarly-situated prisoners mostly means that, regardless of the national criteria for eligibility, prisoners will be considered for evaluation after they have served 2/3 of their sentence. This practice was adopted by the ICTY in order to avoid potential violation of the principle of equality in this very important matter, as certain European states allow, according to their national laws, prisoners to be considered eligible for early release either after 1/2, 2/3 or 3/4 of their sentences served, or they have adopted a system in which a prisoner is awarded periods of remission at the commencement of his or her sentence-enforcement. Almost all of ICTY's prisoners were released after having 2/3 of their sentences served. It is, however, still to be seen how the ICTY will deal with those sentenced to life imprisonment,[74] as in these cases the eligibility for possible earlier release in accordance with the established practice will not be easily discernible.

Next to this formal "pre-condition" for eligibility, the level of achieved rehabilitation will be of crucial significance for prisoner's release. The important question here which also refers to the issues raised in the first chapter is: how is rehabilitation in the case of "macro-criminality" measured? Among the variety of factors, it seems that the ICTY has paid particular attention to prisoners' behaviour during incarcera-

74 As of June 2014, two transferred prisoners were sentenced to life imprisonment: *Stanislav Galić* and *Milan Lukić*.

tion, their reflections on committed crimes (i.e. expressions of remorse; admittance of guilt) as well as prospects for successful reintegration. According to the President's decisions on early release, almost every prisoner has behaved impeccably during the incarceration with no disciplinary complaints. Furthermore, some have managed to integrate within the prison structure to the extent that they have been considered "father-figures" to other prisoners (i.e. *Miodrag Jokić*)[75]. On the other hand, when it comes to prisoners' reflections on committed crimes, the majority of those released did not indicate signs of remorse (66%); moreover, many deny that they have committed any of the crimes for which they are convicted. Similar to the factor of "substantial cooperation with the Prosecution", the ICTY has decided to treat plea bargains as indicators of repentance in more than half of those cases where the remorse was affirmed, while during the incarceration none was actually shown, or there exist no data on it (see *Figure 2*).

This indicates that for the ICTY, a display of good conduct during the imprisonment is the most important indicator of rehabilitation. Having in mind prisoners' profiles, it might be regarded as dubious as it can become sort of an automatism. Considering the very serious nature of international crimes, it gives rise to concern that more importance is not assigned to the expression of remorse, nor that through the prison treatment more efforts have been invested to address it adequately. Only in a scarce number of cases there were attempts to deal with the issue in a more focused way, for example, either through continuous psychological assistance during the period of incarceration[76] or participation in prison programmes dealing with mutual respect, peaceful coexistence and conflict resolution.[77] Coming to terms with one's accountability is the prerequisite for an adequate rehabilitation and important pre-step to any reparative action, which in the case of atrocity crimes and their consequences for all the affected parties is of the utmost necessity.

In several cases (i.e. *Naletilić; Plavšić*) *other relevant factors* such as high age and health issues of the prisoner were given priority for release, despite no clear indicators of rehabilitation or substantial cooperation with the Prosecution. This might be attributed to the willingness of the ICTY to adhere to the international and regional prison-law standards in order not to potentially aggravate imposed punishment of prisoners who are old or have serious health problems.

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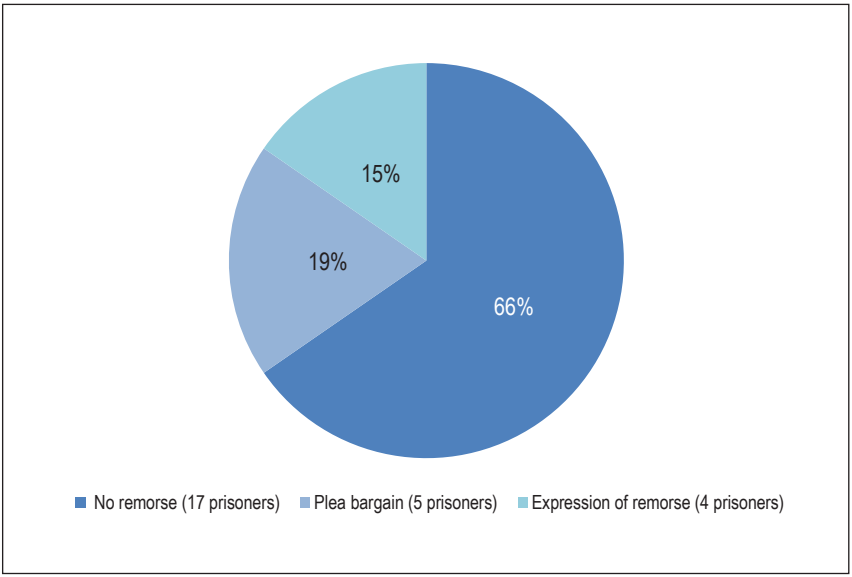
75 See index.hr of 2 September 2008: "Haški sud oslobodio Miodraga Jokića: 'Bio je očinska figura drugim zatvorenicima'" [The Hague Tribunal Sets Miodrag Jokić Free: "He was a Father-Figure to Other Prisoners"]; www.index.hr/vijesti/clanak/haski-sud-oslobodio-miodraga-jokica-bio-je-ocinska-figura-drugim-zatvorenicima-/400572.aspx [21.07.2014].

76 Prosecutor v. *Landžo*, IT-96-21-ES, Order Issuing a Public Redacted Version of Order of the President on the Commutation of the Sentence, 15 July 2008, para. 6 and 7.

77 Prosecutor v. *Rajić*, IT-95-12-ES, Decision of President on Early Release of *Ivica Rajić*, 22 August 2011, para. 18.

Figure 2 Indication of Remorse among Released ICTY Prisoners



3.4 After Release

Information on the after-prison life of the ICTY convicts can be mostly gained through various news-sources. The general opinion is that international prisoners return to their countries of origin where they are celebrated as heroes or martyrs who sacrificed themselves for their homeland. In certain instances, this might be regarded as true. For example, high-profile convicts such as the former Bosnian Serb politician and state executive *Momčilo Krajišnik*[78] are mostly greeted upon their return to home countries by thousands of followers including current political representatives, which tends to raise concerns, especially among victims and survivors of the conflict, about diminishing reconciliatory efforts and still-existing support for controversial and dangerous ideologies. On the other hand, the return of low-ranking convicts such as *Radomir Kovač*[79] only tends to receive mild media attention. In some cases, prisoners have requested asylum in foreign countries due to fear of retaliation if they return to their countries of origin.[80]

Most information regarding after-release life pertains to first impressions upon arrival from the prison, where not much is known about how former prisoners further

78 *Huseinović* 2013.

79 *Dzidic* 2013.

80 Prosecutor v. *Delić*, IT-96-21-ES, Order Issuing a Public Redacted Version of Decision on *Hazim Delić's* Motion for Commutation of Sentence, para. 15.

adapt to their surroundings, how they interact with their communities, what they do and experience.

The main issue seems to be uncertainty regarding their legal status. In accordance with aims of rehabilitation and social reintegration, ordinary prisoners are upon their release usually subject to reintegration programmes and supervision of parole officers. Their release is conditioned by the prohibition to commit further offences, as well as other individual conditions which can be added if necessary. Therefore, conditional release is understood to be a way of implementing the sentence, and not modifying it – as opposed to amnesty or pardon (Article 1.1 of 2003 Council of Europe Recommendation on Conditional Release)[81]. In this manner, the conceptualized idea of actively managing the offender in the community is considered to be "one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community" (2003 CoE Recommendation on Conditional Release, Preamble). In the case of international prisoners, the ICTY's regulative framework did not establish any sort of supervision upon release and prisoners, sometimes literally being 'left on the doorstep' of the prison to walk away,[82] are not informed whether they have to report to somebody or not. Some are aware that they "might" be under parole due to the fact that they have not served entire sentences, however under which conditions and for what period they seem to be unfamiliar with.[83] The apparent lack of an established international parole-system and after-release monitoring was confirmed by the attorney of one of the ICTY prisoners who indicated that "Mr. [...] was not on parole after his release. In essence, he was permanently released and was not under any further supervision. Moreover, it is my understanding that he was not subject to being returned to prison if he violated any laws. In short: no conditions were attached to release of Mr. [...]."[84] This would actually mean that ICTY prisoners, not having served their terms entirely but being released after two thirds of their sentences served, had their punishments reduced; a practice that might be perceived as a factual ex-post "shortening" of the sentence. This particular issue requires further exploration, as in certain cases prisoners have been subject to various cases of "in-direct" monitoring and stigmatization; for example, some were denied to travel abroad, having the passport nullified by the border control officials while going on

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81 Article 1.1: "For the purpose of this recommendation, conditional release means the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition." Council of Europe Recommendation Rec (2003) 22 of the Committee of Ministers to Member States on conditional release (parole), https://wcd.coe.int/ViewDoc.jsp?id=70103 [21.07.2014].

82 Interview with a released ICTY prisoner, 20.05.2014.

83 Interview with a released ICTY prisoner, 20.05.2014.

84 Correspondence with the defence attorney, 30.06.2014.

a business trip, apparently due to the status of convicted war criminals, or were not able to open a bank account in the majority of banks within the state.[85]

4. Conclusion

The current research project is among first attempts to provide insight into the reality of the ICTY sentence-enforcement mechanism; an area which, while not being entirely neglected within the international criminal justice, still remains rather unknown, especially in terms of systematic empirical evidence pertaining to modalities, conditions and experiences of international imprisonment. As an excerpt of a much larger study, the article gives a concise overview of the established system in order to make a preliminary assessment of its legitimacy – a principle of immense relevance for the accomplishment of the international criminal justice agenda.

The above analysis has shown that some of the issues relating to the imposition of the ICTY sentences also seem to be present within the mechanism of their implementation. Accordingly undeveloped is the penological framework, particularly with regard to the lack of reflection on the purposes of imprisonment and methods to achieve them. These shortcomings resulted in an ambiguous set of rules which in practice can lead to discretionary decisions, politicization and inequality in approach and treatment of international prisoners. Prisoners get to be transferred to states on a principle of "lottery", where they are mixed with ordinary prisoners and apparently subject to general rehabilitation programmes, the effect of which in their case is rather dubious. Afterwards, they are released prior to having served full terms, mostly on the basis of good behaviour and seemingly without any sort of formal supervision, which can, particularly to victims, look as if they had "gotten away" with lenient punishment. When this is supplemented by a grand reception and dedication of high honours upon return to their home-countries, the overall mechanism could be seen to greatly detract from the reconciliatory efforts of the conflicting parties, which is certainly an unwanted outcome since "the contribution to restoration and maintenance of peace" is precisely one of the most important principles under which the ICTY operates.

On the other hand, developed practice of enforcement also indicates that regulatory inconsistence and non-transparent balance of prerogatives between the international and national level can lead to potential aggravations of the ICTY's sentences.

The question of purpose in enforcing international sentences, using a conceptually justifiable and standardized approach that identifies an appropriate treatment of international prisoners should be addressed in order to achieve a specific and valid outcome. In that sense, the "symmetric" approach fostering exclusionary penal pol-

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85 Interview with a released ICTY prisoner, 20.05.2014.

icy which reflects purely retaliatory attitudes (as applied in the historical case of Spandau prisoners) without adequately addressing psychological and social causes of the atrocity crimes can only be understood as a symptomatic response to a violent conflict,[86] a "band-aid on a pathological problem."[87] Moreover, possible violations of prisoners' rights resulting from such a treatment can contradict and undermine the very foundations of international criminal justice, as the respect of the rights of prisoners flows from the paradigm shift brought about by the accountability for major international crimes: to place human life and dignity above ideological policies that justify their destruction.[88] In the worst-case scenario, the "symmetric" approach to the treatment of international prisoners could reproduce the very psychological mechanisms that led to atrocity crimes in the first place. Examples of these mechanisms are the dehumanization, demonization and exclusion of others through the construction of an image of the enemy in which flesh-and-blood human beings are turned into abstractions.[89] On the contrary, it is necessary to understand these mechanisms in order to rid the responses of the very psychological flaws that shape the crimes, as well as to set them on a more effective course in terms of repairing the harm done, reconciling the conflicting parties, as well as disrupting the cycles of violence. Theoretically speaking, the adoption of the restorative justice principles of *personalism* ("crime is a violation of people and their relationships"), *reparation* ("the primary goal is to repair the harm of the victim rather than to punish the perpetrator"), *reintegration* ("the aim is to finally reintegrate the perpetrator into society rather than to alienate and isolate him/her from society") and *participation* ("the objective is to encourage the involvement of all direct and possibly indirect stakeholders to deal with the crime collectively"),[90] as well as their appropriate implementation through a distinctive penological treatment of international prisoners, which would foster dialogue and communication between the parties, might be seen as a potential step forward in this matter; however, its elaboration should be mindful of the practical complexities involved.

The development of a standardized enforcement mechanism through structural and regulatory consolidation which would introduce penologically valid policy is of considerable relevance to supporting the aims and legitimacy of an international criminal justice system. This seems especially necessary in the light of the developing mandate of the ICC, which has the majority of enforcement-agreements signed with European states and which recently had its first sentence passed. It can be presumed that future practice of the ICC will increasingly depend on appropriate assistance of

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86 *Parmentier, Vanspauwen & Weitekamp* 2008.

87 *Ellis* 2003.

88 *Rotman* 2008b, 132.

89 *Rotman* 2008a, 527.

90 *Roche* 2003.

national states in the enforcement of its sentences. The extensive experience gained through the implementation of the ICTY's enforcement mechanism as discussed in this article creates fertile ground for a systematic empirical inquiry into the issue of enforcement. This approach reaps "lessons-learned" from the ICTY system and also serves as a valid point of reference for potential future improvement.

5. Summary in Croatian

Članak daje jedan od prvih empirijskih prikaza sustava izvršavanja kazni Međunarodnog suda za ratne zločine počinjene na području bivše Jugoslavije (ICTY). S obzirom na nedostatak *sui generis* međunarodnog zatvorskog sustava, ICTY se u velikoj mjeri oslanja na pomoć europskih država u čije zatvorske sustave među običnu zatvorsku populaciju međunarodni osuđenici nakon donošenja presuda bivaju premješteni radi izdržavanja kazni. Sustav se u velikoj mjeri razlikuje od povijesnih predložaka *Spandau* i *Sugamo* zatvora, te je u izvjesnoj mjeri preuzet kao model izvršavanja kazni za ostale međunarodne sudove (Ruanda i Međunarodni kazneni sud).

Analiza pokazuje kako nedovoljno razrađen normativni okvir odražava u velikoj mjeri nejasne penološke ciljeve izvršavanja međunarodnih kazni kao i metode njihova ostvarenja, što u praksi dovodi do nejednakog tretmana osuđenika Suda te u velikoj mjeri ostavlja prostora diskrecijskim odlukama na međunarodnoj i nacionalnoj razini, kao i političkom djelovanju. S obzirom na ovakvu opasnost narušavanja legitimiteta međunarodnog kaznenog pravosuđa kao i ostvarenja njegovih ciljeva, ponajprije doprinosa uspostavi i održavanju mira među bivšim zaraćenim stranama, članak ističe potrebu razvoja penološki osnovanog i usklađenog sustava izvršavanja međunarodnih kazni; ponajprije na normativnoj, a zatim i strukturalnoj razini. U svrhu toga, sustavni empirijski uvid u praksu izvršavanja kazni ICTY-ja, primijenjen kroz autorov istraživački projekt „Izvršavanje kazni za teške povrede međunarodnog kaznenog pravosuđa na području bivše Jugoslavije" u okviru istraživačkog fokusa MPPG za ‚Balkan kriminologiju', će u velikoj mjeri poslužiti kao osnovana referenca za razvoj predloška takvog sustava.

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Juvenile Delinquency in the Balkans: A Regional Comparative Analysis of the ISRD3-Study Findings

Reana Bezić

1. Introduction

This article seeks to present an overview of the doctoral research project on the topic *"Juvenile Delinquency in the Balkans: A Regional Comparative Analysis based on the ISRD3-Study Findings."* This Ph.D. research project is being conducted under the scope of the Max Planck Partner Group for Balkan Criminology (MPPG),[1] which has been jointly established by the Max Planck Institute for Foreign and International Criminal Law, Freiburg, and the Zagreb Faculty of Law. The MPPG has three research focuses, and this project falls into the scope of Research Focus II: Feelings and Perceptions of (In)Security and Crime.[2] The study is designed as a regional comparative analysis of juvenile delinquency in the Balkans and will be based on data of the Third International Self-Reported Delinquency Study (ISRD3). Croatia is participating in the ISRD3 Study for the first time. ISRD3 is one of the *ad hoc* projects of the MPPG.[3]

With regard to the still ongoing state building processes in the Balkan region there is a need for more criminological research, in order to identify and better understand existing problems. The aim is to try to find a universal solution that can be implemented, as well as to establish the most effective measures of prevention. European criminological research, especially quantitative surveys, have so far usually covered only some parts of the region,[4] creating an "empirical black hole" in the very center of the Balkans, and making a regional approach far overdue.[5]

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1 See Max Planck Partner Group 2014.

2 See Max Planck Partner Group – research 2014.

3 See Max Planck Partner Group – ad hoc projects 2014.

4 EU member/candidate states – see the EU ICS 2005 Study.

5 See Max Planck Partner Group 2014.

The focus of this article is on the elaboration of the topic and research questions of the Ph.D. project, and the presentation of the first ISRD3 results for Croatia. It should be emphasized that the Ph.D. project has a regional approach, but the methodology for this research project will be based on the findings from the Croatian ISRD3 study. Cross-national comparison will be provided between all the Balkan countries that are participating in the ISRD3: Croatia, Slovenia, Bosnia and Herzegovina, Serbia, Macedonia, Kosovo and Turkey. Using primarily quantitative research methods, but also qualitative methods, with the aim of understanding *why* and *the extent* to which juvenile delinquency occurs in the region and what the governmental response to it has been. The phenomenology of juvenile delinquency in the Balkans will be explored on the basis of the following key questions: *What kind of crime has been committed* and *what is the extent to which this crime appears in society?* For the examination of the question w*hy has someone committed a crime* exogenous etiology will be used by comparing the indicators listed under the sub-section 'research questions'.

This article highlights four main issues: background information, research questions, methodology, and first preliminary results of ISRD3 Croatia. The first subject-matter provides the relevant background information and is divided into two parts: first, a discussion as to why cross-national comparison is used among countries from the Balkans, and why countries from other regions have not been included, and second, why the self-reported delinquency method which is one of the four major types of data gathering in international comparative research on crime and delinquency[6] is used in this research project. The second part of this article presents research questions, aiming to explain and justify the selection of indicators referred to for the comparison of the countries. These indicators will be used to identify differences and similarities between countries, with the aim to explore the criminological aetiology of juvenile delinquency in the Balkans. The findings can also provide evidence for policy making.

This is followed by a section that presents the methodology used in the ISRD3 Study and the methodology which is going to be used in the doctoral research project. And, lastly, this article contains first preliminary results of ISRD3 Croatia which were presented for the first time at the *"50. Kolloquium der Südwestdeutschen und Schweizerischen Kriminologischen Institute"* held at the Max Planck Institute for Foreign and International Criminal Law in Freiburg in summer, 2014.[7]

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6 *Albrecht* 1989, 233.

7 See Max Planck Partner Group – events 2014.

2. Background

The focus of this article is on regional comparative analysis. Some criminological research projects have been comparing different regions or different countries from different regions such as, e.g., the International Self-Reported Delinquency Studies 1 and 2. In contrast, the aim of this research project is to present comparative analyses for the countries from the same region − the Balkans. Because of this particular approach, it is important to elaborate *why* cross-national comparison is limited to countries from the Balkans only.

In the second part, the history and the goals of ISRD3 will be presented, and the research results are going to be based on it. The ISRD study is an ongoing research study of delinquency and victimization among youth, using internationally developed, standardized instruments and data collection procedures.[8]

Of course, the part dealing with background could have been complemented by further information such as, e.g., the magnitude of juvenile delinquency in the Balkans, history and mentality in the Balkans, additional background information about each of the countries participating in this research project, but this would exceed the scope of this chapter.

2.1 Cross-National Comparison

The focus of this cross-national comparison is on juvenile delinquency. For example, the level of violence in general differs significantly among young people in different countries, and the reasons for that are not well understood yet.[9] In order to reach a better understanding and to advance the knowledge about the causation of juvenile delinquency, this regional approach is based in the comparison of countries show more similarities than differences which can be explained by their similar cultural and historical background.[10] This particular setting can help to find factors which have impact on the prevalence of juvenile delinquency.

In the case of the Balkan countries 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

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8 *Junger-Tas et al.* 2003, 1.

9 *Wikström & Svensson* 2008.

10 "Concepts are the result of a process of cultural development that took place within the historical context of a country. Since these concepts are formed by history and cultural experience of a people, they are always culture or nation specific. The concepts are transformed into manifest *structures* (e.g. educational systems, types of schools, kinds of certificates). These, too, differ between cultures or nation-states. Thus, *national structures* designate the result of implementing national concepts through public or cultural standardization into possibilities for action" (*Hoffmeyer-Zlotnik & Wolf* 2003, 390).

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.[11]

Therefore, a first crucial component of the research design was the decision about the countries to be included in the comparative analysis. Ideally the comparison should include all the Balkan countries. Regarding the geographical borders and other different criteria and definitions, these are Greece, Albania, Bulgaria, Romania, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Kosovo, Macedonia and partly Turkey.[12] As mentioned, only Croatia, Slovenia, Bosnia and Herzegovina, Serbia, Macedonia, Kosovo and, hopefully, also Turkey are participating in ISRD3.

2.2 International Self-Report Delinquency Studies

Basically, four different criminological methods of data collection are commonly used in international comparative research on crime and delinquency: official statistics, self-report surveys, victimization surveys and studies on the perception of crime and delinquency.[13] Regional comparative analysis in the Balkans is based on the self-report method.[14] Surveys about self-reported delinquency are studies in which probands, usually juveniles, are asked to reveal information about their behaviours, including specific types of delinquent activities; in addition, 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.[15] One of the aims of these surveys is to gather more accurate data on delinquency, especially on those crimes that somehow did not come to the attention of police and/or which are almost never solved by police.[16] Self-report surveys are focused on all kinds of offences, and they are likely to provide better information on minor crimes, in particular crimes that are least likely to be followed by formal intervention and the least likely to result in arrest.[17] Self-report data indicate that delinquency is much more frequent than presented in arrest data. One of the reasons for this divergence is that arrest data specifically refer to a particular group of juveniles and children – in Croatia children under the age of fourteen are not criminally responsible. Under CRC Article 40(3)(a), it is an obligation of States parties to seek to establish such a minimum age.

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11 *Getoš* 2012, 89.

12 *Todorova* 2004, 13.

13 *Albrecht* 1989, 233.

14 Max Planck Partner Group – ISRD3 2014.

15 *Aebi* 2009.

16 *Junger-Tas et al*. 2003.

17 *Agnew & Brezina* 2012, 30.

In criminological research, the use of self-reported delinquency studies, used as a technique to measure crime and delinquency, began with the works of *Porterfield* in the United States in the 1940s.[18] Only a few years later, self-report surveys were introduced in Europe with the Nordic Draftee Research (NDR) Sweden 1959 and Finland 1962.

In the 1990s, ISRD1 was conducted in thirteen countries. Most of the countries that were included were members of the European Union: Finland, Great Britain, The Netherlands, Germany, Belgium, Spain, Italy, Portugal, Switzerland, Northern Ireland, Greece, New Zealand and the USA.[19] Not any of the seven Balkan countries which will be in the focus of the present research project participated in ISRD1. The main purpose for conducting this first study was the conviction that research on the prevalence of juvenile delinquency on a general level would be highly relevant for criminal policy as well as for criminological theory.[20] The study was conducted very slowly with almost no standardization, and there was no central research center to take full responsibility for this. It was difficult to provide the same methodology for all the countries. The target age was wider than today, 12–18,[21] which proved to be a too wide scale. Despite all the obstacles and problems, ISRD1 showed principal feasibility of quantitative, cross-national comparative self-reported studies that can yield important results relevant for criminological theory as well as for criminal policy.[22] The project underwent some improvements regarding the self-report methodology that was used in the second study.

ISRD2 was conducted between 2005 and 2007 among thirty-one countries, and it lead to additional knowledge about causes of delinquency in different countries divided in clusters.[23] There was also a first attempt to expand the survey to countries that belong to Central and Eastern Europe.[24] However, unfortunately only two countries participated: Slovenia and Bosnia and Herzegovina.

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.[25] As mentioned above the expansion of the survey to countries that belong to Central and Eastern Europe started in ISRD2 and was pushed further in ISRD3. In this third round many countries from these regions are participating for the first time, including Croatia,

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18 *Aebi* 2009.

19 *Junger-Tas et al.* 2010, 1.

20 *Junger-Tas et al.* 2003, 2.

21 *Junger-Tas et al.* 2003, 3.

22 *Junger-Tas et al.* 2003, 2.

23 *Junger-Tas et al.* 2003, 5.

24 *Junger-Tas et al.* 2003, 5.

25 Max Planck Partner Group – ISRD3 2014.

Serbia, Kosovo, Macedonia and Turkey. Data collection was predicted to finish by end of 2014, but this seems very ambitious due to the large number of participating countries of which some have only recently joined the study. ISRD3 is primarily a city-based survey and the target group are young probands aged 12–16, which parallels 7th, 8th and 9th school grades in most of the countries. There are, however, some exceptions because of differences in the educational systems, for instance in Croatia where the relevant age parallels 7th and 8th grades of primary school and 1st grade of secondary school. Each city should have a minimum of 300 students per grade – that makes approximately 900 students per city.

3. Research Questions

If cross-national differences are discovered, they have to be explained by identifying the "active ingredients" (e.g. social, cultural, legal system in different countries) that cause them.[26] Demographic and socio-economic variables, often categorized as so-called background variables, can provide information about possible relations between attitudes and societal facts and help to determine how the respondents' opinions, attitudes, and behaviour are socio-economically connected.[27]

In Germany, the first effort to establish a set of common measures for background variables was edited in 1979 by *Pappi*, and has been extended by a number of scholars leading to common definitions and instruments for measuring background variables.[28] Such comprehensive standards of the background variables do not exist on the European level.[29]

The aim of this project is a regional comparative analysis with the purpose to find out what other variables make a difference among the participating countries in order to explain the phenomenology in the Balkans. The added value of the research is the explanation of the prevalence of juvenile delinquency in the Balkans by comparing selected indicators. Some of these indicators will be explained below. It should be emphasized that the list of indicators used will be complemented later with additional variables such as, e.g., *degree of migration/immigration, social rights, impact of the war and refugees*, this would, however, exceed the scope of this paper.

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26 *Weitekamp & Kerner* 1994.

27 "Background variables contain information necessary to define homogeneous subgroups, to establish causal relations between attitudes and societal facts, and to define differences between scores on scales. In short, they allow us to define contexts in which respondents' opinions, attitudes, and behaviour are socio-economically embedded" (*Braun & Mohler* 2002, 112).

28 *Hoffmeyer-Zlotnik & Wolf* 2003, 4.

29 *Hoffmeyer-Zlotnik & Wolf* 2003, 4.

3.1 Criminal Justice System in the Field of Policy Making

The task of comparative criminal justice is to compare and contrast our ways of responding to crime with those practiced elsewhere.[30] Cross-national comparisons of crime, crime rates or offending are difficult to conduct because of differences between countries in laws, legal processes, criminal justice systems, and other conditions.[31]

In this Ph.D. project one of the indicators which will be compared and analysed is the criminal justice system for juveniles. For this purpose, data from the *Manual for the measurement of juvenile justice indicators from 2006*[32] will be used. This Manual is the result of a long process of identifying and promoting the use of global juvenile justice indicators.[33] Fifteen juvenile justice indicators will be used for the comparison of the seven Balkan countries. Based on these indicators, it can be assessed to which extent juvenile justice systems are in place and functioning. They are providing the core information on what happens to minors who come into conflict with the law which can be used as an adequate a means for assessing the policy environment needed to ensure the protection of such children.[34] The main question which is guiding the research is the following: does an increasing resort to punishment and, in particular, a more frequent use of prison necessarily help to reduce the prevalence of juvenile delinquency in the society?

One of the further aims of the project is to raise awareness about the usefulness of self-report data, hoping that it can play a more prominent role in improving criminal policy. Self-report data are institutionalized in Finland and Sweden, and they also have strong influence in Great Britain and Germany.[35] Nevertheless, this is not the case in Balkan countries yet.

3.2 Religion

Religion is one of the factors for developing and maintaining social order within societies, because religion contributes to the integration of individual actors into society.[36] *Mannheim*[37] suggests that there are at least three reasons why religious beliefs should be considered: (1) the decline in religiousness is frequently referred

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30 See *Nelken* 2009.

31 *Shelley* 1981.

32 See Manual for the measurement of juvenile justice indicators 2006.

33 See Manual for the measurement of juvenile justice indicators 2006, 5.

34 See Manual for the measurement of juvenile justice indicators 2006, 5.

35 *Aebi* 2009.

36 *Koster, Goudriaan & Schans* 2009, 482.

37 *Mannheim* 1965, 128–130.

to as a potential factor in the causation of crime; (2) religion plays an important part in the philosophy and psychology of punishment; and (3) religion can often play a therapeutic role in the process of punishment, in the treatment of offenders, and in the prevention of crime. It has to be taken into consideration that moral frameworks of some religions are more strongly related to the condemnation of crimes than those of other religions.[38] In our Balkan-related comparison, the representation of different religions in the societies and their possible impact on the results has to be included in the analyses. Representation of religion within a given state will be analysed according to the data provided by the national statistical offices.

3.3 Economy and Stability of the Country in an Economic and Political Way

The study of crime and economy is a long-standing tradition in criminology.[39] "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."[40] Employment has long been observed to be a correlate of criminal behavior, and it is concerned as an important causal factor in prevention of criminal behavior.[41] *Farrington et al.* assessed the impact of unemployment among 16 to 18 years old London men.[42] 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.[43] Some eastern European countries are joining supranational organizations, with the aim to support their economies through international trade and economic integration.[44] The EU has expanded significantly by including Central and East European countries (CEEC) as new members.[45] Croatia's full membership in the EU became effective on 1 July 2013. This research project will investigate possible effects of this economic adjustment caused by the accession to the EU on the prevalence of (youth) crime. One of the questions addressed will be: *how will accession to the EU, and the corresponding social and economic changes, affect crime?*

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38 *Koster, Goudriaan & Schans* 2009, 493.

39 *Apel* 2009, 118.

40 *Weijters, Scheepers & Gerris* 2007, 90.

41 *Apel* 2009.

42 *Apel* 2009, 120.

43 *Apel* 2009, 120.

44 *Andresen* 2009.

45 *Andresen* 2009.

3.4 Educational System

School is also one of the factors relevant in the context of juvenile delinquency. This is based on the fact that the school is, along with the family, one of the main environments in which young people develop.[46] Accordingly, juveniles' perception of the school is a further research area in the project. The main focus is on what students think about their school, whether they consider their school lessons interesting (or not), and what they think about their teachers. There are different education systems in the Balkan countries, which provides for further points of consideration while the results are compared and analysed. According to the results of a research conducted by *International Organization Eurydicea*,[47] the total number of hours in Croatian elementary schools is lower than that 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.

For comparing national educational systems in the Balkans which vary in terms of structure and curricular content[48] the UNESCO/OECD/EUROSTAT (UOE)[49] database on education statistics will be used. UOE is using the *International Standard Classification of Education* (ISCED), which is adopted formally by the General Conference of UNESCO Member States.[50]

4. Methodology

The ISRD3 Study is designed as a standardized self-report survey conducted in school settings among pupils in grades 7th, 8th and 9th[51] or, as in some educational systems like, e.g., that of Croatia, 7th and 8th grades of primary school and 1st grade of high school. These are equivalent to the relevant age range of 12–16 years. One of the most important methodological characteristics of the ISRD3 Study is its high standardization and comparability in regard to the selection of samples, the content, the administration of the questionnaires, the organization and setting of the data collection, and the coding of the data. This is important for achieving valid and interpretable cross-national data. "The term validity means that an empirical measure adequately reflects the meaning of the concept under consideration."[52] In this respect, ISRD1 was a pilot study which still failed to meet most of the criteria of standardization. With significant improvement

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46 *Egli, Lucia & Berchtold* 2012.

47 Recommended Annual Taught Time in Full-time Compulsory Education in Europe 2012/13 2013.

48 International Standard Classification of Education, ISCED 2011.

49 UNESCO/OECD/EUROSTAT (UOE) database on education statistics 2013.

50 International Standard Classification of Education, ISCED 2011.

51 International Self-Report Delinquency Study 3, 2014.

52 *Maxfield & Babbie* 2007, 118.

ISRD2 has achieved a rather high level of standardization. ISRD3 is learning from the mistakes made in the ISRD2 and is trying to correct the shortcomings that had remained.

The methodological improvement can be traced in the design of the questionnaire, for instance in the questions on specific delinquent acts which is differentiating between *lifetime prevalence* („have you ever committed …"), *current prevalence* („did you do this last year"), and *frequency* („how many times have you done this"). It consists of a core set of fixed questions, paired with a flexible part which can vary in each sweep.[53] A number of comparisons between ISRD2 and ISRD3 findings are feasible but there is no need for it in the context of this research project because only two countries of the region in focus had participated in ISRD2, i.e., Slovenia and Bosnia and Herzegovina.

The actual questionnaire is divided in a set of different modules. The required modules are questions related to background information, in particular family, school, victimization, leisure, attitude, offending, substance use and prior experiences with police and criminal justice. The flexible part includes gang questions, etc. There are two versions of the ISRD3 questionnaire: *pencil-and-paper*, as used in Croatia, and a *computerized* version which is used in Bosnia and Herzegovina. Both versions are identical in the design, the only difference is the way in which the questionnaires have been filled in.

In most of the countries, including Croatia, ISRD3 is a city-based survey, i.e., the samples are randomly selected from schools in two medium or large cities. The size of the cities is flexible and can be defined by the research teams. Each city should have around 300 students per grade or 900 students per city. Data collection and data entry, as well as the processing of the data and the management of the data sets follow the standardized concept and is coordinated by the ISRD3 Central Coordinating Team.[54] In order to ensure the comparability of the data special attention had to be drawn to the standardization in the coding of the variable values. EpiData was used for this purpose which was adapted to each country. Based on the cross-national analyses problems can be identified more precisely as well as criminal policy concepts.

5. First Results

This section presents the first preliminary results of the Croatian part of ISRD3. Firstly, information about the characteristics of the Croatian sample are presented. Secondly, descriptive findings of selected preliminary results such as the prevalence of self-reported delinquency and alcohol consumption with some correlations are presented. It should be emphasized that the data entry was finished just very recent-

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53 International Self-Report Delinquency Study 3, 2014.

54 International Self-Report Delinquency Study 3, 2014.

ly, hence further detailed analyses are to be conducted and will be presented in the forthcoming Ph.D. thesis and related publications.

5.1 Sample Characteristics

ISRD3 was conducted in Croatia for the first time. The city-based sample was used, the survey was conducted in Zagreb and Varaždin. The data collection was finished in early 2014. Data were collected by using the paper and pencil version of the questionnaire.

Croatia has a population of about 4.28 million.[55] The capital city is Zagreb, with a population of around 800 thousand.[56] Random choice of primary and secondary schools was used in Zagreb for conducting this survey. In total, 891 students were

Table 1 Sample Characteristics

(N = 1,744)	**n**	**%**
City		
Zagreb	891	51.1
Varaždin	853	48.9
Sex		
male	813	46.8
female	926	53.2
Age		
12	26	1.5
13	494	28.5
14	517	29.8
15	591	34.1
16 and older	105	6.1
Ethnic background		
natives	1,681	96.7
others	63	3.3
Grade		
grade 7	583	33.4
grade 8	547	31.4
grade 1	614	35.2
Religion		
Roman Catholic	1,533	88.6
atheist or agnostic	141	8.2
Islam	19	1.1
others	28	2.1

55 Državni zavod za statistiku. Statistical Yearbook 2013.

56 Državni zavod za statistiku. Statistical Yearbook 2013.

participating in the Zagreb survey (see *Table 1*). Varaždin is a medium sized city, with a population of around 47 thousand.[57] The number of participants from Varaždin is similar to that of Zagreb (see *Table 1*). The ratio of male and female is similar to the overall population.[58] Most of the probands are between 13 and 15 years old. 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 indicate that 86% of the population consider themselves as Catholics.[59]

Table 2.1 Life-time and Last-year Prevalence of Self-reported Delinquency

Self-reported offences in Croatia (percent)				
	Life time prevalence		12-Month prevalence	
	%	Missing	%	Missing
Illegal downloading	**59.5**	0.7	**50.6**	7.9
Graffiti	**16.6**	0.7	**12.6**	1.4
Shoplifting	**10.8**	0.7	**6.3**	1.3
Vandalism	**7.8**	0.7	**6.5**	1.2
Group fight	**6.0**	0.9	**5.1**	1.4
Theft	**5.7**	0.9	**4.0**	1.2
Carrying a weapon	4.1	1.0	3.5	1.5
Drug dealing	3.4	1.5	3.0	1.8
Car break	1.7	0.9	1.3	1.1
Bicycle theft	1.7	0.9	1.1	1.1
Assault	1.5	0.9	0.9	1.1
Car/motorbike theft	0.8	0.9	0.6	1.0
Extortion	0.7	0.9	0.5	1.0
Burglary	0.6	0.9	0.3	1.0

Table 2.1 shows *life-time* and *last year* prevalence for 14 offences. Three of those stand out as particularly widespread in their life-time prevalence rate. These are illegal downloading (59.5%), graffiti (16.6%) and shoplifting (10.8%). The remaining eleven offences have a life-time prevalence of less than ten percent. Not surprising are the high rates of illegal downloading, whereas the low rate of involvement in group fights was not expected in advance.

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57 Državni zavod za statistiku. Statistical Yearbook 2013.

58 Državni zavod za statistiku. Statistical Yearbook 2013.

59 Državni zavod za statistiku. Statistical Yearbook 2013.

Table 2.2 Gender and Last-year Prevalence of Self-reported Delinquency

	12-Month prevalence in Croatia (percent)	
	Male	**Female**
Illegal downloading	51.0	49.0
Graffiti	**39.5**	**60.5**
Shop lifting	61.5	38.5
Vandalism	67.5	32.5
Group fight	78.7	21.3
Theft	57.1	42.9

Gender is one of the strongest and best known correlates of self-reported delinquency.[60] *Table 2.2* shows that in four out of the five most reported offences of the previous year, young male adolescents were more often involved in such activities than their female counterparts. Surprisingly, the rate of reported participation in graffiti spraying was higher for female than for male students. One of the possible explanations might be that graffiti is a *creative* activity and may therefore be more prevalent in female than in male juvenile groups.

Figure 1.1 shows that 75% of the Croatian students had consumed alcohol at least once in their life. It has been argued that post-socialist countries have the highest rates of students who have consumed alcohol at least once.[61] It might be interesting to verify this finding in the entire Balkan region. Furthermore we will try to find out whether other variables including religion and economic status have effects on the rate of life-time prevalence of alcohol consumption or if it does not have any statistical significance.

Figure 1.2 demonstrates the prevalence of alcohol-related risk factors in relation to gender. In the case of alcohol consumption in general the life-time prevalence rate was used, in the case of wine, beer and strong spirits the last month prevalence. In relation to almost all risk factors included in *Figure 1.2* female students reported higher consumption rates than male students, except for drinking beer. These findings appear rather surprising, especially with regard to the clear lead of girls in the consumption of strong spirits. When asked to specify which strong spirits they have consumed, schnapps, whisky and vodka were most often named. One of the future analyses in this context will be on correlating the prevalence of risk factors with gender and age. It might be interesting to further compare the age of males and females who positively responded to the alcohol consumption question, in order to find out the 'peak age' when alcohol use starts.

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60 *Junger-Tas et al*. 2010, 197.

61 *Junger-Tas et al*. 2012, 125.

Figure 1.1 Life-time Prevalence of Alcohol Consumption

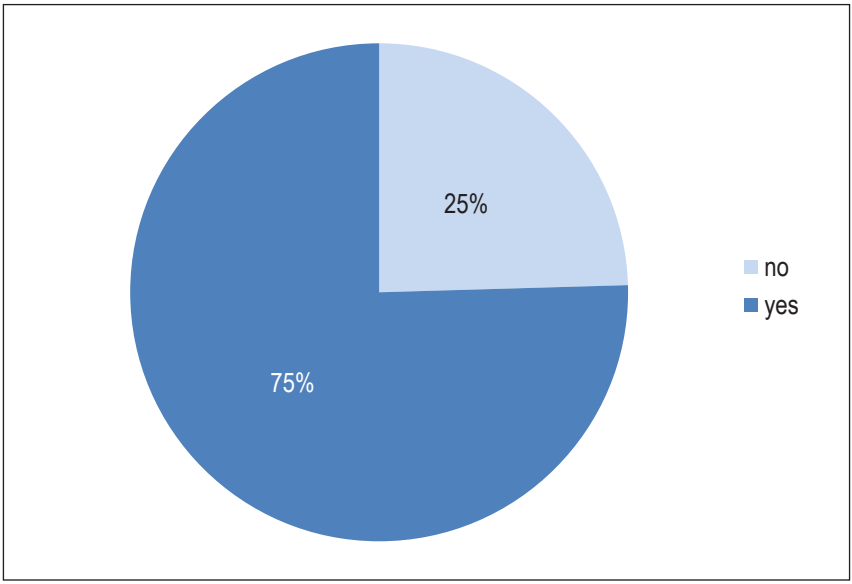
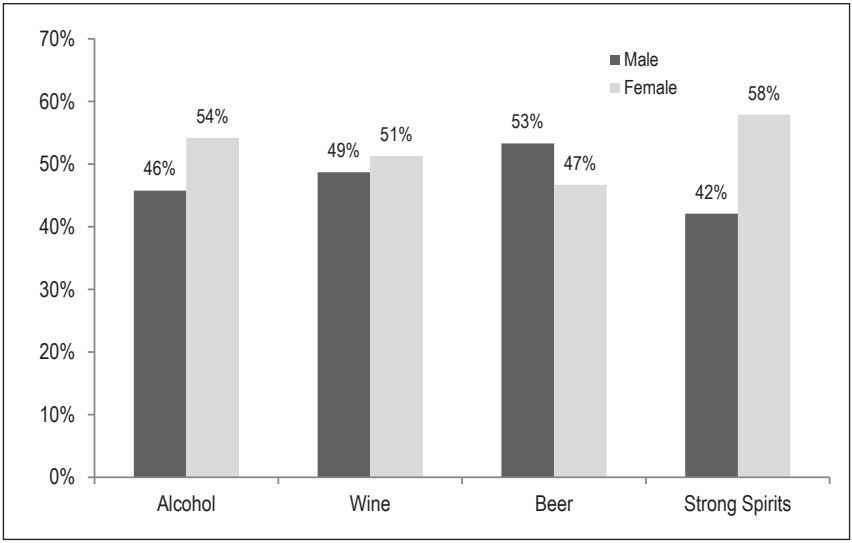


Figure 1.2 Prevalence of Risk Factors among Gender



6. Conclusion

In this article a first introduction into the current Ph.D. project was presented, with the focus on regional comparative analysis in the Balkans. Firstly, it has been argued why this project has its exclusive focus on the Balkan countries. This approach takes advantage of the fact that the cultural and historical background differences amongst the countries are rather limited in extent which allows to put the focus on other risk factors which might affect the increase or decrease in the prevalence of juvenile delinquency. The paper further presented the self-report survey method as one of the four major instruments of measuring the magnitude of and trends in (youth) delinquency.[62] The fact that the Balkan region lacks fundamental criminological research, especially quantitative surveys, makes a regional approach far overdue. It should be pointed out that the states should also accept responsibility for monitoring the effects of their policies, and should therefore encourage and support the carrying-out of related empirical research.

The selected preliminary results of the ISRD3 Croatia presented have been focusing on the prevalence of self-reported delinquency in general and alcohol consumption in particular. Clearly, this article asks more questions than it provides answers. However, it indicates further directions of analysis and demonstrates the potential of the data gathered. In its further stages the research project is aiming to compare and contrast different ways of responding to crime and to discover which risk factors are affecting juvenile delinquency in the Balkan region.

7. Summary in Croatian

Članak predstavlja pregled projekta doktorske disertacije s fokusom na regionalnu komparativnu analizu na Balkanu. Članak naglašava važnost pozadinskih variabli za razumijevanje i tumačenje raspostranjenosti maloljetničke delinkvencije na Balkanu, kao i njenih obrazaca pojavnosti. Prvi preliminarni rezultati ISRD3 studije u Hrvatskoj predstavljaju opseg samoiskazane delinkvencije i konzumacije alkohola. Članak završava prijedlogom za jačanje kriminoloških istraživanja na Balkanu.

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62 *Agnew & Brezina* 2012, 36.

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Links

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Trafficking in Human Beings in and through the Balkans – Introduction to a Qualitative Approach

Karlo Ressler

1. Introduction

Trafficking in human beings has been recognized as a global phenomenon and a grave violation of human rights. Various governmental, nongovernmental and international organizations have invested significant efforts in raising awareness or combating human trafficking.[1] Although there exists also a large and growing body of literature on human trafficking,[2] research on the subject has been mostly restricted to either general overviews of the problem offering little original data or critiques of the existing research on the issue.[3]

It is still challenging not only to grasp the precise extent of the problem, but also to understand the complex relationships between traffickers and trafficked persons, and even to determine the clear division line between trafficking and similar offences, such as human smuggling and pandering. It is evident that it is especially troublesome to measure a hidden and clandestine phenomenon like human trafficking. Yet the dark figure of this type of crime is assumed to be high.[4] Another problem is that countries use various counting methodologies, which makes the data practically incomparable between states.[5]

Neither the trend of the increased attention to human trafficking nor the methodological difficulties related to the measurement of the phenomenon have bypassed the Balkans. The region is suspected to be one of the rare regions which are at the same time area of origin, transit, and destination.[6] Because the Balkans is a transit area on

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1 See e.g. TIP reports; La Strada International; Eurostat 2013.

2 See e.g. *Dillard* 2014.

3 *Weitzer* 2014.

4 *Datta & Bales* 2013.

5 See Eurostat 2013.

6 *Kalaitzidis* 2005.

the route to Western Europe and because some of the countries on the Balkan Peninsula are EU member states, researching and combating human trafficking in the Balkans is closely intertwined with concepts of understanding and fighting crime at the European Union level.

This article seeks to present an overview of the doctoral research project on trafficking in human beings in and through the Balkans, which is being conducted within the Max Planck Partner Group for 'Balkan Criminology' (MPPG) under the Research Focus I dealing with Violence, Organized Crime and Illegal Markets.[7] Using primarily qualitative research methods, the project's objective is to increase the understanding of *how* and *why* human trafficking occurs in the region. In this article, three main issues are addressed. Firstly, a short overview of human trafficking, its legal and policy framework in the Balkans is presented. Secondly, the ways to measure human trafficking are analysed. Finally, arguments for the appropriateness of utilizing qualitative methods in order to gain a deeper understanding of human trafficking activities are given and the proposed research methodology is discussed.

2. Human Trafficking Framework in the Balkans

Trafficking in human beings has been addressed by numerous national and international legal documents and policy proposals. Probably the most important ones for the Balkans are the EU Directive on Preventing and Combating Trafficking in Human Beings[8] and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.[9] The purpose of the Strategy is to provide a coherent framework for existing and planned initiatives, to avoid the risk of policies overlapping, and to complement the Directive which creates the legal framework for member states in legal enforcement, prevention and protection of victims.[10]

EU policy on the issue also has a considerable impact on non-member states since it is important for the annual progress reports on candidate and potential candidate countries and visa liberalization negotiations. The Balkans is a region where coherence between the internal and external instruments of EU security policies is probably most needed in order to combat human trafficking or any other organized crime.

The UN Palermo Protocol on Trafficking in Persons and Convention on Actions against Trafficking in Human Beings put responsibility to tackle human trafficking

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7 For more information about the Group and its Research Focuses see:www.balkan-criminology.eu/en/index.html [21.07.2014].

8 Directive 2011/36/EU of 5 April 2011 on Preventing and Combating Trafficking in Human Beings, O.J. L 101/1.

9 European Commission 2012.

10 European Commission 2012.

mainly on states.[11] The same was pronounced by the European Court of Human Rights in the landmark case on human trafficking "Rantsev v. Cyprus and Russia" in which three positive obligations for states under Article 4 have been elaborated: (i) punishment of trafficking, (ii) protection of victims, and (iii) taking appropriate measures to investigate human trafficking, including cooperation with other states.[12] Nevertheless, trafficking in human beings goes beyond individual states and consequently combating it requires more regional cooperation and coordination. This is difficult when there is a significant lack of information and understanding on prevalent trends and patterns in trafficking in the region. Evidence-based policy on trafficking in human beings requires reliable and comparable data not only in the EU but also throughout the Balkans.

3. Types of Data used to Measure Trafficking in Human Beings

It is difficult to overestimate the importance of evidence-based approaches in designing appropriate policies to combat any crime. Deep understanding of the problem seems necessary in order to construct effective repression and prevention actions. Otherwise, unreliable data can easily result in the creation of wrong policies and in waste of already limited resources. As the International Labour Organization (ILO) in its 2014 Report notes:

> "Clear and precise definitions are fundamental to the measurement of social problems, their trends and potential change. By carefully defining a problem, it is possible to quantify its extent, understand whether it decreases or increases over time, and assess whether policies have an impact."[13]

Clear definitions and valid information about a crime are crucial to fully understand it.

More specifically, *Albanese* offers additional reasons why good numerical estimates of human trafficking are necessary.[14] Apart from the fact that without reasonable estimates of the scope it is impossible to meaningfully determine the need for resources to combat human trafficking, he argues that a lack of these figures makes it harder to evaluate the success of the prevention efforts over time and to assess the importance of human trafficking on the public policy agenda.[15]

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11 Palermo Protocol 2000; Convention on Actions against Trafficking in Human Beings 2005.

12 *Rantsev* 2010.

13 ILO 2014, 3.

14 *Albanese* 2007.

15 *Albanese* 2007, 58–59.

Therefore, it seems very important to obtain data as precise and informative as possible, taking into account not only the reliability of the data but even more their validity.[16] In order to facilitate this and to strengthen the comparability of trafficking statistics, the Trafstat Project (2013) has been commissioned by the EU. The research project is currently in its final phase and the author had the opportunity to participate in its work. The insights on validation and utilization of trafficking statistics gained through the project work and during the expert meetings provided an excellent picture about the complexities of human trafficking research.

With the purpose of illuminating human trafficking, criminologists and other social scientists have employed various methods that produced different sorts of figures that would enable counting, tracking and comparing trends in human trafficking. A plethora of diverse types of statistical data, measures and indicators have been used to assess and measure the scope of human trafficking. These measurements are examined in this section in order to offer insights into their strengths and weaknesses. This could illustrate not only to which extent different features of trafficking may be measured, but also which aspects of the phenomenon are being neglected.

The methods will be discussed in nine subsections. The analysis starts by examining possibilities of counting trafficked persons because this is the measurement which is used most often. Secondly, the number of traffickers, another indicator of the scope of human trafficking, is evaluated, and it is followed by a somewhat related measure – the number of trafficking cases. Then, estimations of the economic significance of the trafficking business, usually expressed through profits, are examined. This is followed by less direct and more complex types of measurement, such as average duration of exploitation, measures obtained through surveys, perception indices, derivatives of basic data and reports containing a grading system.

3.1 Number of Trafficked Persons

Human trafficking is probably most frequently approached by estimating the number of victims.[17] Regardless of whether trafficking in human beings is being examined at national,[18] regional,[19] or global level,[20] it is regularly attempted to express the magnitude of the issue through the information on the number of victims. It seems

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16 For the detailed analysis of differences between validity and reliability see *Maxfield & Babbie* 2007.

17 United Nations Office on Drugs and Crime; International Organization for Migration (IOM); European Commission; United States Department of State; International Labour Organization (ILO); Anti-Slavery International; inter alia, all of them mainly use an estimation of the number of trafficked persons to express the scope of human trafficking.

18 See e.g. Dutch Rapporteur 2013.

19 See e.g. Eurostat 2013.

20 See e.g. ILO 2014.

reasonable to expect that information on the number of victims reflects the extent of the problem relatively accurately. Nonetheless, the fact that it is impossible to determine the exact number of victims reduces the explanatory power of this measure. In his refutation of the widely accepted claims regarding human trafficking, such as the claim that the magnitude of trafficking is steadily growing worldwide, *Weitzer*[21] justly argues that it is not possible to either adequately count or even satisfactorily estimate the number of victims at national or international level in an "illicit, clandestine, underground economy" such as human trafficking.

Different countries use different sub-measures, based on different concepts, to define someone as a victim.[22] It is possible to distinguish *identified* and *presumed* victims. The former are defined as individuals formally identified by the relevant authority and the latter ones as victims who have not been officially identified but fulfil the definition of human trafficking.[23] These differences in definition have a considerable impact on the final figures and makes the data hardly comparable between countries. Namely, use of the *presumed victims* concept usually leads to relatively high figures of trafficked persons. Its advantage is that it facilitates provision of assistance to a larger number of victims. Nevertheless, data based on this definition are quite misleading because, obviously, a part of the presumed victims are not actually trafficked persons.

Furthermore, this significant discrepancy between the number of presumed and confirmed victims raises serious doubts about the magnitude of the problem.[24] Especially problematic seems the method of estimation through which the number of victims is counted by multiplying police statistics on recorded trafficking cases by an assumed ratio of unreported cases. At the Second Croatian-German Workshop on Current Issues in Human Trafficking held on 20 June 2014 at the Max Planck Institute for Foreign and International Criminal Law in Freiburg, *Albrecht* rightly criticized this approach by exposing the groundlessness of the assumptions in the estimation process. Transcrime has used exactly this method of estimation in its 'Study on National Legislation on Prostitution and Trafficking in Women and Children', funded by the European Parliament.[25] As a starting point, the police statistics on victims had been taken, which were then multiplied by a virtual dark figure, which was assumed to be between 10 and 20 in extent. As *Gould* comments on such estimate practices: "The problem here is not that there are only estimates, but that the estimates are based on either faulty grounds or no apparent methodology at all."[26]

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21 *Weitzer* 2014, 13.

22 See e.g. *Aronowitz* 2014.

23 Eurostat 2013.

24 *Weitzer* 2014, 10.

25 Transcrime 2005.

26 *Gould* 2010, 3.

3.2 Number of Traffickers

Similarly as in the case of registering victims, countries refer to different criteria as well when counting the number of traffickers.[27] Several counting methods could be conceived in regard to traffickers. Firstly, the number of *suspected persons* in all the identified trafficking cases in a year can be counted. This results in an up-to-date figure which should, ideally, enable comparison between different countries and which also serves as an indicator of trends in human trafficking and its policing. Yet, these are only data on the number of people for whom the police suspects that they were involved in trafficking. Most likely, a part of them will not even be prosecuted for trafficking, and even a smaller portion of them will be convicted for the offence. On the other hand, like with other crimes, it cannot be expected that all the traffickers will be known to the police, hence, this measure is partially measuring the efficiency of law enforcement bodies, which is one of the factors influencing the number of identified traffickers.[28]

Secondly, it is possible to count only *prosecuted offenders*. This would lead to a lower number, of which it is likely that a higher percentage, but very unlikely all, would be convicted for human trafficking. Nevertheless, the fact that not all the traffickers reported in one year will be prosecuted in the same year hampers the possibility of comparing the number of prosecuted traffickers to the number of identified offenders.[29] An additional problem in comparing these two figures arises from the fact that a part of the traffickers will be prosecuted for other trafficking-related offences, such as human smuggling or pandering.

Finally, the most reliable statistical record of offenders from the criminal law point of view is the number of *convicted traffickers*. As it counts only those who have been judicially declared as traffickers, there is – in comparison to other measures concerning traffickers – a minimum chance that persons who were not actually involved in trafficking are not included. At the same time, a portion of identified traffickers will not be prosecuted or convicted for trafficking but on different charges for various reasons or will not be prosecuted at all. This means that a number of prosecuted and convicted traffickers will inevitably leave out a certain portion of traffickers.

3.3 Number of Cases

Although it is used relatively rarely, the total number of trafficking cases can be a very useful indicator of the scope of human trafficking in a particular country or region. Because of the differences between large organized criminal groups and less

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27 Eurostat 2013; Trafstat 2013.

28 In more detail about general challenges and shortcomings of police statistics see *Skogan* 1975.

29 *Aronowitz* 2014.

formal, small-scale trafficking structures, it seems that, in many cases, the number of cases together with the number of victims and traffickers per case could be more informative than looking only on the total number of victims or traffickers. There is no doubt that uncovering large-scale trafficking is more time-consuming and that it requires different expertise than investigating trafficking in small-scale cases.[30] The number of identified trafficking cases will most likely differ from the number of investigated and prosecuted cases. Not all of the identified trafficking cases will be prosecuted under the legal qualification of trafficking in human beings but may be prosecuted on the basis of other similar offences for strategic purposes or other reasons. In addition, traffickers involved in an identified case do not necessarily have to be prosecuted in the same case, although most often they probably will be.

3.4 Profits

The magnitude of human trafficking has been portrayed by a considerable number of scholars, international and national organizations by estimating the profitability of the trafficking business.[31] This economic dimension of human trafficking has been increasingly examined. ILO defines the profits of forced labour, most commonly intertwined with trafficking, as "the difference between the average economic value added and the sum of expenditures on wage payments and intermediate consumption."[32] It has become widely accepted that one of the main reasons why offenders choose to traffic humans and not drugs, weapons, or other commodities is because trafficking is at the same time lucrative and involves relatively smaller risk than other criminal alternatives. Rough calculations of profits generated from sexual, labour and other exploitation by traffickers have been made by different organizations, such as UNODC and ILO, but also by organizations of the non-governmental sector, such as the Ricky Martin Foundation. Yet, these estimations have rarely been substantiated by reliable evidence.[33]

Belser warns that profits from forced labour of trafficked victims could be much higher than it was previously thought, i.e. as large as 31.6 billion USD annually.[34] The ILO's newest estimate is that the total profit from the use of forced labour globally exceeds 150 billion USD a year, two thirds of which generated by commercial sexual exploitation (ILO 2014). Trafficking in human beings is frequently described with labels such as "the fastest growing form of international crime",[35] "the second

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30 *Aronowitz* 2014.

31 See e.g. *Belser et al.* 2005*; Belser* 2005*; ILO* 2014*; Shelley* 2010.

32 ILO 2014, 9.

33 *Weitzer* 2014.

34 *Belser* 2005.

35 UNGIFT 2014, s.p.

largest criminal industry in the world",[36] "the third largest source of income for organized crime"[37], and the like. Nevertheless, it remains unknown how the scope of human trafficking and the scope of arms and drugs trafficking, which allegedly exceed the profitability of human trafficking, were calculated. Substantially different estimates of profits and lack of evidence call into question the reliability of such figures.[38] This seems problematic because misleading data lead to a risk of creating misdirected combating policies which do not reflect realities on the ground.[39] Parallel with estimating the profits for organized criminal groups, the costs for individuals, communities and states are occasionally examined.[40]

3.5 Average Duration of Exploitation

Although duration of exploitation does not primarily express how widespread human trafficking is, it can – together with other measures, such as number of victims for instance – be a useful method of measuring of human trafficking. Unlike other quantitative data it demonstrates an important qualitative characteristic of human trafficking, which is very likely to influence the relationship between trafficker and trafficked person.

Admittedly, even short periods of time in which a victim is exploited can result in serious psychological consequences. Nevertheless, there are differences between short- and long-term trafficking. And from a quantitative point of view it seems reasonable to expect that a common duration of exploitation may affect the level of profit per victim and the need for additional persons for exploitation. Studies of human trafficking have not dealt with the length of exploitation in detail. The available data, however, suggest that the duration differs considerably and that it is particularly dependable on the type of exploitation.[41]

3.6 Victimization Surveys

Surveys could serve as a relatively informative method of estimating the scope of human trafficking. Nevertheless, the precedence has usually been given to collecting and analyzing expert opinion[42] or to police statistics.[43] One of the exceptions was

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36 UNHCR 2010, s.p.

37 UNGIFT 2014, s.p.

38 *Weitzer* 2014.

39 *Goodey* 2012.

40 See e.g. UNGIFT 2008.

41 *Belser et al.* 2005, 21.

42 *Pennington et al.* 2009.

43 See e.g. Eurostat 2013.

a study conducted for the International Organization for Migration (IOM) in five Eastern European states which were believed to represent the countries of origin.[44] The representative national surveys of more than five thousand households in total included a question as to whether the respondents had heard about someone who was trafficked or whether someone from their family was trafficked. In all five countries covered – Belarus, Bulgaria, Moldova, Romania, and Ukraine – the sample was representative by gender, age, region of the country, and type of settlement. The estimation of human trafficking prevalence was calculated by applying the following formula:

> "N = (share of extended families who suffered from trafficking * population/size of an extended family)"

This method of estimation enables to assess human trafficking prevalence in a particular country. Yet, this approach is marked by certain limitations as well.[45] Firstly, a family member does not necessarily always know that someone from his family really is a victim of trafficking. Yet it is true that it is most probable that they will know of the crime. Secondly, even when there is knowledge about the fact that a family member has been trafficked, it is likely that part of the respondents will not admit that fact. Finally, this method is additionally "downwardly biased" because people without family connections might be more vulnerable to trafficking. Although this method of surveying households is characterized by serious imperfections, in order to estimate human trafficking, in absence of better tools, it might serve as "the best sampling frame" when compared to surveys of current or former victims or the capture – recapture method.[46]

3.7 Perception Indices

Since 1995, when Transparency International introduced its Corruption Perception Index, global corruption levels have been predominantly used as a measure, admittedly not without objections, by experts' opinions and popular perception of its prevalence. Transparency International argues that because of the hidden nature of corruption, there is no other meaningful way to estimate its level in a certain country.[47] Information on reported corruption, the number of prosecutions and examination of court cases linked to corruption demonstrate efficiency of prosecutors and the courts in combating corruption, however, they can hardly serve as definite indicators

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44 GfK Ukraine 2006.

45 *Pennington et al.* 2009.

46 *Pennington et al.* 2009, 127.

47 The Guardian 2013.

of corruption levels.[48] Furthermore, public perception is shaped by media portrayals which are not necessarily reliable reflections of reality.

It is very doubtful that human trafficking could be successfully measured by exploring the perception on prevalence of this type of crime, which is far less part of people's every day experience than corruption. Nevertheless, public opinion on human trafficking is not irrelevant because popular perception indirectly shapes the official responses on human trafficking and attitude towards victims.[49] Negative perception of trafficked persons, *Robinson* argues, creates an additional challenge in combating trafficking in human beings. These are the reasons why studies of popular sentiment on human trafficking, as the cross-national comparison of fifteen Western European countries conducted by *Tverdova* (2011), seem desirable. Regardless of the fact that perception surveys do not directly measure trafficking, they extend our understanding of public sentiment which could enhance anti-trafficking strategies and victim assistance.

3.8 Derivatives of Basic Data

Although many reports focus on the number of trafficked persons, while putting aside its relative significance, compared with the data on absolute number of victims, it is very useful to know the proportion of trafficked people in a population – *the crime rate*. The following example clearly demonstrates this. According to the 2014 ILO report, the regions with the highest number of victims per thousand inhabitants are Central and South-Eastern Europe and the Commonwealth of Independent States, although more than a half of all forced labourers were estimated to be in the Asia-Pacific region (11.7 million out of 21 million worldwide).

Comparison of absolute numbers of victims per region would not necessarily suggest that human trafficking is a critical problem in Central, South-Eastern and Eastern Europe (CSEE) and in the Commonwealth of Independent States (CIS). Nevertheless, a comparison of prevalence rates definitely indicates this. The relatively moderate number of 1.6 million victims or only 7 percent of the global total of forced labourers translates into the highest prevalence rate in the world with 4.2 victims per thousand inhabitants. The main reason is a significantly lower population than in other regions with a higher number of victims. It is well known that the number of victims, perpetrators or cases should be put in relation to the total population. Because the focus of reports on trafficking is often on absolute numbers, however, it is worth to additionally highlight this.

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48 The Guardian 2013.

49 *Robinson* 2011.

Generally, figures on human trafficking are also classified on the basis of gender, nationality, age and form of exploitation.[50] This can be seen as another type of data which has its foundation in basic figures on human trafficking, but requires additional information which supplements it.

Furthermore, in order to measure the extent of victim exploitation in destination countries even *complex algorithms* have been employed. It has been suggested for instance to apply the "Multiple Indicators Multiple Causes (MIMIC) structural equation model".[51] The model arises from the assumption that it is not possible to measure trafficking in human beings directly. Because of this, to measure the extent of trafficking in a particular country, authors argue that it is necessary to take into account indicators and causes of trafficking. Hence, it is first attempted to identify both indicators and causes of human trafficking, such as a number of identified victims as a major indication, results on 3P-index (Anti-trafficking Policy Index), size of a country, and GDP per capita. Subsequently, these parameters are put into a formula model which results in numerical assessment of trafficking – the degree of trafficking in destination countries. Finally, this measure of the intensity is used to rank more than 140 countries within a ten-year period.

As discussed above, derivatives of basic data can be informative. Despite this, these data must be interpreted with caution because they have several weaknesses. The most important limitation lies in the fact that derivatives are characterized by the same problems as basic data. Due to the high dark figure, it is hardly possible to estimate accurately the number of trafficked persons.[52] Consequently, all the data which take these figures as their starting point, are inevitably based on the unreliability of the basic data. Additionally, derivatives bear the risk of their own, independent deficiencies. As far as structural equation models are concerned, for instance, although in the absence of valid and accurate data they can serve as useful indicators, it is hard to believe that it is possible to identify and isolate all the factors influencing human trafficking. Without this, however, final results might be misleading.

3.9 Reports

Most of the reports on human trafficking are descriptive in their nature and present findings on different aspects of this type of crime and governments' responses to it. Similarly, an annual report issued by the U.S. Government, The Trafficking in Persons (TIP) Report, creates a special monitoring system commonly used to independently measure performance of states in combating human trafficking. Nevertheless, each country is also classified into one of the three tiers, depending "more

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50 See e.g. Eurostat 2013; Dutch Rapporteur 2013.

50 *Rudolph & Schneider* 2013.

52 See *Datta & Bales* 2013.

on the extent of government action to combat trafficking than on the size of the country's problem."[53]

3.10 Possibilities and Limitations

In this section a variety of methods used to measure the scope of human trafficking have been described. The list presented is by no means exhaustive – other numerical data which aim at quantifying human trafficking could be conceived. Each of the measures describes a distinctive feature of human trafficking, from illustrating the segment of the population affected (number of victims, number of traffickers) to clarifying the dynamics of trafficking relationships (length of trafficking, number of victims/traffickers per case). Taken together, the different aspects have the potential to get closer to an overall picture.

As was mentioned earlier, current research has dominantly concentrated on estimating the number of trafficked persons, occasionally giving attention to the number of traffickers and estimates of profits. This leaves abundant room for further progress in utilizing strengths of other quantifiable measures of human trafficking, which would enable recording, deeper understanding and comparison. On the other hand, limitations of quantifiable measures, as discussed above, raise questions about other possibilities of describing and understanding human trafficking, which will be analysed in the next section.

4. Qualitative Methods

Apart from the imperfections of quantitative methods, there are other reasons why conducting qualitative research on human trafficking seems desirable. They will be presented in this section. Although the number of victims or cases could relatively accurately reflect the magnitude of the problem, the seriousness of human trafficking does not necessarily lie in the quantity of victims, traffickers or cases, but rather in the grave nature of the crime itself. Similarly, although the data on profitability of the human trafficking business shed some light on the problem, they completely neglect other important aspects of this type of crime, which are crucial for full understanding of the phenomenon.

The advantages of using qualitative methods may be grouped into three main categories. Firstly, general benefits of employing qualitative methods in criminological research, examined by *Noaks* and *Wincup* in their central work on qualitative research in criminology, are valid in this specific case as well.[54] They can usefully complement quantitative methods, they provide a means of researching the "dark

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53 US Department of State 2014, 40.

54 *Noaks & Wincup* 2004.

figure of crime", they might help to inform the improvement of criminal policies and they also contribute to an "appreciation" of the social world from different perspectives of the victim, perpetrator, or third involved persons.[55]

Secondly, the use of qualitative methods seems particularly justified in the study of crimes such as human trafficking. There is a consensus that the measurement of human trafficking, human smuggling, forced labour, and sexual exploitation is more challenging than measuring other social problems, primarily because of their hidden nature and high dark figures.[56] Also, because trafficking in human beings is a relatively rare phenomenon, detected cases of human trafficking are not frequent enough that quantitative methods could lead to meaningful and comprehensive generalizations, unlike in the research of more frequent and common crimes. As a result of this, the sample size of most of the statistics is relatively small, especially when results are grouped according to particular variables (e.g. type of exploitation, age, sex, nationality). Another difficulty is that considerable differences in monitoring systems exist between various European states. Various governmental and nongovernmental bodies on national and international levels measure human trafficking differently, which additionally complicates comparison between different countries.

In many cases, short stories containing the details of particular trafficking cases, interviews with victims and offenders could give us a deeper understanding of the patterns and trends in human trafficking than scarce numerical figures.[57] Any research on human trafficking or on anti-trafficking policies should go beyond the document analysis and study the enactment of policies and of the situation on the ground, which is usually more difficult and time-consuming.[58]

Lastly, in a regional study such as this one, the use of qualitative methods could have especially good results. Trafficking in human beings is typically a transnational crime. Therefore, it seems reasonable to examine it transnationally. Results obtained from quantitative study of data based on small national samples are especially useless for relatively small states in the Southeast of Europe, where sometimes less than a dozen of victims are identified annually.[59]

Nevertheless, it would be wrong to suggest that the use of qualitative research methods on human trafficking is fully exempt from research difficulties. This is the reason why although the preference in this research project will be given to qualitative

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55 *Noaks & Wincup* 2004.

56 *Savona & Stefanizzi* 2007.

57 TrafStat Project 2013.

58 *Vance* 2011.

59 According to the official statistics of the Croatian Ministry of Interior, the number of identified trafficked persons in Croatia, for instance, was 11 in 2012, 14 in 2011, and only 7 in 2010 (MUP 2014).

research, a mix of both methods will be utilized. There is no doubt that bringing together different methods with their own blend of strengths and weaknesses can help to counter the weaknesses of one method by using the strengths of the others.[60]

Turning now to the specific research project on trafficking in human beings in and through the Balkans, purpose and methodological issues will be discussed briefly. The objective of the research project is to enhance the understanding of the key aspects of trafficking in human beings in and through the Balkans. This research will attempt to explore the organization of trafficking activities in the region, from early stages of recruitment, through the transit of the victims to the destination area and the exploitation. Taking into account all of the above, a viable research design will be created in order to conduct the qualitative study. Besides examining legal acts, official reports, and secondary sources, information will mainly be gathered through case studies and interviews.

4.1 Case Studies

The project will analyse the exploitation of trafficked persons from recruitment to the end stage of trafficking. In doing this, court and police records on trafficking in human beings and on trafficking-related offences appear as an informative starting point because they contain many descriptive data of relevance. For instance, some of the publically disclosed descriptions of cases of human trafficking with the purpose of labour exploitation in Croatia depict the features of trafficking activities and exploitation.[61] Each of the four cases included only one victim and three of them were exploited in pastoral farming in rural parts of Croatia.

This challenges the popular view of trafficking as a large-scale, organized business and illustrates the social dynamics between the traffickers and trafficked persons. Moreover, descriptions of cases highlight the vague line between trafficking in human beings and harsh working conditions. Despite the fact that it is difficult to make generalizations on the basis of single cases, all these insights seem valuable even independently, but they can also be useful for the creation of detailed research design. *Webley* suggests that the risk of focusing on an incomplete picture and consequently obtaining misleading results can be reduced by employing various data sources and collection methods.[62] This is likely to be correct and it is the reason why case studies will be used in combination with interviewing, which will be discussed in the following subsection.

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60 *Noaks & Wincup* 2004.

61 MUP 2010.

62 *Webley* 2012, 940.

4.2 Interviews

It is planned to conduct a series of interviews with identified and presumed victims of human trafficking and related offences, with individuals prosecuted or convicted for trafficking offences and with key players in human trafficking. This includes representatives of the police, border control bodies, prosecutor's office and victim assistance.

The interview manual with open-ended questions will be prepared based on which semi-structured, multi-site interviews will be conducted across the region. The fact that in many countries across the Balkans a language barrier does not exist will facilitate the carrying-out of the interviews and the study of the documents. Interviewing will be employed because it seems to offer an effective way of obtaining "phenomenologically thick description."[63] Information gained through this method will later be critically discussed and interpreted in the dissertation.

4.3 Research Challenges

Finally, a number of possible research challenges need to be considered. A part of them is inherent to the use of qualitative methods, and a part is common to the research on human trafficking. Firstly, considerable portions of the groups relevant to the study of this crime – such as traffickers, victims, and illegal immigrants – belong to the so-called hidden population, "a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists,"[64] so that it is not easy to obtain access to them. This also leads to sampling problems. Principally, two main options exist: the sample size can be the same in all the countries included in the research or the sample size can be tailored to the country size.

Another major limitation lies in the definition and legal qualifications of human trafficking. Legal definitions in different countries in the region are not fully congruent. In Bulgaria, for instance, the means of trafficking, i.e., the use of force, coercion, abduction, etc., which is one of the three constituent statutory elements of human trafficking in most jurisdictions, is not required to qualify an act as human trafficking. Furthermore, because of its complexity, the different meanings of human trafficking and human smuggling are sometimes blurred in the public.[65] Although cases of trafficking differ substantially among themselves, they may be very similar to some other crimes, human smuggling and pandering, for instance. The main, statutory difference is that human smuggling and pandering relations, unlike trafficking, require the consent of the victim. Although in some cases this difference is blatantly

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63 *Geertz* 1973.

64 *Tyldum & Brunovskis* 2005*,* 18; see *Heckathorn* 1997 for more information on hidden population and its sampling.

65 *Holmes* 2010.

evident, in practice, it is often challenging to objectively differentiate between the trafficking and smuggling.[66] As a result of this, it seems challenging to isolate trafficking from other similar, related crimes and to apply the complex legal definition to every case that is being researched.

5. Conclusion

Despite the fact that there has been a considerable growth in the number of academic books and articles published on human trafficking, there is still a significant lack of understanding of the issue. Researchers still struggle to grasp not only the extent of the problem but also to identify the victims, determine the root causes and even to distinguish trafficking from similar crimes.

After a brief overview of the human trafficking framework in the Balkans, this article has examined some of the possibilities for measuring human trafficking. These various measures describe diverse features of the trafficking phenomenon. Nevertheless, the focus has been on estimating the number of trafficked persons. Admittedly, the number of trafficked persons is a very good indicator of the extent of human trafficking, which can be an analytical basis for prevention policies.[67] Despite this, other, less researched measures could provide useful information on other aspects of the phenomenon. In general, it therefore seems that the application of different measures reflects inherent distinctions in the understanding of trafficking by focussing on different features of the phenomenon. Secondly, the article has discussed the advantages of employing qualitative methods. Strengths and challenges of the methodology that will be used in the research project on human trafficking in the Balkans were examined.

Arguably, one of the biggest problems of human trafficking research is condensed in this thought:

> "Much of the popular writing on human trafficking has been anecdotal or sensationalistic and most scholarly publications are either general overviews of the problem or critiques of the literature."[68]

This research project will aim at going beyond the mere stating that there is a lack of adequate research on human trafficking. Qualitative regional research will be conducted, which should make it possible to provide original data from interviews and case study analyses. Qualitative features of the research will not be limited to the use of traditionally applied qualitative data collection methods, such as interviews. It will go beyond that by employing qualitative analysis methods as well. From the

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66 *Vlad* 2006, 4.

67 *Albanese* 2007, 58–59.

68 *Weitzer* 2014, 6.

pool of collected data it will be attempted to draw conclusions, interpret the descriptive information and "derive an understanding of key patterns or themes."[69]

In order to combat trafficking in human beings effectively, comprehensive instruments are needed; however, this can only be done when the current understanding of this crime is enhanced. Therefore, root causes, perpetrators' incentives and relationships between traffickers and trafficked persons should be researched more deeply. More knowledge and understanding is needed in order to be able to establish appropriate legal and policy frameworks. This research project aims at precisely that.

6. Summary in Croatian

Usprkos povećanom interesu za trgovinu ljudima, točan opseg problema je uvelike nepoznat. Manjak podataka i razumijevanja otežava kreiranje efikasnih i ciljanih mjera protiv trgovine ljudima na razini Europske unije, ali i u Jugoistočnoj Europi. Ovaj članak predstavlja pregled istraživačkog projekta o trgovini ljudima na Balkanu koji se izrađuje u okviru istraživačkog fokusa I Max Planck partner grupe koji je usmjeren na istraživanje nasilja, organiziranog kriminala i ilegalnih tržišta. Članak počinje pregledom pravnog i političkog okvira trgovine ljudima na Balkanu. Nadalje, analiziraju se različiti načini na koje je moguće mjeriti trgovinu ljudima, primjerice broj žrtava i procjene profita. Konačno, članak predstavlja prednosti korištenja kvalitativnih metoda i planiranu metodologiju.

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69 *Webley* 2012, 948.

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Severe Economic Crimes Committed in Transitional Periods – Crimes under International Criminal Law?

Sunčana Roksandić Vidlička

We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free man". People who are hungry and out of job are the stuff of which dictatorships are made.[1]

In spite of many achievements and occasional exceptions, transitional justice has, like mainstream justice, not yet dealt with economic, social, and cultural rights adequately or systematically. I suggest that transitional justice should take up the challenges to which mainstream justice is reluctant to rise: acknowledging that there is no hierarchy of rights and providing protection for all human rights, including economic, social, and cultural rights. As with all other human rights, economic, social, and cultural rights call for constitutional protection, legislative promotion, and judicial enforcement. A comprehensive strategy for transitional justice would, therefore, address the gross violations of all human rights during the conflict as well as the gross violations that gaverise to or contributed to the conflict in the first pace.[2]

1. Introduction

This article articulates some of the preliminary findings of the Ph.D. project "Criminal responsibility for severe economic offences" that focuses on whether severe economic criminal offences should be qualified as crimes under international criminal law. It aims at exploring legal and social preconditions under which such offences may be characterized as crimes under international criminal law. Accordingly, in the Ph.D., possible amendments to expand the International Criminal Courts' *ratione materiae* jurisdiction will be proposed.

Placing more emphasis on the indivisibility of human rights and on the importance of including the protection of economic rights in the Statute of International Crim-

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1 *Roosevelt* 1944, para 4.

2 *Arbour* 2007, 26.

inal Court[3] could be seen as a necessary step in order to correspond with the new global developments and the concept, as understood today, of human security. One of the most widely-cited views of human security came in 2003: the Final Report of the UN Commission on Human Security (2003). The goals mentioned in the 2003 Final Report are often summarized as the *"freedom from fear and want"*[4] and are directly applicable when one is considering expanding the scope of international criminal law *strict sensu*. Those goals include: protecting the people in violet conflict; supporting the security of people on the move; establishing human security in transitional post-conflict situations; encouraging fair trade and markets to benefit the extreme poor; working to provide minimum living standards everywhere; according a higher priority to universal access to basic health care; developing an efficient and equitable global system for patent rights; empowering all people with a universal basic education.

Furthermore, the Ph.D. project, from which some preliminary conclusions are presented in this article, is exploring whether it is possible at all to aim to achieve security and *"well-being of the world"* in today's global world without prosecuting severe economic crimes, especially ones that have occurred in transitional periods. Especially if the transitional period is understood as the period that refers to a pre-conflict, conflict and post-conflict period and calls for the application of transitional justice[5] measures. One could state that all Balkan countries have undergone, or still are, in one of the phases of transition. All the countries in this region have been through changes to their political and economic systems, and some of them simultaneously through armed conflict.

Serious economic crimes have often been neglected after economic transitions or conflicts, no matter if criminal proceedings or truth commissions were conducted. Although these economic crimes often resulted in a substantial loss of profit to the

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3 Hereinafter: ICC.

4 *Smith* 2010, 42.

5 One of the most cited definitions of transitional justice is the one form *Ruti Teitel*. *Teitel* defines transitional justice as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (*Teitel* 2003, 69). Post-conflict justice is premised on an understanding that domestic stability, security and democratic governance in the aftermath of atrocity are strengthened by a commitment to accountability. Post-conflict justice is also referred to as "transitional justice". According to *Bassiouni* (*Bassiouni* 2010, 7), the term "post-conflict" is preferred because, "in almost all languages, the word 'transitional' modifies 'justice', and that is not what is intended. Transitional justice refers to measures adopted by the states in transitional periods after conflict." Although preferring the term post-conflict justice over transitional justice can have a valid argumentation, in some countries there was no conflict but transition was present (East Germany, Czechoslovakia, Hungary, Poland, etc.).

overall economy and society, they have not been widely prosecuted. The Balkan region is no exception to this rule.

In order to answer the Ph.D. research questions, which will be elaborated further on in this article, the Croatian experience in addressing severe transitional economic offences will be used as an example. Croatia can also serve as an example for the majority of the Balkan states. As *Albrecht & Getoš*[6] pointed out: the fall of communism in the Balkans, ethnic conflict in former Yugoslavia, the new allocation of state-wealth and its accumulation by the "new elite" usually strongly connected to or part of the criminal underworld, as well as weak states and corrupt justice systems, are just some of the conditions encountered in the region. This seems to be fertile ground for organized criminal groups to operate in and for illegal markets as well as informal economies to grow.[7]

While transitional economic crimes (referred specifically in Croatia as war profiteering crimes and crimes committed in the process of privatization and ownership transformation) were not prosecuted in the period of their occurrence, Croatia in 2011 abolished the statute of limitations for transitional economic offences with retroactive effect based on the justification that those crimes are regarded "as extremely grave crimes for which it is necessary, right and justified to rule out application of statute of limitations, particularly having in mind, circumstances of perpetration and consequences cause."[8]

Therefore, the focus of this article is on the elaboration of reasoning and background for the choice of the Ph.D. research topic and elaborating why Pandora's Box should be opened by invoking international criminal law to combat severe transitional economic crimes. Furthermore, research questions of this project will be presented as well. The underlying "Rechtsgut" is the protection of economic and social rights – freedom from fear and want. Some possible approaches of how to address these crimes will be articulated, i.e. amendments to the International Criminal Court's *ratione materiae* jurisdiction or prosecuting severe (serious and widespread) transitional economic offences as crimes against humanity.

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6 *Albrecht & Getoš* 2010.

7 This is one of the reasons why the Max Planck Partner Group for 'Balkan Criminology' has as its research focus (Research Focus I): Violence, Organized Crime and Illegal Markets.

8 The Decision Proposal to Amend the Constitution of Croatia 2009, 8.

2. Reasoning and Background for the Choice of the Topic: Prosecuting Gross and Systematic Economic Offences Committed in Transitional Periods

After the fall of the Berlin Wall in 1989, a political crisis in the former Yugoslavia reached its peak and led to its dissolution. Although in this period Yugoslavia still chaired the Non-Aligned Movement, a severe recession was present, with an annual inflation rate of 2.665% and an unemployment rate of 15% at the turn of the 1990s.[9] In the decade that followed dissolution, most countries of the former Yugoslavia, including Croatia, have gone through one of the most difficult transitions of all European countries. These changes in the political and economic system during the 1990s make Croatia comparable with other countries that have shifted to a market economy and undergone a privatization process (a *common denominator* with other countries of Central, Eastern and Southeastern Europe).[10] However, Croatia had at the same time experienced war and peaceful reintegration (*differentiating factor*). This differentiating factor, or "local context",[11] has proven to be of dominant nature for the Croatian transitional society, at least for prioritizing protection of civil and political rights over economic ones.

According to *Teitel,*[12] two political dimensions determine what signifies the rule of law in periods of transition: the transitional context, specifically the circumstances relating to political and legal conditions associated with periods of political change, and other political factors, such as the local context. Neglecting economic rights in Croatia led to a number of social, economic, political and legal problems in the years that followed and created conditions for what *Durkheim* calls the state of "anomie", as *Cejp* and *Scheinost* stated for the Czech Republic: "as a result of the social disintegration and disorientation brought by fundamental and ongoing changes in values and behavioral patterns."[13] Although the mentioned circumstances make Croatia's transition somewhat specific, political weakness in addressing the economic crimes in conflict and post-conflict societies was not typical only for Croatia.[14] The countries in transition share some common characteristics: increase in volume of crime, growing anomie, growing weakness of control mechanisms, emergence of new types of crimes, decrease in the efficiency of law enforcement, limited economic sources,

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9 *Engelberg* 2014; more in *Novoselec, Roksandić Vidlička & Maršavelski*, forthcoming 2014.

10 See e.g. publications from *Eser, Sieber & Arnold* 1996–2011.

11 *Teitel* 2003, 93.

12 *Teitel* 2003, 93.

13 *Durkheim* 1897/2005, 330; *Cejp & Scheinhost* 2012, 158–159.

14 See *Bassiouni* 2010, 18; e.g. for Hungary see *Inzelt* 2011, 352–378.

perception of an erosion of the state monopoly of legitimate violence, omnipresent fear of crime and preoccupation with safety concerns etc.[15]

Therefore, those contexts determined two categories of transitional economic crimes in Croatia for which statute of limitation is abandoned: (1) *war profiteering*, and (2) *crimes in the process of privatization and ownership transformation*. In many cases, perpetrators of these transitional economic crimes[16] abused the vulnerability of both processes and took advantage of Croatia being a young state.

During and after the Croatian War of Independence (1991–1995), Croatia suffered major financial losses due to the severe armed conflict that took place. According to the findings of the State Audit Report the direct war damage in the period 1990–1999 was DEM 65 billion, i.e. € 32 billion.[17] An important part of the war damage was a result of war crimes and collateral damage. In addition to this, every war brings the war profiteers along: "People who are harmed and killed in war often die unnecessarily gruesome deaths, often at the hands of those in uniforms … No matter who shoots whom, certain power elites make a profit."[18] Although the Croatian war profiteers abused the state of war for personal financial gain (e.g. setting disproportionately high prices of basic products and the sale of state property substantially below its value etc.), the profiteering was not included in the overall amount of the war damage.[19] And not only that, how much war profiteers earned was never officially revealed. To add "salt to the wounds", the process of privatization and ownership transformation, which began in 1988 (while Croatia was still part of the former Yugoslavia), was far from transparent and fully legal.

The initial concept was to transfer a substantial part of the state-owned corporations' shares to the workers for a privileged price, but a substantial amount of shares were purchased by "hawkers" and "peddlers", while corruption was omnipresent.[20] As the judges pointed out in the first instance judgement against *Sanader*,[21] the former prime-minister of the country abused his position for its own enrichment and not for the common good. According to the judges, "this judgment sends a message to people in power, current and future, that holding a public office must be performed for the common good and in the interest of society!" Furthermore, according to the judges, *Sanader*'s behaviour harmed "not only vital strategic interests but also

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15 *Albrecht* 1999, 448–450; *Albrecht & Getoš* 2010.

16 For the empirical and normative approach to the research of economic crimes see *Albrecht* 2003.

17 *Perković & Puljiz* 2001, 235.

18 *Nordstrom* 2004, 33.

19 See more in *Novoselec, Roksandić Vidlička & Maršavelski*, forthcoming 2014.

20 See e.g. *Grozdanić & Martinović* 2012; *Luburić, Matić & Quien* 2010, 13–20; OECD 2000; *Derenčinović* 2001, 7–33.

21 Zagreb County Court Judgement 2012.

damaged the reputation of Croatia in the world … contributed to apathy and disillusionment of people in the system, created a belief among young people that honest labor does not pay, but the violation of the law and the morality of the society does." The judgement emphasized that *Sanader* was "the architect of the system … that was an illusion of democracy." *Sanader* was sentenced to 8.5 years imprisonment.[22]

Impunity for perpetrators of serious transitional economic crimes that occurred in Croatia prior, during and immediately after the Croatian War of Independence was an example of ill treatment and neglecting of committed economic offences in conflict and post-conflict society. Findings of the State Audit Report that carried out revisions of the privatization processes were publicly revealed in 2004[23] and led to the change of paradigm in approaching transitional economic crimes. Although auditing bodies are different from truth commissions, their controlling tasks include truth-finding activities which make applicable what *Laplante* (2008) said for truth commissions as they "… could contribute to post-conflict recovery first by diagnosing the socioeconomic causes of conflict and then by issuing recommendations that would orient national political agendas toward addressing poverty and structural inequalities, namely through the promotion of sustainable development."[24] Following the publication of the Report in 2004, a new approach has been searched for in order to bring those cases before the face of justice. However, from the criminal law point of view, the Report seemed in most cases irrelevant because the statute of limitations for economic crimes committed in the process of transformation and privatization was soon to expire, or has already expired. Even the Transformation and Privatization Revision Report decisively stated the same.[25]

The formal legal obstacle did not prevent a necessary criminal policy reaction because the constitutional quest of social justice prevailed,[26] and new solutions had to be found as a reaction to irregularities found in the report. Ultimately, this resulted in passing Constitutional amendments allowing for the retroactive prosecution of all transitional economic crimes in 2010. The *Decision Proposal to Amend the Constitution of Croatia*[27] to allow retroactive prosecution of transitional economic offences specified that the transformation and privatization did not have the expected economic outcomes, hence the transformation and privatization had no significant positive impact on the economic development of Croatia: "Quite contrary, the im-

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22 Zagreb Supreme Court Judgement 2014.

23 Final State Audit Office Report on Revision of Ownership Transformation and Privatization 2004, 2.

24 *Laplante* 2008, 331.

25 Final State Audit Office Report on Revision of Ownership Transformation and Privatization 2004, 41.

26 Art. 3 Croatian Constitution.

27 Decision Proposal to Amend the Constitution of Croatia 2009, 8.

plementation of transformation and privatization resulted in the increase of domestic and foreign debt, caused a significant increase in unemployment, disproportionate and fast enrichment of individuals, and unjust impoverishment of many. Also, on the other hand, this implementation caused the fall of wages and pensions in real terms in comparison to costs of living and a number of other consequences. It is just and in the spirit of international law to deny the perpetrators of such grave crimes the possibility to avoid criminal liability by application of the statute of limitations. The basis for the statute of limitations is the guarantee of legal certainty to citizens, but it is certain that this institute should not be the benefit for the perpetrators enabling them to practically legalize the effects of such acts through the statute of limitations."

After the Constitutional amendment, in 2011 the Law on Exemption from Statute of Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization was passed as did a new Criminal Code. Ever since the new legal instruments were introduced, the public expected "grandiose" reactions from state prosecutors. However, around ten proceedings have been adjudicated,[28] and only one got tremendous media attention (the case against the former Prime Minister of Croatia, *Ivo Sanader*). This already cited judgement showed expressively what has been stated in the European Commission on Democracy through Law[29] Report on the relationship between political and criminal ministerial responsibility: "An area of criminal law that may be of particular relevance for ministers is that of corruption, embezzlement and other forms of economic crime. It is of particular importance that such rules be strictly and effectively enforced against ministers and other publically appointed officials, since such offences are not only to be seen as criminal, but may also easily undermine public trust and the legitimacy and authority of the democratic system."[30]

However, no matter how "right" the idea of passing such a Constitutional amendment was, its effective application is not an easy task for prosecutors. According to the Venice Commission Report on the Rule of Law,[31] legal certainty also means that actions or promises given by the state to individuals should in general be honored (the notion of "legitimate expectation"). Moreover, "legal certainty – and supremacy of the law – implies that the law is implemented in practice. This means also that it is implementable."[32] However, these crimes were committed long ago; witnesses lack credibility due to the time lapsed; a lot of concerned companies do not exist anymore; financial documentation has been destroyed or is non-existent; there are

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28 *Škugor-Hrnčević* 2013.

29 Hereinafter: Venice Commission.

30 Venice Commission Report on the relationship between political and criminal ministerial responsibility (2013, para 97).

31 Venice Commission Report on the Rule of Law 2011, para 48.

32 Venice Commission Report on the Rule of Law 2011, para 51.

difficulties in collecting evidence; and such *ex post facto* amendments again create legal uncertainty. Moreover, according to financial accounting regulations, accounting documents and financial reports must be kept between seven and eleven years from the year to which documents relate.

Furthermore, the problems that are emerging in prosecution of transitional economic offences committed more than 20 years ago are not only legal in nature. There is also fierce opposition by parties with financial interests, as well as the risk of political manipulation. Therefore, "legitimate expectation" given by the state to individuals by amending the Constitution and the statute of limitation for transitional economic crimes will be hard to justify. As mentioned, so far only a few cases have reached first instance judgements. However, according to the press release of the *State Office for Administrating State Property*, in the process of privatization and ownership transformation 7,700 stock holders of 3,270 corporations abused the statutory privileges in stocks transactions, directly damaging the state's budget for at least DEM 200 million.[33] Therefore, it could be stated that Croatia introduced legal mechanisms to address crimes committed in transitional period and it showed by its example, not only in theory, that in today's globalized society it is becoming harder to argue that only violent crimes represent a threat to the well-being of humanity and that only they shock the conscience of mankind and justify non-applicability of statutory limitations internationally.[34] However, the success of the reform will depend on the realization of those mechanisms by the enforcement bodies.

This new legal tool to investigate and prosecute these crimes opened many questions from a criminological, sociological, political and legal perspective: "It is necessary to examine why economic, social and cultural rights have not traditionally been a central part of transitional justice initiatives and whether there are real impediments to the pursuit of such a comprehensive ideal of justice in societies in transition."[35] In any case, the challenge for a democracy is how to reduce opportunities of wartime and/or other transitional periods for committing economic offences, i.e. how to make the costs of such behaviour so high that it will provide deterrence for profiteers. As *Galliher* and *Guess*[36] pointed out: "Had Sutherland known about the wartime behaviour of Kodak, ITT, and IBM [when he researched war profiteering][37] it is likely that he would have created a new and more extreme category beyond the 'treason' of DuPont. Genocide is one likely candidate." Maybe this is too extreme a solution, but maybe one also worth exploring.

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33 € 100 million, Portal www.Jutarnji.hr [19.07.2014]; see also *Filipas* 2013.

34 See UN Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity 1968.

35 *Arbour* 2007, 4.

36 *Galliher & Guess* 2009, 173.

37 *Sutherland* 1949 (1983).

3. Research Questions

It is important to discuss whether the introduction of new legal tools, like the ones that were adopted in Croatia, will fulfill the quest for justice and provide not only special prevention, but also general prevention in the form of deterrence for some possible future perpetrators of transitional economic crimes. The attempt to impose accountability with retroactive effect through criminal law, as the law of last resort (*ultima ratio*) often raises rule-of-law dilemmas especially in the "transitional justice" cases and can lead to a high degree of prosecutorial selectivity.[38] It is especially arguable when a law aims to restore the confidence between citizens and the state and among citizens themselves. If we see these long needed transitional justice mechanisms applied to strengthen economic rights and the principle of justice, then the Croatian Constitutional amendments should be welcomed with acclaim in those societies that have long neglected prosecution of economic crimes. Welcomed but with an important remark – the new legal tools must be enforced with reason and in accordance with the rule of law – if not, an additional circle of injustice would be created. If the Croatian solution should not be accepted and validated as an appropriate tool (firstly by ECtHR), other ways should be found in the international justice arena to effectively resolve the problem of prosecuting and punishing serious and systematic economic crimes and violations of economic and social rights.

The research of the Ph.D. has its focus on the concept of qualifying severe economic criminal offences as crimes under international law[39] in order to avoid vagueness and disadvantages of *ex post* solutions. One must bear in mind that the country after the conflict and while in transition is, in most of cases, not able or even willing to prosecute war profiteering or other grave economic offences. Based on the Croatian experience, it should be more than necessary that gross and systematic breaches of economic and social rights have, if not equal, but at least similar treatment in international criminal law to grave breaches of civil rights. This is even more so for the crimes that are committed in the particularly vulnerable transitional period.

Therefore, the research questions include:

- Could goals of transitional justice be achieved if serious and widespread economic criminal acts that occurred in the process of transition are not prosecuted?
- Is criminal law the most effective tool to "stop the culture of impunity" for serious economic criminal offences in the transitional period?
- What is (are) the most appropriate economic offence(s) to be considered as crime(s) under the international law?
- What should be the justification for introducing such an offence in the ICC Statute (Art 21 ICCSt, Art 38 ICJ)?

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38 *Teitel* 2003, 76–77.

39 According to *Werle* (2009, 42), "core crimes – crimes under international law – are part of international crimes and they are directly punishable under international law."

Although this research is not yet finalized, it is possible to articulate some of the preliminary answers in this article, if not the Ph.D.'s conclusions. The Ph.D. will be written based on *Lasswell* and *McDougal*'s approach. This approach[40] requires that identified and chosen problems must be of practical and social value for the provision of legal and practical solutions. Such solutions could be applied to solve practical problems in the society and in legal science: "The function of the responsible jurist, advisor or decision maker [who is part of decision-making process] is to develop an appropriate observational standpoint, clarify community goals, identify and then perform the intellectual tasks that will enable him or her to assist those who seek legal or policy advice in clarifying goals, and in implementing them in ways compatible with the common interest of the most inclusive community…the highest calling of all is to enhance human dignity in appropriate system of public order."[41]

4. Transitional Justice Mechanisms: Addressing Economic and Social Rights

Based on research questions, it is necessary to examine more closely transitional justice mechanisms applicable to post conflict societies. As *Sen* pointed out[42] "the exclusion of all economic and social rights from the inner sanctum of human rights, keeping the space reserved only for liberty and other first-generation rights, attempts to draw a line in the sand that is hard to sustain."

An approach toward (re)building the transitional and post-conflict societies based solely on the improvement of civil and political rights was proven to be counterproductive.[43] It is more and more argued among scholars that neglecting the prosecution of transitional economic crimes only enhances an impunity gap and social conflict by focusing almost exclusively on civil and political human rights violations while leaving accountability for economic crimes behind: "literature, institutions and international enterprises of transitional justice historically have failed to recognize the full importance of structural violence, inequality and economic (re)distribution to conflict, its resolution, transition itself and processes of truth or justice-seeking and reconciliation."[44] As *Carranza*[45] argues, while transitional justice promotes accountability by what it chooses to confront, it may reinforce impunity by what it chooses to ignore. Therefore, the strengthening of the protection of the economic and social rights in transitional states, including adequately regulating economic crimes, could

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40 *Lasswell & McDougal* 1992.

41 *Lasswell & McDougal* 1992, v–vi.

42 *Sen* 2009, 385.

43 *Carranza* 2008, 329.

44 *Miller* 2008, 266; see also *Parmientier & Weitekamp* 2007, 110–111.

45 *Carranza* 2008, 310.

be considered a *conditio sine qua non*, especially in states that shifted from the socialist economic system to the free market economy or are in one of phases of transitional period.[46]

In any case, criminal justice for human rights abuses committed during periods of political repression or dictatorship is one of the great challenges to post-conflict societies.[47] As transitional justice has the ambition to assist "the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future,"[48] it therefore calls for, as *Alexander Boraine* pointed out, a "holistic interpretation". This holistic approach to transitional justice should include protection and strengthening of all rights, not only civil and political ones. The harms caused by such economic crimes to individuals and society can be seen as just as serious as those caused by other crimes.[49]

At the beginning, transitional justice mechanisms and established truth commissions were mostly concerned with breaches of civil and political rights leaving behind breaches of economic, social and cultural rights. Approximately a decade after the South African Truth Commission was established (1995), this one-sided approach started to show some downfalls that attracted scholarly attention.[50]

Arbour in her article[51] examined why economic, social and cultural rights have not been traditionally a central part of transitional justice initiatives in the first place and whether there are real impediments to the pursuit of such a comprehensive ideal of justice in societies in transition. Regarding war economies, *Mani*[52] underlined that it has become impossible today to overlook the reality that in an increasing number of conflicts – alongside atrocities perpetrated on civilians – the traditional subject of transitional justice pattern of war economies has emerged, particularly around the exploitation of natural and mineral resources: "war economies strip a country of the very resources that are fundamental for post-conflict development." All individuals, including state officials who are found to have profited from such economies should be forced to repay their illegal profits to the state treasuries and to pay due compensation: "the same should be applied for corrupt political leaders or government officials that grant unaccountable and unethical agreements for resource exploitations rights – usually in exchange for military support"[53] (as e.g. in the Democratic

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46 *Teitel* 2003, 69.

47 *Schabas* 2004, 1.

48 *Arbour* 2007, 2.

49 *Carranza* 2008.

50 See e.g. *Arbour* 2007; *Mani* 2008; *Duthie* 2008; *Laplante* 2008.

51 *Arbour* 2007, 2.

52 *Mani* 2008, 257.

53 *Mani* 2009, 258.

Republic of Congo). *Duthie*[54] underlines that the reasons for adopting such a broad conception of transitional justice include that under authoritarian regimes and during conflicts, these types of crimes can be more widespread that crimes resulting in civil and political rights violations, involve more perpetrators and affect more victims. In *Duthie*'s opinion,[55] transitional justice measures may directly address development issues, including the violations of economic and social rights, as well as root causes of conflict and the structural and distributional inequalities that may have facilitated civil and political abuses, related to such issues as conflict resources, land, corruption, civil society, education and health (truth commissions in South Africa, Sierra Leone, Peru, East Timor and Liberia are the best examples of such practice). Moreover, *Duthie* argues that development related economic crimes in limited circumstances could constitute serious human rights violations. For instance, deliberate and systematic destruction of homes and property and deprivation of homes and property and deprivation of resources and services may constitute crimes against humanity under international law.[56]

These new approaches, i.e. addressing economic crimes in the mandates of truth commissions, got their practical implications and validity already. For instance, the Truth and Reconciliation Commission in Liberia was mandated (2005) to investigate economic crimes, such as exploitation of natural or public resources that perpetuated armed conflicts during the period from January 1979 to 14 October 2003 and to determine whether these were isolated incidents or part of a systematic pattern. Also it was mandated to establish the antecedents, circumstances, factors and context of such violations and abuses and to determine those responsible for the commission of these violations. The Report of the Liberia's Truth Commission[57] was published in 2009. It is worth to also mention that Liberia, like Croatia, faced a statute of limitations' problem for the prosecution of economic crimes. Similar to the Croatian approach, the recommendation of the Report was to extend the limitation period for economic crimes perpetrated during the conflict: "because economic criminal actors controlled Liberia's state-apparatus during much, if not all, of the time period provided for commencing prosecution under Liberia's statute of limitations, the Government of Liberia should adopt legislation that provides a general extension of statute of limitations that apply to economic crimes uncovered by the TRC and in subsequent, related investigations where the alleged perpetrator has evaded justice. The Government of Liberia should also adopt legislation that lengthens the statute of limitations for future criminal prosecutions related to economic crime."[58]

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54 *Duthie* 2008.

55 *Duthie* 2008, 301.

56 See, for instance *Marcus* 2003, 247..

57 Hereinafter: TRC.

58 p. 43, para 156.

The Report justified the aforementioned recommendation with the Art. 29 of the United Nations Convention against Corruption which calls on states to provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice and establish longer statutes of limitations for offences under the Convention.

The changes in paradigms, i.e., opening the doors for seriously addressing economic and social rights in post-conflict societies by transitional justice mechanisms, could be also seen in the UN approach when comparing reports on the Rule of Law and Transitional Justice from 2004 and 2011. The 2004 Report[59] did not contain clear concepts of how to effectively enhance the rule of law but in the 2011 Report that was not the case anymore. In the 2011 Report it was clearly stated that (The 2001 Report, 4): "… it is increasingly recognized that States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to international peace and security. Deep capacity deficits in State justice and security institutions, exacerbated by widespread corruption and political interference, lead to diminishing levels of citizen security and economic opportunity … Transnational organized crime emerges in parallel with increasing instability, stoking new forms of violence, while further undermining the legitimacy and competence of State institutions." Also, this Report highlighted that for societies emerging from conflict, weak justice and security institution struggle to manage the wider socio-economic and political challenges, are inherent in recovery processes: "Institutional actors may prove to be incapable or unwilling to pursue accountability for serious crimes of the past … A deepening appreciation of the challenges and risks that rule of law deficits pose to international peace and security informs a growing discussion among Member States on the impact that insecurity has on sustainable development and the achievement of the Millennium Development Goals. As … highlighted in the World Bank World Development Report in 2011, these efforts are key to facilitating complex processes of social, political and institutional transformation that break cycles of violence and activate economic recovery" (The 2001 Report, 4). Economic recovery and economic and social issues were dominantly present in the Report of 2011 in comparison to the Report of 2004.

This emphasis on the protection of economic and social rights, as well as tackling the organized crime offences, illicit trafficking, corruption and the root causes of conflict, including economic and social justice issues could be seen in the *Model Criminal Code* (2007), a model of criminal offences tailored to the specific needs of post-conflict states.[60] The *International Guidelines on Post-Conflict Justice*, so-

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59 The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies 2004.

60 E.g. section 6, 7, 9, and 10.

called Chicago Principles[61] also contain recommendations connected to the protection of social and economic rights.

To conclude this section, one more important point must be underscored. *Arbour*[62] emphasized that "the work of national and regional courts provides increasing evidence that there are no legal or conceptual impediments to identifying and adjudicating violations of economic, social and cultural rights. If violations can be established, then judicial protection and enforcement are possible." The adjudication of economic, social and cultural rights in a transitional context has also been shown to be possible. For example, the trial chamber of the ICTY in the *Kupreškić* case[63] recognized that the comprehensive destruction of homes and property may constitute a crime against humanity when committed with the requisite intent. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies, is also recognized as an international crime.[64] Furthermore, the TRC concluded that under international criminal law, individuals that have committed economic crimes during a period of armed conflict should be prosecuted for pillaging, a war crime, according to Art. 8 of the ICC Statue.[65] It must be mentioned that prosecuting pillaging as a war crime is not in the focus of this Ph.D., although it will be taken into account.

As with existing judicial mechanisms dealing with gross violations of human rights and humanitarian law, specific criteria grounded in solid theoretical and legal analysis and empirical research must be established to determine which violations should be addressed. Therefore, with this in mind, one could give an affirmative answer to one of the questions that *Mani* posed: "Should transitional justice concern itself directly with the war economies and corruption, particularly the exploitation of natural and mineral resources, as these are often perpetrated by the same war criminals – and with the same abusive, violent and exploitative means and devastating effects on victims – as the war crimes that historically fall within the purview of transitional justice?"[66]

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61 *Bassiouni* 2010, 41–65.

62 *Arbour* 2007, 12.

63 ICTY 2000.

64 *Arbour* 2007, 16.

65 TRC Report 2009, 42–43, para. 155.

66 *Mani* 2008, 253.

5. "Rechtsgut" – Protection of Economic and Social Rights: "Freedom from Fear and Want"

As *Leckie*[67] underlined: "of all domains where state and intergovernmental action on human rights have failed to achieve anything more than modest success, the development of effective measures for the prevention and remedying of violations of economic, social and cultural rights must surely classify as one of the most glaring."

When faced with many obstacles to include economic and social rights into transitional justice mechanisms and to ensure protection of those rights by international criminal law *strict sensu*, one must be reminded that economic and social rights found acceptance at the international level even before civil and political rights did.[68] In the latter part of the 19th century it was "increasingly recognized that improvement of working conditions at the national level required international cooperation and coordination."[69] The Atlantic Charter (1941), adopted by President *Roosevelt* and Prime Minister *Churchill* on 11 August 1941, articulated some of those concerns as well (trade barriers were to be lowered; there was to be global economic cooperation and advancement of social welfare; the participants would work for a world free of want and fear). Those Principles from the Charter expressed the desire to bring about the fullest collaboration between all nations in the economic and social field with the object of "securing, for all, improved labor standards, economic advancement and social security."[70] Moreover, the Universal Declaration of Human Rights and the place of economic, social and cultural rights within it reflected a fully integrated vision of human rights. One of the main sources of the broad approach to human rights in the Universal Declaration of Human Rights was also the "Four Freedoms Address" by President *Roosevelt*, from his State of the Union Address on 6 January 1941. These four freedoms include fundamental freedom of speech, freedom of worship, freedom from want and freedom from fear; freedoms people "everywhere in the world" ought to enjoy. By expressing these freedoms, *Roosevelt* obviously endorsed what would later become known under the notion of human security and economic security. As mentioned in the introduction, the goals mentioned in the 2003 Final Report of the UN Commission on Human Security are often summarized as the "freedom from fear and want".

Therefore, developments in the field of human and international security studies are correspondent to relative theory of criminalization and normative approach toward international criminalization of (transitional) economic crimes. Therefore, internal changes in the system of rights may call for change and adaptation of internation-

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67 *Leckie* 1998, 81.

68 See in *Eide* 2001, 16.

69 *Eide* 2001, 16.

70 *Russel* 1958, 975.

al criminal law. For instance, the development towards new types of fundamental rights, such as environmental rights, has occurred in parallel with a corresponding growth in legislation concerning environmental offences.[71] The same might be stated for economic offences.

Even though the human rights emerged as a unified body in 1948, they were divided in 1968 by the creation of the International Covenant on Civil and Political Rights[72] and the International Covenant of Economic, Social and Cultural Rights[73] as two separate covenants. Later on, the development of the human rights movement took place "at a time when the Cold War's ideological battles undermined the assumption of universality with respect to economic and social rights, whose tenor rung uncomfortably close to communism."[74] Therefore, when proposing international transitional economic offence, one must bear in mind which kind of economic system, among other protected interests, this offence would protect and enhance. German Constitutional Court decisions could provide with some answers. It is underlined in various decisions of the Constitutional Court that in Germany parameters of economic system are set, although they do not reflect a specific economic system, but "all economic policies must be enacted within the framework and in the light of the Basic Law's values" including the right to property under Article 14 and the right of occupational freedom under Article 12.[75] While paragraph 1 of Article 14 clearly states that property and the right of inheritance shall be guaranteed and their content and limits shall be defined by the laws, paragraph 2 of the same article proclaims that property entails obligations and the use of property shall also serve the public good. The economic system in Germany is therefore often described as a "social market economy" (soziale Marktwirtschaft): an outgrowth of German neoliberal and Catholic social thoughts, the social market economy is predicated on a belief in the compatibility of a free market[76] with a socially conscious state: "the social market economy seeks to promote a unified political economy based on the principles of personal freedom and social responsibility."[77] But, the Basic Law does not reflect a specific economic system, and in one of the landmark cases, Codetermination Case,[78] the Constitutional Court "reiterated the doctrine of neutrality by refusing

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71 *Nuotio* 2010, 245.

72 Hereinafter: ICCPR.

73 Hereinafter: ICESCR.

74 See e.g. *Donnelly* 1999; *Craven* 1995.

75 *Kommers & Miller* 2012, 623–626. See e.g. Hamburg Flood Control Case (1986) 24 BVerfGE 367.

76 Elfes Case, 6 BVerfGE 32, 41–45,1957.

77 *Kommers & Miller* 2012, 622.

78 50 BVerfGE 290 (339), 1979.

to treat the social market economy as a constitutional prescribed principle."[79] One could conclude that this economic offence under international law should also embrace the doctrine of neutrality.

However, the question "is one set of rights more valid than the others?" has been driven from "the rights hierarchy debate for decades" (*Laplante* 2007, 142). Also, part of the later "hierarchy of rights debate" arises out of the absence of an individual complaints mechanism to the ICESCR which allows individuals to bring a complaint to enforce their human rights,[80] as was the case with the Optional Protocol to the ICCPR. This concept, however, no longer holds true. From May 2013, the Optional Protocol to the ICESCR is enforceable and therefore economic, social and cultural rights enjoy the possibility of individual complaints for their breaches as civil and political rights enjoyed for decades.

In the meantime, the indivisibility of rights was proclaimed in many international and regional documents. The Limburg Principles from 1986 recognized that the systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. The World Conference on Human Rights in Vienna in 1993 (Vienna Declaration 1993, I, para. 5.) affirmed that "All human rights are universal, indivisible and interdependent and interrelated" and that "the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis." The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), also underscored (I, Art. 4) that it is "now" undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights: "if theoretical debate did not settle the indivisibility question …, simple reality" did: everyday life, especially in developing countries with histories of political violence and repressive governments, "proved the impossibility of dividing rights into generations (Laplante 2007, 142.)". Hence, as *Farmer*[81] documented, structural violence in the form of poverty and social injustices cause life and death situations in countries such as Haiti, Russia and Mexico. *Farmer* further writes, "rights violations are … symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm."[82]

All these documents present a legal and theoretical background for justification of including economic and social human rights violations in the scope of transitional justice. Moreover, although the ICESCR did not, until May 2013, contain provisions

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79 *Kommers & Miller* 2012, 629.

80 For example, *Dennis & Stewart* 2004.

81 *Farmer* 2003.

82 *Farmer* 2003, 7.

that guarantee that any person, whose rights and freedoms are violated, shall have an effective remedy, an increasing number of states have developed judicial and non-judicial remedies for economic, social and cultural rights violations.

Therefore, *Hefendehl'*s concept of the "Confidence in the safety and reliability of monetary transactions" as "Kollektive Rechtsgüter" could be of value when thinking of international criminalization of the most severe (transitional) economic crimes,[83] as a justification for its establishment. Through this offence, which will be proposed in the Ph.D., both individual and collective *Rechtsgüter* should be protected (*mixed Rechtsgut*). This is similar to the idea stated by the UN High Commissioner of Human Rights:[84] economic, social and cultural rights are sometimes wrongly interpreted as being only collective in nature.[85] While these rights can affect many people and may have a collective dimension, they are also individual rights. For example, forced evictions often concern whole communities, yet individuals suffer from the denial of their right to adequate housing. It is important to note that in the 1990s, in Germany the discussion began to relate the *Rechtsgut* to constitutional rights with the conclusion that the concept of *Rechtsgut* alone "cannot carry an adequate theory of criminalization."[86] A theory of Rechtsgüter started to be understood by some scholars as "a way of speaking about … constitutional commitments in the field of criminal law (Nuotio 2010, 252)*."* According to *Hefendehl*[87] "constitutional law provisions are not identical to how criminal law legitimately sees collective Rechtsgüter, but the Constitution is nevertheless able to set limits to what may count as protected interests." The best way of proceeding toward collective *Rechtsgüter,* according to *Hefendehl,* must go through the Constitution itself. This approach is of importance regarding the definition of transitional economic crime that would need international protection. Especially if we connect *Hefendehl*'s point of view with the one of *Habermas*[88]: "… human rights are connected with a universalistic claim to validity, which points beyond all national boundaries. This contradiction would find a reasonable solution only in a constitutionalized world society (not necessarily with the characteristics of a world republic)." Recent developments of international law and regulations in the field of protection of economic and social rights are a clear indicator of the new paradigm that would also need an *ultima ratio* protection guaranteed in international criminal law. In that sense, the Ph.D. research will have some referrals to Constitutional court decisions.

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83 *Hefendehl* 2002.

84 Factsheet No. 33 2008, 8.

85 See *Donnelly* 1990.

86 *Hirsch* 2003, 25; also see *Lagodny* 2003, 83–88; *Böse* 2003, 89–95.

87 *Hefendehl* 2002, 89; see also *Nuotio* 2010, 252.

88 *Harbemas* 2010, 475.

Therefore, preliminarily, one could state that one important "last strike" is obviously missing in the protection of economic and social rights violations. Unlike civil and political rights, economic and social rights still do not have their core crime(s) that is/are "shocking the conscious of mankind."[89] Although gross violations of economic, social and cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict. It is obvious that denying economic, social and cultural rights can affect large numbers of people: gastroenteritis caused by a lack of safe drinking water claims the lives of nearly 2 million children every year and has killed more children in the past 10 years than all the people lost to armed conflict since the Second World War.[90] As it was pointed out by the Statement of UN Committee on Economic, Social and Cultural Rights at the UN Vienna World Conference in 1993[91], "the shocking reality (is) … that states and the international community as a whole, continue to tolerate all too often breaches of economic social and cultural rights, which if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and lead to immediate calls for action*."*

While a human rights framework is valuable to the extent that it empowers people to claim their rights, holds violators accountable, and prevent future violations, without legal accountability for violators within a system precluding impunity, citizen's faith in legal system and the integrity and accountability of the state will wane.[92] The Special Rapporteur on Impunity addressed the obligation of states to establish the necessary legal framework to punish violations of economic, social and cultural rights in accordance with the provisions of international law, adding that in the case of collective rights, the appropriate penalty must be of an essentially reparative nature.[93] He additionally asserted that "violations of economic, social and cultural rights should be declared international crimes that are consequently subject to the principle of universal jurisdiction and imprescriptibility, so that they can be punished at any time and in any place."[94] Despite the relatively clear status of human rights law the international legal community has yet to come to terms with the fact

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89 "That an action is a crime against humanity if and only if it is an action that shocks the conscience of human-kind." This meaning was called upon by *Hartley Shawcross*, the Chief Prosecutor for the UK at Nuremberg, who claimed that the individual "is not disentitled to the protection of mankind when the state tramples upon his rights in a manner which outrages the conscience of mankind" (see *Bassiouni* 1999, 185; see also e.g. *Cassese* 2005, 440). It was later repeated in many occasions, see e.g. Preamble of the Rome Statute of International Criminal Court (1998), see United Nations General Assembly Resolution on the Crime of Genocide (1946).

90 Factsheet 33, 2008, 4 citing United Nations Children's Fund, Sanitation for All, 2000.

91 UN. Doc E/1993/22, Annex III, para 3.

92 *Leckie* 1995, 21

93 *Leckie* 1995, 35.

94 *Leckie* 1995, 36.

that homelessness, hunger, social and economic exclusion, discrimination on the basis of poverty, displacement, illiteracy, unemployment and many other social ills can usually constitute human rights violations. "These violations are as serious, as worrying and as threatening to the social and economic fabric of the world as any violations of human rights."[95]

6. Why Pandora's Box should be Opened – Importance of Invoking International Criminal Law in Combating Severe Transitional Economic Crimes

Invoking international criminal law in combating severe transitional economic crimes could be twofold, especially when taking into account already existing mechanisms in international criminal justice, i.e. through possible amendments to the ICC *ratione materiae* jurisdiction or prosecuting through crimes against humanity.[96]

It took approximately 50 years to establish the ICC.[97] The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held in 1998[98] was just "the top of the iceberg" that started already in 1949,[99] if we do not take into account previous attempts form the League of Nations, or even the one of *Gustav Monnier* that came already in the 1860s.[100] By establishing the International Criminal Court the states party to the ICC Statute aimed to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes, and to secure the peace, security and well-being of the world, in conformity with the purposes and principles of the Charter of the United Nations, and in particular the principle that all states shall refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations (ICCSt, Preamble). Not undermining the period of almost 50 years necessary for the establishment of the ICC, it must be noted that "international justice has often progressed more rapidly in post-conflict situations … Currently, the needs for justice and for respect of human rights go with demands for the accountability of their violations …"[101]

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95 *Leckie* 1995, 123.

96 "Other inhumane acts" in Art. 7(k) ICCSt.

97 *Cassese* 2009, 129.

98 *Cassese* 2009, 131–142.

99 Set up in Nuremberg, more in *Cassese* 2009, 128.

100 *Schabas* 2002, 1–5.

101 *Bernaz & Prouveze* 2010, 269.

If we see all international documents and the development of economic criminal law and human rights law through the world, and serious cases of severe abuse of economic power that occurred before, during and after conflicts or transitional periods, we could state that we are now in a "post-conflict situation" that could enhance more rapid response of the state parties to the ICC Statute in order to proscribe responsibility for gross and systematic abuses of economic human rights.

On the other hand, opponents to the voices of expanding the international criminal law[102] with severe economic offences must be heard too and their arguments must be taken into account before deciding if the expanding of international criminal law (ICL) would be at all effective and necessary. *Hefendehl*,[103] who is very sceptical about the forming of an "international business criminal law" for a variety of reasons, formulated his doubts as follows: "it has been shown that we can learn insightful lessons from the fight against national white-collar crime for the question of the legitimacy of international criminal law in this field. We have to concede that there is really no serious fight against such transnational corporations engaging in risky and potentially dangerous behaviour. These findings have to be taken seriously when it comes to thinking about international business criminal law … The risk of abuse by 'governing through crime'[104] policy far outweighs any achievements that could be obtained through penalization … Recommendation: let the matter rest."[105] A quite similar view is taken by *Derenčinović*, when critically assessing the introduction of the crime of illicit enrichment[106] in domestic criminal legislation. "Namely, the central issue concerning criminal law prevention and suppression of corruption is how to optimize the existing legal framework rather than substituting it with the new one. In other words, instead of introducing a new criminal offence into an anti-corruption legislation, due attention must be paid on how to improve the system of confiscations of illegal proceeds acquired by corruption criminal offences. So the accent should not be on new criminalization but on improving the already existing system set up to demotivate potential perpetrators from engaging in different forms of illegal exchange."[107] Although *Derenčinović* was not referring to an expansion of ICL, the message is quite clear. Although those statements should not be underestimated, the transnational nature of severe (transitional) economic offences and grave breaches of economic and social human rights significantly complicates their prosecution at a national level.

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102 Hereinafter: ICL.

103 *Hefendehl* 2010.

104 See *Simon* 2007.

105 *Hefendehl* 2010, 782.

106 *Kofele-Kale* 2013.

107 *Derenčinović* 2010, 18.

Moreover, one must differentiate between two situations before proposing transitional economic offences under international law. Sometimes national states are not able to successfully combat[108] serious economic crimes or enforce already present criminal offences while the states lack the power and the rule of law in general. The other possibility is that states have enough power but no will to prosecute serious economic crimes. "There exists an enormous disparity in the capacity of states to address their respective national problems of criminal justice. This is due to resources, professionally capable personnel, technological and logistical support, and the levels of priorities ascribed by politicians to criminal justice. Moreover, states that have these capabilities and resources do not provide those that do not with enough assistance and support. This is also evident in such post-conflict justice situations as Ethiopia, Somalia, Cambodia, Rwanda and Afghanistan. Some forty states fall in the category of Least Developed Countries and an estimated sixty states who are in category of Developing Countries are economically so marginal that they are borderline less developed countries. Moreover, almost all other Developed Countries are overwhelmed by their domestic crises of crime and corruption. This means that some two thirds of the world's criminal justice systems are unable to effectively cope with their domestic problems, let alone with needs of international criminal justice."[109] However, considering that ICL in a broader sense depends on the indirect enforcement system, and that means reliance on national criminal justice systems, one has to conclude that unless we can internationalize support and standards for national criminal justice systems, the ICL will not be effective, except occasionally and selectively.[110] The problem is even greater when the states themselves are gaining the profit from such crimes either through taxation of through gained profit of concluded business contracts. Or at least, some public officials.

On the other hand, the fear of "governing through crime" and enhancing "security over justice" could be taken as an argument to easily dismiss the expansion of the ICL with this offence and that is taken into account in Ph.D. research as well. One could agree with *Hudson* who emphasizes that: "There is no evidence to suggest that the inhabitants of the more dangerous places on the earth do not have the same desire for security that the inhabitants of affluent, well-governed places do. Neither is there any evidence that they do not also desire justice in the sense of being treated fairly, being able to defend themselves against accusations, being free from

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108 According to *Hefendehl*, who considers that "war on crimes" is an alarming trend and the reason for the introduction of more criminal offences or for broadening the scope of existing ones, the term "combat" is in line with the "war on crime" approach – a synonym for taking action against something considered evil: "Governing through crime, namely the (political) instrumentalization of crime rates and crime policy as an excuse to accomplish other objectives" (*Hefendehl* 2010, 770).

109 *Bassiouni* 2013, 971.

110 *Bassiouni* 2013, 972.

torture if they are suspected or convicted of offences, and receiving assistance and compensation if they suffer losses. The distribution problem is entailed in the fact that we want security and justice for ourselves and for those with whom we share a sense of community, and we want security from others, and have little concern for justice toward others if we feel they threaten our own safety and well-being. The distribution of justice and security follows Garland's[111] distinction of 'the self' and 'the other', people like ourselves whose actions we can understand and who we can assume share our values, and those who seem incomprehensible and unpredictable, not part of our moral community."[112] This is especially evident in the cases where transnational companies of developed countries violated human rights in developing ones, like *Doe v. Unocal*, *Shell case* in Nigeria, *Global Witness v. Afrimex Ltd* in Congo, *Chiquita case* in Columbia. In order to avoid the notion of justice for "the self" and "the other", introducing gross and systemic violations of economic rights as the crime under international law would prevent that divisibility. On the other hand, that division is no longer a "safe" one. As *Albrecht* pointed out,[113] "European countries – where corruption for a long time had been thought to present a plague strictly confined to underdeveloped countries – now are recognizing eminent dangers of corruption and an urgent need to control corrupt practices in the political, administrative and economic system."

For defending the possibility to reconsider the expansion of the area of ICL, one must, as stated, also look at the recent development of the human rights law. By the Resolution 2005/69[114] the UN Office of the High Commissioner of Human Rights stressed that a special representative was "needed to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights and to elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation" and six years later the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework were endorsed (2011)." Also, when we take into account "the indivisibility of human rights", and the soft laws that are brought to combat against corruption especially ones from relevant organizations such as International Monetary Fund, World Bank and OECD, then the question of expanding the ICL with severe (transitional) economic crimes becomes more plausible. Furthermore, *Global Compact*, the UN principle-based framework launched in 2000, encourages business to adopt sustainable and socially responsible policies in the areas of human rights, labor, the environment and anti-corruption. By doing so, business, as a pri-

111 *Garland* 2001.

112 *Hudson & Ugelvik* 2012, 6.

113 *Albrecht* 2010, 2.

114 Human rights and transnational corporations and other business enterprises.

mary driver of globalization, "can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere."[115] As it could be seen from these policies, the economy and human rights are becoming ever more intertwined.

Also, experiences from the United States could be valuable as well. The *Alien Tort Claims Act*[116] (ATCA) litigation in the United States persists "as a cottage industry, where it inspires plaintiffs, dissidents, circuit splits, concerns and truculence. This litigation opens a fecund vein that germinates a host of other legal questions – ranging from the status of corporations as defendants to the scope of customary international crimes to the redressability of grievous harms through symbolic civil damage awards."[117] The Act allows for district courts to have jurisdiction of any civil action by an alien for a tort, committed in violation of the "law of nations" or a treaty of the United States. Thus, since a decision in 1980 in *Filártiga v. Pena Irala*,[118] the US courts have placed a very expansive interpretation on the Alien Tort Claims Act provide that the US "district courts shall have original jurisdiction of any civil action by an lien for tort only, committed in violation of the law of nations or a treat of the United States."[119] Since 1980, the Act has been applied to gross violations of human rights perpetrated abroad by state officials against foreigners.[120] Then, after *Kadić v. Karadžić* trial,[121] a non-state actor could be held liable under the ATCA for his complicity. The case against *Karadžić* therefore laid the groundwork for lawsuits against multinational corporations as well (e.g. Unocal, Royal Dutch Shell PLC and Caterpillar). In a landmark case in 2004, in *Sosa v. Alvarez-Machain* (29 June 2009), the Supreme Court affirmed the Filártiga line of cases, holding that ATCA provides a jurisdictional basis for claims for violations of international norms that are specific, universal and obligatory, "based on other norms that already exist or may ripen in the future into rules of customary international law."[122] But, in *Kiobel v. Royal Dutch Petroleum Co.*,[123] a United States Supreme Court made a decision in which the court found that the Alien Tort Claims Act presumptively does not apply extraterritorially. The importance of this will further be elaborated on in the Ph.D..

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115 Overview of the UN Global Compact 2003.

116 Alien Tort Claims Act 1789.

117 *Schabas, McDermont & Hayes* 2013, 538.

118 630 F.2d 876 (C.A.2, 1980).

119 28 U.SC, 3 1350.

120 *Cassese* 2009, 126.

121 Kadić v. Karadžić, 70 F.3d 232 82nd Cir. 1995, at 240.

122 Emphasized by *Cassese* 2009,127, § 2763 of the decision.

123 133 S.Ct. 1659 (2013).

7. Conclusion

If criminal law represents a manifestation of the monopoly of power to maintain social order and peace and protect human rights and life in the community, then the absence of a reaction to serious economic violations can lead, in extreme cases, to the occurrence of failed states,[124] especially in today's globalized world and in the transitional societies. Corrupt and unaccountable security institutions are a cause for human insecurity and state failure.[125] "The mechanism of inclusion and exclusion is generally how the law meaning fully applies force or allows violence."[126] Especially if we see the legal system as *Luhmann* conceptualized it "as a social system's immune system that sought to avoid 'violent resolution of conflicts' by providing alternative means of communication for every conflict."[127] Seriously addressing gross and systematic violations of economic rights is one of these mechanisms. In order to avoid the notion of justice for "the self" and "the other", introducing gross and systemic violations of economic rights as the crime under international law would prevent that divisibility.

Hence, one should turn to the scholars that are invoking the role of the ICL to try to find arguments for "internationalization" of severe economic offences. Among the first that have raised this issue include *Kofele Kale* (2006), *Bantekas* (2006) and *Carranza* (2008). Their proposals will be carefully analysed in the Ph.D., among other scholars who have written about this topic. Also, the Draft Protocol to amend the Protocol on the Statute of the African Court of Justice, Human and People's Rights (2012) and include corruption as an offence will be analysed as well.[128] While, as *Abass* pointed out[129] "international criminal justice has grown cyclically over the past century, with periods of intense developments punctuated by rather long stretches of dormancy. It is legitimate to ask whether we are now in the downturn of yet another cycle. The International Criminal Court has failed to live up to its own expectations. But the real challenge is the declining enthusiasm for the Court in Africa." Africa, as proposed in the Draft Protocol, would like to see some economic offences as *ratione materiae* of the proposed regional court.

The conclusion of *Drumbl* after addressing the future of ICL and transitional justice is: "Although international criminal law remains the dominant accountability mechanism for episodes of mass atrocity, it awkwardly elucidates the provenance of collective violence and organizational massacre. Perhaps, then, international crim-

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124 See e.g. *Risse* 2011.

125 *Oberleitner* 2005, 196.

126 *Bikindo* 2011, 162.

127 *Luhmann* 1995, 374–375.

128 For example, see *Abass* 2013, 49.

129 *Abass* 2013, 545.

inal law should recede and international post-conflict justice – a broader paradigm that includes diverse accountability modalities and a more sublime lexicon – should step up."[130] This is also in line with the new challenges for the ICJ: how will existing ICJ delivery models be reshaped and retooled to deal with new risks, threats and transgressions that international actors may consider worthy of regulation through international criminal justice strategies:[131] (1) lower level violations of international humanitarian law and human rights; (2) transnational organized crime; (3) environmental crimes and (4) white-collar, financial and corporate crimes?

Perhaps the time has come to consider some of most serious, systematic and widespread economic offences, breaching economic and social rights as crimes under international law.

8. Summary in Croatian

Ovaj članak donosi neke od važnih zaključaka doktorskog istraživanja pod naslovom *"Kaznena odgovornost za teška gospodarska kaznena djela počinjena u tranzicijskom period,"* čiji su mentori profesori *K. Tuković* i *H.-J. Albrecht*. Doktorska disertacija pripada Istraživačkom fokusu I Max Plank Partnerske Grupe: Balkan Criminology – Nasilje, organizirani kriminal i ilegalna tržišta[132]. Doktorska disertacija je usredotočena na pitanje kvalifikacije teških (tranzicijskih) gospodarskih kaznenih djela kao međunarodnih kaznenih djela. Svrha rada je istražiti pravne i socijalne preduvjete pod kojima se takva teška (tranzicijska) gospodarska kaznena djela mogu kvalificirati kao međunarodna kaznena djela *stricto sensu*.

Stavljanje većeg naglaska na nedjeljivost ljudskih prava te, podredno, uključivanje kaznenopravne zaštite teškog kršenja ekonomskih prava putem Statuta Međunarodnog kaznenog suda, može se smatrati slijedećim nužnim korakom kako bi se odgovorilo izazovima globalnog razvoja i odgovorilo konceptu *ljudske sigurnosti*. Nadalje, kroz doktorsku dizertaciju, a što je i u ovom članku prezentirano, istražuje se je li uopće moguće u današnjem globalnom svijetu imati za cilj postizanje sigurnosti i *„dobrobiti* čovječanstva*"* bez učinkovitog procesuiranja počinitelja teških gospodarskih kaznenih djela, posebice onih koje se javljaju u tranzicijskom razdoblju i uključuju međunarodni element.

Nerijetko su teška gospodarska kaznena djela, pogotovo ona počinjena u kontekstu ekonomske tranzicije ili ratnih sukoba, bila zanemarena i u mandatima *Komisija za utvrđivanje istine* te uglavnom podredna procesuiranju zločinima nasilja. Ista su uzrokovala značajne financijske gubitke te imala izrazito negativne učinke ne samo

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130 *Drumbl* 2013, 545.

131 *Henham & Finley* 2011, 13.

132 Voditeljica: *A.M. Getoš*.

na cjelokupno gospodarstvo, već i na vladavinu prava te društvo samo. Balkanska regija nije iznimka od ovoga pravila. Kako bi se odgovorilo na istraživačka pitanja, uzet će se kao primjer hrvatsko iskustvo u pristupu rješavanja teških tranzicijskih gospodarskih kaznenih djela. Hrvatska je ukinula zastaru kaznenog progona za tranzicijska gospodarska kaznena djela s retroaktivnim učinkom s obrazloženjem da se takva kaznena djela smatraju "iznimno teškim djelima za koja je nužno, pravedno i opravdano uskratiti primjenu instituta zastare, posebno imajući na umu vrijeme i okolnosti počinjenja, te prouzročene posljedice."[133] Time su, ova djela po nezastarjevanju izjednačena s najtežim međunarodnim kaznenim djelima, i.e. genocidom, zločinom protiv čovječnosti, ratnim zločinima i zločinu agresije. Ovaj članak ispituje imali li opravdanja takvoj tvrdnji i na međunarodnom nivou.

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133 Prijedlog Odluke o pristupanju promjeni UstavaRepublike Hrvatske, 2009, 8.

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Responsibility of Political Parties for Criminal Offences: Preliminary Observations, Challenges and Controversies

Aleksandar Maršavelski

> This power, whilst employed for the benefit of the community, and suitably to the trust and ends of the government, is undoubted prerogative, and is never questioned: for the people are very seldom or never scrupulous or nice in the point; they are far from examining prerogative, whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people and not manifestly against it.
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> (*Locke* 1689, 172)

1. Introduction

The role of political parties in criminal justice systems is usually viewed through their legislative powers when their members act in governments and parliaments as subjects who determinate states' criminal policies.[1] In modern democracies, the constitutional law ascribes them such powers because they are chosen by the people to represent their interests. However, political parties sometimes engage in criminal activities themselves, either by abusing their powers (police power, military power, financial power etc.) as a ruling party or by engaging in delinquent anti-government activities as a party in opposition (political crimes, terrorism, supporting criminal organizations etc.). Thus, the criminality of political parties ranges from practicing violence, engaging in economic crimes to taking part in organized crime.

In periods of war, the international community has laid down important international rules and infrastructure designed to end the impunity of politicians for the violence they commit – constituting war crimes, crimes against humanity or genocide. Furthermore, the latter two are applicable in peacetime as well, which makes it easier to prosecute and punish the most severe forms of "state terrorism."[2] Many authors have made proposals to introduce criminal responsibility of legal entities in international law[3] but

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1 See e.g. *Bridgmon & Bridgmon* 2010, 223–238.

2 See *Primoratz* 2004, 113–127.

3 See e.g. *Engelhart* 2010; *Stoichkova* 2010.

due to significant differences in corporate criminal legislations among countries, the international community is still not ready to adopt such a model.

In periods of economic crisis, there is an intensified public demand for responsibility of politicians and their parties. Dubious political decisions, especially the costly transactions from state's budget, are being watched and investigated in case of suspicions that crimes have been committed. Politicians connected to illegal markets and corruption are targeted first. It seems that here is a demand and need that goes beyond the responsibility of individuals – we are facing a new era of political responsibility as more and more countries are allowing criminal responsibility of political parties.

One of the central questions is how to attribute criminal responsibility to political parties? A further analysis will demonstrate that this depends on the status of a political party, which can be either "legal" or "illegal". When a political party is "legal" it normally means that it is registered as such and has a status of a legal entity; while the "illegal" status of a political party is usually attributed to criminal organizations (mostly terrorist organizations). This distinction is crucial for the attribution of criminal responsibility.

Moreover, this opens a more fundamental question that goes deep into the essence of each state: Who should take actions when a ruling party engages in criminal activities? There are many potential actors in this field: various courts (supreme courts, constitutional courts, criminal courts, administrative courts, civil courts, special courts, international courts), the head of state (e.g. by pardoning), the parliament (or parliament's body) or the people (e.g. in a referendum). The choice of actors depends on the type of measures that we want to impose on political parties. By their nature, they can be classified as: constitutional (e.g. impeachment), criminal (e.g. dissolution), administrative (e.g. fine) or civil (e.g. compensation) measures; and usually it is possible even to apply them simultaneously in parallel proceedings.

Furthermore, it is necessary to be aware of possible obstacles in investigating, prosecuting, convicting and punishing political parties for criminal offences: immunity, abolition, amnesty, pardon, law amendments, political preferences of prosecutors and judges etc. The purpose of aforementioned obstacles is mainly related to preventing the so-called vicious prosecutions, which intend to discredit certain political parties. However, it is necessary to determinate the correct balance in the spectrum of their application in order not to lead to a condition of irresponsible political structures.

Finally, one of the crucial issues in this area is to evaluate different sanctions that can be imposed on political parties as well as its effects. A particular attention must be given to sentence of dissolution ("death penalty") of a political party, which many states tend to exclude.

Therefore, this paper will first address the phenomenology and the etiology of crimes committed by political parties, i.e. the types of crimes in which political parties are usually involved in, as well as the causes of such involvement. Second, this paper

will address the problem of attribution of criminal responsibility of political parties, in particular discussing different models of criminal liability. Third, since criminal justice intervention is usually considered to be the "ultimate measure" (*ultima ratio*), it is necessary to observe the alternatives to the criminal law approach. Fourth, criminal proceedings involving political parties face various obstacles regarding the initiation and undertaking of such proceedings, which must be taken into account when searching for an adequate model of responsibility for criminal offences. Finally, one of the crucial points is to evaluate available criminal sanctions for political parties, as well as their (desired and undesired) consequences.

The structure of this research suggests a need of a comprehensive both theoretical and case study analysis. Literature dealing with responsibility of political parties for criminal offences practically does not exist, which means that a new theoretical approach needs to be developed. On the other hand, there are hardly any cases dealing with criminal responsibility of political parties as legal entities. The first case of convicting a political party as a legal entity took place in Croatia, which is, therefore, of crucial importance for this research. As other countries in the region have similar legal systems and have had similar experiences in the past, this research will also reveal certain cases and approaches to the criminality of political parties from the Balkan countries.

2. The Phenomenology and the Etiology of Crimes Committed by Political Parties

2.1 The Types of Crimes Committed by Political Parties

There are several ways to categorize the types of crimes committed by political parties. In relation to whether a political party's activity is "authentic" i.e. whether it represents the will of the people, the political parties' delinquency is two-sided. First, they sometimes fail to represent their voters' or supporters' interests by abusing the given powers (e.g. engaging in corruption, practicing violence, illegal wiretapping etc.). Such criminal behaviour is particularly dangerous because it is difficult or impossible to investigate while the party is in power − practical obstacles of investigating a ruling party are inevitable no matter how democratic is the legal system (e.g. prosecutors have no political support; major actors enjoy immunity from prosecution; there is always a possibility that the party in power would amend the law in order to avoid responsibility by applying the *lex mitius*, there is a possibility of granting an amnesty, etc.). Second, sometimes the interests of the political party's voters or supporters are illegal *per se*, which means that in such case the party is faithful to the population it represents, but by doing so it violates the law (e.g. activities of terrorist groups or neo-Nazi parties). However, as it is often difficult to bring political parties' actions in relation to the popular attitudes, in the forthcoming paragraph a more complex categorization of political parties' criminality shall be given.

Already from the foregoing paragraphs, one could notice that the phenomenology of criminal activities of political parties is somewhat specific due to the particularity of the position they have in states and societies. The preliminary research of the criminality of political parties demonstrates that their criminal behaviour is mainly limited to: economic crimes (corruption, tax evasion etc.), election crimes (unlawful campaign financing, election fraud etc.), political crimes (lèse-majesté, treason, sedition, espionage), international crimes (genocide, crimes against humanity, war crimes, crime of aggression, terrorism), crimes against privacy (illegal wiretapping, illegal data interception), hate speech, unlawful imprisonment and torture. The foregoing crimes can be divided depending on three major circumstances: (a) whether they are in power or in opposition, (b) whether they act in a totalitarian, transitional or democratic environment, and (c) whether they act in peace or in warfare.

The need of a better understanding of national legal systems, as well as of the political environment at the same time, suggests that it would be appropriate to focus this research primarily on countries that belong to the same region, share similar legal tradition and have a long history of political ties. As most Balkan states (former Yugoslav Republics) have recently gone through a transition from a totalitarian regime to a period of war, and ultimately to democracy and peace, such a variety of external influences make it an adequate geographical area for conducting an empirical research of this kind. The second group of Balkan states have changed their totalitarian regimes for democracy without war (Bulgaria, Romania and Albania). Greece and Turkey had different paths – the former being an EU member currently facing a severe economic crisis, while Turkey being an EU candidate experiencing an armed struggle with *Kurdistan Worker's Party* (PKK). The political violence has been one of the major characteristics of this region. Such violence tends to radicalize from mere discrimination and hate speech (verbal violence) to terrorism, guerrilla struggle and warfare.[4] Furthermore, the historical background of this region reveals intriguing events relevant for this research: the assassination of Archduke *Franz Ferdinand of Austria* in 1914 in Sarajevo organized by a political party *Young Bosnia* triggered the First World War; the assassination of King *Aleksandar I of Yugoslavia* in 1934 in Marseilles was organized by a political party called *Internal Macedonian Revolutionary Organization* (IMRO); the *Romanian Communist Party* (PCR) was responsible for decades of terror of its people that ended by executing its leader *Nicolae Ceauşescu* and his wife after a 60-minute kangaroo trial in 1989 (while the members of the PCR never faced trial nor punishment, but instead, a lustration law was passed 20 years later). However, all these violent acts occurred in the era of impunity of ruling political parties.

Today we are facing a shift in paradigms: the new era introduces criminal (or at least misdemeanour) responsibility of legal entities, including political parties. The first

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4 *Getoš* 2012, 105–110.

case of criminal conviction of a political party took place in Croatia. The case has nothing to do with political violence, but it is more related to political corruption. In April 2012, a Croatian county court began a trial against one of two major political parties in Croatia, the *Croatian Democratic Union* (HDZ) and against the former Prime Minister *Ivo Sanader*.[5] The state attorney's office accused *Sanader*, HDZ and several accomplices of conspiracy and abusing power by making illegal transactions with *Fimi Media* company and by receiving illegal donations, in the period between 2003 and 2009, through which HDZ illegally gained at least 31.6 million kuna (€ 4.1 million), while *Sanader* himself illegally obtained at least 15 million kuna (€ 2 million). On 11 March 2014, HDZ was convicted and fined with 5 million kuna (€ 650,000) and is ordered to pay 24.2 million kuna (€ 3.1 million) of reparations.[6] The case is now on appeal and the outcome of this procedure will be a real "experiment" for evaluating the concept of criminal responsibility of political parties as legal entities.

Some countries have not passed laws establishing criminal liability of legal entities. Greece is one of them. However, this did not prevent Greek police to arrest in September 2013 several members of *Golden Dawn*, a neo-Nazi political party, which was categorized as a criminal organization. *Golden Dawn*'s leader *Nikos Michaloliakos* was charged with heading a criminal organization, which has been linked to a number of violent acts directed mostly against immigrants and leftists. This case demonstrates the possibility of holding political parties responsible as criminal organizations.

Turkey took another path in "punishing" political parties. There are many active illegal political parties in Turkey, which have been dissolved by the Constitutional Court. Several cases have been brought before the European Court of Human Rights (ECtHR) which addressed the question whether the dissolutions of these political parties ordered by the Turkish Constitutional Court were in violation of Art. 11 of the European Convention of Human Rights (ECHR). The analysis of the ECtHR's jurisprudence on political parties is crucial for setting the criteria in which cases a sanction of dissolution of a political party is sound with current human rights standards.

The experiences from Balkan countries in combating criminal activities of political parties could have relevancy in searching for global solutions of this problem. However, in order to understand the background of criminal legislation in these countries, it is necessary to observe the legislative "role-models" (such as Germany, France,

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5 Former Prime Minister *Sanader* was involved in several corruption affairs in the 1990s and 2000s, including the first war profiteering case in which the new Croatian Law on Non-Applicability of Statutory Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization has been applied (see *Novoselec*, *Roksandić Vidlička & Maršavelski* forthcoming 2014).

6 County Court of Zagreb, Croatia, Case No. 13 K-US-8/12, Judgement of 11 March 2014.

U.K. and the U.S.) in order to evaluate the effects of "legal transplants" taken from these countries. Furthermore, since international criminal justice has had important impact in the major part of this region (former Yugoslav states) in the past two decades, it is necessary to analyse the relevant international criminal law standards, especially the ICTY's case law, which attempted to criminalize whole governments through the controversial concept of *joint criminal enterprise*.[7]

The foregoing paragraphs have revealed that violent crimes, behaviour as criminal organizations and financial abuses are often features of political parties' criminality. Therefore, this topic fits in the wider concept of the Max Planck Partner Group research focuses, while being in particular related to the "Research Focus I", dealing with violence, organized crime and illegal markets.

2.2 The Causes of Political Parties' Criminality

There is no empirical research on the causes of political parties' criminality. However, at this point we can establish certain hypotheses that can be used as guidelines to answering the question why political parties engage in criminal activities. Of course, in order to verify their accuracy, it requires further research and testing their applicability in case studies.

According to *Locke*,[8] once a political party is employed to participate in the legislative or executive branch of the state power, it has a duty to act for "the good of the people, and not manifestly against it." However, political parties often fail to obey this duty. The main reason for this is one of the main driving forces in humans that *Nietzsche*[9] calls: "the will to power" (*der Wille zur Macht*) – the "danger" and the "end of good and evil". In other words, political parties' main goal is often not the welfare of the people, but to obtain and keep the power. The "danger" of the will to power has two possible criminal manifestations. On the one hand, it exists when the political party is in power – in form of the possibility to abuse the given powers (abuse of office, bribery, torture, election fraud etc.) in order to expand or maintain political power or to achieve financial power. On the other hand, the danger also exists when political parties are in opposition, because they can be driven by ambition to use unlawful means in order to gain power (terrorism, espionage, bribery etc.). Since political parties in opposition are not in power, *argumentum a contrario*, they need not necessarily act for "the good of the people," however, they are still obliged not to engage in criminal activities.

Political parties are capable for what *Merton* (1938) calls "innovation" and "rebellion". They tend to be innovative when driven by their will to achieve or maintain

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7 See *Damaška* 2005; *Damgaard* 2008; *Derenčinović et al*. 2011.

8 *Locke* 1689/2003, 172.

9 *Nietzsche* 1884/2006, 88.

political or financial power, which are considered to be the main "culturally induced success-goals" in capitalist societies.[10] Since the institutionalized legitimate means for achieving those goals are often limited (e.g. the national budget cannot be used for financing political campaigns apart from amounts regulated by law; the election rules require transparent and free elections etc.), political parties seek "innovative" means to achieve their goals – corruption, tax evasion, election fraud et cetera. On the other hand, when in opposition, political parties tend to be rebellious, especially when they do not have the legitimate means to overthrow the ruling political party. Thus, political parties in opposition may sometimes recourse to crimes such as terrorism, treason or espionage in order to achieve their political goals.

In most countries, what is considered to be a crime when committed by other (natural or legal) persons, the state does not consider it as a crime when committed by a political party – either due to absence of provisions on criminal responsibility of political parties or because of unwillingness to prosecute political parties. There is some paradox in such state of affairs, because the political parties have the highest responsibilities when ruling the state, however, they bare very little responsibility when they abuse the given powers – the main sanction is to be overthrown by another political party (either through elections or by means of force). Even for politicians, who bare the primary criminal responsibility, there are many obstacles for prosecutions such as immunity, amnesty, abolition and pardon.[11] The reasons of this "discrimination" are well explained by critical criminologists such as *Quinney* (1977).[12] Political elites, as the creators of the legal framework that governs their activities, are in position to minimize the possibility of sanctions for the wrongdoings they commit throughout their mandates. This "vicious circle" creates a state of "responsibility without accountability", i.e. it provides power and functions to political elites, but the risks of sanctioning their misbehaviour are minimal.

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10 *Merton* (1938, 678) uses U.S. society as an example: "The extreme emphasis upon the accumulation of wealth as a symbol of success in our own society militates against the completely effective control of institutionally regulated modes of acquiring a fortune. Fraud, corruption, vice, crime, in short, the entire catalogue of proscribed behaviour, becomes increasingly common when the emphasis on the culturally induced success-goal becomes divorced from a coordinated institutional emphasis."

11 See *infra* Part 5.

12 In his book "Class, State, and Crime", *Quinney* (1977) argued that crime is a function of society's structure, that the law is created by those in power to protect and serve their interests (as opposed to the interests of the broader public), and that the criminal justice system is an agent of oppression designed to perpetuate the status quo. Furthermore, he argues that corporate and state violation of the law is "natural" and "necessary" to secure the capitalist system.

3. Attribution of Criminal Responsibility to Political Parties

One of the hypotheses of this research is that the attribution of criminal responsibility to political parties usually depends on the legality of their status. A political party is "legal" when it is registered as such and legal systems of most countries provides them a status of a legal entity (corporation). An "illegal" political party is in most cases a criminal organization. In the forthcoming paragraphs different theories of liability of legal entities and of criminal organizations shall be evaluated and applied to political parties. A complete assessment of different models of criminal liability of political parties as legal entities requires an analysis of historical developments of these models.

3.1 The Models of Liability of Political Parties as Legal Entities

Corporate liability evolved from the recognition of corporations as legal persons capable of holding rights and obligations separate to those of their human stakeholders.[13] Throughout history, private law doctrines have been more advanced in comparison with criminal law doctrines because they originated in the highly developed Roman private law. Two private law scholars of 19th century developed two opposing theories of corporate personality: (1) the *fiction theory* by *Savigny*,[14] and (2) the *reality theory* by *Gierke*.[15]

The fiction (or "nominalist") theory says that corporation is merely a legal construct that does not exist in reality, which means that it can only act through its human representatives.[16] The effects of this theory on criminal liability of corporations correspond to what in common law later developed as the identification (or "alter ego") model of corporate criminal liability, which says that a legal entity may bear criminal guilt through its identification with the human beings who serve as its "directing mind and will."[17]

The reality (or "organic") theory recognizes the corporation as possessing a distinct personality, which manifests its will through actions of its organs. This theory is largely rejected as being "unrealistic", because legal entities do not exist without the legal norms that regulate their status. However, some of its features have been adopted in the aggregation theory (or the doctrine of collective knowledge), which constructs the *actus reus* and *mens rea* out of the conduct and knowledge of two or more individuals acting as the corporation. Furthermore, the theories of autonomous

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13 *Wells* 2010, 10.

14 *Savigny* 1840.

15 *Gierke* 1881.

16 *Savigny* 1840.

17 Tesco Supermarkets Ltd v Nattrass 1972, AC 153.

corporate culpability[18] also have their roots in the reality theory because they observe the legal entity's criminal responsibility separately from the liability of natural persons.

However, in spite of the fact that corporate law doctrine first developed in civil law countries, the criminal liability of corporations was first introduced in the U.S. and U.K. The tort law jurisprudence in common law countries, which substantially influenced their criminal law, also developed a model of vicarious criminal liability of corporations for crimes of their servants, derived from the *respondeat superior* doctrine.[19] In civil law countries, the introduction of criminal liability of corporations came later – after first being introduced in the post-World War II period in Belgium, Denmark and France – the real expansion of this concept began in the 1990s.

Thus, a comprehensive evaluation of relevant theoretical models of responsibility of legal entities in comparative law and their application on political parties will be provided: identification theory, aggregation theory, organic theory, corporate guilt theory, corporate ignorance theory and compliance theory. Furthermore, the scope and limits of the statutory exceptions that exclude criminal liability of political parties shall also be evaluated.

3.2 The Models of Liability of Political Parties as Criminal Organizations

A criminal organization[20] in a broad sense is a structured enterprise of three or more persons existing for a period of time with the aim of engaging in criminal activity. There are two main types of criminal organizations depending on their major purpose: (1) organized criminal groups, which aim at obtaining material benefit; and (2) terrorist organizations, which are mainly politically motivated; and (3) other criminal organizations, aiming at committing serious criminal offences.

The main purpose of legislation related to combating criminal organizations is primarily to prosecute their members, while no sanctions can normally be imposed on criminal organizations as such because they are usually illegal enterprises. However, there are many examples of political parties acting as criminal organizations (in most cases as terrorist organizations), sometimes even when they are legally registered as political parties.

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18 The most notable among them is the German theory of "culpability for organizing" (*Organisationsverschulden*) of *Tiedemann* (1988). He argues that a corporation can be held culpable only for its organizational failures that caused the commission of an offence.

19 New York Cent. & H.R.R. v. United States 1909, 212 U.S. 481, 29.

20 For general observations on the liability of criminal organizations see e.g. *Albrecht* 1998.

A wider comparative perspective reveals that there are essentially three models of attribution of criminal responsibility to criminal organizations: (1) criminalization of participation in a criminal organization; (2) attribution of responsibility for the crimes committed by a criminal organization to its members through strict liability/foreseeability standard; and (3) accomplice liability (co-perpetration, perpetration-by-means, accessories). In the first model, the law criminalizes various acts of participation in a criminal organization as such: forming or being a member of a criminal organization, recruiting members for it or providing support to a criminal organization, which are punishable regardless of whether the actor himself perpetrates, aids or abets in a crime committed by the organization. The second model also criminalizes participation in a criminal organization, but under this concept a crime committed by the organization is attributable to all members (e.g. if a political party organizes kidnapping and torture of a member of the opposition, all party members may share criminal responsibility). The third model is quite different from the previous two, because it essentially cannot be used to condemn the whole political party, unless all of its members are involved in its criminal activities as co-perpetrators, perpetrators-by-means or accessories.

Within the scope of evaluating the application of each of these models to political parties, it is necessary to take into account certain provisions in some countries that exempt political parties from the application of criminal organization statues. A good example is § 129 (2) of the German Criminal Code, which explicitly says that the criminal offence of "forming criminal organizations" (*Bildung krimineller Vereinigungen*) shall not apply to political parties which the Federal Constitutional Court has not declared to be unconstitutional. The purpose of this so-called "parties' privilege" (*Parteienprivileg*) is to protect the "operation of a political party as such."[21]

4. Alternatives to Punitive Reactions on the Political Parties' Delinquency

Regardless of the fact whether it is possible to impose a punishment of dissolution, the consequences of criminal proceedings against a political party can be fatal for its political future. Furthermore, we have witnessed throughout history a number of criminal prosecutions of political opponents. For example, the political opponents in former Yugoslavia ranged from Nazi collaborators, *Stalin*'s supporters to progressive democratic proponents, and had been subjected to prosecutions, imprisonment

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21 See e.g. *Schäffer* 2012, Rn 70.

and death penalty. Such trials are referred to as "political trials" and they are still taking place in many countries, especially those in transition.[22]

Therefore, a comprehensive assessment of the concept of criminal responsibility of political parties cannot be done without an analysis of possible alternatives to criminal law approach. Namely, the criminal law provisions are considered to be the *ultima ratio* measures in a legal system, which means that when more lenient measures in other branches of law are available with the same effect, they should be used. These include: constitutional liability, political liability, civil liability and administrative liability, lustration laws, peace and reconciliation commissions. Each of these forms of liability requires a detailed analysis and comparison in order to assess the limits of criminal responsibility of political parties.

5. Obstacles in the Application of Criminal Law against Political Parties

This chapter has the purpose to reveal a legal realist perspective of the criminal responsibility of political parties, i.e. to demonstrate how politics particularly influences legal framework and decision-making related to the application of criminal law against political parties. As noted before, there are several obstacles in the application of criminal law against political parties. These obstacles are sometimes difficult to overcome due to the two opposing interests at stake: interests of justice vs. interests of democracy. On the one hand, there is a need of punishing the wrongdoer. On the other hand, there is a need of ensuring the effective functioning of the democratically elected bodies.

Investigations or prosecutions of politicians can *per se* have negative effects (especially in cases of so-called vicious prosecutions) that ought to be avoided by ensuring the immunity of high-ranking public officials. Most states do recognize such immunity as well as the possibility to lift the immunity upon the authorization of the body whose official is under investigation. However, leaving aside the fact that in totalitarian systems the ruling parties enjoy absolute immunities, the states normally do not formally recognize the immunity of political parties or the possibility to lift such immunity. The laws regulating criminal responsibility of legal entities sometimes just exempt the political parties from liability, which is *de facto* an absolute immunity.

Another problem in investigating, prosecuting and convicting political parties for crimes is that many countries recognize abolition, amnesty and pardon. These acts

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22 The most recent examples include Ukraine (*Tymoshenko*), Russia (*Navalny*), Rwanda (*Ingabire*), Kazakhstan (*Kozlov*), Bangladesh (*Chowdhury*), Malaysia (*Anwar Ibrahim*), Djibuti (*Abdirahman Bashir, Abdirahman God* and *Guirreh Meidal*), Kuwait (*Musallam al-Barrak*), Lagos (*Tinubu*), Côte d'Ivoire (84 Popular Front members), etc.

are usually given in competence of the head of state or the parliament. The controversy lies in the fact that the ruling party usually has a majority in the parliament and it is also possible that the head of state is also a member of the same party. Such conflicts of interest are obvious. The most notable example of such "self-pardoning" occurred in 1974 when the U.S. President *Gerald Ford* pardoned his Republican colleague *Richard Nixon* for Watergate scandal.

Furthermore, a ruling political party may amend the laws in order to avoid criminal responsibility. For example, this was done by *Forza Italia*, which passed several amendments in the Italian Parliament in order to save its leader *Silvio Berlusconi* from prosecution. However, once he lost power, first convictions appeared.

Moreover, in most countries public prosecutors are considered to be a body of the executive branch or at least highly influenced by the executive (especially through the cooperation with police authorities). This means that, if public prosecutors work for the government, they are obviously in conflict of interest while investigating crimes of the ruling party, which makes independent and impartial investigations impossible. The same conflict is even more evident with respect to the police, which is usually a body of the Ministry of Interior, whose minister is a member of the ruling political party.

Finally, political preferences of judges may also influence the outcome of trials against politicians and political parties. In order to prevent this, some countries prohibit judges from being members of political parties (e.g. Turkey, Croatia, Macedonia etc.). The influential nature of political preferences of judges has been demonstrated in studies that have revealed how predictable the rulings of the U.S. Supreme Court are.[23]

6. Criminal Sanctions for Political Parties

When a country decides to introduce criminal responsibility of political parties, one of the most problematic issues is which criminal sanctions should be prescribed for political parties.

In countries that have criminal liability of legal entities, a fine is considered to be the main punishment and it is also the most applied sanction. On the other hand, the sentence of dissolution is considered to be the most controversial, because it may undermine the functioning of the country's political life (especially in two-party systems such as U.K. and U.S.). The same problem exists in countries that do not have a sanction of dissolution of a political party, but the fines that can be imposed are so high that they can immediately lead to bankruptcy of the political party. Furthermore,

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[23] See *Epstein et al.* 1989, p. 825–841.

dissolution also has a practical consequence if political party's members are prosecuted for organized crime and the party is declared to be a criminal organization.

Furthermore, dissolution of political parties may lead to illegitimate limitations of certain political freedoms, especially election rights. This is especially the problem in transitional societies, where the criminal justice system is often subject to political influences. In this respect, a parallel can be drawn with the imprisonment of political leaders of the opposition, as in the outcome of Ukraine's 2011 corruption trial against *Yulia Timoshenko*. By putting away the main political opponent, the ruling political structures could secure their political power for a longer period of time.[24]

There are also other criminal sanctions that states adopt in sentencing political parties as legal entities. The most important among them is confiscation, either as a measure designed to seize the means of perpetration, to seize the illegal benefit from the crime or as a separate punishment. Apart from confiscation, other criminal sanctions mainly include security measures that have the purpose to prevent the danger of repeating the crime (ban on performance of certain activities or transactions; ban on obtaining of licences, authorizations, concessions or subventions; publication of the judgement in the media, placement under supervision, disqualification from public tenders etc.). States that exempt political parties from the punishment of dissolution of a legal entity, also exempt the political party from sanctions of similar effect such as the ban on performance of certain activities (e.g. France, Croatia, Macedonia etc.), because banning a political party to perform certain (political) activities would make it impossible to function.

With respect to certain consequences of conviction that are sometimes referred to as "ancillary measures" (*Nebenfolgen*), it is worth of observing that in most countries many official positions (e.g. president, governor, mayor etc.) require not to have a criminal record. However, there are no such provisions for political parties.

7. Concluding Remarks

The need of introducing criminal responsibility of legal entities has been recognized among many states, but due to significant differences in corporate criminal legislation, the international law has not been ready to adopt such a model. However, it seems that it is a question of time when it will be adopted in some form on international level, since the sole international criminal responsibility of "individuals" has proven to be insufficient in suppressing certain categories of crimes related to political parties.

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[24] However, due to strong pressures from abroad and Euromaidan protests, such scenario did not occur in Ukraine: *Yulia Tymoshenko* was released in February 2014.

The model of attribution of criminal responsibility to political parties in most cases depends on the status of a political party, which can be either "legal" or "illegal". This dichotomy has theoretical and practical advantages: "legal political parties" are to be prosecuted as legal entities, while the "illegal political parties" are to be treated as criminal organizations. Furthermore, different theories underlying the liability of legal entities (from *alter ego* to autonomous liability) and criminal organizations (from *Pinkerton doctrine* to accomplice liability) need further evaluation in order to crystallize adequate modes of liability.

A comprehensive assessment of the concept of criminal responsibility of political parties cannot be done without an analysis of possible alternatives to criminal law approach, which needs to be the *ultima ratio*. Thus, different forms of liability (constitutional, political, civil, administrative) require a comprehensive analysis in order to assess the limits of criminal law with respect to political parties.

It is also important not to overlook the possible obstacles in investigating, prosecuting, convicting and punishing political parties for criminal offences: immunity, abolition, amnesty, pardon, law amendments, political preferences of prosecutors and judges etc. Finally, a comprehensive evaluation of different sanctions models that can be imposed on political parties – with special focus on the sentence of dissolution of a political party, which many states tend to exclude.

8. Summary in Croatian

Ovaj rad predstavlja rezultate preliminarnog istraživanja o modelima odgovornosti političkih stranaka za kaznena djela. Prije svega, u njemu se otvara opće pitanje ovog istraživanja: Da li je uopće potrebno imati kaznenu odgovornost političkih stranaka?

U većini država, teško je ili gotovo nezamislivo pripisati kaznenu odgovornost političkim strankama. To je uglavnom zbog toga što postoje određene pravne prepreke u kaznenom progonu i osudi političkih stranaka, ali i zbog činjenice da nerijetko nedostaje volja i spremnost državnih tijela da pokrenu kaznene postupke i utvrde kaznenu odgovornost političkih stranaka. Postoji izvjesni paradoks u takvom stanju stvari. Naime, političke stranke imaju najviše odgovornosti kada upravljaju državnom administracijom, međutim, snose nizak stupanj odgovornosti kada zloupotrebljavaju date ovlasti. Dva su glavna razloga za to. Prvi je činjenica da klasična doktrina kaznenog prava općenito odbacuje mogućnost kaznene odgovornosti kolektiva. Druga je da su vladajuće političke stranke – kao stvaraoci pravnog okvira koji regulira njihove vlastite aktivnosti i kao nositelji izvjesnog političkog utjecaja na pravosuđe – u poziciji minimalizirati mogućnost sankcioniranja protupravnih radnji koje počine tijekom mandata. Ovaj *circulus viciosus* stvara stanje „ovlasti bez odgovornosti" tj. omogućava vlast i funkcije političkim elitama uz minimalni rizik da će njihove zloupotrebe biti sankcionirane.

Fenomenologija kriminalnih radnji političkih stranaka je donekle specifična zbog posebnosti njihovog društvenog statusa. Preliminarno istraživanje za potrebe ovog rada otkriva kategorije kaznenih djela koje se mogu pripisati političkim strankama. Katalog tih kaznenih djela se uglavnom odnose na: gospodarske delikte, izborne delikte, političke delikte, međunarodne zločine, delikte protiv privatnosti, govor mržnje, protupravno oduzimanje slobode i mučenje.

Jedna od hipoteza ovog istraživanja jest da su uzroci kriminaliteta političkih stranaka povezani s gubitkom ravnoteže između dvaju suprotstavljenih interesa: dužnosti djelovanja za dobrobit građana nasuprot želje za vlasti. Kada prevladavajuća svrha njihovog djelovanja postane zadovoljenje želje za vlasti – postoji tendencija kriminalnog djelovanja.

Dva glavna modela koja su dosad korištena u kaznenim postupcima protiv političkih stranaka ovisila su u načelu o njihovom statusu. Prvi model se sastoji u tretmanu političkih stranaka kao pravnih osoba, dok ih drugi tretira kao zločinačke organizacije. U svakom slučaju, važno je biti svjestan posljedica kaznenog postupka i kažnjavanja političkih stranaka, koje mogu biti fatalne za njihovu političku budućnost. Različite kontroverze povezane s političkim suđenjima kroz povijest ukazuju na potrebu restrikcije kaznene odgovornosti političkih stranaka u političkim okolnostima u kojima postoji opasnost instrumentalizacije kaznenog pravosuđa u sukobljavanju s opozicijom. Zbog toga je potrebno razmotriti moguće alternative kaznenopravnom pristupu (ustavnopravni, politički, građanskopravni, upravnopravni) s obzirom na to da kazneno pravo treba biti „ultima ratio“. Ovo istraživanje ima zadatak usporediti prednosti i nedostatke različitih modela te predložiti adekvatan pristup kriminalitetu političkih stranaka. Konačno, posebna pozornost posvećena je tipovima sankcija koje se mogu izreći političkim strankama.

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Summaries

Mapping the Criminological Landscape of the Balkans

Evisa Kambellari

Criminology and Crime in Albania 77–98

The paper aims to provide a general representative picture of criminological research and education in Albania. It consists of a step-by-step analysis that explains the main peculiarities characterizing the criminal justice system and crime related matters in Albania. The paper is divided into several secions, each of them dealing with specific matters of criminal policy, institutional capacities, statistical research, and actual major problems of the criminal justice system. The article presents a good starting point to reflect on where we are and the objectives to be achieved in terms of national criminal policy and issues related to it. Special key notes are made on the main recommendations made by international actors and the institutional and legal measures that have been taken in this regard.

Almir Maljević and Elmedin Muratbegović

Criminology and Crime in Bosnia and Herzegovina 99–111

The authors address a number of issues related to crime and criminology in Bosnia and Herzegovina. First of all, it provides an overview of the development of criminological education and research in the country. The Faculty of Criminal Justice and Security, University of Sarajevo, has been identified as the institution at the forefront of both criminological education and criminological research. When it comes to education, curriculum of undergraduate, master and doctoral studies in criminology are in line with respective studies abroad, in Europe in particular. This paper provides evidence to show that researchers from this faculty have been involved in a number of world leading research projects and have published in some of the most renowned criminological journals. Despite being on a par with the European criminologists, the paper argues that criminologists in Bosnia and Herzegovina are yet to produce reliable figures on crime and criminal justice statistics for the country. For this to happen, governmental support and willingness to share data needs to be

provided. Only once the data is provided, will criminologists be able to analyse the information and provide figures based on which it will be possible to view the country's significantly reformed criminal justice system as either a success or as a failure.

Svetla Margaritova-Vuchkova

Criminology and Crime in Bulgaria 113–138

Historically, Criminology took shape as science in Bulgaria at the end of the 19th century. The first institutionalization of criminology dates back to 1922 when the Society for Crime Control was founded.

In accordance with the process of institutionalization of criminology in Europe, in 1967 a Council for Criminological Research at the Chief Prosecutor's Office was established and later a Research Institute of Forensic Science and Criminology at the Ministry of Interior was also created. Some criminological problems are dealt with at the Institute for Legal Studies at the Bulgarian Academy of Sciences, at the Faculty of Law of Sofia University and at the Academy of the Ministry of Interior.

One of the achievements in the promotion of criminology is the fact that it has been lectured at law faculties since the end of the 1970s. Today, it is legally required to be on the curricula of all the 9 law faculties in the country.

In 1987, the Bulgarian Association of Criminology was founded. It contributes to the qualifications of its members, coordinates plans of research units and the teaching of criminology in law faculties. It has a permanent seminar which is a forum for discussing the results of specific criminological surveys and current problems of criminology and criminal policy.

Contemporary crime in Bulgaria is a consequence of globalization, the effect of which was manifested most tangibly seen after 1989 when the division into ideological and military blocks (East-West) and the elimination of national and regional isolation saw crime move out of control.

The main characteristics of contemporary crime in Bulgaria are: increased participation of minors in the commission of criminal offences and decrease in the age of early criminal activity; intellectualization of crime, especially in the area of economic and computer crime; dangerously increased criminal activity of Roma in street crime, especially offences against property, which has become an acute social problem, and development of organized crime.

At the same time it appears that penal policy is more and more reduced to severe repression by means of criminal law. Society is taught to believe that the only effective way to fight crime is to increase the severity of punishments for criminal offences.

Anna-Maria Getoš Kalac and Ruža Karlović

Criminology and Crime in Croatia

The authors analyse the current state of art in Croatian criminological education and research, focusing on criminological history and criminological institutionalization, the key actors, major criminological textbooks, journals and domestic as well as international studies. This *criminological mapping* is then followed by a discussion on the basics of the Croatian criminal justice system with a focus on the prison system and recent statistics, before the findings of a general *crime mapping* are presented. These findings offer a basic insight into major sources of data about crime and the most important crime trends and problems in Croatia. Levels, trends and patterns of crime in general and violent crime in particular are analysed, before being discussed in the context of age, sex, recidivism, type of crime, etc. They are then evaluated against the current Croatian socio-political setting, including possible effects of the New Croatian Criminal Code. The aim of the article is to provide a full picture of the current state of criminology and crime in Croatia, including its specific socio-political context.

Effi Lambropoulou

Criminology and Crime in Greece

The article describes in its first part the development of criminology in Greece during the last decades, and in particular, the graduate, as well as the postgraduate criminological education, i.e., courses, major criminological textbooks and journals publishing criminological studies. The article continues with the state of empirical research and the respective institutions. It refers to the relationship between criminological theory and research and the public policy, the state of general criminological discourse, and the research strategy of criminology.

In the second part, the article analyses the level and patterns of crime during two time periods, 1980–1998 and 1998–2010/11, as well as the development of sentencing and imprisonment. High increase of felonies (robberies, serious assaults and homicides), significant decrease in convictions with an increasing involvement of women in crime rates and high rise of prison population are the main characteristics of the situation. ESS data are used for outlining victimization and fear of crime, being of the highest in the EU countries. Political and media engagement with crime trends and criminal justice problems is varying, selective and, generally speaking, moderate.

The third part presents a short description of the criminal justice system and the main problems that it faces, which are the overburdened court dockets and prison overcrowding. Although various measures have been taken in response, they have had limited and short term effectiveness. In the conclusions the author emphasizes the need for continuous and systematic efforts on the part of criminologists in order to intervene more as a scientific community with their distinctive arguments and perspectives in public policy, and similarly for the establishment of the criminological profession in social life.

Eszter Sárik

Criminology and Crime in Hungary 203–223

The article presents an analysis of the development of criminology in Hungary from the early 20th century to date. Besides an overview of the history of this branch of science the evolution of crime from the 1970s and 1980s to the present is explained in more detail. The aim of this part is, on the one hand, to outline the rapid and radical changes in crime experienced in Hungary after the fall of the Berlin Wall and, on the other hand, to highlight the contradictions in current legislation. The author explicitly emphasizes her belief in the commitment of scientific research to human rights, although the populism in legislation seems to contradict scientific findings and statistical data from time to time. Also, scientific research should aim to support those legislators who prefer the priority of prevention and individual punishment, despite punitive trends in the international scene.

Ernesto U. Savona

Criminology in Italy between Tradition and Innovation 225–233

The author outlines the development of criminology in Italy from legal medicine and forensic psychiatry to social sciences through criminal law. The result is an interdisciplinary approach connected to the mainstream debate of criminology at international level. Different problems related to crime Italy has experimented in recent years (organized and economic crime) have solicited a wide and deep debate on these topics, a consequent data collection and the development of policy relevant research at national, European and international level.

Lavdim Krasniqi

Criminology and Crime in Kosovo 235–243

The paper deals with education, legal research and crime trends in Kosovo. The first section looks at the development of education and research in the field of criminology in Kosovo, with a focus on several key institutions (both public and private). The main challenges to criminology are also spelled out. The second section presents and analyses data from institutions responsible for fighting crime, focusing on forms of crime and the number of cases initiated and completed (including the number of prisoners). Special attention is paid to the criminal justice system where legislative structures and key developments in this area are analysed. The paper concludes with the observation that there are a lack of publications and research infrastructure in the area of criminology, including the non-existence of harmonized databases required for criminological research. Criminology in Kosovo needs much support if it is to contribute to discussions on crime prevention and mitigation.

Gordana Bužarovska

Criminology and Crime in Macedonia

The paper presents a brief overview of the basic data relating to criminology, trends in crime, recidivism rates, most frequent committed types of criminal offences, imposed criminal sanctions, profiles of inmates and opportunities for conditional release in Macedonia. There is an analysis of crimes committed by adult males and females as well as an assessment of the main features of juvenile delinquency. Characteristics of the criminal justice system are presented through the last reform of the Code of Criminal Procedure, a schematic presentation of the organization of courts and public prosecutor's offices, and an appraisal of the situation of state prisons and pre-trial detention.

Vesna Ratković

Criminology and Crime in Montenegro – Focus on Corruption

Crime, especially its organized forms, including corruption, has been identified as a priority issue to be addressed in Montenegro. The article briefly points out the activities of competent state authorities and other institutions that undertake suppressive, preventive and educational measures to reduce crime in the country. The necessary prerequisites for the prevention and sanctioning of corruption and organized crime have been established. However, it is also very important to continuously strengthen the independence and integrity of key authorities and institutions, as well as their overall resources (administrative, technical and material). In the forthcoming period, the preventive activities of state institutions should focus on removing bureaucratic barriers to the provision of public services to citizens, as these barriers have been identified as one of the main causes of corruption. Strengthening the administrative framework is a serious challenge, especially for "small countries", which have limited personnel capacities, especially highly specialized ones. This is evident not only in relation to the state authorities, but also for higher education institutions, partly due to a significant lack of scientific studies into the nature of crime. It is hoped that the quality of legislation and successful and effective practice of judicial and other authorities, along with a critical scientific approach to the study of crime, will provide for a reduction in crime, especially its most serious, organized form.

Andra-Roxana Trandafir

Criminology and Crime in Romania – Focus on the New Criminal Code

The paper aims to offer a general introduction to criminological research and education in Romania, as well as on the criminal justice system, focusing on the challenges raised by the new Criminal Code and new Criminal Procedure Code, which both entered into force in February 2014. The adoption of these regulations is the

consequence of several problems raised after the fall of communism and the accession to the European Union. For this reason, the paper also briefly presents some of the issues Romania has faced with in the past years, as well as criminological studies and projects developed at a national level. It is clear that all reforms in this field cannot be made by a single body, which means that only sustainable structures of cooperation between all agents involved in crime prevention and repression can lead to proper solutions.

Đorđe Ignjatović and Natalija Lukić

Criminology and Crime in Serbia

This article is divided into two parts. The first part examines the status of criminology in Serbia. After a brief review of the development of this science, its status as a scientific discipline at universities in Serbia is presented, as well as the main sources of knowledge in criminology. First and foremost, the list of textbooks in criminology with their systematic is presented, as well as the approaches of the authors in defining this science. Furthermore, the list of the most important journals is given. Also, a selective bibliography of monographs in Serbian language is provided. The paper presents information about the Section of Criminology of the Serbian Society of Criminal Law Theory and Practice, which is the first association of criminologists in the country. The special efforts of the Section to gather the interest of young people in criminology are mentioned. Of great significance is the fact that among its honoured members some of the most famous criminologists from all around the globe can be found. The article further indicates the importance of edition "Crimen", which has become the most significant library of criminological sciences in Serbia.

The second part of the article, based on the data from judiciary statistics, gives an overview of crime in the Republic of Serbia. Crime trends are analysed for the period 1991–2012. At the time of writing the article, the last available statistical data of the Statistical Office of the Republic of Serbia were for the year of 2012 (Bulletin n. 576). The authors have analysed data for adult offenders, both suspects and convicted persons. Offenders charged with criminal offences are excluded, considering that they have a transient status. Furthermore, the territorial distribution of committed crimes, data about the structure of committed criminal offences and data about some characteristics of these offenders are presented. Finally, the crime rate for suspects and for convicts as well as the crime clock for the year of 2012 is calculated.

Sabina Zgaga

Criminology and Crime in Slovenia

Criminology in Slovenia has a long tradition and has been closely intertwined with various institutions and fields of science. Criminology study and research originated within the Faculty of Law, University of Ljubljana, with *Aleksander Vasiljević Mak-*

lecov. The Institute of Criminology in Ljubljana was established in 1954, followed by the Faculty of Criminal Justice and Security, University of Maribor, established in 1973. In 2004, finally, the Institute of Criminal Justice and Security Research in Ljubljana was established.

The paper presents the state of art of criminology and criminal justice in Slovenia. Its first part defines basic outlines of criminological education and research in Slovenia. Criminology has been mostly taught in two institutions in Slovenia, i.e., at the Faculty of Criminal Justice and Security of the University of Maribor and at the Faculty of Law of the University of Ljubljana. The study of criminology in Slovenia is within certain limits possible also at the Faculty of Social Work and Faculty of Educations, University of Ljubljana. Slovenian institutions that provide criminological education also conduct criminological research, co-financed by the state and the European Union.

The second part of the paper focuses on the main crime trends and problems. Accordingly, available official statistics shows the rise of all crime reports, as well as reported crime against the economy and property as well as computer crime. The statistics on sentencing of adult offenders shows repressive trends, since prison sentences are more frequent, and the conditional release and judicial admonition have decreased. This is reflected in the gradual growth of the average number of all incarcerated prisoners in Slovenia, as well as the average number of sentenced prisoners and the general trend towards longer prison sentences.

The effectiveness of the criminal justice system is of course based on effective, clear, up-to-date and safeguarded legislation; therefore the third part sketches the criminal justice system of Slovenia. Despite opposite desires of science and practice, Slovenian criminal legislation has suffered from constant amendments without expert basis, which also influences the efficiency of the criminal justice system. Issues (prison overcrowding, length of criminal procedures, etc.) that are arising in the criminal justice system demand thoughtful, clear and decisive actions from the legislator, based on the needs of the practice, clear understanding of the state of art, its reasons and problems and theoretical basis.

Adem Sözüer and Tuba Topçuoğlu
Criminology and Crime in Turkey 377–397

The paper provides an overview of the state of art in Turkish criminological research and education. It also undertakes a brief outlook into the many facets of the criminal justice system in Turkey. Overall, it is shown that criminological education and research, though developing, is in its infancy in Turkey. A fully-fledged education in criminology and criminal justice in terms of theory, research and practice is currently absent. Furthermore, existing research into the causes of crime is scarce and suffers from serious methodological flaws and, as a result, cannot guide effective

policy making. Measurement of crime at the national level relies solely on unreliable official sources, and available data suggests a significant and worrisome increase in both adult and juvenile crime over the last decades. Available judicial statistics also point to a significant and increasing case overload at both the investigation and the prosecution phases. Finally, the continuous increase in the country's prison population over the last decade is another matter of concern in Turkey that calls for urgent and effective solutions. In sum, an outlook of the state of crime and criminology in Turkey significantly points to the urgent need for the scientific development of the criminology discipline in terms of theory, research and practice, which in turn initially requires providing comprehensive criminological education at the universities.

An Expedition into the Criminal Landscape of the Balkans

Filip Vojta

Punishment and Sentence Enforcement for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia

The article provides one of the first systematic and empirically-supplemented overviews of the ICTY's sentence-enforcement system. The system itself, being to a large extent different from the historical prison archetypes of Spandau (Nuremberg trials) and Sugamo (Tokyo trials), requires the assistance of individual states for the incarceration of international prisoners.

The analysis indicates that the problems relating to the imposition of international sentences are also present at the sentence-enforcement stage. The system operates within an under-developed penological framework which seemingly does not account for intrinsic characteristics and the context of "macro-criminality". This is reflected in the ambiguous set of rules which, as practice indicates, can lead to discretionary decisions, politicization and inequality in approach and treatment of international prisoners who are being transferred to various European prison systems where they serve their sentences among ordinary prisoners.

The article proposes the development of a penologically valid, standardized approach to treatment of international prisoners through structural and regulatory consolidation. This is also deemed necessary due to the fact that other international tribunals have, to a large extent, adapted the ICTY-system for the enforcement of their sentences.

The article concludes by fostering a further systematic inquiry into the enforcement of the ICTY sentences which can, due to its wealth of practice, serve as a valid point of reference for potential future improvements. The research project is the first one conducted under MPPG's Research Focus III on international sentencing.

Reana Bezić

Juvenile Delinquency in the Balkans: A Regional Comparative Analysis of the ISRD3-Study Findings 429–445

The article presents the overview of a current Ph.D. research project, with the focus on regional comparative analysis in the Balkans. The project is carried out under Research Focus III of MPPG dealing with Feelings and Perceptions of (In)Security and Crime. It highlights the importance of the background variables in understanding and explaining the prevalence and patterns of juvenile delinquency in the Balkans. First preliminary results of the ISRD3 Croatia data presented show the prevalence of self-reported delinquency and alcohol consumption. The article concludes with a proposal for the strengthening of criminological research in the Balkans.

Karlo Ressler

Trafficking in Human Beings in and through the Balkans – Introduction to a Qualitative Approach 447–466

Despite the growing interest in human trafficking, the precise extent of the phenomenon is largely unknown. The lack of data and understanding hinders the creation of effective and well-targeted anti-trafficking policies in the EU, but in the Southeast of Europe as well. The article presents the overview of the research project on trafficking in human beings in and through the Balkans which is being conducted within the Research Focus I of the MPPG Group for Balkan Criminology on Violence, Organized Crime and Illegal Markets. Firstly, an overview of the human trafficking framework in the Balkans is presented. Secondly, different qualitative ways based on which human trafficking is measured, such as the number of trafficked persons and estimations of profits, are discussed. Thirdly, the article proceeds to examine the advantages of utilizing qualitative methods and explains the proposed methodology.

Sunčana Roksandić Vidlička

Severe Economic Crimes Committed in Transitional Periods – Crimes under International Criminal Law? 467–498

The article presents some of the important findings of the Ph.D. research project "Criminal responsibility of severe economic crimes committed in transitional period", supervised by professors *K. Turković* and *H.-J. Albrecht.* The project belongs to MPPG's Research Focus I on Violence, Organized Crime and Illegal Markets.

This article has its focus on the concept of qualifying severe (transitional) economic offences as crimes under international law. It aims at exploring legal and social preconditions under which severe (transnational) economic offences could be qualified as such crimes.

Placing more emphasis on the indivisibility of human rights and on the importance of including the protection of economic rights in the Statute of the ICC could be seen as the next necessary step in order to correspond with global developments concerning the concept of human security. Furthermore, the project, as elaborated in this article, is exploring whether it would be possible at all to aim to achieve security and "well-being of the world" in today's global world without prosecuting severe economic crimes, especially those occurring in transitional periods.

Economic crimes have often been neglected in criminal proceedings and the reports of truth commissions that have followed economic transitions or conflicts, although such crimes can result in substantial losses for the economy, society and rule of law. The Balkan region is no exception to this rule. In order to answer the research questions, the Croatian experience in addressing severe transitional economic offences will be taken as an example. Croatia abolished the statute of limitations for transitional economic offences with retroactive effect with the justification that those crimes have to be regarded "as extremely grave crimes for which it is necessary, right and justified to rule out application of statute of limitations, particularly having in mind the time, circumstances of perpetration and consequences caused." Hence, these economic offences are equated with the most serious crimes under international law, i.e. genocide, crimes against humanity, war crimes and the crime of aggression. This article examines whether one can find justification for such an identification for severe economic crimes at the international level.

Aleksandar Maršavelski

Responsibility of Political Parties for Criminal Offences: Preliminary Observations, Challenges and Controversies 499–514

The paper provides preliminary observations on the models of responsibility of political parties for criminal offences. First of all, it opens the general research question: Do we need criminal responsibility of political parties?

In most countries it is difficult or even impossible to attribute criminal liability to political parties. This is mainly due to legal obstacles to prosecute or convict political parties, or because of the unwillingness of law enforcement bodies to undertake criminal procedures and hold political parties criminally liable. There is some paradox in such state of affairs. Namely, political parties have the highest responsibilities when governing state administrations, however, they bear little responsibility when they abuse the given powers. There are two main reasons for this. The first one is that classical doctrine of criminal law rejects the possibility of holding collectives criminally

liable. Second is that ruling political parties – being the creators of legal frameworks governing their activities and having to certain extent the political influence on the criminal justice system – are in a position to minimize the possibility of sanctions for the wrongdoings they commit throughout their mandates. This vicious circle creates a state of "responsibility without accountability" i.e. it provides power and functions to political elites, but the risk of sanctioning their misbehaviour is minimal.

The phenomenology of the criminal activities of political parties is somewhat specific due to the particularity of the position they have in states and societies. The preliminary research for this paper reveals the categories of crimes that can be attributed to political parties. They are mainly limited to: economic crimes, election crimes, political crimes, international crimes, crimes against privacy, hate speech, unlawful imprisonment and torture.

One of the hypotheses of this research is that the causes of criminal activities of political parties are linked to the misbalance of two colliding interests: the duty to act for the benefit of the people vs. the will to power. When the prevailing goal of their conduct is to satisfy their will to power – there is a tendency to engage in criminal activities.

The main two models used so far in criminal proceedings against political parties were in principle related to their status. The first model is to treat political parties as legal entities, while the second is to treat them as criminal organizations. In any case, it is important to be aware of the consequences of criminal proceedings and imposed sentences against political parties, which can be fatal for their political future. Various controversies linked to political trials throughout history have demonstrated the need of restrictions to the criminal responsibility of political parties in political settings where there is a danger of instrumentalization of criminal proceedings in confrontations with the opposition parties. Therefore, it is necessary to find an adequate balance between the interests of justice and the need of preserving the functioning of the democratic system. This requires reconsidering possible alternatives to criminal law approach (constitutional, political, civil, administrative) since criminal law ought to be the "ultima ratio". This research has the task to compare the advantages and disadvantages of different models and make proposals about how to address the criminality of political parties. Finally, special attention is given to the types of sanctions that could be imposed on political parties.

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BALKAN CRIMINOLOGY

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