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Content

James Finckenauer
Rutgers University, Newark, NJ, USA
Aunshul Rege,
Temple University, PA, USA

CRIMINAL ORGANIZATIONS AND HARMS ASSESSEMENT: A RESEARCH PROPOSAL

Abstract
The article is devoted to International Organized Crime (IOC) issues. The authors analyzed questions related to measuring of the harm resulting from international organized crime particularly economic harm caused by IOC groups and other impacts, such as human misery, public safety and threats to free commerce. Authors suggested five hypotheses can be broken down into five sub-hypotheses based on the characteristics of criminal organizations:

1. The more sophisticated the criminal organization, the larger its harm capacity.
2. The more complex the structure of the criminal organization, the larger its harm capacity
3. The more a criminal organization exhibits stability, the more likely it is to cause harm.
4. The stronger the self-identification exhibited by members of a criminal organization, the more likely it is to cause harm.
5. The greater a criminal organization's authority of reputation, the larger its harm capacity.

Key words: Organized crime; Harm capacity; Criminal organizations

Introduction
To point out that crime and criminal behavior cause harm is no great revelation; nor is pointing out that this harm varies in its nature, magnitude and seriousness. Further, there are differences among criminals in their ability or capacity to cause harm, and at least one of those differences is between criminals who commit their crimes alone versus those who commit them as members of criminal groups. The latter would seem to hold true in most criminal instances, with the possible exception of extraordinary or unusual criminals such as serial killers and mass murderers. Assuming that there is variability with respect to harm capacity among criminals and criminal groups, and also in the harmfulness of their crimes, it is both important theoretically and potentially useful for policy purposes to carefully examine this variability and its consequences. Focusing specifically on criminal organizations – those principally engaged in what is commonly known as organized crime, as a generic category -- what are the characteristics of these kinds of organizations that determine their harm capacity? And, by looking at the crimes they have committed, can one discern a relationship

between those characteristics and the degree of harm that emanates from their criminal behavior?

The goal of this proposal is to test what has been called elsewhere the "harm capacity" thesis (Marvelli & Finckenauer, forthcoming). In brief, this thesis is that a criminal organization's capacity to commit harm varies based upon the degree to which they possess certain primary characteristics. The challenge for the research is to identify groups that have been (and possibly still are) committing crimes, and then to assess the consequent harm from their criminal activities.

Harm Capacity

The definition of organized crime, and by extension the definition of what is a criminal organization, have both long suffered from a kind of collective ambiguity. We do not need to elaborate on that ambiguity here, but rather simply to state that the assumption for our purposes here is that "organized crime" is that crime that is collectively committed by criminal organizations. Finckenauer (2005 & 2007) has identified the characteristics of criminal organizations that many scholars have agreed upon as being essential elements to any definition of organized crime. Of particular import are five essential characteristics: sophistication, structure, stability, self-identification, and authority of reputation. Finckenauer (2005:76) argued that "criminal networks that are totally or even substantially lacking in [these characteristics], should not be considered true criminal organizations." "Criminal networks" here refers to a sort of umbrella category that captures a variety of groupings of criminals, ranging from the very loosely organized to some others that are more structured. A criminal network has been defined as being composed of "key individuals who engage in illicit activity together in often shifting alliances; [t]hey do not necessary regard themselves as an organized criminal entity" (United Nations 2002, 19).

Our presumption is that all criminal groupings in fact have the characteristics mentioned above to a greater or lesser degree. The extent to which these characteristics are possessed is obviously critically important. *Sophistication*, involves the degree of preparation and planning for the crime and how much skill and knowledge are needed in order to commit the crime. *Structure* entails a division of labor with clearly defined lines of authority. *Stability* pertains to the organization's ability to maintain itself over time and crimes. *Self-identification*, as the term implies, involves the participants identifying themselves as members of a defined organization. And lastly, *authority of reputation* is the extent to which a group is able to force others-criminals and non-criminals—to do what it wants without regularly having to resort to actual physical violence.

The research we are proposing here would assist in moving away from the kind of risk and threat assessments that have traditionally been used to develop policy focus and priorities in combating both domestic and transnational organized crime. Instead, we propose moving towards harms assessment. The traditional law enforcement approach has been to identify

criminal organizations and individuals with the goal of disruption and/or prosecution. Most previous assessments of organized crime have been conducted by law enforcement agencies (Albanese, 2008), and these assessments generally focus on the "most serious" groups or individual members. The aim has been to identify the criminal organization and/or criminal that is of the greatest threat, and then to pursue disruption and prosecution.

Measuring Harm

Recently, there has been an evolution in threat assessment away from this historical focus on individual criminal organizations, toward a greater focus on criminal enterprises and markets. But the ability to measure the criminal markets that criminal organizations participate in has remained elusive for both practitioners and scholars. In large part, this inability to measure criminal activity is hindered by the secretive nature of the activity. In the parlance of criminologists, the "dark figure" of crime poses the greatest challenge to measuring organized crime. The true quantities of narcotics or numbers of people being trafficked, for instance, are largely unknown. At best, we have only rough estimates concerning these sorts of crimes (Marvelli & Finckenauer, forthcoming). Beyond these specific, even if unknown figures, ther are more general "dark figures." How for example do we measure and perhaps quantify such other impacts of transnational organized crime as human misery, public safety and the threats to free commerce (EWG, 2010).

In one of the earliest efforts in the direction of doing harm-based assessments, Maltz (1990) proposed assessing the harms associated with each criminal activity since, he believed, each activity resulted in a different type of harm. This, he said, would provide insight into criminal markets and assessments of the threat posed by particular criminal activities. The dimensions of harm, according to Maltz, are physical, psychological, economic, and societal. Physical harm is fairly self-explanatory – murder, assault, rape, torture, etc. Psychological harm is that harms flowing from, for example, the intimidation of victims and witnesses or even of potential jurors in criminal trials. It can also be manifested in the fear of crime and the unwillingness of people to go into certain neighborhoods or to be out at night. Economic harm is the magnitude of material loss resulting from certain crimes. How much money is stolen? What is the take, for example, from drug trafficking or gambling or hijacking? And finally, societal harm emanates from the insidious undermining of the rule of law, the breeding of cynicism and distrust, and from corruption. Society is also harmed as a consequence of such crimes as the theft and trafficking of cultural artifacts. Each, or a combination of each type of harm may result from any particular criminal activity. For example, homicide, the ultimate physical harm, may also cause economic and psychological harm for the victim's family, together with the physical harm.

Some recent efforts to pinpoint the specific dimensions of harm, and to consider ways of measuring it, include the thinking reflected in a paper by Natasha Tusikov for the Criminal Intelligence Service Canada (2009). In that paper, harm is defined as the type and level of

adverse consequences, intentional or inadvertent, resulting from criminal activities undertaken by organized crime.

> "Harms can be categorized as either direct, e.g., theft, fraud, assault and homicide, or indirect, e.g., the loss of consumer confidence in financial institutions because of fraud, or fear of crime in a particular community. As well, the effects of these harms are either tangible or intangible. Tangible harms have clearly identifiable victims and involve concrete damages or losses. For example, direct tangible harms can involve stolen or damaged property or losses due to fraud. In contrast, indirect tangible harms can include the costs of responding to and bringing offenders to justice through the criminal justice system (including law enforcement, medical care, victim services, courts, legal aid and correctional institutions). These harms can be concentrated within a particular community or jurisdiction, or experienced more broadly by society as a whole.

From this definition the sorts of research questions that arise are: Are there clearly identifiable victims? Are these victims of theft? Of fraud? Of assault? Of homicide? Of extortion? Are there concrete damages or losses, e.g., stolen property, damaged property, losses due to fraud, etc.? Other possible victims and losses include businesspersons forced out of business by unfair or illegal business practices, or business owners who lose customers because of fear and intimidation. In addition to the harms from violence and theft, there are the potential environmental harms that result from illegal fishing, illegal logging or trafficking in timber, the poaching of exotic species such as tigers or parrots, and the illegal transport and disposal of radioactive materials and hazardous waste. The latter are all crimes that are specialties of criminal groups, including especially those that operate transnationally.

In 2010, the National Institute of Justice of the U.S. Department of Justice convened an expert working group to help define the issues and problems surrounding research on international organized crime, and to help frame a research agenda. One of the major topics of discussion was the need for better indicators of the harm done by international organized crime. In addition to economic harm, the group considered the importance of social and public health indicators as other forms of harm that researchers need to explore. As examples supporting this argument, one workshop participant pointed out that the national health system of one particular country sets aside only a small number of intensive-care beds for emergencies or serious surgical cases. If an emergency case arises from a shooting and requires hospitalization, this often displaces an innocent person from access to these beds. Thus, the health service examined the true cost of this scenario and found that a shooting victim costs 16 times more than the average patient. When an innocent person is displaced, this further increases the cost and adds additional harm to community safety. As an example of the indirect economic harm resulting from the crime committed by criminal organizations, another workshop participant noted that the insurance industry in one country spent 45 percent of its income on fraud detection and prevention.

Problem Statement and Research Hypotheses

We could extend these examples, but suffice it to say that the harms, both nationally and internationally, from the crimes of criminal organizations are obviously extensive and costly. They impact individuals, neighborhoods, communities, and whole societies in a variety of ways, some of which we know about, and others that remain largely hidden. Our goal is to try to sort out and make sense of this puzzle, by examining both the makeup of criminal groups on the one hand, and the nature and extent of their crimes on the other.

Our principal research hypothesis is that the degree to which crime groups possess certain characteristics (defined above) varies, and that this variation is associated with their capacity to commit harm. Logically, this hypothesis can be broken down into five sub-hypotheses based on the characteristics of criminal organizations:

Hypothesis 1: The more sophisticated the criminal organization, the larger its harm capacity.
Criminal organizations vary with respect to their sophistication. If an organization engages in thorough preparation and planning, it may be more successful in the commission of its crime, and therefore cause extensive harm. Also, if it possesses a greater skill set and knowledge base, it may be more resourceful and experienced in committing the crime effectively, resulting in greater harm. Efficient communication and information sharing are also crucial for the success of the criminal organization. Communicating information on changes in market trends, impending police raids, and competition, for instance, may help ensure smooth and prosperous criminal activity, which, in turn, may cause more harm. Finally, if a criminal organization is involved in multiple criminal enterprises, it may cause greater harm. The harms associated with different criminal activities may result in larger, cumulative harms.

Hypothesis 2: The more complex the structure of the criminal organization, the larger its harm capacity.
The structure of a criminal organization can be characterized by its size, organization, division of labor, and flexibility. Criminal organizations with larger memberships may have greater manpower and more resources to commit their crimes efficiently, therefore causing more harm. Furthermore, if members bring different skills to the organization, they may engage in corresponding roles. This role-based division of labor may enhance the performance of a criminal organization, which in turn, may cause greater harm. Hierarchical, networked or hybrid structured criminal organizations may cause different levels for harm. For instance, hierarchical structures may cause greater overall harm when compared to networked or hybrid structures. Related to this organizational property is structural flexibility; criminal groups with a fixed structure, low turnover rate, and strict memberships may cause different levels or types of harms than structures that are more fluctuating in nature, high turnover rates, and overlapping memberships.

Hypothesis 3: The more a criminal organization exhibits stability, the more likely it is to cause harm.

The success of a criminal organization is also determined by its endurance and resilience. If a criminal organization can maintain its operations even when a particular component or a key member has been exposed or apprehended, it is more likely to succeed, and therefore continue causing harm. If the criminal organization has existed for a long period of time, it has demonstrated the ability to adapt to changes in market trends, insulate from law enforcement and manage competition. These abilities allow criminal organizations to be stable and maintain operations across time, which may result in long-term harm.

Hypothesis 4: The stronger the self-identification exhibited by members of a criminal organization, the more likely it is to cause harm.

When members of criminal organizations adhere to strict codes of conduct, participate in rituals, have strong ties to other members, and share goals and rationales, they are more likely to identify themselves as members of the group and strive for its success. This drive for success may cause members to engage in any strategies necessary for committing the crime productively, which may result in greater harm.

Hypothesis 5: The greater a criminal organization's authority of reputation, the larger its harm capacity.

Crime groups are often able to force compliance from both criminals and non-criminals based on its reputation. This reputation may be well-established, well-known over a geographic area, and elicit a certain level of fear. The stronger this reputation is, the more likely it is to attain compliance, and the more likely it is to cause harm. For example, those who comply may experience economic and societal harm, while those who do not, may experience physical and psychological harm. Each of these hypotheses is further discussed next.

Research Methods

Implementing the working group's suggestion of employing closed organized crime cases, the appropriate methodology would be document analysis. First, as Dantzker and Hunter [1] note, documents assist in discovering "why or how an event occurred and whether such an event could happen again" [1, 74]. Indeed, documents allow us to examine organized crime groups, their properties, and the harms they cause. In addition, this method involves the analysis of preexisting data in a different way so as to answer different research questions than originally intended. Regardless of the context and content of earlier documents, we can reorganize and analyze them to specifically address our research objectives.

A second reason for using this method is that documents provide a way of gaining access to events or processes, which you cannot observe "because they have already occurred, [or] because they take place in private" [3, 73]. In the context of organized crime, documents can 'unlock' the otherwise covert elements of their organization and operation. They provide

information which would otherwise be difficult to ascertain, such as the five characteristics of criminal organizations discussed above.

Third, documents permit an "alternative angle" or add "another dimension" to the research process because they allow for detailed pictures of social phenomena to emerge [2, 109]. For instance, a combination of investigator notes, case reports, and court records generate a dialog between these information sources, thereby providing a well-rounded understanding of cybercrimes at gambling sites. Document analysis permits us to triangulate different sources in order to get a plausible picture of the phenomenon under study, and track it over set periods of time. These factors make document analysis ideal for our preliminary study into understanding the relationship between the characteristics of, and harms cause by, criminal organizations.

The Sleipnir tool used by the Canadian criminal intelligence community offers a reasonable measurement technique [5]. This technique uses rank ordered sets of attributes for comprehensive and structured measurement. Each attribute is defined, weighted, and has a set of predefined values. Defining attributes minimizes the degree of subjectivity in interpreting and assessing information [3]. The results are then presented as a matrix showing the attribute values for each group. The results are displayed visually as a matrix which illustrates the organized crime groups in rank order and which uses color coding for attribute values to indicate the reasons for that ranking [3].

Following this strategy would allow academics, law enforcement, and intelligence services a consistent means of comparing groups of organized criminals. More importantly, this measurement technique permits rank-ordering criminal organizations in an objective, comprehensive and systematic way using a two-fold mechanism. The first ranking system is based on the characteristics of organized crime groups, such as criminal sophistication, structure, stability, self-identification, and authority of reputation. The second ordering system is based on harms caused by organized crime groups, along economic, physical, psychological and societal dimensions. These ranking filters, or matrices, can help determine the degree to which crime groups possess certain characteristics varies, and how this variation is associated with their capacity to commit harm, which would address the harm capacity thesis.

Characteristics Matrix

As we hypothesized earlier, the degree to which organized crime groups possess certain attributes varies. We therefore identified a preliminary set of indicators in order to assess, rank, and compare organized crime groups. These indicators – sophistication, structure, stability, self-identification, and authority of reputation – capture the most important and shared qualities of organized crime. Furthermore, these indicators do not have any particular

rank order, that is, no one attribute is more important than the other. These attributes are summarized in Table 1.

We propose using five components to assess the *sophistication* of organized crime groups: (i) preparation and planning – did the group engage in extensive planning and preparation before committing the crime, or was the act committed in a disorganized manner? (ii) skill and knowledge intensity – do crime groups need experts or can novices suffice? (iii) skill and knowledge diversity – what range of skills and expertise does the crime group need to succeed? (iv) criminal diversity – does the crime group monopolize a particular criminal enterprise or are they involved in several illicit operations that may be interrelated or entirely separate? (v) communication and information dissemination – do group members share information and communicate using technological tools (email, disposable cell phones, chat rooms), or do they meet face to face in covert meetings?

The *structure* of the organized crime group can be identified using four components: (i) hierarchy – does the crime group exhibit a vertical chain of command, or is it composed of sub-units that are autonomous? (ii) size – is the crime group a large structure with global membership or is it a local structure with few operatives? (iii) division of labor – does the crime group have members fulfilling specific functions, such as organizers, recruiters, money movers, and enforcers? Are certain roles not required, such as corrupters and monitors? (iv) fixed – is the structure of the group fixed or does it have a high turnover rate? Are there any overlapping memberships with other crime groups?

An organized crime group's *stability* can be analyzed using four dimensions: (i) redundancy – can the organized crime group recover after being exposed or caught? Are members readily available to fill in voids in the aftermath of detection and apprehension? (ii) duration – how long has the crime group been in existence? (iii) adaptability – how efficient is the crime group in responding to market changes, competition, law enforcement raids in order to maintain its operations? (iv) insulation – what evasion measures does the crime group utilize to insulate itself from detection?

Six elements of *self-identification* can be seen in crime groups: (i) codes of conduct – do members have to pledge allegiance to the group's mores? Do they follow a secret code or a set of protocols? (ii) initiation – are new recruits subjected to any initiation ceremonies, such as committing a crime or getting a tattoo? (iii) bonding – do group members bond by sharing resources and knowledge? (iv) social ties – do members identify to the group because of shared ethnicity, familial connection, or similar criminal history? (v) nature of ties – do members form cohesive, long-lasting bonds or do members engage in fleeting alliances on an as needed basis? (vi) motivations and rationales – do members express similar motivations, such as financial gain, reputation, or sense of brotherhood?

Finally, the *authority of reputation* characteristic can be assessed using six components: (i) geographic scope – is the crime group known in the confines of its immediate community, or is it well-known internationally? (ii) history – has the reputation of the crime group changed over the years? (iii) violent compliance strategies – what physically violent strategies, such as assault, rape, torture, or murder do group members utilize to achieve compliance from those who question their authority? (iv) non-violent compliance strategies – what non-violent strategies, such as bribery and corruption, are organized crime groups known for? (v) reputation – what reputation does the organized crime group among different societal groups, such as police, public, and the media? (vi) harm/fear level – to what extent is the organized crime group feared? What types of harms does the group cause?

Harms Matrix

Like the characteristics of organized crime groups, the harms they cause also vary. Here, we elaborated on Maltz's (1990) harm dimensions. This set of indicators can be used to compare and combine harms (physical, psychological, economic, and societal) caused by organized crime groups. These indicators in no particular rank order, that is, no one attribute is more important than the other. These attributes are summarized in Table 2.

The *physical* dimension of harm addresses harm to individuals (public, criminal justice system representatives, rivals, and group members) and property, and is composed of the following six elements: (i) number of deaths, (ii) number of injuries, (iii) number of torture cases (iv) number of assaults, (v) number of rapes, and (vi) number of property damage cases.

The *psychological* dimension of harm deals primarily with harm to members of the general public. This dimension can be assessed using six components: (i) number of threats/intimidations – how often do organized crime groups threaten the public and potential witnesses? (ii) negative influence on emotional and mental health – to what extent does the organized crime group impact the public's emotional and mental well-being? (iii) fear of crime – how fearful is the public of the crime rates and specific crimes in their communities? (iv) fear of victimization – how fearful is the public of being victimized either directly or indirectly by the organized crime group? (v) frustration/anxiety – how frustrated is the public with the amount and extent of organized crime in its community? (vi) duration of harm – how long has the public suffered from psychological trauma brought about by the organized crime group?

The *economic* dimension of harm captures harms caused to individuals, society, and government, and comprises five components: (i) illegal revenue generated – how much revenue is the crime group generating from its illicit enterprise? (ii) investment of illicit revenue in the legitimate sector – how much revenue generated by crime groups is laundered and layered into legitimate markets? (iii) number of affected businesses – how many legitimate businesses have shut down, downsized, or relocated because of competition or

threats from organized crime groups? (iv) income tax lost – how much tax money is the government losing on underground businesses? What ratio is it getting from the legitimate investments by the crime group? (v) Foreign bank accounts – how heavily is the crime group invested outside the country in which it operates? (vi) Local/national bank accounts – how heavily is the crime group invested in the country in which it operates? What is the ratio of foreign to national investments?

Finally, the societal dimension of harm focuses on harms to societal organizations and influence on government representatives, and has six elements: (i) corruption – how many government representatives (police, politicians, judges, and so on) have been corrupted by the crime group? (ii) loss of confidence in laws/criminal justice system – does the public feel that its laws are inadequate and that the criminal justice system is ineffective in prosecuting and sentencing crime group members? (iii) loss of confidence in law enforcement – does the public feel that its law enforcement representatives are inefficient in managing and countering organized crime? (iv) loss of confidence in politicians – does the public feel that its appointed politicians are not undertaking effective measures to counter organized crime? (v) loss of confidence in community – is there an overall lack of a sense of community? Is the public motivated as a united front to counter organized crime in its community? (vi) affected geographic regions – what is the reach of the organized crime group with respect to offering its goods and services, violence, corruption, and reputation?

Coding and Scoring

Like the Sleipnir tool, each attribute for the characteristics and harms matrices will be assigned a color-coded value that has a corresponding numeric score dependent on the attribute: high (red), medium (orange), low (yellow), nil (green), or unknown (blue) [5]. A preliminary coding mechanism for both characteristics and harms can be found in Tables 1 and 2. The sum of all the attributes results in two aggregate scores (characteristics and harms) for each organized crime group. These scores will serve three main purposes (i) determine how the properties of organized crime groups are associated with their capacity to commit harm, (ii) compare and contrast different organized crime groups based on the their properties and harms they cause, which may reveal whether certain characteristics are affiliated with certain types of harm, and (iii) conduct a temporal analysis by identifying how changes in an organized crime group's characteristics over time impacts the harms it is capable of committing.

Limitations

While this research is still in its infancy, there are some unavoidable limitations given the nature of the task at hand. First, the set of indicators that have been identified here are preliminary. There may be some indicators or sets of indicators that we have not taken into consideration that may affect both the characteristics and harms matrices, thereby impacting our analysis on the relationship between the characteristics of organized crime groups and the harms they cause.

The sets of documents that are used will also have an impact on our analysis. For instance, sentencing documents may also not capture those cases where organized crime group members were found innocent, thereby giving only part of the picture. Different categories of documents (newspaper articles, research studies, and so on) will reveal different types and quantities of information, and when taken individually may be "dated, fragmentary, contradictory, vague, and inconsistent in terms of accuracy and reliability among law enforcement agencies and between jurisdictions domestically and internationally" [5]. Using these different categories of documents may offer more information to fill in the gaps at this first methodological stage.

Another important issue is the weighing of attributes in a consistent and standardized manner. For instance, how many categories should ordinal variables be assigned and what should these categories be? What factors should these decisions be based on (law enforcement reports, case reports, sentencing reports)? How can the categories and scores assigned to them be standardized? How does this decision impact analysis and the next stages of the research process?

Each of these limitations can be addressed at each stage of the research process. For instance, deciding on which indicators to use and how to weigh them can be done at the outset using a multi-disciplinary collaborative effort. By opening up a dialog between academics, law enforcement, prosecutors and judges, and victims of organized crime, a comprehensive set of indicators, and their importance, can be agreed upon. While using a certain type of documents may influence our analysis, it is a *preliminary* analysis. The next stage in the research process could be to use other types of documents to triangulate information and identify any missing data. Employing this strength of the document analysis methodology can not only result in getting a more plausible picture of organized crime, but it may also lead to the refinement of the set of predictors as new ones may be revealed in other documents.

Research Extensions

While this research suggests a framework to identify the correlation between the characteristics of criminal organizations and harms, there are several related research extensions that emerge. First, does the type of criminal activity itself determine the type and degree of harm caused, regardless of the above-mentioned characteristics? For instance, does a drug trafficking organization cause different harms than a crime group engaged in film piracy, even though both groups may be similar in their sophistication, structure, stability, self-identification, and authority of reputation? Second, is there a correlation between a specific characteristic of the crime group and a specific type of harm? Does the authority of reputation, for instance, cause only psychological and societal harm, while criminal sophistication determines economic and physical harm? Do the different crime group characteristics interact to determine harm, and are some characteristics more predominant

than others? For example, self-identification and authority of reputation collectively may cause greater psychological harm than when considered separately.

Also important in studying harm capacity are the properties of harm itself, such as duration, intensity and scope. Can long-term, local, minimal harm be effectively compared against short-term, global, intense harm? Another related harm property is temporal trajectory. For instance, when are the different types of harm caused (before, during, or after the commission of crime)? And can these harm properties be used to rank crime groups? Is it possible to quantify and compare harms? Is one type of harm more important than another, and can this in turn identify which criminal organization causes greater harm? These are just some of the theoretical questions that emerge from this study.

Research Issues

When the aforementioned Expert Working Group was convened by NIJ, much of the discussion centered around the obstacles and pitfalls faced in attempting to assess harm and harm capacity with respect to organized crime. One obstacle was the flow of information between policymakers and practitioners on the one hand and researchers on the other. Many of the researchers recalled the difficulties they had confronted in trying to obtain information from criminal justice officials, including information that might be presumed to be publicly available. The officials at the meeting generally agreed on the need to share data with researchers in order to establish a baseline of "scientific information documenting these areas," but they also noted the prohibitions against sharing information that was either classified or was related to an ongoing investigation or case.

A few of the suggestions from the group for dealing with these obstacles included continuing some of the current lines of research on the organization of criminal groups. The participants believed that pursuing numerous studies would lead to more rigorous results and would help to better identify trends. The participants further believed that researchers should focus on those criminal organizations which are involved in more high-risk activities and criminal markets, rather than focusing on how individuals initially became involved with the crime groups. The latter they believe is a much less fruitful line of inquiry.

A further suggestion was to focus on research into white-collar crime, which while often organized, does not usually involve violence or some other factors commonly associated with traditional organized crime. This sort of focus would thus be somewhat easier to accomplish, and could help to explain why certain crimes require the establishment of more formal organizations for their commission, while other crimes can seemingly be committed through informal and ad hoc networks.

Yet another recommendation for research was to examine how groups organize to engage in specific forms of organized crime. For example, to date, no researcher has explored the logistics of international organized crime, thus practitioners do not have a systematic

understanding of how crime groups move people around, communicate, or run other aspects of their multinational operations. Nor has research catalogued the attempts, successful or otherwise, of international criminal organizations to invest in (or actually capture) licit sectors of the economy. To this end, participants noted that any research detailing the relationships between crime groups and licit actors, such as businessmen and political leaders, would further clarify how corruption and the protection of criminals are brought about by criminal organizations.

In order to conduct a creditable harm assessment, a researcher has to engage a number of concepts: the actors, both criminal and non-criminal, a definition of success and failure, the logistical contexts, and so on. Researchers cannot complete harm assessments without addressing all of these points and more. Thus, such studies have to start out with basic research on the actors (on the criminal organizations themselves) before they move on to the more complicated study of the harm done by those organizations. One without the other will prove to be of little value.

In thinking about a starting point for this type of research, the working group suggested a step-by-step process. To begin, information could be gleaned from closed organized crime cases—investigator notes, court records, pre-sentence reports, and so on— to be followed by interviews of those actually involved in the cases (investigators, prosecutors, defense counsel, probation officers, etc.) to garner more information and to fill-in the gaps. Next, the researchers need to identify key the indicators of harm in these cases, such as money stolen, and use case information such as insurance claims or the costs of private security as operational measures of these indicators.

Once these data have been collected, aggregated, and analyzed, the researchers would be in a position to provide a reasonable (far better than currently available) of both the group's harm capacity and the actual resulting harm in these particular cases. An important requirement for this kind of research is to make every effort to triangulate the information sources so as to limit bias and inaccurate reporting.

The process outlined above requires that law enforcement and researchers trust one another in order to obtain access to the information that law enforcement controls. This has been a major roadblock in the past. Researchers need total access to quantify the data and to work with law enforcement and policymakers to clarify the data and findings. It should be pointed out that old investigative files are, by nature, biased toward the past and may well contain only information that could be proved in court as opposed to providing the full picture of the crime. But these limitations are just that – limitations to be acknowledged – but are not insurmountable obstacles.

References

1. Dantzker, M.L. & Hunter, R.D. 2006. *Research Methods for Criminology and Criminal Justice*. 2nd edition. MA: Jones and Bartlett Publishers.
2. Mason J. 2002. *Qualitative Researching.* 2nd edition. London: Sage Publications Inc.
3. Strang S.J. 2005. *Project Sleipnir: An Analytical Technique for Operational Priority Setting*, Royal Canadian Mounted Police.
4. https://analysis.mitre.org/proceedings/Final_Papers_Files/135_Camera_Ready_Paper.pdf
5. Tusikov N. 2009. *Developing Harm Analysis to Rank Organized Crime*. International Studies Association Conference, February 15-18, 2009.

Table 1: Characteristics of Organized Crime Groups

Organized Crime Group Attributes	Attribute Values
Sophistication	
Preparation & Planning	Extensive; Haphazard; None
Skill & Knowledge Intensity	Expert/professional; Novice
Skill & Knowledge Diversity (skill-specific recruits)	Different roles (recruiter, organizer, monitor, etc)
Criminal Diversity (multiple crimes/enterprises)	>3; 1-3; 1
Communication & Information Dissemination	Face-to-face; technology; both
Structure	
Hierarchy/Lateral	Hierarchy; clustered hierarchy; networked; mixed
Size	Associates (3-5); group (5-20); syndicate (>20)
Roles/Division of Labor	Organizers; executors; extenders; money movers; insulators; monitors; communicators; guardians; crossovers
Fixed/Fluctuating	Turnover rate; overlapping membership
Stability	
Redundancy	Restructuring upon exposure/apprehension
Duration of OC group	
Adaptability	Changing structure and operations based on exposure, market changes, police actions
Insulation	Anonymity, Evasion measures
Self-identification	
Codes of Conduct	Secret code; protocols
Rite de Passage/Initiation	Initiation ceremonies; tattoos
Bonding	Resource sharing; learning strategies; mentorship
Social Ties	Kinship; generational; background; business
Nature of Ties	Transient; overlapping; permanent

Motivations & Rationales	Revenge; status; financial; power; sense of brotherhood
Authority of reputation	
Scope or Reach (geographic)	Local; national; international
History (temporal reputation)	Existence period
Violent Compliance Strategies	Physical violence, Weapons usage
Non-violent Compliance Strategies	bribery; corruption; capital/investment
Reputation/Perception	Police; public; media
Harm & Fear Level	Psychological, Financial, Physical

Table 2: Harms Caused by Organized Crime Groups

Harm Attributes	Attribute Values
Physical	
Number of deaths	Nil, low(<50), medium(50-150), high(>150)
Number of injuries	Nil, low(<50), medium(50-150), high(>150)
Number of torture cases	Nil, low(<50), medium(50-150), high(>150)
Number of assaults	Nil, low(<50), medium(50-150), high(>150)
Number of rapes	Nil, low(<50), medium(50-150), high(>150)
Number of property damage cases	Nil, low(<50), medium(50-150), high(>150)
Psychological	
Number of threats/intimidations	Nil, low(<50), medium(50-150), high(>150)
Negative influence on emotional and mental health (perceptions)	Likert scale 1-10, 1: low, 10: high
Fear of crime (perceptions)	Likert scale 1-10, 1: low, 10: high
Fear of victimization (perceptions)	Likert scale 1-10, 1: low, 10: high
Frustration/Anxiety (perceptions)	Likert scale 1-10, 1: low, 10: high
Duration of harm	Short-term vs. long-term
Economic	
Illegal revenue generated	Nil, low(<1 mill.), medium(1-10 mill.), high(>10 mill.)
Investment of illegal revenue in legitimate sector	Nil, low(<1 mill.), medium(1-10 mill.), high(>10 mill.)
Number of affected businesses	Nil, low(<50), medium(50-150), high(>150)
Income tax lost	Nil, low(<1 mill.), medium(1-10 mill.), high(>10 mill.)

Foreign bank accounts	Nil, low(<50), medium(50-150), high(>150)
Local/national bank accounts	Nil, low(<50), medium(50-150), high(>150)
Societal	
Corruption	Nil, low(<50), medium(50-150), high(>150)
Loss of confidence in laws/criminal justice system (perceptions)	Likert scale 1-10, 1: low, 10: high
Loss of confidence in law enforcement (perceptions)	Likert scale 1-10, 1: low, 10: high
Loss of confidence in politicians (perceptions)	Likert scale 1-10, 1: low, 10: high
Loss of confidence in community (perceptions)	Likert scale 1-10, 1: low, 10: high
Affected geographic regions	Nil, low(<50), medium(50-150), high(>150)

Helmut Kury
Max Plank Institute for International and Foreign Criminal Law, Freiburg, Germany
Annette Kuhlmann
University of Wisconsin, Baraboo, USA

MEDIATION IN GERMANY AND OTHER WESTERN COUNTRIES

Abstract

The article is devoted to comparative analyses of mediation in Germany and other countries. Authors discussed historical precursors of conflict resolution after crimes from the Code of Hammurabi to contemporary approaches.
The theoretic part of paper is based on in extensive empirical criminological research results over the last 50 years. The authors analysed definition of mediation and development of mediations process in USA, Germany and other countries. “Overall, mediation is throughout faster and more inexpensive for all participants than the classic confrontational court procedures”

Key words: Mediation; Restorative justice; Reconciliation; Restitution; Harm; Offenders

1. Introduction

In recent decades professionals in criminal justice in western industrial countries have increasingly "rediscovered" forms of dealing with crime, deviance, and other forms of social conflict that were prevalent in earlier periods of European history and non-European indigenous societies. Generally these practices have become known as mediation or restorative justice and have spawned a sheer overwhelming body of literature and approaches [18], [25], [34].

A main reason for the "rediscovery" of mediation can be seen in extensive empirical criminological research results over the last 50 years which has shown repeatedly that today's classical approach to dealing with crime and criminals can only rarely, if at all, address the harm created through the criminal act. This classical approach concentrates on harsh punishment of the offenders, while "using" victims only as witnesses [29]. Another important contributing factor was the emergence of victim research and the foundation of the field of victimology as part of post WWII criminology. This new field rightly criticized that with the classic criminal justice approach the victims of crime receive little attention and support [3]. Over the last several decades many countries established special legal provisions for more effective victim support, but in practice little, if anything has changed. The role of victims in the justice system remains limited to being "used" as witnesses; compensation occurs, if at all, mostly through private institutions. In Germany, for instance, access to the few victim support measures available through the state require surmounting so many bureaucratic obstacles that in most cases compensation is unachievable [54], [55].

International research clearly shows that most crime victims, with the exception of those of severe victimizations, are more interested in restitution of the material or immaterial damage inflicted by the criminals than in (harsh) punishment of the offender [47]. But exactly the latter is the focus of the current penal law and state organized criminal justice system. It is thereby ignoring the needs of victims and a broad variety of the public groups which, in contrast, strive to find solutions for the social harm created by the crime. Beginning in the 1960s and 70s in the United States, these conditions have led to an increasing number of projects that seek to find solutions through mediation and the building of bridges between offenders, victims, and community.

Restorative justice presents a different approach to achieving justice than the traditional court system. Whereas court systems depend on punitive measures and do not attend to victim concerns, restorative justice focuses on repairing the harm caused by an offense, bringing the offender back into society, and giving all actors affected by the crime (the offender, the victim and the community) a direct voice in the justice process [11].

Important for the acceptance of mediation is the familiarity of the public as well as of penal law and criminal justice institutions of its potential and possibilities for conflict resolution. Johnstone and Van Ness [26, 6] point out: "Yet, despite its growing familiarity in professional

and academic circles, the meaning of the term 'restorative justice' is still only hazily understood by many people". Professionals at a recent international conference in Germany identified the reasons for the limited use of restorative justice as a lack of understanding or familiarity with this approach among the general public as well as the court. "Because of the overwhelmingly punitive orientation in the relevant arenas such as politics, penal justice, and public discussion it is difficult to create a change in this situation since restorative justice is seen as a rather soft reaction to crime" [34, 240].

The following chapter will first present a short overview of the historical background and use of mediation and conflict solution techniques, particularly those ideas which are "rediscovered" today. Mediation is a general term which has been used in a number of different ways; we will attempt a short definition. The main focus of the chapter will then be a discussion of forms of application and experiences with mediation in Germany and other (western) European countries. The central question regarding the possible preventative impact of mediation in contrast to "classical" approaches to crime will subsequently be addressed. In this context results of evaluation programs will be discussed by comparing the different effects of mediation and penal punishment.

2. Historical precursors of conflict resolution after crimes

Supporters of mediation and restorative justice emphasize correctly the historical background of this approach to problem solving. For example, Frühauf points to the history of restitution as one of the most interesting topics in the history of law [10, 8]. In the beginning restitution was a natural part of any system of sanctioning and can be traced back to the beginning of written law [12]. Already the Code Ur-Nammu (2050BC) shows the legal roots of modern forms of restorative justice [2]. The Code of Hamurabi originating in 1.700 B.C., one of the oldest traditional law books, describes, beside harsh punishment, also extensive regulations regarding restitution for the victim by the offender. This applied, for example, to cases of theft, but also bodily harms or killings. Even more extensive forms of restitutions by the offender were regulated in the law of the Hethiter from about 1.300 B.C.

Extensive regulations regarding restitution were common among most cultures; for instance, in antiquity, in the Islamic legal system, and in most tribal societies [34, 11], [7]. Barak [2] reports in this regard on the Roman Law of Twelve Tablets (449 BC). Although North American Indian cultures have deep and extensive differences between their respective traditions, restorative justice has been a wide-spread theme which is now revived among many tribes, most notably the Navajo [1], [17], [60]. Sharpe [48, 26] points out: "Reparation has been a vehicle for justice throughout human history." Rössner [41, 878] explains these findings from the point of view of behavioral sciences when he writes "that behavioral rules regarding reconciliation are part of humankind's biological program". He further explains that there is no human society "without systematic rules for conflict resolution" and "the restoration of peace through social restitution was the central goal of criminal policy" in the historical penal law until the Middle Ages.

Frühauf [10, 13] describes the development of the concept of restitution for the German legal tradition over the last several centuries. Beginning with the 5th Century A.D. penal law increasingly became a written system. An institutional reaction to crimes in the form of restitution was regarded as normal and customary [10, 17]. With the emergence of institutional regimes of kingdoms the distribution of power between state and tribes changed dramatically [10, 37]. These kingdoms were interested in the abolition of the old systems of penal law since they understood jurisdiction also as a medium of political power over which they wanted to be in charge, effecting deep change in social control as a result. The concept of restitution had no place in the newly established forms of punishment through these authorities. In the process the victim lost participation in the regulation of the conflict and thereby also the right to cooperate in the finding of a "solution" [8].

Punishment now became a means to impose power. Upon the completion of an investigation the state imposed a "Peace fine," a monetary punishment, so punishment became a source of state income. This created a problem that continues to this day, "…by the end of the Franconian period the involvement of the state had become the main focus, the complete monetary penance had to be paid to the judge without exception. The problem of restitution for the victim was seen as solely his or her problem [10, 44]. Essentially these principles have remained unchanged to this day. Frühauf [10, 45] talks about a thorough 'fiscalization' of penal law in response to the massive financial interests of the kingdom. Fines have been and continue to be today a profitable business for the state; discussions regarding restitution to the victim as a responsibility of the state have only recently re-emerged. At the same time, however, Frühauf points out correctly that there is no way around state control of criminal justice, despite all the problems of social control connected with it, since it led to a more just and equal treatment [10, 59].

What remain open according to new scientific inquiry are questions regarding the extent to which the state has to necessarily limit itself to punishment in its reaction to crime [10, 60]. This question in particular has to be reconsidered in light of the changed societal conditions today. The missing component of restitution in penal law can be seen as a disadvantage of modern penal law. In dealing with crime the focus is nearly exclusively on the offender, with a network of treatment and diversions options beside criminal sanctions. For instance, in Germany today monetary fines have become the most prevalent form of sanction – victims, however, are not significantly benefiting from these measures. Only recent considerations from the field of victimology have led to some new forms of thinking regarding these issues [10, 65] and the creation of several restitution projects which started in the US, but are now also becoming increasingly visible in western European countries.

3. Definition of Mediation

Braithwaite, one of the founders of the modern mediation movement, distinguishes between "mediation" and "restorative justice" when he emphasizes,"Mediation between just a victim

and just an offender can be described as a 'restorative process', but it does exclude other stakeholders such as the family of the offender." Mediation as a restorative process stands in contrast to restorative justice which he understands as a process where all the stakeholders affected by a crime have an opportunity to come together to discuss the consequences of the crime and what should be done to right the wrong and meet the needs of those affected. Of course such an ideal is secured to greater and lesser degrees [4, 497].

However, according to Braithwaite restorative justice does not only refer to procedures

> … it is also about values. It is about the idea that because crime hurts, justice should heal. The key value of restorative justice is non-domination … The active part of this value is empowerment. Empowerment means preventing the state from 'stealing conflicts' [8] from people who want to hang on to those conflicts and learn from working them through in their own way. Empowerment should trump other restorative justice values like forgiveness, healing and apology, important as they are [4, 497].

The central role of 'empowerment' in this context also means that it has to be accepted when a victim reacts in a retributive rather than restorative manner to the experienced injuries. "But because non-domination is the fundamental value that motivates the operational value of empowerment, people are not empowered to breach fundamental human rights in their pursuit of revenge" [4, 497].

According to Walgrave the following characteristics distinguish restorative justice from criminal justice

> Crime in restorative justice is defined not as a transgression of an abstract legal disposition, but as social harm caused by the offence…. In criminal justice, the principal collective agent is the state, while collectively in restorative justice is mainly seen through community….The response to crime is not ruled by a top-down imposed set of procedures but by a deliberative bottom-up input from those with a direct stake in the aftermath …. Contrary to formalized and rational criminal justice procedures, restorative justice processes are informal, and include emotions and feelings….The outcome of restorative justice is not a just infliction of a proportionate amount of pain but a socially constructive, or restorative, solution to the problem caused by the crime…. Justice in criminal justice is defined 'objectively', based on legality, while justice in restorative justice is seen mainly as a subjective-moral experience [55, 559].

At the same time the author emphasizes that the differences between criminal und restorative justice have become blurred in recent years.

Similarly, there are no clear distinctions between the different types of mediation. According to Zernova and Wright there are numerous models that can be applied in practice as restorative justice approaches. "There is no agreement among restorative justice proponents as to how exactly restorative justice should be implemented and what its relationship to the criminal justice system should be" (2007:91). The authors distinguish between a process oriented and an outcome oriented model. In the face of such diversity of approaches, a distinction is often made between three kinds of mediation. In one instance, mediation is part of the court proceedings and conducted by the judge. In the other situation mediation is used parallel to the court proceedings in an "institutional interlocking with the court proceedings and yet at the same time implies a procedural disengagement from the court." Finally, an out-of-court mediation aims to prevent a court proceeding in the first place [20, 9, 19]. The latter two were the prevalent forms in those countries analyzed by these authors [20].

According to Hot and Steffen [20, 12], who have conducted an international comparison, the definitions for mediation vary widely depending on the respective legal system. According to their results, the smallest common denominator of a definition of mediation is:

> Mediation is a procedure based on voluntary participation. Without using any coercion or decision making power, a facilitator supports the communication between the parties involved with the goal of finding a responsible resolution of their conflict.

The various legal systems are in agreement in regard to one central element, voluntariness; however the extent to which this concept applies varies in the different countries.

A central element in mediation is victim-offender reconciliation or restitution. Heinz [15, 376] rightly emphasizes that victim-offender reconciliation is closely connected to the idea of restitution, but goes beyond it, since the central idea in reconciliation includes a social peace.

> The goal is to reach a mutual settlement and, in the best instances, a reconciliation of the parties by addressing the needs and interests of both sides. By using the opportunity for a private, autonomous solution, the offender is supposed to gain an increased awareness of the damage caused and thereby gain a greater sense of social responsibility. However, this foundational concept points beyond a victim-offender reconciliation in its current form to the consideration of the victims perspective as a starting point for social learning in offender- and probation treatments as well as corrections."

4a. Developments in the United States

In western countries restorative justice first emerged in the United States as a result of several strands of development. In connection with the social unrest of the 1960s and 70s the US government developed strategies that focused on community development and poverty reduction. They provided resources for the development of neighborhood justice and

community panels. Beginning in the 1980s these initiatives contributed to a vibrant sense of community as a cultural resource, which included forms of community justice. At the same time critique of the traditional, state-sponsored adversarial legal system mounted and the ensuing disillusionment with the system became known as the 'nothing works' thesis.

> The criminal justice system was seen as failing, and to be doing so with spectacularly tragic consequences for the social fabric. The law was depicted as deploying anachronistic institutions ill-equipped to accommodate the changing volume, type and cause of dispute in the late 20th century. The system was labeled as costly, inefficient, alienating, arbitrary, inaccessible, and inappropriately focused on the interests of lawyers and judges [37, 5].

The era was characterized by dissatisfaction with the status quo and a zest for experimentation. As mentioned before, victim logy had emerged and became increasingly established. In criminology Richard Quinsy emerged as a leading figure in a new, critical approach to crime that emphasized social justice. One of his transformative contributions was the formulation of an influential kind of restorative justice that became known as Peacemaking Criminology. Consistent with the era's exploration of different religions, he brought a general spiritual dimension to restorative justice based on its prevalence in ancient wisdom tradition, including Hinduism, Taoism, and Buddhism beside those mentioned earlier and gained quite a following among criminologists as well as lay people [5, 267], [49], [50], [59]. Restorative justice now became applied in an ever wider array of settings, mediation circles, race circles, family violence, prisons, specialty courts, capital punishment, juvenile justice, as well as various settings of trauma resulting from war and government violence [50].

But another, confluent strand enhanced this development. Restorative justice had been the focus of most justice systems in antiquity and in tribal societies, including North American Indians. In the process of colonizing the tribes in North America the US Government took over many parts of tribal law enforcement as well as criminal justice (see for instance the Major Crimes Act of 1885 or Public Law 280 in 1953). In the context of the American Indian Movement and tribal revitalization of the 1970s, the re-creation of tribal courts became a central means of re-establishing political sovereignty. Even the Attorney General of United States supported these new developments [38]. The Peacemaker Court of the Navajo Nation was at the forefront of this movement. Similar to other contemporary tribal courts it is built on traditional and spiritual tribal values which emphasize social harmony, but lack concepts, even words, for guilt [17]. These traits, however, potentially leave tribal courts open to the danger of idealization [23]. In Navajo jurisprudence today both systems exist parallel to each other and supplement each other. Still, the Navajo Peacemaker Court not only became the most successful and most well-known of these tribal courts, but by bringing its ancient tradition into the present, it, in turn, had a major impact on the establishment of restorative justice in the main stream administration of justice in the United States.

The re-establishment of tribal courts illustrates one aspect of the ongoing debate surrounding restorative justice in the US – that of the role of the state. The state used its criminal justice system as one of the ways to oppress indigenous people [39]. But the revival of traditional tribal justice systems has the potential for spaces of tribal autonomy (relatively) free from state intrusion [64]. Pelvic points to an inherent paradox in restorative justice. On one hand it has a distinct identity and distinct approaches to crime which are "fundamentally incommensurable with and independent of, state criminal justice agencies" [37, 17]. On the other hand, restorative justice works predominantly "within (rather than against) state criminal justice arenas" [37, 19]. Johnston goes even further when he asks: Is restorative justice "an alternative to punishment or an alternative form of punishment" [23, 88]. Some of the other controversies include questions regarding reiterative shaming, ethical roles for victims, and the appropriate use of restorative justice in various settings [23], [50].

4b. Developments in Germany

As Fruehauf [10, 20] states.... the need to talk about a social conflict so that it can be resolved is still deeply rooted in society, but this potential for conflict resolution is hardly ever, if at all, used in existing criminal proceedings. … The idea of restitution and satisfactory conflict resolution in penal politics has therefore a certain conviction and legitimacy (1996:1088).

In the middle of the previous century this fact was obviously increasingly recognized after an extended period of "forgetting." It allowed the newly created victim logy, based on sound research, to revitalize this idea relatively quickly and spread it at first throughout western industrial states and then globally. In Germany penal sanctions have been supplemented through a net of diversion and treatment measures. However, these considerations have focused so far predominantly on the offender or on appropriate sanctions for him/her [10, 64]. The history of mediation emerged in Germany during the 1980s on the backdrop of reports about its successes in the United States. An intensive discussion about "restorative justice" had already emerged in that country during the previous decade [41, 889].

> Restorative justice as both a philosophy and an implementation strategy developed from the convergence of several trends in criminal justice: the loss of confidence in rehabilitation and deterrence theory, the rediscovery of the victim as a necessary party, and the rise of interest in community-based justice [34, 13].

In the US, during the 1970s and 80s, punitiveness increased among the population, but, at the same time, so did the emergence of alternative forms of sanctions. "Along with their interest in punishment, the public's interest in alternative non-punitive solutions has also been recognized"[34, 103]. When the public is educated about the low deterrent impact of classical sanctions as well as about alternatives to these forms of punishment, punitiveness declines [40], [43]. "In sum, while the public's support for punishment is well known, its support for alternatives to punishment and sanctions with a restorative quality is also strong" [34, 104]

and especially "punishment alone is an extraordinarily poor way of restoring trust either in an offender or in society" [34, 105].

The emerging discussion on alternative forms of crime reduction especially lauded the advantages of mediation as

> … expanded access to implementation of justice, lasting satisfaction and acceptance of the results, conflict resolution that benefitted all effected by the crime, a greater sense of justice and resolution in the perspective of the parties involved as well as the community, a strengthening of all parties through an integrative and constructive method of conflict resolution, an easy access point, workload reduction of the judiciary, as well as cost savings for the state and the parties involved [18, 7].

In this context support of mediation increased "… in the 1990s to a point of euphoria which praised mediation as an omnipotent resolution to any kind of conflict "(Hopt and Steffek 2008c:7). According to Hopt and Steffek [18, 9] there is "a tradition in mediation orientation of focusing on foreign legal codes."

The German penal code (Strafgesetzbuch or StGB) mentions restitution once in connection with requirements for parole (§ 46 section 2 of StGB) and once in the context of sentencing (§ 46 section 2 StGB). § 46 sets policies for sentencing which are based in the notion of personal guilt and thereby the measure of individual guilt. Section 2 lists the main charges against the accused with special mentioning of possible efforts of the offender for restitution attempted already before the conviction [10, 66]. It is possible to use restoration of the damage caused by the crime as part of the probation requirements. § 46a allows for the dismissal of a trial after successful victim-offender reconciliation in cases of misdemeanor (offenses that carry a sentence of less than a year). Even in felony cases victim-offender reconciliation can be considered for a reduction in sentencing.

Re-socialization is a central theme in German juvenile law (Jugendgerichtsgesetz or JGG). Consequently, restitution is seen as particularly valuable in this regard, since it is well suited to bring home the injustice of the offense to the offender. "Victim-offender reconciliation holds a privileged function in juvenile justice because of the normative consideration of the concept of restoration" [15, 376]. Accordingly it is already possible in the juvenile law of 1923 to impose restitution as a special obligation. Through such restitution the young offender is supposed to "recognize the injustice of his acts and acknowledge the negative consequences for himself" [10, 76]. Consequently, victim-offender reconciliation was first accepted into the juvenile penal law (1. JGGÄndG August 30, 1990; BGB1 I, 1853) which was the first time it was explicitly mentioned in a law. Then, in 1994, it was included in the general penal code (§46a StGB). In juvenile penal law the judge has the option to require the convict to attempt victim-offender reconciliation (§10 paragraph 1 section 3 Number 7 JGG).

To increase the application of victim-offender restitution, the justice system was required to encourage its use in 1999 (§§ 155a, 155b, Strafprozessordnung – StPO). The prosecutor and the court were asked to explore the possibility of restitution and work towards it or to include an appropriate agency to do so [46, 438].

Nationally applied approaches are not uniform. Criteria for victim-offender reconciliation have to include: no petty offenses, presence of personal harm, clear facts of the case, agreement of the offender with the facts of the case and acceptance of responsibility, voluntary participation by both parties [9, 93], [30]. Johnstone points to the danger of 'net-widening' when harder cases are tried in court and more minor offense are addressed through restorative justice programs.

> Less serious cases will be diverted to informal restorative processes and sanctions. But, because they are less formal and regarded as more benign, these processes will be extended to cases which previously would not have given rise to penal interventions. Overall the reach of the system of penal control will be extended rather than cut back [24, 609].

On one hand restitution requirements are rightly given great pedagogical value, on the other hand this approach is still used relatively rarely in Germany; payments to a charity are more common. Similarly, Frühauf [10, 77] emphasizes that a requirement for restitution is "...given great significance on the theoretical level, ... yet in practice it is rarely used." This may be related to the training of judges, especially judges in juvenile courts.

As a result of a resolution by the German government in 1992, the national organization for probation and parole (Deutsche Bewährungshilfe e.V.) established a service office for victim-offender reconciliation as a trans-regional counseling center which is funded predominantly by the department of justice and the states (http://www.toa-servicebuero.de/) [6, 589]. Since 1995 Kerner et. al [28] are compiling data about victim-offender reconciliation nation-wide at the request of the German department of justice. According to these statistics an increasing number of non-partisan conflict resolution offices have been established by various organizations, including support agencies for the court and juvenile courts as well as court related social service agencies. These services can be sought by the prosecutor in the pre-trial stage or by the court during the trial to initiate victim-offender reconciliation. The professionals who conduct mediation are usually social workers and already have significant additional training in conflict resolution [9, 90]. According to Schwind [46, 439] there are approximately 400 such reconciliation offices in Germany. According to Delattre [9, 90] currently more than 300 victim-offender reconciliation agencies staffed with full-time employees work annually on 25,000 cases (Germany has ca 82 million citizens) [52, 104]. Delatorre [9, 91] shows, those 35,000 cases are resolved annually through victim-offender reconciliation. While these absolute numbers put Germany at the top in Europe in regard to

the application of this approach, "[i]t is still relatively rare considering the 550,000 annual indictments" [46, 439].

According to Kerner et al. [28] the majority of victim-offender reconciliations were about assault (47%), about half of which were instances of domestic abuse [51, 105], [52, 2012]. Schmidt [44, 189] agrees that victim-offender reconciliation is used predominantly in cases of physical assault, but also property damage, slander, threat of a crime, coercion, unlawful entry, and property crime. The emphasis of victim-offender reconciliations is "…not on addressing material damage, but on the interpersonal realm [56, 339]. According to Jehle, the largest number of incidents occurred in 2002 namely in 69.8% apologies, 25.1% recovered damages, 13.6% compensation for pain and suffering, and 5.7% labor for the victim. In cases where the victim-offender reconciliation is successful the prosecutor usually dismisses the case. In other cases the court may reduce the sentence or even abstain from sentencing all together [21, 39], [46, 439].

On July 21, 2012 the German Parliament passed the "law in support of mediation and other procedures for out-of-court conflict resolution" (Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung. Bundesgesetzblatt 2012, Teil I, Nr.35;
(http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/mediationsg/bgbl.pdf;jsessionid=B20051C2D06C174DE282AB87C67EBC4B.2_cid344?__blob=publicationFile). This law represents the implementation of guideline 2008/52/EG of the European Parliaments from May 2, 2008 concerning specific aspects of mediation in civil and trade affairs (ABIL 136 from May 24, 2008, p. 3).

Hopt and Steffek [20, 7] correctly emphasize that in Germany today mediation "is partially established in the system of conflict resolution and seen as a helpful approach, however, according to general opinion, its potential is underutilized." Delattre [9, 90] argues similarly when he says that there is a general agreement that "victim-offender reconciliation, as a new perspective in dealing with law-breaking behavior, deserves greater attention in the administration of justice and should be anchored more solidly in criminal law."

5. Development in Other European Countries

In an anthology contracted by the German Department of Justice, Hopt and Steffek (2008b) provide an overview of the situation of mediation in other countries [41, 881]. The volume contains studies about the regulations in the United States, England, Australia, Canada, Bulgaria, Poland, Russia, and Hungary. Foremost it was the successes and positive descriptions of mediation in the US which increasingly encouraged other countries to introduce and support mediation.

As Hopt and Steffek [20, 12] rightfully emphasize, there are significant variations in the practice of mediation between these countries – even the term itself is defined differently.

Participation in mediation on a voluntary basis is a characteristic of this approach in all countries; some states do, however, discuss the question of the extent to which parties can possibly be forced to participate. Furthermore, the role of the mediator is defined differently; for instance in regard to the extent to which he or she may become involved in the solution of the problem. In addition, extra-legal conflicts such as domestic or work-related disputes can benefit from mediation; "It is one of the shared views in all of the studied social systems that the particular strength of mediation lays in its primary focus on social conflict while the legal resolution remains only a supportive function" [20, 13].

According to the authors, in situations where problems with mediation do emerge, the causes have to be found and evaluated in the context of the countries' legal system [20, 85]. Difficulties occur particularly in countries which are still unfamiliar with the process and thereby lack experience with its implementation such as poor procedures, insufficient institutional support, or abuses leading to delays of the court proceedings. It is important that the courts and public are familiar with the process.

While restorative justice, at least in terms of theoretical discussions, has become wide-spread in Western industrialized countries since the 1980s, there are fewer Eastern European countries that have developed such approaches. Those that did usually had already oriented their policy development in accordance with the west for several decades. Willemsens and Walgrave, for instance, emphasize: "Although a number of countries in Central and Eastern Europe already have well established victim-offender mediation practices (for example, Poland, the Czech Republic, and Slovenia), others are still struggling to take the first steps" [56, 491]. The European Forum for Restorative Justice tries to provide support in the context of the AGIS2- Project "Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe." Based on their own experiences with collaborations in Eastern European countries Willemsens and Walgrave [57, 491] point to specific difficulties and resistances:

> …a highly punitive attitude among the public and policy makers, - an uncritical reliance on incarceration, - strong resistance within the police, prosecutors and judges, who fear competition from alternatives, - a passive civil society and weakened public legitimacy of the state and its institutions, - limited trust in NGOs and in their professional capacities, - lack of information about restorative justice and of restorative justice pilots, - low economic conditions, making it difficult to set up projects, - no tradition of co-operation and dialogue in several sectors and professions, - a general loss of trust in a better future, and a mood of despondency and cynicism, - forms of nepotism and even corruption in parts of the criminal justice system, - heavy administrative and financial constraints on the agencies, preventing investment in qualitative work" [31].

Kuzynsky-Singer emphasize, with regard to Russia, that mediation represents "…a relatively new phenomenon whose foundations are not yet fully developed, particularly since special court regulations for restorative justice procedures do not yet exist" [32, 837]. Professional discussions lend more significance to this approach in regard to business-related conflicts. However, in 2007 a bill on "Reconciliation procedures with participation of a mediator" was introduced on the federal level in the Duma. The draft also addressed conflicts in labor and domestic disputes.

The same authors further report that the court has to grant permission for a settlement, confidentiality does not exist, and even the procedures for this approach are not regulated. The mediator can be subpoenaed and interrogated by the court. The profession of a mediator is available to anyone; no post-secondary educational degree is required. The majority of mediators do not have any legal background and there is not consistency in their approaches. "The practice of mediation in Russia at this time is very opaque" [32, 848].

Mediation is developing in Russia particularly as an alternative to the state's court system. "The Russian literature addresses the possibility that the risks of court corruption and false court judgments can be circumvented through mediation. It would thereby be more logical to forego state legal structures in the enforcement of the agreement [32, 846].

Jessel-Holst [22, 906] reports about the state of mediation in Hungary. A law regarding the process of mediation was implemented on March 3, 2003. This approach is intended for civil legal conflicts. The law offers few incentives for the initiation of a mediation process although it was introduced to alleviate the workload of the courts. Mediation was first practiced in Hungary in the regulation of conflicts in the area of health care. Mediators are required to hold an academic degree, although a special professional certification is not required. The procedure has been applied relatively rarely so far. Among all certified mediators in 2005, 51% were lawyers, 16% were teachers, or persons with a technical background. The number of mediations has increased to 721 in 2004, 532 of these led to a successful conclusion. Among the total number of mediations that year, 254 were related to family law, 34 to labor law, and 433 to civil controversies. Overall these mediation procedures were seen as positive and the low rates of utilization were deplored.

6. Evaluation Results for Mediation

While there were only a small number of research projects, even internationally, that focused on the evaluation of mediation or restorative justice, Bazemore and Elis showed that today a number of studies document "the positive impact of restorative practices at multiple levels, with case types ranging from first-time offenders and misdemeanants to more serious chronic and violent offenders". In contrast to counseling, which shows uneven success rates, the evaluation of restorative justice programs is more consistent. "Most studies of restorative programs, including recent meta-analyses … indicate some positive impact …, and some suggest that restorative programs may have equal or stronger impacts than many treatment

programs…"(2007:397). Most importantly, these studies also document positive impacts on the victims. However, it remains controversial if causes for these positive impacts are to be attributed to the reparation or to the experience of just treatment.

Hayes [14, 426] also arrived at a positive evaluation of restorative justice programs: „It seems clear that restorative justice processes have many benefits for victims, offenders and their communities. Victims benefit from active participation in a justice process. Offenders benefit from the opportunity to repair harms and make amends. Communities (of care) benefit from the negotiation of restorative resolutions to conflict… In this sense, restorative justice has achieved many of its aims (i.e. holding offenders accountable and affording them opportunities to make amends in symbolic and material ways, encouraging reconciliations between offenders, victims and their communities of care)".

However, there is still little research available on the preventative impact such as a reduction in recidivism among offenders who have participated in such victim – offender reconciliation programs. The existing evaluation results show significant methodological problems in regard to individual studies and the limited generalizability of the finding which are the same problems that have characterized the research on treatment options for decades [33]. Restorative Justice is a wide concept with varying approaches which are applied in different segments in the administration of criminal justice. The actual meetings, and thereby the opportunity for direct influence on the offender, often last only 60 to 90 minutes and can thereby only have limited impact. In addition, other factors that contribute to recidivism have to be considered such as unemployment, attachments to social networks, such as family, with their own particular dynamics, special life events, and possible drug and alcohol problems. Finally, there is the possibility of a "self-selection bias" since the offender as well as the victim have to agree to this approach [11, 41].

The most frequently articulated critique of restorative justice relates to the possible danger that (hard) punishment as deterrence might be eliminated. Proponents, in contrast, argue that such deterrence does not actually exist anyway. "It is of course true that the deterrent effects of punishment tend to be greatly overestimated and its tendency to re-enforce criminality underestimated. However, the average citizen will probably find this response unconvincing…" [58, 117-144], "….because the idea that without penal sanctions for law-breaking, many people will succumb to temptations to break the law seems self-evident to most people" [24, 601]. Some critics emphasize that for reasons of justice, restorative justice can only supplement, not replace, judicial punishment, though it may be significant in this role.

Johnstone [24, 610] argues for a role of restorative justice as part of a larger reaction pattern to criminality; "What is most interesting is that even the most fervent critics tend to regard restorative justice – suitable reformulated and modified – as an extremely valuable

contribution to the ongoing debate about how we should understand, relate to, and handle the problem of wrongdoing".

The impact and meaning of mediation is based in the interplay of the legal situation of a country and its cultural traditions of resolving conflicts, this is a central point in particular in regard to international comparisons [18, 77], [17]. Therefore the legal conditions and attitudes towards this form of conflict resolution have to be seen in the context of historical developments which are different in the countries of the former Soviet Union than those in western industrial countries and are also reflected in the respective punitive attitudes [31]. The experiences of the judiciary as well as the public with alternative sanctions is more limited, as public discussion and media reporting focus more on hard sanctions [35]. In many countries mediation is a new and still unfamiliar form of conflict resolution, based on little experience.

Hopt and Steffek come to the conclusion that "mediation is a meaningful method of conflict resolution worthy of support. However, it reaches its potential only when those involved see it as attractively rooted in the larger system of conflict resolution methods" [18, 79]. Also in regard to duration and costs this approach shows clear advantages. "Overall, mediation is throughout faster and more inexpensive for all participants than the classic confrontational court procedures" [18, 80].

7. Concluding Discussion

As illustrated above, there exists now an extensive international body of literature on mediation and restorative justice, especially in western industrial countries. Beginning after WWII, but particularly in the 1960s and 70s, the increasing significance of the emerging field of victimology initiated a necessary discussion about more prominent considerations of the needs of victims in criminal proceedings. In criminal court proceedings the victim only appears as a witness; restitution is left to him or herself. Considering that the majority of offenders were not able to provide restitution due to small or non-existing incomes, many victims were left either empty-handed or limited to insurance benefits. The penal law did not care about victim needs, but focused exclusively on the sanctioning of offenders. With this background it is not surprising that many victims were and are dissatisfied with the outcome of criminal proceedings; the only satisfaction left to them was the more or less harsh punishment of the offender.

According to Sessar [47, 21] the re-establishment of a "legal peace", the sole goal of modern criminal prosecution, does not automatically lead to a 'social peace' because 'legal peace' means "…first and foremost recognition and control. Social peace has then to be achieved separately. This includes the effort to retract displacements of the problem; i.e. the problem has to be traced back to its origin and a solution has to be identified from there. If this is possible and if the general public agrees, penal law can become superfluous or take over the responsibility for indemnity bonds. However, this agreement has to occur independently of

the criminal justice system and in appreciation of the socializing and rebalancing elements of such interpersonal regulations."

With this Sessar also addresses also public opinion, a particularly important factor since no innovations in this regard are possible without public support. Delattre [9, 91] correctly called victim-offender-mediation the most important and the most encouraging criminal justice initiative of the last 25 years. "The dialogue with the public has been a neglected element in the emergence of victim-offender-mediation and has to be intensified" [9, 101]. Law enforcement plays a central role since they are often the first institution to come into contact with the victim and the offender.

According to Young [60,137] the 1984 British crime survey indicates that 51% of those interviewed indicated that they were willing to meet the offender outside of court in the presence of an official to discuss restitution. In 1998 the same survey revealed in a different questionnaire item that 41% of the respondents agreed to a meeting with the offender, again in the presence of a third person, to learn about the circumstances leading up to the offense and to explain one's own feelings to him/her. This indicates generally a wide-spread willingness in the public to find restoration with an offender. Sanders [42, 222] emphasizes that research has shown that if offenders understand the criminal proceedings and view them as legitimate, they more readily accept the results, even if they consider it unjust. The same applies to the victim.

With the background of these overall encouraging results of victim-offender mediation it is not possible to ignore these alternative modes of reacting to law-braking behavior. "All modern legal codes are facing the question if and how victim-offender mediation is to be included in penal law" [41, 881]. The international comparison suggests "an integration of the appropriate restoration on all levels of penal control"[41, 894]. Most importantly the victims report predominantly positive results after participation in mediation.

Mediation was originally intended for victims; they were to experience better treatment following the offense. They were supposed to obtain better options for restitution of the material and non-material damage resulting from the offense. Numerous research results document convincingly that a professional approach to mediation has a high probability of fulfilling this goal. The vast majority of victims are doing better after participation in mediation; they clearly have better chances of overcoming the trauma than through traditional criminal proceedings.

America. Lanham: Rowman& Littlefield.

References

1. Austin R.D. 2009. *Navajo Courts and Navajo Common Law: A Tradition of Tribal Self-Governance.* Minneapolis: University of Minnesota Press.
2. Barak G., Leighton P., Flavin J. 2010. *Class, Race, Gender, Crime: Social Realities of Justice in America.* Bazemore G., Elis, L. 2007. Evaluation of restorative justice. In: Johnstone, G., Van Ness D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 397-425.
3. Braithwaite, J. 1989. *Crime, shame and reintegration*. Cambridge, UK: University Press.
4. Braithwaite, J. 2009. Restorative Justice. In: Schneider, H.J. (Hrsg.), *Internationales Handbuch der Kriminologie*. Band 2: Besondere Probleme der Kriminologie. Berlin: DeGruyter, 53-98.
5. Braswell M.C., McCarthy B.R., Braswell B.J. 2008. *Justice, Crime, and Ethics.* Newark, NJ: LexisNexis.
6. Bundesministerium des Innern/Bundesministerium der Justiz (Hrsg.)(2006). Zweiter Periodischer Sicherheitsbericht. Berlin: BMI/BMJ.
7. Burnside J. 2007. Retribution and restoration in biblical texts. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 132-148.
8. Christie N. 1977. Conflicts as Property. *British Journal of Criminology*. 17, 1-26.
9. Delattre G. 2010. Der Täter-Opfer-Ausgleich – die Praxis eines anderen Umgangs mit Straftaten. In: Senghaus, P. (Hrsg.), *Mediation und Polizei. Rothenburg/Oberlausitz: Sächsische Polizei*, 81-102.
10. Frühauf L. 1988. Wiedergutmachung zwischen Täter und Opfer. Eine neue Alternative in der strafrechtlichen Sanktionspraxis. *Gelsenkirchen*: Verlag Dr. Mannhold.
11. Gromet D.M. 2009. Psychological perspectives on the place of restorative justice in criminal justice systems. In: Oswald, M.E., Bieneck, S., Hupfeld-Heinemann, J. (Eds.), *Social Psychology of Punishment of Crime.* Chichester: Wiley-Blackwell 39-54.
12. Hagemann O. 2011. Restorative Justice: Konzept, Ideen und Hindernisse. In: Lummer, R., Hagemann, O., Tein, J. (Eds.), *Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schriftenreihe Soziale Strafrechtspflege*, Band 1, 151-178.
13. http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf
14. Hayes H. 2007. Reoffending and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice.* Cullompton: Willan Publishing, 426-444.
15. Heinz W. 1993. Opfer und Strafverfahren. In: Kaiser, G., Kerner, H.-J., Sack, F., Schellhoss, H. (Hrsg.), *Kleines Kriminologisches Wörterbuch*. Heidelberg: C.F. Müller, 372-377.
16. Hentig H.V. 1948. *The criminal and his victim*. New Haven.
17. Holly M. 2006. Navajo Criminal Justice. In: Ross, J.I. and Gould, L. (eds.) *Native Americans and the Criminal Justice System*. Boulder, CO: Paradigma.
18. Hopt K.J., Steffek F. (Hrsg.). 2008a. *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen.* Tübingen: Mohr Siebeck.

19. Hopt K.J., Steffek F. 2008b. Vorwort. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, VII-IX.
20. Hopt K.J., Steffek F. 2008c. Mediation – Rechtsvergleich, Regelungsmodelle, Grundsatzprobleme. In: Hopt K.J., Steffek F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, 3-102.
21. Jehle J.-M. 2005. *Strafrechtspflege in Deutschland.* Berlin.
22. Jessel-Holst C. 2008. Mediation in Ungarn. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, 906-921.
23. Johnstone G. 2011. *Restorative Justice: Ideas, Values, Debates*. London: Routledge.
24. Johnstone G. 2007. Critical perspectives on restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 598-614.
25. Johnstone G., Van Ness D.W. (Eds.). 2007a. *Handbook of Restorative Justice*. Cullompton: Willan.
26. Johnstone G., Van Ness D.W. 2007b. The meaning of restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 5-23.
27. Kaiser G. 1996. *Kriminologie. Ein Lehrbuch.* Heidelberg: C.F. Müller Verlag.
28. Kerner H.-J., Hartmann A., Lenz S. 2005. *Täter-Opfer-Ausgleich in der Entwicklung. Auswertung der bundesweiten Täter-Opfer-Ausgleichs-Statistik 1993 bis 2002*. Berlin.
29. Kury H. 2013. Zur (Nicht-)Wirkung von Sanktionen – Ergebnisse internationaler empirischer Untersuchungen. In: Kury, H., Scherr, A. (Hrsg.) *Zur (Nicht-)Wirkung von Sanktionen. Immer härtere Strafen - immer weniger Kriminalität? Soziale Probleme* 24, 11-41.
30. Kury H., Lerchenmüller, H. (Hrsg.). 1981. Diversion. *Alternativen zu klassischen Sanktionsformen*. 2 Bde. Bochum: Studienverlag Dr. N. Brockmeyer.
31. Kury H., Shea E. (Eds.). 2011. *Punitivity – International Developments*. 3 Vols., Bochum: Universtiätsverlag Dr. N. Brockmeyer.
32. Kurzynsky-Singer E. 2008. Mediation in Russland. In: Hopt, K.J., Steffek, F. (Hrsg.), *Mediation, Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen: Mohr Siebeck, 837-853.
33. Lipton D.S., Martinson R., Wilks J. 1975. *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies*. New York.
34. London R. 2011. *Crime, Punishment, and Restorative Justice. From the Margins to the Mainstream.* London, Boulder: First Forum Press.
35. Ludwig H., Kräupl G. 2005. Viktimisierung, Sanktionen und Strafverfolgung. *Jenaer Kriminalitätsbefragung über ein Jahrzehnt gesellschaftlicher Transformation.* Möchengladbach: Forum Verlag Godesberg.
36. Lummer R. 2011. Restorative Justice - EU-Projekt. Konferenz an der Fachhochschule Kiel. Arbeitsgruppen - Ergebnisse. In: Lummer, R., Hagemann, O., Tein, J. (Eds.), *Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schriftenreihe Soziale Strafrechtspflege*, Band 1, 235-242 (http://www.cepprobation.org/uploaded_files/RJ_Band1.pdf).

37. Pavlich G. 2005. *Governing Paradoxes of Restorative Justice*. London: Glass House.
38. Reno J. 1995. A federal commitment to tribal justice systems. *Judicature.* Vol. 79:3 pp.113-117.
39. Ross L. 1998. *Inventing the Savage: the Construction of Native American Criminality*. Austin, Tx.: University of Texas Press.
40. Roberts J.V., Hough M. (Eds.). 2002. *Changing attitudes to punishment: Public opinion, crime and justice*. Cullompton: Willan.
41. Rössner D. 1998. Die Universalität des Wiedergutmachungsgedankens im Strafrecht. In: Schwind, H.-D., Kube, E., Kühne, H.-H. (Hrsg.), Festschrift für Hans Joachim Schneider zum 70. Geburtstag am 14. November 1998. *Kriminologie an der Schwelle zum 21*. Jahrhundert. Berlin, 877-896.
42. Sanders A. 2002. Victim participation in an exclusionary criminal justice system. In: Hoyle, C., Young, R. (Eds.). *New visions of crime victims*. Oxford, Portland/Oregon: Hart Publishing, 197-222.
43. Sato M. 2013. *Public opinion and the death penalty in Japan: measuring tolerance for abolition*. Berlin: Springer.
44. Schmidt A. 2012. *Strafe und Versöhnung. Eine moral- und rechtsphilosophische Analyse von Strafe und Täter-Opfer-Ausgleich als Formen unserer Praxis*. Berlin: Duncker & Humblot.
45. Schneider H.J. 1975. *Viktimologie – Wissenschaft vom Verbrechensopfer*. Tübingen.
46. Schwind H.-D. 2011. *Kriminologie. Eine praxisorientierte Einführung mit Beispielen.* Heidelberg: Kriminalistik Verlag.
47. Sessar K. 1992). *Wiedergutmachen oder Strafen. Einstellungen in der Bevölkerung und der Justiz.* Pfaffenweiler: Centaurus-Verlagsgesellschaft.
48. Sharpe S. 2007. The idea of reparation. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice.* Cullompton: Willan, 24-40.
49. Shelden R. 2002. Bearing Witness to Richard Quinney. *Contemporary Justice Review* **5** (4): 403–405.
50. Sullivan D., Tifft L. 2005. Restorative Justice: Healing the Foundations of Our Everyday Lives.
Handbook of Restorative Justice: A Global Perspective. London: Routledge.
51. Trenczk T. 2003. Mediation im Strafrecht. *Zeitschrift für Konfliktmanagement* 3, 105-109.
52. Vázquez-Portomene F. 2012. Vorgehensweisen und Vermittlungsstandards zur Bearbeitung von TOA-Fällen bei häuslicher Gewalt in Deutschland und Österreich. Ein Modell für Europa? *Monatsschrift für Kriminologie und Strafrechtsreform* 95, 413-440.
53. Villmow B. 1988. Staatliche Opferentschädigung. In: Kaiser, G., Kury, H., Albrecht, H.-J. (Hrsg.), *Kriminologische Forschung in den 80er Jahren*. Freiburg, 1013-1041.
54. Villmow B., Savinsky A.L. 2013. Staatliche Opferentschädigung nach der Jahrtausendwende – statistische Daten, methodische Probleme und einige Anmerkungen zur gegenwärtigen Praxis des OEG. In: *Festschrift für Jürgen Wolter*. Berlin (im Erscheinen).

55. Walgrave L. 2007. Integrating criminal justice and restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice.* Cullompton: Willan Publishing, 559-579.
56. Walter M. 2004. Mediation im strafrechtlichen Bereich: der Täter-Opfer-Ausgleich. In: Henssler, M., Koch, L. (Hrsg.), *Mediation in der Anwaltspraxis*.
57. Willemsens J., Walgrave L. 2007. Europe. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan Publishing, 488-499.
58. Wilson T. 1983. *Thinking about Crime.* New York, NY: Basic Books.
59. Wozniak J., Braswell M.C., Vogel R. E., Blevins K. 2008. *Transformative Justice: Critical and Peacemaking Themes influenced by Richard Quinney*. Lanham: Rowman & Littlefield.
60. Yazzi R. 1995. The Traditional Navajo Dispute Resolution in the Navajo Peacemaker Court. *Forum 27 (Spring)*. pp. 5-16.
61. Young R. 2002. Testing the limits of restorative justice: The case of corporate victims. In: Hoyle, C., Young, R. (Eds.). *New visions of crime victims.* Oxford, Portland/Oregon: Hart Publishing 133-172.
62. Zehr H., Toews B. 2004. *Critical Issues in Restorative Justice.* Monsley, NJ: Criminal Justice Press.
63. Zernova M., Wright M. 2007. Alternative visions of restorative justice. In: Johnstone, G., Van Ness, D.W. (Eds.), *Handbook of Restorative Justice*. Cullompton: Willan, 91-108.
64. Zion J.W. 2006. Justice as Phoenix: Traditional Indigenous Law, Restorative Justice, and the Collapse of the State. In: Ross, J.I. and Gould, L. (eds.) *Native Americans and the Criminal Justice System*. Boulder, CO: Paradigma.

Svetlana Paramonova
Max Planck Institute for Foreign and International Criminal Law , Freiburg , Germany

BOUNDLESSNESS OF CYBERSPACE VS. LIMITED APPLICATION OF THE NATIONAL CRIMINAL LAW (ON EXAMPLE OF RUSSIAN, US-AMERICA AND GERMAN LEGAL SYSTEMS). INTERNATIONAL CYBERCRIME COURT

Abstract
The Arlicle devoted to characteristics of cyberspace, especially the cross-border nature of cybercrime as nedative phenomenon of 21 sentury. The author analysed: Limits of the application of national law in relation to transnational cybercrime Extraterritorial application of national criminal law; The question of the applicability of traditional principles of

jurisdiction to cyberspace; The national character of the conflict law in criminal cases (Strafanwendungsrecht / internationales Starfrecht) and the core difference to private international law.

Key words: Transnational crime; cybercrime ; Internet; conflict law ; International

Cybercrime Court

1. Posing a problem

The characteristics of cyberspace, especially the cross-border nature of cybercrime, pose a dilemma for criminal law [36]. On the one hand, with the help of the **modern technologies** criminals can commit cross-border crimes (and often anonymously) within the networked data processing systems. Information of different kinds can be fed and retrieved within the short time as well as damaging impacts can unfold worldwide, no longer constrained by national frontiers [7, 8], [30].

On the other hand, criminal law as an expression of state **sovereignty within its domain of application** is primarily restrained to the particular national territory, unless *otherwise stipulated by international treaties*.

In accordance with the relevant international agreements and principles of customary international law, states are obliged to adhere to a number of key fundamental rights and obligations that significantly shape the characteristics of modern international law.

In accordance with the relevant international agreements and the principles of customary international law, States are entitled to a number of key fundamental rights and obligations. These rights and obligations – that shape the characteristics of modern international law – are mainly formulated in art. 2, 55, 56 Charter of the United Nations and in the Friendly Relations Declaration. These include: sovereignty of States, prohibition of intervention, sovereign equality of States, prohibition of violence, obligation of cooperation [21, 130], [35, 127].[1]

The question that arises here is how far the application of national law may be extended without violating the sovereignty of other states and the principle of non-interference [45, § 6].[2] Because a state may basically extend its criminal jurisdiction in relation to other states only insofar as it does not unreasonably prejudice interests of other states [3, 22]. This in turn raises the following problem: whether the principles of application of national criminal law that are recognized by the international law are fully applicable within the context of cybercrime.

1 Resolution 2625/XXV vom 24. Okt. 1970.

2 BGHSt 27, 30, 32; 34, 334, 336; BGHR StGB § 6 Nr. 1 Völkermord 1 - BGH NStZ 1994, 232, 233; BGH NStZ 1999, 236.

2. Limits of the application of national law in relation to transnational cybercrime

a. Extraterritorial application of national criminal law

Criminal law – in contrast to the possibilities of the Internet – is mainly restrained to its territorial application (primarily to the state territory). However, under the terms of the international law the **extraterritorial application** of domestic law is not considered a priori as inadmissible.[3] According to the jurisprudence and the doctrine, national legislation may refer to the extraterritorial application if there is a clear domestic nexus [35, 127], [21, 140].[4]

An extraterritorial effect is of a particularly great relevance with regard to cybercrime, since offenses in this particular area can easily have an impact on several states, even if they have been committed on none of these territories.

Each state determines the boundaries of the application of its own criminal law without obligation to take into consideration other national criminal law systems. Therefore, jurisdictional rules referring to the criminal law (in German legal system called "*internationales Strafrecht*") are the conflict-of-law provisions of the "unilateral" nature [21, 139].

However, the limits regarding the application of national criminal law that have been set by the international law must be considered [35, 128], [15]. At present, it seems fairly well established that appropriate limits result from generally binding norms of international law.[5] Nonetheless, the content of the latter is controversial. State sovereignty and the principle of non-interference in the internal affairs of states exclude an unlimited jurisdiction of the national criminal law with regard to the offenses committed abroad.

It is also to be noted that states do not always fully use their right – granted to them by the international law – regarding the application of their national criminal law [35, 128-129]. For example, a German saving clause to art. 7 II of the European Convention on Human Rights represents the waiver of exercise of national criminal jurisdiction that has been granted by the rules of international law [35, 128-129].[6] This makes it clear that under German law only norms that have been incorporated into the national law constitute a criminal offense; international treaties and customary international law alone cannot serve as an appropriate legal basis for the criminalization of behavior (art. 25 and art. 59 Constitution of Germany). This corresponds to a *dualist approach* to the relationship between *international* and national law.

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[3] See: *The report on Extraterritorial Criminal Jurisdiction.* Council of Europe, European Committee on Crime Problems, 1992, p. 447 ff.; *Lotus case*, C.P.J.I. Ser. A. No. 10, 1927.

[4] *Lotus case*, C.P.J.I. Ser. A. No. 10, 1927; BGHSt 46, 212.

[5] See, for example, Art. 2, 55, 56 *UNO-Charta* und *Friendly Relations-Declaration*.

[6] European Convention on Human Rights.

The dualist approach (at least with respect to the relevant treaties in the field of criminal law) has also been followed both by the Russian doctrine and the jurisprudence, including the Supreme Court of the Russian Federation (see art. 15 of the Constitution[7] of the Russian Federation, art. 15 of the Federal Law[8] "On International Agreements") [39], [17, 135-161], [12, 11], [6, 126], [31, 45], [22].[9] Art. 15 pa. 4 of the Constitution enshrines the principle of the supremacy of international treaties over domestic legislation: "The universally recognized principles and norms of international law as well as international agreements of the Russian Federation are a component part of its legal system. If an international agreement of the Russian Federation establishes other rules than those provided for by law, the rules of the international agreement shall be applied".

However, according to the systematic interpretation of other relevant legal provisions – including constitutional norms (art. 4 pa. 2 and art. 15 pa. 3), regulations of the Criminal Code of the Russian Federation, UKRF[10] (art. 1 and 3: the principle of legality) as well as the legal provisions of the Federal Law "On international treaties" (art. 15) – only norms of those international treaties that have been incorporated into domestic law constitute a criminal offense [37, 86-97], [39].[11]

Therefore, both in Russia and in Germany, the application of national criminal law can be legitimatized only through the national legal provisions. This does not mean though that national jurisdictional rules *per se* constitute a legitimate link according to the international law [3, 24]. For that reason, the legitimization of the principles of national criminal law jurisdiction shall be based on the rules of the international law.

According to the **monist** concept, international treaties and customary international law legitimatize the application of domestic criminal law (e.g., in Switzerland) without their additional incorporation into national law [22].

The *United States of America* is a hybrid *monist-dualist* system. This country belongs to those states in which the legislature or a part of the legislature is involved in the ratification process of international agreements. As a result, the ratification as such is a legislative act. In such a way, an international treaty enters into force (at federal level) at the same time in international law and in domestic law. The Constitution of the USA gives the President the "power, by and with the advice and consent of the Senate, to make treaties, provided two

[7] *Constitution of the Russian Federation*, 12 December 1993.
[8] Federal Law "*On International Treaties*", July, 15, 1995 N 101-FZ; Resolution of the Supreme Court of the Russian Federation, 10 October 2003 N 5.
[9] See Plenum Verchovnogo Suda Rossii, 10.10.2003, N 5, 6. 45.
[10] *Criminal Code of the Russian Federation*, 17.06.1996, N 63-FZ (hereinafter *UKRF*).
[11] Mezhdunarodnoe pravo: http://eulaw.edu.ru/documents/articles/glob2.htm; art. 1 UKR; art. 14, 15, 30 Federal Law "*On International Treaties*", 1995.

thirds of the Senators present concur" 31, 45].[12] A treaty that has been ratified in accordance with the Constitution automatically becomes a part of domestic law.

Particularly worthy of note here is the leading decision of the *Supreme Court of Germany*, 12.12.2000 "Ausschwitzlüge"[13] (denial of the existence of the Ausschwitz concentration camp). The decision was devoted to the scope of the application of German criminal law in relation to the content-related offenses on the internet, e.g., dissemination of illegal content.

In this specific case an Australian citizen after his entry to Germany was convicted of incitement of the people and denial of the holocaust (§ 130 of the German Criminal Code[14]). The reason for that was that he had published the right-wing extremist contents on Australian web server. According to the dualistic concept that is applicable in Germany, the legitimatization based only on the rules of the international law is not sufficient for the application of German criminal law. Without *legitimacy enshrined in the domestic legal provisions* (by the principle of territoriality, § 3 in conjunction with § 9 para. 1, alt. 3 StGB) the applicability of German criminal law would have been denied. It would have led to a termination (but to an acquittal) of the criminal proceedings due to the procedural obstacle[45, §§ 3-7].[15] Although legitimatization of the application of German criminal law that is based purely on the international law would not have been possible, the Supreme Court considered "the under international law legitimizing link" ("*völkerrechtlich legitimierender Anknüpfungspunkt*") as a key argument for the application of national law (in this case: § 130 para. 1 and para. 3 Stab): Since the conduct concerns "a substantial domestic legal interest that manifests a special connection to the Federal Republic of Germany".[16]

In summary, it should be said that the extraterritorial application of national (Russian and German) criminal law must be legitimatized through the norms of domestic law provisions that, however, must derive from international law. Whereas in the United States the relevant ratified international agreements can already serve as a legitimate base for the application of national criminal law.

b. The question of the applicability of traditional principles of jurisdiction to cyberspace

Each legal system has certain principles of determining the scope of jurisdiction over crimes. The recognized nexus rules include the *territoriality principle* (locus of commission of an offense), the *flag principle* (commission of the offense on a vessel registered in a particular country), the *active personality principle* (nationality of the offender), the *principle of domicile* (residence of the offender), the *protective principle* (infringement of legal interests of a state), the passive personality principle (act (omission) against individual legal interests of

[12] Artikel II, Section 2 of the *U.S. Constitution*.
[13] BGHSt 46, 212.
[14] *German Criminal Code*, 15.05.1871, RGBl. 1871 (hereinafter StGB).
[15] BGH 34, 3, LG Frankfurt NJW 77, 508.
[16] BGHSt 46, 212.

a citizen) and the *principle of universal jurisdiction* or *universality principle* (40, 220-223] (offenses against universal legal interests and values) [21, 140], [38, 297-315], [3, 24], [35, 127].

Legal provisions on the application of national criminal law of Germany (§§ 3-7, 9 StGB) and Russia (art. 11-13 UKRF) are based – albeit with national differences – on the principles listed above.[17] In both legal orders the jurisdictional principles that are applicable to the traditional criminal offenses shall apply within cyberspace. This derives from the *principle of legality* (§ 1 StGB, art. 3 UKRF) and the fact that specific rules on criminal jurisdiction regarding cyberspace in both legal systems are lacking [41, 77-84].

However, in other legal orders there are special legal provisions which design specific rules regarding the jurisdiction in cyberspace. These rules reinterpret traditional jurisdictional principles in respect of cyberspace. Such statutory provisions are to be found, for example, in the laws of Singapore[18], Malaysia[19], in the relevant federal and state law of the United States.[20]

With regard to the application of the traditional jurisdictional principles in the area of cyberspace, in Russian, German and American legal scholarship are represented *different views*.

The first group of authors argues for the application of traditional jurisdictional rules, nonetheless, under the consideration of the special characteristics of cyberspace (such as definition of "harmful impact" with regard to dissemination of illegal impact on the internet) [50, 39], [26, 279], [10, 394], [9, 5].

According to the followers of another concept, cyberspace is regarded as "separate legal entity", "new legal space" [18], [5, 197], [33, 1789] or "a whole new collective phenomenon" [28, 373]. This is the reason why the traditional jurisdictional principles cannot be carried over to the same extent to cyberspace. Rather, new modified rules shall be found [28, 373].

Within this second group one can differentiate between two different subgroups. On the one hand, there is a rather radical view according to which a creation of the special rules of application of criminal law with regard to cybercrime is necessary as well as 'territory in cyberspace' shall be defined in a new way (a view that some of the U.S. states follow) [16, 1],

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[17] German Constitutional Court (BVerfG) recognizes the following jurisdictional principles for the application of German criminal law: territoriality principle, protective principle, personality principle (active and passive), principle of universality and the principle of an alternate criminal justice: BVerfGE 92, 277 (320 f.). In Russia, the passive personality principle was introduced in 2006 for the first time, *Criminal Amendment Law* RF, 2006.

[18] *Singapure Computer Misuse Act*, 1993 (Art. 10).

[19] *Malaysia Computer Crimes Act,* 1997.

[20] On the federal level: Basic Federal Computer Crime Provision: *CFAA* 1984, 18 U.S.C. § 1030 (e) (2) (B). U.S. states: z.B. *W. Va. Code Ann.* § 61-3C-20, 2004; *Ark. Code Ann.* § 5-27-606, 2003; *N.C. Gen. Stat.* § 14-453.2, 2002.

[4, 40-41], [41, 77-84]. On the other hand, the followers of the less radical concept argue that traditional principles should be adapted to the special features of cyberspace. For instance, personality and territoriality principles shall be expanded in terms of the internet and other evolving telecommunication technologies [8, 173], [15].

In German legal scholarship, for example, a new scope of application of § 9 StGB concerning dissemination of illegal contents in cyberspace has been proposed. According to this view, only § 9 pa. 1 alter. 1 StGB should be applied in the case of the spreading of criminal contents online. It means that the *locus of commission of the offense* by the content provider[21] serves as the only nexus – the place from where the contents have been send or fed into internet. The *locus of commission of the offense* – the location of the host computer – would also be decisive for the determination of the punishability of the service provider [8, 173].[22]
However, the use of such a nexus of pure formal nature does not solve the problems of fighting cybercrime, but would mainly lead to many cases of circumvention of law.

c. The national character of the conflict law in criminal cases (Strafanwendungsrecht / internationales Starfrecht) and the core difference to private international law

In German legal system, the terms "Strafanwendungsrecht"or "internationales Strafrecht" [3], [20, 190] are traditionally used for the rules on the application of domestic criminal law. In Russia criminal jurisdiction is regulated by the norms related to "operation of criminal law in time and space" (art. 9-13 UKRF) [44], [27, 264]. In the U.S. relevant jurisdictional rules are comprised by the term "criminal jurisdiction".[23] In all three legal orders these rules determine the same matter: scope of the application of national criminal law [20, 1], [35, 1], [42, 1], [34, 222], [25, 67], [29, 30], [50, 36], [1, 145, 179], [14, 411-412].

Private international law decides in a concrete case on the most appropriate jurisdiction on the basis of certain connecting factors (e.g., on the basis of nationality, art. 10 EGBGB[24]: "The name of a person is a subject to the law of the state whose citizen this person is"). In such a way, foreign interests and conflict rules are also considered [23, 316].

On the contrary, jurisdictional rules regarding criminal matters define the scope of application of national criminal law unilaterally. Possible conflicts of law with other national legal orders are not taken into consideration [43, 435]. Consequently, this body of legal provisions does not represent conflict of laws in the proper sense [3, 3].

Russian and German criminal codes contain in terms of conflict-of-law rules only such norms that **determine the scope of application of their own national (Russian or German respectively) criminal law** [26, 279], [32, 558]. To that extent, Russian, German as well as

[21] Content Provider provides information and data: Abs. 1 § 7 *TMG* Deutschlands, 2007.
[22] Service Provider (ISP) provides access to external contents: § 10 *TMG* Deutschlands, 2007.
[23] *CFAA* 1984, 18 U.S.C. § 1030 ff.
[24] *EGBGB (Introductory Law to the Civil Code of Germany)*, 1994.

American jurisdictional criminal law-related rules do not contain such legal provisions according to which, e.g., the criminal liability of a provider would fall under the law of the state in which the provider has been registered.

In the U.S. legal order the "jurisdiction to prescribe" (i.e. substantive regulatory power)[25] and the "jurisdiction to adjudicate" (the exercise of judicial power)[26] allow an application only of the domestic criminal law in criminal matters.[27] The existing U.S. federal criminal law that contains special rules related to cybercrime does not allow the application of foreign criminal law either.[28]

Hence, in all three legal orders courts are required to apply their domestic criminal law. In general, the application of foreign criminal law is possible only as an exception.[29]

The will of states to enforce their own national criminal provisions complies with the protective function of criminal law which – unlike the private law – deals with the profound infringements of legally protected interests.

d. Transnational crime and national responsibility

Due to the *cross-border nature* of the cyberspace, transnational cybercrime, especially offenses regarding dissemination of contents, cannot be longer effectively prevented solely by national regulations. "The classic criminal law based on the territorial sovereignty" [46, 7] will always reach its national borders [48 , 222], [49, 282].[30] International criminal justice mechanisms are applicable only to a limited number of offenses and individuals. Under art. 5 of the Rome Statute[31] the International Criminal Court (ICC) has jurisdiction over core crimes, such as genocide. International criminal law in general refers to the protection of fundamental legal interests and values of the global community and helps to maintain a minimum level of the standards of international law [2, 10].

However, the establishment of international military tribunals, ad hoc tribunals as well as existence of the ICC represents an exception and does not touch the basic principle of national responsibility [49, 229].

Convention of the Council of Europe on Cybercrime[32] is the only multilateral agreement which contains regulations that are devoted to jurisdiction issues in cyberspace (art. 22

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[25] *Foreign Relations Law of the US, 3rd Restatement of the Law,* 1987, § 401 (a), 1987.

[26] *Foreign Relations Law of the US, 3rd Restatement of the Law,* 1987, § 401 (b), 1987.

[27] *American Banana Company v. United Fruit Company,* 213 U.S. 1909, p. 347, 356; *Uta*, Jurisdiction and the Internet, 2007, p. 87 ff.

[28] *CFAA* 1984, 18 U.S.C.

[29] In 2003 the Supreme Court of Israel applied Russian criminal law: *Dorfmann,* Pravo i politika 2006.

[30] The European Arrest Warrant allows a certain extraterritoriality of the criminal justice: *EuHbG*, 2006.

[31] http://www.un.org/law.

[32] Convention on Cybercrime, 23.11.2001: http:// http://conventions.coe.int/Treaty.

Convention). It is also open to non-members of the Council of Europe. However, Convention does not solve the problem of jurisdiction even for the parties to the agreement[33], since "this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law" (art. 22 pa. 1 Convention) [36]. With regard to the global context, there has not yet been any kind of legal agreement on cybercrime developed at the U.N. level, nor treaties, protocols or a convention.[34]

3. International Cybercrime Court

Today, more and more of the high-leveled legal protected interests are affected by the cybercrime. The number of the serious offenses committed online increases, becoming more common, and the methods of committing crimes constantly evolve.

The potential of cybercrime can easily reach even the severity of the "core crimes" of the "Rome Statute", e.g., instructions to the construction of nuclear weapons that could be available on the internet. Moreover, nowadays essential infrastructures such as water, electricity supply as well as databases of various kinds are controlled by information and communication technologies [13], [47]. Cyberattacks against such infrastructures have the potential to cause harm to the communities in different states in a new and serious manner [51, 1], [52].

In view of these negative developments in a virtual space – that have nonetheless very tangible effect in a real world – the establishment of a supranational jurisdiction can become unavoidable. Therefore, it is conceivable that the establishment of an International Institution for Cybercrime (**International Cybercrime Court**) modelled on the International Criminal Court [49, 229] will be required in the future. Within the competence of such Court could be, apart from the prosecuting cybercrime, the solution of jurisdiction issues. Its jurisdiction could be restricted to the cybercrime that have reached a certain significance regarding damage.

References

1. Akehurst M. 1972. Jurisdiction in International Law, 1972-3 46. *British Yearbook of International Law* (cit.: Akehurst, Jurisdiction in International Law).
2. Ambos K., Steiner Ch. 2001. Vom Sinn des Strafens auf innerstaatlicher und supranationaler Ebene. *JuS.* Vol. 1, p. 9 ff. (cit.: Ambos/Steiner, JuS 2001)
3. Ambos K. 2011. *Internationales Strafrecht*. 3. Ed., Munich, (cit.: Ambos, Internationales Strafrecht, 2011).

[33] Signatures and ratifications of the Convention on Cybercrime, 23.11.2001: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG: USA and Germany ratified the Convention; Russia did not ratify and in 2008 withdrew its signature.

[34] "I´m not Willing to Accept Deadlock", Stein Schjolberg. 20 March 2012 (posted by Thomas Lynch): http://www.ewi.info/i-am-not-willing-accept-deadlock.

4. Babarykin P. V., Kitaev K.K. 2001. K voprosu o jurisdikzii pri rassmotrenii komputernih prestuplenij. Saint Petersburg: *Institut avtomatizazii i informatizazii*, p. 41 ff. (cit.: Babarykin/Kitaev, Informazionnaja bezopasnost Rossii, 2001).
5. Babkin S. A. 2006. *Intellektualnaya sobstvennost´ v Internete.* UrInfor, Moscow, 2006 (cit.: Babkin, Intellektualnaya sobstvennost´ v Internete, 2006)
6. Bachin S. 2007. Mezhdunarodnaya sostavlyauschaya pravovoi sistemi Rossii. *Правоведение (Pravovedenie)*, Vol. 6, p. 126 (cit.: Bachin, Mezhdunarodnaya sostavlyauschaya pravovoi sistemi Rossii).
7. Barton D.-M. 1999. *Multimedia-Strafrecht. Ein Handbuch für die Praxis.* Neuwied, (cit.: Barton, Multimedia-Strafrecht, 1999).
8. Bremer K. 2001. Strafbare Internet-Inhalte in internationaler Hinsicht. Ist der Nationalstaat wirklich überholt? Frankfurt am Main. (cit.: Bremer, Strafbare Internet-Inhalte, 2001)
9. Brenner W., Koops B.-J. 2004. Approaches to Cybercrime Jurisdiction. 4 J. *High Tech*. L. 2004, p. 1 ff. (cit.: Brenner/Koops, Approaches to Cybercrime Jurisdiction, 2004).
10. Cornils K. 1999. Der Begehungsort von Aüßerungsdelikten im Internet. Vol. 8, *JZ* . p. 394 ff. (cit.: Cornils, JZ 1999).
11. Dorfmann M. 2006. Zeitschrift Pravo i politika. N 11. Available at: http://www.nbpublish.com/lpmag/single_mag.php?id=&month=11&year=2006 (cit.: Dorfmann, Pravo i politika 2006).
12. Gavrilov V. 2005. *Ponyatie i vzaimodejstvie mezhdunarodnoj i nazionalnoj pravovich system.* Vladivostok, p. 11 (cit.: Gavrilov, Mezhdunarodnaya i nazional´naya pravovie sistemi)
13. Gercke M. 2009. Understanding Cybercrime – A Guide for Developing Countries. www.itu.int/ITU-D/cyb/.../itu-understanding-cybercrime-guide.pdf. (cit.: Gercke, Understanding Cybercrime, 2009)
14. Goode M. 1997. The Tortured Tale of Criminal Jurisdiction. *Melbourne University Law Review* (cit.: Goode, The Tortured Tale of Criminal Jurisdiction, 1997).
15. Grinuyk M. 2004. Internet. Ego jurisdikzija (Internet. Seine Jurisdiktion). Pravo i Internet, www.allpravo.ru (cit.: Grinuyk, Pravo i Internet, 2004).
16. Guinchard A. 2007 Criminal Law in the 21-st century: the demise of territoriality. University Essex. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=12900 (cit.: Guinchard, Criminal Law in the 21-st century, 2007).
17. Ivanenko V. 2010. Mezhdunarodnie dogovori i konstituziya v pravovoj sisteme Rossii. *Правоведение (Pravovedenie),* Vol. 3, pp. 135–161 (cit.: Ivanenko, Mezhdunarodnie dogovori i konstituziya, Pravovedenie 2010).
18. Jakuschev M.A. 1997. Internet i pravo (Das Internet und das Recht). *Zakonodatelstvo,* Vol. 1, (cit.: Jakuschev, Zakonodatelstvo, 1997)
19. Jescheck H. H., Gribbohm G., Schünemann B., Schroeder F.Ch., Jähnke, B., Hillenkamp, T., Lilie H., AlbrechtD., Roxin C. 1997. *Leipziger Kommertar zum StGB.* 11. Ed., Berlin, New York, (cit.: respective author, LK 1997).

20. Jescheck H.-H., Weigend Th. 1996. *Strafrecht Allgemeiner Teil.* 5. Ed., Berlin, (cit.: Jescheck/Weigend, AT).
21. Kälin W., Epiney A. 2003. *Völkerrecht. Einführung. Verlag AG.* Bern. (cit.: Kälin/Epiney, Völkerrecht, 2003).
22. Kaufmann C. 2008. *Das Verhältnis von Völkerrecht und Landesrecht.* Available at: http://www.unserrecht.ch/fileadmin/user_upload/files/Christine_Kaufmann__Voelkerrecht_und_Landesrecht.pdf (cit.: Kaufmann, Das Verhältnis von Völkerrecht und Landesrecht, 2008).
23. Kegel G., Schurig K. 2004. *Internationales Privatrecht.* 9. Ed., Munich, (cit.: Kegel/Schurig, Internationales Privatrecht, 2004).
24. Kohl U. 2007. *Jurisdiction and the Internet.* Cambridge University Press, (cit.: Uta, Jurisdiction and the Internet, 2007).
25. Kropachev N. M. 2010. *Rossijskoe Ugolovnoe Pravo. Obschaja Chast.* Saint Petersburg. (cit.: Kropachev, Rossijskoe Ugolovnoe Pravo, 2010).
26. Kudlich H. 2004. *Herkunftslandprinzip und internationales Strafrecht.* Vol. 8, HRRS, p. 278 ff. (cit.: Kudlich, HRRS 2004).
27. Kudrjavzev V. N. 1999. *Mezhdunarodnoe ugolovnoe pravo (Internationales Strafrecht).* 2. Ed., Nauka. Moscow, (cit.: Kudrjavzev, Mezhdunarodnoe ugolovnoe pravo, 1999).
28. Ladeur K.-H. 1997. Zur Kooperation von staatlicher Regulierung und Selbstregulierung des Internets. *ZUM*, p. 359 ff. (cit.: Ladeur, ZUM 1997).
29. Lehle Th. 1999. *Der Erfolgsbegriff und die deutsche Strafrechtszuständigkeit im Internet.* 1. Ed. Konstanz, (cit.: Lehle, Der Erfolgsbegriff im Internet, 1999).
30. Loskutov I. 2008. Sravnitelnij analis mezhdunarodnih norm zakonodatelnogo regulirovanija Interneta v razlichnih stranah, Available at: http://www.medialaw.kz (cit.: Loskutov, Sravnitelnij analis norm zakonodatelnogo regulirovanija Interneta, 2008).
31. Malanczuk P. 2010. *Akehurst's modern introduction to international law.* 8. Ed., London, (cit.: Malanczuk, Introduction to International law, 2010).
32. Mankowski P., Bock S. 2008. Die internationale Zuständigkeit der deutschen Strafgerichte als eigene Kategorie des Internationalen Strafverfahrensrechts. *JZ*, p. 505 ff. (cit.: Mankowski/Bock, JZ 2008).
33. Mayer F. C. 1996. Recht und Cyberspace. *NJW*, p. 1782 ff. (cit.: Mayer, NJW 1996).
34. Naumov A. V. 2007. *Rossijskoe Ugolovnoe Pravo.* (cit.: Naumov, Rossijskoe Ugolovnoe Pravo, 2007).
35. Oehler D. 1973. *Internationales Strafrecht.* Cologne, Berlin, Bonn, Munich, (cit.: Oehler, Internationales Strafrecht, 1973).
36. Paramonova S. 2013. *Strafanwendungsrecht für Straftaten im Internet unter besonderer Berücksichtigung der Rechtslage in Deutschland, Russland und den USA.* Dissertation (Criminal Jurisdiction in Cyberspace under Special Consideration of the Legal Situation in Germany, Russia and the U.S.A.) forthcoming (cit.: Paramonova, Strafanwendungsrecht für Straftaten im Internet (Criminal Jurisdiction in Cyberspace).

37. Paramonova S. 2011. Concept and systematization of the criminal offense in Russia. In: Sieber, U. / Forster, S. / Jarvers, K. (ed.): *National Criminal Law in a Comparative Legal Context.* Volume 3.1: Defining criminal conduct. Berlin, Duncker & Humblot, p. 86-97 (cit.: Paramonova, Concept and systematization of the criminal offense in Russia. In: National Criminal Law in a Comparative Legal Context).
38. Paramonova S. 2011. Extraterritorial jurisdiction in Russia. In: Sieber, U. / Forster, S. / Jarvers, K. (ed.): *National Criminal Law in a Comparative Legal Context*. Volume 2.1: General limitations on the application of criminal law. Berlin, Duncker & Humblot, p. 297 – 315 (cit.: Paramonova, Extraterritorial jurisdiction in Russia. In: National Criminal Law in a Comparative Legal Context).
39. Paramonova S. 2013. Rechtlicher Status der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK) und der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (EGMR) sowie deren Rolle bei der Gestaltung des russischen Strafverfahrens, *KritV*, 3, forthcoming (cit.: Paramonova, Rechtlicher Status der EMRK, KritV 2013).
40. Paramonova S. 2010. The Principle of Universality and Extradition in Russia. *Revista Penal*, Vol. 26, pp. 220–223 (cit.: Paramonova, The Principle of Universality, Revista Penal 2010).
41. Paramonova S. 2009. Ugolovnaya jurisdikziya v Internet-prostranstve: terroritorial´nij prinzip v rossijskom i nemezkom zakonodatelstve. *Журнал зарубежного законодательства и сравнительного правоведения (Zhurnal zarubezhnogo zakonodatelstva i sravnitelnogo pravovedeniya)*, Vol. 4, p. 77-84 (cit.: Paramonova, Ugolovnaya jurisdikziya v Internet-prostranstve, Zhurnal sravnitelnogo pravovedeniya 2009).
42. Primig Th. J. Internationales Strafrecht und das Internet. Available at: http://www.rechtsprobleme.at/doks/primig-1-internationales_strafrecht.pdf (cit.: Primig, Internationales Strafrecht und das Internet).
43. Rath J. 2006. Prüfungsschema. Auslandsbezug. Tatortbestimmung. *JA*. p. 453 ff. (cit.: Rath, JA 2006).
44. Romaschkin P. S. 1946. K voprosu o ponjatii i istochnikah mezhdunarodnogo ugolovnogo prava, (cit.: Romaschkin, *Sovetskoe gosudarstvo i pravo*, 1946).
45. Schönke A., Schröder H., Eser A. Strafgesetzbuch. 2010. *Kommentar.* 28. Ed., Munich, (cit.: Schönke/Schröder/Eser, StGB, 2010).
46. Sieber U. Grenzen des Strafrechts. 2007. Grundlagen und Herausforderungen des neuen strafrechtlichen Forschungsprogramms am Max-Planck-Institut für ausländisches und internationales Strafrecht. Vol. 119, *ZStW*, p. 1 ff. (cit.: Sieber, Grenzen des Strafrechts, ZStW 2007).
47. Suter M. 2007. A Generic National Framework for Critical Information Infrastructure Protection. Available at: http://www.itu.int/osg/spu/cybersecurity/pgc/2007/events/docs/background-paper-suter-C5-meeting-14-may-2007.pdf. (cit.: Suter, Generic National Framework for Critical Information Infrastructure Protection, 2007).

48. Uschakov N. A. 2000. *Mezhdunarodnoe pravo (Völkerrecht).* Moscow, (cit.: Uschakov, Mezhdunarodnoe pravo, 2000).
49. Weber G. 2008. *Völkerstrafrecht.* 2. Ed., (cit.: Weber, Völkerstrafrecht, 2008).
50. Werle J. 2001. Grundfälle zum Strafanwendungsrecht. Vol. 1, JuS, p. 35 ff. (cit.: Werle, JuS 2001).
51. Wigert, Isabelle. 2006. *Varying policy responses to Critical Information Infrastructure Protection (CIIP) in selected countries, Cybercrime and Security.* IIB-1, (zit.: Wigert, Varying policy responses to Critical Information Infrastructure Protection, 2006).
52. Wilshusen G. 2007. Internet Infrastructure, Challenges in Developing a Public/Private Recovery Plan, Testimony before the Subcommittee on Information Policy. GAO Document GAO-08-212T. Available at: http://www.gao.gov/new.items/d08212t.pdf. (cit.: Wilshusen, Internet Infrastructure, Challenges in Developing a Public/Private Recovery Plan, 2007).

List of abbreviations

alter.	alternative
art.	article, articles
FZ	Federal´nij Zakon (Federal Law)
p.	page/pages
pa.	part
para.	paragraph
RF	Rossijskaya Federaciya (Russian Federation)
UKRF	Ugolovnij Kodeks Rossijskoj Federazii (Criminal Code of the Russian Federation)
StGB	Strafgesetzbuch (German Criminal Code)
Vol.	volume

Margarita Zernova
University of Hull, Kingston upon Hull, United Kingdom

RUSSIAN POLICE AND CITIZEN: PUBLIC RESPONSES TO THE STATE OF CONTEMPORARY POLICING AND THEIR UNINTENDED CONSEQUENCES

Abstract
This paper will discuss public experiences of policing in contemporary Russia, coping techniques employed by citizens who believe that police can hardly be relied on for protection and the social impact of such adaptations. The author gives historic aanalyses of development of russian milicia from early 80-s till now. The artile is based on the empirical study of everyday survival in post-socialist countries the analysis of adaptation strategies that emerged to compensate for the failure of Russian militsiya to perform their functions. It also adds to the body of research which examines public attitudes towards militsiya. Surveys conducted in post-Soviet Russia (Moscow and Oryol) in 2007 and 2009

Key words: militsiya; corruption; abuses of power; panishment; dysfunctional policing; victimization

Introduction
This paper will discuss public experiences of policing in contemporary Russia, coping techniques employed by citizens who believe that police can hardly be relied on for protection and the social impact of such adaptations. This will be done on the basis of findings derived from an empirical study. The discussion will begin with describing the background of the Russian police and the broader social context within which the institution operates. Then the empirical study which forms the foundation of this paper will be introduced and its findings presented. The paper will proceed to analyze the implications of the findings for the social order that has emerged on the ruins of the communist empire. It will be argued that attitudes and behavioral orientations adopted by ordinary Russians in response to the pathological state of policing inadvertently may help to entrench the unwelcomed social conditions.

Background
Following the collapse of socialism, the Russian police (until recently known as the militsiya, but on the 1st of March 2011 renamed into the politsiya) found itself in a weakened and unstable state [16], [37], [20], [8], [9], [13], [12, chapter 9]. Since the late 1980s a large-scale staff-turnover took place within the institution. Many officers left the force because of the low pay, poor working conditions and the low prestige of the profession of a militsiya. The high personnel turn-over, combined with underfunding and insufficient training, resulted in a situation where militsiya officers could not develop a high level of professionalism. The situation was aggravated by a lack of controls over the militsiya. The strict control exercised

by the Communist party was gone, and new forms of accountability were ineffective [46], [7]. This produced conditions conducive to abuses of power by militsiya officers on a massive scale.

At the time when my empirical research was carried out, the legislative framework within which the militsiya operated was provided in the Law 'On the Militsiya', passed in 1991 (on the 1st of March 2011 it was replaced by the Law 'On the Politsiya'). The Law 'On the Militsiya' gave the institution a wide range of powers. For example, the militsiya issued passports, residence permits, visas, automobile registrations, various certificates ranging from drivers' licences to work permits. Such extensive regulatory powers provided many opportunities for abuse and corruption. The Law 'On the Militsiya' articulated the principles and values guiding actions of its officers, among which were lawfulness, humanism and respect for human rights. However, these principles have not been translated into practice very well. There is abundant evidence of militsiya violations of human rights, corruption and involvement in crime, including organised crime [18], [22], [1], [2], [3], [4], [5], [6], [33], [24].

The post-Soviet crisis in the militsiya occurred against the background of weakening of other governmental institutions and a general retreat of government. To survive in the midst of the post-soviet turmoil people have been challenged to discover ways of compensating for the inability of the state to perform many of its functions. They had to learn self-sufficiency and independence from the state. So, in response to the failure by the state to provide order and security, a new industry has emerged to make up for the failures of the state law enforcement. Vadim Volkov [47] has labeled it 'violent entrepreneurship'. 'Violent entrepreneurs' included organized criminal groups, private security companies and law enforcement officers. They managed the same resource – organized violence – and converted it into money.

Militsiya became one of the 'violent entrepreneurs' in the emerging security market. Since 1992 units within militsiya are allowed to offer 'extra departmental protection' to businesses if the businesses enter into contracts for the provision of security services with Extra-Departmental Protection Directorate of the Ministry of Internal Affairs. Such provision of protection is legal, carried out by the commercial police in state uniforms. Militsiya may also provide protection to businesses unofficially, illegally. They may offer a 'roof', which involves providing protection to clients to minimise their business risks on a for-hire basis. In such situations militsiya act as private entrepreneurs, receiving payments from their clients. In addition to offering protection, militsiya became engaged actively in various illegal commercial activities, effectively turning themselves into a business entity which is concerned primarily with making money [15], [48], [25].

In December 2009 President Medvedev launched extensive reforms of the institution. Among the reforms is an anti-corruption programme, the revision of the process of personnel selection, raising the level of professionalism, stripping the militsiya of unnecessary functions,

cutting the number of officers by 20%, centralisation of financing, pay rise for militsiya officers by 30% and organizational restructuring. On the 1st of March 2011 the new Law 'On the Politsiya' came into force. It renamed the militsiya into the politsiya, returning its original, tsarist, and name. This was done in an attempt to remove the institution further from its Soviet past. At the time of writing, the reforms are still at an early stage, yet they have already attracted a lot of criticisms which range from arguments that the reforms are purely cosmetic and essentially retain the same system to accusations that they further widen powers of the politsiya, strengthen the grip of the central executive at the local level, and fail to make the institution more accountable [14], [25], [11], [28].

The empirical study

The empirical study upon which this paper is based adds to the body of research into everyday survival in post-socialist countries [35], [36], [10], [23], [31], [32], [39], [42] the analysis of adaptation strategies that emerged to compensate for the failure of Russian militsiya to perform their functions. It also adds to the body of research which examines public attitudes towards militsiya. Surveys conducted in post-Soviet Russia have consistently demonstrated that public trust towards militsiya is very low [27], [19], [21], [29], [30]. Typically research stops at asking respondents about their attitudes towards militsiya. This paper goes further and examines implications of distrust towards militsiya. The paper asks: how does the low level of trust towards militsiya affect daily lives of ordinary Russians? What coping behaviours does it give rise to? And, whatever responses to the decaying state of Russian policing are employed by citizens, what are their broader social implications and dangers? These questions will be answered in the light of findings derived from my empirical study.

I carried out this study in the summers of 2007 and 2009 in Moscow and Oryol (a city in central Russia). The study aimed at investigating public experiences of policing in today's Russia, public attitudes towards the militsiya resulting from those experiences and implications of those attitudes for people's everyday behaviour. An approach similar to grounded theory was used 17], [43], [44], [45]. In-depth qualitative interviews were employed as the primary research method. Fifty-four members of the public who had encounters with militsiya as crime suspects, victims or witnesses were interviewed. Respondents were selected using purposive sampling: the main criterion for selection was the requirement that they had had direct encounters with militsiya in the post-Soviet period as crime suspects, victims or witnesses. The sample consisted of 22 men and 32 women; 14 respondents were between ages of 18 and 30; 20 respondents – between 31 and 50; 20 were above 51. Additionally, 10 militsiya officers were interviewed. Six of them were senior officers and four were from the lower ranks. Questions for both members of the public and militsiya were open-ended, designed to enable respondents to express views in their own words. Interviews with members of the public were organised around three main themes: experiences of policing, attitudes towards militsiya and impact of those attitudes on everyday behaviour. Militsiya officers were asked to comment on the state of the contemporary militsiya and the

relationship between militsiya and members of the public which has emerged in the post-Soviet era.

Findings

When respondents were asked to share their experiences of policing, typically militsiya were described as unhelpful and unwilling to help people. Interviewees provided multiple examples of militsiya failing to perform their functions or performing them incompetently. There was a wide perception that militsiya were concerned primarily with ensuring good statistics and enriching themselves, rather than upholding law and order. Following lengthy discussions of unresolved crimes and miscarriages of justice, respondents often concluded that militsiya offers no protection to the population.

Respondents argued that militsiya were corrupt, with 80 per cent of the sample admitting that they or their family members gave bribes to militsiya, and every respondent knew somebody who had bribed militisya. Most examples involved traffic militsiya who have the reputation of being most corrupt. Also, bribing militsiya in order to avoid arrest or obtain release from the police custody appears to be a regular practice: half of the sample provided examples involving themselves or people they knew doing so. Militsiya interviewed as part of this study provided additional examples where bribing was common. One such example concerns document-checks exercised by militsiya. When a person does not have documents with him or her, and is in a hurry, she or he may offer a bribe, so as to avoid being taken to the police station for verifying their identity. Other examples of bribery provided by militsiya respondents related to specific groups, such as prostitutes. The militsiya know the places where prostitutes are most likely to be encountered early in the morning, stop them and take a part of their earnings. A similar example involved migrant workers from former Soviet republics, numerous in Moscow, many of whom are easily identifiable by their non-Slavic appearance. They are also frequently stopped and deprived of some of their earnings by militsiya. Or, if the migrant workers cannot pay themselves, their employer is likely to bribe militsiya for their release. Other examples where bribes were given by interviewees or their relatives and friends involved paying militsiya for timely or accelerated processing of various documents (such as passports, or driving licences). Some used bribes to obtain an inspection document on one's car confirming that the car is in a road-worthy condition when it is not. Others gave a bribe to militsiya carrying out checks of businesses and organisations for non-interference. Yet others paid militsiya for taking favourable decisions (such as in applications for licences).

Findings show that citizens frequently become victims of property-related crime carried out by militsiya. So, many examples were given where militsiya stopped people and stole their money while searching them or checking their documents. Likewise, many examples were offered where militsiya found stolen property, but never returned it to its owners. Examples were also encountered where the militsiya were charged with guarding factories and used

their position to steal from them. Some interviewees provided stories of burglaries carried out by militsiya against people whom interviewees knew.

There was a wide perception on the part of interviewees that militsiya are preoccupied not with fighting crime and upholding order, but with pursuing their own private interests. It was a common argument made by both militsia and ordinary citizens that people joining the militsiya do so in order to enrich themselves. While respondents viewed militsiya as generally ineffective and unresponsive, they pointed out that a bribe may have a positive effect on the ability of militsiya to resolve criminal cases.

The majority of respondents believed that militsiya were brutal and disrespectful towards rights of citizens. So, multiple examples of violations of citizens' rights during stops, searches, arrests and detentions were reported by interviewees, and thirty-four respondents provided examples of militsiya brutality against themselves, or their relatives, or people they knew. Militsiya brutality was perceived as widespread and systemic. Militsiya brutality appears to be particularly frequent during arrests and in the process of extracting confessions[35]. Interviewees stressed that militsiya brutality can lead to false confessions and referred to cases involving acquaintances where suspects admitted crimes which they had not committed (two of which were murders). As far as brutality during arrests is concerned, it emerges from examples offered by interviewees that most likely victims are men who are either drunk or young (or both) – the groups which are less capable to defend themselves either in the physical or legal sense. There was a general feeling among interviewees that the militsiya violence towards these people had a symbolic, rather than instrumental, character: brutality towards such groups formed part of a ritual of subduing the arrestee and demonstrating the power of militsiya.

Importantly, findings of this study indicate that most victims of militsiya brutality do not believe that perpetrators can be held accountable. The general perception was that militsiya are free to violate people's rights without any negative repercussions for themselves, with 44 respondents highlighting their feelings of defencelessness in the face of militsiya abuses. Interviewees pointed out the existence of *'krugovaya poruka'* among militsiya (that is, militsiya covering up each other's misdeeds), making it virtually impossible to prove – and punish wrongdoers for – transgressions. The trust that *Prokuratura* or the judiciary will protect victims of militsiya abuse of power was very low, and examples were provided where interviewees felt that *Prokuratura* and the judiciary sided with militsiya and helped them get away with their wrongdoings.

[35] One explanation of this phenomenon may relate to the system where performance of militsiya is measured by their ability to meet typically unrealistic quotas. This creates a temptation to use violence and tortures to extract confessions. Another explanation may relate to the large-scale staff turnover that occurred in militsiya in the post-Soviet period (which was mentioned earlier). It has led to a lack of experienced professionals capable of acquiring evidence without resorting to illegal methods and an increase in poorly trained staff resorting to unlawful violence to obtain confessions [41].

When citizens found themselves in a situation where abuse of power by militsiya is rampant, yet there are no effective formal avenues for complaints, various strategies aimed at self-protection against wrongdoings by militsiya were generated. Respondents have described numerous tactics they have utilised during stops, searches, arrests and detentions which have helped them to minimise abuse by militsiya. For example, one way of avoiding extortions by militsiya may involve provoking sympathy in militsiya (for example, by appealing to the fact that one is a low income person). Another strategy is to assert that one has powerful connections within or outside the militsiya (such as with local government) and threaten officers demanding payments with negative repercussions.

One interviewee gave an illustration where an appeal to legal procedures was used successfully to avoid extortions from market traders by militsiya. When militsiya approached her, while she was trading at a market, and demanded a payment under the pretence of checks, she pointed out to them that certain procedural rules required for the checks have not been complied with. The officers looked baffled when confronted with a citizen who knew what her rights were and how to use them, but left her alone. Findings from this study suggest that this case was exceptional. When faced with extortions by militsiya, typically citizens do not attempt to appeal to law: they either pay them or try informal solutions. Likewise, it seems to be rare for people to employ formal complaint procedures following violations by militsiya: I was unable to find any evidence of formal complaints.

There was, however, limited evidence of citizens choosing to follow correct legal procedures as a form of retaliation against wrongdoings by militsiya. When a driver is stopped by militsiya and accused of a violation, typically he or she has a choice between a larger, official fine, or a smaller, unofficial payment made directly to militsiya. Such unofficial payments are called dan'. *Dan'* serves as a 'tribute' or an acknowledgement of who rules the street [23, 143-144]. Paying *dan'* (instead of an official fine) is a natural choice of the vast majority of drivers. Since the incident is not documented and no receipt is provided, the money goes directly into the pocket of a militsiya officer. Yet some drivers who were interviewed instead of paying *dan'* asked for a receipt. That choice meant that the amount the driver had to pay was significantly bigger, and the inconvenience of going to the bank and having to queue there was added. It appears from interviews that this choice is most likely when a driver feels that the infringement they are accused of never occurred and is invented by militsiya. Choosing the correct legal procedure in such cases appears to be a form of protest against unfair accusations and is a revenge on militsiya whose expectations of additional earnings are disappointed.

An important finding of this study is that the general perception that militsiya are corrupt, brutal, unreliable, professionally inept and unaccountable for their wrongdoings often led interviewees to conclude that they should avoid reporting crimes. Some felt that reporting crimes is useless because militsiya will never find the offender. Others believed that it may be dangerous because militsiya may accuse an innocent person and beat a confession out of him

or her. Yet others were reluctant to ask militsiya for help out of fear that militsiya collaborated with criminals, in which case reporting a crime involved the risk of retaliation. The unwillingness to cooperate with militsiya has created a situation where citizens have to be self-reliant in protecting themselves against crime. Interviewees offered abundant evidence illustrating attitudes of self-sufficiency, making it possible for them to survive in circumstances where militsiya cannot be trusted [49]. So, respondent reported becoming more vigilant in the post-Soviet period, trying to avoid potentially dangerous situations where they could become crime victims. Various steps taken by citizens to protect themselves against crime were listed, ranging from installing heavy locks on doors to acquiring guns. Some interviewees used private security firms to guard their persons and property. Others paid militsiya to protect their businesses. Yet others employed services of organised criminal groups. Organized criminal groups may offer long-term protection or one-off services to individuals and businesses. The examples offered by respondents involved gangsters investigating crime, settling disputes, recovering debts and administering punishments. Some respondents offered examples of people administering punishments with their own hands.

Militsiya respondents also expressed self-reliant attitudes. They argued in interviews that the state had 'abandoned' its employees and failed to guarantee them a decent existence, so they have to look for ways to top up their salaries. Many militsiya officers have second jobs (for example, working as private security guards or transporting valuables), but there is also a variety of more questionable ways to augment income. Examples provided by militsiya in interviews ranged from planting incriminating evidence and then extracting bribes from people who have been falsely accused, to charging citizens for the very services the militsiya are under a duty to perform (such as finding stolen property), to issuing fake documents, selling weapons and secret information to criminals, covering up crimes, falsifying evidence and fabricating criminal cases or closing them for a payment.
When asked at the end of interviews what could be done to resolve the crisis in the militsiya and improve its public image, respondents typically expressed very pessimistic views and declared the situation to be hopeless. Even when possible solutions were suggested (such as raising salaries or better personnel selection), they were quickly dismissed, with interviewees pointing out that resolving the crisis in the militsiya would require fundamental changes at various levels of the Russian society, and to expect such radical social transformations is unrealistic.

Discussion: the unintended consequences

Three main stories arise from my interviews: stories of abuse, pessimism and self-reliance. These stories reveal the complexity of attitudes and behavioural orientations that evolved in order to deal with organisational failures of the militsiya. When they combine, these narratives and behavioural orientations espoused by citizens produce paradoxical social effects. While the behaviours in question emerged as a response to the inability of the state to protect its citizens, they offer virtually no scope for eradicating – indeed they help to entrench – unwanted social conditions.

Take, for example, the stories of abuse. These stories typically involved complaints and grievances about the wrongs which respondents (and other people they knew or heard of) have been subjected to, expressed despair and hopelessness, often contained rhetorical questions, and never attempted to suggest solutions to the situation. Many passages in these stories were similar to laments observed by Nancy Ries in early *perestroika* years which she calls 'litanies' [34]. Such laments may be viewed as a Russian cultural mode of speaking, or a ritual that involves a particular way of expressing people's concerns, fears, anxieties and frustrations about irresolvable problems and contradictions of Russian social life. Importantly, Russian laments are not merely ways of speaking about the world. They are also a way of acting in the world. They are instrumental, as well as expressive. They reaffirm and reproduce certain dispositions. Far from encouraging people to oppose actively injustice and oppression, the laments enable them to rehearse themselves into stances of passivity and victimisation. The laments may be a strategy of coping with trouble. Yet, inadvertently they may help to cause – or at least allow – toleration of more trouble [34].

While at the beginning of the stories of abuse told by members of the public militsiya were presented as the agent of abuse, as stories evolved, other villains – the powerful and the wealthy – were added and blamed for the suffering of ordinary people. Stories of individual victimisations by militsiya were combined with stories of collective victimisations experienced by ordinary Russian people both today and throughout history. Such stories created a sense of identification and belonging of the speaker to a timeless moral community of the long-suffering Russian people and led them to view their individual suffering as a drop in the ocean of collective pain. Somehow these stories made suffering appear natural and inescapable, an inalienable part of the existence of the historically abused and enslaved Russian people. Such narratives may serve to affirm the sense of inevitability of both individual and collective powerlessness and reinforce modes of thinking characterised by passivity and fatalism.

Respondents in this study were reluctant to discuss possibilities of resolving the crisis in the militsiya. The pessimistic stance adopted by them made them see attempts to change the current situation for the better as naive and unrealistic. The awareness of dishonesty and ulterior motivations of militsiya and other powerful actors led respondents to accept deceit by the powerful as the only conceivable reality and resulted in the entrenchment of the sense of hopelessness. When such fatalist narratives are provided and people recognize events as unavoidable, they abandon attempts to imagine alternative possibilities of how events could develop. In the process social conditions which otherwise could be questioned become normalised and the scope of what aggravations are acceptable is widened [39].

This study has found very little evidence of active challenges or explicit contestations to abuses of power by militsiya. Perhaps some rare examples provided by the interviewees who refused to pay *dan'* could count as resistance to predatory behaviour by militsiya. Such

examples illustrate that attempts to resist militsiya's abuse of their position happen. However, they tend to take the form of isolated actions against individual militsiya officers in specific cases of injustices, and they do not directly engage broader social relations that keep producing individual injustices. Due to their atomised nature, they cannot attend to the roots of the oppressive social conditions and thus cannot affect general relational tendencies. To transform the broader relational matrixes that breed individual injustices, collective political action by their actual and potential victims would be required. Unfortunately, no evidence of such concerted action was found in this study.

A somewhat similar argument can be made regarding the stories of self-reliance shared by respondents. Empowerment and a sense of moral worth was expressed by those respondents who took charge of their own safety. Likewise, some militsiya may feel empowered through inventing ways of topping up their official salaries. Attitudes of self-reliance of militsiya and ordinary citizens could have undesirable effects which stem from the individualised character of the behavioural orientations which they entailed. These behaviours effectively translated collective conundrums into problems that could be resolved at an individual level. Yet, dealing with each case on an individual basis addresses only one dimension of complex social and political relations that nurture such cases. Changing conditions which generate victimisations would necessitate determined collective actions directed at various facets of the relations at hand. The attitudes of autonomous, self-reliant individuals which respondents cultivated not only failed to ameliorate the undesirable social conditions, but also helped to reproduce them. By creating an impression that problems could be effectively resolved on a case-by-case basis, tensions were dispersed and attention diverted away from the social breadth and political complexities of these problems.

Some other findings point to conclusion that behavioural orientations of Russian members of the public may help to reproduce the dysfunctional system of policing. One such finding concerns the willingness by citizens to support corrupt practices by militsiya, while simultaneously resenting militsiya venality. So, a number of interviewees provided examples where they used bribery and informal connections within militsiya where it appeared to be a useful and effective way of resolving problems. Some bribed militsiya to obtain a release from custody or to have criminal charges dropped, others used bribes to obtain a fake document which militsiya issue, such as a driving license, a residence permit, or a vehicle registration certificate. Stories told by respondents confirm that such practices are considered as acceptable and 'normal', they have practically acquired the status of a system of relationships between militsiya and the public. These practices present a formidable barrier to creating a transparent and lawful system of policing. Inadvertently citizens help to preserve the system they resent by participating in them on a daily basis.

Similar results are produced by another tendency: the unwillingness to turn to law in an attempt to hold militsiya to account for wrongdoings. As has been pointed out above, respondents in this study expressed low trust in the ability of *Prokuratura* and the judiciary to

protect them, citing examples of arbitrariness of *Prokuratura* and unfair judicial decisions. It was clear from interviews that when citizens experience abuse by militsiya, normally they do nothing to try and bring wrongdoers to justice. If people take steps to minimise the impact of militsiya abuse (for example, to release a person falsely detained by militsiya), typically their recourse is not to courts which they distrust, but to informal mechanisms. With the help of side payments and informal pressures they may resolve their predicaments in a case at hand. Yet in the process they allow toleration of more abuse of power by militsiya who go unpunished for their wrongdoings. The underlying power relations that have generated abuse in the first place remain unopposed and allowed to perpetuate.

Equally problematic is the finding that it is not uncommon for citizens searching solutions to their problems to turn to criminal networks. Such private methods used by citizens to compensate for dysfunctional policing challenge the rule of law and present threats to human rights. When people rely on self-help, another important implication is the inequality in protection across various sections of the population, with some being in a better position to protect themselves due to their higher income, status and network connections.

So far it has been argued that Russian citizens, by virtue of their attitudes and behaviours, have passed up the chance to challenge the very social conditions they bemoan. However, it would be inaccurate to claim that their attitudes and actions completely prevented social change from taking place in post-Soviet Russia. Predatory behaviour of militsiya[36] and their lack of commitment to protecting citizens has generated a persistent lack of trust among ordinary people, as this empirical study has demonstrated. The lack of trust in turn has led to the adaptive and self-sufficient behaviours on the part of ordinary people some which have been uncovered in this empirical study and described above. The multitude of such everyday private actions by citizens seeking to compensate for the inability and unwillingness of militsiya to protect them have shaped the emerging post-socialist order. Each of those actions may be aimed merely at resolving a problem in an individual case, yet, combined, such actions transform the society from within, with new social networks being created and a new infrastructure being generated to make up for the failure of the militsiya to fulfill its functions.

[36] Gerber and Mendelson [15] define the model of policing dominant in post-Soviet Russia as 'predatory'. The model of 'predatory policing' is characterized by police activities which are mainly devoted to personal enrichment and self-preservation of the police themselves. This model is distinguished from the 'functionalist' model (typical in most developed democracies where the police enforce law and preserve order, upholding general social interests) and the 'divided society' model (typical in authoritarian societies and societies with polarized social structures, where the police protect primarily interests of dominant groups and suppress subordinate groups or political opposition). While numerous examples of militsiya being used to suppress state opponents in contemporary Russia suggest that Russian model of policing may confirm to the 'divided society' model, Gerber and Mendelson argue that Russian policing corresponds more closely to the model of 'predatory policing'.

Importantly, while change has taken place, this is not the sort of change that has a potential to transform radically the social and political relations that keep producing undesired circumstances. The new infrastructure created by 'violent entrepreneurs' (mentioned earlier in this paper) and the multitude of everyday survival techniques employed by ordinary citizens to compensate for the ineptitude and the lack of integrity on the part of militsiya enable people to survive and function amid problematic social conditions, reducing the need to oppose and change them. By offering remedies in individual cases, various forms of adaptation help to reproduce the very circumstances they were designed to amend and discourage people who have suffered though those circumstances from seeking ways to transform them and prevent future occurrences of suffering.

Similarly, private business activities developed and institutionalized by militsiya to compensate for the inability of the state to compensate them properly enabled militsiya to survive, despite their relatively low official pay. The substantial degree of financial independence from the state acquired by militsiya through their private business activities reduced the need to demand from the state that it meets its obligations towards its employees[37].

Conclusion: vicious circle

This paper has argued that attitudes and behavioural orientations adopted by citizens in response to the failure by the militsiya – and the state broadly speaking – to protect them, stifle possibilities of unwelcome social conditions being challenged and changed. By developing attitudes and behavioural orientations characterised by self-reliance, people learn to survive in unwanted social conditions, instead of attempting to dismantle them. Similarly, as a result of finding ways to augment their official wages, militsiya manage to function in circumstances where the state fails to reward its workers properly, instead of demanding from the state that it meets its obligations towards its employees. The self-sufficient attitudes and behaviours on the part of both ordinary citizens and militsiya create an illusion that what are essentially problems of collective nature could be handled and resolved effectively on an individual basis. This generates remedial measures which do not correspond with the scale and form of the power relations at hand. Furthermore, people's pessimistic and fatalistic attitudes help to affirm profound individual and collective powerlessness. This makes the situation where the state fails to protect its citizens – indeed where its officials present danger to citizens – look acceptable and unavoidable, as well as limiting the range of options for action that could be imagined. The very social conditions which people decry are reproduced and entrenched.

[37] As has been pointed out above, as part of the recent police reforms launched by President Medvedev which have been mentioned at the beginning of this paper, salaries of militsiya's successor, politsiya, have been raised by 30%. However, it is far from obvious whether the increase in salaries will lead to the reduction in illegal ways of supplementing income. A number of interviewees in this study argued that even if salaries were raised significantly, as long as the amount of money which an officer can make using illegal means is much higher than the salary which the state can offer him or her, the temptations offered by illegal activities will remain.

Twenty years after the collapse of the Soviet empire it is clear that the transition to a democratic, pro-Western society is not going to happen in the foreseeable future. Of course, obstacles to the Russian transition are multiple, and complex historical, economic and political factors account for the lack of progress [26], [40], [38]. However, findings of this study suggest that one of the barriers may be presented unintentionally by ordinary citizens themselves: through their attitudes and everyday practices they may contribute inadvertently to the perpetuation of the social conditions which they regret. The atomised nature of their actions, combined with fatalistic attitudes, fail to produce effective engagements with political forces that breed individual and collective victimisations. The result is clinging to – instead of transforming – the very social conditions that generate those victimisations in the first place. Russia remains trapped in a vicious circle where dysfunctional policing generates public distrust towards militsiya, and public distrust in turn produces responses on the part of citizens which fail to challenge the pathological nature of policing, indeed help to cement it.

References

1. Amnesty International. 2002. *Russian Federation: Denial of Justice.* [online] Available from: http://www.amnesty.org/en/library/info/EUR46/027/2002 [Accessed 21 September 2010].
2. Amnesty International. 2003. *Dokumenty!: Discrimination on Grounds of Race in Russian Federation.*[online] http://www.amnesty.org/en/library/info/EUR46/001/2003 [Accessed 29 April 2010].
3. Amnesty International. 2006a. Russian *Federation: Preliminary Briefing to the UN Committee against Torture.* http://www.amnesty.org/en/library/info/EUR46/014/2006/en [Accessed 8 September 2010].
4. Amnesty International. 2006b. *Russian Federation: torture and forced 'confessions' in detention.* http://www.amnesty.org/en/library/info/EUR46/056/2006 [Accessed 8 September 2010].
5. Amnesty International. 2007. Russia – Amnesty International Report 2007. Human Rights in Russian Federation. http://www.amnesty.org/en/region/russia/report-2007 [Accessed 8 September 2010].
6. Amnesty International. 2008. *Russian Federation – Amnesty International Report 2008. Human Rights in Russian Federation.* [online] Available from: http://www.amnesty.org/en/region/russia/report-2008 [Accessed 8 September 2010].
7. Beck A., Robertson A. 2005. Policing in Post-Soviet Russia. In: Pridemore, W.A., ed. *Ruling Russia. Law, Crime, and Justice in a Changing Society.* Lanham, Maryland: Rowan and Littlefield Publishers.
8. Beck A., Robertson A. 2009a. Policing the 'new' Russia. In Hinton, M.S. and Newburn, T., eds. *Policing Developing Democracies.* Oxon: Routledge.
9. Beck A., Robertson A. 2009b. The challenges to developing democratic policing in post-Soviet societies: the Russian experience. *Police Practice and Research.* 10, 285-293.

10. Burawoy M. 2000. Involution and destitution in capitalist Russia. *Ethnography,* 1:43-65.
11. De Vogel S. 2012. Reforming the Police. *Institute of Modern Russia,* 16 December 2012 [online] Available from http://imrussia.org/index.php [Accessed 24 December 2012].
12. Favarel-Garrigues G. 2011. *Policing Economic Crime in Russia. From Soviet Planned Economy to Privatisation.* London: C. Hurst and Co. Publishers.
13. Galeotti M. 2010a. Terrorism, Crime and the Security Forces. In: Galeotti, M., ed. *The Politics of Security in Modern Russia.* Farnham: Ashgate.
14. Galeotti M. 2010b. Medvedev's Police Reform is more about Control Thank Reform. *Radio Free Europe Radio Liberty.* 7 January 2012. [online] Available from www.rferl.org/content/Medvedevs_Police_Reform_Is_More_About_Control_Than_Reform/1923207.html [Accessed 26 December 2012].
15. Gerber T.P., Mendelson S. E. 2008. Public Experiences of Police Violence and Corruption in Contemporary Russia: A Case of Predatory Policing? *Law and Society Review,* 42, 1-44.
16. Gilinskiy Y. 2000. Challenges of Policing Democracies: The Russian Experience. In Das, D. K. and Marenin O., eds. *Challenges of Policing Democracies. A World Perspective.* Amsterdam: Gordon and Breach Publishers.
17. Glaser B., Strauss A.L. 1967. *The Discovery of Grounded Theory: Strategies for Qualitative Research.* Chicago: Aldine.
18. Glikin M. 1998. *Militsiya i Bespredel.* Moskva: Tsentrpoligraph.
19. Gryaznova O. 2005. Mesto pravookhranitel'nykh organov v strukture sotsial'nykh otnoshenii'. In Fond 'Obschestvennyi Verdict', eds, *Indeks proizvola pravookhranitel'nykh organov' otsenki sociologov i kommentarii pravozaschitnikov.* Moskva: Fond 'Obschestvennyi Verdict'.
20. Gudkov L., Dubin B., Leonova A. 2004. Militseiskoe nasilie i problema 'politseiskogo gosudarstva'. *Vestnik obschestvennogo mnenia.* 4, 31-47.
21. Gudkov L., Dubin B. 2006. Privatizatsia politsii' in Fond 'Obschestvennyi Verdikt', eds., *Indeks Proisvola pravookhranitel'nykh organov'. Otsenki sociologov i kommentasrii pravozaschitnikov.* Moskva: Fond 'Obschestvennyi Verdikt'.
22. Human Rights Watch. 1999. *Confessions at any cost. Police Torture in Russia*. [online] Available from: http://www.hrw.org/legacy/reports/1000/russia [Accessed 29 April 2010].
23. Humphrey C. 2002. *The Unmaking of Soviet Life. Everyday Economies after Socialism.* Ithaca and London: Cornell University Press.
24. Khinstein, A. 2005. *Okhota na Oborotnei.* Moskva: Detektivpress.
25. Kosals L. 2010. Police in Russia: Reform or Business Restructuring. *Russian Analytical Digest.* 84: 2-5.
26. McFaul M., Trayger E. 2004. Civil Society. In: McFaul, *et al*, eds.. *Between Dictatorship and Democracy. Russian Post-Communist Political Reform.* Washington: Carnegie Endowment for International Peace.
27. Mel'nik E.A. 2001. *Obschestvennoe mnenie o militsii.* Moskva: VNII MVD Rossii.
28. Mishina E. 2012. Is Russian Police Reform Doomed? Lessons from Estonia and Georgia. *Institute of Modern Russia,* 16 December 2012 [online] Available from http://imrussia.org/index.php [Accessed 24 December 2012].

29. Nevirko D.D., Shinkevich V.E., Gorbach N.A. 2006. Deayatel'nost' militsii v zerkale obschestvennogo mneniya. *Sotsiologicheskie issledovaniya.* 2, 76-84.
30. Obschestvennyi Verdikt. 2009. *Otnoshenie naseleniya k reforme militsii.* Moskva: Levada Centr.
31. Polese A. 2006. Border-Crossing as a Strategy of Daily Survival: The Odessa-Chisinau Elektrichka. *The Anthropology of Eastern Europe Review,* 24, 28-37.
32. Polese A. 2009. Ukraine 2004: Informal Networks, Transformation of Social Capital and Coloured Revolutions. *Journal of Communist Studies and Transition Politics.* 25, 255-277.
33. Pustintsev B. 2000. Police Reform in Russia: Obstacles and Opportunities. *Policing and Society.* 10, 79-90.
34. Ries, N. 1997. *Russian Talk. Culture and Conversation during Perestroika.* Ithaca and London: Cornell University Press.
35. Rose R. 1999. How Russians Cope: Living in an Antimodern Society. *East European Constitutional Review.* 8, 68-75.
36. Rose R. 2001. When Government Fails: Social Capital in an Antimodern Russia. In B. Edwards, M. W. Foley and Diani, M., eds. *Beyond Tocqueville: Civil Society and Social Capital in Comparative Perspective.* Hanover, NH: University Press of New England.
37. Safronov A. D. 2003. *Prestupnost' v Rossi ii kriminal'naya bezopasnost' organov vnutrennikh del.* Moskva: Yuniti-Dana, Zakon i pravo.
38. Sakwa R. 2011. *The Crisis of Russian Democracy.* Cambridge: Cambridge University Press.
39. Shevchenko O. 2009. *Crisis and the Everyday in Postsocialist Moscow.* Indiana University Press: Bloomington and Indianapolis.
40. Shevtsova L. 2008. *Russia – Lost in Transition. The Yeltsin and Putin Legacies.* Washington: Carnegie Endowment for International Peace.
41. Skoibeda U., Kots, A. 2005. Pochemu menty pytayut i berut vzyatki. *Komsomol'skaya Pravda*, 6, 7, 10 June 2005 [online] Available from http://www.kp.ru/daily/23523/40658/ [Accessed 16 April 2013].
42. Stenning A., Smith A., Rochovska A. and Swiatek D. 2010. *Domesticating Neo-Liberalism. Spaces of Economic Practice and Social Reproduction in Post-Socialist Cities.* Chichester: Wiley-Blackwell.
43. Strauss A., Corbin J. 1990. *Basics of Qualitative Research. Grounded Theory Procedures and Techniques.* Newbury Park - London – New Delhi: Sage Publications.
44. Strauss A., Corbin, J. 1998a. Grounded Theory Methodology: An Overview. In Denzin, N. K. and Lincoln, Y.S., eds. *Strategies of Qualitative Inquiry.* Thousand Oaks - London - New Delhi: Sage Publications.
45. Strauss A., Corbin, J. 1998b. *Basics of Qualitative Research. Techniques and Procedures for Developing Grounded Theory.* Thousand Oaks – London – New Delhi: Sage Publications.

46. Uildriks N., Van Reenen, P. 2003. *Policing Post-Communist Societies. Police-Public Violence, Democratic Policing and Human Rights.* Antwerp-Oxford-New York: Intersentia.
47. Volkov V. 2002. *Violent Entrepreneurs. The Use of Force in the Making of Russian Capitalism.* Ithaca and London: Cornell University Press.
48. Wilson D., Kolennikova O., Kosals L., Ryvkina R., Simagin, Y. 2008. The 'economic' activities of Russian Police. *International Journal of Police Science and Management.* 10: 65-75.
49. Zernova M. 2012. Coping with the failure of the police in post-Soviet Russia: findings form one empirical study. *Police Practice and Research.* 13, 474-486.

Dejan Marolov
Goce Delcev Univerzity, Stip, Republic of Macedonia
Elena Ivanova
Goce Delcev Univerzity, Stipm, Republic of Macedonia

THE POSSIBLE NEGATIVE ASPECTS OF THE ADOPTION PROCEDURE

Abstract
Adoption is an old institute, which primarily occurs like substitution for matrimonial communities that cannot have descendants. Now days, along with modernization of social values and beliefs, it is used for establishing adoption within certain country, as well as internationally worldwide. There is a serious need of it primarily because of a care for minors who remained without parents and parental care, for them to grow into psychologically stable person who will contribute for the better tomorrow. The adoptive parents provide the necessary home, love and attention, raise and educate for the adoptees, so they made up for the parental care which they were deprived. An individual will better develop in an environment where it will be surrounded with love and understanding, although there is no blood relation, then with biological parents who are not ready and able to create the needed conditions for a child to feel loved and desired.

Key words: Adoption; Trafficking of minors; Reproduction; Adaptive parents; Surrogacy;

Introduction
Emotions have always been a moving force during human development and the culminating role they have exactly in the whole process of reproduction. For realization of the desire of reproduction in one marital or extramarital community, despite emotional part, there are

some biomedical criteria that need to be fulfilled. However, what is predetermined as primary – continuation of a gender, is not always easily feasible. There is sequence of biomedical difficulties that hinder the process of formation of nascent and maintain pregnancy until birth.

As primarily solution of the problem – the inability of reproduction occurs adoption. Adoption is an old institute that traces its roots from Roman law. Primarily, it occurs like good substitute in marital communities that, from biomedical point of view, cannot have the offspring that they really want. Today, with the modernization of social values and beliefs, this institute is used by many reasons and in many ways. However, adoption is necessary to exist first of all for the care of minors who, favored by fate, are left without parental care. For these persons to be raised into psychologically stabile ones who will contribute for better tomorrow, this institute is more than necessary. Adoptive parents allow to adoptees to have needed home, love and attention, raise them, educate them and carry for them, in a word they made up for the parental care that they were deprived immediately after their birth, and much more. An individual will be much better developed in an environment in which it will be surrounded with love and understanding, though there is no blood relation, than if it is with the biological parents who are not ready or able to create the necessary conditions for child to feel loved and desired. Therefore, justification of this institute is sweeping over the years.

1. About the procedure for establishing adoption in Republic of Macedonia and its flaws

What is worrying is the procedure for adoption itself. It is a fact that it is a sensitive issue to what it should be given all necessary attention and precaution, but in such amount that is needed not to be created an open space for manipulative games. Everything that is complicated more than necessary opens up possibilities for abuses. Entire legal procedure, from the very beginning has not suffered any major changes. "The ball" is throwing constantly between Commission for adoption and competent Center for social work. Commission profile is in very appropriate composition: lawyer, pedagogue, psychologist and social worker, who must have experience in the field so they can appear as members of the Commission and from who is required to make an objective evaluation of the condition that are needed for properly growth of a juvenile. The procedure begins with filing a request by the potential future adoptive parents to the Commission, followed by all required documentation[38]. Commission shall consider the filled documentation, and if are not all right it will rejects the request, but if they are, Commission will submit the request with the application subject to the competent Center for social work. The Center is authorized in legally specified period, a period of 4 months (before the amendments to Family Law from 2012[39], this period had its own legal minimum of 4 months and legally specified maximum – 6 months) to monitor potential adoptive parents and to value their suitability for adoption. An expert team of the Center

[38] Ministry of labor and social affairs determines the required documentation with Rulebook for keeping records of adoptees and for determining the adoption papers.

[39] "Official Gazette of the Republic of Macedonia" No. 44 from 30th March 2012.

prepares findings and opinion and if they are positive, the team makes a proposal for their registration into the Register of potential adopters. Such a proposal, together with findings and opinion from experts are forwarded to the Commission within 15 days – a period that was added with the recent amendments to the Family Law from 2012. If the documents are not in order they should be in, Commission pass the whole subject to the competent Center for social work with obligation within five days to remove the deficiencies and return the subject to the Commission, but if the documents are in order – Commission brings a decision for enrollment in the Registry of potential adopters. A copy of this decision with an excerpt from the Register and a copy of the documentation are forwarded back to the Center for social work for archiving data in the Program for selecting the most appropriate adoptive parents electronically. The Center also monitors minors without parental care as well and proposes to the Commission for entering them in the Registry of possible child for adoption (together with the finding and opinion from the expert team and individual finding and opinion from the experts). After receiving the proposal, Commission submits report for health conditions of the child to the Commission for valuation of health condition of children without parental care, which within 15 days submits finding and opinion for the health condition of the child. With the amendments from 2012, Institute for Social Activities is obligated to prepare a Program for evaluation of adopters (current article 104-b, paragraph 4) and Program for evaluation of minors without parents and parental care who are possible children for adoption. Before mentioned amendments of 2012, Center of social work was making the selection of the most appropriate adopter electronically and was notifying the Commission for the top five possible adopters from the list of the Program, according to Family law, Commission was making the election and it was obligate to give explanation for that choice. Now, after entering the data for potential adopted child in the Program, the Commission at the first next session has to make a choice of most suitable adopter electronically from the top three possible adopters from the list of the Program. Commission notifies Center for social work that is guardian of the child for the selection and depending on the place of living of the selected adoptive parents, will seek the custody of a specific child to be in hands of a Center of social work from the area where adoptive parent is. With that all rights and obligations of Center of social work under whose custody the child was will stop.

After all of this, Commission brings a decision for accommodation of a child in an adoptive family and submits it to the competent Center of social work. The period of the accommodation cannot be less than two or more than three months, and during this period Center of social work will continuously monitor the accommodation and make monthly reports to the Commission. After expiring the period of accommodation, Center within five days will prepare a report on it and gives an opinion for adoption of the child to the certain adoptive parents and submits it to the Commission for establishing the adoption. Commission makes a valuation on the documents and after that the report is either rejected, either whole case is backed for amendments of the procedure within 30 days and for making a new selection of potential adoptive parents, or, in the best case, the Commission brings a decision for establishing the adoption.

During the procedure of adoption, in the presence of those who are predicted by the law and accordance for adoption, minutes will be made and a decision will be brought with the data about the type of adoption and, according this, all the other necessary information (name, surname of the adoptee, place of birth, inheritance rights etc.). And finally, the decision will be forwarded to the registry office for registration in a birth certificate [1]. This procedure varies depending on whether it is complete or incomplete adoption that is establishing, depending the age of the minor who is adopted and if it is about child of a spouse or the adoptive parent is a foreigner. However, this is the essence of the adoptive procedure.

Delicacy of the matter needs a detail procedure indeed, a reasonable brake when the selection of adoptive parents is make and finding a suitable home objectively, and all of this is inserted through the existence of the Commission and Center of social work that affects each other as a controllers and that are the key players in the whole procedure. Legally predicted prudence must be present into the procedure because it is a life of a minor that is decided about with who fate has not been mother but stepmother since his birth. Once made life stroke must not be repeated, especially if the minor has reached several years and starts to understand and feel the pain that comes from situation in which he or she is. But this prudence is a source of potential maneuvers. What during reading the legal procedure resembles like "ping-pong" relation, in practice creates serious complications. Primarily as a problem occurs slowness into the procedure. Meanwhile the waiting list of the potential adopters extends and the children grow without parental care that they need. Psychologically it has destructive affection over minors, but also over those who want to adopt child, especially married couples who before starting this procedure have been through a lot of trying to have their child. So, those who want to adopt are ready to "compensate" substantial sums for accelerating the procedure. The competent authorities become corrupt and direct the procedure where benefits from it are subjective. Some are deleted from the list, other mysteriously appear on it. The procedure is prolonged for some, and expedited for others. None of this differs greatly from normal administrative routine; indeed, it would have not even been worth mentioning, if it were not for an essential element which renders the overall story alarming, i.e. the life of the minors. This simple administrative procedure affects their faith and is crucial to their wellbeing; therefore, it must not in any way pose a threat to them; on the contrary, it is to be in their favor. The Rulebook on the Closer Criteria and Method of Selecting Adoptive Parents Electronically is only a part of an already complicated procedure. The value system of the Rulebook does not make any considerable distinction between the love given to the child and the ownership of an additional apartment or a house; the location of the residence and its vicinity to children's playgrounds are considered equal to moral values and attitudes, sensibility, empathy and altruism. In general, raising a healthy and loved child does not require ownership of luxurious automobiles, houses and holiday houses, etc. What the Rulebook in fact promotes is marginalization of people with average incomes, and their legal right to adopt a child, in favor of people with higher incomes.

The illegal trade of infants is one of the by-products of the complexity of this procedure. Human trafficking of minors is a serious criminal act, which in recent decades, has been growing at an increasingly fast pace and has transcended international borders. Internationally, trafficking offenders (trafficking of infants) are known as "baby-mafia". The severity of this criminal act is reflected in the legal distinction between incrimination of human trafficking of minors and human trafficking in the Criminal Code of the Republic of Macedonia [2], as well as in increased penalties; moreover, in Serbia there is a separate article on illegal trade of children for the purposes of adoption[40]. Serbia faces kidnapping of newborns from hospitals for the purposes of illegal trade and adoption by other families within Serbia or more often beyond its borders. This criminal industry in Serbia is highly organized and the chain of human traffickers includes people employed in key positions, such as hospital staff, social services staff, judges, etc. The international nature of human trafficking and the vicinity of neighboring Serbia inevitably entail consequences for Macedonia, such as having a model for criminals to follow, as well as being an export destination. The possibility of having this complex legal procedure bypassed and having human trafficking of infants in our country is very real. There have been several instances in which families have raised suspicion of abduction and illegal trade, after the failure of hospitals to provide valid evidence of the death of their newborns.

2. Trafficking with minors for illegal adoption

The motives and the goals that are set by the perpetrators of the crime of trading with people mainly can identify regardless of whether as victims arise adults or minors.

Sexual exploitation, labor exploitation often realized through forced begging, performing works in low or no conditions relating to the construction, exploitation of victims for removing organs and illegal transplant, forced pregnancy etc. are forms that can be found in both cases when victim appears to be an adult, but a minor as well. In cases of trafficking for establishing illegal adoption, the victim who was reduced to a mere of an object without any opportunity for the expression of will, is a minor only. This form of trading in children is relatively newer than other forms of the implementation of the legal entity of the crime of human trafficking and begins to come to the surface and to develop their own forms mostly as a result of manipulation of the legal structure by perpetrators in a certain country. But despite the fact that this is a new form of the crime, the consequences of its execution are so destructive and alarming, which requires tremendous speed and organization for effective prevention and suppression.

Ways of doing this form of human trafficking are varied. Include kidnapping of children, their purchase often from the parents or guardians, as well as forcing a child (if it has reached the age of several years of life) or forcing parents to give up their child.

[40] Article 389 of the Criminal Code of the Republic of Serbia

In some countries, adoption is legally prohibited (egg Egypt), and because of that people are using baby trafficking and services of the perpetrators, all in order to get offspring.

Sometimes the very people who want to adopt a child and are coming to the desired offspring in this way are not even aware that the adoptee has obtained through its trading, because they are taken from the agency that performs mediation adoption. This is more difficult to occur in countries that do not provide private adoption, where the state itself do not give permission to the private sector to be involved in the adoption trough license agencies that will carry out adoption, but adoption is carried out exclusively by state institutions and bodies established by the State responsible for adoption. Therefore in these countries occurs the element of conscious ordering adoption of children on illegal way by those who wish to have child, thus consciously entering the network of this organized crime.

Particularly difficult element to detect the trafficking of children for adoption is the international adoption. For this reason, international adoption is regulated by several international documents and bilateral agreements. The most important among them are the European Convention on the adoption of children from 24 April 1967 adopted by the Council of Europe and the Hague Convention on Protection of Children and Co-operation in the field of international adoption, adopted 29 May 1993 in the framework of the Hague Conference on Private International Law. Hague Convention in its goals that are planned to be achieved, clearly emphasizes that through the convention Contracting States have to respect the safety measures and to avoid abduction sale or trafficking of children. Also it provides the prohibition of improper financial or other gain from activity related to international adoption. The European Convention for adopting children regulates this area similarly.

3. Surrogacy and its relation with illegal adoption

The continuity of the technical and technological development spurred by globalization and eminent advancements in medicine and bio medicine, allowed other alternatives despite the adoption, for the substitution of the basic ways of establishing parental relationship - surrogacy.

Surrogacy is a method of reproduction in which a woman agrees to become pregnant with inlaid embryo from another or simply – borrows her womb. In the surrogate mother's uterus are implanted embryos that are given as a result from the artificially inseminating eggs of another woman who is unable to cope with the pregnancy. After that for nine months the surrogate mother's womb is used as an incubator. Surrogacy can be used for: artificial insemination, natural fertilization where the sperm of the father is used and the surrogate mother's eggs that after birth the child gives the baby to the father and his partner, even though she appears as a biological mother, and biomedical assisted fertilization - by entering the embryo into the uterus of the surrogate mother. Because of these features many authors speaks about the fact that surrogacy leads to "fragmentation of motherhood" and therefore only a small number of countries around the world allows such a procedure. It is allowed in

Russia, Israel, Canada, part of the U.S. states. Some states prohibit only if the procedure of having a baby for another is paid, while they allowed the birth of a child from noble motives - enabling couples to have a child who will have their genetic material, if before that, for achieving the same purpose, all other alternatives are exhausted, like in the UK. In countries like this the altruistic surrogacy is allowed but in those that are based on commercial grounds is banned.

The biggest part of the countries worldwide, including Republic of Macedonia, uses restrictive measures for its prevention, often in favor of prevention of side effects.

According to some experts (Prof. Jovan Tofoski, Macedonia), this moment makes space for a lot of manipulation, and opens countless moral, ethical and legal issues. Before all, there is the payment and the manner of regulation of the service itself, from where the dilemma that the infant from subject becomes an object is raised because, practically, baby is being sold -the "owner" usually requires money for the service and that is the point when many problems are raised. So according to this, the birth of a baby for another where the payment is included would make this act the act of human trafficking or trafficking in minors for obtaining a parental relationship. Although many believe that surrogacy is as ethically and morally justified as adoption itself, however, apart from rare cases of altruistic surrogacy, paid surrogacy violated the dignity of the person, because only things can be valorized and children are way too valuable to be the subject of sale. This surrogacy is seen as bad as baby trafficking. The child becomes the object of negotiation and purchasing agreements, and the woman comes down only to the level of reproductive machine.

In 2011 this kind of trafficking was happening in Thailand, where surrogacy for compensation is prohibited and only altruistic surrogacy by close relatives is allowed. At first it was trafficked with women from Vietnam who were moved to Thailand, their passports and money were being confiscated and they have been told that is necessary to give birth to a child for someone else, for certain amount of money - that is, to be surrogate mothers. Illegal company "Baby 101" which appears in the role of acting this activity even had a web site which represent itself as a company that offers "eugenical surrogacy", which provides the best conditions for the creation of offspring, where only the best leave embryos for implantation. However, it is not mentioned what they to do with embryos that remain because they do not measure with their eugenical standards. The company offered two types of services - surrogacy and egg donation, and for that purpose they had several of photographs of women in fashion style photos who could appear in the role of surrogate mothers. For women who were unable or are unwilling to give birth there was a package worth $ 32,000 - the couple should provide their sperm and eggs, to choose the gender of the child and the surrogate mother of the offered, later the surrogate mother is being isolate in a particular mode of life and diet, special conditions, in order to give birth of the child as it is being "ordered". The fact is that the institute adoption exists in favor of infertile couples who want to be parents, and it cannot achieve that in a natural way, but there is also present the whole "Ping-

Pong" legal procedure for achieving adoption, that would make the young couple old, while waiting in the row for adoption. And here surrogacy becomes tempting, and because it is forbidden comes to the inclusion of significant material compensation for the service in conjunction with the performance of other serious crimes for its realization. So it is easy to move in the direction of getting the labels - organized and international crime.

Conclusion

It is necessary to provide a greater amount of objectivity in the adoption procedure and to render it unsusceptible to corruption and crime. With regards to dealing with this challenge correctly, the legal and sublegal regulative do not contribute significantly; the exaggerated precaution is merely a cruel reality to the ordinary citizen wishing to adopt a child, give it a home and love to ensure its normal development. While the problem clearly exists, i.e. the procedure is violated or strict adhering to the procedure considerably delays its successful completion, more often than not, it is ignored as a result of its sensitivity. However, regardless of how sensitive this problem may be, the cost of ignoring it is too big. Human lives are at stake, the lives of the adoptive parents, and more importantly, the lives of the adopted children. There are a considerable number of homeless children, even though one of the excuses for having a complicated and demanding procedure is the low number of potential children available for adoption. Providing shelter is vital to the well-balanced growth and development of such children, as well as to the normal development of the society in general. Consequently, one must question the necessity of having a seemingly flawless procedure. Are we in fact capable of adhering strictly to the procedure, within decent time periods, and without any violations? People should act in compliance with procedures; on the other hand, procedures should be designed to be in favor of those concerned. Only then will the procedure focus on its primary and essential goal – to compensate for the loss of parental care. As such, the procedure has many flaws, and requires due precaution. The incorrect implementation of the procedure must not create a buffer zone which could be maleficent to the adoptive parents and to the adopted children. The goal of the Institute must not be reduced to mere carrying out of an administrative procedure. Its goal is humane, and its embodiment should follow along.

References

1. Law on Family. *Official Gazette of the Republic of Macedonia.* No 80/92, 9/96, 38/04, 33/06, 84/08, 67/10, 156/10 and 44/12.
2. Criminal Code of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia.* No. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11 and 185/11.
3. Criminal Code of the Republic of Serbia. *Official Gazette of the Republic of Serbia.* No 85/2005, 88/2005, 107/2005 and 72/2009.
4. Rulebook on the Closer Criteria and Method of Selecting Adoptive Parents

Electronically.
Official Gazette of the Republic of Macedonia. No12/11.
5. *European Convention on the Adoption of Children, Council of Europe, Strasbourg, 1967.*
6. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. *Hague conference on private international law*, Hague,1993.
7. http://www.novosti.rs/vesti/naslovna/aktuelno.290.html:359604-Kupuju-potomstvo-za-200-evra
8. http://www.globalpost.com/dispatch/news/regions/asia-pacific/thailand/110310/thailand-surrogacy-human-trafficking?page=0,0
9. http://bridgetobaby.com/profiles/blogs/would-be-surrogate-mothers-used-in-human-trafficking-scheme
10. http://www.lifesitenews.com/news/fourteen-women-rescued-from-eugenics-surrogate-baby-trafficking-ring-in-tha
11. http://aconspiracyofhope.blogspot.com/2011/02/brave-new-crime-surrogacy-eugenics-and.html
12. http://legislationline.org/documents/section/criminal-codes

Helmut Kury
University of Freiburg, Freiburg, Germany
Oksana Ilchenko
Far Eastern Federal University, Vladivostok, Russian Federation

THE EFFECT OF PUNISHMENT AND CRIME RATES IN THE WEST AND RUSSIA

Abstract

Since old times it is the rule to prevent undesirable, especially criminal behaviour by punishment. In medieval times most brutal sanctions are used – and as was the obvious result also in that times, with no or small effect. At the same time, the attitude to the punishment has never been straightforward. Beccaria [3, 107] wrote that we should "prevent crimes than to punish them"; it means that criminal prevention must be concentrate in "rewarding virtue." The scientist also believed that "in countries and over time with the most severe punishment most brutal crimes had been done." The effect of criminal sanctions is small, if ever given. This is shown on the background of empirical research from the USA, Finland, Germany,

Switzerland and Portugal and on the basis of different groups of criminal behaviour. All international empirical results show a missing or in best cases small crime preventive effect of sanctions. The reasons are discussed. Alternatives to harsh sanctions mostly are cheaper than and as successful as sharp punishments. Nevertheless crime politicians are asking for sharper punishments, here populist ideologies might play an important role.

Key words: Violent crime; Punishment; Brutal sanctions; Decriminalization; Rehabilitation

Since many years the USA is a country, which contains about 25% of all prisoners of the world, even just about 5% of world population live in this country. The sharp increase in the prison population began in the first half of the 1970s, which was due to many factors, especially changes in the criminal and political spheres. System of punishment has its own distinctive features in different states of the country. "Based on the examination of 44 variables encompassing a mixture of dimensions of the construct across the 50 U.S. states, this research suggests that the American South is highly punitive, the West and the Midwest moderately punitive, and the Northeast relatively lenient". Also Hinds [13, 58] emphasizes that: "Increasing disparity over time shows important regional differences with the United States in the appeal of getting tougher on offenders. While there have been increases in custody rates in all US states, the South stands out from the rest". Nowadays the USA has "incarceration boom" (Kuhlmann, 2011, P. 90). This pick is the result of some reasons, most important of them is "Three-strikes laws".The first true "three-strikes" law was passed in 1993, when Washington state voters approved Initiative 593, California passed its own in 1994. This law is "one of the most punitive sentencing statutes in recent history … Three Strikes and you're out" said Males [27, 2]. "The severe nature of the law was intended to maximize the criminal justice system's deterrent and selective incapacitation effect"[27, 2].

It was supposed that the law will reduce the number of violent crimes, because depending on the seriousness of the current and the prior crimes committed by the offender, the sentence can range from a minimum of 25 years to a maximum of life imprisonment. Study showed that the crime rate really dropped in subsequent years, but the decrease occurred in all states, regardless of whether there such a law was introduced or not. Three strikes laws have not confirmed the indisputable deterrent effect, at best, its impact on the crime rate was low, but obviously have increased the number of arrests. "Data clearly shows that counties that vigorously and strictly enforce the 'Three Strikes' laws did not experience a decline in any crime category relative to more lenient counties. The absence of any difference in relative crime rates occurred despite the fact that the six largest counties applied the law at a rate 2.2 times greater than the six counties that invoked the law least. Even more remarkable, the sevenfold proportionally greater use of three strikes in Sacramento and Los Angeles was not associated with a bigger crime decline than in Alameda and San Francisco counties that rarely use the law. In fact, San Francisco, the county which uses 'Three Strikes' most sparingly witnessed a greater decline in violent crime, homicides, and all index crime than most of the six heaviest enforcing counties" [27, 9].

A tougher penalty in the USA is also associated with the introduction of the policy of "zero tolerance". A zero tolerance policy imposes automatic punishment for infractions of a stated rule, with the intention of eliminating undesirable conduct. Opponents of zero tolerance believe that such a policy neglects investigation on a case-by-case basis and may lead to unreasonably harsh penalties for crimes that may not warrant such penalties in reality. More over thorough analysis shows that the decline in crime in New York began in the years before the introduction of a policy of zero tolerance. At the same time, reducing crime occurred not only in New York but also in other major cities of America, which like Seattle, Boston, Dallas and Los Angeles, where the program was not carried out.

Increasing the frequency and duration of arrest has tangible costs. “Prison construction quickly became a booming business” [35, 4]. The owners of the prisons tend to develop the business; they are looking for new prisoners. Shelden comments on reports of empty places in the prisons of South Carolina as “These developments are bad news for corporations …, who depend upon a steady supply of prisoners”. “… incarceration is a huge industry in the United States. About $69 billion is being spent each year on the correctional system” [35, 2]. “As the first decade of the 21st century comes to a close, the United States faces a growing crisis in imprisonment that threatens to cause unprecedented fiscal problems for virtually every state and large city in the country”.

The most striking example in the matter of the effectiveness/ineffectiveness of tough sanctions is Finland. By 1950, the number of convicts in Finland was 187 people. Compared with other countries in Northern Europe, such as Denmark (88), Norway (51) and Sweden (35) the level of inmates in the country was nearly three times higher. Sanctions and penalties handed down by Finnish courts were tougher than in the other Nordic countries. More severe penalties applied to repeat offenders and who commit crimes against property, i.e. to the two main groups of criminals. In next years, numerous reforms had been made in the country, including reform in the field of criminal - legal relations. “In sentencing, the principles of proportionality and predictability became the central values. Individualized sentencing, as well as sentencing for general preventive reasons or perceived dangerousness was put in the background. These ideological changes touched all Nordic countries. However, practical consequences were to be most visible in Finland” [23, 255]. Example of Finland shows that cruelty of sanctions depends on politic will and consensus between authorities. Törnudd [38, 12] wrote: “Those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s comparatively high prison rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation”.

Studies conducted in various federal states of Germany and in the cantons of Switzerland, also confirm that the stiffness of punishment has little protective effect on crime.

Storz in his study in federal lands in Germany tried to find out relationship between the first offense committed by young people, penalty and repeated offense committed within 3 years after the first one. The results showed that type of sanctions have no any effect on the recidivism [37]. In another similar study, the author conducts research in 26 cantons of Switzerland. His goal was to find correlation between recidivism and type of first penalty (imprisonment or probation). There was the similar result: while the rigidity of punishment is very different in different cantons, no prevention effect was found. In the canton Appenzell arrest was just about 20%, and it increases to 90% in the canton Obwalden. However, the number of repeat offenses in all cantons was about 10 % - 15%.

Dölling conducts full analysis of 9422 sources of criminological, sociological, economic literature and 700 most meaningful researches. The results showed that the death penalty deters produces the smallest effect: "The smallest effects are to be found in studies on the death penalty… In this area sanctions are severe and the norms protect fundamental values. Moreover, the deterrence hypothesis is more frequently confirmed when administrative offences are investigated as opposed to crimes. Finally, the severity of punishment clearly has a lower deterrent effect than the probability of punishment" [9, 374]. The same idea has Wikström and others [39, 417]. He wrote "than that they abstain from it because they fear the consequences (their assessment of the risk of getting caught). People who do not see crime as an action alternative do not tend to engage in crime regardless of whether they assess the risk of getting caught as very high or very low." As Pauwels emphasizes: "their crime involvement is generally influenced by their assessment of the risk of getting caught (their deterrence sensitivity): those who assess the risk of getting caught as higher tend to commit crime less frequently" [31, 397].

The **sharp** increase in the prison population in the USA in 1970 was due to "war against drugs." 2008 year was first time then more persons were arrested for drug possession than for it production and trade. So Macallair u. Males [28, 2] wrote: "For nearly three decades, Califonia's criminal justice system has devoted every-increasing resources towards the arrest, prosecution, and imprisonment of drug offenders". Against this background the prosecution in many European countries is criticized.

Bold step in this direction was taken few years ago in Portugal. In 1990s, the country experienced a serious problem with drugs. The Commission recommended achieving substantial decriminalization of drug use, as well as providing greater assistance to drug addicts. In November 2000 Portugal adopted the Law 30/2000, so drugs for personal use were decriminalized, while trade still was serious crime.

The data about effects of decriminalization of drug use in this country are interesting. Although official figures of drug users has increased. A major achievement in the fight against drug abuse and its consequences has been reduced. Deaths due to drug use and AIDS, which was the highest in Portugal, decreased significantly.

The European Monitoring Centre for Drugs and Drug Addiction - EMCDDA after several years of research on the effects of decriminalization has come to the conclusion that “initial fears that this approach would lead to an increase in drug tourism or increased levels of use do not appear to be supported by the data available”(EMCDDA, 2009, P. 12). Also Greenwald [12, 1] said: “Those data indicate that decriminalization has had no adverse effect on drug usage rates in Portugal, which, in numerous categories, are now among the lowest in the EU, particularly when compared with states with stringent criminalization regimes”.

In Russia attitude to punishment is close to the socio-historical context of country. In the 19th century there was a trend to suffer punishment, but after 1917 sentence increased. Peak "cruelty" was in the years of repression in 1937 -1953. After a brief "thaw" and reduce the number of prisoners, it gradually increased and reached 4 million people in the 1980. The sharp decline in the number of inmates in prison occurred in the early 1990s, which was associated with the collapse of the USSR, the ideological and socio-economic changes that have affected all spheres of human activity. However, after 5 years, the number of prisoners has doubled from 573 million in 1993 to 1100 in 1998, again largely due to the transformation process of social and economic reforms that led to the impoverishment of the majority of the population, changes in moral and ideological consciousness of people. In 1996 Russia had a moratorium on the death penalty. In 1996 (last year then death penalty was allowed) Russia had 53 executions, including death penalty to fumets Russian serial assassin Chikatilo. However, over the 15 years, during which there is to be executed the death penalty, there is a debate in a society, much of society resisted adopting the moratorium and wants to resume use of the death penalty.

The Penal Code, which entered into force in 1997, has visible tendency to toughen penalties. Thus, Article 57 provides for life imprisonment. In Article 56, paragraph 2 provides imprisonment 20 years up. Paragraph 3 stipulates that for multiple offenses the maximum sentence can be more than 25 years. The previous version of the Criminal Code (1960) consolidated the maximum term of imprisonment 15 years.

In general, the Russian tendency increasing the punishment is obliviously. Just in 2012 were developed and proposed for consideration some laws, propose greater responsibility for driving under the influence of alcohol, a law to toughen penalties for creating and participating in the management of financial pyramid. In February 2012 President D.A. Medvedev signed a law "On amendments to the Criminal Code and Certain Legislative Acts of the Russian Federation in order to stiffen the penalties for sexual offenses committed against minors." It provides a specific procedure for the application of compulsory medical measures to such persons. In particular, a set of measures may include the possibility of preventive drugs, including chemical castration, as a ban of probation and deferred sentence to these persons. In October 2012, the Federal Law "On Amending Article 73 of the Criminal Code of the Russian Federation" limited the cases of probation for dangerous repeated.

In 2013 the Interior Ministry drafted some laws toughening responsibility. So, for example it is planned to toughen punishments for a gaming. The amendments proposed that will threaten the organizers of gambling outside the gaming zone restriction of freedom for two years up. For the same crimes committed by an organized group, the penalty is imprisonment for five years up.

In the spring of 2013 the State Duma will review of laws that lowering the age of criminal responsibility to 14 year, and for some category of crime to 12 (now 16 and 14 year respectively). But how international empirical results show, harsh sanctions are not best solution of crime among youth. In Russian there is no Juvenal Justice. Since Soviet period Government Commission on Protecting the Rights of Minors deals with delinquent and deviant children. This old mechanism is not adequate for modern Russia, because there are no professional psychologies, social workers in it. Solution of youth crime problem needs more perversion measures than punishment.

Presented the results of international studies confirm doubts about the criminal preventive action of sanctions. Even if we assume the presence of their production of the minimum deterrent effect, there will always be more effective and, above all, cheaper alternative to prosecution.

Hofer and Ham emphasized several decades ago that the political demands to toughen criminal penalties largely dictated by "pure ideology" and "concealment of reality. General prevention claims to secure basic societal values which in reality are specific interests of various power groups. General prevention pretends consensus where there is conflict. Penal legislation is to a considerable extent the attempt of specific groups to secure their specific interests – not so much in respect to what actually is criminalized, but with regard to what is *not* criminalized" [14, 268]. "General prevention is based upon fear and threat. It is at least partly repressive in its character. It does focus on individuals rather than on structures" (P. 270; Lee 2001). Clear (2008, P. 125f.) wrote: "If the problem of mass incarceration is the large number of people who go into prison and how long they stay there, then the solution is for fewer to go in and for shorter stays". As emphasized by Braman [6, 224]: "The question … is not merely how to punish and deter offenders, but how to encourage and strengthen the bonds that make families possible, give life to community, and ultimately determine the character of our society as a whole".

Thus, the results of criminological research unanimously show that severe criminal penalties if provided, the marginal impact on the crime rate, and produces a small protective effect. At the same time, a sentence of imprisonment has significant negative consequences.

This imposition requires additional intensive rehabilitation in order to motivate people to change their behavior. Modern criminal political tendency toward increased penalties,

increased prison terms and the number of prisoners is in the wrong direction. Prisoners were motivated by the possibility of parole at the appropriate cooperation and behavior change. Additional load, which in this case will test the probation service, may be partially reduced through the active involvement of volunteer labor [22]. As Dalley asks: "In short, the remaining question is a simple one: Do we pay now, or later?" (Dalley, 2002, P. 262).

References

1. Agra C. da 2009. Requiem pour la Guerre à la Drogue. *L'Expérimentation Portugaise de Décriminalisation. Déviance & Société.* 33, 27-49.
2. Aos S. 2003. Cost and benefits of criminal justice and prevention programs. In: Kury, H., Obergfell-Fuchs, J. (Eds.), *Crime Prevention – New Approaches*. Mainz: Weisser Ring, 413-442.
3. Beccaria C. 1764; 2005. *Von den Verbrechen und von den Strafen.* Berlin: Berliner Wissenschafts-Verlag.
4. Blumstein A., Wallman J. (Hrsg.). 2006. *The crime drop in America.* Cambridge: Cambridge University Press.
5. Bowers W.J., Pierce, G.L. 1980. Deterrence or Brutalization: What is the Effect of Executions? *Crime and Delinquency.* 26, 453-492.
6. Braman D. 2004. *Doing Time on the Outside: Incarceration and Family Life in America.* Ann Arbor: University of Michigan Press.
7. Death Penalty Information Center (2011). The Death Penalty in 2011: Year End Report (http://deathpenaltyinfo.org/documents/2011YearEnd.pdf).
8. Death Penalty Information Center (2012). The Death Penalty in 2012: Year End Report (http://deathpenaltyinfo.org/documents/2012YearEnd.pdf).
9. Dölling D., Entorf H., Hermann D., Rupp T. 2011. Meta-Analysis of Empirical SAtudies on Deterrence. In: Kury, H., Shea, E. (Eds.), *Punitivity – International Developments*. Vol. 3, Bochum: Universitätsverlag Dr. Brockmeyer, 315-378.
10. Gascón G., Foglesong T. 2010. *Making Policing More Affordable. Managing costs and Measuring Value in Policing.* Washington: National Institute of Justice.
11. Gilinsky J.I. 2002. *Kriminology.* Piter Press.
12. Greenwald G. 2009. *Drug Decriminalization in Protugal. Lessons for Creating Fair and Successful Drug Policies.* Washington, D.C.: Cato Institute.
13. Hinds L. 2005. Crime control in Western countries, 1970 to 2000. In: Pratt, J., Brown, D., Brown, M., Hallsworth, S., Morrison, W. (Eds.). *The New Punitiveness. Trends, theories, perspectives.* Portland/Oregon: Willan, 47-65.
14. Hofer H. von, Tham H. 1975. Beware of General Prevention! In: National Swedish Council for Crime Prevention (Hrsg.). *General Deterrence – A Conference on current Research and Standpoints. Stockholm: Research and Development Division*, 257-270.
15. Jasch M. 2003. *"Zero Tolerance" in New York – Was ist daraus geworden?* Frankburg: unveröff. Manuskript.

16. Kury H. 1979. *Sozialstatistik der Zugänge im Jugendvollzug Baden-Württemberg.* Freiburg: Max-Planck-Institut für Strafrecht. Unveröff. Forschungsbericht.
17. Kury H. 2001. Das Dunkelfeld der Kriminalität. Oder: Selektionsmechanismen und andere Verfälschungsstrukturen. *Kriminalistik* 55, 74-84.
18. Kury H., Kern J. 2003a. Frauen und Kinder von Inhaftierten. Eine vergessene Gruppe. *Kriminologisches Journal* 35, 97-110.
19. Kury H., Kern J. 2003b. Angehörige von Inhaftierten – zu den Nebeneffekten des Strafvollzugs. *Zeitschrift für Strafvollzug und Straffälligenhilfe* 52, 269-278.
20. Kury H., Quintas J. 2010a. Zur Wirkung von Sanktionen bei Drogenabhängigen - Argumente für eine rationale Drogenpolitik. *Polizei & Wissenschaft* 1, 31-56.
21. Kury H., Quintas J. 2010b. Sanktionen oder Hilfe? Einstellungen zu Drogentätern - Ergebnisse aus Portugal. *Kriminalistik* 64, 403-409.
22. Kury H., Sato M. 2013. Bewährungshilfe – die Rolle der Freiwilligen. Ein Vergleich zwischen Deutschland und Japan. *Zur Veröff. Eingereicht.*
23. Lappi-Seppälä T. 2011. Changes in Penal Policy in Finland. In: Kury, H., Shea, E. (Hrsg.). *Punitivity – International Developments.* Vol. 1: Punitiveness – a global Phenomenon?
24. Lauterbach O. 2009. Jugendstrafvollzug – Soziale Integration und Delinquenz nach Entlassung aus dem Jugendstrafvollzug. *ZJJ – Zeitschrift für Jugendkriminalrecht und Jugendhilfe* 20, 44-50.
25. Lilly J. R., Knepper P. 1993. The Correctional-Commercial Complex. *Crime and Delinquency* 39, 150-166.
26. MacKenzie D.L. 1998. Criminal Justice and Crime Prevention. In: Sherman, L.W., Gottfredson, D., MacKenzie, D.L., Eck, J., Reuter, P., Bushway, S., *Preventing Crime: What waorks, what does not, what is promising.* Washington: National Institute of Justice.
27. Males M., Macallair D., Taqi-Eddin K. 1999. Striking Out: The Failure of California's «Three Strikes and You're Out" Law. San Francisco: Justice Policy Institute (http://www.cjcj.org/files/strikingout.pdf).
28. Males M., Macallair D. 2010b. *Are Teenage Criminals Getting Younger and Younger? Exposing another Urban Legend.* San Francisco: Center on Juvenile & Criminal Justice.
29. Murray J., Farrington D.P. 2008. The Effects of Parental Imprisonment on Children. In: Tonry, M. (Hrsg.). *Crime and Justice.* Chicago: Chigano University Press. A Review of Research, 37, 133-206.
30. Ortmann R. 1993. Prisonisierung. In: Kaiser, G., Kerner, H.-J., Sack, F., Schellhoss, H. (Hrsg.), *Kleines Kriminologisches Wörterbuch*. Heidelberg: C.F. Müller, 402-409.
31. Pauwels L., Weerman F., Bruinsma G., Bernasco W. 2011. Perceived sanction risk, individual propensity and adolescent offending: Assessing key findings from the deterrence literature in a Dutch sample. *European Journal of Criminology* 8, 386-400.
32. Quintas, J., Agra, C.da. 2008. The impact of Portuguese Drug Use Decriminalisation Law. Porto: University of Porto, Faculty of Law – School of Criminology.

33. Radelet M.L., Lacock T.L. 2009. Recent Developments – Do Executions lower Homicide Rates?: The Views of Leading Criminologists. *The Journal of Criminal Law and Criminology* 99, 489-508.
34. Rose D.R., Clear T.R. 1998. Incarceration, Social Capital and Crime: Examining the Unintended Consequences of Incarceration. *Criminology* 36, 441-479.
35. Shelden R.G. 2010. *The Prison Industry.* San Francisco: Center on Juvenile & Criminal Justice.
36. Snell T.L. 2010. *Capital Punishment, 2009 – Statistical Tables.* Washington: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
37. Storz R. 1992. Jugendstrafrechtliche Reaktionen und Legalbewährung. In: Heinz, W., Storz, R.: *Diversion im Jugendstrafverfahren der Bundesrepublik Deutschland.* Bonn: Bundesministerium der Justiz.
38. Törnudd, P. 1993. Fifteen Years of Decreasing Prison Rates in Finland. National Research Insatitute of Legal Policy. Research Communication 8.
39. Wikström P.-O., Tseloni A., Karlis D. 2011. Do people comply with the law because they fear getting caught? *European Journal of Criminology* 8, 401-420.

Хельмут Кури
Фрайбургский Университет , Фрайбург, Германия
Оксана Ильченко
Дальневосточный Федеральный Университет, Владивосток, Российская Федерация

СУРОВОСТЬ НАКАЗАНИЯ И УРОВЕНЬ ПРЕСТУПНОСТИ В СТРАНАХ ЗАПАДА И РОССИИ

Аннотация
С давних времен наказание используется с целью предотвращения нежелательного и преступного поведения. Особенно жестокие наказания использовались в средние века. В тоже время отношение к наказанию никогда не было однозначным. Ещё Беккариа [5, 107] писал, что следует «преступления предотвращать, чем наказывать их» и средство уголовного предупреждению нужно видеть в том, чтобы «вознаграждать добродетель». Мыслитель также считал, что: «в странах и во временах с самыми жестокими наказаниями совершаются самые кровавые и самые бесчеловечные преступления». В данной статье представлены результаты международных исследований о влиянии мер наказания на уровень преступности в зависимости от суровости.

Суровость наказания и уровень преступности в западных странах

США на протяжении многих лет является страной, в которой содержится около 25% всех заключенных мира, причем в стране проживает примерно 5% населения планеты [36]. Резкий рост численности заключенных начался в первой половине 1970-х годов, что было связано, как указывают исследователи, со многими факторами, прежде всего изменением в уголовной и политической сферах. Система наказания имеет свои отличительные черты в разных штатах этой страны. Как отмечает Хиндс: «существуют региональные отличия в системе наказания. Хотя во всех штатах меры наказания правонарушителей становятся все более и более жестким, Южные штаты особо выделяется на фоне остальных» [14, 58]. По общему мнению, в настоящее время в США наблюдается «бум лишения свободы». Этому способствовал ряд причин, важное место среди которых занимает «Закон трех ударов». Принятый в Калифорнии в 1994 году закон является «одним из самых жестоких законов в новейшей истории …. «Три удара — и ты выбыл»» [28, 2]. Предполагалось, что закон будет способствовать уменьшению числа насильственных преступлений, поскольку для преступников-рецидивистов предусмотрено практически пожизненное тюремное заключение. Тенденции развития преступности, показали, что уровень преступности действительно снизился в последующие годы, однако снижение произошло во всех штатах, независимо от того был там введен подобный закон или нет. Закон трех ударов не подтвердил бесспорного сдерживающего эффекта, в лучшем случае его влияние на уровень преступности было незначительным, но привело к увеличению числа арестов. Анализ данных исследований [29, 1] позволяет сделать вывод, что города и штаты, которые решительно и неумолимо водили «Закон трех ударов» не ощутили более значимого снижения в какой- либо из категорий преступлений, чем менее решительные административные единицы.

Ужесточение наказания в США связано также с введением политики «нулевой толерантности», предусматривающей наказание за любой проступок, например выбрасывание окурка сигареты на мостовую [16]. Однако, тщательный анализ показал, что спад преступности в Нью-Йорке начался за годы до внедрения политики нулевой толерантности. При этом, снижение преступности произошло в одно и то же время не только в Нью-Йорке, но и в других крупных городах Америки, каких как Сиэтл, Бостон, Даллас или Лос-Анджелес, в которых не осуществлялась программа [6].

Мэйлс и Макалайр подвергают сомнению идею, получившую широкое распространение в кругах общественности и даже среди некоторых экспертов о том, что в последние годы преступность среди несовершеннолетних чрезмерно возросла, стала иметь более жестокий характер, а убийцы стали значительно моложе [29, 1]. Ученые пришли к противоположному выводу: "За последние 40 - 50 лет, средний американский преступник, совершивший насильственное преступление стал старше, не моложе. Преступность несовершеннолетних стала носить существенно менее серьезный характер, это в большей мере проступки, а не уголовные деяния, с применением меньшего насилия и убийств чем 50 лет назад. Вероятность, что современный среднестатистический подросток станет убийцей или совершит другое серьезное

преступление значительно меньше, чем у подростка 1960-ых, 70-ых, 80-ых или 90-ых годов 20 века. Снижение, произошедшее за последние 10 - 15 лет, выглядит внушительным как в абсолютных, так и процентных показателях, по сравнению с преступлениями, совершенными взрослыми [29, 3].

Из 50 штатов США 33 по-прежнему практикуют смертную казнь, прежде всего, Техас, Вирджиния, Оклахома. В США с 1976 по 2012 1.320 человек были казнены, из этого числа 492 (37 %) в Техасе, 109 в Вирджинии и 102 в Оклахоме, таким образом, только на эти 3 штата приходится 53% от общего числа казненных [37], [10]. На фоне пристального внимания общественности к данному вопросу, а также благодаря международной критике число казней уменьшилось. Вопрос об уголовно-превентивной эффективности смертной казни по-прежнему остается острым. Раделет и Лакок считают, что: «результаты эмпирических исследований, проведенных ведущими криминологами, безоговорочно поддерживают вывод о том, что смертная казнь не имеет дополнительного сдерживающего эффекта для тех, кто уже приговорен к долговременному тюремному заключению» [34, 489]. Еще в 70-ые годы прошлого столетия население США полагалось на устрашающее действие смертной казни. По данным Галоп, проведенном в 1985 году, 62% населения думали, что смертная казнь способствует снижению числа убийств, однако, в 2006 году такого мнения придерживалось уже лишь 34% (p. 492). Некоторые авторы указывают на совершенно обратное явление, так называемый «Эффект озверения», суть которого заключается в том, что после совершения казни количество тяжких преступлений возрастает. Так, например, Боурс и Пирс (1980) считают, что в штате Нью-Йорк каждая казнь способствовала увеличению числа убийств, совершенных в течение следующих нескольких месяцев после экзекуции [7].

Следует отметить, что увеличение частоты и длительности арестов имеет ощутимые финансовые затраты. По сравнению с 1980 –ми годами в 2010 издержки на систему уголовного правосудия увеличились в США более чем в два раза [36, 5]. Резкое увеличение числа заключенных привело к необходимости строительства новых тюрем, что приводит к процветанию «Тюремной индустрии». «Строительство тюрем быстро стало процветающим бизнесом» [36, 4]. Собственники тюрем стремятся развивать бизнес, они заинтересованы в новых заключенных. Шелден так комментирует отчеты о пустых местах в тюрьмах штата Южная Каролина «Такие простои - плохие новости для корпораций ..., которые зависят от стабильных поставок заключенных…Тюремное заключение является огромной индустрией в Соединенных Штатах. Около 69 млрд. долларов тратится каждый год на содержание уголовно-исполнительной системы» [36, 2]. Лилли и Кнеппер уже 20 лет назад говорили об «Исправительно-коммерческом комплексе», который они характеризовали как систему «суб-правительственной политики», альянс между государством и частным бизнесом [26, 152]. Авторы считали, то специальные группы по интересам, оказывают сильное влияние на государственную политику в целом и по вопросам уголовного правосудия, в частности ...».

Наиболее ярким примером в вопросе о неэффективности жестких санкций представляет Финляндия. К 1950 году в Финляндии количество осужденных составило 187 человек. По сравнению с данными других стран Северной Европы, такими как Дания (88), Норвегия (51) и Швеция (35) уровень заключенных в стране почти был в три раза выше. Санкции и наказания, выносимые финскими судами, были жестче, чем в других скандинавских странах. Более жестокие санкции применялись к преступникам-рецидивистам и к совершившим преступления против собственности, т.е. к двум основным группам преступников. В течение последующих лет в стране проводились многочисленные реформы, в том числе в области уголовно - правовых отношений. Устаревшие положения уголовного кодекса 1889 изменялись и приспосабливались к новым общественным условиям. «Основными принципами, на которые опирались при вынесении приговоров, стали соразмерность и предсказуемость. Индивидуализация наказания также как и предполагаемая общественная опасность деяния или наказание «для общей профилактики» были вынесены на задний план. [24, 255]. Таким образом, совершался процесс, полностью противоположный тому, который происходил в это же время в США и других западных странах, где пытались путем вынесения жестких мер наказания и акцентом на потенциальную опасность отдельных видов преступлений повлиять на сокращение проблемы преступности.

Эти процессы выступали как часть реформирования уголовно - правовой сферы, изменения всей социальной политики страны. Анализ эффективности реформ оценивался по критерию «затраты на результат», который показал, что в Финляндии высокий уровень арестов и большое количество приговоров о наказании в виде лишением свободы, увеличивает расходы на сферу исправительной системы, по сравнению с соседними странами – при этом, что уровень преступности был примерно одинаков. Реформы системы правосудия, проводимые вплоть до середины 1990 годов, были направлены на сокращение санкций и декриминализацию некоторых видов преступлений. Так, в 1966 году были расширены возможности условно-досрочного освобождения; в 1969 - статья за появление в нетрезвом состоянии в общественном месте была декриминализирована; в 1972 году было уменьшено наказание за совершение краж; в 1976 году были расширены возможности досрочного освобождения из мест лишения свободы; в 1977 году было уменьшено значение прежних судимостей для назначения меры наказания, лишение свободы всё чаще заменялось денежными штрафами и, так например, за вождение в нетрезвом виде наказание в виде лишения свободы было заменено денежными штрафами. В 1989 году были существенно расширены возможности условно-досрочного освобождения для подростков, вынесение наказания в виде реального тюремного заключения для несовершеннолетних было значительно ограничено, в 1991 был сокращен срок наказания за преступления против собственности, в 1992 году как альтернатива традиционным санкциям повсеместно введены общественные работы, случаи применения которых были расширены в 1995 и 2000 годах. Однако с середины 1990-х годов, в контексте международных дискуссий,

наметилась обратная тенденция, заключающаяся в выделении новых форм преступлений, в сфере телекоммуникаций, бытовое насилие, организованная преступность, торговля людьми и жестокое обращение с животными [24, 258].

Указанные меры привели к тому, что если численность заключенных в Дании, Швеции и Норвегии с 1950 по 2000 практически не изменилась, то в Финляндии, благодаря процессам декриминализации, количество заключенных уменьшилось с 187 в 1950 году до 55 в 2000 году. Иными словами, изменения привели к тому, что если раньше под стражу заключалось 3 человека, то теперь, лишь один лишался свободы.

Если бы тюремное заключение как самый жесткий вид наказания после смертной казни имело, как предполагается, значимый уголовно-превентивный эффект, то после очевидного снижения суровости и масштабов применения наказаний, а также быстрого распространения информации среди населения посредством СМИ, в стране можно было бы ожидать значительного подъема уровня преступности. На самом деле, официально зарегистрированный уровень преступности вырос в Финляндии только в середине 1960-х годов. При этом в этот период подобный рост был зафиксирован не только в этой стране, но и в других скандинавских и большинстве развитых стран, включая Германию, в которой общее количество преступлений выросло с 3018 случаев в 1955 до 7625 эпизодов и 2000 (Bundeskriminalamt 2011, p. 30). По сравнению с тремя другими Северными странами, рост официально зарегистрированной преступности в Финляндии был незначительным, даже ниже чем в Швеции и Дании.

Результаты исследований, проведенных в различных федеральных землях Германии и в кантонах Швейцарии, также подтверждают, что жесткость наказания оказывает незначительный превентивный эффект на преступность.

Шторц в проведенном исследовании на материалах 11 федеральных земель Германии, изучил зависимость между первым преступлением, - чаще всего «мелким хищением» - совершенным молодыми людьми, с полученным наказанием и повторным преступлением, совершенным в течение 3 лет после первого. Результаты показали, что жесткость санкций не оказала никакого воздействия на частоту рецидивных преступлений в перечисленных федеральных землях [38]. В другом аналогичном исследовании автором на материалах 26 кантонов Швейцарии изучал зависимость между рецидивизмом и полученным в первый раз наказанием в виде лишения свободы или условного осуждения. Здесь также наблюдается аналогичная картина. В то время как жесткость наказания значительно отличается в разных кантонах, никакого доказанного воздействия на количество повторных преступлений это не оказывает. В кантоне А́ппенцелль-А́уссерроден арест составляет чуть более 20%, что представляет сравнительно очень мягкую реакцию, и возрастает до 90 % в кантоне Обвальден, что свидетельствует о жестком подходе к наказанию, тем не менее, число повторных преступлений во всех кантонах примерно одинаковое от 10% до 15%.

Полный анализ превентивного эффекта санкций проведен Доллинг [11]. Автор изучил 9422 источников криминологической, социологической, экономической литературы по вопросу влияния санкций на преступность, а также провели собственный анализ 700 самых содержательных исследований. Результаты исследования показали, что смертная казнь производит наименьший сдерживающий эффект: «Самые незначительный сдерживающий эффект оказывает наказание в виде смертной казни … Жестокость наказания производит меньший сдерживающий эффект, чем вероятность наказания» [11, 374]. Сформулированные выводы, в значительной степени совпадают с результатами, полученными Викстремом, который считает, что, люди, которые в принципе считают возможными совершение преступных действий, могут воздержаться от подобных действий, из-за страха возможного наказания. «Они воздерживаются потому, что боятся последствий (высоко оценивают риск быть пойманными)» [39, 417]. «Люди, которые в принципе не считают совершение противоправных действий возможным, не склонны участвовать в преступлении независимо от того, оценивают ли они степень риска быть пойманными высоко или низко» [32, 397].

Резкий рост заключенных в тюрьмах США в 1970-х годах был в значительной степени обусловлен «войной с наркотиками». В этой стране с 1990-ых годов уголовное преследование отчетливо сфокусировалось на наказании за хранение наркотиков. В 2008 впервые было арестовано большее преступников за владение наркотиками, чем за их изготовление и торговлю. На фоне практикуемой в США жесткости наказания за преступления связанные с наркотиками, даже если речь идет о случайном потреблении легких наркотиков, уголовное преследование во многих европейских странах выглядит прямо-таки мягким.

Нидерланды, в частности, подвергаются критике за свою либеральную политику в отношении наркотиков. Также в Германии под лозунгом "Легализуй их", снова и снова обсуждается вопрос о декриминализации легких наркотиков.

Смелый шаг в этом направлении был предпринят несколько лет назад Португалией. В конце 1990-х годов страна испытывала серьезные проблемы с наркотиками. На этом фоне правительство учредило международную комиссию, призванную разработать рекомендации для решения проблемы. Комиссия рекомендовала осуществить значительную декриминализацию употребления наркотиков, а также оказывать большую помощь наркозависимым. Соответственно предложениям, Португалия в ноябре 2000 года приняла Закон 30/2000, согласно которому хранение наркотиков в целях личного употребления и само употребление наркотиков было декриминилизировано, в то время как торговля осталась неизменно наказуемым деянием. В соответствии с этим новым регулированием, хранение для личного пользования запрещенных наркотиков, хотя по-прежнему в целом, запрещено, но хранение наркотиков в небольших объемах, для использования в течение 10 дней стало

административным правонарушением, в то же время наркоману была предложена помощь и поддержка. Также было создано новое уголовно-исполнительное учреждение "CDT - Комиссия по лечению наркоманов, которое предназначено для разработки и апробации новых способов борьбы с наркоманией. В случае отказа от сотрудничества, CDT вправе налагать штрафы, пени, однако, наказание наркомана не является приоритетной задачей; оказание помощи – основная цель этой комиссии [3], [21], [22], [33].

Интересными представляются данные о последствиях декриминализации употребления наркотиков в этой стране. Хотя, официальная численность лиц, употребляющих наркотики, увеличилась. Большим достижением в борьбе с наркоманией и снижением её последствий стало, возросшее число обращений наркоманов в медицинские учреждения. Смертность в результате употребления наркотиков и СПИДа, которая была в Португалии самой высокой среди европейских стран в 2000 году, после принятия закона значительно снизилась.

Европейский мониторинговый центр по наркотикам и наркомании - EMCDDA после нескольких лет практической работы по изучению последствий декриминализации пришел к выводу о том, что первоначальные опасения о том, что такой подход приведет к увеличению числа людей употребляющих наркотики, привлечет «наркотических туристов» не подтверждаются полученными данными (EMCDDA, 2009, S. 12). Гринвальд указывает: «Полученные данные показывают, что декриминализация не оказала негативное влияние на темпы потребления наркотиков в Португалии, которая в настоящее время имеет самый низкий уровень по многим криминологическим показателям в Евросоюзе, особенно среди стран с похожим уголовно-правовым режимом» [13, 1].

В России изменение отношения к наказанию тесно связано с социально-историческим контекстом. Если в 19 веке происходило смягчение наказания, то после 1917 года произошло резкое ужесточение налагаемых санкций. Пик «жестокости» пришелся на годы репрессий 1937 – 1953. Снижение объёма и уровня преступности и соответственно количества заключенных происходит в периоды «оттепели» (1963-1965) и перестройки (1986-1988). Резкое снижение числа лиц, отбывающих наказание в тюрьмах, произошло в начале 1990-х годов, что было связано с распадом СССР, идеологическими и социально-экономическими изменениями, затронувшими все сферы жизнедеятельности людей. Однако, уже через 5 лет число заключенных увеличилось вдвое с 573 тыс. в 1993 году, до 1100 тыс. в 1998, что опять же в значительной степени было обусловлено трансформационными процессами, социально-экономическими реформами, приведшими к обнищанию большей части населения страны, изменением нравственно-идеологического сознания людей. В 1996 г. в России был введен мораторий на применение смертной казни. В 1996 году в России были 53 казнены преступника, среди которых серийный убийца Чикатило. Однако, на протяжении всех 15-ти лет, в течение

которых не приводится в исполнение смертная казнь, в обществе не утихают споры, значительная часть российского социума критикует принятие моратория и желает возобновления применения высшей меры наказания.

В уголовном кодексе, вступившем в силу в 1997 году, отчетливо просматривается тенденция к ужесточению наказания по сравнению с предыдущей версией уголовного кодекса РСФСР 1960 года. Так, в настоящем кодексе статья 57 предусматривает пожизненное лишение свободы. В статье 56 пункт 2 оговаривается возможность лишения свободы до 20 лет, в пункте 3 оговорено, что по совокупности преступлений максимальный срок лишения свободы не может быть более 25 лет, по совокупности приговоров 30 лет. Следует отметить, что в настоящее время приговоры, выносимые судьями, чаще всего содержат санкции предельные для данного вида преступлений.

В целом в Российской Федерации тенденция ужесточения наказания очевидна. Только за 2012 год разработаны и предложены для рассмотрения законопроекты, предполагающие усиление ответственности за вождение в нетрезвом виде; проект закона об ужесточении наказания за создание и участие в руководстве финансовой пирамидой. В феврале 2012 года Д.А. Медведевым был подписан закон «О внесении изменений в Уголовный кодекс и отдельные законодательные акты РФ в целях усиления ответственности за преступления сексуального характера, совершенные в отношении несовершеннолетних». Согласно данному нормативному акту предусмотрен особый порядок применения принудительных мер медицинского характера к лицам, совершившим преступления против половой неприкосновенности несовершеннолетнего. В частности, такой комплекс мер может включать в себя возможность применения профилактических медикаментозных средств, в том числе химической кастрации, также вводится запрет на применение условного осуждения и на отсрочку отбывания наказания в отношении данной категории лиц. В октябре 2012 был принят Федеральный закон Российской Федерации N 172-ФЗ «О внесении изменения в статью 73 Уголовного кодекса Российской Федерации», который ограничивает случаи применения условного осуждения при опасном рецидиве и в других случаях.

С начала 2013 года Генпрокуратурой РФ и МВД подготовлены проекты нескольких законов ужесточающих головную ответственность. Так, например, планируется ужесточить наказания за нелегальный игорный бизнес. Согласно поправкам, Уголовный кодекс предлагается дополнить статьей, которая будет грозить организаторам азартных игр с использованием игрового оборудования вне игорной зоны, извлекающие доход в крупном размере ограничением свободы на срок до двух лет. За те же преступления, совершенные организованной группой предусмотрено наказание в виде лишения свободы на срок до пяти лет.

В январе 2013 года в СМИ появилась информация, что в Государственной Думе РФ весной 2013 года планируется рассмотрение закона, предполагающего снижения

возраста уголовной ответственности до 14-ти лет, а по некоторым составам преступлений - до 12-ти (в настоящее время 16 и 14 лет соответственно). Следует отметить, что в Государственной Думе есть как сторонники, так и противники этого закона. Инициаторы и многочисленные сторонники снижения возрастной планки говорят, что за последние годы криминальная ситуация в стране изменилась, преступность в России помолодела.

Мнение о том, что в России «следует активнее внедрять наказания, не связанные с лишением свободы, чтобы за незначительные преступления человека не отправлять сразу за решетку» высказанное, например, членом комитета Государственной Думы РФ по гражданскому, уголовному, арбитражному и процессуальному законодательству Рафаэлем Марданшином не находит широкой общественной поддержки. Лейтмотив современной системы наказания в России «ужесточение, а не либерализация», подтверждением чего являются уже принятые и готовящиеся к рассмотрению нормативно-правовые акты.

Представленные результаты международных исследований подтверждают сомнения относительно уголовно-превентивного действия (жестких) санкций. Даже если предположить наличие производимого ими минимального сдерживающего эффекта, всегда найдутся более действенные и, прежде всего, более дешевые альтернативы уголовного преследования. В тоже время в обществе неоднократно звучат призывы к применению более строгих мер наказания для снижения уровня преступности.

В конце 2012 года Беате Мерк - баварский министр юстиции - подняла вопрос о „более суровом наказании для несовершеннолетних преступников“. Вначале выступления она повествует о случае, произошедшем в Мюнхене. Мальчику, на которого напали двое других молодых людей на улице, попытался помочь мужчина, который сам был избит и смертельно ранен. Основной обвиняемый был осужден за убийство и приговорен к высшей мере наказания для несовершеннолетних - к 10 годам лишения свободы. Министр задает вопрос: «справедливо ли, правильно ли то, что вдова должна считаться с тем, что вскоре вновь встретит преступника на улице?». Министр выступает против этого, и считает «правильным и важным шагом», чтобы несовершеннолетние «в случаях совершения жестоких преступлений, убийств, приговаривались к 15 годам лишения свободы». Более того, она требует ужесточить наказание для несовершеннолетних преступников «до пожизненного лишения свободы как высшей меры наказания …», если они совершили преступление со смертельным исходом или их действия привели в последующем к смерти жертвы. «Более суровое наказание для несовершеннолетних преступников», по мнению Беате Мерк «было бы не только воспитательной мерой, но и искуплением вины и разумной платой за содеянное». Наказание должно стать справедливым возмездием. Для этого законодатель должен ужесточить наказание «иначе жертвы и их семьи остаются под ударом».

В предвыборной агитации Р. Коха в 2008 году в Гессене уже звучали призывы к резкому ужесточению наказания для молодых людей. Его предвыборная программа с заголовком "Жизнь в безопасности", составленная на основе онлайн–опроса, проведенного 02.01.2008, представляла собой план из шести пунктов по ужесточению правосудия в отношении несовершеннолетних. План предусматривал в том числе «предупредительный арест» для несовершеннолетних правонарушителей, применение норм «взрослого» права начиная с 18 лет, и увеличение максимального срока наказания для подростков с 10 до 15 лет. «Должен быть положен конец ложной тактичности и приукрашиванию действительности», - сказал Кох. При этом он также ссылался на случай нападения подростками на пожилого мужчину. Через несколько дней Христианско-демократический союз Германии принял решение о «Висбаденской декларации», призывающей к увеличению максимального наказания для несовершеннолетних до 15 лет, следуя, таким образом, призывам Коха

Между тем, в США, существует огромное количество литературы, доказывающей отсутствие профилактического эффекта у карательных мер и санкций [27]. Хофер и Хам подчеркивали несколько десятилетий назад, что политические требования ужесточить уголовную ответственность в основном продиктованы «чистой идеологией» и являются «сокрытием реальности» [15, 269].

Современная уголовная политика, в которой по-прежнему основной акцент ставится на штрафы и задержания, при невысокой эффективности в области предупреждения преступлений обходится налогоплательщикам исключительно дорого, как показывает, в частности опыт США, в котором проводилось оценивание «затрат и результатов» (Aos, 2003). Гаскон и Фоглесонг говорят, что американские штаты и города сегодня тратят гораздо больше денег на полицию, сотрудников правоохранительных органов и безопасность, чем это было несколько десятилетий назад [12, 1]. При расчете стоимости, как правило, не учитывается сопутствующий ущерб, который наносится ближайшему социальному окружению преступников, прежде всего их семьям. Большинство заключенных составляют мужчины в возрасте от 20 до 60 лет, имеющие жену и детей [35]. После ареста мужа или отца семьи часто испытывают финансовые трудности, а также подвергаются стигматизации, последствия которой особенно негативно сказываются на детях преступников [30], [19], [20]. При более длительных сроках тюремного заключения семьи испытывают значительную стрессовую нагрузку и напряжение, наносящие ощутимый удар отношениям. Сохранения семейных связей – важный социальный вопрос, так как наличие семьи, хорошие внутрисемейные отношения являются значительным фактором для успешной адаптации бывших заключенных. Как подчеркивает Браман: «этот вопрос ...не является просто проблемой наказания и сдерживания преступников, но касается укрепления семейных уз, способствует улучшению жизни в общине, и в конечном итоге определяет характер нашего общества в целом» [8, 224].

Итак, результаты криминологических исследований единодушно показывают, что суровое уголовное наказание если и оказывает, то незначительное влияние на уровень преступности, и производит небольшой превентивный эффект. В тоже время наказание в виде лишения свободы имеет значительные отрицательные последствия. Их наложение требует оказание дополнительных интенсивных реабилитационных мероприятий для того, чтобы мотивировать людей к изменению поведения. Простая «отсидка» наказания вызывает, как правило, лишь закрепление криминального поведения, привычек и установок, чему способствует мощное воздействие тюремной субкультуры [31]. Современная уголовно-политическая тенденция, направленная на ужесточение наказания, увеличение сроков тюремного заключения и числа арестантов ведет в ошибочном направлении. Заключенные должны были мотивированы возможностью досрочного освобождения при соответствующем сотрудничестве и изменении поведения. Переход осужденных к лишению свободы от «заключения» к «освобождению» должен происходить при соответствующем внимании и сотрудничестве заинтересованных лиц, ему должна сопутствовать совокупность последующих мероприятий, таких как интеграция на рынок труда, поиск работы [25]. Дополнительная нагрузка, которую в таком случае будут испытывать службы пробации, может быть частично снижена путем активного привлечения труда добровольцев [23]. Иными словами, если общество в серьез задумывается об улучшение криминологической ситуации и профилактике преступности, то без мер, обеспечивающих реабилитацию преступников обойтись нельзя.

Литература

1. Гилинский Я.И. *Криминология.* Спб.:Питер, 2002, 377 с.
2. Необходимо от ужесточения наказаний переходить к их неотвратимости. Интервью с депутатом Гос. Думы РФ Р. Марданшиным (http://pravo.ru/review/face/view/82091/)
3. Agra C. da 2009. Requiem pour la Guerre à la Drogue. *L'Expérimentation Portugaise de Décriminalisation. Déviance & Société.* 33, 27-49.
4. Aos S. 2003. Cost and benefits of criminal justice and prevention programs. In: Kury, H., Obergfell-Fuchs, J. (Eds.), *Crime Prevention – New Approaches*. Mainz: Weisser Ring, 413-442.
5. Beccaria C. 1764; 2005. *Von den Verbrechen und von den Strafen.* Berlin: Berliner Wissenschafts-Verlag.
6. Blumstein A., Wallman J. (Hrsg.). 2006. *The crime drop in America.* Cambridge: Cambridge University Press.
7. Bowers W.J., Pierce, G.L. 1980. Deterrence or Brutalization: What is the Effect of Executions? *Crime and Delinquency.* 26, 453-492.
8. Braman D. 2004. *Doing Time on the Outside: Incarceration and Family Life in America.* Ann Arbor: University of Michigan Press.
9. Death Penalty Information Center (2011). The Death Penalty in 2011: Year End Report (http://deathpenaltyinfo.org/documents/2011YearEnd.pdf).

10. Death Penalty Information Center (2012). The Death Penalty in 2012: Year End Report (http://deathpenaltyinfo.org/documents/2012YearEnd.pdf).
11. Dölling D., Entorf H., Hermann D., Rupp T. 2011. Meta-Analysis of Empirical SAtudies on Deterrence. In: Kury, H., Shea, E. (Eds.), *Punitivity – International Developments*. Vol. 3, Bochum: Universitätsverlag Dr. Brockmeyer, 315-378.
12. Gascón G., Foglesong T. 2010. *Making Policing More Affordable. Managing costs and Measuring Value in Policing.* Washington: National Institute of Justice.
13. Greenwald G. 2009. *Drug Decriminalization in Protugal. Lessons for Creating Fair and Successful Drug Policies.* Washington, D.C.: Cato Institute.
14. Hinds L. 2005. Crime control in Western countries, 1970 to 2000. In: Pratt, J., Brown, D., Brown, M., Hallsworth, S., Morrison, W. (Eds.). *The New Punitiveness. Trends, theories, perspectives.* Portland/Oregon: Willan, 47-65.
15. Hofer H. von, Tham H. 1975. Beware of General Prevention! In: National Swedish Council for Crime Prevention (Hrsg.). *General Deterrence – A Conference on current Research and Standpoints. Stockholm: Research and Development Division*, 257-270.
16. Jasch M. 2003. *"Zero Tolerance" in New York – Was ist daraus geworden?* Frankburg: unveröff. Manuskript.
17. Kury H. 1979. *Sozialstatistik der Zugänge im Jugendvollzug Baden-Württemberg.* Freiburg: Max-Planck-Institut für Strafrecht. Unveröff. Forschungsbericht.
18. Kury H. 2001. Das Dunkelfeld der Kriminalität. Oder: Selektionsmechanismen und andere Verfälschungsstrukturen. *Kriminalistik* 55, 74-84.
19. Kury H., Kern J. 2003a. Frauen und Kinder von Inhaftierten. Eine vergessene Gruppe. *Kriminologisches Journal* 35, 97-110.
20. Kury H., Kern J. 2003b. Angehörige von Inhaftierten – zu den Nebeneffekten des Strafvollzugs. *Zeitschrift für Strafvollzug und Straffälligenhilfe* 52, 269-278.
21. Kury H., Quintas J. 2010a. Zur Wirkung von Sanktionen bei Drogenabhängigen - Argumente für eine rationale Drogenpolitik. *Polizei & Wissenschaft* 1, 31-56.
22. Kury H., Quintas J. 2010b. Sanktionen oder Hilfe? Einstellungen zu Drogentätern - Ergebnisse aus Portugal. *Kriminalistik* 64, 403-409.
23. Kury H., Sato M. 2013. Bewährungshilfe – die Rolle der Freiwilligen. Ein Vergleich zwischen Deutschland und Japan. *Zur Veröff. Eingereicht.*
24. Lappi-Seppälä T. 2011. Changes in Penal Policy in Finland. In: Kury, H., Shea, E. (Hrsg.). *Punitivity – International Developments.* Vol. 1: Punitiveness – a global Phenomenon?
25. Lauterbach O. 2009. Jugendstrafvollzug – Soziale Integration und Delinquenz nach Entlassung aus dem Jugendstrafvollzug. *ZJJ – Zeitschrift für Jugendkriminalrecht und Jugendhilfe* 20, 44-50.
26. Lilly J. R., Knepper P. 1993. The Correctional-Commercial Complex. *Crime and Delinquency* 39, 150-166.
27. MacKenzie D.L. 1998. Criminal Justice and Crime Prevention. In: Sherman, L.W., Gottfredson, D., MacKenzie, D.L., Eck, J., Reuter, P., Bushway, S., *Preventing Crime: What waorks, what does not, what is promising.* Washington: National Institute of Justice.

28. Males M., Macallair D., Taqi-Eddin K. 1999. Striking Out: The Failure of California's «Three Strikes and You're Out" Law. San Francisco: Justice Policy Institute (http://www.cjcj.org/files/strikingout.pdf).
29. Males M., Macallair D. 2010b. *Are Teenage Criminals Getting Younger and Younger? Exposing another Urban Legend.* San Francisco: Center on Juvenile & Criminal Justice.
30. Murray J., Farrington D.P. 2008. The Effects of Parental Imprisonment on Children. In: Tonry, M. (Hrsg.). *Crime and Justice.* Chicago: Chigano University Press. A Review of Research, 37, 133-206.
31. Ortmann R. 1993. Prisonisierung. In: Kaiser, G., Kerner, H.-J., Sack, F., Schellhoss, H. (Hrsg.), *Kleines Kriminologisches Wörterbuch*. Heidelberg: C.F. Müller, 402-409.
32. Pauwels L., Weerman F., Bruinsma G., Bernasco W. 2011. Perceived sanction risk, individual propensity and adolescent offending: Assessing key findings from the deterrence literature in a Dutch sample. *European Journal of Criminology* 8, 386-400.
33. Quintas, J., Agra, C.da. 2008. The impact of Portuguese Drug Use Decriminalisation Law. Porto: University of Porto, Faculty of Law – School of Criminology.
34. Radelet M.L., Lacock T.L. 2009. Recent Developments – Do Executions lower Homicide Rates?: The Views of Leading Criminologists. *The Journal of Criminal Law and Criminology* 99, 489-508.
35. Rose D.R., Clear T.R. 1998. Incarceration, Social Capital and Crime: Examining the Unintended Consequences of Incarceration. *Criminology* 36, 441-479.
36. Shelden R.G. 2010. *The Prison Industry.* San Francisco: Center on Juvenile & Criminal Justice.
37. Snell T.L. 2010. *Capital Punishment, 2009 – Statistical Tables.* Washington: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
38. Storz R. 1992. Jugendstrafrechtliche Reaktionen und Legalbewährung. In: Heinz, W., Storz, R.: *Diversion im Jugendstrafverfahren der Bundesrepublik Deutschland.* Bonn: Bundesministerium der Justiz.
39. Wikström P.-O., Tseloni A., Karlis D. 2011. Do people comply with the law because they fear getting caught? *European Journal of Criminology* 8, 401-420.

Olena Shostko
National University Yaroslav the Wise Law Academy of Ukraine, Kharkov, Ukraine

THE ROLE OF CIVIL SOCIETY AND STANDARDS OF THE FATF[41] IN FIGHTING POLITICAL CORRUPTION IN UKRAINE

Abstract

Corruption in Ukraine is currently a serious and as of yet unresolved problem. The article is devoted researches of role of civil society in combating political corruption in Ukraine. The author analyzed the mechanism which is known as Recommendations of FATF, an intergovernmental body establishing global anti-money laundering standards. Corruption prevention by civil society has priority over other methods of controlling this phenomenon, specifically, over the repressive ones. Permanent public awareness is a key element. Informed public organizations can be the most effective driving forces of any anti-corruption company.

Key words: Corruption; Money laundering; Perceptions Index; Anticorruption Action Centre

With every passing year the situation in this area becomes worse despite numerous declarations about the threat posed by this phenomenon.

In the world corruption rating Ukraine has been downgraded from the 134th place in 2010 to the 144th place in 2012, according to the Transparency International annual Corruption Perceptions Index [10]. Results of the investment climate of Ukraine research show that in 2011 businesses spent on corruption composed about 10 percent of their profit [5].

A special feature of corruption of the "Ukrainian model" is that this is a corruption of a crisis type. It is generated by the crisis of the modern Ukrainian society (not just by imperfect criminal justice); it may aggravate a crisis of society having a capacity to destroy any political, economic, legal and moral reforms. It is a threat for national security of Ukraine [3].

The most dangerous form of corruption is political corruption. It defined as an abuse of office by subjects endowed with political authority (political figures and statesmen, high-ranking public employees/public officials/civil servants), directed towards political goals achievement (to hold and consolidate power, to extend authorities) and/or with the

[41] The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

purpose of enrichment [4].

Political corruption is present in all spheres of political life in Ukraine, first of all, in the election process and activity of political parties, at all levels of state governance and in all bodies of state power, local self-government bodies, courts and law-enforcement bodies without exception [6].

Under M. Melnyk, political corruption is a determining factor of corrupt process in the state in general, since it is inherent in the subjects which form the factor fundamental for the whole state activity – the political will, hence the degree of these subjects' corruption involvement determines the essence and content of public policy in all spheres of social life including the sphere of counteraction to corruption [6].

We may conclude that corrupted powerful people firmly cemented by corruption networks in all branches of power and in law enforcement agencies, consider themselves to be "untouched".

The latest parliamentary elections in Ukraine (on October 28, 2012) showed that, in fact, they were neither free nor democratic because we have seen the mass subornation of voters that is a manifest example of political corruption since it involves influence on citizens' will, encouraging its exercise in a way conducive to keeping power by a certain political parties or its candidate.

We have observed widespread use of the administrative resource that may be defined as an "influence of officials using their powers on political developments in Ukraine, in particular the course, results and other elements of the election process with the purpose of staying in power" [7]. While free expression of will and objective determination of presidential and parliamentary elections results create system political and legal prerequisites for decrease in political corruption rate.

It can be stated that the top officials of Ukraine do not have enough political will to fight corruption now. All above mentioned circumstances necessitating more action of civil society that can force powers that be play by the rules.

Providing the citizens with access to information is one of the components of a successful strategy directed against corruption. International legal acts, in particular, the Convention against Corruption of the UN (2003, article 13) encourages countries to promote active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as enhancing the transparency of and promoting the contribution of the public to decision-making processes; ensuring that the public has effective access to information; under-taking public information activities that contribute to non-tolerance of corruption; respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption [11].

For this reason special attention should be paid to the targeted information companies aimed at informing people about threats of corruption and citing certain examples of how a crime with no evident consequences reduces incomes of citizens. It is necessary to constantly inculcate ideas in the Ukrainians that due to people making an honest living there is an unfair redistribution of money on behalf of a small layer of oligarchic groups and corrupted officials of different branches of power. The latter would not prosper without the aid of ordinary people and their displays of active corruption.

It is worth mentioning that motivation of crime and favorable factors for their commission is directly dependent. The presence of such possibilities (in-adequate legislation which regulates different aspects of economic life; high tolerance of citizens to some crimes, for example, bribery; possibility to use large amount of cash, obtained by a criminal way, in subsequent legal and illegal activity; absence of clear standards of conduct officials, judges, deputies of all levels; a lack of control mechanisms in relation to verification of profits and charges of official persons) considerably facilitate the commission of the corruption offenses. Minimal risk of bearing criminal responsibility creates the habit of such activity.

In this regard, we consider it is appropriate to pay attention to such method of informing the public about the most hazardous crime as independent journalistic investigations. There is a list of Internet editions where the journalists conduct objective high-quality investigations facts of corruption, in particular, the political ones in Ukraine. First of all, these are the "Ukrainian Pravda" (the Ukrainian Truth[42]), the "Our money"[43], the "Maidan" (Square)[44], as well as some individual journalists.

For example, journalists-experts in the sphere of public procurement from the web platform "Our Money" daily monitor the web-portal the "Bulletin of Public Procurement", which is an official edition of the state and where, according to the law, the information is published about all state tenders (which constitute one of the major sources of corruption in Ukraine). As a result of monitoring, hundreds of publications on political corruption in tenders went out on the pages of the Ukrainian newspapers,

[42] See < pravda.com.ua/>
[43] See < nashigroshi.org/about/>
[44] See <maidan.org.ua/>

Internet editions and on some of the Ukrainian TV channels (those which are considered as opposition). In accordance with the materials of the project "Our Money" a few most kick-up journalistic investigations got international resonance. In particular, after the series of publications and plots about the opaque purchase by a state enterprise "Chornomornaftogas" (Blacksee Petroleumgas) of the oil boring setting at the price above the market at 150 million dollars and through the network of off-shore firms, the prosecutor office of Great Britain has initiated the criminal case [2].

Another demonstrative example is the work of the Ukrainian non-profit civic organization – the Anticorruption Action Centre (AntAC)[45] which unites experts from legal, media and civic-political sectors having a purpose to re-duce political corruption in Ukraine. This organization cooperates closely with the "Our Money" in matters of monitoring governmental procurement contracts. Materials of investigations of the site "Our Money" have already formed the basis of more than two hundred Members of Parliament addresses to law enforcement bodies of Ukraine, initiated and developed by this organization. Having been established just a year ago, this organization has prevented embezzlement of nearly a billion UAH (approximately 124 million U.S. dollars) as a consequence of holding such tenders.

ANTaC believes that the most efficient method of fighting corruption in Ukraine would be identification of the state officials involved in the corruptactivities in Ukraine, documenting their alleged crimes, following their assets abroad and applying the FATF standards and other international instruments, which should help with filling the gap of the Ukrainian national law with regard to the PEPs (Political Exposed Persons) and their overseas assets and economic activities. The state procurement tenders represent the best documented cases, and, therefore, this organization has chosen to monitor them, follow the laundered money abroad and make endeavours to recover them to Ukraine. For these purposes the ANTaC will plan to conduct an informational campaign with distribution of the database on the Ukrainian PEPs having assets overseas in the foreign media. Much data for such fruitful cooperation can be obtained from the investigative journalism.

Various countries to a lesser or greater extent have got past the stage of development which Ukraine is proceeding with now. All of them dealt with such phenomena as organized crime and with its integral attribute – corruption, first of all with a political one. The analytical results in Buscaglia and Jan Van Dijk (2003) drew on the example of more than five dozen countries worldwide attest to the deep ties between the growth of organized crime and the growth of public sector corruption. Since they "feed" each other, it explains why there are common countermeasures [1].

It is clear that a lot of transnational aspects of corruption as well as organized crime

[45] See < antac.org.ua/pro-nas/>

require measures developed and implemented by the global community. Any transaction involving laundering of black money outside of Ukraine cannot occur without support from foreign financial institutions. The cores of numerous international legal instruments, as well as practical actions of the criminal justice system, financial institutions, civil society in many European countries, as well as the United States, are increased risks for corrupt leaders of being caught and punished, and depriving them of opportunities to use the criminal incomes. Proceeds deriving from abuse of political power and public office in Ukraine are being carefully cleaned up through the system of network of fictitious companies, nominal directors and offshore cor-porations, so political corruption and money laundering are also intrinsically linked.

We have been witnesses to more and more schemes of budget money laundering from Ukraine just to the West. By some estimates during the years under the present government (2010 - 2012) more than 70 billion of dollars have been transferred from Ukraine to offshore, most of all to Cyprus [6].

It should be emphasized that banks and other Western financial institutions are contributing to the flourishing of political corruption in Ukraine. There is, however, international legal mechanism aimed at cleaning the global financial sector of providing services for corrupt public officials. This mechanism is known as Recommendations of FATF, an intergovernmental body establishing global anti-money laundering standards [12].

FATF is called upon to make an "Achilles' heel" of criminal dealers – crime income – more vulnerable. Key instruments of FATF are set forth in the Forty Recommendations of that organization.

The financial institutions, volunteering their services to unfair clients offer an opportunity to conceal crime income by legalizing it, are placed by the FATF at the cutting edge of the Global Programme against Money Laundering.

"Financial institutions should undertake customer due diligence measures including identifying and verifying the identity of their customers" as per the tenth FATF Recommendation [13], [10].

As to the clients and financial transactions with a higher risk, the FATF separately requires stricter rules of due diligence from financial institutions. Financial institutions should conduct additional due diligence with regard to PEPs, defined by the FATF as "individuals who are or have been entrusted with prominent public functions in a foreign country…" [13], [10]. The FATF has recently changed this provision (February 12, 2012), including to the PEPs national politicians. Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of

State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials [13], [10].

Financial institutions are obliged to create such management system of risks that should allow determining which clients of bank attribute to PEP. They are required to take measures for determination of the enriching sources of the clients - PEP and sources of their financing; to getapproval of top management to set business relationships with such clients and to conduct the permanent monitoring of business relationships with them [8, 6].

Standards of the FATF are legally incorporated in the European Union Law, namely in the EU Directives on counteraction to money laundering, which create a single legal field for implementation of the FATF recommendations by the community countries. In particular, the Directive 2005/60/EC [15] of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financ-ing significantly tightens the requirements for financial institutions to identify the client: the law obliges beneficiaries to identify and thoroughly check their identity (similar to the tenth FATF recommendations).

Persons who hold or held important public positions in countries with high levels of corruption, the Directive refers to the categories of customers that carry higher risk of money laundering. Business relationships with such persons create serious reputational and legal risks for financial institutions of the EU [15].

At present in a number of leading countries in the world we may observe a tendency to wider application of legal provisions of crime assets confiscation. It is mainly associated with the fundamental position in the sphere of counterac-tion to organized crime and corruption according to which primary attention is focused on the destruction of criminals' economic basis.

To sum up, it should be noted that further expansion of political corruption in Ukraine, without taking effective measures for its curbing, can have ruinous effects on democratic fundamentals of political system of the country as well as on its social and political stability and development.

Corruption prevention by civil society should take priority over other methods of controlling this phenomenon, specifically, over the repressive ones. Permanent public awareness is a key element. Informed public organizations can be the most effective driving forces of any anti-corruption company.

The real fight against corruption in Ukraine is impossible without measures to

minimize the manifestations of this shameful phenomenon, especially in the higher echelons of power. The corrupted political and public figures are uninterested in its exposure, since the main levers of influence may become international standards that aim at blocking capabilities laundering the proceeds of crime and their confiscation.

So the core of numerous international legal norms as well as practical actions of criminal justice agencies, financial institutions, and civil society of many developed countries in the world is to put corrupted powerful people at increased risks of being caught and punished as well as to deprive them of the opportunities to use crime incomes.

References

1. Buscaglia E., van Dijk J. Controlling Organized Crime and Corruption in the Public Sector. The full text of the article is available on the internet at: <www.unodc.org/pdf/crime/forum/forum3_Art1.pdf>
2. Stack G. Minor court case sheds light on major Ukrainian corruption scandal, at <grahamstack.wordpress.com/2012/05/>. See < antac.org.ua/pro-nas/>
3. Kostenko O.M. 2009. Corruption in Ukraine in the Light of Political Criminology. *Political Management*. No. 1. – p. 49.
4. Melnyk M. 2009. Political Corruption: Essence, Causes, Counteraction. *National Security and Defense*. № 7. – C. 67–72. The full text of journal is available on the internet at: <http://www.uceps.org/ukr/files/category_journal/NSD111_ukr_5.pdf>
5. International Finance Corporation. Investment Climate in Ukraine as Seen by Private Businesses, 2011: www1.ifc.org/wps/wcm/connect/ /Ukraine-
6. Political corruption in Ukraine: actors, manifestations, problems of counteracting
   Sherbyna Sergii. Treasure Island - 2. Will the Oligarchs Achieve New Records? <www.epravda.com.ua/publications/2012/09/14/335415/>
7. <razumkov.org.ua/eng/files/category_journal/NSD111_eng_1.pdf>
8. Shostko O., Kalenyuk D. 2012. Criminal Investments: Do They Stop? *Legal Bulletin of Ukraine*. 7-13 May. (№ 14). – p. 6.
9. www.transparency.org/country#UKR.Report_Nov011_ENG.pdf?MOD
10. Recommendations is available on the internet at: <http://www.fatf-gafi.org/media/fatf/
    documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20Februar y%202012)%20reprint%20May%202012%20web%2 >
11. The United Nations Convention against Corruption. <www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
12. antac.org.ua/en/category/analytics/money-laundering/
13. Combating Money Laundering and the Financing of Terrorism & Proliferation.

14. Directive 2005/60/EC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing. The full text of the Directive is available on the internet at:
<eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:
L:2005:309:0015:0036:en:PDF>.
15. GRECO Evaluation Report regarding Ukraine. The full text of article is available on the internet at:
www.google.com.ua/#hl=uk&gs_nf=3&cp=49&gs_id=3&=GRECO+Evaluation+
Report+regarding+Ukraine+(2009)&pf=p&output=search&sclient=psyab&oq=GRE
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Eliko Ciklauri-Lammich
Max Planck Institute of Foreign and International Criminal Law, Freiburg, Germany

STRUCTURAL VIOLENCE AND SOME OTHER FORMS AND MANIFESTATIONS OF VIOLENCE

Abstract
There are different perceptions of the phenomenon of violence. In general, violence is perceived to be an action which causes harm to the others. The legal definition of violence is causing physical, psychological or material (property) harm to the others.

Author conceder this phenomenon from different angles, especially briefly, as the term is used by the Norwegian sociologist, mathematician, and political analyst and one of the founders of the doctrine of peace and conflict Johan Galtung.

In his paper the author considers some methods and programs as a response to racial crimes and racial violence in the EU.

Within the EU there are a variety of examples of methods and programs aimed at preventing crime and racial violence motivated by racial hatred.

Programs to reduce and prevent racial violence can be divided into several categories:

Programs to study the dynamics of attitudes and behaviors:
- risk (specific young people from disadvantaged environments) ;
- pupils and students;
- the general population;
- profession (police).

Preventive social work associated with the influence of the aggressive youth;

Preventive work with communities to resolve the issues of racial discrimination and racial violence;
Supporting victims of racial violence and compensation schemes;
Increasing the role of the political, professional and social participation for risk groups:

- in the integration of national minorities in the police and judiciary;
- assist in the integration of risk groups in socialization and participation in public life and political activity;

Promoting the integration of national minorities - immigrants;

- by reducing pressure on legal immigrants and asylum seekers;

Support most loyal right-wing activists in the output of extremist organizations.

Impact on offenders with the aim of preventing violence behaviors:

- anti-aggression therapy training;
- Specialized police investigation focuses on racial or extremist violence;
- Increase penalties for racist crimes.

Violence has various forms and types – structural, individual, political, etc. The author discussed the main characteristics of the mentioned forms of violence, as well as the factors which lead to the formation and expression of violent behavior both on personal and group levels.
The author also pays attention to the methods and programs aimed to prevent violence.

References

1. Albrecht H.-J. 2002 Terrorismus und kriminologische Forschung – Eine Bestandsaufnahme, in: *Schweizerische Zeitschrift für Kriminologie*, Vol.1, pp. 5-17.
2. Brussels, 28.11.2001 COM(2001) 664 final, 2001/0270 (CNS).
3. Bjorgo T. 1997. Racist and Right-Wing Violence in Scandinavia. *Patterns, Perpetrators and Responses*, Oslo: TanoAschehoug, p. 17.
4. Blumstein A., Rosenfeld R. 1998. *Assessing Recent Ups and Downs in U.S. Homicide Rates. The National Consortium on Violence Research.*
5. British Crime Survey in Simmons, J., Dockl, T. 2003. *Crime in England and Wales 2002/2003.* London: Home Office.
6. Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives. Warsaw, 2005; Hall Nate Crime. Willan Publishing, 2005; Jacobs, J., Potter, K. Ibid.; Levin J., Mc Devitt J. Hate Crimes: The Rising Tide of Bigotry and Bloodshed. NY-L. Plenum Press, 1993.
7. Europe. Euro barometer Opinion Poll no 47.1. First results presented at the Closing Conference of the European Year Against Racism. Luxembourg, 18 & 19 December 1997.
8. Eser A., Arnold J. (Hrsg) S82.2 Band 2:*Deutschland 2000.662 Seiten*.ISBN 3-86113-938-3.
9. Galtung Verlag J., *Strukturelle Gewalt*. Reinbek 1975, 10ff

10. Galtung J. Konflikte & Konflktlösungen. *Eine Einführung in die Transcend-Methode: Die Transcend.*
11. Graebsch, C. (ed). 2000. Experimente im Strafrecht – Wie genau können Erfolgskontrollen von kriminalpräventiven Maßnahmen sein? *Bremen: Bremer Institut für Kriminalpolitik .*
12. Hawkins D.F. et. al. 1998. Race, Ethnicity, and Serious Juvenile Offending, in: Loeber, R., Farrington, D. (eds) *Serious and Violent Juvenile Offenders. Risk Factors and Successful Interventions.* London, New Delhi: Thousand Oaks, pp. 30-46, p. 31.
13. Hippler J. Wissenschaft & Frieden 2007-1: *Terrorismus - Ursachen und Folgen*
14. Jacobs J., Potter K. 1998. *Hate Crimes. Criminal Law and Identity Politics.* Oxford Un. Press, p.4.
15. Joint Action 96/443/JHA of 15 July 1996.
16. Kinzig J. *Die rechtliche Bewältigung von Erscheinungsformen organisierter Kriminalität Duncker und Humblot.* Berlin, S.77
17. Kressel N. 1996. Masse Hate: The Global Rise of Genocide and Terror. Plenum Press, pp. 252-253.
http://unobserver.iom.int/images/pdf/iom%20syria%20crisis%20regional%20response%20sitrep%2029%20august%202013.pdf
18. Levin, J.,McDevitt, J. (1993) HateCrimes: The Rising Tide ofBigotryandBloodshed, New York:Plenum; Findeisen, H.-V., Kersten, J. 1999. Der Kick und die Ehre. Vom Sinn jugendlicher Gewalt, München: Kunstmann.
19. Racism and Xenophobia in Methode und ihre Anwendung 2007. Johan Galtung und Georg Günther Menschenrechte - anders gesehen.suhrkamptaschenbuchwissenschaft von Suhrkamp
20. Tutt N. (Ed.) *Violence.* L.: Her Majesty's Stationary Office, 1976, p.613.
21. Trotha, T. 2002. Über die Zukunft der Gewalt (Aboutthefutureofviolence), in: *Monatsschrift für Kriminologie und Strafrechtsreform*, Vol. 85, pp. 349-368, p. 360
22. Van Donselar, J. 2000. Monitor racisme en extreem rechts. *Leiden: DerdeRapportage*, p. 75.
23. Foucault M. 2003. Statehood. (Idea of State Interest and Its Genesis). *Logos.* № 4/5. P. 4-22.
24. http://unobserver.iom.int/images/pdf/iom%20syria%20crisis%20regional%20response%20sitrep%2029%20august%202013.pdf

Элико Циклаури Ламмих
Институт иностранного и международного уголовного права Имени Макса Планка, Фрайбург, Германия

СТРУКТУРНОЕ НАСИЛИЕ И НЕКОТОРЫЕ ДРУГИЕ ФОРМЫ И ПРОЯВЛЕНИЯ НАСИЛИЯ

Введение

Традиционное определение насилия включает в себе как деструктивные действия людей, отдельных персон, так и действия по защите законных интересов государства и общества (государственная монополия на насилие, наказание полномочий – Gewaltmonopol des Staates, ius puniendi). Насильственные действия в прямом смысле слова означают «насилие» в форме как физического так и психического, в более широком, научном понимании «насилие», включает в себя и «структурное насилие».

Можно создать ситуацию насилия, можно ее воссоздать в обществе, в частности, системным провокационным поведением. Подобная ситуация рано или поздно принимает форму конфликтов.[46]

Наиболее распространённым является понимание насилия как поведения, наносящего вред другим (20,360). Юридически более точное определение насилия это причинение физического, психического или материального (имущественного) вреда. В узком же смысле слова насилие - причинение физического вреда, нарушение физической неприкосновенности. Под насилием также понимается враждебное отношение к объекту посягательств, осуществленное в действии или бездействии, направленных на его разрушение (повреждение или уничтожение).

Автор статьи кратко рассматривает этот феномен в разных ракурсах, в первую очередь раскрывая, как этот термин используется норвежским социологом, математиком и политическим аналитиком,- одним из основателей учения о мире и конфликтах Йоханом Гальтунгом [10].

Гальтунг отмечает, что существует как насилие со стороны отдельных лиц, так и группы лиц, которое также может проявляется в форме структурного насилия, насилие, которое может на первый взгляд не имеет индивидуального характера, но составляет суть всей структуры. Гальтунг определяет структурное насилие, как обесценивание основных потребностей человека, его жизни. Это в свою очередь, снижает реальный уровень удовлетворения потребности и уровень жизни, которых потенциально возможно было бы избежать. Структурное насилие включает в себя не только все формы

[46] Конфликтология (от лат. konflikt – столкновения, греч. logos – учение, наука) — наука про столкновения, проблемное функционирования лица, человеческого общежития, природы, взаимодействии человека и природы.

дискриминации, но и неравномерное распределение доходов, воздействует на продолжительность жизни и возможность получить образование, а также разрыв в уровне благосостояния в широком смысле.

Структурное насилие отличается от прямого непосредственного физического или психического насилия тем, что действует косвенно, через общественные институты. Оно, как правило, не сразу и не всегда осознается индивидами и социальными группами, подвергающимися его влиянию. В отличие от прямого насилия, которое непосредственно, хотя изменчиво и динамично, структурное насилие статично и стабильно. В таких обществах, оно часто принимает форму апатии, характерезуется повышением суицида и фрустра́цией.

Очевидно не существует единой причины насилия как социального феномена. Хотя имеется множество факторов, воздействующих на состояние и динамику многообразных проявлений насилия – государственного, полицейского, военного, семейного, педагогического, криминального и др. Это факторы экономические, демографические (пол, возраст, этническая принадлежность, миграция и др.), культурологические (принадлежность к той или иной культуре, субкультуре, религиозной конфессии) и т.д.

Гальтунг отмечает, что структурное насилие в современном обществе является стольже распространенным и значимым, чем традиционное физическое или личные насилие.

Личное и структурное насилие

При прямом насилии жертва насилия непосредственно ощущает причиняемые ей вред действиями или бездействием, при структурном насилии, насилие не всегда явно выраженно.

Структурное насилие обладает рядом специфических признаков:

1) структурное насилие является естественным феноменом, так как, между социальными группами всегда существуют определенные различия интересов, прежде всего в позициях власти, которые отражаются в структуре социального и экономического взаимодействия;
2) под структурным насилием понимается социальная несправедливость в смысле неравного распределения прав, свобод и обязанностей, неравных ресурсов и жизненных шансов;
3) в категорию структурного насилия попадают только те явления, которых можно было бы избежать, если альтернативные социальные или властные структуры проявили бы соответствующие усилия;
4) структурное насилие, как правило, является следствием недальновидных и не до конца разумных политических решений;

5) в общем, структурное насилие является следствием дисбаланса, который проявляется между различными социальными группами, имеющих мировозренческие отличия.

Гальтунг также выделяет и культурное насилие. В нем как бы выстраивается следующая связь – культурное насилие создает условия для проявления структурного, а структурное насилие – для прямого, которое выражаеться в виде физического и психологического насилия. Данное положение может выразиться в причинение физической боли или нагнитания угроз, как бы уменьшая ментальные и/или физические возможности людей [9].

Под культурным насилием Гальтунг предлагает рассматривать и аспекты культуры, представленной религией и идеологией, языком и искусством, эмпирической и формальной наукой (логикой и математикой). Данные аспекты могут и бывают использованы для оправдания в форме законов – церковных или государственных, получает легитимацию прямого и структурного насилия. Культурное насилие ведет к тому, что как прямое, так и структурное начинают выглядеть и восприниматься как справедливые деяния [23, 4-22].

Между личным и структурным насилием существует прямое соотношение. Например, как связь между пострадавшим и правонарушителем. Социальные или политические структуры являются причиной насилия, а не отдельные лица. Хотя структурное насилие осуществляется исключительно через отдельных лиц. Это сложная юридическая проблема, которая долго и серьёзно обсуждалось во время процесса над пограничниками стрелявшими в перебежщиков из ГДР в ФРГ. Но эта отдельная тема для дисскусии [8].

Сама «справедливость» понятие субъективное, и для её легитимации необходим правовой каркас состоящий из правовых норм и обязанностей.

И лишь после этого насильник обретает мантию правопроводника и правозащитника. Одной из форм структурного насилия является политическое насилие. По Йохену Хипплеру политическое насилие сопряжено со сложными психическими и физическими усилиями и является признаком социальных, экономических или политических кризисов, которые часто отражаются в идеологических или духовных потрясениях [13].

Наиболее широким является понимание насилия как поведения, наносящего вред другим [20]. Юридически более точное определение насилия - причинение физического, психического или материального (имущественного) вреда. В узком смысле слова насилие - причинение физического вреда, нарушение физической неприкосновенности. Под насилием также понимается враждебное отношение к

объекту посягательств, осуществленное в действиях, направленных на его разрушение (повреждение или уничтожение).

Существует множество разных теорий насилия. Эта дискуссия безусловно примет в будущем ещё более глубокий характер. К этому сложному термину мы еще вернёмся чуть ниже. В широком же смысле наверное там где есть жертва имеет место насилие.

Политическое насилие

Как правило, политическое насилие является признаком социальных, экономических или политических кризисов, которые отражаются в идеологических или духовных потрясениях.Это верно как для насилия сверху - политические элиты, также к насилию снизу – со стороны негосударственных субъектов (терроризм, сепаратизм, организованная преступность и др.) (16).

Политическое насилие имеет место если сила применяется сверху политическими элитами или правительством и их вооруженными силами. Если такая государственная система не поддерживается народом, правительство (политические элиты), которое находится в опасности потерять власть, может попытаться применить насилие. В таких ситуациях, оппозиция становится прямым объектом насилия, но часто такими являются активные политики, которые могут быть опасны для правителей, а также политические и неправительственные организации, партии или движения, религиозные, культурные, этнические или национальные группы или меньшинства и др.

Геноцид в Руанде в 1994 году, или же геноцид армян в Турции были классическим примером этого. Существуют источники, согласно которым только за 80 лет XX в. в мире произошло 154 войны, стоивших человечеству свыше 100 млн. жизней. За 87 лет минувшего столетия помимо 39 млн. жертв межнациональных и гражданских войн, около 151 млн. человек было уничтожено собственными правительствами. Лидеры стран («организаторы убийств»), принесли в жертву человеческие жизни: СССР (1917-1987) – 61,9 млн. человек, Китай (1928-1987) – 45,2 млн., Германия (1934-1945) – 20,9 млн., Япония (1936-1945) – 5,8 млн., Камбоджа (1975-1978) - свыше 2 млн. и т.д. [17, 252-253].

В руках авторитарного государства закон становится инструментом, через который в сознание внедряются понятия, противоречающие мировоззрению демократического общества и оно берёт на себя полномочия по манипуляции сознанием граждан через ограничение информации, маргинализацию, разобщение, несправедливость в предоставлении прав, создает неравные шансы и берёт на себя полномочия и по сохранению социального порядка. Такие режимы создают все условия для роста количества лиц, ищущих убежища в других странах .

Число лиц, которые ищут убежища в Германии, по-прежнему значительно возрастает. Согласно докладу"Augsburger Allgemeine", в июле 2013 в Федеральное ведомство по вопросам миграции и беженцев было внесено 9516 ходатайств о предоставлении убежища. По сравнению с июнем, количество ходатайств выросло на 13,2 процента, а по сравнению с июлем 2012 года – на 112 процента.

Некоторые предпосылки

По данным Международной Организации Миграции, количество мигрантов и беженцев, ежегодно возрастает, а в 2013г. было зарегестрировано самое большое число беженцев за последние 20 лет. - 45 миллиона лиц (7 мил. только из Сирии).(24) Кроме экономических, бытовых и экологических причин, к массовой миграции подталкивают политические обстоятельства, гражданские и межнациональные войны (Беженцы). Исторически, миграция является естественным процессом. В условиях глобализации, разрушение политических систем и блоков, и перераспределения влияния, упрощение визовых режимов, а также развитие средств передвижения и коммуникации, ускорило миграционные процессы.[47]

Эти процессы способствуют образованию меньшинств, которые в не демократических обществах, да и не только легко становятся мишенью предрассудков, насилия и расизма [19]. Тут нужно отметить двойной теракт и гибель ста человек в Норвегии совершенный Андерсом Брейвиком, а также убийства турецких граждан совершенные группой неонацистов в Германии.

АНТИРАСИСТСКАЯ ПОЛИТИКА В ЕВРОПЕ

На протяжении девяностых по всей Европе можно было наблюдать акты проявления расизма, преступления на почве ненависти к национальным меньшинствам и даже целые программы против национальных меньшинств и иммигрантов, часть из которых, к примеру, цыгане или евреи, были жертвами расизма на протяжении многих столетий. Европейские соцопросы показывают довольно высокий уровень расизма и ненависти к иностранцам в Европе – около 33 % населения, признали, что поддерживают расистские настроения. Специфика данных преступлений заключается в том, что они направлены исключительно против отдельных лиц, принадлежащих к определенной группе, создают основу для возникновения социальных конфликтов, вызывающих общественные волнения и нарушающих общественный порядок. В силу данных

[47]**Миграция населения** (лат. *migratio* — переселение) — перемещение людей из одного региона (страны, мира) в другой, в ряде случаев большими группами и на большие расстояния. Российский учёный О. Д. Воробьева в своих работах пишет, что миграция населения — это «любое территориальное перемещение населения, связанное с пересечением как внешних, так и внутренних границ административно-территориальных образований с целью смены постоянного места жительства или временного пребывания на территории для осуществления учёбы или трудовой деятельности независимо от того, под превалирующим воздействием каких факторов оно происходит — притягивающих или выталкивающих. *Воробьева О. Д.* Миграционные процессы населения: вопросы теории и государственной миграционной политики // Проблемы правового регулирования миграционных процессов на территории Российской Федерации / Аналитический сборник Совета Федерации ФС РФ — 2003. — № 9 (202). — С. 35.

обстоятельств значительное внимание данной теме уделялось на международном и национальном уровнях при выработке тактики борьбы с расизмом. Решения, принятые Европейским Экономическим Сообществом и рекомендации, изданные Советом Европы, обязали парламенты государств пересмотреть законодательство таким образом, чтобы усилить ответственность за определенные виды преступлений, защитив тем самым социальные группы, которые могут стать жертвами расизма.

Утверждения об уровне распространенности и тенденциях расового насилия в Европейском союзе зависят от определения насилия в общем, и определения расового насилия в частности. Определение насилия всегда было в центре обширных дебатов, в особенности в сферах сексуального насилия, политического насилия (в частности, политический терроризм) и государственных репрессий [3,17]. Отвечая на вопрос, что же такое «насилие», можно обратиться и к его истории в криминологической науке. Вместе с тем, никогда не возникало сомнений в том, что суть насилия заключается в противоправном поведении, причиняющем физический и психический вред жертве. Целесообразно дифференцировать физическое насилие и насилие в социальных и политических структурах, которое выражается в социальных ограничениях для определенных групп людей или создании условий, которые являются невыгодными, дискриминирующими для определенных категорий граждан. Исследования групповой или индивидуальной дискриминации, либо проблем, связанных с отношением к гражданам, имеющим статус иностранцев, как к второстепенным лицам, безусловно важно при анализе и оценке ситуации, связанной с национальными меньшинствами, и разработке стратегии преодоления данных трудностей. Поскольку перспектива политической мобилизации или идеологического сплочения, безусловно, порождает искушение эксплуатировать власть, как насилие и преследование, расширяя определение насилия, необходимо установить аналитические и теоретические цели (рамки) для более четкого определения данного понятия. Использование понятия насилия в широком смысле не является подходящим, в конечном счете, поскольку в таком случае национальные меньшинства подвергались бы сильному преследованию. При специфическом международном сравнительном исследовании необходимо опираться на достаточно узкий круг точно очерченных проблем. Кроме того, необходимо различать возможные факторы, вызывающие насилие, такие, как подстрекательство к расовой дискриминации или пропаганда преступлений на почве расовой вражда и фактическое насилие, так как необходимо различать действия, потворствующие насилию и приветствующие насилие или содержащие графические и другие демонстрации фактического насилия. Стратегии предотвращения расистских преступлений, должны базироваться на полном и всестороннем анализе факторов, вызывающих такие преступления, также как и стратегии реформирования законодательства, предусматривающие полную, всестороннюю ответственность для преступников.

Поэтому должно быть сделано четкое различие между тяжким преступлением и действиями, способствующими совершению насилия на почве расовой принадлежности. В то время как тяжкое преступление подразумевает такие составы, как убийство, насилие, грабеж, вандализм, то есть составы, имеющие наименьшее количество различий при характеристике преступлений в уголовных кодексах различных государств, расистская пропаганда, подстрекательство к расовой дискриминации, членство в расистских (и поэтому запрещенных) организациях, должны рассматриваться как действия, способствующие совершению расовых преступлений.

Законодательство, как и уголовная политика того или иного государства выделяет такие различия, поскольку это играет важную роль при защите законных прав и интересов граждан. Составы преступлений, такие как подстрекательство к расовой дискриминации или расистская пропаганда, осуществляя превентивную функцию уголовного законодательства, призваны охранять общественный порядок посредством установления риска быть оштрафованным, либо подвергнутыми наказанию. Такие деяния представляют общественную опасность, поскольку способны вызвать фактическое насилие или порождать атмосферу страха и небезопасности среди населения. Тяжкие же преступления характеризуются, в первую очередь, наличием последствий, опасных для жизни и здоровья людей, а также нанесением имущественного вреда потерпевшим.

В таком случае, безусловно, что утверждения о расовом насилии зависят от толкования понятия раса. Раса – это форма классификации основанная на делении и ранжировании людей и групп людей в зависимости от их биологических показателей. Позже будет указано более подробно, о том, что понятие раса несет в себе определенное идеологические значение в сфере предположений о превосходстве либо неполноценности и законности доминирования определенной расы. В "демографическом" смысле понятие «раса» используется по большей части в англо-американских странах, где все виды статистики включают так называемые исчезающие популяции в категорию раса (которая, в конце концов, главным образом основана на делении по цвету кожи, к примеру, белые, афроамериканцы, азиаты, латиноамериканцы) [12, 31].

Расовое насилие основывается на убеждении преступников в своем превосходстве, доминировании либо исключительности. Действия расистов могут быть вызваны различным отношением, восприятием себя и окружающих, ненавистью и предубеждениями. Эти понятия также относятся к мотивам и побуждениям. Однако, референтные группы, видимо, различаются.

Различия в референтных группах вытекают из различий в сфере легального признания определенных групп, которые должны находиться под усиленной защитой со стороны государства, особенно в сфере уголовного права. В то время, как в пределах Евросоюза существует соглашение о нетерпимости к дискриминации по признаку расовой

принадлежности либо социального положения, исторические корни различных народов и увеличение этнического и социального разнообразия в современном обществе могут привести к напряженным отношениям между определенными группами людей, в частности при политических выборах, результат которых повлияет в дальнейшем на положение той или иной группы. В любом случае, определение расизма всегда содержит социальные и политические составляющие: в зависимости от того, какой статус в обществе (раса, пол, социальное положение, инвалидность) получает социальную защиту, постоянные социальные различия между людьми с иными статусами в обществе приводят к дискриминации и негативному настрою, который и является первопричиной насилия.

Понятие расового насилия нельзя соотносить с обычными актами насилия, поскольку речь идет о социальной группе, вступающей в конфликт с обществом, поддерживающей деление на «мы и они» [21, 360]. В отличие от обычных актов насилия, суть расового насилия заключается в том, что оно направлено не на одну жертву, а на всех членов референтной группы, к которой принадлежит жертва. Таким образом, расовое насилие говорит о наличии конфликта между несколькими группами в связи с их «исключительностью» и принадлежностью к одной из них. Можно предположить, что такое насилие представляет элементарную форму расового доминирования, однако так же может рассматриваться в качестве открытого вызова монополии власти, как единственной законной форме насилия. Формы расового доминирования включают классификацию посредством предубеждения и «клеймления», дискриминации, связанной с различными отношениями между членами референтных групп, сегрегации, которая выражается в групповом делении в социальном и психологическом аспектах, геттоизации, как силовом разделении параллельных социальных и организационных структур, и расовом насилии, начиная от запугивания и агрессии, ведущих к суду Линча, бунтам и погромам с кульминацией – расовой войной и истреблением членов определенной социальной группы.

Безусловно, расовое насилие не ограничивается насилием, направленным против меньшинств. В прошлом десятилетии в Европе были распространены бунты, вызванные национальными меньшинствами, и, очевидно, поведением других лиц (полиции и т.д.) против несправедливости в отношении к данным социальным группам. Кроме того, отдельные акты расистского насилия могут быть направлены также против членов групп большинства или могут иметь место между членами национальных меньшинств.

Определение понятия расового насилия указывает также на основные причины такого насилия. Если под расовым насилием понимается выражение конфликтных отношений между членами различных социальных групп, то конфликты, связанные с борьбой за власть, разделением ресурсов, безусловно, могут вызывать расовое насилие, как и другие формы стремления к расовому доминированию. Однако, необходимо учитывать, что такое насилие также способно вызывать чувство страха и незащищенности среди

населения. Кроме того, помимо конфликтных отношений между группировками существуют иные причины расового насилия, к примеру, поиск ярких эмоций и острых ощущений, который так же может быть связан с ситуациями, в которых проявляется насилие. Можно отметить, что, в особенности, молодые люди также склонны к такому виду насилия, как гедонистическое насилие [18].

Расовое насилие в Европе

Расовое насилие в Европе, как и где бы то это ни было, имеет социальный, исторический и культурный контекст. Этот контекст определяет формы проявлений расового насилия, как и социальной, юридической ответственности за такие действия. Уровень миграций в течении последних сорока лет и история колонизации некоторых европейских стран определяют различные проблемы в отношениях между разными этническими группами и национальными меньшинствами.

Подъем социалистических движений в начале 20-го века стал причиной создания во многих странах исторических центров сосредоточения фашистской идеологии и политических партий, пропагандирующих эту идеологию в своих программах. Это получает свое отражение в законодательстве, как и в системах мониторинга, которые во многих европейских странах примыкают к организациям фашистского или правого крыла, политическим партиям данного направления и их символам. Кроме того, все страны отмечают некоторый подъем правого экстремизма, как среди местных жителей, так и на национальном уровне. Необходимо отметить, что наиболее экстремистские партии являются не национальными, а локальными и влияние местных партий и политических деятелей значительно сильнее.

Другой аспект контекста, в пределах которого необходимо рассматривать расовое насилие – усиление влияния международных отношений на восприятие расистов. Последствиями событий, произошедших 11 сентября 2001 стало усиление насильственных действий не только против мусульман, но и против евреев вследствие израильско-палестинского конфликта, поскольку изображение этого конфликта в СМИ вызывало негативные эмоции по отношению к обеим сторонам не только местного населения, но и всего мира. Граждане различных стран могут стать на любую сторону в этом конфликте, основываясь на культурных, религиозных, этнических, или политических побуждениях.

Наконец, еще два момента, оказывающих непосредственное влияние на развитие расизма – телевидение и интернет [22, 75]. Если причиной враждебных действий прежде становились этнические и культурные условия развития разных народов, то теперь это международные отношения, сведения о которых распространяются через СМИ.

В современных обществах, доминирование связывают с отклонением «непохожести», находящейся вне досягаемости мотивов расового насилия. «Непохожесть» может выражаться в виде различных особенностей, в частности, сексуальное предпочтение, этническая принадлежность, цвет кожи, пол, национальность, религия, статус иммиграции, трудоспособность, психические заболевания и т.д. Необходимо отметить, любая группа может быть подвергнута расовому насилию не только на основании фенотипичных различий, но и при частичном либо полном отсутствии таковых различий – один из уроков долгой истории развития антисемитизма.

Однако, определяющими элементами расизма, как и вытекающих отсюда проблем, являются культурные различия, социальные нормы и политические интересы, влияющие на отношение к социальным группам, которые получают законодательную защиту.

У расизма множества лиц. Поэтому, от феноменологических перспективных актов расового насилия необходимо отличать бунты и погромы, на почве расовых разногласий. Помимо этого, насилие в исправительных учреждениях также представляет отдельную категорию насилия, отражающую отношения между социальными учреждениями и некоторыми социальными группами.

Поскольку проявления расового насилия разнообразны, понятия и определения, окружающие его, изменяются экстенсивно. Эти изменения становятся существенными для развития в странах, объясняющих феномен такого насилия на основе различных концепций. Различия эти могут объясняться также очевидной нехваткой политического и научного сотрудничества среди стран Европы относительно проблемы определения расового насилия. В то время как область антисемитизма широко рассматривалась в исторической и современной литературе, исследованием других типов расового насилия пренебрегали.

С точки зрения криминологической теории и исследований, проведенных в Европе, становится ясно, что расовое насилие до сих пор скорее было исключением, нежели правилом. Исследования относительно насилия, в частности среди молодежи, и исследования относительно преступлений, совершенных иммигрантами и этническими меньшинствами проводились достаточно мало [4].

Использование понятия раса в описании населения (к примеру, числа заключенных) или категоризации тяжких преступлений указывает на деление стран в данном аспекте на англоговорящие и страны континентальной Европы. В то время как понятия, такие как "раса", или "расовый" могут быть найдены в статистических отчетах (в особенности в популяционной статистике) и на установленном законом языке в Англии/Уэльсе, США, Канаде или Австралии, использование таких понятий в официальных источниках континентальной Европы незаконно. Что касается государств – членов Европейского

союза, использование «раса» и «расовый» в информационных системах (так же как в исследовании) разрешены только в Англии/Уэльсе, где такие понятия применяются для классификации подгрупп в общей численности населения. В континентальных европейских странах эти понятия используются по отношению ко всей нации, в силу чего исследования вокруг расовых преступлений в течении прошлых десятилетий не развивалось, так как, к примеру, в США. В континентальных европейских странах вместо этого акцент был на «иммиграции», «национальности» и «преступлении». Однако обе концепции применялись с целью отражения статуса определенных групп людей, нуждающихся в защите со стороны государства.

Уголовное право, развивающееся на протяжении 19 века, было сосредоточено на преступлении, поэтому субъективные элементы, такие, как побуждения, редко рассматривались как элементы состава преступления. Не становится неожиданностью то, что статистика актов насилия в полицейских информационных системах не указывает на специфические мотивы совершения таких действий (за исключением убийства и сексуальных преступлений). В силу ряда причин европейские информационные системы не позволяют выделять акты расового насилия в отдельную категорию, поскольку базисных категорий для классификации расовых побуждений не существует и на сегодняшний день.

В основе правопорядка, поддерживаемого Евросоюзом, лежат ценности, отрицающие расизм во всех его формах проявления. В частности это было отражено в рамочном решении «Об усилении репрессивного подхода в уголовном праве». Данное решение о борьбе с расизмом и ксенофобией [2] нашло отражение в «Объединенном действии», принятом в 1996 году.(15) Речь идет о стремлении создать твердую законодательную базу в сфере уголовного законодательства с целью обеспечения во всех государствах – членах ЕС эффективного и соразмерного наказания за расистские преступления и уменьшении препятствий для дальнейшего правового сотрудничества. Рамочное решение обязывает государства-члены ЕС наказывать за расистские настроения и рассматривать расизм и ксенофобию как отягчающие обстоятельства при назначении наказания. Речь идет о стремлении создать твердую законодательную базу в сфере уголовного законодательства с целью обеспечения во всех государствах – членах ЕС эффективного и соразмерного наказания за расистские преступления и уменьшении препятствий для дальнейшего правового сотрудничества. Рамочное решение обязывает государства-члены ЕС наказывать за расистские настроения и рассматривать расизм и ксенофобию как отягчающие обстоятельства при назначении наказания. (В 1985 г. John Coneyrs, Barbara Kennelly и Mario Biaggi опубликовали «Hate Crime Statistics Act». В 1989 г. была издана статья Джона Лео «The Politics of Hate». В начале 90-х гг. минувшего столетия термин «Hate crimes» приобрел легалистский (правовой) характер, включая законодательные акты. (14, 4) Криминализации подверглось насилие по мотивам расизма, антисемитизма, а также – гомо фобии, враждебного отношения к

гомосексуалистам. Прошло немного времени, и появилась обширная литература, посвященная этой проблеме [6].

Отмечается существенное различие между европейскими странами, которые начали довольно рано собирать статистическую информацию о расовом насилии тогда бы полицейские данные государства стали бы доступными для всех государств – членов ЕС, это позволило бы разбить расовое насилие на определенные виды и категории, что значительно облегчило бы процесс сравнения. Начиная с 2002 года, в Ирландии начали собирать данные в полицейских участках также по определенной модели, однако пока они не доступны. В Дании и Финляндии, собраны статистические данные о преступлениях расового характера, но принципы сбора таких данных несколько отличны. В Дании акт преступного поведения засчитывается, если полицейский подозревает расистский мотив в действиях преступника. В Финляндии же должен быть доказан расистский мотив, который усматривается, когда жертва является членом национального меньшинства или отличается от преступника по цвету кожи или этническому происхождению. Побуждения в таком случае оцениваются посредством пяти основных категорий вероятности (да, наиболее вероятно, возможно, не знаю, не расист), и первые две категории учитываются полицией, как расистские. Однако сами регистрационные процедуры зачастую отличатся, и не только между разными правовыми системами, но и в разных районах на территории одного государства.

Если рассматривать опросы жертв расизма, то оказывается, что наибольшее количество таковых в Великобритании, где британский «Обзор Преступлений» учитывает расовое насилие с тех пор, как оно было впервые обнаружено в 1982 году илие и странами, которые это делает сравнительно недавно. Основное различие в том, собраны ли какие-либо статистические данные о расовом насилие за определенный период, или нет. Систематически собираются данные в Австрии, Дании, Финляндии, Германии, Нидерландах, Швеции и Великобритании, и достаточно рассеянные данные хранятся в информационных отделах в Бельгии, Франции, Греции, Испании, Италии, Португалии, Люксембурге и Ирландии. Не удивительно, что между показателями контроля за преступностью и преступлениями на почве расовых конфликтов между этими группами стран достаточно большой разрыв [5]. В Дании акт преступного поведения засчитывается, если полицейский подозревает расистский мотив в действиях преступника. В Финляндии же должен быть доказан расистский мотив, который усматривается, когда жертва является членом национального меньшинства или отличается от преступника по цвету кожи или этническому происхождению. Побуждения в таком случае оцениваются посредством пяти основных категорий вероятности (да, наиболее вероятно, возможно, не знаю, не расист), и первые две категории учитываются полицией, как расистские. Однако сами регистрационные процедуры зачастую отличатся, и не только между разными правовыми системами, но и в разных районах на территории одного государства.

Кроме того, ни в одном государстве, помимо Великобритании не ведется учет количества представителей разных социальных групп и национальных меньшинств, поскольку данные переписи населения не включают категорию «национальность». Это весьма усложняет оценку уровня распространенности расового насилия. А государства – члены ЕС, где системы учета расовых преступлений все же были введены, имеют множество различий в деталях хранения и учета данных, что делает весьма проблематичными сравнительные исследования в данной сфере.
Политическая и социальная среда в обществе отражается посредством отношений между членами общества в целом и подгруппами в частности, развитие политических партий правого и левого крыла, законодательства и политики в отношении иммигрантов (частично демонстрируются в «Крепости Европы»).

Поскольку понятие «раса» не относится к категориям популяционной статистики, поэтому значение «популяция в опасности» возможно лишь применительно к национальности. Однако, национальность – не слишком удачное определение для национальных меньшинств, поскольку ведет к недооценке «расовых» меньшинств (если изучение идет на базе гражданства).
Суммируя имеющееся доказательства о применении расового насилия, можно сделать вывод:

Для большинства стран информация полицейских баз данных отдельных государств недоступна. В странах, где информация собрана полицией и другими организациями, отмечается:
а.проблема всех данных, зарегистрированных полицейскими участками заключается в том, что они зависят от уровня латентности таких преступлений, и ресурсов, инвестируемых в подобного рода исследования;
б. проблема различий в процедурах регистрации таких преступлений;
с.проблема установления повода совершения таких преступлений.

Методы и программы как ответ на расовые преступления и расовое насилие
Краткий обзор практики в данной сфере в рамках Евросоюза обеспечивает разнообразие примеров методов и программ, нацеленных на предотвращение расовых преступлений и расистского насилия.

Программы по уменьшению и предотвращению расового насилия можно условно поделить на несколько категорий:
Программы, направленные на изучение динамики отношений и поведения:

- группы риска (специфические молодые люди из неблагополучных окружения);
- школьники и студенты;
- население в целом;
- профессии (полиция).

Превентивная социальная работа, связанная с влиянием на агрессивную молодежь;

Превентивная работа сообществ с целью разрешения вопросов о расовой дискриминации и расовом насилии;
Поддержка жертв расового насилия и схемы компенсации;
Увеличение роли политического, профессионального и социального участия для групп риска:

- в сфере интеграции национальных меньшинств в полицию и судебные органы;
- содействие в интеграции групп риска в сфере национализации и участия в общественной жизни и политической деятельности;

Содействие интеграции национальных меньшинств – иммигрантов;

- путем сокращения юридического давления на иммигрантов и лиц, ищущих убежища;

Поддержка наиболее преданных активистов правого крыла в выходе из экстремистских организаций.

Влияние на преступников с целью препятствования жестокому поведению:

- тренинги терапии антиагрессии;
- специализированная полиция, концентрирующая усилия на расследованиях расового или экстремистского насилия;
- увеличение штрафов за расистские преступления.

Хотя, множество ресурсов было направленно на реализацию программ по предотвращению расового насилия, необходимо отметить, что на сегодняшний день не выработано исследования, результаты которого можно было бы эффективно использовать при оценке воздействий или эффективности издержек осуществленных программ [1, 5-15].

В данном аспекте сведений достаточно мало о результатах антирасистской политики и программ за исключением, услуг, которые могут быть предоставлены жертвам. Такое состояние исследований было ожидаемо, поскольку есть аналогии, касаемые состояния исследований в других областях социальной политики

В основном, политика антирасизма в Европе, и в пределах Европейского союза, не приведена в соответствие с научной информацией, а скорее управляется нормативной теорией и идеологией. Исследования должны еще развиваться в данном аспекте [11]. Наиболее актуальной проблемой остается оценка потенциала уголовного права для полного предотвращения данной проблемы и создания правовой базы. Сомнительной на сегодняшний день является достоверность данных социологических исследований. Хотя, социологическая теория права заявляет, что потребность в уголовных нормах обычно продиктована нарушениями общественного порядка, однако не существует доказательств, которые объяснили бы тип санкций, который должен быть установлено в процессе правотворчества.

Тема насилия довольно сложна и рассмагривать её следует комплексно. К сожалению, оно становится всё более изощренным и жестоким.

Было бы весъма наивно утверждать, что справитъся с этим злом возможно лишь правовыми средствами. Комплексные же исследования в этой области пока находятся на начальной стадии.

Литература

1. Albrecht H.-J. 2002 Terrorismus und kriminologische Forschung – Eine Bestandsaufnahme, in: *Schweizerische Zeitschrift für Kriminologie*, Vol.1, pp. 5-17.
2. Brussels, 28.11.2001 COM(2001) 664 final, 2001/0270 (CNS).
3. Bjorgo T. 1997. Racist and Right-Wing Violence in Scandinavia. *Patterns, Perpetrators and Responses*, Oslo: TanoAschehoug, p. 17.
4. Blumstein A., Rosenfeld R. 1998. *Assessing Recent Ups and Downs in U.S. Homicide Rates. The National Consortium on Violence Research.*
5. British Crime Survey in Simmons, J., Dockl, T. 2003. *Crime in England and Wales 2002/2003.* London: Home Office.
6. Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives. Warsaw, 2005; Hall Nate Crime. Willan Publishing, 2005; Jacobs, J., Potter, K. Ibid.; Levin J., Mc Devitt J. Hate Crimes: The Rising Tide of Bigotry and Bloodshed. NY-L. Plenum Press, 1993.
7. Europe. Euro barometer Opinion Poll no 47.1. First results presented at the Closing Conference of the European Year Against Racism. Luxembourg, 18 & 19 December 1997.
8. Eser A., Arnold J. (Hrsg) S82.2 Band 2:*Deutschland 2000.662 Seiten*.ISBN 3-86113-938-3.
9. Galtung Verlag J., *Strukturelle Gewalt*. Reinbek 1975, 10ff
10. Galtung J. Konflikte & Konflktlösungen. *Eine Einführung in die Transcend-Methode: Die Transcend.*
11. Graebsch, C. (ed). 2000. Experimente im Strafrecht – Wie genau können Erfolgskontrollen von kriminalpräventiven Maßnahmen sein? *Bremen: Bremer Institut für Kriminalpolitik.*
12. Hawkins D.F. et. al. 1998. Race, Ethnicity, and Serious Juvenile Offending, in: Loeber, R., Farrington, D. (eds) *Serious and Violent Juvenile Offenders. Risk Factors and Successful Interventions.* London, New Delhi: Thousand Oaks, pp. 30-46, p. 31.
13. Hippler J. Wissenschaft & Frieden 2007-1: *Terrorismus - Ursachen und Folgen*
14. Jacobs J., Potter K. 1998. *Hate Crimes. Criminal Law and Identity Politics.* Oxford Un. Press, p.4.
15. Joint Action 96/443/JHA of 15 July 1996.
16. Kinzig J. *Die rechtliche Bewältigung von Erscheinungsformen organisierter Kriminalität Duncker und Humblot.* Berlin, S.77
17. Kressel N. 1996. Masse Hate: The Global Rise of Genocide and Terror. Plenum Press, pp. 252-253.

http://unobserver.iom.int/images/pdf/iom%20syria%20crisis%20regional%20response%20sitrep%2029%20august%202013.pdf
18. Levin, J.,McDevitt, J. (1993) HateCrimes: The Rising Tide ofBigotryandBloodshed, New York:Plenum; Findeisen, H.-V., Kersten, J. 1999. Der Kick und die Ehre. Vom Sinn jugendlicher Gewalt, München: Kunstmann.
19. Racism and Xenophobia in Methode und ihre Anwendung 2007. Johan Galtung und Georg Günther Menschenrechte - anders gesehen.suhrkamptaschenbuchwissenschaft von Suhrkamp
20. Tutt N. (Ed.) *Violence.* L.: Her Majesty's Stationary Office, 1976, p.613.
21. Trotha, T. 2002. Über die Zukunft der Gewalt (Aboutthefutureofviolence), in: *Monatsschrift für Kriminologie und Strafrechtsreform*, Vol. 85, pp. 349-368, p. 360
22. Van Donselar, J. 2000. Monitor racisme en extreem rechts. *Leiden: DerdeRapportage*, p. 75.
23. Foucault M. 2003. Statehood. (Idea of State Interest and Its Genesis). *Logos.* № 4/5. P. 4-22.
24. http://unobserver.iom.int/images/pdf/iom%20syria%20crisis%20regional%20response%20sitrep%2029%20august%202013.pdf

Gia Dekanozishvili, Guram Rostiashvili, Dimitri Dekanozishvili
Grigol Robakidze University, Tbilisi, Georgia

PROBLEMS OF THE TESTIMONY VERIFICATION OF CRIME COMMITMENT

Abstract
The testimony of a witness, victim, suspect and accused is a complex form of the evidence which in some cases forms in (fate) of such people that are not able to realize happened. However this testimony is especially needed to establish the objective reality. The factor that the destiny of a criminal law case depends upon these testimonies should also be taken into consideration, since they present an independent form of the evidence. Hence it follows that the establishment of the completeness and correctness of the testimony given by the witness, victim, suspect and accused is one of the inquest problems.

Key words: Testimony of a witness; Victim, Suspect; Psycho-energetic methods; Smell

From the demand of the code of penal procedure, the establishment of the testimony completeness implies the inquiry of every existent proof separately; their verification with other proofs, i.e. the completeness of the testimony presents their formation by means of the unity of particular tactic, psychological, procedural or technical media from which we infer about some fact, circumstances and occurrences. It should also be noticed that the

completeness of the inner side of the testimony implicates a detailed research into intellectual conclusions and physical powers existent in the testimony of the witness, victim, suspect and accused.

It is also ascertained that on particular occasions investigators try to avoid this problem since they do not know how to interpret such kind of cases.

Difficulty in the diagnostics and estimate of the testimony consisting of unconscious errors presents its psychological essence. Unintended errors in the testimony are the results of thoughtless and uncontrolled interaction between a man's conscious and unconscious components which are determined by the man's individuality, namely: mood, purpose, and temperament, cultural, ethnic and national peculiarities.

In the improvement of psycho-tactic methods we imply a deep penetration of the interrogator into conscience and subconsciousness of the process participants not only on the level of logical interaction but also on that of emotional behavior.

It is obvious that the improvement of the psycho-tactical methods of the testimony adoption and analysis considers and requires the interrogator's increase in professional level. In this context more attention is given to such aspects of the interrogator's knowledge level as:

- Observation-the study of reaction during the interrogation process (procedure);
- Sociability-as a means of the psychological contact establishment;
- Flexibility i.e. to possess enough tactical methods in tactical arsenal in order to find a way out in conflict situations and for the diagnostics of an investigatory situation.

A psychological condition of a suspect, its change and emotional state, exposure and obtaining necessary information connected with crime excited an interest of scientists and lawyers long since.

From the ancient times it was observed that during the interrogation process a person who had committed a crime experienced a fear of exposure which changed their psychological functions. Thus for instance in Ancient China suspects had some dry rice pushed in their mouths and if during the exposure process the rice remained dry(from fear a man's mouth dries up), suspect's guiltiness was proved. In Ancient India a suspect said neutral and critical words connected with the offence and they had to say the first word that appeared in their mind and slowly beat the drams simultaneously. Indians thought if the suspect beat the drum strongly while being said the critical word, he/she was guilty.

If we analyze the above-mentioned methods, it will not be difficult to infer that both nations used the control of a person's separate physical change, in these cases - saliva secretion and movement activity.

When considering a criminal law case, the use of contemporaneous psychological, chemical or technical means for the verification of evidential testimonies sometimes acquires unexpected forms.

'Psycho-energetic methods belong to the verification form of the testimony. One of such methods is hypnosis, which is used in various situations by thirty-two countries.

Still scientists are not totally convinced of the safety of this kind of influence over a person during the interrogation procedure. That is why it is believed that the use of hypnosis while interrogating a suspect is inhumane. And in the countries where hypnosis is allowed during the interrogation it is used only in cases of witnesses.

The mechanism of extrasensorics has not yet been studied fundamentally. That is why the use of it in practice and especially in the case of Georgia is not legal and humane. Practice shows us that in particular psychological state the accused (suspect) having given the evidence admits his guilty and considers himself/herself as guilty. Although sometimes they are in such psychological condition that while presenting the evidence they do not reacts to it as if it is all the same for them what kind of accusatory material they were presented.

Biorhythmologists ascertain that there are more than a hundred biological rhythms in a man's organism which express physical conditions proceeding in it. These are biorhythms of sleep and awakeness, the changeability of the body temperature, cardiovascular system, etc. There are biorhythms the detection cycle of which takes months and years. The majority of them depend on the rhythmical changeability of the sun eradication, moon phases and the changeability of electromagnetic field. In different countries scientists came to the conclusion that during the geomantic activity the number of patients in mental hospitals, suicides and crime increase. They also noticed the dependence between moon phases and the number of murders.

For an investigator the estimate of a separate emotion display of the interrogated person is as important as the knowledge of their mood. In this the investigator will be helped by biorhythmologists, who can determine the best period for the investigation.

Biorhythmologists confirmed that after the experimental interrogation of people, committed a grave crime, a detailed testimony around the crime was obtained in 28cases (78%) out of 36. And in 8 cases (22%) the position of the accused did not change but the facts proving their involvement in the crime were let out. Later the videos of the interrogation were used in the exposure of the guilty person.
From the tactic viewpoint the interrogated people were not informed that the work period for them was deliberately chosen in the result of biorhythmologists' calculation and lawyers' presence did not hinder the interrogators to obtain the real detailed testimonies.

The use and creation of pleasant corresponding (suitable) music background is one of the permitted means during the interrogation of such an accused who is giving a false testimony. This medium is based on psychological research from the viewpoint of which it is proved that music can affect man's emotional sphere.

The influence of music much depends on particular vital conditions in which they exist. Almost all accused have the music works which give them pleasure. Music excites, creates corresponding association of thoughts and feelings in the man, which causes a particular formation of their behavior. Investigations showed that the neutralization of the inner mood of the accused to give the false testimony is possible by the influence of their favourite music works (at least for a particular period). The use of music gives the effect when the qualities, peculiarities of emotional sphere and temperament of the accused are studied thoroughly.

Smell can create and prolong a particular mood, affect person's behavior, ability to work, cardiovascular system, intracranial pressure, tone, vision, hearing, and pulse. In many people it can provoke old memories. It is explained with the fact that the mechanism of smell sense is connected with such part of brain which governs memories and emotions.

Among the present literature on the accused interrogation there are no recommendations which consider the distinction of psychological peculiarities according to the sex whereas psychologists and physiologists indicate the peculiarities of smell perception and its influence on the behavior of the feminine sex representatives.

In the US police practice there were made experiments on the use of narcotics during the interrogation with the aim of gaining information. In Vienna the serums of morphine, chloroform, chlorine scopolamine, which weakened particular cells in brain and had an effect on a person like alcohol, were used. Later when the person reached a semi-unconscious condition i.e. particular stopping abilities of the brain were paralyzed, the interrogation started. In 1944, American scientist G. Mullbar mentioned that after the usage of scopolamine, in 50% cases the accused people in a semi-unconscious state told the truth.

In 1958-68, similar interrogation methods in the United Nation were known as illegal action, humiliation of human dignity and breach of human rights, which has no connection with jurisprudence.

In some countries the use of narcotics during the interrogation is not publicized publicly. That is why it is desirable that the inadmissibility of the use of such substances would be clearly mentioned in the penal procedure code.

The difficulty of the similar interrogations lies in choosing an optimal dose. Exceeding the dose is inadmissible for it can cause a total disconnection or even death whereas a small dose does not evoke a desirable ''effect''.

In the process of inquest the use of **lie detector** or **''polygraph''** for the verification of the information during the interrogation distinguishes with its effectiveness. In literature this apparatus is also mentioned as ''varyograph'', ''platismograph''.

An essential requirement of a psychological research by means of polygraph is a physiological data fixation of respiration, blood vessel activity, skin conductivity, for which basic sensors are used: respiration- upper (chest) and lower (stomach, diaphragm); blood vessel activity- arterial pressure, pulse, filling vessel with blood and skin conductivity- skin resistance, galvanic reflexes.

Exclusion of one of the mentioned physiological parameters makes the investigation process unreliable, and other parameters possess a subsidiary function.

By legislation of the majority of countries the use of ''polygraph'' is prohibited and the result gained with it has no evidential power. In some countries the use of ''polygraph'' is permitted for obtaining the information needed for the investigation. West Europe has a neutral position in this point, according to the official data there are no such check ups in the police practice. In Georgia the official information about the use of ''polygraph'' does not exist.

During the last years in the establishment of the accuracy of the evidential information a special method of medical research, namely **Magnetic resonance imagining (MRI)** ,which is used for health control and diagnostics, have spread. In criminalistics it is called judicial neurovisualization.

Based on the magnetic resonance, it is possible to obtain specific images from a man's organism. Magnetic resonance imaging (MRI) implies gaining information from atomic nuclei of hydrogen, the most abundant substance existent in the organism. On the basis of MRI principle the excitement of the atomic nuclei of the organism occurs with the definite combination of electromagnetic waves, high strain in the magnetic field that returns with a signal and by means of the computer processing of this signal we gain the image. Magnetic resonance is especially informative during the research into nervous system, namely central nervous system, but it does not mean that this method of research is uninformative as regards to other organs or tissues.

By MRI we can reveal and analyze microcirculation changes connected with neuron activity in nervous system, namely, in brain. Correspondingly, it is not only anatomic, but also functional method of research.

When a person thinks about a particular event the conformable motoric area of brain excites and becomes active: as it does, the blood supply to the same area intensifies. With MRI we can reveal this excessively supplied area and discuss the functional activity of the definite part of

brain. It is more than simplified example but it shows us the effectiveness of MRI research and what possibilities in the diagnostics and estimate of the testimony it has.

Despite the existence of the perfect devices, this branch of radiology is continuing to develop and improve. That is why it can be said from all the above-mentioned that for the accuracy (correctness) establishment of the testimony about the committed offence, various technical and chemical means and psychological methods used over many years have not given proper effect with the help of which lawyers would be given the opportunity to ascertain the truth. But it can be said that in the matter of the verification of the evidential testimony about the committed crime MRI has promising results since the scanning and fixation of the activation of certain parts of brain are not subject to control of consciousness by the person who is being investigated and does not have a need for subjective interpretation.

References

1. Dekanozishvili G. 2010. *Modern Methods of Interrogation in Criminal Justice and Criminalistics*. Tbilisi: Grigol Robakidze University Press.
2. Volodina A. N. 2004. The Methods of Obtaining Information while Conducting Interrogation. *Topical Problems of Jurisprudence*. Tyumen.
3. *Encyclopedia of Crimes and Catastrophes. Drugs and Psychotropic Substances*. Moscow, 1998.
4. Plotnikova A. A. 1996. *Polygraph Use in Disclosure of Crimes:* lectures. Khabarovsk.
5. Khornak J. P. 1996-1999. Fundamentals of MRI.
6. Lauterbur P.C. *All science is interdisciplinary — from magnetic moments to molecules to men.*
7. Mansfield P. 2003. Snap-shot MRI. *Les Prix Nobel. The Nobel Prizes 2003*. Nobel Foundation.
8. http://www.mkurnali.ge/diagnostika/1866-2010-04-20-15-39-17.html

Giorgi Todria, Manana Mosulishvili, Amiran Mosulishvili
Grigol Robakidze University, Tbilisi, Georgia

PECULIARITIES OF THE EVOLUTION OF POLICE GOVERNANCE: STRATEGY AND TACTICS OF FOREIGN COUNTRIES

Abstract

The problems discussed in the given article are divided into here major issues: 1. Governance forms; 2. Police as the subject f scientific research; 3. Implementing the “Community policing” programme in the reforming process of the police. Authors analyzed four models in the

article: 1. The model of militarized central governance; 2.The model of social control on criminality; 3. The model of municipal police; 4. The perspective model of police governance.

Key words: Police; Community policing; Criminality; Police governance

The process of formation of the police governance historically is determined by such factors as: political regime, cultural level of population, country's economy, etc. All these factors taken together make the system of police control in different countries. Unlike other law enforcement bodies, namely police is in close contact with population. Furthermore, police is responsible for protecting society from delinquents. Police is a special controlling body of the society. Thus, it is important for society to be well aware what the police do to protect their safety and peace. Both, government and society always paid special attention to police, its strategy and tactics as well as to handling the forcing measures. The Georgian police are not an exception. Its activities determine the state governance and the rate of protection of citizens' rights. The experience of foreign countries shows that police governance undergoes evolution; it goes through stages which are important to understand perspectives. Four models are discussed in the article: 1. The model of militarized central governance; 2.The model of social control on criminality; 3. The model of municipal police; 4. The perspective model of police governance.

The model of militarized central governance was especially important in the Soviet and European Socialist republics. The following features characterize this model: extra power of public officials, compelling secret cooperation, keeping an eye on public, brainwashing of the society, torturing and other methods of violence. On the stage of establishing capitalism as a state system, these methods were rejected. Though, such methods of governance can be observed even nowadays. The negative approach to the militarized central governance is clear.

The method of social control on criminality is considered as the attempt to drive the police governance from the dead end. In the 60s of XX century, due to increase of criminality, the idea of strengthening the social function of the police was stimulated in European countries and especially in the USA. Stimulating of idea caused the process to be overloaded with abstract and archaic formalism. The extraordinary measured of struggle against crime were taken, the sanctions against criminals who confessed the committed crimes were abolished or minimized, civil and legal liability measures were changes. For instance, in FRG, France, Italy, Scandinavian countries the police became responsible for investigation. The court stated the simplified production of case processing as they "trusted" police. Self-will of the police increased in many countries. Unacknowledged "democratization" of the police revealed its negative impact what provoked self-will in certain policemen and boundless subjectivity. Neither "totalitarian" not "democratic" model of the police organization worked. It was life itself hat found the way out from the dead end. It appeared that the police are effective when it is not against the society and struggles against criminality together with the society.

The method of municipal police broadens the contacts between the police and the society. The municipal police was established in many big cities and megalopolises (Amsterdam, Madrid, Rome, London, Washington, New York, etc.). It means police formations established by local self-governance that are controlled directly by the latter. They are fully or partially financed from the local budget and act in the strictly determined jurisdiction. Such an activity is especially developed in Great Britain. The analysis of the social-economic conditions of the municipal police shows that it is successful in those countries where the market economy is well developed and local budgets are actively used for struggle against crime. Decentralized police mainly acts either in mono-national countries or in those federations where the tendencies of separatism are not observed alongside the national elite. And finally, the developed municipal police exists only these where it is under the financial control of the local government.

While discussing hr perspective model of the police governance, the attention is paid to: searching for the new forms of ascertaining tight contacts between the society and the Ministry; theoretical and practical analysis of the existing models; evolution of the experience of foreign countries; synthesis of the governance of the centralized Ministry and the broadening of the social functions of the police activities; the relatively between ways of driving from the dead end.

While analyzing the second issue, it would be advisable to remember H. Schneider's considerations discussed in his monograph "Criminology". According to the scholar, state bodies that control criminality should be controlled themselves. He also states that in the democratic country, a public official (politician) can abuse his position and commit a crime at a certain time and present all the characteristic signs of such a crime. The case when the police exceed its authority seems to be especially dangerous as this violates the constitutional right of a citizen. The second issue also touches: historical aspects of the activities of the police; major conceptions; evolution; the results of J. Skolnick's research on the theory of policemen's self-assessment; the problem of cultural conflict according to T. Selin's, R. Klark's, J. Wilson's and the Soviet scholar's considerations; Albert Reis's conceptions and the important points of his theory; and the conclusion stating that severity of the police is revealed when the society opposes the police and when the society refuses to collaborate with the police.

While discussing the third issue, it should be stated that in modern countries, the reform of the police system is one of the most difficult problems as the effective modeling of this system results in creating convenient conditions for struggle against criminality. Implementation of such a model among policemen raises legal culture and has positive impact on public opinion and on the development of legal institutions. The reform of the police system of Western Europe is not implemented homogeneously. In the beginning of the 90s, the new strategy of the reform of the police system which was known as the "Community policing" was

developed in the USA as well as in Europe. Its basic objective was prevention and not the passive respond to the already committed facts. The activities for prevention took place in the streets, districts, regions, etc. The conception of the reform required from the police to be always present in micro-environment and have tight contacts with the population. The police attempted to refuse using cars and for the purpose of being in close contacts with the population implemented patrolling by bicycles or on foot. Special attention should be paid to avoiding criminogenic impact of those particular factors which could have played the role of a cause of a crime. Criminological researches ascertained that "Community policing" was not able to defend the police itself. Stigmatization theory was not developed. Unlike the American model, the elements of "Community policing" are more strengthened in the Japan policy. Because of the peculiarities of the Japanese culture, society is wore attentive to criminality in Japan than in America. While characterizing the Japan police, the practice of preventive observation is singled out.

The general outline of the issue is certainly not absolutely sufficient, but it is obvious that the police reforms need serious deep research as the knowledge of the experience of other countries will make profitable conditions for the current reforms that take place in the Ministry of Internal Affairs of Georgia.

References

1. Gubanov A.V. 1999. *Police of Foreign Countries*. Moscow.
2. Luneev V. V. 1997. *XX century Criminality.* Moscow.
3. Smith A., Polloch B. 1975. *Some Sins are not Crimes*. N.Y., p.208.
4. Judicature. 1982. Chicago. vol. 65. #10., p. 470.
5. Polisia Nuova.1995, #12,p.16
6. Gessner R., Khertsog Kh. 1990. *Beynd the Façade of Law. Methods of New Secret Police.* Moscow.
7. *International Police Reviet*. 1993, #5, p.75
8. *Practical ways to Crack Crime*. L.,1989, p.34
9. Todria G., Badzagua M. 1999. Anti-corruption Social Movement Is the Necessity for the Development of Society! *Law.* No 1. P. 11-14.
10. *Police and Order in USA*. 1990, p.137.
11. *The Yale law journal*.1970, vol.79. #3. p. 359.
12. *International Police Revier*.1996 #8. p.13-14
13. Schneider G. 1994. *Criminology.* Moscow, Progress, pp. 437-438.
14. Skolnick J. 1966. *Justice without Trial.* New York-London-Sidney.
15. Sellin T. 1938. *Culture Conflict and Crime*. N.Y.
16. Klark R. 1975. Police in the Epoch of Shocks. *Criminality in the USA.* Moscow, Progress, pp. 211- 240.
17. Wilson J. 1972. *Varieties of Police Behavior*. New York.

18. Harey C., Banks C., Limbardo P. 1973. Interpersonal. *Dynamics in a Simulated Prison,* IntjcrimPen., #1,p.69-97
19. *Organized Crime in the United States of America.* 1953. Nikoforova B. S. (editor). Moscow.
20. Gromakov S. 1958. *Anti-democratic Legislation of the USA*. Moscow.
21. Mikhailovskaya I. S. 1971. USA Police, Its Organization and Essence. *Issues of Struggle against Criminality*. Moscow. Issue 13, pp. 141-177.
22. Harrison R. *Jfe C.G.D. and F.B.G.* London, 1956.
23. Blankenburd E. 1973. Die Selektivital rechtlicher Sanktionen. Jurgen Freidrichs (Hrsq.) – *Teilnehmende Beobachtung a bweichenden Verhaltens*. Stuttgard, p. 120-150.
24. Blankenburg E., Klaus S., Wibke S. 1978. *Sozialkontrolie.* Berlin.
25. Punch M. 1979. Policing the Inner City. *A Study of Amsterdam's Warmoesstraat*. London-Basingstoke.
26. Reiss A. 1971. *The Police and the Public*. New Haven-London.
27. Discussion Concerning Two-level Creation of the System of Protection of a Public Order in Great Britain. 1995. *Struggle against Crime in Foreign Countries*. №5, p.16.
28. Bottomley A. 1979.*Criminology in focus*. N.Y. p.157-159.
29. McCorkle R. 1993. Punish and Rehabilitate? Crime and Delinquency. v.39, #2, p. 245.
30. Crime Prevention. *Struggle against Crime in Foreign Countries*. 1993. №12, p. 4.
31. About Impact of Economic Factors on Crime. 1994. *Struggle against Crime in Foreign Countries*. №11.
32. Information Support in the System of Law Enforcement Bodies of the USA. 1993. *Struggle against Crime in Foreign Countries*. № 10, p. 22.
33. Ames W. 1981. *Police and Community in Japan.* Berkley.
34. Chada K. 1989. *Criminality and Criminology in Contemporary Japan.* Moscow.

Contributors

Finckenauer, James O. - Served the School of Criminal Justice from 1974 to 2011 as an Associate Professor, Professor I and Professor II. He was one of the founding faculty members during the creation of the school. Over the years, his research and teaching interests included international and comparative criminal justice, transnational organized crime, and criminal and juvenile justice policy, planning and evaluation. He authored, co-authored or co-edited ten books, as well as numerous articles, chapters and reports. During his Rutgers tenure, Professor Finckenauer edited both the *Journal of Research in Crime and Delinquency* and *Trends in Organized Crime*. He also served as President of the NJ Council of Educational Institutions for Law Enforcement, the Academy of Criminal Justice Sciences and the International Association for the Study of Organized Crime. He was a visiting professor in Australia, China, Germany, Japan, and Russia, and studied or lectured in Europe, Asia, the former Soviet Union, Latin America and the Middle East. From 1998-2002, he was Director of the International Center at the National Institute of Justice of the U.S. Department of Justice, while on academic leave; and in 2007 he was a Fulbright Senior Specialist in Hong Kong. Dr. Finckenauer continues to serve Rutgers as a member of the Core Faculty of the Division of Global Affairs, and Co-editor of the *Online Journal of Criminal Law and Criminal Justice Book Reviews*.

Rege Aunshul. - Assistant Professor with the Criminal Justice Department at Temple University. Ph.D. Criminal Justice, Rutgers University, Newark, NJ, USA, September 2008-present. M.A. Criminal Justice, Rutgers University, Newark, NJ, USA, May 2010 M.A. Criminology, Saint Mary's University, Halifax, NS, Canada, October 2008 B.Sc. Computer Science, University of British Columbia, Vancouver, BC, Canada, May 2002 Research interest: Environmental Criminology and Offender Rationality; Geographic Information Systems (GIS) and Spatial Analysis Cybercrime; Law, and Society Terrorism, Security, and Social Control Surveillance; Regulation, and Society; Corporate Crime and Organized Crime. Aunshul Rege obtained various academic awards and was a scholarship holder of various foundations, e.g., - Dissertation Fellowship, Rutgers University, 2011-2012, Doctoral Fellowship, Social Sciences and Humanities Research Council of Canada, 2008-2012 Presidential Fellowship, Rutgers University, 2008-2010 Master's Scholarship, Social Sciences and Humanities Research Council of Canada, 2007- 2008; Graduate Award, Saint Mary's University, 2007-2008, and other. She is a member of American Society of Criminology, 2009-2010 and Canadian Criminal Justice Association, 2008-2009, 2007-2008

Kury Helmut – Doctor Kury is a German psychologist and criminologist. He was in 1974 at the University of Freiburg doctorate and habilitation in 1984. He was the first director of the Criminological Research Institute of Lower Saxony , and then was a professor of forensic psychology in Freiburg and the Max Planck Institute for Foreign and International Criminal Law operates. Helmut Kury is honorary professor at the University Didorenko, the State University of Lugansk / Ukraine, the State University Adilet in Almaty / Kazakhstan and

Robakidze University in Tbilisi / Georgia. Known to the general public as it related to the appraiser was premature pardon of Christian Klar

Kuhlmann Annette - Doctor Kuhlmann is currently professor for Sociology and Anthropology at the University of Wisconsin - Baraboo in the US. She grew up in Germany and moved to the United States after receiving a graduate degree in Education. There she completed two doctoral degrees, in American Studies and in Sociology. Her focus on race and ethnic relations was supplemented through applied work with a Native American Community. As part of her appointment with the UW-Baraboo she taught for 17 years in a college program at a medium security federal male prison. Annette Kuhlmann's research focuses on punitiveness, stratification, gender, and comparative criminal justice.

Eliko Ciklauri-Lammich – Doctor of Law. In 1983 she graduated from the Tbilisi State University, Faculty of Law, Doctoral Program. In 1991 shee graduated from the Moscow Institute of State and Law Doctoral Program. In 1999 defended her thesis in criminal law titled "Problems to Combating and prevention organized crime"
Ciklauri-Lammich is working at Max Planck Institute for International and Foreign Criminal Law at Criminology Department (Freiburg, Germany) as Coordinator researchers at the former Soviet Union Countries since 2005. She is co-director of the joint Max Planck Institute and Gr. Robakidze University Centre for Prevention of Crime and Comparative Criminology since 2012,
Since 2008, the organization " Women in Law Without Borders ' Founder ;
2008 - Up to now, the German , Swiss and Austrian Criminologists Society;
2007 - Present - German Law Women's Union;
2003 - Present - Chairman of the Society of Women in the South West Germany
2003 - Present - International Alliance of Women (IAW) the member ;
2003 - 1999 BC - Southern District of West German women, German Deputy
2003 - The International Alliance of Women (IAW) 100 -year anniversary of the Organizing Committee , Fraumen Ring Breisgau head ;
1996 - Member of the German Society of Women (DFR)
1995 - German Society for East European Studies (DGO):

Zernova Margarita - Dr Margarita Zernova is a lecturer in Criminology. LLB (University of Hull United Kingdom), PhD (University of Hull United Kingdom) Her doctoral research involved an examination of aspirations of restorative justice proponents and experiences of participants in family group conferences. Her current research revolves around ethics of restorative justice. She has contributed to articles on restorative justice to the Handbook of Restorative Justice (Johnstone and Van Ness 2006), British Journal of Criminology, and British Journal of Community Justice. She has also presented papers at the National Conference on Restorative Justice, British Society of Criminology Conference, and European Forum for Restorative Justice Conference and the International Institute for Restorative Practices Conference. Forthcoming publications are as author of Restorative Justice Ideals and Realities and an article in Contemporary Justice Review.

Paramonova Svetlana – LL.M., is at the current time employed as a Researcher at the Max Planck Institute for Foreign and International Criminal Law in Freiburg i. Br., Germany. She graduated the Faculty of Law of the Siberian Federal University (former Krasnoyarsk State University) in Russia. There she was employed at the Law Faculty (Comparative Law Department), worked as a legal adviser at the law clinic (*pro bono* legal aid) and later as a lawyer at the Legal Department of the Siberian Federal University. Her *PhD and LL.M* degree Svetlana Paramonova obtained from the *University of* Passau (Germany). At the University of Passau she was employed at the Chair for Criminal Law, Criminal Procedure and Criminology. Svetlana Paramonova obtained various academic awards and was a scholarship holder of various foundations, e.g., U.S. Government Scholarship (FLEX), TEMPUS (European Union Program), German Academic Exchange Service (DAAD).

Ilchenko Oksana – Associate Professor in the School of Humanities in the Far Eastern Federal University. Phd. in Sociology. Pacific State University Russian Federation, 2009. Courses: "Theory of social work", "Social Pedagogic", "Psychology and social work with drug and alcohol consuming people", "Social work with disability persons", "Social work in foreign countries", "Psychology of advertising", "Psychology of families", "Ethics in Social work"; Responsible person for students' science work. 01.10.2010-31.03.2011 (Germany). DAAD fellow «Immanuel-Kant-Forschungsstipendien und -aufentha-2» Project «Child abuse and neglect», 01.07.2012 – 01.09.2012 (Germany). MPI stipendium, project «Crime against minors: when parents kill their child», 01.02.2012 – pr. time (Russia). Collective Research Grant from President of Russia Federation «The growth of women's violent crime in the Russian Federation: comprehensive analysis of the factors and prevention measures». 25 scientific publications.

Shostko Olena - Professor at National University "Yaroslav the Wise Law Academy of Ukraine" Head of the Sector for Study of International Cooperation in the Fight against Crime at V.V. Stashys Scientific-Research Institute for Studies of Crime of the National Academy of Legal Science . Expert Anticorruption Action Centre (AntAC), Ukraine *Counteracting Organized Crime in European Countries.* National Correspondent from Ukraine at the European Sourcebook of Crime and Criminal Justice Statistics. Yaroslav the Wise Award in the category "For preparation and publication of textbooks for law students of higher educational institutions". Yaroslav the Wise Award in the category "For Outstanding Achievements in Scientific-Research Work in the Science of Law" The National Academy of Legal Sciences of Ukraine.

Todria Giorgi – Doctor of Law, Professor at Grigol Robakidze University School of Law. He was born on November 12, 1949. In 1971 he graduated from Ivane Javahishvili Tbilisi State University Faculty of Law. In 1983 he defended a thesis on "the basic concepts of criminology". He is the author of many scientific works in the Philosophy of Law, Criminal

Law and Criminology; co-author of the Criminology textbook. He has taken part in various projects and international conferences. He is a member of the Crime Center for Research and Forecasting, as well as a member of the Criminological Association.

Mosulishvili Manana - Doctor of Law, Professor at Grigol Robakidze University. She has the highest pedagogical and legal education. 1976-2004, she worked in various positions in the Ministry of Internal Affairs. Since 1990 she has been involved in scientific-teaching activities. In 2001 she defended the thesis on the topic "Moral and Legal Responsibility - Legal Aspects" at Ivane Javakhishvili Tbilisi State University. She has 45 scientific publications, including 5 monographs (4 with co-authors); has participated in a dozen international scientific conferences. 2006-2010 she was the Dean of the Faculty of Law. Currently she is the Head of Quality Service. In order to improve the qualifications she visited Poland and the United States. Professor Mosulishvili is a member of the Women's Council, a member of the Basketball Federation, Honored Worker of Internal Affairs, War and Military Forces veteran, has received government awards - 8 Medal of Honor

Dekanozishvili Gia - Doctor of Law, Professor at Grigol Robakidze University School of Law, member of the Council, Head of the Criminalistics (Forensic Sciences) Laboratory. He was born on February 18, 1962 in Tbilisi. In 1984 he graduated from the Polytechnic Institute. In 2001-2005 he worked at the Ministry of Internal Affairs Academy. In 2009 he defended the thesis on “The interrogation of contemporary problems in criminal justice and the Crime." He delivers a course of Forensic Sciences at the School of Law. Doctor Dekanozishvili has published 12 scientific works, including monographs. He is a veteran of war and military forces.

Mosulishvili Amiran - Doctor of Law, Associate Professor at Grigol Robakidze Unievrsity School of Law, member of the Dissertation Board. He was born on 9/9, 1983 in Tbilisi. In 2004 he graduated from the Ministry of Internal Affairs Academy. In 2007 he enrolled at Grigol Robakidze University in doctoral program. On November 10, 2009 he defended his thesis: “Characterization of Drug and criminological aspects of the fight.” Teaching experience since 2006. He leads course at the School of Law in criminal justice at Grigol Robakidze University. In 2008 he was awarded a 30-hour course, "Critical Thinking and Active Learning at Universities" - certificate. He has taken part in four scientific conferences, including abroad. He is the participant of 2 research grants - in 2007 the "Youth against Crime" and in 2009 as a trainer, "a corruption crime" of fighting. He has published 8 scientific papers.