

Alenka Šelih · Aleš Završnik *Editors*

Crime and Transition in Central and Eastern Europe

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Foreword

This insightful book tells a story of the so-called ‘other Europe’. It is a story that is surprisingly seldom told in criminological circles, and when it is, this is mostly done by the voices originating from the ‘old Europe’ and the rest of the West. These voices, well-meaning and interested as they may be, have often lacked in local knowledge and nuance and have been unable to see ‘the other Europe’ in its diversity, complexity and richness. Nor have these observations been free of preconceived notions of ‘the other Europe’s’ putatively deplorable past and its appropriate future directions. This book is a diligent attempt to redress the imbalance. It is an important contribution, not only towards a greater plurality of criminological voices but, crucially, also a contribution towards greater variety of the tunes that are being played.

The narrative of transition from socialism to liberal democracy in the Eastern and Central Europe tends to be told as one of a march towards progress and freedom. Although most observers are willing to acknowledge the enormous costs of the transition and the apparent shortcomings of the new social and political orders which have been established in the aftermath of socialism, these problems tend to be ascribed to the ‘youth’ and ‘immaturity’ of the democratic traditions and the political institutions in the societies in question. In short, democracy is hard work, but a worthwhile sacrifice to be paid for freedom. This book is an encouragement to rethink and revise this position, at least when it comes to the issues of crime and its control. Several contributions in this collection show how the narratives of freedom and human rights—the corner stones of the critique of the old socialist regimes—are being subverted by the ideas imported from the West itself. As a historic irony, the borders of Central and Eastern Europe are, twenty years after the fall of the Berlin wall, once again being closed off and militarized. Surveillance technologies are proliferating and colonizing new spheres of everyday life, penal populism is gaining strength, and the effectiveness of combating social ills and enemies is gaining precedence over due process of law. These growing commonalities with the Western European crime control practices may indicate that rather than these societies being ‘immature’, their transition towards the so-called ‘European model’ has in fact been successful.

Throughout, this text forces us to reconsider ‘the other Europe’s’ otherness. The West may be able to see in the journey taken by ‘the other Europe’ its mirror image, which it may not necessarily like. The underlying story of this collection is how the ‘great transition’—ushered in by foreign experts and advisers, and more or less eagerly welcomed by the people hungry for change—has brought in more, rather than less repressive penal policies. The book also provides a wealth of new insights about issues such as trafficking and organized crime. These types of crime tend to be talked about, and studied from the Western European perspective, as an unwelcome foreign import from the East. Yet they are, as several contributions in this volume remind us, phenomena which have been intrinsically connected to the transition process and the anomic debris it has produced in the societies in question. *Crime and Transition in Central and Eastern Europe* is a book that, if read carefully, offers its reader an opportunity to look at the phenomena we study in a new light. This is far from a modest achievement. The contributions in the volume force us to address and consider the numerous similarities between the East and the West (as well as questioning the overall usefulness of the terms). The lines of division between crime control in late-modern democracies and the former totalitarian regimes are far from clear cut. The book therefore also encourages us to rethink a more fundamental issue, namely, the difference between democracy and totalitarianism.

This volume is a most welcome invitation to reflect on the comparative state of crime and crime control policies, as well as the state of criminological scholarship. Criminology has been throughout history predominantly not only a western discipline, but also a discipline built on a presupposition of peace and relative social stability. This book, on the other hand, charts social transformations which were born out of profound seismic shifts and turmoil, the unsettling of the existing social and political structures and, in the case of former Yugoslavia, even warfare. It opens perspectives and traverses geographies less traveled by criminological scholarship. I would encourage everyone to take the journey.

Oslo, January 2012

Katja Franko Aas

Acknowledgments

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We have both profited from the constructive atmosphere at the Institute of Criminology at the Faculty of Law, University of Ljubljana. Discussions, both formal and informal, with our colleagues have often been connected with the topics dealt with in this book and we owe many an idea to these encouraging and inspiring conversations.

Our thanks go also to all our co-authors, with whom we have had friendly contacts for many years, and with whom we met while the book was in preparation for two one-and-a half-day meetings in Ljubljana. The exchange of ideas, proposals as well as remarks, critiques and suggestions was most fruitful and gave us further incentive to proceed with our endeavour. It was fortunate that the authors enjoyed similar stimulating environments in their respective countries and institutions to ours in Ljubljana.

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Ljubljana, 29th of December 2011

Alenka Šelih
Aleš Završnik

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Introduction

In 1959, Czesław Miłosz, the Polish Nobel laureate, published a book of memoirs on his student years entitled “Rodzinna Europa”—“The Native Realm” in the standard English translation, but more literally, “The native Europe”. When the book was translated into French the French editor suggested that the title should be changed slightly to “L’autre Europe”—“The other Europe”. It seemed as if Eastern Europe did not quite qualify as “native”. Many years have passed since then—and colossal changes have taken place in Europe as well as in the world, but this special sense of Central and Eastern Europe as not-being-quite European can still be felt from time to time. The anecdote seems to catch “l’esprit de corps”, the state of mind, when it comes to Central and Eastern Europe: a mixture of insecurity, exoticism and lack of knowledge that permeates most discussions about it. In an attempt to help change this image, the authors of the present book started work on a collaborative project of which the results are presented in the following chapters.

During the last 20 years crime problems in the countries of Central and Eastern Europe (CEE) have been the subjects of much research, both from within the region as well as the West. With time, however, researchers from CEE countries felt that they themselves should tell this “crime story” in a more comprehensive way. The wish to survey the past 20 years of crime problems and crime policy in CEE countries was the starting point for the collective effort which led to the present book.

The first stimulus came from researchers at the Institute of Criminology at the Faculty of Law, University of Ljubljana, Slovenia, where criminological research has been carried out for more than 50 years. One of the editors, Alenka Šelih, contacted colleagues in other CEE countries with the basic idea for the project. Since all were ready to participate, the concept was then taken further by the editors.

We all thought that after a lapse of 20 years, it was possible and necessary to find a balanced view of the crime problems in our respective countries and to present a broader picture of it in a comparative way. After the “Big Change” of

1989 and its ensuing repercussions for the crime situation, this picture of the epoch has stabilized, and it seems that no major qualitative changes stemming from transition will occur in the near future.

During the past 20 years, many partial analyses of the crime problem in general in the CEE countries have been set forward; many of them by foreign scholars. We felt that researchers from CEE countries themselves should bring together their experiences and present their views on the changes that occurred and their explanations for those changes. It was felt that the analyses and views published abroad differed from those of researchers who were born and based in the CEE countries themselves, and that this difference should be noted and explored. Foreign researchers brought positive and negative experience to the field of crime and crime control phenomena in the region. They had the advantage of an outside view of the challenges the CEE countries faced, and they brought some new and fresh ideas. Yet CEE researchers could not help but notice that sometimes some basic knowledge about these countries, their culture, life in the past, their administrative systems and other essentials were absent from these western studies; and it is rather difficult to explore a complex phenomenon such as crime and crime control without some knowledge of the language spoken in the country one is analysing—as was sometimes the case.

In 2009, the Ljubljana researchers began further dialogue with colleagues from the Czech Republic, Hungary and Poland, Bosnia and Herzegovina, Croatia and Serbia. It was agreed that the project should be carried out in countries which—at least to some extent—had similar historical experiences and have some common heritage. The first three countries (although for Poland this is true only in part) together with Slovenia and Croatia had been parts of the Austrian-Hungarian empire over a long period of time; while Bosnia and Herzegovina, Croatia, Serbia and Slovenia had for a shorter period been fellow members of the former Yugoslavia. Beside the obvious fact that all were socialist states, most of these countries also shared a similar culture and value system, with strong geographical and historical ties. A decision was reached that the former German democratic republic could not be included in the project since its transformation after 1989 differed completely from the other former socialist countries taking part here. These countries naturally offered strong contrasts and idiosyncrasies—but we believed that these would combine fruitfully with the common traits which provided as a basis for comparative analysis.

The main idea of the project was to present an overall picture of crime problems in the last 20 years—as we perceive and assess them now; to elucidate particular crime and crime control challenges in the socialist system and how these transformed in the wake of the political changes. In this respect, the team agreed that the topics chosen should refer to particular components of crime policy that have been strongly influenced by the changes (e.g. the role of politics, the role of the media); they should deal with some of those segments of the crime control system that directly experienced major institutional and operational changes (e.g. surveillance, policing, penal policy); and, finally, they should consider groups of criminal offences that have raised particular concern during the last 20 years (e.g.

economic and organized crime, corruption, human trafficking, juvenile delinquency) and also reflect on some critical stances developed during the transition. These problems are tackled at two levels: analyzing a particular crime or crime control problem by giving a general overview of it in the region and then by an in-depth analysis of it in a particular country. It is hoped that the two approaches combine breadth with depth on the specific issues they address. As a prologue to these analyses of particular problems, a comparative chapter dealing exclusively with crime problems in these countries as a whole gives a more extensive introduction to the book.

Each of the contributors was free to choose his or her research methods; however, to harmonize the different aspects and approaches of the whole procedure two research meetings were held in Ljubljana—in January and in July 2011. During these very useful and constructive symposia, problems for further investigation were aired and analyzed, the first, peer-reviewed drafts of the chapters were shared and commented upon and the structure of the book discussed and prepared.

The book is composed as follows: the introductory chapter on crime problems in CEE countries as viewed from a comparative perspective (Part I) is followed by case studies dealing with the particular crime and crime control challenges identified as typical of the CEE region in post-socialist transition: the media's influences on the perceptions, fears and subsequent politicization of crime (Part II); surveillance, policing and penal policy (Part III); organised and economic crime, corruption, human trafficking and juvenile delinquency (Part IV); and a final theoretical chapter on what transition means in political and philosophical terms (Part V).

In [Chap. 1](#), Alenka Šelih (Slovenia) points out that the twentieth century has seen several forms of transition from one system to another—starting with the transitions experienced after World War I (with the break-up of the Austro-Hungarian empire) and II (the reconstitution of the Federal republic of Germany and Italy) and in the sixties and seventies (in Greece, Spain and Portugal); but argues that the transitions made from socialism to capitalism after 1989 were the most profound of all of these. She emphasizes the differences between different CEE countries and draws attention to the different ways in which crime was dealt with in different countries. After giving an account of what changes the former socialist countries had to introduce in the process of making this transformation, the author reviews those with direct import to crime, crime policy and crime control. In retrospect, it is actually difficult to believe that such profound changes have passed so peacefully. She enumerates the political changes, draws a picture of the social cost populations in these countries had to pay during the transition processes and gives an account of the role of politicians and the media within them.

The author moves on to present the legal framework—which was comprehensively altered,—redefining criminal offences and criminal procedure as well as implementing the new structures to the overhauled criminal justice systems. She goes on to offer a broad comparative statistical mapping of the main crime

parameters in the countries reviewed and finally a survey of theoretical explanations of crime problem in these countries. According to her, such profound change to almost all aspects of life in a country and its society can only be explained from a multi-causal point of view: the process was too deep and far-reaching to be explained by a single causal approach.

In the author's opinion the future will demand an answer to the question of whether a more repressive or a more humane crime policy will take hold in these countries. In the author's opinion it would, however, be a cruel historical irony if the standards of human rights protection within the criminal justice system which have been achieved in CEE countries during the last twenty years should be sacrificed for an efficiency-oriented and repressive crime policy.

In *Chap. 2*, Anna Kossowska and co-authors (Poland) draw attention to three phenomena connected with crime policy which are new for CEE countries: fear of crime, crime policy as a political issue and the impact of the media on public perception of crime. These new phenomena are directly or indirectly related to the liberalisation and commercialisation of the media which was legitimised with by newly instituted civil liberty of free speech and which has subsequently had a great impact on crime policies in the CEE region. After 1989 crime itself was made prime-time news and politicians "discovered" the power of the mass media could have over the concerns people might have about crime. Crime became firmly established on the political agendas of all political parties in the region. An in-depth analysis is given of the Polish situation, illustrating the influence of the media on the public perception of crime and consequently on the level of fears about crime. Politicians' growing perception that crime policy could be an important political tool and a means of winning votes had a highly significant influence on the ways crime policy was then conceived. Twenty years after the beginning of the post-socialist transition and taking into account the differences among the countries reviewed in the project, a common feature emerges: these countries have begun to fall—as far as these three phenomena are concerned—within the ambit of the same rules which apply in the "mature" democracies of Western Europe.

Three inter-related phenomena are tackled in the third part of the book: a shift towards the privatisation of surveillance, transformations of policing and the challenges to standards of "democratic policing" posed by organised crime, and changes of penal policy in the CEE region.

In *Chap. 3* Aleš Završnik (Slovenia) situates new technologically enhanced surveillance practices (TESPs) in the social and economic turmoil of post-socialist transition. Surveillance technologies are understood as carrying out "politics by other means" and as a socially embedded phenomena. Their transformation coincided with social, political, economic and cultural changes in the region, some of which are highlighted as being decisive to the evolution of surveillance, in particular privatisation and the denationalization of once "common" property; transition to the capitalist and free-market economy; and EU integration. Završnik presents some of the most remarkable shifts in surveillance practices in the region, e.g. changes in border surveillance where the focus is no longer on preventing the

emigration of citizens but on regulating illegal immigration, and continues by illustrating the flourishing multi- and cross-disciplinary “surveillance studies” which have nevertheless failed to take account of developments in the CEE region. The chapter tries to fill the gap by presenting some equivalents to surveillance studies in the social control theories developed in the CEE region and then gives a brief historical overview of surveillance in the region. The author recalls how socialist surveillance put a high focus on labour-intensive police surveillance conducted in the name of protecting national security, and continues by discussing the important role that the police—the central surveillance subject in the socialist period—played in the Balkan war.

By focusing on the privatisation of surveillance and booming private security industry Završnik shows the discrepancies that exist in the CEE region and shows how the creation of a “minimal state” that outsources even the protection mechanisms of its citizens has been conducted in the name of the very same corpus of fundamental rights and liberties that consigned socialism in the region to the waste dump of history. He concludes by offering a few examples of counter-surveillance initiatives and citizens’ self-protective organisations in the CEE region in order to map the way TESP’s are blurring once clear hierarchies between the subjects and objects of surveillance.

The transformation of police forces—the primary agents of social control in the “totalitarian” regimes—was one of the central tasks CEE countries faced in the transition from socialism. In [Chap. 4](#), Primož Gorkič (Slovenia) tackles the trend of re-establishing police forces in line with ideals of “democratic policing”, ideals such as serving civil society, transparency, accountability, integrity management, relative autonomy and professionalism. These principles might have stemmed from the West but were in fact undermined in the CEE region by countervailing trends in the development of policing in “old democracies”. In other words, CEE countries were under pressure to meet the thresholds set by “developed democracies” at the same time that policing in the “old democracies” began to prioritise “efficiency” and “effectiveness” in, for example, fighting organised crime. Gorkič argues that new policies and protocols made violations of human rights and the principle of the rule of law ever more possible. The CEE countries thus followed suit in instituting new organisational measures for fighting organised crime and securing special, covert powers of investigation. Ironically the same methods and powers now used to combat organised crime resemble to a great extent to methods used to uphold former “totalitarian” socialist regimes. Through this line of inquiry the author asks whether the measures apparently necessary to deal with serious types of crime stand up to the principles of democratic policing.

Gorkič focuses his analysis on the measures adopted in combating organised crime. The reasons for the focus are threefold: methods of policing organised crime are very well known; they stand in clear contradiction to ideals of democratic policing; and organised crime poses challenges to the values of democratic policing not only to CEE countries but across the world. He continues by outlining the essentials of democratic policing and the conflicting demands of policing organised crime for specialised law enforcement bodies, the tight coordination of

competent agencies at an organisational level, the application of asset seizure and special (covert) methods of investigation. After offering a general overview of police reforms in the selected CEE countries and detailed analysis of the new organisational measures for fighting organised crime and new powers of investigation the countries had to adopt in order to join the EU, the author unambiguously concludes that the adoption (or, rather, retention) of methods for which the police were most feared and loathed under socialist regimes is commonplace among CEE countries in transition.

In **Chap. 5**, Miklós Lévy (Hungary) focuses on oscillating penal policies in the CEE region in the post-socialist transition. Although crime rates began to escalate during the political and social changes which followed the “Big Change”, penal policy stayed “reductionist” with declining imprisonment rates at this time. The new governments humanized and rationalized the rigorous imprisonment-centred penal policies of socialist regimes by focusing on the safeguard of human rights. Nevertheless, penal policies started to change at the turn of the millennium, despite stabilising crime rates. In the last decade, to a varying extent in all CEE countries, the decision-makers on penal policy have been adopting populist formulas and introducing increasingly draconian penal policies, such as for instance “three strikes” sentencing legislation or the mandatory life sentence.

The author maps manifold reasons for such a disproportionate turn, which has led to an “expansionist penal policy”. There was already some initial confusion as to what exactly was meant by legislation and penal policy turning to a “European” model. At first at least, the predicate “European” alluded to progress and more particularly the denial of everything that remained from old socialist regimes. Later on, nevertheless, we can feel more directly than ever how the predicate “European” can, and too often does, mean exactly the opposite of (positive) progress. Lévy traces the reasons for the shift to a stricter penal policy and increasing prison populations to the phenomenon of “governing through crime” and the penal populism of recent governments, and clearly postulates these are not the “heritage of the socialist past”. By doing so Lévy clearly demonstrates how political and social changes affect crime trends and their impact on crime control institutions. The political system fundamentally determines the characteristics of penal policy and the latest developments in the field of penal policy indicate that the reaction to crime has become a significant political issue not only in Hungary, but as other chapters show, to some degree in every CEE country.

The fourth part of the book tackles four significant types of crime in the CEE countries: organised and economic crime (**Chap. 6**), corruption (**Chap. 7**), human trafficking (**Chap. 8**) and juvenile delinquency (**Chap. 9**). Martin Cejp and Miroslav Scheinost (The Czech Republic) deal in their chapter with organized and economic crime, which they describe as “a common problem”. And, indeed, in spite of the fact that such crimes existed in the socialist regimes it never reached the dimensions it has twenty years after the changes. The authors stress the importance of haste and radicalism in transforming the economic and the political system: the too rapid privatization of state property, redistribution and new accumulation of capital and “the hurried formation of the market economy”.

Processes that in developed capitalist countries have taken at least decades if not centuries were here performed in one or two decades. Under the “old system” the state-planned economy, which turned into a permanently “in-short-supply” economy, the black market flourished and very often its actors simply adapted their old roles and started organizing a new “crime market” in the new system.

The economic changes implemented in transition countries were dramatic: capital, goods and services moved freely and these “new territories” were a target not only for domestic but also foreign criminal groups. Crimes connected with drug trafficking, human trafficking, stolen cars, arms trafficking and other illicit forms of trade were an ideal opportunity for local as well as international criminals and criminal groups. The lack of an adequate legal and institutional framework either to prevent or deal with these types of crime was enormous and these criminal groups as well as individual perpetrators knew how to take advantage of such a situation. After giving a general view on the development of economic and organized crime, the authors concentrate on an analysis of the Czech situation and present a detailed picture of these phenomena in the Czech environment. They give an account of how each of these crime groups, organized and economic, has developed and try showing the link to the (in)adequate legal regulation which has always fallen behind the actual crime situation. We can see also, how the crime picture—as far as organized crime is concerned—had been internationalized: while in the period pre-1989 foreign players were so to speak non-existent, nowadays, foreigners bring specialized forms of organized crime within Czech borders. The authors are rather pessimistic as to the future development of this situation and do not hide the possibility that the ongoing financial and economic crisis may only lead to further deterioration.

In their discussion on corruption in [Chap. 7](#), Velinka Grozdanić and Igor Martinović (Croatia) pose themselves the question of why corruption should take such a special place in crime in transition countries. They try to find answers to this fundamental question by analyzing the deficiencies and malfunctions of post-socialist societies: the lack of democratic traditions, the breakup of old institutions, and values as well as the economy after the changes of 1989, alongside the importation of new institutions in a most hurried way and under strong impetus from the outside world, and the enormous redistribution of capital from the state to the private sector, to enumerate some of the most important factors. They then proceed to develop a picture of corruption within particular sub-groups of the transition countries reviewed in the project.

The authors first present the general defining characteristics of corruption in the Czech Republic, Hungary, Poland (and also in Slovakia) and then in the countries of the former Yugoslavia. With regard to this last group, they try to show the pernicious effect the Balkan wars had on the economic situation and point to the fact that in some of these countries we could speak accurately of “state capture” in connection with corruption. After offering a new perspective on the different historical circumstances influencing the situation in each particular country, the authors turn to an in-depth analysis of corruption in Croatia, drawing a very critical picture of the situation; however, they also point out some positive trends in recent

years, which have seen efforts to set in place a legal and organisational infrastructure which may deal with corruption more successfully. After all, the latest developments in Croatia (such as court proceedings against a previous prime minister on charges of corruption) may prove that the country has set out on a new path.

Human trafficking has only recently become a key crime issue in CEE countries, reports Vesna Nikolić-Ristanović (Serbia) in [Chap. 8](#). She links this with the enormous social changes occurring in the region, especially with general growing insecurity, but also with the consequences of war and the turbulence this brought. This social context, combined with the geographical position of CEE countries, supported an expansion of human trafficking in the region as a whole. In contrast to many research projects that concentrate on the victims of this process, the author concentrates on the perpetrators, pointing out that she approaches the problem from a criminological rather than a victimological point of view.

She gives an overview of the human trafficking problem as a whole and presents a broad picture of its characteristics: she describes the role of particular categories of country—country of origin, transit or destination; categories of victims—who are still predominantly women but also increasingly children, trafficked mostly for sexual and labour exploitation. The author, who has conducted several prior research projects on the topic, uses some of the data she has gathered from these studies to shed light on the perpetrators of human trafficking. Traffickers are still mostly male, but among them there are women too; shockingly, in cases of the trafficking of children, it emerges that the traffickers are often the victims' parents. The perpetrators work either alone or in groups with different forms of organization. As to the role of traffickers the author differentiates between arrangers/investors; traffickers on the middle managerial level and amateur/low level activity. After giving this broad regional overview, the author turns to the situation in Serbia, whose geographical position has made a typical transit country. The author gives a detailed survey of this problem in Serbia: the forms in which it occurs are analyzed; special attention is paid to the perpetrators and their criminal behaviour, the influences of war are considered, and also how the criminal procedure copes with such cases. It is expected that readers will emerge with a new and chastened insight into this new form of criminal activity in the region.

Conflicting assessments of changes in juvenile delinquency over recent decades and social and economic turmoil in the CEE region too often lead authors to simplified conclusions about growing juvenile delinquency and a supposedly “punitive turn” in juvenile justice regimes in the region. In [Chap. 9](#), Hajrija Sijerčić-Čolić (Bosnia and Herzegovina) deals with the complex social changes which have affected CEE countries and left their traces on juvenile delinquency—its causes, consequences and trends, and on the juvenile justice systems seeking to tackle the problem. After presenting key characteristics and trends in juvenile delinquency in the CEE region she makes clear that a dramatic explosion of juvenile delinquency has not taken place in any of the transition countries, nor has any “punitive turn” occurred in juvenile justice either. The increase of juvenile delinquency rates occurred only at the beginning of the 1990s, but today, the levels

still have not reached those experienced by some countries in Western Europe. Juvenile delinquency is actually declining in CEE countries.

Having said that, Hajrija Sijerčić-Čolić nevertheless shows how despite such trends, the debates in the region focus on other important issues, such as recidivism of juvenile offenders; the great likelihood of juveniles who started criminal activities earlier in life reoffending soon afterwards; the perpetration of criminal offences in groups; and the perpetration of extremely serious violent offences by juveniles. Such developments raise a dilemma, the author argues, as to whether countries should intensify repressive responses to juvenile offenders or follow the concepts that have provided a framework for dealing with juvenile delinquency for more than a century. This framework is nothing less than a special “legal and cultural heritage” of CEE countries; and one aspect of this heritage that deserves special attention is without doubt the age of juvenile offenders with regard to the applicability of juvenile law. It is noteworthy that in all CEE countries the age limit is still remarkably low: in Bosnia and Herzegovina, Croatia, Slovenia, Serbia and Hungary juvenile law is not applicable to children who at the time of committing a criminal offence are less than 14 years of age (or in the Czech Republic 15 and in Poland 13 years of age). Although this is a somewhat symbolic indicator of a juvenile justice system’s orientation it still reveals how “the best interest of a child” has been a common feature of all CEE countries aspiring to preserve and improve a special approach towards juveniles; an approach based on providing help, encouragement, rehabilitation, reintegration into society and restricting punitive measures, while expanding the use of alternative measures and restorative justice.

The [Chap. 10](#), by Zoran Kanduč (Slovenia), tackles the question of whether the benefits and harms of transition from socialism to capitalism *summa summarum* have led to a progressive step forward or whether they in fact constituted a historical regression. The author’s answer is that it depends on how we conceive of “progress” and continues by offering a critical view of the mainstream narrative which sees “transition” in the CEE countries as being a “success story”. In doing so he tackles questions such as what actually “transition” means, since the western, first-world countries are themselves undergoing manifold transitions, politically and culturally; what it means for a regime to be “totalitarian”; what is and what has become of the concept of “freedom” in the (post)socialist transition, since the defence of this concept was the central legitimisation for the passage from socialism to capitalism in the first place. Kanduč also asks what is “post-modernization” and finally how the profound social changes seen in the region were truly affected by “crime”. In wrestling with such questions Kanduč takes as a critical point of departure offered by Bartolt Brecht at the end of *The Threepenny Opera*: “Who is the greater criminal: he who robs a bank or he who founds one?”

The author claims that the “transition” in the CEE region was a passage from the lethal crisis of (localized) “socialism” to the structural crisis of the (global) capitalist economy. This involved, or required, a slavish imitation and mindless or at best naïve acceptance of the suggestions, advice and imperatives delivered by foreign experts, politicians and agents of “the supra-national state of capital”

(e.g. WTO, IMF, European Union). Strong allegations are supported by the strong insights Kanduč offers by enumerating negative developments in the CEE region: the normalisation of corruption, organised clientalism, fragmentation of “society”, the dissolution of solidarity, the dismantlement of the social state, growing inequalities etc.

In his critique of transition and implicitly of capitalism the author admits that the “socialist systems existing in reality” can be labelled “dictatorships of bureaucracy” or “politically authoritarian regimes”. What he critically attacks is the label “totalitarian” socialism, because what the socialist “system” actually managed to create was merely a depoliticised outward obedience of citizens, while capitalist elites in Western democracies are much more successful in maintaining class rule, which is founded upon anonymous, invisible, arcane “market forces”, and a gigantic ideologically harmonized media apparatus. “Old democracies” can thus also be labelled “totalitarian”, since the average quantity (and quality) of personal liberty estimated according to the amount of time and energy “sacrificed” in the realm of economic activities (commodity production and consumption) far surpasses that seen in previous socialist regimes. From this perspective, the author continues, the “kingdom of freedom” has been reduced on behalf of a “kingdom of necessities”. Transition can not be described as a “liberation” or “emancipation”.

Kanduč’s post-socialist transition narrative focuses on developments of crime in the CEE region in which he highlights forms of predatory, fraudulent and corruptive activities that the moral majority accepted as more or less “normal” means of accumulating capital, wealth and prestige. In his previous works the author has labelled such harms as forms of “structural violence” that encompass unjustified inequalities, socially unnecessary heteronomous work, the growth of precarious jobs, the irrational organisation of a profit-oriented economy, ecological destruction etc. The (post)socialist transition has also been marked by broadening the “traditional” category of criminals through a diversified group of offenders occupying the highest positions in state apparatuses, private firms and “civil” society organisations, the members of which include first ministers, judges, public prosecutors and lawyers whose defining feature is their “normality”: their motivation in committing crime seems quite normal, to a post-transition mentality, and accords well with the omnipresent desire for the quick, easy, effortless acquisition of money. With such a critical alternative narrative of transition in the CEE region, the author probes the foundations not only of CEE countries but also, if not predominantly, the “first-world” democracies which guided them through this period of social and political change. The result, which this volume as a whole seeks both to analyse and illustrate, is a portrait of crime and transition, and the relationship between the two.

Alenka Šelih
Aleš Završnik

Part I
Changes in Crime and Crime Control

Chapter 1

Crime and Crime Control in Transition Countries

Alenka Šelih

Abstract This chapter offers a comparative overview of the main problems CEE countries have faced during the period of transition. By drawing attention to the fact that many European countries found themselves ‘in transition’ several times in the twentieth century (after WWI and II, after the collapse of totalitarian regimes in Spain, Portugal, Greece) the author suggests that the transition process the CEE countries had to undergo was probably the most far-reaching and difficult of all. The characteristics of crime, views on crime and crime policy in socialist systems are then analysed and the challenges facing CEE countries during the transition process illustrated. The political, economic and social changes affecting crime, crime policy and crime control were enormous and came at great cost for the populations of these countries. In the field of crime policy it was necessary to change all the important elements: legislation, the judicial and law enforcement systems—and this at the same time that the economic system was also transforming completely while some countries in the region were obliged to fight, in some cases through atrocious war, for basic sovereignty and independence. The chapter traces the complex process of developing new structures in the area of crime policy: the coming to life of new legislation, the unexpected increase in crime in the first years after the ‘Big Change’ and the changes experienced in all areas of the institutions dealing with crime—the police, prosecutorial service, courts and magistrates as well as the prison systems. The author also gives an analysis of the theoretical views presented by Western experts as well as by those from CEE countries and argues that in seeking to understand such a vast and involved historical shift one must regard it from a multi-causal viewpoint, since it is impossible to explain entirely from any single perspective. The chapter goes on

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to discuss the importance of human rights issues (within the criminal justice field) and asserts that these issues have become of utmost importance in the CEE countries at a time when they appeared to be losing ground in Western democracies, especially in the aftermath of 9/11. It concludes by stating that 20 years after first undergoing the major changes brought about by transition, crime in CEE countries has stabilised. The differences between these countries are considered, and compared to similar differences among West-European countries. Finally, the chapter touches upon the question of how crime and penal policy may develop in the future and argues for a humane and fair crime policy system.

1.1 Introduction

1.1.1 Transition in Different Countries and Political Systems

During the twentieth century, which was at the onset heralded as the century of prosperity, peace and societal development, Europe was confronted not only with two world wars but also with two totalitarianisms—nazi-fascist and communist—of which both had tremendous effects on the continent as a whole but especially on the lives of the populations brought directly under their control. It should therefore come as no surprise that different European countries have, at different periods, passed through several different types of transitions. This discussion will of course be limited to features of the last—and probably the greatest—transition, namely that of East and Central European countries from a socialist to a pluralistic and market-oriented model of state organisation.

Offe (1997, p. 64) speaks of three ‘families of transformation’ in twentieth-century Europe: the postwar democracies after WWI in 1918; the post-war democracies after WWII in 1945; the democracies of Southern Europe emerging from the mid 1970s on (Spain, Portugal and Greece—each breaking with an authoritarian past). The first of these ‘families’ probably differs from the others in that it was created by a war which devastated the societies in the countries on the losing side—but also left the ‘winners’ in a weakened position. However, when these countries organised themselves after the destruction of war, they introduced the same economic and political system they had known before: it was a market-oriented economy and a pluralistic political system (however limited it might have been before 1914). The transition after WWII with respect to Germany (and to a much lesser degree with respect to Italy and to Austria) was of a different nature since the country not only had to overcome the consequences of the war but also come to grips with its totalitarian past. However, as Offe emphasises, transition in these countries was less comprehensive as they could lean upon some not altogether distant democratic traditions as well as on a virtually identical economic system: the institutions and legal framework of capitalism (property rights, price

setting, labour markets and others) were already at hand for revival and development (Offe 1997, p. 64). This also holds true in cases of transition in the 1970s when Spain, Portugal and Greece moved towards a democratic social organisation. Offe remarks that all these countries have had some previous experience of democratic state structure and institutions in a not too distant past, however ineffective these institutions might have been.

The situation in the former socialist countries differs in many respects from these earlier transition processes. Very often all of these countries are taken and analysed as if belonging to a homogeneous group. However, major differences always existed among these countries and more emerged during the experience of transition. First of all, the situation and processes at work in Russia today should be considered quite separately from those in the formerly socialist countries. Because of its size and also specificities of its system Russia represents a special case apart from the other CEE countries. The transition taking place in the former German democratic Republic also differs completely from the other CEE countries (Boers 1996, pp. 314–337).

Among other CEE states one should also note a discrepancy in the fact that some of these countries had to digest two interconnected but nevertheless different processes: some among them have long been firmly founded states (e.g., Poland or the Czech Republic) while others at the time of transition also had to gain and establish their independence (the case of Slovenia, Croatia, Bosnia and Herzegovina, and to some extent Serbia). This dual struggle, especially when one considers the trauma of war suffered in Croatia and Bosnia and Herzegovina, made the situation especially complex and difficult.

There is another difference that should be taken into consideration: among these East and Central European countries there existed—in spite of the uniformity of basic social structures—significant differences in how the system was implemented. The former Yugoslavia, for example, after its break with the Soviet Union in 1948, had developed a relatively unique system among socialist states: the economy was planned only to a certain degree, enterprises enjoyed comparative independence from state authorities, creating a more liberated atmosphere, greater autonomy and more incentives to produce and sell more.

During the first years after the 'Change' it was rather common for all the countries emerging from this disintegrating system to be viewed by outsiders as comprising a monolithic bloc. Only with time did greater appreciation of the variety among them develop. It goes without saying, of course that they had shared some decisive common traits: one-party rule, political surveillance of citizens, verbal political criminal laws violating freedom of expression, criminal laws violating freedom of association, extreme limitations on private property and a planned economy. These common features, however, were manifested in these countries in diverse ways. Hungary, for example, had a more relaxed system of planned economy; in Poland the role of the Catholic church was much larger than in any of the other countries; the former Yugoslavia was a very decentralised federation and in contrast to all other countries in the region its citizens were generally free to travel abroad without visas. The distinction between CEE

countries with open and with closed borders was probably one of the most important.

Regardless of these differences, all these countries were faced in the 1990s with the need to transform. In contrast to forms of previous transition (those of the first two ‘families’) there had been no war to push them into it. On the contrary, it was pressure from their own populations that demanded the change—probably without knowing exactly what that meant and what it would involve. In retrospect, it seems that what the nations wanted was unachievable: to preserve the positive sides of the previous system, especially the job security it provided, along with social and medical care while enjoying at the same time the benefits of the new one: political freedoms, a more efficient economy, high standards of living, private initiative.

The transition processes which followed the first joy of acquiring new freedoms were much more profound than any that had been felt by the earlier European ‘families’. As Offe puts it: ‘what has been undertaken is not a change of regime only, but also a reorganization of the production system....There was no “revolutionary” blueprint showing how and in which sequence things have to be done’. (Offe 1997, p. 64). The CEE countries had to undergo a process of transformation—which combined “Western” standards and objectives—in order to get, among other benefits, much-needed support from Western states and bi- or multi-lateral organisations. It is true—as Offe remarks—that the political and economical models for these countries’ future was not drawn from their own past but imported (Offe 1997, p. 65); however, this import was at the same time wished for and demanded by these nations’ governments and populations. This wish might have been uninformed as to what the consequences would really be but there is no doubt that the desire itself was very strong and genuine.

In the field of crime problems and crime policy a ‘cocktail’ of suggestions and recommendations was placed in front of these countries’ representatives; who were left in no doubt that they were obliged to drink the glass dry if their nations were to join in the club of free, democratic and pluralistic countries they wanted so much to enter.

1.1.2 Crime in Socialist Systems

As a side effect of the systemic differences mentioned above there were also many variations in crime policy. Some of these countries were much more open as far as crime problems were concerned. Thus Poland was known to have a well-developed tradition in criminology with a department for this discipline at its highest research institution, the Polish Academy of Sciences. Hungary too, to foreign scholars, seemed more open than other countries. In the 1970s it organised a congress of the International Society of Criminology in Budapest—where I personally remember the intensity of the debates among criminologists from different socialist countries as to how serious a problem crime posed in their respective societies. The first international conference on crime policy in the former

Yugoslavia was organised in 1963—the conference of the International Society of New Social Defence; this was followed in the 1970s by the conference of the International Society of Criminology.

These different attitudes among researchers were translated into models of crime policy which diverged to varying extents in particular countries. Crime itself was (of course) viewed as a phenomenon intrinsically ‘strange’ to socialist society and its role and importance were played down in politics as well as in the media. However, theoretical views on it were not identical in all countries. A dispute between Slovenian criminologists and those from German Democratic republic in the late 1960s illustrates these differences well. The official explanation for crime in socialist society was that crime is a consequence of ‘the remnants of the past in the conscience of people’, a euphemism meaning that crimes were committed by individuals because some negative influences from the former (immoral capitalist) system still persisted in these individuals. (Buchholz et al. 1966, pp. 73–83). Another view on it also existed, stating that crime was rooted in the conflicts of socialist society and was present in current problems on a societal as well as individual level. (Bavcon et al. 1968, pp. 105–109). In a country which at least tolerated the latter view, crime policy could be conceived and carried out in a different way than in a country endorsing only the former view. This applies, for example, to one of the features of crime policy which some writers consider crucial to what might be called the ‘European identity’, namely the death penalty (Fijalkowski 2007, pp. 164–165). In Slovenia, which during the socialist period was of course a part of the former Yugoslavia, this penalty remained in the Criminal Code until September 1989; nevertheless, the death sentence was carried out for the last time in 1957 and passed by the court on only one more occasion in the interlude (with subsequent reprieve). In contrast to this, the penalty remained in use in other CEE countries.

Foreign observers and analysts of the crime problem in former socialist countries have observed that crime control under communism was an important means for maintaining law and order and that it was characterised by a system of terror and repression with its roots in the Stalinist era (Fijalkowski 2007, p. 157, 163). Los speaks of a ‘panoptical type of control’, where citizens lived with the constant assumption that they were or might be under surveillance (Los 2002, p. 169).

Such very critical views contrast with the views of criminologists from the countries in question. It may be that these are prejudiced by experience in their efforts to (self) critically assess the past situation. On the other hand, one cannot exclude the possibility that these authors knew and still know the situation in their respective countries somewhat better than foreign analysts. Regarding crime policy in CEE countries—Levay suggests—there were important differences in crime policy as well as in the situation it addressed, this being the consequence of different historical and cultural traditions but also of the level of development and the extent to which a given country ‘deviated’ from the socialist principle (Levay 2000, p. 36). This can be illustrated by the fact that prison rates (per 100,000 inhabitants) during the 1970s and 1980s differed greatly among these countries: in

countries such as Poland, the Czech Republic and Hungary they reached around 250–300 prisoners, while in the former Yugoslavia the corresponding number was around 70–80—the lowest of all being in Slovenia. Even if we take into account the unreliability of the statistical data and also the possibility of it being manipulated it is unrealistic to believe that this could have been so great as to render such a large discrepancy.

The (un)reliability of such data on crime and crime policy is regularly questioned. The difficulties connected with assessing crime in one country only over a period of time poses many questions since changes may be connected with very different factors (changes in criminal legislation, the rate of reported offences, ways of reporting, etc.). This is true of statistical data in a democratic society. In a totalitarian society priding itself on low crime rates these problems are still more acute. The content of statistical information was, in many cases, determined by political interests. According to authors from these countries the data was made unreliable by the non-recording of reported crime. While this was a widespread practice especially in the Soviet union, it was followed elsewhere, the main exceptions being Hungary and some of the states of the former Yugoslavia (notably Slovenia and Croatia) (Europe in a time of change: crime policy and criminal law, CE Rec. No. R(96)8: 87). According to Jasinski (1996, p. 7) ‘...the level of crime shown by criminal statistics was as high as the authorities wanted it to be’. In some socialist countries data on crime was kept secret (e.g., in the German Democratic Republic)—none of these states are however considered in this study. However, as there is no other statistical data and no means exist of testing its reliability we must still rely on the data as it was published by particular countries when comparing it with figures from the post-communist period, while bearing in mind the possibility of it being unreliable.

One important element in the picture of crime in socialist countries was the role of the media. Since it lay under the complete control of the ruling party this could not possibly play the role of a ‘watchdog’ for democracy. As crime was not ‘compatible’ with the socialist system reports on it were scarce. But although it is true that the media in these times may be said to have concentrated on ‘good news’ (or even propaganda) (Los 2002, p. 166) it did not ignore crime problems entirely. However, at the same time that media reports condemned and confronted crime, they were also preoccupied with emphasising how little overall importance it had on society as a whole. (Vodopivec 1990, pp. 97–107).

As a consequence of this lack of full and reliable information about crime, the level of fear of crime in CEE countries was low. In a way this contradicts the idea that fear was the first principle of Soviet-style control (Los 2002, p. 169). That being said, the object of this fear was not crime, however, or a widespread sense of being unsafe in the streets, but rather of the State itself. This unrealistic sense of safety was subsequently—after the Big Change—translated into a general apprehension of crime that was probably just as exaggerated. Studies on the fear of crime, however, were not completely unknown in these countries. A pilot study carried out in Ljubljana, showed that (only) half of the sample of interviewed persons felt safe in the streets at night (Pečar 1980, pp. 30–40).

Crime policy in the socialist system of course lay entirely under the influence of the single-party state. Given the declared ‘foreignness’ of crime to socialism, there was a general political desire not to emphasise the issue. In time, however, some regimes recognised the detrimental consequences of arbitrariness in crime control, and subsequently their respect for law increased. There were, of course, some political elements in crime policy and criminal law that the party insisted on retaining; these were in the first place political offences and at certain periods economic offences. The so-called ‘classical’ forms of criminality (property offences, violent offences and traffic offences) were not categories which especially interested the political authorities.

The criminal judicial system was not an independent third power, as dictated by the principle of the division of powers: even if it acted at times as relatively independent it remained a tool in the hands of the party.

Nevertheless, in the last two decades of the socialist system, the courts did attain a certain level of professionalism and independence—but only insofar as areas of their activity were not considered crucial by the party: an independence which could thus never extend to political offences. Within the limits—set forth by the party—of ‘classical’ crime the courts were relatively free to decide the cases according to law (as it was). One should also keep in mind that judges (or magistrates) were predominantly members of the party and, hence, under its control, so could not be expected to reason or rule with complete independence.

The law enforcement agencies were perhaps the most burdened by the system in which they worked. The law enforcement system before WWII in these countries was most probably stricter and more repressive than in West European countries. The great changes in this field took place in Western Europe in the second half of the twentieth century—and these were lessons never learned in CEE countries. Poor living conditions in the prisons and staff whose concern for prisoners’ welfare was minimal—and whose training in this direction was all but non-existent could only mean that prisoners’ human rights were violated on a daily basis. It should be stressed, however, that there were exceptions to this rule too—of which Slovenia was certainly an example.

The overview outlined here has shown, first, that the whole field of crime policy in the socialist system lay under the control of the party; it has also established that the means and forms of dealing with crime were different in particular countries and that with time respect for law had increased at least in some of them for certain kinds of offences, above all traditional offences.

1.1.3 Challenges Faced by Socialist Countries in Transition

Twenty years after the Big Change occurred it is well known what challenges the CEE countries in transition had to face and overcome: shifting from a one-party system to a pluralistic party system; from a planned (or other form of controlled) economy to a market economy; from a totalitarian state system to a democratic

one. Political and economic freedoms figured prominently in popular slogans of that time—but most probably those who demanded them did not know exactly what they comprised.

As noted earlier, particular countries got through this tumultuous period with different experiences: while some were well-established states, others had to gain their basic independence. Among this second group there were further major differences: two of this number, Croatia and Bosnia and Herzegovina were badly damaged in a violent war that left each country mutilated and changed their infrastructure into a devastated state. Serbia, meanwhile, in whose territory no direct military action took place, was confronted with other problems: an authoritarian political system which persisted until the fall of Milošević; NATO sanctions and Serbian war refugees from other parts of Yugoslavia. Because of this special situation, transition in these three countries started later than elsewhere in the region.

But regardless of these differences, the main challenges these countries faced were largely the same and the cost they exacted was similar.

According to analysts from these countries, the populace have paid and are still paying a high human and social price for transition. Kerezi believes that there were three types of consequences these countries had to deal with after the first changes: some of these were completely unexpected; some were expected to last much less longer than they in fact did; and others that turned out to be entirely negative (Kerezi 2004, p. 102). One of the latter factors was the economic situation. Kerezi cites public opinion polls from 2002 stating that three-quarters of the population in Poland, Romania and Slovakia saw the economic situation in their respective countries as bad; a smaller percentage in the Czech Republic (40%) and Hungary (25%) thought the same of their respective economies (Kerezi 2004, p. 102).

One of the unexpected consequences was the level of social differentiation transition brought about. The countries involved in the present project represent the more developed states among all CEE countries; however, all of them saw an increase in social differentiation, social division and outright social disintegration. Generally, one could say that in most of these countries, many inhabitants had lost their welfare net without gaining the benefits of the capitalist system. Social exclusion of the most vulnerable parts of population is thus a major part of the cost these countries' populations are paying for the changes.

According to Levay (Levay 2000, p. 45) the rate, intensity and character of the changes were extreme; occurring, moreover in relatively homogeneous and closed societies. The transformation began at a time when many of these societies were living in crisis conditions, making the ensuing upheaval even more difficult. As the past and its system of values, symbols and institutions were swept away, this led to relative deprivation among people, increase of inequality and social tensions, conflicts and social disharmony. On the top of this the prospect of these societies handling and solving social conflicts in an open and democratic way was weak, since the past did not furnish any models for doing so.

Another consequence that took much longer than expected was the slow process of changing how state authorities functioned. If social inequality and social

exclusion was one feature of the transitional processes, another was the problem of dealing with the way new state structures were supposed to develop. Let us repeat that all the countries were and perhaps still are largely perceived by the outside world as forming a more or less uniform system. Los gives a list of very 'unflattering labels' coined by different analysts to homogenise these countries together in characterizing an emergent post-communist state. These terms include 'the captured state', 'the privatized state', 'the criminal state', 'the extortionist/blackmail state' and others, similarly typifying the states in question by a corrupt, criminal or otherwise negative and above all inferior quality (Los 2003, pp. 148–161). Although this author makes some differentiation as to which countries such labels refer to, the overall impression is that to a greater or smaller degree at least one of these labels refers to all post-communist countries undergoing transition. While the views from inside the countries represented in the present project may be critical enough, such views from outside are obviously little short of pejorative. The countries involved in this project—excepting Croatia, Bosnia and Herzegovina and Serbia—all became members of the EU in 2004 and to enter this privileged 'club' each had to fulfil a number of conditions set forth by the EU. Since all parts of the state authorities' structure—especially the government and the judicial system—have been reorganised and checked by the EU authorities it is relatively safe to say that no such extreme forms of mismanagement or abuses as analysts have speculated about are present.

When considering such concepts as a "captured" or "privatized" state, one should also bear in mind that the economic transformation carried out in most of these countries—following the advice of Western experts—has as a rule brought with it many anomalies and also criminal activities which disqualify it in the eyes of whole populations.

Crime policy and crime problems were certainly not a central political concern during the first years of transition since there were so many other problems of greater importance. During this period, in all the countries reviewed, the processes of re-organising the judicial system as a whole were begun, an initiative that probably constituted both the largest change and the greatest challenge in the criminal legal field. In none of these countries a process of comprehensive 'lustration' took place; however, all officials in the judicial system—judges as well as prosecutors—were obliged to go through a new procedure of election or nomination which resulted in relatively large changes in the judiciary. Some candidates did not meet the new criteria; some of them simply did not reapply for their posts. In a short period of time, the complexion of the judicial system was changed to a large degree. It should be noted that those who left the system not only included those who had or might have violated human rights in particular proceedings but also some who declined to go through the election procedure—many of them having good professional qualifications. In the majority of these countries the judicial institutions found themselves in a position of not being able to cope with the new situation, especially with their newly acquired independence. At the same time the courts were flooded with new cases: partly because of new

legislation, partly because individuals who felt they had been wronged in one or another way during the old regime filed charges in very numerous cases.

The dream of freedom (Los 2003, p. 145) was noble and greatly worth fighting for; the reality, however, proved much more difficult than anybody could have imagined.

1.1.4 Political, Economic and Social Changes Affecting Crime, Crime Policy and Crime Control

In writing about the processes of transition in CEE countries, Karstedt speaks of ‘peaceful transition and tumultuous societies’ (Karstedt 2003, p. 295). In retrospect, it is very difficult to believe that such profound changes—regarded by all authors as enormous and by some as the most far-reaching in modern history—could have passed so peacefully. It becomes clear also that the real problems began and developed after the first period of sudden change which swept away the old system and brought in the new—which then had to build up a new social, economic and legal system, in some cases even a new nation altogether. Taking into account the magnitude of the task it is no wonder that so many problems then surfaced. In a certain way, one could be surprised that most of these problems were still solved (for better or for worse) without any social disorders, protest or unrest—especially in societies classified as ‘tumultuous’.

On the political side, newcomers who had no or hardly any experience were entrusted with running state institutions: parliaments, governments, ministries, and to a large degree also the criminal justice system. These individuals were full of energy and goodwill but certainly also dependent on those administrators of the former structures who had the necessary operational ‘know-how’. It is an open question whether the new elite was really so helpless and the old elite so powerful that by this time ‘...an invisible process of informal reproduction of the communist power/knowledge complex was already under way’ (Los 2002, p. 173). If nothing else, one should differentiate among all the countries in transition because some—mostly those in Central Europe: Poland, Czech Republic, Hungary, Slovenia—did not quite match this description. Subsequent data on corruption did not confirm such strong links existing between the two groups or the supposed ‘interweaving of private sector crime and public sector corruption’ to such a high degree that assigning labels of a ‘captured’ or ‘criminal state’ could be justified (Los 2003, p. 149). If such links developed they did so later and over time—when both sides might have seen the common advantage to be gained in working together.

On the economic side, the changes were also enormous: the so-called ‘shock therapy’ advocated and aided by Western (mostly American) economic experts but supported also by such institutions as the International Monetary Fund, the World Bank and others, really did cause a huge shock: the swift privatisation of public (or state) enterprises, liberation of entrepreneurial initiatives, denationalisation of

previously nationalised property, along with the wholesale introduction of free market standards into the economy represented a colossal change that could not have been implemented without consequences in social terms. (Gruszczynska 2004, p. 124; Fatić 1997, p. 150).

For all these countries—except for Slovenia and, also Croatia and Bosnia and Herzegovina, which had, however, to deal with a war—the opening of their borders to the West meant an enormous jump into freedom. Serbia, in contrast to this, found its borders closed firmly from outside, since almost all countries required visas for Serbian citizens travelling abroad. The opening of the borders, the liberty to do business with foreign enterprises without bureaucratic regulations, the influx of foreign capital—all this represented situations that put the lives of individuals and their endeavours in a completely new position (Gruszczynska 2004, p. 124).

All these changes had unprecedented social consequences. Large sectors of the population were left unemployed, impoverished, and levels of social stress in consequence soared (Gruszczynska 2004, p. 125). Some authors report apocalyptic death rates in the region during this period (Fatić 1997, p. 150).

While it is true that these countries had little or no experience of ‘civil society’, it is also true that a number of different social movements very close to those of a civil society were organised in these countries before 1989 and indeed led to the processes of transformation. Examples include Polish Solidarity, Charter 77 in the Czech Republic, Democratic opposition (as well as some other groups) in Hungary or ‘social movements’ for the rights of homosexuals, green movements and other associations in Slovenia in the 1980s. As May observes, human rights in the 1980s became ‘a comparatively safe ideology with which to pressure the state’ (May 2005, p. 3). However, the individuals leading these civil society movements transformed themselves into politicians as soon as the system changed; although many of them were in turn replaced by newcomers. Indeed, these first civil society leaders left a vacuum which is difficult to fill even today. As is well known, the ability to protect international standards of human rights was a precondition for these countries entering the Council of Europe and European Union, so their records in human rights protection are—in the view of foreign observers—good (May 2005, p. 6).

Among the first institutions to undergo change was the judicial system and the services connected with it. Laws passed on the organisation of the court system as well as the prosecution service demanded a new procedure for retaining or gaining a post as judge, magistrate or state/public prosecutor. Through these procedures those who had in the past violated human rights were disqualified from holding such posts. As some judges and prosecutors did not want to undergo such a procedure a relatively large change of personnel took place in all the countries concerned (Valkova & Hulmakova 2007, p. 104).

The organisation of the bar in the socialist system differed in the countries concerned: it was organised as a state service in all, except the former Yugoslavia, where it remained an individual public service and enjoyed a certain degree of independence.

As for the police in some countries (e.g., Slovenia) a mandatory retirement wave in the early 1990s eliminated those who had (or might have) violated human rights.

These changes were most certainly necessary; they had, however, also a negative consequence: the judiciary—judges and prosecutors—who entered into the new system were young and as such had less experience than was required by the situation which then quite unexpectedly arose, namely the extreme increase of crime during the first years after the changes. This was probably one of the causes for delays in judicial proceedings in general, and in criminal proceedings in particular, which later became a heavy obstacle in the functioning of these judicial systems.

The system of implementing criminal sanctions was one of the most difficult and precarious of all to change. The prison system in socialist countries was—with maybe one or two exceptions—one that was completely isolated—even from other government agencies. It was known that prison rates were high or very high; but it was only in some of these countries that data on prison systems was publicly available. One of these was the former Yugoslavia where prison rates were from the mid-1970s much lower than in any other socialist country and data on the prison system was regularly published.

After the initial changes, the prison system in all of these countries underwent profound alteration. Immediately after the change in regime, broad amnesties were declared in almost all the ex-socialist countries, and in some on an extremely generous scale: in the Czech and Slovak Republics (Czechoslovakia at that time), for example, three quarters of the sentenced prisoners were released and 40% of those in pre-trial detention (Walmsley 1996, 6 ff). In Hungary, this percentage was 40% of all prisoners. In those countries which gained their independence during this time, amnesties were also granted, under the influence of these larger releases, but were much smaller in scope.

The next development the prison system faced was drastic staff changes. Walmsley (*idem*, 9 ff) reports that large numbers of prison staff in the Czech Republic, Poland and Hungary were either dismissed or voluntarily left their posts—perhaps anticipating dismissal. Staff changes, albeit to a smaller degree, also took place in the other countries concerned. After these first changes in personnel, new legislation was prepared for all other parts of the criminal justice and law enforcement systems.

Overall, two problems which had great impact on the ways crime was dealt with in these countries should be mentioned.

The first was a new and vivid interest from politicians in crime and its associated problems. While the importance of crime was played down under the socialist system, this was no longer the case. Politicians in general and some in particular, discovered that the slogan of ‘law and order’ was a good tool for gaining votes. The general punitive wave that began moving over Europe from the West slowly reached the CEE countries too. It is a paradox that in, for example, Slovenia which was under communism a *de facto* abolitionist country (since 1957; and by statute since 1989) with 20 years’ imprisonment as its maximum sentence,

the highest penalty was then raised in 2008 with the introduction of life imprisonment. Many election strategies in the last 10 years have been designed and fought on the principle that a politician promising to be ‘tough on crime’ will get more votes.

In this changing attitude towards crime an important role was taken by the media. The transformation of the media was one of the most important changes effected by transition but we shall limit ourselves to the part it began playing with regard to crime. As Los observed ‘the communist mass media were essentially “good news” media’ (Los 2002, p. 166). But, the public, at least a part of it, learned to ‘read between the lines’ and to detect at least part of the real problems that were not reported. During transition, the media were privatised and found themselves in a completely new situation. In many cases, the state retained part-ownership and as such the government of the day (or the parties forming it) could exercise influence on particular elements of the media. However, with the orientation of the media another factor became much more important: the market. The media’s markets—on the principle of Western models—called for reporting news that would make profit at best and no losses at worst. This led, on one side, to the rise of the yellow press and, on the other, to what we might call a ‘yellowing’ of the serious press. Crime had become an important issue and slowly led to the media transferring its attention from ‘good’ to ‘bad’ news (Los 2002, p. 166).

1.2 Crime Policy and Crime Trends

1.2.1 New Penal Legislation

During the transition process, it was necessary to change criminal legislation in all areas: substantive law, procedural law, police law, laws on the organisation of the judicial system and the criminal justice system within it, implementation of criminal sanctions—all these areas were to be substantially revised. This was an enormous task and it had to be carried out in a very short time. The principal way of proceeding was to move in steps: often the first changes—the most urgent—were made in the form of amendments to existing laws; later entire pieces of legislation—the criminal code, code of criminal procedure—were prepared anew. During the first years after the changes CEE countries had to adapt their criminal legislation to the new pluralistic political system and to the demands of the concept of ‘the rule of law’ (Rechtsstaat). At first, penal legislation had to be brought in accordance with the principles and demands of the European Convention on human rights as this was the precondition for the states to become members of the Council of Europe—which was a kind of an “anti chambre” of the membership of the EU. In substantive criminal law, criminal offences typical of totalitarian regimes were abolished (e.g., the infamous ‘enemy propaganda’); the death penalty also had to be abolished as a condition for signing the European Convention

on Human Rights. Forming another large tranche of legislation to be changed were statutes pertaining to the protection of state property or social property: here, private property took its place. After these first changes, new criminal codes were adopted (Savona et al. 2000, pp. 66–67).

The criminal procedure in all of the countries concerned was founded on the civil (continental) law system with elements typical of totalitarian systems: the so-called inquisitorial components were strongly predominant, while the accusatorial were under-developed or non-existent. This meant that police powers as well as those of the public prosecutor were set very large in law and even larger in day-to-day work. The changes to the procedure were directed especially towards curtailing such official powers and to finding a new balance between the rights of both parties: the prosecutor and the defendant (Recasens 2000, pp. 81–82; Šelih 2000, pp. 99–100).

The aim of new laws dealing with organisation of the justice system as a whole and with the criminal justice system in particular aimed at guaranteeing the independence of the judiciary—through a variety of measures—and in reorganising the position of the prosecution in order to make it an equal party in procedure and to curtail its powers as a state authority. Finally, the system of enforcing sanctions had to be entirely reorganised.

One can conclude from this brief summary alone that the legal and organisational changes in the field of criminal justice were enormous. If we also bear in mind the replacements and restructuring taking place simultaneously in human resources the full extent of the manifold shift involved can be appreciated. Given the pace and scale of such change, it was inevitable there would be numerous and sometimes grave deficiencies and mistakes.

The changes introduced during the first years after 1989 were influenced by the wish these nations felt ‘to return to Europe’ (Krajewski 2003, pp. 20–24). Historically, they felt they belonged to the old continent and the will to be part of it had not faded during the 50 years of socialist rule. To some extent, the changes were also brought about by a push from the Council of Europe and the European Union. In order to gain entry into the Council and the EU, the CEE countries were more than willing to meet the standards demanded of human rights protection, transparency and respect for the rule of law. The first changes, in the majority of the countries concerned, were prepared by groups of liberal experts, mostly from the universities and for these specialists the desire for a ‘return’ to Europe meant moving to a liberal, less punitive crime policy system that had been seen as a hallmark of ‘European’ crime policy before 1989, especially in the work carried by the Council of Europe. At the same time, however, this movement favouring a more liberal and less punitive kind of crime policy was in fact disappearing from Europe’s ‘old’ democracies. Authors from CEE countries express regret that this liberalising wave passed by very quickly and was followed by a much more aggressive political current which brought opposing changes in criminal legislation (Krajewski 2003, p. 24; Levay 2007–2008, p. 545; Kerezi 2004, p. 116; Valkova & Hulmakova 2007, p. 109). These changes occurred when the new political elites learned the lesson that ‘fear of crime can be turned into votes’

(Joutsen 1995, p. 16). ‘The European argument’ was often used not as in previous years to limit the state powers but to support the very contrary position: to introduce more punitive and more security-oriented ways and means in criminal legislation as a whole, often under the pretext that ‘that is what “Europe” demands’. The Slovenian experience with the introduction of life imprisonment in 2008 is a good example of this trend.

The ‘golden rule’ of criminal legislation demands that it must be scrupulously prepared, stable and not changed too often or in a hurry. It should reflect as broad a social consensus as possible and its basic elements should stay in place over time. Contrary to this, criminal legislation in the countries concerned has been changed frequently and in haste, very often to satisfy the wishes of the political party in power at the time. Looking at how these procedures took place, one is surprised to see that for example, a criminal code was prepared and passed in less than a year (in 2008 in Slovenia); that the course or orientation of a code changed completely after a political shift (in Hungary from 1998 on); or that a constitutional court had to decide on whether the majority by which the code was passed in parliament was truly in accordance with the constitutional provisions (in Croatia, Novoselec 2009, p. 52).

Over the past 20 years criminal legislation in general has been almost completely transformed in these countries. In general, this entailed moving closer into line with West European criminal legislation; nowadays, it guarantees better procedural rights; it has greater respect for basic political and civil human rights; the roles of the main actors in criminal procedures are defined in accordance with human rights standards and inbuilt measures exist to secure the basic elements required for a fair trial; the procedural roles of the main players—the judge, the prosecutor and the defendant—are clearly delimited. It is, however, also a fact that criminal law as a whole has drawn back from the direction suggested by the first relatively liberal amendments made in the period immediately after 1989. Compared with those solutions, later developments are more punitive and, in consequence, so was the application of the law.

1.2.2 Changes and Trends in Crime

To give a statistical picture of crime, its trends and changes over time, we have collected the most elementary statistical data from all countries participating in the current project. For some countries—Bosnia and Herzegovina, Croatia, Serbia—data was not complete—for obvious reasons. The decision had also to be taken whether it was appropriate to include data before 1990. Much of this is deemed unreliable; however, for a general picture of long-term trends in crime—which is the main aim of the project—this was the only data available and in spite of its deficiencies it does yield information about at least the approximate levels of crime. That said, opinions still differ as to how (un)reliable the data might really be.

Table 1.1 Criminal offences in the countries reviewed (BaH, Cro, Cz, Hu, Pl, Slo) 1985–2009 from police data

Country	Total criminal offences					
	1985	1990	1995	2000	2005	2009
BaH	–	–	12.949	18.319	28.055	23.795
Croatia	–	–	63.015	68.378	79.946	73.497
Czech Republic	121.272	216.852	375.630	391.469	344.060	332.829
Hungary	165.816	341.061	502.036	450.673	436.522	394.034
Poland	–	883.346	974.941	1.269.910	1.379.962	1.129.577
Slovenia	42.776	38.118	40.164	66.927	84.481	87.465

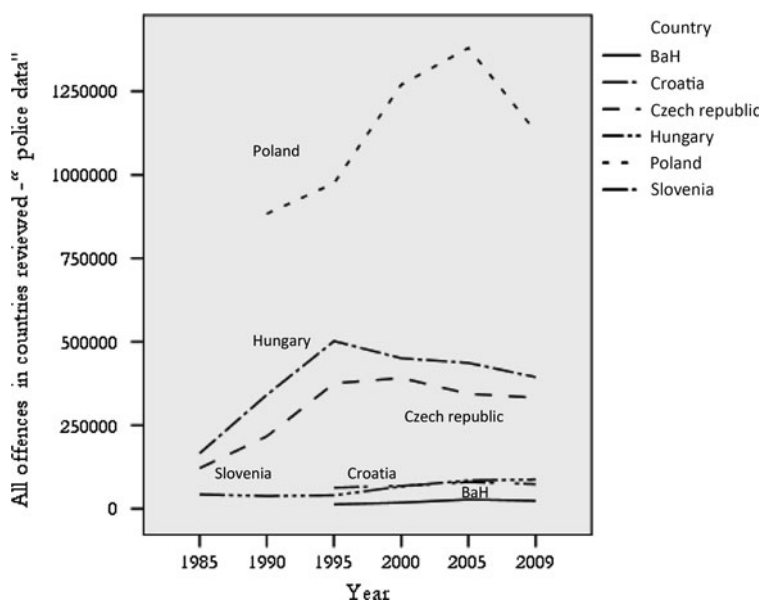


Chart 1.1 Criminal offences in the countries reviewed, 1985–2009, from police data

1.2.2.1 Criminal Offences

Before giving any explanation of the illustrations above, it is necessary to stress that the countries reviewed differ enormously as to their size; this should be kept in mind throughout the following analysis. Therefore, and to give a better overview for all countries except Poland we present the data in two charts—with and without this country. It should also be pointed out that no data was available on criminal offences in Serbia. (Table 1.1; Charts 1.1, 1.2).

Three of the countries concerned supplied our research group with data for the whole period: the Czech Republic, Hungary and Slovenia; Poland submitted it for 1990 and after, Bosnia and Herzegovina and Croatia from 1995 on. The chart

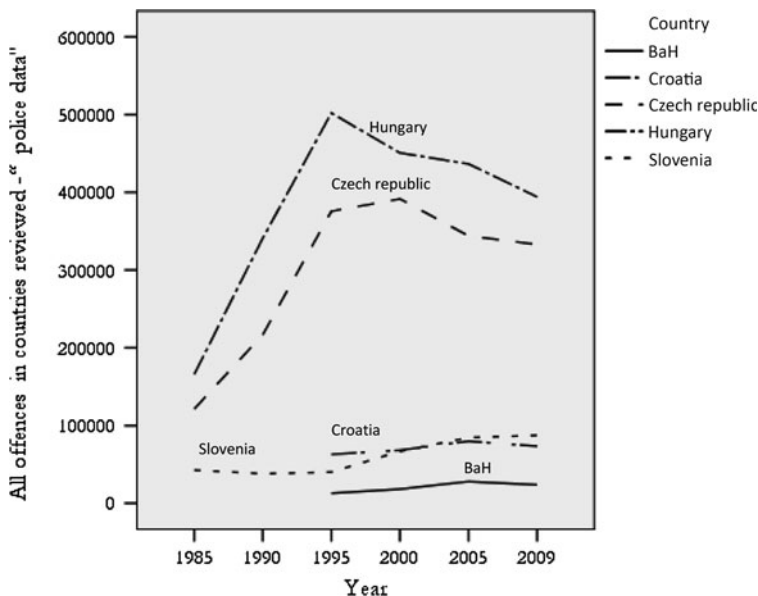


Chart 1.2 All offences in countries reviewed—'police data' (BaH, Croatia, Czech Republic, Hungary, Slovenia)

shows very clearly that two types of developments can be seen among the six countries: Poland, Hungary and Czech Republic all show a steep increase in crime from 1985 onwards (for Poland from 1990 onwards); reaching a peak in the Czech Republic and Hungary around 1995 and in Poland later on—in or around 2005. The second group of countries are the three republics of the former Yugoslavia—BaH, Croatia and Slovenia which—in spite of the wars in two of them—do not follow the same pattern as the first three: the trends in crime show a moderate but constant increase from 1985 onwards. If we restrict ourselves to Slovenia only—for the other two countries we have data from 1995 onwards only—it is evident that the increase started later than in the first group of countries and was much less steep. Are we therefore entitled to believe that statistical data was more reliable in this case? Or, are we allowed to speculate that the differences between the socialist regimes in the first group of countries (CZ, HU, PL) and that in Slovenia accounted for a different development of crime in the transition period? Were the changes on societal levels, as postulated by modernisation or civilisation theory, smaller in Slovenia than in the other three countries? Was self-control on a higher level? These and similar questions could be answered only by a special study.

The Table 1.2 tells a different story from the first: the relative gravity of crime measured in 2009 per 100,000 population, is the lowest in BaH and Croatia while Slovenia finds itself at the top of the list. In Slovenia it is well known that in 2005 the system of registering criminal offences was changed and this caused a serious increase in offences dealt with by the police. Regardless of such changes the data

Table 1.2 Criminal offences in the countries reviewed (BaH, Cro, Cz, Hu, Pl, Slo) 1985–2009 from police data, per 100,000 population

Country	Total criminal offences per 100,000 population					
	1985	1990	1995	2000	2005	2009
BaH	–	–	469	654	985	834
Croatia	–	–	1.414	1.597	2.532	1.657
Czech Republic	1.178	2.114	3.638	3.811	3.363	3.177
Hungary	1.579	3.287	4.876	4.445	4.328	3.926
Poland	–	2.289	2.525	3.278	3.618	2.957
Slovenia	2.168	1.907	2.919	3.614	4.217	4.304

Table 1.3 Criminal offenders in countries reviewed, from police data, 1985–2009

Country	Total criminal offenders					
	1985	1990	1995	2000	2005	2009
BaH	–	–	10.835	11.316	18.325	17.386
Croatia	–	–	37.232	29.287	–	32.819
Czech Republic	112.249	69.368	114.791	130.234	121.511	123.235
Hungary	85.766	112.254	121.118	122.780	133.621	111.724
Poland	–	273.375	423.896	405.275	594.088	521.699
Serbia	–	109.542	122.030	84.143	100.536	100.026
Slovenia	29.601	27.595	31.565	39.483	40.207	42.247

shows quite clearly that in each of the countries concerned a relative increase in crime has occurred during the last two decades.

1.2.2.2 Criminal Offenders

As noted earlier some data was not available for all countries reviewed from 1985 onwards. The data collected on offenders shows a distribution similar to that on criminal offences: three countries—BaH, Croatia and Slovenia—had a relatively more even increase than Hungary and the Czech Republic, while Poland had an increase that shows some oscillation in a steeply rising development. All countries, except Bosnia and Herzegovina and Slovenia show oscillations in the development (Table 1.3; Charts 1.3, 1.4).

Data on the relative level of offenders to populace, represented by the number of offenders per 100,000 population, shows that Slovenia with its relatively slow increase in crime has the highest number of offenders as measured by this index (Table 1.4). In all countries, except in BaH, Croatia and Serbia, crime measured in this way has increased from 1985 on. It is an open question as to whether the war situation in these countries contributed to this result. Here again, the three countries that had shown similar development present a similar picture: Czech Republic, Hungary and Poland have rather similar ratios of criminal offenders (as shown by police data) per 100,000 population.

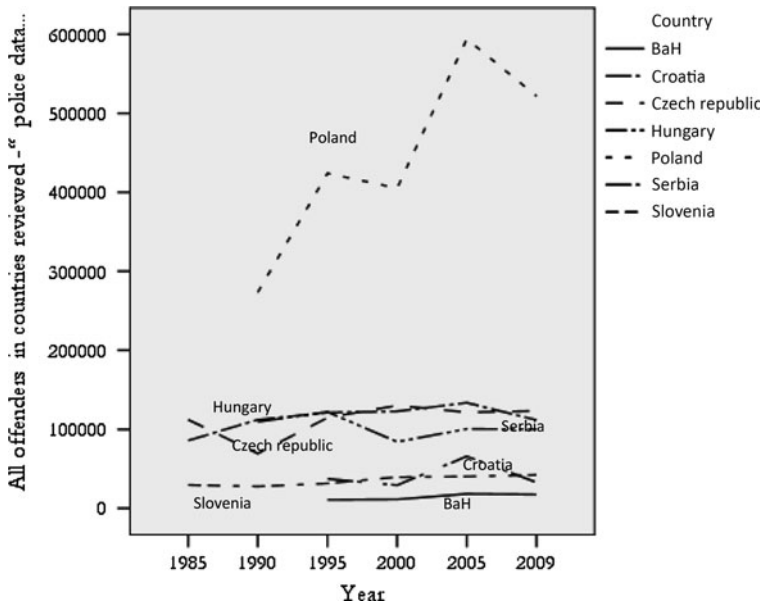


Chart 1.3 Criminal offenders in countries reviewed, from police data, 1985–2009

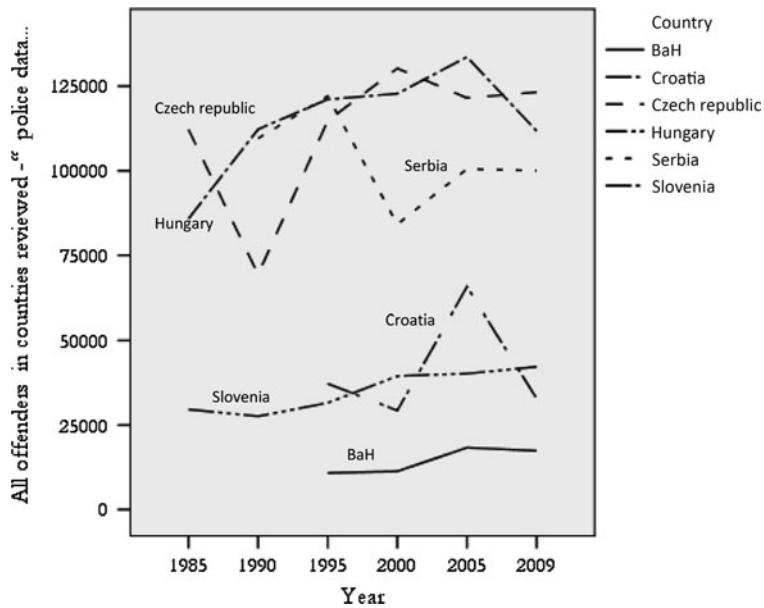


Chart 1.4 Criminal offenders in countries reviewed, from police data, 1985–2009 (BaH, Croatia, Czech Republic, Hungary, Slovenia)

Table 1.4 Criminal offenders in countries reviewed, from police data, per 100,000 population, 1985–2009

Country	Total criminal offenders					
	1985	1990	1995	2000	2005	2009
BaH	–	–	392	404	643	609
Croatia	–	–	836	664	1.480	740
Czech Republic	1.089	673	1.112	1.268	1.187	1.176
Hungary	810	1.083	1.176	1.212	1.326	1.113
Poland	–	718	1.098	1.048	1.557	1.365
Serbia	–	1.387	1.565	1.119	1.351	1.366
Slovenia	1.500	1.381	1.586	1.984	2.007	2.079

Table 1.5 Sentenced offenders in the countries reviewed, 1985–2009

Country	Total sentenced persons					
	1985	1990	1995	2000	2005	2009
BaH	13.752	10.578	3.499	13.553	14.794	14.355
Croatia	25.739	–	15.252	17.253	22.586	–
Czech Republic	67.899	18.871	54.957	63.211	67.561	73.685
Hungary	60.918	47.694	85.746	95.213	98.524	86.901
Poland	–	–	195.214	223.300	515.190	–
Serbia	–	40.197	36.664	31.949	36.901	40.880
Slovenia	13.528	9.827	4.127	6.895	8.234	8.035

1.2.2.3 Sentenced Offenders

Although there is data missing for some years in some countries the general pattern emerging in previous tables and charts seems present here. Three categories of developments emerge: Bosnia and Herzegovina, Croatia, Serbia and Slovenia with a decrease from 1990 to 1995 and later a slow but steady increase in sentenced offenders, form one group; the Czech Republic and Hungary with a drop in the 1990s due to their large amnesties—and later a steady increase, form a second; with one country, Poland, where a very steep increase especially after 2000 is in evidence, takes up a category of its own (Dünkel et al. 2010, pp. 999–1006) (Table 1.5; Charts 1.5, 1.6).

This data again shows remarkable differences in the ways particular countries deal with crime. Taking into consideration the numbers of offences, it is possible to observe that some countries (e.g., Slovenia) employ more different forms of removing those convicted of relatively minor offences out of the group of those given sentences. The differences between the countries as far as this characteristic is concerned are probably due to different possibilities of dealing with minor offences in particular, but probably are also a sign that the ways of dealing with crime differ to quite a substantial degree from one country to another. In this respect, the Czech republic, Hungary and Poland seem to have a much stricter approach to offenders than the four new states that emerged from the former Yugoslavia (Tables 1.6, 1.7).

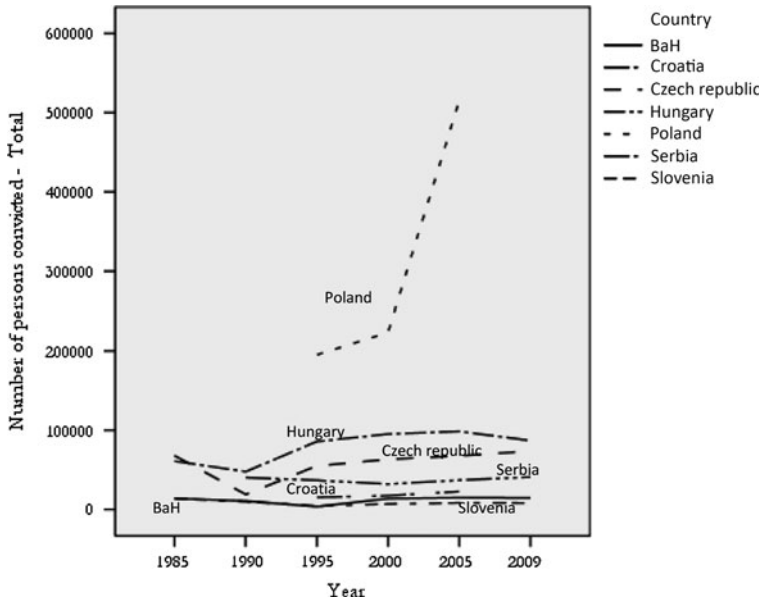


Chart 1.5 Sentenced offenders in the countries reviewed, 1985–2009

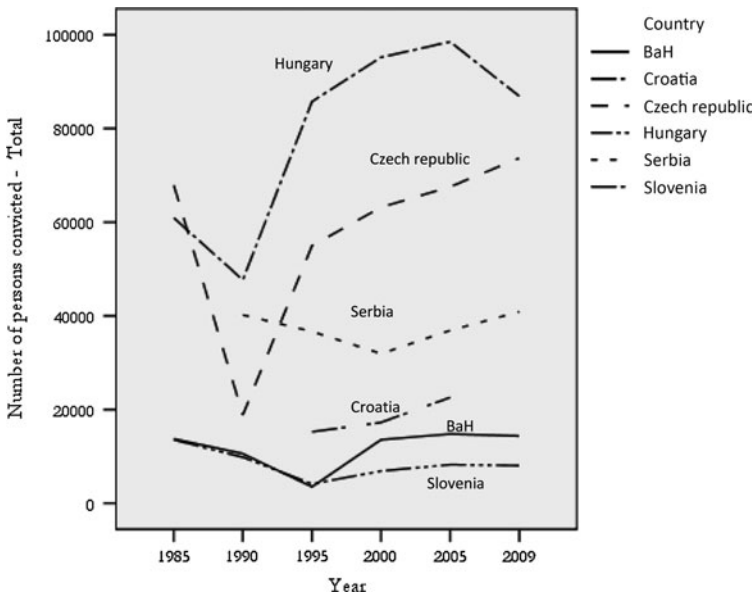


Chart 1.6 Sentenced offenders in the countries reviewed, 1985–2009 (BaH, Croatia, Czech Republic, Hungary, Slovenia)

Table 1.6 All offenders in the countries reviewed, sentenced, 1985–2009, per 100,000 population

Country	Total sentenced persons					
	1985	1990	1995	2000	2005	2009
BaH	323	242	127	484	519	5033
Croatia	–	–	342	391	508	–
Czech Republic	659	184	532	615	660	703
Hungary	580	465	938	1.034	1.084	866
Poland	–	–	507	576	1.321	–
Serbia	–	407	470	425	496	558
Slovenia	686	492	207	343	411	395

Table 1.7 Number of persons in prison, 1985–2009, per 100,000 population

Country	Number of persons in prison					
	1985	1990	1995	2000	2005	2009
BaH	–	–	–	78,5	53,8	56,8
Croatia	–	–	–	44,5	78,5	110,3
Czech Republic	–	–	188,0	219,0	186,4	210,4
Hungary	–	146,0	122,0	158,0	162,4	164,1
Poland	–	–	163,0	207,0	216,5	220,3
Slovenia	–	–	33,0	57,3	56,7	67,2

In Table 1.7 data on sentenced offenders as well as those in pretrial detention has been collected. Although we do not have data for the years before 1985, we know that the figures were higher than at the beginning of the 1990s. If we limit ourselves to the time period from 1995 onwards we see that in all countries—except Bosnia and Herzegovina—the number is on the increase. If compared with the relevant data for West European countries we note that these numbers are higher. Taking into account the development in West European countries one would be inclined to say that the two groups of countries are coming all the more closer: in Eastern (and Central) Europe as well as in the West a strong belief in ‘law and order’, in ‘justice’ as well as in ‘incapacitation’ seem increasingly to take priority.

Let us add a word on the smallest country, Slovenia: although its result is the lowest (except for BaH) and is low in wider European terms too, it is nevertheless true also that the increase there from 1995 was the sharpest: it more than doubled. So crime policy in Slovenia too has been catching up with the rest of the continent.

1.2.3 Explaining Crime in Transition: An Attempt

The sudden and extreme increase in crime, an upsurge one might say, after the changes in 1989 in all CEE countries came as almost as big a surprise as the

political changes themselves. This explosion of crime seemed totally to contradict the expectations that crime could not increase in societies which would now start enjoying freedom. It is therefore no wonder that numerous attempts have been made to explain this seemingly extraordinary phenomenon.

In an early book of essays on *Crime in Europe* Heidensohn (1993, pp. 3–13) did not touch upon the situation in CEE countries as a special problem, but she did discuss the experience of convergence and diversity typical of Europe alongside the effects of change. She confined her analysis of change there, however, to that undergone in western Europe—although she did dedicate a chapter to the CEE countries (Bienkowska 1993, pp. 43–54). It was the Council of Europe that was the first to focus on the specific circumstances of crime in CEE. Eisner's report at the Council of Europe conference on 'Crime and Economy' in 1994 on 'the effects of economic structures and phases of development on crime' offered a large sample of theoretical views on crime and change (Eisner 1995, pp. 17–51). Analysing three theoretical models for explaining crime and change, he notes that the 'modernization' theory (initiated by Durkheim, and developed especially by Clinard) suggests that industrialisation and urbanisation cause crime to increase because of the higher levels they create of anomie, that is, a breakdown of social bonds. Social and economic modernisation has the effect of increasing crime, especially crime against property; it is therefore presumed that an increase in crime is an inevitable cost of socio-economic modernisation. The second theoretical approach is—according to Eisner—the 'opportunity' theory advanced by Cohen and Felson which holds that crimes occur when motivated offenders converge in time and space with suitable targets in the absence of capable guardians. An increase in economic prosperity produces more opportunities to offend as do certain compliant patterns of everyday life (e.g., more leisure time, less formal control). The implications of this approach are quite straightforward so far as property offences are concerned (Eisner 1995, p. 20). The third theoretical approach to explaining trends in crime trends and economic development has been founded on Elias' 'civilization' theory, according to which '...there is an interplay between growing external formal control related to state monopoly, increasing self-control and gradual diffusion of both from social center to periphery' (idem, p. 21).

In Eisner's view the key concept in understanding the motivation to offend is self-control, as part of the general theory of crime causation at an individual level developed first by Elias (1969) and later by Gottfredson and Hirschi (1990), (Eisner 1995, pp. 33–35). Accordingly, how '... a person's behaviour conforms with existing norms depends on the interplay between the mode and level of self-control expected in a given situation and the mode and level of self-control an individual "possesses" as a resource' (idem, p. 35). In transferring this model to the problem of crime in CEE countries crime Eisner suggests that '... the revolutionary transformation of the economic and social structures in CEE countries...' has resulted '... in a complete reversal of the mode and level of self-control required for socially adequate action'. In the author's opinion crime in these

countries will not decrease as the economic recovery gains momentum but will continue to increase (*idem*, p. 41).

Eisner's approach seemed close also to that of Joutsen (1995, pp. 10–12) who traced the erosion of self-control in CEE countries to different economic factors appearing after 1989, e.g., in the rapid drop of living standards as reported by Gönczöl (1995) among others; in the spread of unemployment, in crime becoming a reality and new perceptions of it arising, in an increasing relative deprivation brought about by the influx of consumer goods accessible only to a small minority, etc.

Authors from CEE countries have also given different explanations for the unprecedented and unexpected rise in crime seen immediately after the political changes. Kossowska (1995, pp. 31–34) emphasises the theory of social disorganisation; in her view, '... when the system of accepted standards and values is no longer adequate to a new social situation, the mechanisms of social control fail to operate as they should'. This new social situation is characterised by a dramatic drop in living standards, a rise in unemployment and the failure of a new legal system to function. Valkova (1995, pp. 45–46) believes that anomie in Czech society could explain some aspects of the country's increasing crime. Among the reasons for it, she cites the restructuring of society as a whole, a complete change of the dominant value system. The collapse of the totalitarian system resulted in, among other consequences, a society lapsing into a drawn out moral crisis; while the changes filling the vacuum only brought about social disorganisation and disintegration (*idem*, p. 47).

Over the past decade, new ideas of explaining the increase in crime in CEE countries after the political changes have been presented by Western as well as by Eastern European authors. Karstedt (2003, pp. 299–307) believes that the lack of civil society was a defining feature of social life in socialist countries. Because of this, those societies were not able to produce strong democratic practices and such cultural values as individualism and egalitarianism which are—according to Karstedt—'major trajectories of the process of modernization and main characteristics of democratic society' (*idem*, p. 299). These countries were shaped for a very long period of time by collectivism rather than individualism and by authoritarianism rather than egalitarianism. In Karstedt's view '... under the layer of violently enforced homogeneity a substructure and subculture of high inequality developed' (*idem*, p. 306). There existed high degrees of inequality between "the top" and "the bottom" of society. This led to a feudalisation of communist societies which instilled them with a special *esprit de corps* that fuelled the illegal economy surrounding privatisation during the transition period and engendered links with organised crime (*idem*, p. 307). Los (2003, pp. 145–169) analysing markets and crime looks at crime in CEE countries as a consequence of state corruption: talking of 'the captured state', 'privatised state' or 'criminal state' she looks at crime as a consequence of systemic corruption.

Authors from the CEE countries tried explaining the increase mainly by applying theoretical models developed in Western criminology. Levay (2000, pp. 44–46) believes that several theoretical views had to be taken into account and

a multi-causal view on the causes of crime should be adopted. According to him, one could assume several theoretical viewpoints since crime in these countries seemed to have so many and such diverse causes (idem, pp. 48–49). Levay later developed his idea into an explanation of the crime problem in CEE countries based upon the theory of social exclusion (Levay 2007, pp. 7–26). Krajewski (2003, p. 24) discusses crime within the framework of I. Young's discourse of exclusive society by noting that the '... growing tendency for exclusionary crime control policies coincides with growing problems of social exclusion in other areas of social life'.

I myself would argue that the changes taking place after 1989 in CEE countries were so huge and so unique that it is extremely difficult if not impossible to try to explain them according to a single theoretical viewpoint. As Offe (1997, p. 64) noted '...the transition from state socialism to capitalism and liberal democracy has neither been tried nor accomplished before'. As noted earlier in this chapter, the changes to be implemented were enormous and manifold: there was no part of social life left untouched—nor much of personal life unaffected. It seems therefore inadequate to try explaining a phenomenon as complex as crime by only one theoretical approach. The modernisation theory was developed bearing in mind a gradual social and individual development of economic and social conditions in a given society; as to a lesser or greater degree were all the other theories outlined above. When one sees so many new and quite different social and individual circumstances converging as was the case during the fall of communism it is appropriate to look at the subject from a multi-causal viewpoint. There is no doubt that self-control had decreased to a very high degree during this period; but, in assessing its influence we cannot ignore the factors that caused it or at least contributed to it diminishing: the sudden drop of living standards, mass unemployment, the change of value system among others. I would adopt the expression 'shock approach' to describe the complex of factors that had a massive influence on life in general and crime in particular in transition countries. On a societal level, a number of developments caused economic shock: the transition from state economy to private market economy, the privatisation of enterprises, denationalisation of previously nationalised property, the opening of markets to foreign competition—and in consequence a breakdown of entire branches of national economies, e.g., shipbuilding in Poland, the Czech and Slovenian textile industries; the sell-off of entire economic sectors to foreign capital (e.g., the banking system in almost all of these countries). This shock was transmitted to the individual level very often in a most painful way: through the loss of work, loss of social security network, loss of the possibility of educating one's children, loss of 'safety nets' for old age, among many others. To these developments, painful as they were, must be added growing social differentiation and exclusion, the growing gap between the few who were (often dubiously in moral terms) 'winners' and the more numerous group of those who became 'losers'. All of these developments may well be described as 'shocks' on a societal as well as an individual level. It is not surprising that the shock combining on both levels left ideal terrain for crime to increase. All of these developments bring a variety of elements that

may be taken as causes of crime either on the individual level (decrease in self-control, strain theory, opportunity theory) or the societal level (as viewed by modernisation or civilisation approaches); but since it seems that they have concurred much more powerfully than in any other previous historical situation they had been drawn on to explain one surely cannot use them as isolated approaches but rather call upon each of them in a combined way and admit that they might be understood as explaining together the sudden increase of crime in CEE countries in the first years after the changes brought about by the fall of socialism.

1.3 Looking Forward

1.3.1 Balancing Human Rights and Effectiveness in Crime Control

For quite some time, crime policy has faced the dilemma of whether the priority should lie with protecting and advancing human rights standards or whether effectiveness is its goal in controlling crime. For many CEE countries this dilemma is of particular importance because human rights were the motivating factors behind the processes of democratisation in the 1990s. It was an illusion to think, at that time, that this perhaps represented the ‘end of history’; but, nevertheless, it was sincerely felt in all CEE countries that a better and more open society could be established.

In these countries, crime policy was seen at that time as being closely connected with human rights issues: the one-party system by itself produced systemic human rights violations in crime policy—for example, penal legislation in some cases violated certain basic political rights; an independent judiciary was not available; and the fair trial maxim was absent.

In Western democracies, the new schools of thought on crime policy that emerged in the 1970s had brought human rights to the forefront of the subject, in the form of the ideology of ‘just desert’ (American Friends Service Committee 1971; Von Hirsch 1985). However, these ideas soon mutated or gave way to policies of *law and order*, *incapacitation* and other such goals (Wilson 1983). These latter policies seemed much less concerned with promoting respect for human rights than they were with effective crime control, which in reality was translated into a more punitive approach to crime and criminals. It is safe to say that, in these perspectives, human rights lost their importance in the formulation of a liberal and humane response to crime.

In the 1980s and 1990s, the vocabulary of crime policy was broadened to embrace safety. A new and stronger emphasis on *security* became one of the most prominent goals of crime policy, and since its emergence has developed into probably the most important topic in crime policy today. The risks of everyday life were studied and with them the all-embracing notion of the *risk society* has since

the 1980s been a major paradigm in crime policy as we know it now. In this context, human rights protections for suspects, defendants and offenders have lost their importance; it is the *security* of society at large and that of the individual, combined with victims' rights, that have taken first place as the most socially desirable goal in this field (Garland 2001).

This picture of crime policies evolving in the older democracies during the 1980s contrasted sharply with what was going on at the same time in the CEE countries, where social discontent had become strong and was about to spill over. In these countries the demand for greater respect for human rights was the chief impulse for the subsequent changes. Some aspects of crime policy—the decriminalisation of verbal political offences, respect for freedoms of speech and of association, due process, fair trial, an independent judiciary and the diminution of police powers—were among the foremost requirements of the social movements springing up at that time.

From today's perspective, it seems that the human rights agenda in the CEE countries gathered force at the very moment when it was already losing strength in Western democracies. During the 1990s, crime policy priorities in the older democracies became focused on the risk of crime in post-modern society, the management of crime and its processes, governance of safety, private–public partnerships in crime policy and other similar topics. Very quickly, these developments contributed to a general shift to more punitive orientations: increased numbers of prisoners; the privatisation of some traditionally state-run or public services, from private policing to private prisons; and the perception of an 'exclusive' safe society and another 'unsafe' one. All these developments were, in my view, very detrimental to the development of crime policies in the 'new democracies', where at the same time demands for fair and humane crime policies, respect for human rights and a fair trial and other civil liberties came at the top of agendas for the reform of crime policies and legislation which in some of these countries had been very punitive.

Immediately after the 'Great Change' of the 1990s, the CEE countries were confronted with tremendous challenges: most of them had introduced profound changes to their state and economic structures. They were inundated with foreign experts, who knew very little about the political, economic and social structures of the individual countries in question. Their advice sometimes was adequate; but often, however, this advice simply reflected certain views of the world, of particular economic or social science schools, on various problems and which were largely unresponsive to the particular needs of the countries actually undergoing transition.

After a while, these countries began to see that from this mixture of advice they had to choose those approaches which they themselves found useful and relevant.

In the midst of this process, when the CEE countries were at the height of their preparations to enter the EU, the events of September 11, 2001 and their aftermath represented a tremendous turning point: to those crime policy professionals in the CEE countries who took 'rights seriously', the changed attitudes and the visible lowering of human rights standards which Western democracies themselves had

for decades proclaimed cornerstones of their free and democratic systems were a terrible blow. The introduction of measures that clearly did not advance or even violated basic human rights in the crime field was taken by some as a betrayal of an ideal for which they had been working for years. In a way, their view—perhaps naive—of liberal democracies as fortresses of preservation and respect for human rights, was shaken forever.

It was not only the 9/11 events that changed the crime picture so drastically: for it seems that the resulting changes came at a time when Western democracies were already prepared to embrace other crime policies. Even before 9/11, crime and insecurity dominated a large part of professional as well as public debate in these countries and became important aspects of social as well as political discourse. At the same time, responses to crime were changing almost as much as crime itself. While the modern state provided security to its inhabitants predominantly through the police and judiciary (and in exceptional circumstances military), the post-modern state developed a series of alternate agencies that served this end. If formerly safety had been left to ‘professionals’, very soon security became an object dealt with by multiple actors—and a problem in which everyone was supposed to be involved. We have all become ‘partners against crime’. At the same time, crime problems and security issues are no longer simply national problems; instead, their internationalisation has become more and more widespread.

These and some other recent developments have contributed to essential re-definitions in crime policies in the past 10 years. Some of these new forms and types of policies have lowered human rights standards that were taken for granted for decades. In this context it suffices to mention the example set by Guantanamo, the vigilante groups now active in some countries, the general expansion of criminalisation among other causes for concern. CEE countries which had long experienced crime policy in totalitarian regimes were stunned to see that the social and state systems that they had viewed as their democratic ideals (so to speak) were employing similar or even the same forms and methods that these countries experienced before. There are of course systemic differences between the two situations, but nevertheless, it was not only sobering but indeed disappointing to see democracies settling on means and ways that the CEE countries themselves had known in very different times and experiences. At the same time, these new repressive methods revived and bolstered those tendencies in the CEE countries that had previously advocated more punitive responses to crime problems.

When talking about balance between human rights standards and effective crime control, one should indeed recognise the need for efficiency. However, postmodern society and the postmodern state should not achieve this aim through ways and measures that nullify previous achievements with regard to human rights.

Finally, another important factor should be mentioned, one that has appeared very recently across the world: the financial and economic crisis. It has brought misery and poverty especially to underprivileged populations all over the globe—those people who might already have been prone to crime. The same holds true for

older democratic countries as well as CEE countries: those parts of the population that had been in the most precarious economic and social positions before—‘in the good times’—have suffered the most. Millions have lost jobs and millions have lost their savings; both have consequently lost economic sustainability or at least safety (Judt 2010). Viewed from a human rights perspective, there is no doubt that the economic human rights of these population groups have been seriously violated. It goes without saying that such a situation is an ideal one for an increase in crime.

History teaches us that in a situation like the one the world faces today, there exist two scenarios in which societies in general and crime policies within them can develop: one leads in a more and more punitive direction, bringing an ever greater and more normative disregard for human rights standards, and the other—more sustainable—would, regardless of the problems confronting it, attempt to reconcile effective crime control with respect for human rights for all involved. We may be now at such a crossroads, and we should do all that is possible to preserve the standards of human rights crime policy has so far managed to attain.

1.3.2 Where to Sail?

The analysis presented here has shown that crime in the reviewed CEE countries has been a very volatile phenomenon: it has shown great increases as well as decreases in some countries; in others it has remained more stable than expected. Taking into account all the changes—elimination of some basic features of the system as it had been known for almost 50 years and the installation of almost completely new parameters—one cannot be surprised by such a development. Indeed, one would be inclined to say that it is surprising that in such ‘tumultuous societies’ as these countries are perceived as being this level of fundamental change has not produced far worse consequences.

Two decades on from these events, the picture of crime seems to have stabilised in these countries. If anything is going to change this picture the causal force is unlikely to stem from these countries themselves but rather the consequences of the financial and economic crisis which has engulfed them, and which, again, originated in Western democracies.

The crime picture in the countries reviewed is not uniform—just as it was not in the socialist system. It rather shows considerable differences—as was the case under the previous system, but which go largely unnoticed or unrecognised. This may perhaps be due to a lack of information, but maybe also because of pre-formed views on this part of the world as being a homogeneous and uniform one. Today we can observe differences among these countries in the levels of criminal offences committed as well as the ways in which particular states deal with offenders. Keeping in mind the limitations of the parameter of the number of prisoners per 100,000 inhabitants we should stress the large range manifested in the countries reviewed—the ratio varies from its lowest point in Slovenia, Croatia,

BaH to the highest in Poland and Czech Republic. Or, to put it in a different perspective: as differences exist in crime and penal policy among West European countries (also with respect to this parameter) so do they exist in CEE countries. It seems that these countries differ among themselves more in the means they deploy against crime than in the extent and forms of crime itself. If this supposition is correct this would mean that those groups that are responsible for dealing with crime on a legislative, judicial as well as enforcement level differ greatly as to the ways by which they may carry out this function.

It was mentioned earlier in this chapter that during the time of the great changes taking place in CEE countries, a great wave of change swept over Western Europe from the USA. The current that had pushed very strongly towards rehabilitation from the 1950s on changed its direction towards 'just desert' at first and greater 'punitiveness' later on. It is very unfortunate that this change should have occurred precisely at a time when the former socialist societies were reorienting their ways of dealing with crime (among myriad other areas of policy). All of them having experienced one-party rule for decades and the majority of them having borne an extremely punitive crime and penal policy, they found themselves in the precarious situation of wishing on one side to change these policies and being tempted by the ideas of 'new punitiveness' being advocated by a great number of Western experts on the other side.

As if this complicated situation were not enough, the financial—and ensuing economic—crisis which was certainly not produced in any of these countries swept across the world, with grave consequences in all of these states except in Poland. There can be hardly any doubt that these consequences will also include changes in the crime picture since the economic conditions for many social groups within them have deteriorated; but it is reasonable to expect that the crisis situation will influence decision-makers as well to adopt more norms and measures with which to strengthen crime policy. The world itself, and the developed part of it especially, stands at a crossroads and we cannot foresee which path the world will take in the future.

What we are able to do is to visualise the paths open to crime and penal policy because in fact only two exist: one leading towards greater use of repressive apparatus in fighting crime, and the other advocating the use of this apparatus as a *last resort, as ultima ratio societatis*. The first approach would lead to more severe control and greater use of coercive sanctions, especially imprisonment, while the other would favour the less frequent use of such measures and greater exploration of community sanctions, probation and similar less coercive measures. The system which lies along this second path is viable; however, only with the support of a good and fair educational system, a well-equipped social welfare system and an inclusionary policy as far as economic and minority questions are concerned.

In a time such as the present, characterised as it is by neo-liberal economic policies (in spite of the fact that it was precisely these which caused the ongoing crisis) and the ensuing punitively oriented attitude to crime those policies brought with them, the view above may seem unrealistic and naive. However, social forces do seem to exist that are challenging the current system and demanding a different

world. Although these voices do not represent a mass phenomenon and it is not clear how they could change the system it is a positive sign that people are not indifferent; that the desire does exist to make the world a better and fairer place—not for a tiny minority only but for broad social classes. Perhaps this nucleus of change could include the humane and fair crime policy that is essential to the world in general—and in particular to the countries which regained democracy 20 years ago.

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Part II
Politics, Media and Fear of Crime

Chapter 2

Politicians, Media, and Society's Perception of Crime

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Abstract This chapter deals with three important issues for countries of Central and Eastern Europe, which are going through political transformation, associated with society's perception of crime: fear of crime, politicization of crime, and the impact of the media on public perception of crime. The authors set out the main characteristics of these phenomena since 1989 in the countries of the region, with a view to performing a more detailed analysis of them in the context of Poland. Despite the numerous differences among the countries going through the transformation in the past 20 years, they are beginning to fall within the ambit of the same rules as the "mature" democracies of Western Europe. In evidence are the same processes associated with the behavior of politicians in relation to troubling social phenomena and their use of populism as a method of wielding power, similar media reactions to criminality, and the recorded drop in the fear of crime.

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2.1 Introduction

One of the more important effects of the political transformation in Central and Eastern Europe is the emergence of the problem of criminality in the social awareness of the inhabitants of these countries. After a long period in which information about the risk of crime was controlled (unless it concerned crimes against the Socialist state) the societies of this part of Europe were deluged by information about criminal incidents and by opinions and discussions on the subject of criminality. Crime in itself became an article “sold” in the media and a political football. Fear of crime, which had scarcely existed prior to the transformation, appeared as a phenomenon in the social consciousness. Influencing the heightened fear of crime to a certain extent was a rise in criminality and a change in its nature, but more importantly a general state of uncertainty brought about by the deconstruction of life as it used to be and the established rules on which society functioned. Criminality and the related feeling of danger is already probably a permanent element in the public face of politicians mainly, but not exclusively, from populist parties.

2.2 Changes in Society’s Perception of Criminality in the Countries of Central and Eastern Europe

The process of changes occurring since 1989 in Central and Eastern Europe encompassed not only a change of political systems, from various forms of totalitarianism to democracy, but also and perhaps above all an evolution within the societies of these countries. Every big change, and especially one as comprehensive as a change in the political system of the state, leads to an upsurge in anxiety at the level of the individual. Evidently, this fear will be significantly lower if the change is positive in nature rather than resulting in negative consequences (e.g. loss of employment). Nevertheless, the state of anxiety is unavoidable.

The political changes in the countries dealt with in this book took place more peacefully in Poland, the current Czech Republic, Slovenia, and Hungary than in Bosnia–Herzegovina, Serbia, and Croatia. However, in every case the change was accompanied by society being stripped of its feeling of relative stability, which had been provided by the socialist state through a developed system of social welfare and, above all, of guaranteed employment.

The embracing of normal, free-market rules, driven primarily by the pursuit of profit from business activity, resulted in a raft of social changes. A group of entrepreneurial people appeared, or rather came to light, who knew how to take advantage of the new conditions and increase their wealth rapidly. Equally, there was a group of excluded people who could not find their way in the new times and for whom the period of rampant capitalism, as the 1990s are sometimes referred to, in which the foundations of the democratic system in the particular countries were

laid, was incredibly difficult. It was the latter group that bore the brunt of the process of change. It was they—often the least educated, with absolutely no professional qualifications—who were the first to lose their jobs, and the state—preoccupied with its own problems linked to the transformation process—did not find sufficient resources (or will, in the case of politicians) to provide adequate help.

No wonder then that the 1990s in the countries undergoing political transformation were a time of rise in criminality, worsening of public safety, and a decline in the perceived public safety in society.

Research conducted by Imre Kertész and József Stauber concerning Hungary showed that the doubling of crime rates per 100,000 of population took 15 years in most Western European countries; in Hungary this process took 21 years (between 1971 and 1990), only for the crime rate to double again during the subsequent 5 years (1990–1995) (Kertész Stauber 1996, p. 520). Moreover, the transformation also affected the structure of criminality—in the first period of changes a significant rise was recorded in crimes against property, with the perpetrators being largely persons of low education, inadequate social conditions, lacking professional qualifications, and employment of any kind (Lévay 2007, p. 26). A similar process was observed in what is now the Czech Republic, where the greatest increase in recorded crime occurred in the years 1990–1993, stabilizing in the second half of the 1990s at an annual level of 400,000 (Válková and Hulmáková 2007, p. 112).

Siemaszko (2007a, p. 68) notes that most of the countries undergoing transformation that he surveyed (Slovenia, Estonia, Lithuania, Latvia, Poland, Romania, Croatia and the Czech Republic) experienced a positive dynamic in general criminality. This trend contrasted with the tendencies in Western European countries, where crime rates fell over the same period. Hungary and Slovakia were exceptions. However, it is in Hungary where—despite the negative dynamic in criminality—the greatest increase in general criminality occurred in the surveyed period, which is quite unexpected. Higher crime rates should not be associated exclusively with social factors arising from mass unemployment. This assertion would be profoundly untrue. The increase was caused by a whole array of factors including a greater readiness of the public to report crime (despite a negative assessment of policing, resulting from a greater fear of crime) and—associated with economic changes—the emergence of a group of anti-market behaviors that was new to Central and Eastern Europe.

The past 20 years were also a time of great change in the ways media had been working. The policies of the governments preceding the regime change aimed at using the media to create an image of safety and harmony in society. It was also a time when information about crimes was presented in a way that stigmatized perpetrators and often victims too, showing them to be the effect of the loss of an individual's social morality; frequently the information was prepared in such a way as to promote the prevailing ideology and show proof of its effectiveness in fighting social evil.

Criminality as presented by the media was used to divert the attention of society from current economic problems.¹

The transformation gave the mass media, which was previously under tight state control, the opportunity of unrestrained growth. It seemed that, in tandem with the democratic changes, the media would become completely independent and constitute a pillar of support for the building of the new social order. In fact, however, apart from a few exceptions (Serbia under the rule of Slobodan Milosevic—see Copic et al. 2011, p. 296), in the first years of the transformation the press, radio, and television were safe havens for reformers. In some countries (Romania), the democratic changes started from seizing control of the television stations.

However, with the passing of the years the changes in the media, the influx of the private capital, often accompanied by the privatization of media hitherto under state control, and the emergence of an unusually competitive market led to the media fishing for topics to boost their attractiveness to viewers, and indirectly advertisers, who—by paying for media campaigns—would increase the profits of their owners. This explains the existence of newspapers offering their readership high dosages of sensationalist reporting (e.g. *Fakt* and *Super Express* in Poland, *Slovenske Novice* in Slovenia and *Novosti* in Serbia).²

Analyzing the content of these newspapers leads one to the conclusion that their high violence content is justified solely by the profit motive. Research carried out in Slovenia (Petovec 2009, p. 114) showed that information featuring various forms of violence accounted for as much as 26.9% of the content of *Slovenske Novice*, regularly read by c. 300,000 people, whereas in other dailies the figures range from 3.1% in *Delo* to 8.6% in *Dnevnik*.

It could be said that in the past 20 years the media in the countries undergoing transformation have grown similar to its counterparts in Western Europe (see Reuband 2009, p. 161). In the Internet era the only way information has a chance of entering the social awareness is if it is sent quickly and wrapped attractively for the recipient and, preferably, triggers extreme reactions (shock, anger). This emotional charge is often present in information about crimes of the most extreme variety, with brutality blazoned across screaming headlines.

The media-created image causes an increase in feelings of danger and artificially engineered fear of crime in societies. It would naturally be an oversimplification to blame the media entirely for the heightened feeling of fear among the public. Surveys conducted in the Czech Republic in 2001 indicated a

¹ A striking example of this was the ‘meat scandal’ arising out of irregularities in the meat trade in Poland in the 1960s. This was a time when Poland experienced serious shortages in the shops of food and other goods. Among those accused of stealing meat, substituting goods, and falsifying invoices were directors of the state-owned meat chain store, shop managers, and the owner of a private meat processing factory. One of the accused was condemned to death and executed, four others were sentenced to life imprisonment, and others received long sentences. Interestingly, this was the only case in Poland of an execution for an economic crime.

² These daily newspapers modeled themselves on *The Sun* (UK) and *Bild* (Germany).

permanent, deep-seated fear among the general public about the possibility of becoming a victim of crime and that they attached too much importance to this fear—to the detriment of other values (Válková and Hulmáková 2007, p. 123).

A Slovenian survey conducted in 2001 has shown that fear of crime is lower among participants with a higher socio-economic status and a higher education level. Well-situated participants have no difficulties to ensure themselves a satisfactory level of safety. They can choose a safe living environment and provide themselves better technical equipment or a security service. A typical representative of persons with the highest level of fear is females, aged 21–55, employed and outgoing. The lowest level of fear is perceived among outgoing and well-situated men (Meško et al. 2004, p. 8).

In turn, research of fear of crime in Central European capitals (ICVS 2000) exhibited that inhabitants of Ljubljana, Budapest, and Warsaw feel safest, although their level of fear is much higher than in Western European countries (Siemaszko 2007a, p. 73).³

The existence of a heightened fear of crime might be justified by, for instance, the very poor assessment of policing in the initial period of transformation. This is a typical feature of former Eastern Bloc countries, where the police was viewed for years more as a formation that safeguarded the socialist system and constituted a tool of repression rather than as a service to protect the public and fight crime (Siemaszko 2007a, p. 73).⁴

It is worthwhile noting the results of a crime victims survey conducted in Hungary in 2003–2004, with a population of 10,020 respondents, which showed that criminality is not the main source of fear for Hungarians. It was listed only in sixth place behind factors such as: unemployment, social tensions, economic situation, political situation in the country, and quality of life. When analyzing the factors affecting the fear of crime, an exaggerated concern was noted with respect to crimes such as: robbery, car theft, murder, and corruption. This might be explained by the influence of the media, which distorts the actual frequency of these acts in society (the actual number of these types of crime is lower than presented by the media) (Papp and Scheiring 2009, p. 103).

Maintaining the state of threat from criminality can also be an element of politics. A particularly clear example of this was Serbia, as cited earlier, where during Slobodan Milosevic's rule (1989–2000) the pro-regime media supported and legitimized the plans of building a state based on nationalism and chauvinism. The leaders of the Serbian state ably exploited the media to spread the nationalist rhetoric in a socially acceptable and even expected fashion (Kešetovic et al. 2009, p. 121).

³ Percentage of people who do not feel safe during a walk in the neighborhood after dark was 35 in Ljubljana, 46 in Budapest, and 48 in Warsaw.

⁴ The International Crime Victims Survey 2000 showed the highest levels of satisfaction with police work to be in Slovenia, where 62% of respondents said the police was effective in the fight against crime, whereas in Estonia the figure was only 26%. In Western Europe this figure ranged between 60 and 70%.

Serbia is not the only example of a country in the transformation era where politicians used crime data to build or strengthen their popularity. They often sought to justify populist solutions to problems by citing incomplete data or interpreting it in a convenient way (e.g. the slogan of chemical castration for pedophiles as put forward by the Polish Prime Minister Donald Tusk on the back of a wave of media reports on police activity against people showing pedophile tendencies or distributing or possessing child pornography). In this context it is interesting to analyze the programs of the main political parties from the angle of these types of slogans.

Politicians also exploit for party political gain the problem of criminality among ethnic minority groups, who are accused of committing numerous crimes and sponging off the rest of society. Sloganeering of this type can be seen in the more ethnically diverse countries of Central and Eastern Europe (e.g. Slovakia and Romania with their large Roma minorities).

The penal populism of politicians manifests itself in the taking of one-off actions with a spectacular social and media impact, supported by declarations of absolute war on social ills and the perpetrators of crime which are followed by—often poorly thought-out—draft legislation fast-tracked through parliament.

2.3 Politicians and Criminality

In the Polish general elections of 1997 all political parties campaigned on a ticket of improved safety and better protection for the public against crime (Widacki 2002, p. 95). The leftist party *Sojusz Lewicy Demokratycznej* (Democratic Left Alliance) promised that if they won the elections they would “improve the law, increase the effectiveness of law enforcement agencies and the workings of the justice system, in particular through simplifying and expediting court procedures.” The center-liberal party *Unia Wolności* (The Freedom Union) declared in its program the necessity of improving the functioning of the police and the justice system. The right-wing grouping⁵ set forth the need for harsher punishments, the return of the death penalty, and tougher prison conditions. The party which won the 1997 elections—*Akcja Wyborcza Solidarność* (Solidarity Electoral Action—right-wing party)—declared in its political program that the basic duty of the state is to ensure public safety. They also formulated a slogan of fighting corruption and stopping the spread of mafia-like structures.

Similarly, in the parliamentary elections of 2005 all political parties included in their programs slogans and pronouncements on the subject of crime rates, threat of crime, and the response to criminality in terms of penal policies applied by the

⁵ Comprises the parties: *Unia Prawicy Rzeczypospolite* (The League of the Republic), *Unia Polityki Realnej* (Union of Real Politics), *Ruch Odbudowy Polski* (Movement of Reconstruction of Poland)—none of which are currently represented in parliament.

courts and the functioning of the justice system (Bulenda 2005, pp. 41–64). In the program of *Platforma Obywatelska* (Civic Platform Party, center-right party) there was talk of the bad state, where criminals walk free, courts are more lenient on criminals than their victims, and access to the courts exists on paper only—due to overly long court proceedings. The program of the populist party *Samoobrona*⁶ (Self-Defense) wrote of the inequality between citizens in the eyes of the law, court room corruption, use of arrest and holding on remand against poor people and avoidance of the same by the rich and politically well-connected. In its program, *Prawo i Sprawiedliwość* (Law and Justice, a right-wing party) spoke at great length on the subject of criminality and penal policies applied by the courts. Its assertion was that the level of criminality in Poland was high and the public felt threatened by crime. It laid the blame for this state of affairs on liberal penal policies and poor functioning of the police, courts, and public prosecutors. The new Polish Criminal Code of 1997 (still in force today largely unamended) was branded as liberal and permissive of such lenient sentencing as it outraged the fundamental feeling of social justice. The program of *Prawo i Sprawiedliwość* proposed: raising the cap on terms of imprisonment to 25 years, the possibility of a life sentence without parole, reinstating the punishment of confiscation of assets, tougher punishments for re-offenders, tougher punishments for offences against the person. The criticism of the new Criminal Code was completely devoid of foundation. From the crime policy point of view, the Code is so constructed as to allow for appropriately measured punishments: ranging from mild to harsh and very harsh (including life sentences).

In November 2006 local elections took place in Poland. During the election campaign the extreme right-wing party *Liga Polskich Rodzin* (League of Polish Families), which was languishing in the opinion polls, put forward an extreme measure: introducing the death penalty for child sex killers.

On September 7, 2007 parliament voted to dissolve itself. After that, a very short election campaign followed—the President of the Republic called for parliamentary elections on October 21, 2007. In the campaign all political parties highlighted the inadequate level of public safety, the threat posed by serious crime, corruption, terrorism, need to improve the functioning of law enforcement agencies and security services. *Prawo i Sprawiedliwość* proposed an overhaul of the Criminal Code, along the lines of the draft legislation they had presented prior to the election campaign. The bill called for the toughening up of punishments for crimes against the person and all crimes of violence, crimes against the family, and terrorist crimes. Also proposed was a widening of the right of self-defense, a lowering of the age of criminal responsibility—responding to the need to fight serious crime rates among minors—cracking down on re-offenders, limiting the use of suspended custodial sentences, introducing life sentences without the possibility of conditional early release (Bulenda 2010, p. 25–49).

⁶ Now a marginal party with no seats in parliament.

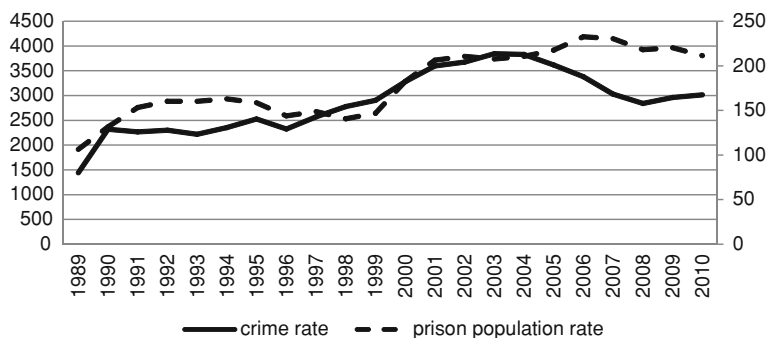


Fig. 2.1 Crime rate and prison population rate in Poland in the period 1989–2010 (per 100,000 population) [Data for 1980–2007 from: Siemaszko 2009, pp. 12–13; 164–165. Data for 2008–2010 from the information bureau of the Centralny Zarząd Służby Więziennej (Central Executive of the Prison Service) and Komenda Główna Policji (Police Headquarters), own calculations. Crime rate on the left, prison population rate on the right of the chart]

Against this backdrop of political ideas, a closer look at crime rates in Poland over the past 20 years is in order. Police crime statistics show that the number of all reported crimes was on the increase throughout the 1990s—883,346 in 1990 rising to a peak of 1,466,643 in 2003 before falling gradually to 1,151,157 in 2010. See Fig. 2.1 for details.

The crime victims survey which, along with the police crime figures, presents data showing the state and extent of criminality, showed falling overall numbers of victims of crime from 1992. The crime rate was also falling according to information and assessments coming from victims of crime (Siemaszko 2009).⁷ At the same time there was a gradual increase in the reporting rate, which means that the aggrieved had a greater propensity to inform the police about crimes they had fallen victim to. So the fall in registered crime is not associated with under-reporting.

Safety in society, including criminality and control thereof, is one of the most important issues facing governments and one where they are held accountable for their actions. In one election campaign after another, as shown above, the issue of threat of crime and the legal-penal reaction was clearly presented, discussed, and proposals for change put forward. Political parties talked about criminality in a characteristic fashion: they showed criminality as a dangerous phenomenon which has to be fought, which constitutes a permanent threat to the public, and in face of which the correct reaction from the authorities should be harsh, uncompromising punishment.

In all campaigns the tone used in pronouncements on the subject of crime and the fight against crime was the same, whereas the rate of registered crime fluctuated. Although criminality trended downwards, this had no bearing on

⁷ Crime statistics available at: <http://www.statystyka.policja.pl/>.

politicians: they viewed crime as a serious threat, scared people with rising crime rates, and only proposed “medicine” in the form of increasingly harsh measures. It seems there is a relationship here between treating criminality as “goods” in political marketing, in electioneering, where none of the competitors wants to be “worse”, and there is an accepted belief that only scaring the public with crime (even by misrepresenting the current state of affairs) can pave the way to political victory (Garland 2001, pp. 203–205).

Politicians propose to society only one type of reaction to perpetrators of crime: harsh punishments. In this way they teach the electorate only one manner and type of reacting, and yet we have at our disposal a variety of sanctions, including supervision in the community and fines, and criminality is varied by nature, being mostly minor and medium tier. By the same token penal policy should be differentiated.

On the web sites of the two major parties in Poland, the opposition right-wing *Prawo i Sprawiedliwość* and the ruling right-wing *Platforma Obywatelska*, we find stances taken on dealing with criminality and the correct reaction to this problem.

In its program *Prawo i Sprawiedliwość* declares that a safe Poland is a country in which zero tolerance is applied to lawbreaking, and the courts function efficiently and hand down fair sentences. The most important actions are: decisive and immediate reactions by the authorities to infringements of law (even relatively minor ones), fighting corruption, combating the causes of crime (such as youngsters staying out at night in dangerous places without adult supervision), setting up a Fund to Help the Victims of Crime, reinforcing protection for persons suffering domestic violence, toughening up criminal responsibility and improving the efficiency of procedures to confiscate the proceeds of crime, public naming, and medical treatment for dangerous sex offenders, and improving the efficiency of the system for delivering punishments.⁸

In *Platforma Obywatelska*'s program we can read that freedom of citizens and a safe state constitute two core values for the party. The state should be efficient and sympathetic to honest citizens and harsh on criminals. This aim is to be pursued through: fighting threats to state security including: organized crime, corruption, espionage, terrorism and preventing common crimes. *Platforma Obywatelska* declares that it will deliver a reasoned compromise between widening the authorized field of operation of the law enforcement agencies and limiting the rights of the citizen.⁹

In recent times, two incident-related issues have given rise to discussions between politicians and reactions from the authorities: amendment to the Act on

⁸ Program of *Prawo i Sprawiedliwość* of 2009: http://www.pis.org.pl/download.php?g=mmedia&f=program_pis_2009.pdf; downloaded 28.05.2011.

⁹ Supplement to the program of *Platforma Obywatelska*: [http://www.platforma.org/download/\(ggWYZ57YrXailKWWZ0Xf32iiiqWValypo4HQW52fl12frq-hVKbXZ1mmrWjaltvQkpDd56XGgN3Tp4fp3KfGgOPNjILO6rXTj9TDnIXo6qfbhtfJjJrO1avhkdTJk3d7LPGkczSoJfm3KuVkc_KT17s\)/pl/defaultopisy/3/4/1/suplemnt_rozdzia_xi_wolni_obywatele_w_bezpiecznym_panstwie.pdf](http://www.platforma.org/download/(ggWYZ57YrXailKWWZ0Xf32iiiqWValypo4HQW52fl12frq-hVKbXZ1mmrWjaltvQkpDd56XGgN3Tp4fp3KfGgOPNjILO6rXTj9TDnIXo6qfbhtfJjJrO1avhkdTJk3d7LPGkczSoJfm3KuVkc_KT17s)/pl/defaultopisy/3/4/1/suplemnt_rozdzia_xi_wolni_obywatele_w_bezpiecznym_panstwie.pdf); downloaded 28.05.2011.

fighting drug addiction, including the problem of designer drugs (modified narcotics) and the reaction to hooliganism in soccer stadiums.

In mid 2010 there were confirmed cases of young people being hospitalized following the use of modified narcotics resulting in life-threatening poisoning (including several confirmed deaths). They provoked a strong, decisive reaction from the Prime Minister. Shops hitherto selling legal highs were closed and modified narcotics were classified as stupefacients (so-called substitute substances in the amended Act on fighting drug addiction). It was only a partial success for the authorities. The sellers of designer drugs relocated to the Czech Republic, where trade in these substances is not banned, and purchasers from Poland started ordering the goods over the Internet. The dispatch of substitute substances from abroad is tantamount to marketing them in Poland and supplying them to third parties and is defined as a crime. Hence, Customs officers checked parcels from the Czech Republic and any designer drugs found were sent to Sanepid¹⁰ for analysis and (after being confirmed as toxic) they file a motion for confiscation to court. In the Warsaw Customs office alone, during 2 months, 200 parcels with banned substances were intercepted. However, journalists are still criticizing the government for its partial success in the fight against new narcotics (Kreśkawiec 2011).

Meanwhile, legislative works were underway in parliament to reform Polish drugs law, and these resulted in the promulgation (on April 2, 2011) of the amended Act on fighting drug addiction. Attracting the greatest controversy was the change in the provision of the Act which mandated custodial sentences for the possession of drugs irrespective of the amount or category. After the change, proceedings for possession can be discontinued. Discussions in parliament on these changes became the stuff of political infighting. The government was suspected by opposition MPs of collaborating with the drugs mafia, because it was liberalizing the possession of drugs. But this time the “shrill cries” of the opposition seemed to fall on deaf ears. The changes proposed by the government and prepared by experts garnered public support, in particular from non-governmental organizations working with addicts and addicts groups (Kalinowski 2011). This time round a reasonable liberalization of law prevailed over a toughening up.

The second incident dealt with soccer hooliganism. In early May 2011 during and after a soccer match in a regional city in Poland fighting broke out between rival fans, they attacked the players, ground security, and the police. Those involved used sharp weapons. The Prime Minister in heated words talked of the need to close stadiums to the public. This met with strong criticism—his proposed penalties were criticized by the owners of sports clubs, journalists, and opposition politicians as ineffective and heavy-handed. The opposition judged the Premier’s actions to be purely grandstanding gestures aimed at gaining support in the upcoming general elections (October 2011). And yet the critical stance shown by the opposition surely must raise eyebrows. Their party’s program speaks only in terms of a tough, relentless fight against lawbreaking, but in this case the

¹⁰ Stacja Sanitarno-Epidemiologiczna (Regional Disease Control Centre).

opposition sided with the lawbreaking fans. The opportunist actions by opposition politicians and their attempt to win the votes of fans were all too transparent (Chlebowicz 2011).

The two examples above illustrate how problems involving unlawful behaviors are used for political purposes and can be turned into smart tools for attracting voters.

2.4 The Media and Criminality

There seems to be an unbreakable bond between the mass media and criminality. The media are the primary source for the public's knowledge on the subject of criminality (70% of Poles gain it from television, 15% from the press, and just over 7% from the radio) and the justice system (Błachut et al. 2000, p. 420; Daniel 2005, p. 95). The mass media are also without doubt more than willing to report on criminality, mainly because it is an attractive subject for the audience, pandering to the emotions, often sensationalist and an easy way to grab the attention of readers, TV viewers, and radio listeners. Researchers state that people react positively to news about prohibited actions. Hearing information about the subject of criminality evokes a positive reinforcement of feelings of self-worth and allows the individual to distance himself from people who fall into conflict with the law and as a consequence bolster his conviction of his own normality (Błachut et al. 2000, p. 414). Thanks to a few manipulative techniques, of which more later, information about crimes is easily accessible and can be used to achieve various sorts of political goals (cf. Wójcik et al. 2006).

It is beyond doubt that the media portrays criminality selectively, concentrating on brutal, sensational incidents and scandalous oversights by the justice system. They rarely address positive or useful aspects of discussions on criminality, such as the causation of deviant behaviors, the role of the victim in originating crime, the issue of prevention, appropriate protection of property and safe behavior in everyday life, or the possibility of cooperating with the bodies of the justice system.

2.4.1 *The Media Before and After Regime Change*

In the case of Poland there is a great difference between the influence of the media on public opinion over the past 20 years and the influence it had before the political changes in 1989. In the times of socialism all media activity was subject to censorship. The *Główny Urząd Kontroli Prasy, Publikacji i Widowisk* (Central Office of Control of the Press, Publications and Events) in Warsaw issued a "Book of Notes and Instructions" ordering censors to eliminate certain information concerning, for example, alcoholism, pollution, and even information about road

traffic accidents. Any criticism of how state agencies and the justice system worked was banned (Strzyżewski 1977, p. 11).

A similar situation occurred in all countries of the former Soviet Bloc. In all of these countries, publishing or broadcasting of any material was strictly controlled by communist parties which supervised the national media, directed the propaganda organs, and censored all media content and literary works: both fiction and the news in the newspapers and television.

The Central Office of Control of the Press, Publications and Events was abolished in April 1990¹¹ and the media was freed from preventive, political censorship. Filar (2007–2008, p. 490) remarks that it was at that time that the media split into two camps: the tabloid-style and the serious. The tabloid press is guided by market principles, namely to present information in such a way as to maximize newspaper sales, whereas in the case of TV stations the goal is to maximize viewing figures. Meanwhile the serious media, on more than one occasion, threw in their lot with certain political groupings, towing the party political line.

The freeing of the press, the journalists reveling in free speech, and simultaneously starting a cut-throat circulation war gave rise to a need to write about shocking events. The media concentrates on reporting only headline-grabbing crimes: the extremely shocking, the cruel and the dramatic, creating a false impression of the scale and type of criminality.

Crimes are written about not only by the daily press but also by specialist periodicals dealing exclusively with crime reporting. Various TV stations put out programs dedicated wholly or mostly to crime, under titles such as: 997 (the police number), *State of Danger*, *Traffic Cops*, *Police Station* and *Prison Cell*.

2.4.2 *How the Media Portrays Criminality*

The picture of criminality as portrayed in the mass media is distorted and never reflects reality. The media reports certain incidents in a selective way or even over-reports them. They relay the fact of the crime itself, but only rarely (more often with serious crimes) report further proceedings or verdicts. Sometimes the accused is found not guilty, but this is not held to be information worthy of media attention and so is not widely reported. The public might be fed news about a controversial verdict of a trial court, but much less often, and several months later, information emerges about the verdict being overturned by the appeal court.

The mass media, especially those parts of it appealing to a less demanding audience (TV and tabloids), use a number of techniques to present information in such a manner as to attract the attention of the listener, viewer or reader. To wit: immediacy, dramatization, personalization, simplification, and credibility through

¹¹ Act of April 11, 1990 on revoking the Act on control of publications and events, abolishing the bodies of control and amending the Press Act (Journal of Laws 1990, No. 29, item 173).

authority (Jones 2006, pp. 80–82). Certain topics are guaranteed to grab attention, e.g. sex, violence, spectacular events and crimes featuring famous people, celebrities or children (Jewkes 2010, pp. 47–58). This process is called agenda setting and consists of journalists selecting those problems they want to give coverage to and those which will be omitted. This is the result of the chase after public interest (and hence high viewing or reading figures) on the one hand and, on the other, certain commissions—including political requests. “The publisher—and consequently the journalist—is interested only in the sort of ‘truth’ that increases profit. (...) In practice the journalist chooses from the whole range of topics only those that guarantee sales, overwhelming the recipient with stories that are sensationalist either from a human interest or political angle, or those which reinforce the position of the powers on which the paper is dependent, or to which it is sympathetic or serves. Topic selection conducted in this way has little in common with the public interest and the importance of the facts themselves and becomes pure manipulation of the public, who believe in journalistic good will, professionalism and integrity” (Migaczewska 2006, p. 97). This results in excessive publication of negative facts and events, accompanied by a simplified problem explanation provided by “experts” who are determined to prove a particular thesis—the one the journalists base their material on.

The phenomena of overinformation and underinformation are present in news involving criminality. Overinformation is when one shocking event unleashes a whole avalanche of information about a similar topic. For example, when there is a news item on a mother who kills her child while under the influence of alcohol, the audience is inundated for the next few weeks by stories about other mothers who to varying degrees neglect their children. A tragic coach accident with fatalities results in follow-up reports about other (often relatively minor) accidents involving buses or technically unsound vehicles and coaches driven by over-tired drivers. Overinformation can also engineer a “crime wave”. A certain topic becomes “fashionable” in the media and keeps cropping up. Increased reporting of subjects such as crimes by minors or women may lead to an increased belief in “being swamped by crime” of a certain type, which is usually not based on fact (Błachut et al. 2000, p. 415).

Underinformation consists of the media refraining from reporting crime or certain types of crime. It could be a conscious process (as it was during communist times) or stem from the fact that at any given time priority is given to another, more attractive topic or that certain types of crime are rarely reported because they fail to arouse any emotion from the audience (e.g. petty shoplifting or complex business crimes, which are hard to understand for a public used to simple messages). It is hardly surprising then that the picture of criminality as portrayed in the mass media deviates significantly from the actual statistical picture. Various criminological materials make the point that the mass media over-represent, compared with the statistical data, crimes involving violence and under-represent property crimes (Maguire et al. 2002, p. 383). This affects how Poles perceive criminality. One in four respondents of Zawadzki (2002, p. 32) stated that criminality in Poland was dominated by crimes against the person (while in reality they

account for 3.5% of all crimes), and one in three said the same about business crimes (which in reality constitute c.7.7%—see Policja 2011b). Respondents showed similarly baseless beliefs in relation to murders committed by minors. Over 83% of respondents stated that in the last 2 years (survey carried out in 2002) the figure rose “shockingly” or “significantly”, whereas in reality it fell (from 28 in 1999 to 16 in 2000 and 20 in 2001 (Zawadzki 2002, p. 35)). In 2010 only 7 murders were committed by minors.¹²

The only factor where media reporting reflects statistics is the gender of the perpetrators: criminality as illustrated in the media and the statistics is dominated by men (Maguire et al. 2002, p. 385). However, audiences show more interest in crimes committed by women. Researchers in the subject note that female criminality is presented differently in the media than male criminality. In the case of crimes involving women the protagonist is often presented as a person who has emotional problems or is mentally ill. Violence by women is commonly portrayed as irrational and emotionally driven.

Through conscious manipulation journalists sometimes miss out quite important facts when preparing material. Most crimes of violence take place between people who are known to each other, but this aspect is often omitted in media reports and the incident is presented as an event between complete strangers.

For example, press reports on rapes usually present a dramatic attack by an unknown perpetrator in a public place, whereas in reality women mostly fall victim to rape in a private place and the perpetrator is known to them (Williams 2004, p. 45).

Another manipulation used by the mass media is to create an impression that the media represents the whole of society and speaks on their behalf. Newspapers use expressions such as: “the public demands that” and “public opinion is shocked by” without seeking any basis for this in any research, even the most cursory (Jones 2006, p. 99).

2.4.3 Media Representation and Society’s Perception of How the Justice System Works

The media representation also plays a key role in molding society’s perception of how the various bodies of the justice system function (cf. Daniel 2005, pp. 80–99). In the literature one sometimes encounters calls for the mass media to go beyond cheap thrills and present the work of policemen, public prosecutors, judges, and prison officers as well and urge society to show respect for these professions and support them in their work (Sławik et al. 2003, p. 268).

¹² Police statistics at: <http://statystyka.policja.pl/portal.php?serwis=st&dzial=942&id=50256&sid=c5eac4ddeca7918dab4e2ab8e0b2805b>, maj 2011.

Information about the workings of the justice system is usually given a negative slant in the media, appearing alongside malfunctioning in the various justice bodies (prolonged court proceedings even in trivial cases, prisoners held on remand for unjustifiably long periods, and rulings repeatedly overturned) and instances of corruption, drunken driving by judges, public prosecutors, and policemen, and private dealings by them with the criminal world. It is undeniable that the average Pole receives a rather negative impression as to the functioning of the various parts of the justice system. In recent years politicians too have very often spoken critically in the media of the courts, sometimes going as far as to criticize individual judges themselves and the verdicts they hand down. This deluge of critical information has undoubtedly been a factor in the serious loss of public trust in judges.

Nowadays the various bodies of the justice system are increasingly aware of the need to build their own media image. Fully aware of this the police are trying to completely professionalize their contacts with the media. For example, the Chief of Police issued an order on the method and form of conducting press-information activities in the police service,¹³ which sets out the type of information that can be passed to journalists, and the attendant conditions. The police place enormous emphasis on the presence of press officers in regional police stations (Skibińska 2007, p. 167). It is possible that these moves have resulted in the relatively high trust ratings in the police in Poland which for a number of years have hovered around 70%. The courts' press service is not as effective or well developed. Moreover, research shows the apprehension of representatives of the justice system in respect of dealings with society, in particular when it comes to good PR for courts. This is precisely because it could lead to judgments founded in populism. There is a danger that judges could give priority to society's expectations for harsh punishments rather than being guided by evidence and the law. That way they would issue judgments that would satisfy the public's opinion on the work of the justice system (Markov 2009, pp. 18–19). Faced with that danger, they prefer to keep their distance from the media.

Figure 2.2 shows the changes in Polish society's opinions as to the work of the police and the courts over the last few years. Whereas the police have gone up in the public's estimation, trust in the courts is significantly lower and is subject to massive fluctuation; this could be a result of the aforementioned difference between these institutions in terms of how they handle their media image. In a 1993 survey, 54.7% of Warsaw inhabitants trusted the courts (Bieńkowska et al. 1993, pp. 35–37), while in a national survey of 2002, as much as 29% of Poles believed that the verdicts handed down by the criminal courts were unjust (against 17% in the case of the civil courts), and one in three respondents thought that the workings of the courts had worsened in the last 5 years. The injustices according to respondents stemmed primarily from corrupt judges, difficulties with evidence

¹³ Order no. 13/2000 of the Chief of Police of September 25, 2000 regarding the method and form of press-information activities in the police.

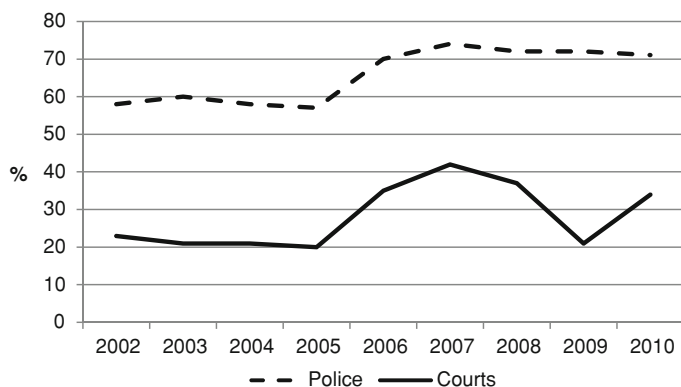


Fig. 2.2 Positive opinions on the functioning of Polish courts and the police in the period 2002–2010. *Source:* Policja 2011a

making it impossible for parties to prove their point in court, bad and unjust laws and also a lack of access to lawyers; 78% of respondents believed that judges were not independent and were subject to undue influence in their rulings (including 12% who thought this happened often) (Czapska 2003, p. 15, pp. 38–43).

Despite the low degree of trust, most respondents (59%) said that if they fell victim to an unlawful act they would take it to court in the belief that their case would be dealt with appropriately. The courts, as institutions protecting the rights of the individual, were rated second only to the Polish Ombudsman and ahead of the public prosecutor and the police (Czapska 2003, p. 25). It is also worth noting that people who had dealings with the courts in recent years assessed them relatively positively—57% of respondents were satisfied with their contacts with the courts (the courts came third in the public ranking of institutions of the justice system—ahead of the police and lawyers). The least well-disposed towards the work of these institutions were the ill-educated, old, and low-income groups, which doubtless reflect the difficulty judges have in communicating with these people. The exclusive nature of the language used by lawyers is particularly poorly understood by these parts of society, hence they often do not know what is happening in their case and accordingly have a low opinion of their contact with the court (Kojder 2008).

One must bear in mind that society's trust in the justice system can in no way be separated from the individual's faith in democracy and assessment of the public decision-making process by politicians. If society does not trust politicians and does not have faith in the quality of law, it will not have trust in the courts and will have a low opinion of its ways of functioning (Markov 2009, p. 16). In Poland, public opinion is very critical towards parliament—about 60% rate its works poorly (Kowalczyk 2010a). Similar opinions are expressed about the workings of the law—63% of respondents assessed it negatively. Three quarters of respondents

believe that people are not treated equally and parliament gives priority to the interests of politicians and the ruling elite over “normal people” or the Polish state when framing laws (Cywiński 2010, pp.170–173).

2.4.4 Legal Journalism: Risks and Opportunities

Returning to the heavily criticized (see above) authors of media news, most journalists state boldly that sensationalist reporting increases the attractiveness of the particular media for which they work (Łojko 2005, p. 113). Hence it is not unjustified for legal circles to allege that journalists who write about crime and report on court cases are unprofessional and seek sensational tidbits and moreover, they present a one-sided, simplistic and unobjective image of the functioning of the courts (cf. Daniel 2005, pp. 89–99, Łojko 2005, pp. 101–115).

Another serious allegation that lawyers level at journalists is their lack of knowledge of the law and the egregious errors they make when reporting court cases (Daniel 2005, p. 97). Again, this is not an unfounded accusation since barely one in five Polish legal journalists is a law graduate; additionally there is a general belief in journalistic circles that the most important aspects of the profession are: innate talent, “self-teaching”, and experience rather than a thorough grounding in the profession (Łojko 2005, pp. 104–105). Demands to raise the level of professionalism among legal journalists apart, their role in public life is undoubtedly very important. Journalists spread knowledge about the law and how the justice system works, often playing a large role in uncovering crimes and in the fight against irregularities in the workings of the justice system. Their very presence in the courtroom encourages self-discipline on the side of the judges and is a form of societal oversight (Łojko 2005, p. 111). Another key role of the media is the part played by journalists in detecting and pursuing crimes. The active role of investigative journalists as opposed to the sometimes passive approach of the law enforcement agencies means that it is the media that often unmask the perpetrators of many crimes, often including financial and economic wrongdoings (Sławik et al. 2003, p. 268). Sometimes the police intervene only after dramatic footage is shown on TV when the aggrieved talk openly about how their complaints about crimes were simply ignored by the authorities.

Journalists and by extension the information they convey are trusted by a large group of Poles—57% of respondents in 2006 trusted journalists and believed that most of them were reliable (up 11% on the figure of 2003) (Wenzel 2006). This shows that journalists are held in higher esteem by the general public than politicians or judges. The media should not abuse this overwhelming degree of trust.

However, the fact remains that criminality as manna for the media is already somewhat overexploited. The press, radio, and TV have recently been on the hunt for bogeymen other than criminals, such as swine flu, or even the end of the world.

2.5 Society's Perception of the Risk of Crime

As mentioned above the media often make use of violence in the materials they prepare to generate a sense of fear among their audience. This is evident in journalists' reports and in various types of programs and films—"the media present reality to us in a way that differs little from dramatized events. We are left in a position where it is difficult to easily tell fact from fiction" (Alexander 2006, p. 77). This level of fear is not without effect on our view of the world, including how we relate to the risk of crime.

Surveys of society's fear of crime encounter many problems of methodology. The answers of respondents can vary widely depending on how the questions are put. Most often, questions about the level of safety are put in the most general of terms, e.g. "Is Poland a safe country?" or "Are you scared of crime?" Also impacting on answers is the point in time at which the survey is conducted, which is contingent on current events, e.g. recent brutal crimes which received extensive media coverage. Here, the question arises of the extent to which public opinion polls reflect the actual attitudes of individuals, or whether they are just a mirror of society's mood (Kury 2002, pp. 135–136).

As a matter of fact, the level of fear of crime in the society is similar across all Central and Eastern European countries. Countries of former Yugoslavia (Serbia and Montenegro at that time) are a notable exception, where citizens feel safest. Ukrainians and Bulgarians feel most unsafe (Table 2.1).

2.5.1 Fear of Crime in Poland

Surveys show that in recent years society's general opinion on safety in Poland has improved significantly (cf. Fig. 2.3). Whereas in the 1990s only c. 25% of respondents believed that Poland was a safe country to live in, this figure has now risen to 70%. Alongside the rise in feelings of safety, there is a corresponding decrease in the fear of becoming a victim of crime—from almost 70% to around 40%. Hence one can say that public opinion has grown used to criminality and has adapted to life in a society where criminality is a permanent and normal phenomenon.

If one contrasts the perception of respondents with the picture of criminality based on police statistics (information about reported crimes) and compares it with the level of victimization experiences by respondents, it becomes apparent that public opinion in a shockingly accurate way senses the changing picture of crime in Poland. The trends depicted in Fig. 2.4 show that varying levels of intensity of criminality over the years (supported by statistical and victimization data) correlate surprisingly closely to the fear of crime. Similar correlations appear in the Polish Crime Survey of 2007 (PBP). Respondents living in provinces with higher crime levels generally had a greater fear of criminality than people in safer provinces (Siemaszko 2007b, p. 111). However, such correlations were not

Table 2.1 Fear of crime in selected countries of Central and Eastern Europe (responses to question: "how safe do you feel alone after dark?")

	1992	1993	1994	1995	1996	1997	2000	2001
Estonia	2.44	–	–	2.29	–	–	–	–
Poland	2.42	–	–	–	2.30	–	2.41	–
Czech Republic	2.37	–	–	–	2.36	–	2.61	–
Slovakia	2.41	–	–	–	–	2.80	–	–
Slovenia	2.07	–	–	–	–	2.16	–	1.99
Latvia	–	–	–	–	2.80	–	2.64	–
Romania	–	–	–	–	2.63	–	2.67	–
Hungary	–	–	–	–	2.34	–	2.68	–
Yugoslavia	–	–	–	–	2.39	–	–	–
Macedonia	–	–	–	–	2.10	–	–	–
Croatia	–	–	–	–	–	2.05	2.06	–
Ukraine	–	–	–	–	–	2.91	2.79	–
Bulgaria	–	–	–	–	–	2.84	2.83	–
Lithuania	–	–	–	–	–	2.61	2.86	–

Review of Scientifically Evaluated Good Practices for Reducing Feelings of Insecurity or Fear of Crime in the EU Member States, European Communities 2004, p. 11, available at: http://www.eucpn.org/pubdocs/review_reducing_feelings_insecurities_fear_crime_en.pdf [downloaded 07.09.2011]. Data shown in the table are the average values from the respondent's statements, where: 1 very safe, 2 fairly safe, 3 a bit unsafe, 4 or very unsafe

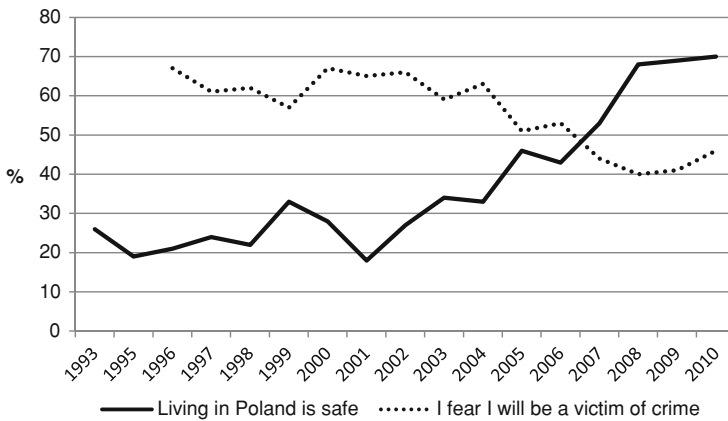


Fig. 2.3 Fear of crime in Poland in the period 1993–2010 (Questions about fear of victimization were first put only in 1996). *Source:* Kowalczyk 2010b

observed in the long-running International Crime Victims Survey (ICVS, cf. for example Siemaszko 2007–2008).

In criminological surveys fear of crime is most commonly measured by questions about the feeling of fear that accompanies a walk after nightfall in one's

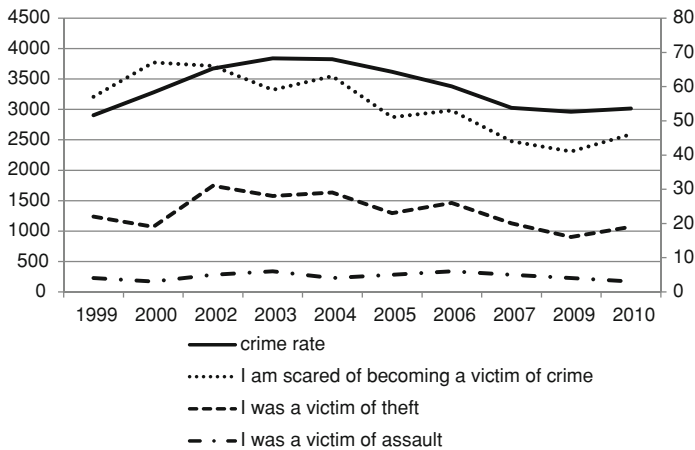


Fig. 2.4 Fear of crime in Poland against a backdrop of victimization and statistical data in the period 1999–2010 (The figure does not contain data for the years 2001 and 2008—because those sorts of survey were not conducted at that time. The crime rate per 100,000 inhabitants was presented on the basis of police statistics (Policja 2011b) calculated as per the population data published by the Central Statistical Office. The victimization data was given in percentage terms). *Source:* Kowalczyk 2010b, own calculations

neighborhood.¹⁴ It appears that one in four respondents does not feel safe in that situation, and one in three when moving around town avoids certain places and streets out of a fear for his safety. Polish respondents are most scared by macho drivers (36%), becoming a victim of assault or mugging (24%), being accosted by groups of youths behaving aggressively (24%), burglary (23%), or damage to property by vandals (22%) (Siemaszko 2007b, p. 110 et seq). However, the greatest fear felt by society relates to crimes which are relatively rare. A total of 5.7% of respondents were victims of violent crime, 7.2% burglary, 4.6% theft (non-auto) (Siemaszko 2008, pp. 19–32).¹⁵

In the international context the crime rate in Poland is mid-ranking and is accompanied by an exceptionally high level of fear of crime (cf. van Dijk et al. 2007). In an international survey conducted in 2002,¹⁶ respondents from Cracow felt the least safe compared with their counterparts in other countries (their level of fear was four times higher than in other cities). The belief of respondents as to the risk of crime did not correlate in this case to the actual danger, seeing as crime

¹⁴ This is how the question was formulated in PBP and the International Crime Victim Survey (ICVS).

¹⁵ The survey was conducted in 2007 and respondents were asked about their previous year's experience.

¹⁶ The survey was also conducted in four other major European cities: Budapest, Amsterdam, Vienna, and Hamburg.

rates in Cracow (as measured by victimization data) were average in comparison to the other cities (Krajewski 2008, p. 125 et seq.).

Extremely insightful is the fact that, irrespective of the high level of subjective risk of crime, Poles do little in the way of precautions to safeguard against the risk of becoming a victim of a prohibited act. The method most often used to minimize the risk is avoiding certain places believed to be dangerous. However, only a small percentage of respondents (compared to the declared level of fear and measures taken by inhabitants of other countries) decide to install extra locks (18% against the international average of 45%), alarms (3% against an average 16%) (van Dijk et al. 2007, pp. 135–139).¹⁷ This fear of Poles was picked up on by property developers who in recent years have offered practical isolation of dwellings in gated communities (although only about 20% of purchasers of such dwellings stated that security was one of the deciding factors in their choice of real estate). The marked increase in gated communities is especially apparent in Warsaw. Surveys of the fear of crime show that inhabitants of gated communities more readily view Warsaw as a less safe place than their counterparts in non-gated residential developments (the difference in the declared fear of crime between inhabitants of the two types of development is as high as 50%). Nevertheless, they do feel extraordinarily safe “behind their walls” (Waszkiewicz 2006).

A high fear of crime is accompanied by preventive actions taken by the police. This primarily consists of an increased number of patrols, efforts to raise their profile in the local community, and the installing of CCTV in public spaces. Surveys show nevertheless that levels of activity do not translate into higher levels of feelings of safety. Equally, increased patrolling of the neighborhood and installing of CCTV cameras did not cause a decrease in the reported fear of crime. The ineffectiveness of these actions is also confirmed by international analysis and the results of Polish surveys (Siemaszko 2008, p. 104; Waszkiewicz 2011, pp. 116, 171).¹⁸ Segregating yourself off causes a permanent increase in fear of the world “beyond the walls” and a perception of it as hostile, which leads in turn in a desire for even greater isolation and heightened security measures against outsiders.

Researchers into the fear of crime highlight the fact that the declared fear of becoming a victim of a prohibited act is a general reflection of fears in society—

¹⁷ These percentages were higher in large cities although they are still lower than average indicators internationally. In Warsaw in the same survey 46% of respondents declared they had extra locks and 5% had alarms (van Dijk et al. 2007, pp. 135–139). Similar results were obtained in Cracow in 2002. Around half of the respondents declared they had extra locks or grills on windows. However, most commonly, respondents avoided certain places (80%), exceptionally taking self-defense courses (12%) or carrying weapons in self-defense such as mace, knives, or sticks (8%). Interestingly, victimization surveys did not correlate with the choice of security measure aimed at increasing safety (Czapska 2008, pp. 155–158).

¹⁸ The problem of building ever-increasing numbers of gated communities was also noted by Bauman (2007). He posits that closing people off within fenced areas separate from all others is to fall into a vicious circle.

feelings of lack of safety and permanency as well as uncertainty about the future in a rapidly changing environment.¹⁹ People convinced as to the high risk of crime around them organize their life so as to avoid risk of victimization. On the other hand, one can observe the phenomenon of safety utopia, where a strong need to feel safe coexists with a desire to lead a free life, unrestricted by prohibitions (Kossowska 2006). This leads to a certain dichotomy—we want to be as free as possible ourselves, but in order to do so we seek to limit the freedom of other people we see for whatever reason as “strangers” and “endangering” our society.

2.5.2 Degree of Punitivity in Poland

As shown above, the Polish media displays a high level of punitivity. We have to address the question: does this stance of the media reflect the attitudes in society? The fact is that Poles truly manifest a rather high level of punitivity compared with other European countries. In ICVS 2004/2005 where respondents had to state what punishment should be given to a juvenile re-offender who stole a color TV during a burglary, Poles came fourth in Europe in terms of severity (after the UK, Ireland and Greece). 34% of respondents opted for mandatory imprisonment (Siemaszko 2007–2008, pp. 189–190).

The question should be asked: Is the high level of punitivity in society reflected in harsh legislation, or is the reverse true—does the severe penal policy mold social attitudes? Krajewski (2002, pp. 181–182) supports the latter. He argues that the high level of punitivity in Polish society is a consequence of the totalitarian system which held sway in Poland for years (as it did elsewhere in Central and Eastern Europe). It gave rise to conservative, rigid, and intolerant social attitudes resulting in very punitive criminal laws and accordingly frequent recourse to custodial sentences and a high prison population (for more on this subject see: Klaus et al. 2011). This leads to a devaluing of the punishment of imprisonment, which is currently seen by society as the basic penalty in Poland—therefore public opinion views prison as the only just punishment for criminals. It is a natural tendency, and one which can be seen in many countries of the world. In countries

¹⁹ It is evident when looking at the anxieties of Poles that their fear of crime is a fixed part of their consciousness (although it fell 10% between surveys conducted in 1993 and 2006). Respondents reported that the factors posing the greatest risk to their personal security were: unemployment (33%), crime (30%), poor health (26%), and bad government (22%) (Szymanowska 2008, p. 54). Poles are on the whole pessimistic when asked about their general mood. In a survey in early 2011 a majority stated that the general situation in the country was going in the wrong direction (c. 60%); similarly, many had a negative assessment of the Polish economy (over 40%). At the same time in direct questions concerning their personal situation only a small number considered the material conditions of their household to be bad (over 10%), around 40% of respondents thought their family had good living standards, and on average one in two persons had a positive assessment of their employer's business situation (Feliksiak 2011).

where custodial sentences are common, more people support them, seeing them as a natural and obvious consequence of committing a crime.²⁰ Here, the opinion-forming nature of the media²¹ and politicians is not without significance, promoting certain patterns of thought and behavior in society, in the case of Poland a univocal demand for the only “just” punishment: imprisonment (Kury 2002, p. 123, pp. 130–131).

The mass media is largely responsible for the punitive attitude of Poles, in particular frequent demands to imprison criminals. In all news items the only “fitting” penalty is precisely mandatory imprisonment. When the media reports on a criminal incident it unflinchingly finishes with the words: “the perpetrator faces up to X years in prison”, giving the maximum possible sentence and never mentioning whether other forms of punishment are available.

Almost 100% of Poles surveyed in 2006 expressed the utmost condemnation for serious crimes such as: murder, rape, and abuse of a family member, usually demanding a mandatory prison sentence for the perpetrator. Nevertheless, after a case was presented to them, setting out the details of the crime, their assessment was influenced by both the nature of the act itself and the surrounding circumstances: a terrorist would be punished one way, and an abused wife who killed her husband another way (Szymanowska 2008, p. 299). The media rarely makes the effort to present a crime from various angles.²² No wonder that presenting a simplified picture of the villain and an idealized victim ineluctably leads to demands for harsh punishment. For many people the only truth is that given by the media. On more than one occasion media crime reports have triggered such public outrage and demands for harsh punishment that a not guilty verdict (based on a detailed consideration of the case by the court, painstaking analysis of the evidence and taking of expert opinions) has sparked a general outcry and protests. In consequence, 70% of Poles surveyed in 2002 on their general assessment of criminal court judgments thought they were too soft with regard to verdicts. Public opinion also thinks that it is easy for criminals to avoid punishment (one-third of respondents even think this about murder), and that the Polish penitentiary system is too lenient (Czapska 2003, pp. 46–47).

²⁰ The prison population indicator in Poland is one of the highest in the EU (cf. Probant 2008) and in recent years has reached on average c. 220 per 100,000 inhabitants (cf. Fig. 2.1).

²¹ It should be noted that the media plays only an auxiliary role in many cases—acting as a catalyzer, reinforcing certain attitudes which are already present in society. Surveys show that people select the sort of media material that reflects their outlook and view of the world (Kury 2002, p. 113).

²² Surveys show that respondents assessing the same case fall into two groups: the first base their opinion on information coming from media materials, the second from court files, and they are diametrically opposed in terms of their attitudes to the verdict of the court. While 61% of the first group viewed the verdict as too soft, only 19% of the second group was of the same opinion (Kury 2002, pp. 139–140).

2.6 Conclusions

In light of the tough attitudes manifest in Polish society, supporting harsh punishment, it is unsurprising that politicians are quick to include punitive slogans in their election programs in hopes of boosting their opinion poll ratings. Their calls for the toughening up of criminal responsibility are founded on related public expectations. It is not a new phenomenon. It was also present in the communist years when “the will of society, to which communist politicians referred to when justifying their increasingly absurd ideas about penal policy, was (...) to a significant degree a propaganda creation made by the media they themselves controlled” (Krajewski (2002, p.182). It is still the same today, the only thing that has changed is how the media is “controlled” or shall we say “influenced” by the politicians.

While there are many differences between the countries that in the past 20 years experienced the transformation from communism to democracy, they are starting to be subject to the same rules as “mature” Western European democracies. The same processes can be seen in the behavior of politicians with regard to troubling social phenomena and similar reactions by the media to crime and the reported fall in the fear of crime.

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Part III
Surveillance, Policing and Penal Policy

Chapter 3

Transformations of Surveillance: From National Security to Private Security Industry

Aleš Završnik

Abstract This chapter outlines the transformations of surveillance in the Central and Eastern European (CEE) countries occurring as a result of profound economic, social and political change in the post-socialist transition. It begins with the socio-economic framework in which new and historically significant technologically enhanced surveillance practices (TESPs) should be understood. This chapter works from the position that flourishing multi- and cross-disciplinary “surveillance studies” have overlooked non-western and non-Anglophone experiences of surveillance. It fills this gap by situating the “surveillance question” within the field of social control theories which were highly elaborated in the CEE region. These theories approached surveillance from a different world view, with different research questions. After putting surveillance within this social control context, this chapter maps the surveillance practices seen in socialist regimes, which used it predominantly for national security purposes with labour-intensive methods and by relying on networks of informers. Some specific features of surveillance during the Balkan war are then addressed. This chapter continues by showing how a growing private sector has challenged and to some extent supplanted state-controlled agencies in carrying out surveillance, not only in the interests of »national security«—a notion long used by government to justify extra-judicial policing—but also of consumerism and profit. It then focuses on the development of this industry and offers examples of transformation in the border surveillance, road surveillance and consumer surveillance domains. After tackling the fundamental question of why surveillance is problematic and giving some examples of counter-surveillance initiatives in the CEE region, the author concludes by demonstrating how public awareness of intensified surveillance is increasing in the region.

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3.1 Introduction

New surveillance systems, made possible by developments in microelectronics, databases and computer networks, have subjected our daily lives to ever increasing scrutiny. Our communications, movements and even our bodies are constantly recorded: communications in public telecommunication networks are tracked by mandatory data retention legislation, physical movement is monitored by video in public places, GPS vehicle trackers, location-enabled body wearables, body-based location technologies, ambient intelligence and radio-frequency identification (RFID) tags placed in everyday items, while we ourselves are screened physically by devices such as security body-scanners. Technology-enhanced surveillance practices (TESPs) have become perceived as a means of solving social problems, particularly those of crime (and especially those labelled as “terrorism” and “serious crime”).

Technical surveillance enables more intensive, ubiquitous and permanent monitoring (24/7). It disregards boundaries of all kinds: night vision technology allows round-the-clock vigilance on the external “Schengen border”, while police observers can literally stare through walls with thermal cameras. For instance, Radovan Karadžić, the wartime political leader of Bosnian Serbs in the Balkan civil war, allegedly the architect of the Bosnian war responsible for genocide and war crimes, was tracked and found with the through-the-wall cameras. This gadget boasts the capacity to penetrate visually through wood, plaster, brick and reinforced concrete. It illustrates a typical pathway of development for surveillance technology: initially developed for and used by the military, and then slowly penetrating into everyday civilian life.

The goals of “new surveillance” today include security (e.g. against terrorism), efficiency (e.g. of infrastructure systems) and transparency (e.g. of social transfers to the impoverished recipients of social benefits who have become a primary targets of state surveillance in neoliberal “post-Great-Refusal” times; Lyon 2003). These goals are by no means the sole concern of a “Big Brother” state. Surveillance has been adopted by corporations, to whom no constitutional safeguards—such as the separation of powers with a system of checks and balances—apply. In addition, not only the users of TESPs—subjects of surveillance—but the objects of TESPs have also changed. Targets are not only individuals but entire demographic and social groups, not only isolated locations but whole forms of activities, data flows, patterns of movement of people, goods and money.

Technically enhanced surveillance is “digitalised”. This allows agencies to accumulate, preserve and organise data much more efficiently, creating personal data databases and using tools such as “data mining” to combine and cross-reference information from formerly separate sources.

The impact of TESPs on fundamental liberties, especially on principles of equality and social justice as well as privacy, has consequently been profound. New

surveillance technologies purport to be neutral, but technology is inescapably political in its uses; it is politics by other means. Technological objects are not easy to observe and measure, because they are also sociological objects (Leman-Langlois 2008). They are moulded by culture as they simultaneously change it. By protecting, for example, environments characterised by social, political and economic inequalities technology can reinforce the conditions already at work there, to the detriment of social equality, justice and social cohesion.

The following chapter identifies, analyses and critically evaluates technologically enhanced surveillance practices (TESPs) in Central and Eastern European (CEE) countries. It begins by presenting the most prominent social and economic changes in the CEE region in the time of the post-socialist transition. The changes had a paramount influence on how surveillance practices developed. The once overwhelmingly predominant subjects of surveillance, i.e. the national state agencies, which peered into the innermost daily lives of their citizens in the interest of authoritarian regimes, have slowly shared their monitoring powers with private security agencies and especially corporations in a novel and flourishing consumer surveillance domain.

This chapter continues by introducing the “new surveillance” practices that have given an impetus to multi-, inter- and cross-disciplinary “surveillance studies” in western countries and locates their equivalents in the social control theories developed in the CEE region. After summarising surveillance studies as “the offspring of a multitude” (Murakami Wood 2009a, p. 53) and “necessarily a multi-disciplinary enterprise” (Lyon 2002, p. 18), it offers some insight into the main directions pursued by social control theorists based on the region itself.

The introductory section on contemporary TESPs and the attempts to understand them is followed by a subchapter on the privatisation of surveillance in the region. Examples are offered from selected surveillance domains that have changed or have even emerged only lately—in the post-socialist transition period—in the CEE region, e.g. from the public transport domain, the public telecommunications surveillance domain, the consumer surveillance domain and from the border surveillance domain. The chapter then continues by tackling the fundamental question of exactly why surveillance is problematic. It concludes by presenting some types and modes of resistance surveillance is meeting in the CEE region, and some of the people mounting that resistance.

3.2 Socio-Economic Framework of Surveillance in the CEE Region

The purpose of focussing here on how TESPs are being applied in the selected CEE countries is to fill a gap in surveillance studies, which, despite considerable conceptual innovation, remain culturally biased to an Anglo-American milieu and

that of “older” EU member states.¹ “New theoretical and empirical accounts need to be developed that take into account the specificity of non-western, non-Anglophone and “global south” experiences and cultures of surveillance” (Murakami Wood, 2009b p. 189). The focus proposed here attempts to offer examples of various technologies in use; valuable insights in semantics of surveillance; its cultural embeddedness; different economies of surveillance; the predominant subjects and perennial objects of surveillance; and particularities in how TESP’s are regulated in the CEE region.

Having said that, surveillance technologies are, as any other technology, more than purely technological tools. They are politics by other means and socially embedded phenomena. With regard to Western countries, Marx (2002) for instance claims convincingly, how new surveillance was brought not only by the digital turn, but accompanied a neoliberal economic shift taking place in the 1970s. This shift led to changes in financial, workplace and consumer management. The social changes coincided with a computer revolution. The process of surveillance transformation in CEE countries has similarly coincided with other social, political, economic and cultural transformations in the region that I turn to now. How, then, are TESP’s “socially embedded” in the CEE region?

Today, surveillance is primarily related to the exceptional computing capacities of IT in tracking, recording and data mining that are leading us into a “pre-crime society” (Brown and Korff 2009). Such pre-emptive turn is supporting a “pre-emptive” criminal justice model (Zedner 2007) or “preventive law enforcement” (Cole and Lobel 2007) where criminal justice actors are, in partnerships with private security actors, oriented not only to crimes already committed, but also to detecting perpetrators of crimes that have yet to take place. The trend towards anticipating risks has especially come to the fore in the context of contemporary counter-terrorism efforts that attempt to integrate the politically charged concept of national security into liberal, human rights-based criminal procedure. Such blurring of boundaries between law enforcement and intelligence agencies facilitated the exchange of information between the law enforcement and intelligence communities at an EU level and beyond. By itself, such development would not be problematic, but such blurring pushes information gathered by the intelligence services into criminal proceedings in a process which then by-passes some of the fundamental rights guaranteed by criminal procedure, i.e. the right to a fair trial and the right of defence to cross-examine witnesses (Vervaele 2005). The pre-emptive turn was thus only possible with the growing ability of agencies to accumulate, preserve and organise data for socially significant uses with the help of IT.

As socially embedded phenomena, TESP’s furthermore form an inseparable part of neoliberal crime policy and its shift toward selective incapacitation. The latter is a variant of the idea of dangerousness as a basis for sentencing. Dangerousness is a

¹ Attention was given to the USA (e.g. Andrejevic (2004); the UK (e.g. Murakami Wood (2006); Canada (e.g. works of David Lyon); Germany (e.g. Zurawski 2007); France (e.g. works of Michel Foucault, Jean Baudrillard and Gilles Deleuze); the Western Europe (e.g. Flaherty 1989); and other developed countries (e.g., in Japan, Abe 2004).

highly contestable concept in its own right, and has been held accountable for a moral impoverishment of society (Pratt 1995). It is ascribed those offenders who are deemed to pose a significant risk to the general public (von Hirsch 1985). This shift toward “selective incapacitation” moves the focus away from the traditional concerns of criminal law and criminology, which have focused on the individual, and redirects it to an actuarial consideration of aggregates. It facilitates the development of a new type of criminal procedure that embraces not only increased reliance on imprisonment, but also merges concerns for the surveillance not only of individuals but social groups labelled as dangerous or meriting special monitoring on other grounds (e.g. recipients of social benefits must consent to invasive types of surveillance in order to retain their entitlement for support).

Surveillance is also closely related to the “just desert” philosophy that the CEE countries are slowly embracing. The turn towards just deserts may be a disputable fact in itself. In Slovenia, for instance, the principles of punishment established within the first new Penal Code (KZ 1995), which was adopted after the country’s secession from the Yugoslav federation, reflected the first shift towards “just desert” philosophy. The general rules on sentencing omitted the former aims of punishment, such as “reformation”, “educational influence” and “strengthening the social morals and responsibility” of an offender (Petrovec 2007). These aims were regarded as unpleasant ideological remainders of the socialist past and the new approach stipulated that the gravity of the offence and culpability of an offender as the only measures for determining sentence. The code still retained some provisions that reflected treatment ideology. But the first novelty of the Penal Code (KZ-A 1999) moved crime policy a step closer towards a just desert model by raising the maximum penalty from 20 to 30 years. The new Penal Code (KZ-1) adopted 9 years later (2008) raised it again to a full life sentence. There were no “rational” reasons for such a shift and most legal experts did not support the harshening measure; nor did Slovenia’s Supreme Court (Petrovec 2007, p. 327). By also taking into account the increasing prison rates in the region (see Chap. 1), the decreasing use of alternative sanctions (e.g. of community sanctions) and the introduction of harsher regimes in penal institutions (e.g. a decline in the social climate in Slovenian prison institutions)² the shift towards just desert philosophy in the CEE region becomes more evident.

In terms of surveillance such shifts are important since the just desert rationale does not rely on “deeply” rooted causes of criminality, neither social nor psychological. “On-the-surface” ontology replaces a “deep ontology” that addresses the causes of crime (Franko Aas 2005). The “on-the-surface” paradigm needs vigilant “on-the-surface” crime prevention and pushes penitentiary institutions into a managerial paradigm that relies predominantly on monitoring and tracking offenders rather than rehabilitation.

² The first research on the social climate in Slovene prisons was carried out in 1980 and has continued till nowadays. Social climate was assessed by nine categories: (1) involvement and social interaction, (2) support of the staff, (3) expressiveness, (4) autonomy, (5) practical orientation, (6) personal problem orientation, (7) order and organisation, (8) clarity of the programme rules, (9) staff control measures. See Brinc and Petrovec (2001).

The other social, political, economic and cultural changes relevant to the transformation of surveillance in the CEE region can be summed up in the following ways:

- (1) The privatisation of public (“common”) property was followed by an idea that private property should be protected privately and not with public funds (Pečar 1998) and this has triggered a boom in the private security industry.
- (2) The denationalisation of public property created new social inequalities and new elites and additionally fostered a “privatisation of security”. Security has suddenly become a commercial commodity available to those who can afford it.
- (3) Structural subordination, intimidation, extortion and humiliation of the “work force” together with the reduction of economic rights and social state provisions (see Chap. 10) have resulted in strengthening employers’ powers of supervising and monitoring employees.
- (4) Transition to the capitalist and free-market economy provided a framework for a new type of “structural” (Kanduč 2003) or “systemic” (Žižek 2007) violence and launched the special “business of surveillance”, e.g. boosting surveillance equipment industry.
- (5) The democratisation of political system, the rule of law and separation of powers: the changes strengthened public police accountability and responsibility; submitted intelligence services to the supervision of parliament and the Supreme Court, but omitted the surveillance carried out by the private security sector and left consumer surveillance insufficiently regulated, e.g. by a lack of unified standards regarding the ethical neutrality of those in the private security sector.
- (6) EU integration and the adoption of *acquis communautaire*: newly established states accelerated in creating a new legal framework for surveillance regulation, but with two provisos: only some of the countries were invited to join the club (i.e. Slovenia, Hungary, The Czech Republic, Slovakia and Poland, but not yet fully Croatia, Macedonia and Montenegro, and not Bosnia and Herzegovina and Serbia); and new member states could join only on condition they adjusted to the existing rules of the club (i.e. to regulation already tailored to serve the values and political and economic interests of the existing member states).
- (7) Changes in the relationship between the public and private domains led to a profound shift in the understanding of the right to privacy and access to public information.
- (8) Lack of trust in states agencies (including the actors of criminal justice) and fears of a “powerful” state based on abuses in the past, on one hand, and on the other the euphoric embracement of consumerism as reflected in a flourishing and all-pervasive culture of consumer surveillance (e.g. “loyalty cards” schemes).
- (9) Media liberalisation: this has strengthened the exchange of political ideas but at the same time evolved in a too often sensationalist and populist media

landscape. Abuses in the form of hate speech directed at minorities started increasing, with intimidation of the Roma population in particular (e.g. in Hungary) and members of formerly “fraternal” nationalities (e.g. in Slovenia against citizens with origins in other ex-Yugoslav republics). The sensationalism increased the fear of crime, strengthened a spirit of public condemnation and framed social questions in the form of a “communist versus anti-communist” ideological framework.

- (10) Other socio-economic developments influencing surveillance indirectly include abuses in privatisation processes, the neo-liberal turn advocating a slimmed-down government and weak social state.

These socio-economic developments in the CEE countries formed the cultural background in which TESP^s evolved, and at the same time equip us with the necessary framework for identifying, analysing and evaluating those new surveillance technologies. The questions to be tackled in the next section are, what exactly are the “new surveillance” practices in the CEE region, and how they have been understood and theorised?

3.3 Surveillance Practices and Studies in the CEE Region

3.3.1 *What are “New Surveillance” Practices?*

Almost all digital paraphernalia, from shopping tags (RFID) to mobile phones, has the potential to watch us. All these technologies have proliferated in the CEE region and we can thus speak of CEE societies in terms of “new” surveillance societies. CCTV systems have been installed (e.g. in Budapest and Zagreb³), automatic plate recognition systems put in place (e.g. in Romania), electronic transport cards introduced for travelling around the city and visiting tourist attractions (e.g. the “Urbana” travel pass in Ljubljana). Similar TESP^s are in place in every country in the region, ranging from speed control cameras, loyalty cards schemes, the monitoring of credit card transactions, satellite and mobile telecommunication for intelligence and crime control purposes, e-based national health schemes, interactive digital TV infrastructure developed for enabling scrutiny of consumer preferences—and so forth.

These monitoring devices record our browsing habits on the Internet, at our workplaces (e.g. by workers clocking-in), our out-door activities and consumer

³ The Zagreb municipality started an extensive centralised project of CCTV instalment in November 2011 at a cost of more than 2 million Euros. Ten supervisors will monitor the cameras from a central control room. The municipality claims the CCTV is necessary to prevent illegal parking, graffiti damage, street violence and illegal waste dumping. (From URL: <http://www.jutarnji.hr/nadzorne-kamere-u-zagrebu-bandic-postavlja-225-kamera-koje-od-danas-prate-bas-svaki-vas-korak-987726/>, Accessed 5 Dec 2011).

preferences. On a general level the crucial novelties of “new” surveillance can be summed up as being ubiquitous and permanent (“round-the-clock”) phenomena. They are not a novelty merely because such practices of identification and tracking would not have existed before, but because of the enhanced capacities of the information technology (IT) they use to collect unprecedented amounts of data, store it and carry out data mining for use in social settings. The spin that IT has given to social processes has raised formal and informal control to a “new” technologically enhanced level.

“New surveillance”, a term coined by Gary Marx (1985), then, is technically enhanced, more intensive (in depth), more extensive (in breadth), low profile, more embedded in everyday life routines, lends itself to multimedia formats (video, audio) and is acontextual. Information gathered in this way is easier to organise, store, retrieve, analyse, send and receive; it is focused on individuals or groups (Marx 2002).

“New” surveillance redefined the hierarchies between subjects and objects of surveillance. The state ceased to be the main or even only subject executing surveillance. The boundaries between subjects and objects have become blurred and even irrelevant. Counter-surveillance initiatives such as cop-watching have empowered citizens and fostered accountability of state officials (e.g. police surveillance of the “Occupy Ljubljana” protest in October 2011 conducted from a van equipped with a 360° vision camera on the roof was counter-recorded by demonstrators with mobile phones and uploaded on the internet as a sign of protest to such “undercover” police operations).⁴ Surveillance became ingrained in consumer objects and the infrastructure itself, e.g. in the design of consumer services such as the Apple App Store that is becoming the only place from which an upgrade of an Apple computer’s operating systems can be completed; this grants Apple absolute control over the distribution of their devices, reduces costs and increases their profits.

New surveillance sites can today be found at places (sites, points) we would never expect to find, e.g. embedded in entertainment (see Andrejevic 2007). Police, intelligence agencies and the armed forces are thus not the only ones who can scrutinise our lives. Also our closest friends, colleagues and our children (e.g. by revealing details of our lives on social networking sites) can put us under surveillance.

The surveillance shifts towards “new” surveillance began in the CEE region in tandem with the economic and political turn in the late 1990s. New technologies started to be understood as a remedy for social and economic problems. Politicians in Slovenia claimed that we needed to strengthen the economy with high-tech (IT) products and services. IT was perceived as a “progressive” and “European” tool for advancing economically broken societies. Local communities and individuals wanted to show they are “catching up” with developed countries and displayed

⁴ From URL: <http://www.had.si/blog/2011/10/16/policija-in-snemanje-dogodka-occupy-ljubljana-iz-kombija/>, Accessed 10 Dec 2011.

their success and prosperity by installing high-tech surveillance equipment in a prominent fashion. When analysing CCTV in the major urban infrastructure Hempel and Töpfer (2004, p. 27) recall that Budapest is next to London among several biggest European cities. The first open-street surveillance system in Budapest, comprising five cameras, was installed in the 5th district in 1997. In 1999, the municipal assembly of Budapest funded the installation of CCTV in a further six districts at a cost of 16 million Forint (app. 66.390 Euro) and in 2000 another ten districts received surveillance systems worth 31.8 million Forints (app. 132.000 Euro). In April 2002, 14 larger open-street CCTV schemes were developed with about 200 cameras and seven more were planned. National governments also decided to modernise public administration and infrastructure and this almost automatically meant “going digital” (e.g. with e-government). Such initiatives promised more control at lower cost to public funds.

The process of modernising Slovenian roads offers an example of how societal progress itself was understood in terms of surveillance technology instalment. The programme of road modernisation began in 1995, together with a boom in car sales. An electronic toll collection system using microwave technology and pre-paid cards (the so-called “ABC System”) was also introduced on the highways in 1995. It was a cashless tolling system and a free-flow commodity intended for frequent highway drivers. The technical “solution” was neither cheap for the state nor for the users who had to invest in buying receivers. But the system had a significant “social sorting” effect: more affluent drivers benefited from the system, as their discounts for using prepaid cards could be substantial and also brought savings in fuel. Less affluent drivers, meanwhile, did not use the system to the same extent. They ended up in using the older and more dangerous local roads and paying more per kilometre on the highways. The ABC system was not necessary, cheap, fair or safe. But it was a technologically enhanced surveillance practice considered “European” and a sign of “progress”. It provided a new market for foreign and not domestic knowledge-based enterprises: the designer of the national road toll system, the Swedish Kapsch TrafficCom Company,⁵ sold almost 420,000 board units despite the fact that the “technical solution” was planned as a temporary one from the beginning (and was taken out of operation in 2010).

3.3.2 “Surveillance Studies”

A relatively independent discipline of “surveillance studies” has evolved from theories of the social impact of individual surveillance technologies (e.g. on privacy, social equality and transparency), their regulation, their modes of operation, the business structure supporting them, their relation to nation-state, their

⁵ Source: http://www.kapsch.net/en/ktc/downloads/files/brochures/Kapsch-KTC-CI-Reference_List-EN.pdf, Accessed 15 December 2011.

embeddedness in everyday life, their relation to morality and ethics and even the resistance they have faced.⁶ The originality of surveillance studies is, however, relative since it has strong roots in philosophical and sociological thought dating from the nineteenth century and stream from social disciplines as diverse as science and technology studies and urbanism, geography, (critical) media studies, law, political science, computer science and philosophy and security studies.

The theoretical bases of surveillance studies stem from Marx's and Weber's philosophical tradition and from later authors, such as Rule (*Private Lives, Public Surveillance*, 1973) Foucault (*Surveiller et punir*, 1975), Giddens (*Nation-State and Violence*, 1985), Cohen (*Visions of Social Control*, 1985). Such studies have for the most part been Anglo-American endeavours with a few exceptions from French (e.g. Foucault, Deleuze and Bigo) and German theory (e.g. Zurawski). In addition to theoretical accounts of surveillance in general, a rich literature of empirical studies has treated individual surveillance technologies from ethical, legal, media, criminological and sociological perspectives, e.g. exploring *video* surveillance (e.g. Murakami Wood and Webster 2009), the social, ethical and legal aspects of *privacy* (e.g. Franko Aas et al. 2009), the cultural and normative *meanings* of surveillance (e.g. Mathiesen 1997), the modification of surveillance brought about by *terrorist attacks* (e.g. Lyon 2003), and the role of *computers* and *databases* in surveillance (e.g. Haggerty in Ericson 2000).

The fact that surveillance studies remain culturally biased to an Anglo-American milieu has been highly debated within surveillance studies itself (e.g. in the light of French theory by Klauser (2009)), although the gap has been only partly supplemented (e.g. for Greece by Samatas (2004), for Japan by Abe (2004), for South Africa by Minnaar (2010)). There is a big silence in theorising on “new” surveillance in the CEE region because surveillance was understood in terms of social control. Technological “solutions” for social questions such as crime did not fit into the prevailing ideology of a classless society that would eventually overcome such social malaises. If crime exists, in socialist thinking its causes should be tracked down to its roots. In order to overcome crime, a society should transform as a whole on one hand and provide strong rehabilitation for individual delinquents on the other.

From a linguistic point of view, an equivalent to the English or French term “surveillance” does not exist in Slavic languages, another possible reason for the lack of theory explicitly addressing surveillance in the CEE region. There is no word that would encompass “at-the-surface”-oriented monitoring. The semantic lack does not mean that there were no such practices, or that these were not highly debated. But, depending on the context, surveillance has been understood in terms of “watching”, “observing”, “monitoring”, “following” “tracking” or “being awake”, and regularly translated as “control” in the sense of influencing, steering and guiding the object under surveillance. As “surveillance” and “control” were

⁶ See The Surveillance Studies reader (Hier and Greenberg 2007) and Surveillance Studies: An Overview Lyon (2007).

used as synonyms,⁷ surveillance was tackled within theories of social control and implicitly understood as an activity involving object modification. Due to the linguistic lacuna, TESP's have never been understood in terms of a value-free or "neutral" activity. Observing, watching or other forms of tracking and recording were always conceived in relation to some underlying modification effects; either explicitly articulated or implicitly assumed.

3.3.3 Social Control Theories

In the past surveillance practices were tackled in the CEE region within theories of social control, as I suggested above; but why within such theoretical framework and how, exactly? Social control was understood from such diverse theoretical starting points as, in Slovenia for instance, a Marxist theory of formal and informal control (Pečar 1988, 1990) and Lacan's theoretical psychoanalysis tackling the absence of self-control in the modern subject (Salecl 1993).⁸ Such focuses show a more fundamental disparity within the social sciences regarding the theory production. Global inequalities are, as emphasises Franko Aas (2012), not only a matter of resource allocation, but "may be embedded in the ways social theorists view the world, situate their research interests, define the social and reflect over the general applicability of their knowledge" (Franko Aas 2012, p. 3). In other words, surveillance was not on the social scientists' agenda in the CEE countries at the same extent and fashion for reasons that touch upon a more fundamental "knowledge divide" between regions than appears at face value. Let me turn to the question of how exactly was surveillance understood within theories of social control by offering three representative directions pursued in the CEE region.

The social control theory inspired by Marxism defined formal control as an activity lying within the domain of the state (e.g. Pečar 1988) and informal control as taking the form of award or punishment in the family, social group, local community, neighbourhood and workplace. Pečar (1990) defined informal control in relation to numerous psychological and social phenomena, such as emotions, morals, tradition and habits, in relation to the media and public opinion, culture, ideology, politics and law, political socialisation and indoctrination, religion and

⁷ Translations of surveillance: (a) in Slovene it is "nadzor", but at the same time "nadzor" is also control (while monitoring is "opazovanje"); (b) in Croatian: "nadzirati", "kontrolirati", "vršiti uvid", "promatrati"; (c) in Polish: "inwigilacja" from lat. "vigilare" meaning "to stay awake" or "nadzoru" as supervision; (d) in Serbian: "nadzor" (e.g. electronic surveillance is "elektronski nadzor"), monitoring is "pracenje" (literary "following"); (e) in Czech: sledování, e.g. electronic surveillance is "elektronické sledování" or "elektronický monitoring"); (f) in Bosnian: nadziranje; nadzor; posmatranje.

⁸ The presented theories should only be taken as offering an example of differences between CEE and western countries and not as a comprehensive review. There are significant differences between authors at the level of individual countries that would require separate and longer analysis.

as a function of crime control. His comprehensive analysis is of the greatest importance today because he clearly showed the simultaneously productive and repressive nature of social control, i.e. as something neither “good” nor “bad”, but as being at the same time “positive and negative, preventive and repressive, uniting and dividing, overt and covert, direct or indirect” Pečar (1990, p. 18). Informal control is, he postulates, “the oldest, original and in real life most ingrained form of control that occurs whenever at least two people face each other.” (Pečar 1990, p. 17–18).

Such understanding of informal control focused on the “soul” of a subject did not explicitly approach surveillance as understood in Anglo-American theory. Surveillance was regarded as a constitutive part of the formal social control exercised by the state or of the informal controls on the desires, aspirations and motivations of an individual in his or her most intimate spaces. Social control was theoretically expressed as an “interaction between people that are together because they have to be in order to survive” (Pečar 1990, p. 18). Surveillance practices were thus implicitly understood as social “tools” such as gossips and rumours that are also a constructive element of every society (Solove 2007). Similarly, privacy was regarded as too individualistic a notion; a notion worth deposing because the balance between individual interests and the interests of the state was different from that proposed by modern individualism and thus shifted in favour of the state. If surveillance was employed, its focus was on upholding the state and its political regime with a defined end—namely a classless society that would overcome exploitation and in which individuals would be provided for according to their needs.

Another crucial focus in theorising social control in Slovenian theoretical criminology was derived from Durkheim’s claim in *The Division of Labor in Society* (1893) that “a society lives in each of us.” Theorists asked an intriguing question: how should such statement be understood? If a normative background did “really” “live in each of us”, crime would not even occur.

Lacanian theoretical psychoanalysts provided some interesting answers to this problem (Salecl 1993). Inner psychological control is a result of a “normal” subject-formation process that develops in the Oedipus phase. This is a process that fundamentally makes a human animal a moral subject, when the “Father” introduces a subject to the “symbolic order” (e.g. to the language, rituals and normative expectations of a given society). But as a result of the impotence of the example set by the Father in the modern nuclear family, the argument continues, the subject is not properly introduced into this order. What we face today, therefore, are frequently psychotic and narcissistic subjects without a functional “Ego-Ideal”, i.e. an inner example that would install “a society within us”.

If internal control ceases to exist, to what tools should crime prevention turn? When individuals are understood as fully rational agents capable of analysing cost and benefit in the course of committing a crime (if not the moral dimension of their actions), the only tool available seems to be surveillance technology. Permanent external control is comprehended in such a scenario as being the only effective tool available with which to fight crime.

Surveillance technologies thus enter the crime prevention mechanism, according to such crime control theories, which give a rather pessimistic picture of our capacity to understand the underlying causes of crime. If crime becomes a matter of capricious calculation, then the only way to decrease it is by introducing dense external supervision. And so the surveillance net was free to unfold: as offenders are conceived as opportunistic mathematicians they do not need treatment. They must be confined or closely monitored according to assessments of the danger and risk they pose to society (or penitentiary institutions). Such a logical trap was to be avoided and thus surveillance, comprehended simply as a monitoring activity, never became a highly debated issue within this branch of social control theory. Crime prevention programmes should tackle the causes of crime directly and not stay “on-the-surface” by providing purely technological fixes for social problems.

The psychoanalytical insights into internal psychic dynamics revealed that psychic controls are of the utmost importance for social control. “Surveillance within the self” precedes external technological surveillance tools as the primary control mechanism. The modern subject that still retains an internal imperative—the Lacanian concept of “the-Name-of-the-Father” or the Freudian “superego”—should be supported today, the line of reasoning continued. The constant and ubiquitous surveillance of our physical movements, preferences and even bodily functions by technologies such as security heart-beat detector machines minimise our future choices and reduce our freedom. By reducing freedom they reduce internal psychic controls, as paradoxically “freedom allows the best possible control” (Petrovec 1987).

The third and the latest direction in social control theory tackles globalisation, monetisation and the diminishing power of national states in upholding the mechanisms of social control (Kanduč 2007). This view is concerned with the powers of contemporary neoliberal “minimal” states that are losing the battle for power with supranational and deterritorialised financial elites unbound by any regulations. Social control, the argument continues, is today overtaken and executed by the financial sector with the support of international organisations such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organisation together with a few of the most powerful states (e.g. gathered in the G8 forum). According to this perspective surveillance and privacy rights are understood as being of very little significance, and that theory should rather address why social control has been overtaken by financial international organisations that are not accountable to anyone. Their powers have grown over the last decade to the extent that they can intimidate whole nation states and force them into accepting environmentally and socially destructive restrictions. The fluid “financial markets” should not be made nervous as their irritation can sink even the biggest economies.

Surveillance executed by technological gadgets is thus regarded as problematic insofar as it amplifies the more serious class struggle between the members of the work force and supranational free-flowing capital that dictates precarious working conditions without social and economical rights. As Garland (2001) has

persuasively shown, the “control society” dominated by financial and commercial interests has been imported to the UK from the US. But a similar remark can be made for the CEE region. Together with the import of democracy in the process of transition, the CEE countries also imported ideas of deregulation and privatisation. The final goal of those ideas was to create a “minimal” state that would not interfere in the markets; a state which would also be too impoverished to protect the basic human rights of the vast majority of its citizens. Interestingly enough, these processes were conducted in the name of civil liberties; i.e. in the name of the very same corpus of fundamental rights and liberties that demanded socialism be consigned to the waste dump of history.

3.4 History of Surveillance in the CEE Countries

3.4.1 National Security in the Socialist Period

Socialist countries put a high priority on labour-intensive police surveillance. Surveillance measures were not only deployed to detect and combat crime, but were much in use in border control and deterring threats to national security. The crime and border surveillance domains resembled to a great extent those found in other countries, but with one important difference. Border control was deployed to prevent the emigration of citizens and not immigration of foreigners as in contemporary Europe.

Surveillance measures deployed for national security reasons were adopted to secure political conformity and uphold the political regime. One can argue that contemporary surveillance measures have a similar, if less explicit goal of upholding political conformity. Such an argument is justified to the extent that prevailing (especially state) surveillance measures are never directed against the mainstream, establishment ideology. This has been supported by many (e.g. Lyon 2001) who claim that the power of contemporary technologically enhanced surveillance to reinforce social inequalities and perpetuate social divisions is its particular distinctive feature. But the crucial difference with regard to socialist regimes is that contemporary conformity is induced more subtly and without the state’s surveillance artillery. It is executed by seducing individuals with consumerism and uses more refined and low-profile forms of surveillance.

High focus on the political notion of national security was not a distinctive feature of socialist countries. On the contrary, national security is becoming increasingly important and a decisive justification for the extra-legal use of physical coercion in the twenty first century. But the extent of overt (public) police engagement in defending national security was extraordinary in the past. Neither intelligence nor (ordinary) police activities were under stringent regulation and subordinated to transparent political or legal control. The idea of a permanent enemy outside also fuelled extensive suspicions among citizens. Although very often based on real attacks and realistic threats from the western block (Ganser

2005), suspicion penetrated the everyday life of ordinary citizens. The degree to which ordinary people were then recruited as police informers was consequently extremely high.

The disclosure in 2003 of files from the archives of the Slovenian Secret Service (UDBA) shows, for example, the scale of citizens' mobilisation in such surveillance networks. The UDBA's Central Active Record contained data pertaining to public and state security on more than one million citizens of the republic of Slovenia, then a federal state of Yugoslavia, and data on foreign citizens involved in procedures with the agencies of the federal state; it should be noted that the population of Slovenia was under two million at the time. The UDBA records contained different categories of informants and collaborators, filed in alphabetical order, including their surname, name, data of birth and stating whether the State Security Service had also opened a dossier on them. The record included names of contemporary left-wing and right-wing politicians, nationalists and clerics. The record's structure does not incorporate a clear-cut distinction between surveillance targets and informants. But in spite of these deficiencies the database clearly shows the density of the surveillance network and the nature of surveillance practices: these were very labour-intensive and focused primarily on national security.

The next important feature of informant networks was the recruitment process. Many informants executed jobs that entailed a duty to collaborate and inform. Some of them had a minor compromising event in their life that they did not want made public. Even when both groups from the Central Active Record are easily discernible, it would be unjustifiable to "blame" informants for their actions. The way recruitment was carried out thus sheds a different light on lustration legislation adopted in at least some of the CEE countries—a programme which prohibits former government officials from working in public service.

A complete lack of legal scrutiny of the state's national security agencies, the subordination of police to the imperatives of national security were distinctive features of CEE countries in the socialist period. There was no, or at most very weak subordination of the security apparatus to the rule of law (e.g. no exclusionary rules existed in criminal procedure that would prohibit the use of data gathered illegally or even with torture), no judicial supervision of the police when acting as a *de facto* "intelligence service" and a lack of police accountability for abuses of their powers.

The described aspect of surveillance became very significant for later developments in the western Balkans region, where the civil war and subsequent privatisation of crime control were significantly marked by the conduct of the former socialist police.

In terms of subjects of surveillance, the CEE countries developed specific programmes and organisations to direct citizens' participation in surveillance regimes. A concept of "social self-protection", for instance, was common in the former Yugoslavia, a mechanism for involving citizens in policing (Pečar 1991, p. 326; in Slovenian "družbena samozaščita"). The scheme was introduced with the Internal Affairs Act of 1972 and further developed in the Social Self-protection, Security and Internal Affairs Act of 1976. The later implemented

methods of social self-protection and added a special subchapter on “national protection” (in Slovene “narodna zaščita”) with detailed tasks, directions for organising the participation of citizens in the protection regime. It encompassed military defence together with citizen engagement in crime policy and surveillance (Frlež 2010).

A very similar civilian engagement in policing was also established in Hungary by the nationwide Civil Self-Defence Organisations or Civil Guards (“Polgárőrség”). The “Nationwide Civil Self-Defence Organizations” (OPSZ) evolved into an entirely civilian organization in the transition period, which includes uniformed and unarmed operatives who take part in policing in various fields. Their goals are keeping public order, reducing crime and increasing public safety. The Civil Guard executes tasks by patrolling neighbourhoods, informing residents and assisting police officers on duty with specially formed squads, such as a “youth crime prevention unit”, or a technologically enhanced surveillance unit with automatic number plate recognition system.⁹

3.4.2 Surveillance Agents in the Balkan War

The Western Balkans war started in June 1991, at first in Slovenia only, with military incidents in fact having taken place as early as October 1990. The subsequent regional war changed the future development of every agency within the security domain.

The war in ex-Yugoslavia was predominantly an internal armed conflict with external intervening factors (e.g. NATO bombings). It was an inter-ethnic war among people of different ethnic origins who had been living next to each other or in the same country for years before military action broke out with regular and irregular armies (Nikolič-Ristanović 1998). It was significant that during the war the police, i.e. the major surveillance subject in the socialist period, became one of the main perpetrators of crime. Testimonies from Bosnia–Herzegovina, for instance, suggest that the role of the police was often in the hands of people who were known criminals before the war (Nikolič-Ristanović 1998). Such recruitments in the police forces led to the arrest of people of other nationalities, burglaries and executions. The situation of insecurity, fear and distrust during the war was thus to a great extent aggravated by the former subjects of formal control.

The war also marked the development of the private security market. During the war the embargo imposed by western countries facilitated the illegal smuggling of weapons and private security companies were very often the first to

⁹ Citizen self-protection organizations are by no means unique to CEE countries. They resemble, for instance, Neighbourhood Crime Watch in the USA and the U.K.; the Stop Crime Program in the USA that started in 1976 in Albuquerque, New Mexico; the “Guardian Angels” that started as a subway patrolling group in New York in 1979 etc.

engage in such activities by, for example recruiting individuals from the criminal underground.

After the war the private security companies formed during it, e.g. in Croatia and Serbia, recruited returning ex-soldiers. This undermined public trust in the private security industry for the next two decades. The background to this was a situation in which new independent states had not yet reformed their institutions. The private security industry was thus predominantly perceived as a competitor to the (public) police and thus something undermining and not fostering society's overall capacity to prevent, detect, prosecute and punish crime.

3.5 Securing Private Interests in Post-socialist Transition

3.5.1 The Rise of Private Security

Private security industry encompasses four segments, according to de Waard (1999): (1) private security companies which perform “activities on a professional basis for third parties”, also known as “contract-security”; (2) private in-house security services “performing functions for their own company” and also known as “in-house security”; (3) private central alarm monitoring stations that perform functions for third persons on a professional basis; and (4) private security transport companies offering services for transporting limited quantities of cash and other valuables for third persons.

After the collapse of socialism, surveillance regimes became much more dispersed. The privatisation of public property, development of information technology and adoption of neo-liberal ideology spread surveillance to other domains. It became embedded in the consumer domain, architecture and urbanism, transport systems, schools and kindergartens where parents could become full-time surveillants of their offspring (and their guardians) through video surveillance. The shift toward “commercialized security” was mainly generated by privatisation of “public property” and the state's withdrawal from providing the same extent of social and economic safety.

In general terms, policing always involves a body of largely uniformed representatives of the state—who may exercise powers on behalf of the state which are unavailable to others. However, there are many forms of policing besides the police, such as private security actors, citizens' self-protective organisations, hybrid private–public institutions (e.g. the Internet Watch Foundation which monitors internet abuses in the UK), governmental non-police organisations (e.g. customs and postal services) or even infrastructure providers (e.g. Internet service providers) (Wall 2007). But “commercial policing” is a complete novelty in CEE countries, where it has developed in a very short period of time since the beginning of the 1990s with the transformation of the social and political system (Sotlar and Meško 2009; Kešetović 2010, p. 63). Such rapid change took place in sharp contrast to western countries where developments in commercial (and public)

Table 3.1 Changes in commercial and public policing employment 1951–2001

	1951	1971	1991	2001
Police officers	84,585	115,170	149,964	166,407
Security guards	66,950	129,670	159,704	161,013

policing evolved progressively over decades (Jones and Newburn 2006; Table 3.1).

The rise of private security is thus by no means a unique feature of CEE countries as the private security industry in the west has generated and fed off public fears to grow into a \$215-billion industry (Hay and Andrejevic 2006), with an annual growth rate of 6–8% (Abrahamsen and Williams 2005). It caters to government agencies, businesses and individuals alike with high-tech security “solutions”. The trend has been described as a “marketization” and “commodification” of policing. “Pluralisation” of policing (Loader 2000) also gave powers to new subjects of surveillance in the CEE region. This led to “diffusion” of policing models (Kempa 2007) across all of Europe and developed a “business of surveillance” that fully transformed crime control into an “industry” (Christie 1993) and security into a “commodity” (van Buuren 2010).

In the socialist period activities now associated with private security were undertaken solely by security companies, which were based on the “social ownership” model common to the socialist political system of the former Yugoslavia (Sotlar and Meško 2009, p. 490). In the course of privatisation fever these companies were also privatised. For instance, the biggest (and the only) security company in Slovenia in 1989 was called SOZD “Varnost Ljubljana”. The system for organising such companies at the time was briefly as follows: SOZDs (“Sestavljena organizacija združenega dela”) were “self-managing” legal entities, defined according to the period’s typology of legal (juridical) persona. The “company” was a “holding” in contemporary legal terms that encompassed 13 “daughter companies” or TOZDs—“Temeljna organizacija združenega dela”. It was transformed into a joint-stock company in the process of transforming the ownership of companies and subsequently bought up mostly by members of the management.

The other important particularity of the development of private security industry in the region was that ex-police officers were the first to establish “real” private security companies. There was a saying: “A police officer does not die; he goes into private security” (Pečar 1998). This had several negative consequences. It often led to corruption and caused a transfer of negative practices from the police to private sector. It fostered the use of methods that were legally prohibited to private security. Private security often ended up acting as the right-hand man of the public police in executing tasks that were indeed prohibited to the police. It caused a net-widening effect and deepened the surveillance net: marginalized areas of less importance for the state were put under private supervision.

3.5.2 Justifications of Security Privatisation

The privatisation of public property led to a redistribution of rights and duties in protecting property. It was claimed that the interests stemming from ownership should define the model for security practices. Private owners should secure their assets by engaging private security firms on a free security industry market. Responsibility for providing security should be divided between the (public) police, private security forces, local communities and citizens themselves. The (public) police should predominantly engage in tackling crimes which have already been committed.

The reasons for the process of privatisation and the state's outsourcing of its security work is discernible from the following Slovenian example when, at the end of 1997, the Ministry of Internal Affairs decided that the police would disconnect technically protected sites from police alarm centres (Anželj 1998, p. 2). The reasons were threefold: a limited budget, the "necessity" of privatisation and commitment to the rule of law.

Funds, it was argued, were needed for either equipment or police personnel (or both). The limited budget available to the police did not stretch to training a greater number of officers, overtime work or funds for adapting and updating old police technology.

The process of government outsourcing was fostered by an unsettled understanding of what private property actually is. The social, economic and ecological functions of private property that could limit the concept of private ownership were disregarded. It was claimed that the protection of private property should be carried out solely by private security agencies and not with public funds. The privatisation of public property was conceived as a "necessity" that automatically leads to the privatisation of security.

Due to general public resentment of strong governmental powers and because of past abuses (also because of continuing political pressure on the management of companies still owned by the state) state agencies started to act strictly according to the letter instead of the spirit of the laws. A growing recourse to rigid legal reasoning by the authorities led them to pull back their duties as defined in law. The disconnection of the technically protected sites formerly plugged into police alarm centres was thus part of a wider process of state withdrawal from domains where obligations to act were not directly required by law (Anželj 1998).

3.5.3 Trends in Private Security Industry in the CEE Region

The data provided by the Confederation of European Security Services (CoESS 2008), an umbrella organisation for national private security associations, shows the extent to which crime control was privatised. The whole European market for manned guarding services has grown from about 1 million contracts in 2004 to

Table 3.2 Number of private security companies and their employees

CoESS members	Security companies		Security officers		Police officers	
	2004	2008	2004	2008	2004	2008
1. Poland	3.600	3.600	200.000	165.000	103.309	100.000
2. Hungary	3.900	11.304	80.000	80.000	40.000	40.000
3. Czech Republic	2.210	5.629	30.030	51.542	47.400	46.000
4. Serbia	n/a	158	n/a	28.000	n/a	34.000
5. Slovakia	1.730	n/a	20.839	17.200	21.500	21.500
6. Croatia	n/a	246	n/a	16.000	n/a	19.000
7. Macedonia	n/a	152	n/a	5.600	n/a	12.000
8. Slovenia	126	100	4.500	6.211	7.500	7.500
9. Bosnia and Herzegovina	42	n/a	n/a	2.000	n/a	16.000

Table 3.3 Public police and private security forces rates for 2008

CoESS members	Population	Security per population ratio	Police per population ratio	Police/Security ratio
1. Poland	38.600.000	1/234	1/386	1/1,65
2. Hungary	10.000.000	1/125	1/250	1/2,00
3. Czech Republic	10.220.911	1/200	1/222	1/1,12
4. Serbia	7.400.000	1/264	1/218	1/0,82
5. Slovakia	5.455.407	1/317	1/254	1/0,80
6. Croatia	4.491.543	1/280	1/236	1/0,84
7. Macedonia	2.061.315	1/368	1/172	1/0,47
8. Slovenia	2.000.000	1/322	1/267	1/0,83
9. Bosnia and Herzegovina	4.590.310	1/2295	1/287	1/0,13

over 1.6 million in 2008. This data SEESAC (2005) together with academic estimations (e.g. Sotlar and Meško 2009; van Steden and Sarre 2010) shows the “mounting pervasiveness of commercial guarding companies” (van Steden and Sarre 2010, p. 427) in the CEE region (Table 3.2).

The number of companies in the period 2004–2008 had increased in all countries but Slovenia. There was also an increase in the number of security officers in all countries except Poland and Slovakia.

The relation between (public) police forces and (private) security forces shows a significant trend toward the privatisation of security (see Table 3.3).

In a group of countries composed of Poland, Hungary and the Czech Republic, the security forces’ personnel outnumbers the police and the police/private security ratio is reaching 1:2 in Hungary in favour of the private security (in 2008). But in a group of countries comprising the Western Balkans and Slovakia, police forces still outnumber private security forces; in Bosnia privatisation has been very weak and the ratio is nearing only 8:1 in favour of the police. Ex-Yugoslav countries, especially in parts mostly affected by the war, have not privatised security to the

same extent as other parts of the CEE region, although private security is gradually becoming more common everywhere.

The number of private security guards and public police officers at a world level was estimated to be from 2.4 to 2.8 private security employees for every one police officer (Cunningham et al. 1990). A typical estimation in 1999 for Slovenia, for instance, was that the number of private security personnel would reach 12,000 in 2004 (Anžič 1999, p. 5), i.e. a greater number than the personnel working at the Ministries of the Interior and Defence combined. However, the increase was not as sharp as expected. It reached 4,500 in 2004, and 6,200 private security personnel in 2008.

The private security sector has also grown strong in other perspectives. It has turned out to be a very lucrative business. The company Varnost Maribor, one of the biggest private security companies in Slovenia, for instance, opened offices in other Balkans countries. It was established in 1985 as a TOZD under the “mother” company Varnost Ljubljana. Today, it employs 1,800 people, with a 28 million EUR turnover, and controls 3,203 objects from its own control centre.¹⁰ The scale of the other main players in the sector, the Concern Sintal, is similar: 1,821 employees, 15,500 physically and technically protected sites, 523 physically protected sites and 325 intervention vehicles. The growth of this company is illustrated by the increase of employees, technically secured sites and intervention vehicles (Sintal 2011).

Licensing and training reveals another aspect of the growing private security industry. Training is usually only offered by national associations of private security companies. This creates struggles for power both within the industry (e.g. for influence within the national associations) and between the industry and governments as the latter want to retain at least some vestiges of control over areas taken over by the industry. The granting and revoking of security licences have developed into a “big business” either where it is trusted only to national associations or to the market.

3.5.4 Regulation of the Private Security Industry

Regulation of the private security industry remains a very turbulent and unstable issue in the CEE region. Newly established states struggled to keep pace with technological progress and lacked funds, while the private sector invested significantly in technical development. Furthermore, police forces also constantly had to respond to political pressures on account of their allegedly partial conduct. The private security regime was, on the other hand, not as rigid and very poorly viewed by the public in comparison to police and intelligence services (Sotlar 2006). In Slovenia, for instance, a very open legal framework (e.g. an underdeveloped

¹⁰ Data from Varnost Maribor, source URL: http://www.varnost.si/poslovni_sistem_varnost, Accessed 29 July 2011.

licensing system, poor training requirements for security personnel, weak supervision from the national Chamber of Private Security) led to significant increases in the number of companies authorised for security services, a number which peaked at 249 companies in 1997 (Sotlar 2006).

Slovenia was one of the first states in the western Balkans to adopt legislation regulating private protection. It regulated private security¹¹ and detectives'¹² services separately back in 1994. All other countries in the Western Balkans region, except Serbia, have adopted some regulation and standardisation of security services. But although Slovenia has a long-standing tradition of regulation and is the only country in the Balkans region with full membership of the Confederation of European Security Services (CoESS), calls for stricter regulation and limiting the industry have been spurred by a number of scandals within the industry itself.

The Slovenian security industry backed stricter regulation because it wanted to outlaw semi-legitimate and cheap business practices that were undermining the reputation of the industry. The Chamber of the Republic of Slovenia for Private Security established in 1994 was vested with several important tasks (such as overseeing the standard of skills, approving licences, organising training courses). Importantly, membership in the Chamber was mandatory for all private security companies. The first private security industry regulation prohibited the industry's practice of conducting its activities with retired police personnel, students and other non-qualified workers. New licences for physical and technical security were issued back in 1995. Devoted enthusiasts, who even organised their own Security Fair, took the lead in the sector. According to Sotlar and Meško (2009) the first period was marked by the "privatisation of security" (1994–2003) and was followed by consolidation of the private security sector because of the interventions of the state in the period 2003–2007; the latter phase was succeeded by a period of "politicisation" of the private security sector (from 2007).

Legislation was substantially changed several times after several fatal security incidents. The number of private security companies consequently dropped and settled at 117 companies in 2011 (Slovenia). The Private Security Act (2003) entrusted inspection of and oversight over private security companies to the Ministry of the Interior and the Police. The Slovenian Chamber for Private Security retained only a professional supervision over companies. The Slovenian Ministry of the Interior became responsible for granting, changing and revoking licences for offering private security services. The act also introduced mandatory training of private security personnel prior to their employment in security companies (Sotlar and Meško 2009). These developments led to the specialisation of security companies (Sotlar and Meško 2009).

¹¹ The first regulation by the Private Protection and Obligatory Organization of Security Services Act (1994) was replaced by the Private Security Act (ZZasV 2003) and later on with the new Private Security Act (ZZasV-1 in 2011).

¹² Detective Activities Act (ZDD 1994) was amended four times and completely new Detective Activities Act (ZDD-1) was adopted in 2011.

3.5.5 Challenges for the Private Security Industry

Frequent and substantial changes of regulation of the private security industry, as exemplified by the Slovenian situation, reveal a long struggle for power over private security regulation taking place between governments (e.g. ministries of the interior) and industry (which desires, e.g. self-management executed by national associations).

The role of the national associations of private security companies remains controversial as it became evident that the industry's capacity to self-regulate is rather weak. For instance, after incidents at the "Lipa" and "Global" nightclubs in Slovenia, the president of the Slovenian Chamber for the Development of Slovene Private Security warned about weak control over private security companies at the time when the Slovenian Ministry for the Interior was still vested with supervisory powers. The struggle for regulatory power over private security industry emerged again in 2008 following a proposal from the Ministry of Interior to allow any company that meets the criteria of professionalism to offer private security services. The Chamber lobbied extensively against such liberalisation of the private security market by claiming that the quality of services would be endangered if companies that do not offer private security services as their primary business were also to enter the security market. What is certain today is that this governmental proposal would put an end to monopolies in the security sector. The quality and legality of security services does not depend on a company's primary business, but on the quality of supervision, licensing and training a company offers. It thus comes with no surprise that the government's proposal has not yet been adopted (December 2011).

Some of the most controversial and challenging aspects of the long process of regulating this industry remain unresolved. Such issues include the low level of supervision over the operations of private security companies, the relaxed licensing procedures they still may exploit, the illegal work force they employ, the poor salaries security workers receive for demanding and dangerous jobs with extremely weak labour rights (e.g. unsettled working hours). If one takes into consideration a fact mentioned by Sortlar and Meško (2009, p. 275) that three big companies dominate the private security sector in Slovenia (i.e. they employ more than 50% of the private security personnel at work in the country), one may conclude that the industry has grown very strong vis-à-vis the state. Regulation becomes increasingly difficult to adopt yet even harder to enforce.

3.6 Conclusion

Surveillance is of great importance today because of the power it both exercises and represents (cf. Monahan 2010). Technologically enhanced surveillance practices (TESPs) establish and sustain social inequalities in a manner that has been

dubbed the “social sorting effect” (Lyon 2003), e.g. routine drug testing is intended only for workers in low-paying service jobs but not for politicians; software tracking keyboard activity is deployed only for employees at the lower levels of the management echelon. This is not a complete novelty; Durkheim noted long ago that modern societies depend upon differentiation among people. But crucially for TESP, although social sorting which occurs through surveillance can be seen with regard to any (perceived or actual) difference among people (such as race, class and gender) the key differences it reinforces are capitalist disparities of social status and place (cf. Monahan 2010).

Discourses about surveillance typically speak in terms of false trade-offs: we are presented a choice between security or liberty, security or privacy, and so forth (cf. Murakami Wood et al. 2006). Such binary framing implies that surveillance works by consensus that people have a (rational) choice as to whether or not they accept it in their lives. But in reality citizens have little or no option but to submit to surveillance. The informed consent on which advocates of privacy are primarily focused be regarded as a given if observed merely at the very surface level. But the denial of services, unreasonably long boarding waits, higher prices and other inconveniences and obstructions are examples showing the consequences of such narrow legal reasoning at regulating TESP.

The sense of security offered by the binary framing is also false because surveillance is often much more efficacious at identifying perpetrators during and after a criminal act than at preventing crime. Even more often, it simply escalates public fear of crime (e.g. the perception that cameras are not installed in places where there is no need for such high-tech control). It also too often suffers technical failure (e.g. low resolution cameras showing images without any value whatsoever). Finally, TESP are also not in reality as grim as one would expect from such framing. They can offer liberating and emancipatory alternative forms of use.

The struggle to beat control systems and to avoid observation has adopted manifold forms and strategies (cf. Lyon 2007; Koskela 2009; Monahan 2010). Mapping the streets with the least surveillance in Ljubljana with iSee routes is but one example from the CEE region. The “Sousveillance” movement (Mann et al. 2004), which encourages the surveilled (“sous-”) to take control and use the data of those at the top (“sur-”), has spread into the CEE region through “Big Brother Awards,” a “Freedom not Fear” initiative opposing CCTV in Prague and the Hungarian Civil Liberties Union that maintains vigilance against the fresh growth of surveillance with a data protection programme. Counter-surveillance activism is also slowly proliferating in the region although a civil society organizations have not still sprung up to offer influential resistance: opposition against CCTV in Slovenia with an important “TiKam” project has not yet raised public concerns.

TESP are also of prominent importance because they infringe freedom of expression and the right of assembly and association. Increased, intensified and low-profile TESP lead to self-censorship, because they impose fears that recorded speech and/or assembly could be misleadingly interpreted, e.g. as forming (a part of) a terrorism activities. The technology automatically affects the

choices and power of the targets of surveillance and ordinary citizens, little by little, lose control over the data that is used to shape their life chances (cf. Murakami Wood 2006). Many TESP's also infringe the presumption of innocence. The very core idea of a large-scale "dataveillance" (e.g. data retention regulation in the EU that obliges EU member states to adopt legislation for compulsory and large-scale traffic and location data retention) is to allow investigations of non-specific individuals and without probable cause (or any other standard of proof). Obviously, TESP's affect the right to privacy, as has already been extensively debated in the literature on the subject.

Having said that, only particular TESP's are in use in chosen countries and even when employed they may cause different effects. The way technology is employed depends on cultural, legal and organisational factors. The history of abuses of power by central governments against their own populations in the CEE has given rise to particular social fears. CEE countries tend to regulate and limit the power of central governments strongly, but to lean increasingly on the private security industry. Government is itself perceived as a very suspicious agent of surveillance while private industry is granted trust over almost every detail of our lives.

The privatisation of surveillance has been central to the development of surveillance in the CEE region. If the main justification of surveillance in the socialist period was national security, its contemporary justification is profit. The private security sector has grown significantly over the past two decades, although not completely evenly in the whole CEE region. Related to privatisation and the new market economy was a growth of consumer surveillance that became one of the most intrusive surveillance domains during the transition from socialism. Private corporations have not been monitored to the extent as governments that became confined to relatively firm national and EU legal frameworks while, at the same time, consumers are not even aware of the monitoring carried out on them in leisure, shopping, entertainment and "wellness" complexes, and similar spaces.

Justifications of border surveillance shifted significantly in the transition period. If border surveillance focused on citizens in order to prevent emigration in the time of socialism, today it focuses on those struggling to enter borders in the region. Immigration and crime control have become closely co-ordinated fields for contemporary European police and social policy organisations (Franko Aas 2011) and thus highly relevant for the CEE region, since it lies on the "outer" EU border.

Besides the declining power of the (public) police to remain the dominant subject of surveillance, we are also witnessing reviving forms of self-protection measures, patrol and informal peer-to-peer control (e.g. in the form of community policing). These are not always positive developments such as "counter-surveillance" initiatives mentioned above, aimed at monitoring those in power. On the contrary, right-wing extremism fuelled by fear of the other (e.g. the Roma population in Hungary or immigrants from the ex-Yugoslavian republics in Slovenia) is fostering vigilante surveillance by hardliners who feel that the state is 'not doing enough' to control terrorism, crime and illegal immigration.

The contemporary forms of surveillance are thus not only technologically enhanced but culturally embedded. Surveillance is inevitably marked by larger

socio-economic transformations and shifts towards neoliberal policies in the CEE region. The transition to a capitalist market economy led to the privatisation of once “public” property and also of crime control. It has contributed to individual and collective fears and dictated specific market-oriented responses to them. It was influenced by a shift in security logic, where the new emphasis is upon a preemptive criminal justice system using methods of proactive risk management; a shift from a “punishment” mentality towards a “risk” mentality; a shift towards security privatisation and decentralisation; and a countervailing trend towards the centralisation of surveillance systems at the EU level. The privatisation programmes that started in 1991 significantly marked CEE societies and together with the adoption of neoliberal policies turned surveillance in a direction that leads to social problems being depoliticized into individual ones and social inequalities being seen as normative—as unremarkable and obvious, indeed, as the cameras surrounding us in public spaces.

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Chapter 4

Policing Organised Crime: A Paradox of Transition?

Primož Gorkič

Abstract CEE countries in transition have supposedly succeeded in re-establishing their police forces in line with ideals of ‘democratic policing’ or are in the process of doing so. It is also widely recognised that crime numbers surged in CEE countries after the break-up of socialist regimes. This chapter aims to analyse how the standards of democratic policing stood up to the pressures brought by this rise in crime, in particular in organised crime. Democratic policing stands in opposition to policing in a totalitarian, socialist country. Its core values are: serving civil society, transparency, accountability, integrity management, representativeness, the (relative) autonomy of the police organisation and professionalism. CEE countries—some due to notable influence from abroad—took steps both towards instituting new organisational measures for fighting organised crime and securing adequate special, covert powers of investigation. How do the measures necessary to challenge organised crime stand up to the principles of democratic policing, in particular those of decentralisation, (judicial) accountability and transparency? At face value, it appears that combating organised crime requires the very same methods commonly used by pre-1989 regimes to uphold the pre-transition political system. This chapter provides a comparative overview of police reforms in selected CEE countries, with special emphasis on special investigative and other measures aimed at combating organised crime. A casestudy attempts to assess the struggle to secure legitimacy for such policing methods in a new political order.

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4.1 Introduction

CEE countries in transition have supposedly succeeded in re-establishing their police forces in line with ideals of ‘democratic policing’ or are in the process of doing so. Indeed, some CEE countries have reached the threshold set by the European Union and are by now Member States. The transition of police forces is today generally taken as a step towards strengthening the rule of law, one of the key principles of democratic policing that police forces in transition were to follow. Its central element is, no doubt, respect for and protection of human rights. At the same time, this ideal has reshaped transition countries in a way that offers new breeding grounds for criminal activities, to an extent previously unknown (or rather, perhaps, at least not acknowledged). It is widely recognised that crime numbers surged in CEE countries after the break-up of socialist regimes. Have the standards of democratic policing stood up to the pressures brought by this steep rise in crime?

It would be presumptuous to think that we can approach the issue in a comprehensive manner here, that is, by covering all types of crime. Different types of crime allow or demand different types of policing policies. Where in one case classic, reactive policing methods may suffice (e.g. a simple theft), they will fail when dealing with a different type of crime. Similarly, while applying the most intrusive methods of policing (e.g. covert methods of investigation) will be deemed necessary in one case (e.g. corruption), they will surely overshoot the target in another. Policing a specific type of crime involves specific resources that may or may not be at the disposal of a given police force. A comprehensive approach would have to take these differences into account. The scale and complexity of such an undertaking is beyond the scope of this chapter.

Analysing a particular type of crime is, however, feasible. The policing of organised crime shall suit this purpose well, for a number of reasons. First, from the outset, methods of policing organised crime were very well known—even though the notion of organised crime was (and remains) rather vague, uncertain and variously defined. Second, these methods, when examined properly, stand in clear contradiction to ideals of democratic policing. And third, organised crime is hardly confined to CEE countries in transition: it is an internationally recognised problem that poses challenges to the values of democratic policing worldwide. In this last respect, analysing police reform in transition countries may therefore offer a valuable insight into the values, theory and practice of policing in Western Europe.

To conclude these introductory remarks, a further short note is in order: the notion of policing is becoming notoriously far-reaching. It may extend to all state law enforcement and include private policing as well (for an overview, see Rowe 2008, p. 5 *et seq.*). A comprehensive analysis of policing developments in CE Europe would therefore demand that private policing and other methods of surveillance be taken into account as well; their expansion after the fall of the Iron curtain has been noted and researched (Caparini and Marenin 2005, p. 10).

However, in this chapter we shall focus on the reform of policing within specialised state agencies ('the police'), and their attempts to deal with organised crime during the transition period.

4.2 An Overview: Democratic Policing, Organised Crime and the Path Towards Rule of Law

4.2.1 Democratic Policing: Values and Benchmarks

It is easy to note the ideological, political element behind the notion of democratic policing. As summed up by Caparini and Marenin (2005, pp. 2–3), the notion of democratic policing comprises 'a set of core values and norms,' pursuit of which is taken as an 'indicator of the consolidation of democracies.' Democratic policing stands in opposition to policing in a totalitarian, socialist country. These core values are: serving civil society, transparency, accountability, integrity management, representativeness, the (relative) autonomy of the police organisation and professionalism. All of these stand in contrast to what was perceived as policing in a totalitarian regime. By stressing that the police should act in the interests of civil society, we depart from the idea of the police mainly serving the interests of the state. Transparency and accountability are achieved by establishing internal and external control mechanisms that ensure respect for the rule of law and human rights. Integrity management is essential to avoid police corruption and abuses of power, and semi-autonomy should balance the police service in a way that secures impartial and professional law enforcement. In short, democratic policing promotes the values to be shared in a democratic society, an ideal pursued by the transition countries. In opposition to this stands policing that sees to the elimination of political opposition, involves secretive and violent methods and aims at perpetuating the current state ideology (Fijalkowski 2007, pp. 158–160).

It is crucial to note that the notion of democratic policing, being a set of values, principles and norms, hardly provides a simple recipe on how to reform a post-totalitarian police force. Although all of these are discussed in detail by Western scholars, these values are in need of further definition within the context of transitional societies. By doing so, it will be possible to develop benchmarks allowing us to assess the success of the democratisation processes and, more specifically, the impact organised crime developments have had on police reforms in selected CEE countries. Scholars attempting to develop these criteria in more detail have focused mainly on the transformation of the police as a corporate body. Recasens (1999, pp. 405–407), for example, stressed the following elements:

- (1) Structural change, which includes the flexibility and decentralisation of police structures, good managerial skills, clear orders and alacrity in giving them.

- (2) Optimal use of human and material resources, i.e. providing staff motivation (by providing opportunities for promotion or securing interest in police work), objective, adequate standards and planning of resource usage.
- (3) Training, including basic training, special training for posts of command and special tasks, and refresher training.
- (4) Means of professional representation, including trade unions and the right to strike; and
- (5) Supervisory mechanisms, which include internal supervision (by the police themselves), judicial supervision, and supervision by other democratic and international bodies.

A similar attempt was made by Kertesz and Szikinger. Their starting point is the concept of legitimacy (Kertesz and Szikinger 2000, pp. 278–279). Drawing from their experience with the transformation of the Hungarian police, they noticed a need to provide a clear basis for the legitimate exercise of police powers, not only on an abstract level (by providing an adequate legal foundation for police work, ‘legal-logical legitimacy’), but also in the field of practice (functional legitimacy). Democratic policing required the clear and transparent statutory regulation of police powers, and efficient exercise of such powers (‘doing the right things’, Oosterwijk, as cited in Kertesz and Szikinger 2000, p. 279). The second element in democratic policing is human resources, i.e. the need to secure personnel that can deliver professional and ethical conduct (Kertesz and Szikinger 2000, pp. 280–281). In CEE countries, the process of lustration caused many to leave the police forces, creating a vacuum that needed to be filled with new officers, equipped with new training and skills on a new ethical basis. The third element is the democratic style of management, which includes a level of inner democracy that leads to participative managements (in contrast to authoritarian, centralised leadership). Fourth, responsiveness to the needs of society is required. This involves not only adequate responses when enforcing laws, preventing crime and disorder, but also a philosophy of response to emergencies as constituting a social service (Kertesz and Szikinger 2000, p. 283). The fifth is the element of accountability: internal, judicial and social accountability.

It is easy to see that both these academic attempts focus mainly on the institutional aspects of police reform. Although these are no doubt essential for a successful police transition, we need to bear in mind that the success of police forces in their newly defined mission, to fight crime and prevent disorder, depended (and still does) mainly on their powers of conducting police investigations. Powers of investigation underwent a significant shift after 1989. This shift reflected new constitutional arrangements introduced in CEE countries and, as a common denominator, was a condition for joining the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention was ratified by Croatia on November 5, 1997, the Czech Republic on March 18, 1992, Hungary on November 5, 1992, Poland on January 19, 1993, Serbia on March 3, 2004, Slovenia on June 28, 1994 and Bosnia and Herzegovina on July 12, 2002.

Respect for human rights, in terms of institutional changes, is reflected in a shift from a state-oriented police model to one geared towards serving civil society: but in practice, this shift is seen mainly in how the police carry out their investigatory powers, more particularly those of the most intrusive kind. It is the exercise of these powers that put the legitimacy, professionalism, ethical conduct, transparency and accountability of a police organisation to the test. Accordingly, their scope and application may be treated as a distinct, non-institutional aspect of the democratisation process in CEE police forces.

With this principle in mind, research was undertaken by the Institute of Criminology at Ljubljana Faculty of Law (Jager 2006) that took into account the structural or institutional emphasis of the two studies summarised above, but also focused on the effectiveness of police crime investigation. Admittedly, the resulting study does not directly deal with the impact of transition on Slovenian police forces. It does, however, provide a comprehensive framework for assessing police effectiveness in investigations—which, as has already been noted, has a direct bearing on the legitimacy of police powers. In making its assessment, the analysis combined two factors (Jager 2006, p. 98 *et seq.*):

- (1) organisation (systemic) factors, and
- (2) application of particular police powers.

Organisational factors included the aforementioned points of concern: adequate legal regulation of the police force, human resources (in particular, adequate wages and training), material resources (technical support, forensics, analytical support), management and cooperation with the public, victims and other law enforcement agencies (in particular, the public prosecutor and investigative judge). The second research category covered the effectiveness with which particular powers of investigation are applied to particular types of crime. Further exploration of the success of policing organised crime in CEE countries will be guided by the distinction set out here.

4.2.2 Policing Organised Crime

It is obvious that approaches to analysing police reform and the effectiveness of police work are fairly heterogeneous and a comparative overview of policing reform in transition countries is not a simple task. Focusing on a particular type of crime may, however, prove helpful. That said, the diverse and ambiguous nature of organised crime raises methodological problems of its own. Interestingly enough, methods of combating organised crime became well known before any attempts were made at a unifying definition of exactly what it was. Legislators recognised that there was a problem, and began tackling it even in the absence of a full, precise and standard definition of its nature. Adamoli et al. (1998, p. 139) reported on the multitude of approaches taken by CEE countries by 1998. While some had only just begun to introduce relevant provisions into their criminal codes

(Albania, Bulgaria), others had already incorporated wide-reaching definitions (Czech Republic, Estonia, Poland, Slovenia, Croatia) or treated commission of a crime in an organised manner as an aggravating circumstance (Hungary).

Measures deemed necessary to combat organised crime were already being brought online. These pertained both to prevention and specific forms of investigation. The latter included both organisational innovations and new special methods of investigation. More specifically, policing organised crime requires:

- (1) At an organisational level: specialised law enforcement bodies and tight coordination of competent agencies (Adamoli et al. 1998, p. 155 *et seq.*).
- (2) At the investigative level: application of asset seizure and confiscation and special (covert) methods of investigation (undercover agents, surveillance, controlled deliveries etc.; see also Dobovšek 1997, p. 158 *et seq.*).

In short, investigation of organised crime requires a proactive, flexible approach, in order to overcome the shortcomings of traditionally bureaucratic and hierarchically structured bodies of law enforcement. Such bodies were adapted to function under the paradigm of reactive policing and very much ill-suited to the need for a more surveillance-oriented type of policing (Wright 2010, pp. 86–88).

4.3 A Comparative Overview

4.3.1 Police Reforms in Selected CEE Countries: A General Overview

In 1998, CEE countries, particularly those on track to join the European Union, were given a clear signal of the measures necessary to meet the benchmarks set by the EU in combating organised crime. The Pre-Accession Pact on organised crime between the Member States of the EU and the applicant countries of Central and Eastern Europe and Cyprus, adopted by the Council on May 28, 1998, followed the guidelines set by the Action Plan to combat organised crime, adopted by the Council on April 28, 1997. Applicant countries, among them Poland, Hungary, the Czech Republic, Slovakia and Slovenia, were required to take steps both towards instituting new organisational measures for fighting organised crime and securing adequate powers of investigation. Of the many initiatives set out in the Pact, the following should be stressed for our purposes here.

- (1) Enhancing international cooperation.
- (2) Enhancing central bodies responsible for fighting organised crime.
- (3) Providing adequate training and joint investigative activities.
- (4) Setting up bodies and implementing policies to combat corruption and money laundering.
- (5) Implementing of witness protection programmes.

- (6) Stressing the importance of techniques such as electronic surveillance, undercover operations and controlled deliveries.
- (7) Protecting sensitive data.

Only 7 years before the Pre-Accession Pact, police forces in transition countries were in general disarray. In Czechoslovakia, six areas were reported as top priorities in the reorganisation of police forces: personnel, technology, salaries, firearms, training and forensics (Vogel 1994, pp. 89–90). Growing crime rates and the process of lustration both created a need for new police officers: many of those recruited then were only 19 or 20 years old, and naturally lacking in experience and skills. Police forces generally lacked communication equipment, sufficient vehicles, computer support and firearms. Salaries were also low. Forensic departments were only being developed, and suffered from shortages of material and financial support. Reports from Poland gave a similar picture. Vogel (1994, p. 115) reported a lack in human resources due to a wave of police officers retiring early. Vacancies of up to 50% of the normal required staff were reported in the field of policing economic crime, with a lack of experienced officers among those who remained. Salaries could not compete with other sectors of interest. Forensic departments lacked equipment, management and operations were desperately short of computer technology. Shortages of firearms, uniforms and vehicles were reported. In Hungary (Vogel 1994, p. 147), the need to demilitarise the police force came to the forefront of the debate on police reform. Also, a new training system was needed, along with reorganisation of the existing workforce with proper categorisation of specific posts and the skills they required. The need to improve data and intelligence-gathering was also stressed.

A decade later, Jenks (in Caparini and Marenin 2004, p. 23 *et seq.*) described the turbulent times which followed the fall of socialism in the Czech Republic. The Czech police force faced rapid reforms, including the separation of the secret police and reorganisation of the Ministry of the Interior, with the process of lustration leading to the removal of officials suspected of collaborating with the Communist regime. Adopting a new legal basis for policing did not mitigate the situation, as the Police Act of 1991 reportedly did not extend in practice to local police forces until 1993, contributing to a less than stable legal environment. Later developments show an increase in police responsiveness and an increase of police accountability to the law, along with better protection of human rights and greater transparency in policing. Yet police brutality and discrimination by no means disappeared, despite ever-increasing public scrutiny.

In Poland, police legislation was in constant flux. The Police Act of 1990 was followed by two reforms in 1995 and 1999 (Pływaczewski and Walancik, in Caparini and Marenin 2004, p. 95 *et seq.*). On the organisational side, local authorities began participating in planning and financing police activities, thus contributing to the process of decentralisation. Payment and training systems were reformed in order to meet the rising need for new personnel. Several internal and external mechanisms of control were established. The police force improved its international cooperation, responding to the transnational nature of emerging criminal activities.

In Hungary (Keresztes Dimovné in Caparini and Marenin 2004, p. 65 *et seq.*) the main instrument of reform was the Police Act of 1994, although reforms were already under way, e.g. through the depolitisation of the police and separation from the state secret service. After 1994, the police maintained its centralised, militarised structure. The number of personnel increased, after a marked loss between 1994 and 1996, mainly due to low salaries, demanding work conditions and poor management. The training system, too, was thoroughly reformed. Police accountability, however, remained a major issue in practice. By 2002, central issues for Hungarian policing were its dubious record on human rights (particularly with respect to the treatment of the Roma population) and corruption. The attitudes of police officers were also found to be problematic, since they were reported as feeling that the rule of law and the need to respect human rights merely hinder and complicate their work.

The development of police reforms in the former Yugoslavia was, understandably, notably different and somewhat delayed. The region was engulfed in armed conflict until the late 1990s and the police took an active part in it. As reported by Trivunović (in Caparini and Marenin 2004, p. 265 *et seq.*), the police in Serbia remained a tool of political oppression until 2000. It was only after the change of regime that the reform of police forces could begin, influenced strongly from abroad, particularly by the OSCE. In 2002, the following priorities were identified: police education, accountability and internal control of policing activities, policing organised crime, forensics, border and community policing. The acuteness of the problems faced by Serbian police forces became evident with the assassination of the Serbian prime minister by a former member of the special police forces engaged in organised criminal activities. The Serbian police was understaffed and under-equipped. Later on, police training was reformed (to include education in human rights and ethics) and mechanisms of control strengthened. The police was separated from the secret intelligence service in 2001.

The situation in Bosnia and Herzegovina up to 2002 was described by Kendall Palmer (in Caparini and Marenin 2004, p. 169 *et seq.*) as a mixture of 'external pressure and internal resistance'. The post-Dayton decentralisation of BiH along ethnic lines was also reflected in the police reorganisation. Respective national leaders are said to have resisted the democratisation of the police forces; in consequence, the initiative was internationalised, with the UN Mission in BiH taking the lead. The main goals of police reforms were: reducing the size of the police (over-expanded by its role in the military conflict), establishing new admission criteria, reforming the training process and depolitisation. Reducing political influence by limiting the influence of the territory's respective ministries of interior was a top priority. At the same time, new ways of policing were explored, introducing multi-ethnic patrols and community policing.

In Croatia, too, the police were strongly involved in post-breakup conflict. They assumed both defensive and policing roles. Reform of the criminal justice system came late in 1997. Reforming the police force focused on depolitisation, demilitarisation, increasing professionalism and downsizing police numbers (Kutnjak Ivković, in Caparini and Marenin 2004, p. 195 *et seq.*). Reforms were aimed at

decentralisation in order to achieve flexibility and secure accountability. The Croatian police force experienced a high turnover of personnel in the 1990s and had to deal with ethnicity issues when Serbian officers left the police force. Regular police duties were hindered by the war, which left a minimal number of officers assigned to carry out normal policing. Those assigned to crime investigation were on the whole poorly trained and inexperienced. In general, the process of democratisation was hindered by a lack of resources (diverted to defence police activities) and a high level of corruption in the public sector and in state leadership.

Slovenia, however, did manage to avoid the core of the Balkan conflict. Trust in the regular police forces remained high, while quite the opposite is true in the case of the security intelligence service, which accordingly experienced a significant change of personnel. The police began a reform process focused on raising its professionalism and ensuring depolitisation. Following the Police Act of 1998, the Slovenian police was organised as an independent state agency, no longer an integral part of the Ministry of Interior. It was decentralised and organised on three levels: state, regional and local. The existing cadet training system was replaced by a two-tier post-secondary school education. Candidates could enrol either with the Higher School of Police or proceed to the Faculty of Criminal Justice. The success of the initiative to decentralise the Slovenian police is, however, open to dispute. Some are of the opinion that the police remained a predominantly bureaucratic, centralised and paramilitary organisation. Most certainly, the process of depolitisation has suffered most when put to the test in practice. The appointment of the director of the police remains a highly sensitive political issue.

4.3.2 Introducing Policing Organised Crime

In general, the situation of the police forces in CEE countries was a cause of great concern, not only with regard to policing organised crime, but also regular policing. Even so, CEE countries began to adopt selected mechanisms, aimed at combating organised crime. It would be wrong to assume a lack of awareness of what successfully policing organised crime requires. For example, as early as, (Pečar 1988, p. 295) pointed out the need to employ intelligence-gathering methods, surveillance, undercover operative, informants and secure prosecution witnesses. During transition, the issues of policing organised crime were regularly discussed at various international events organised within CEE countries with contributions from foreign experts.

Developing comprehensive policies to combat organised crime has been, however, a slow process. It focused mainly on introducing an adequate legislative framework and institutional measures. If we concentrate on the selected group of CEE countries, this process at first appeared two-tiered. The Czech Republic, Poland and Slovenia proceeded to introduce changes to the policing infrastructure much more swiftly than the second, war-damaged group of countries that included

Croatia, Bosnia and Herzegovina and Serbia. After 2005, however, Croatia and Serbia showed remarkable progress, both reforming their criminal procedure legislation and introducing the forfeiture of assets with a reverse burden of proof.

4.3.2.1 Poland, Czech Republic, Slovenia

In Poland, the initial growth of organised crime was met with denial (Pływaczewski and Filipkowski, in Paoli and Fijnaut 2004, p. 900 *et seq.*). A systematic response only began emerging in 1995. The reason for such a late response was reportedly an over-zealous respect for human rights in reaction to the practices of the previous regime. The core instrument that introduced new special investigative powers was the 1998 Code of Criminal Procedure. These powers included surveillance of correspondence, interception of telecommunications, controlled purchase and controlled deliveries. In 1997, the Immunity Witness Act introduced the possibility of interrogating witnesses anonymously as well as granting a witness immunity from prosecution. In 2003, the Polish Criminal Code was amended by introducing a principle of reversed burden of proof regarding decisions on a convicted offender's forfeiture of assets. On the institutional side, specialisation of police forces and prosecutors began when the Bureau for Combating Organised Crime was established in 1994, followed by a Bureau for Combating Drug-related Crime, with the merging of the two in late 1998. In 2000, the Central Investigative Bureau was established. On the prosecution side, special departments were set up for the purpose of coordinating efforts in prosecuting organised crime.

Similarly, the problem of organised crime also appears to have been underestimated in the Czech Republic. As reported by Scheinost (in Paoli and Fijnaut 2004, p. 880 *et seq.*), the decisive push in the direction of a consistent organised crime policy came in 1994, with the World Ministerial Conference on Organised Transnational Crime in Naples (1994). Here, too, the emphasis was on adopting the necessary legal framework by modifying penal and police legislation, accompanied by a specialisation of police forces and improvements in their training and equipment. Key legislative improvements came in 1994 with changes to the Criminal Code and Code of Criminal Procedure. The Criminal Code introduced provisions on the impunity of undercover operatives and provisions on immunity from prosecution for those making timely reports on criminal conspiracies. The Code of Criminal Procedure already contained provisions dating from 1990 on measures such as intercepting communications. Further changes included provisions on interrogating anonymous witnesses (although a comprehensive witness protection scheme was not introduced until 2002), substitution of consignments, postponement of prosecution, disclosure of data subject to banking secrecy, etc. On the institutional side, specialised police forces were established as early as 1991 through the creation of a Financial Crime and State Protection Office and the Department for the Detection of Organised Crime. Specialised departments within the prosecution service were established in 2000.

Despite early warnings, coming mostly from practitioners, the Slovenian legal framework for measures against organised crime evolved quite slowly. A new Criminal Code and Criminal Procedure Act (CPA) entered into force in 1995. These contained the basic tools necessary for policing organised crime effectively, such as surveillance measures, sting operations, covert gathering of banking data, etc. They were supplemented by the Police Act of 1998 that introduced covert tracking, undercover operations, etc. Other instruments were brought in late. The interrogation of anonymous witnesses was only introduced in 2004, with a comprehensive witness protection programme following a year later through the Witness Protection Act of 2005. In 2004, the Criminal Code was amended to allow an optional reduction of sentence for a co-operating offender who had participated in a criminal association. Slovenian provisions on the forfeiture of assets remained limited to assets arising from a criminal offence until 2011, when the Forfeiture of Illegally Obtained Assets Act introduced a non-conviction model of forfeiture with a reversed burden of proof. As for the institutional framework, changes to the State Prosecution Act in 1999 introduced a special group of prosecutors to take over complex prosecutions of organised, economic and other serious crimes. The police have introduced separate divisions dealing with organised crime at both the national and regional levels. In 2010, the Police Act was amended in order to allow the establishment of a National Investigation Bureau, acting as an independent office at the national level and dealing with the most complex and sensitive investigations, including those of organised crime. Amendments to the Judiciary Act in 2009 envisaged the establishment of departments within the district courts which would specialise in investigating and adjudicating cases relating to organised and economic crime.

4.3.2.2 Bosnia and Herzegovina, Croatia and Serbia

By 2004, Croatia, Bosnia and Herzegovina and Serbia had all adopted new legislations on criminal procedure, introducing special investigative measures and other tools aimed at tackling organised and other serious crime. Croatia adopted a new Criminal Procedure Act in 1997, introducing surveillance of communications, surveillance of persons in private and public premises, controlled deliveries, sting operations and undercover operations. In 2001, the spectrum of investigation measures was supplemented by a special act on the Office for Combating Corruption and Organised Crime, with powers to request interrogation of prosecution witnesses and forfeiture of assets with a reversed burden of proof. Similar developments were under way in Bosnia and Herzegovina with the Criminal Procedure Act of 2003 and in Serbia, with the Code of Criminal Procedure introduced in 2001 and later amended to include provisions aimed especially at investigating organised crime.

In addition to these efforts, the countries of the Western Balkans, including Croatia, Serbia and Bosnia and Herzegovina, received substantial external support aimed at further developing their capabilities for policing organised crime. In 2004, a project for the 'Development of reliable and functioning police systems, and enhancing of combating main criminal activities and police co-operation' (CARDS Regional Police Project, CARPO) was started, funded by the European Commission and the Council of Europe. The project aimed particularly at overcoming significant institutional shortcomings which had been noted in Western Balkan countries. A comparative overview of institutional capabilities ('Comparative table on institutional capacities in the field of international co-operation in criminal matters' 2005) showed predominantly shortcomings regarding:

- Availability of technically and linguistically qualified staff, translation and interpretation facilities and foreign language training.
- Availability of communication infrastructure.
- Availability of technical means for special investigative measures.
- Availability of the travel budgets necessary for effective international co-operation.
- Availability of technical, legal and practical support.

By 2005, a regional strategy on tools against organised and economic crime was drafted, aimed particularly at strengthening crime analysis and criminal intelligence, financial investigations, special investigative means, witness protection and international co-operation.

The adoption (or, rather, retention) of methods for which the police were most feared and loathed under socialist regimes is therefore commonplace among CEE countries in transition. The threat of organised crime could simply not be ignored. Indeed, the reports of Czech and Polish hesitation with regard to implementing such methods illustrate not only a moral dilemma but also the fact that organised crime left policy-makers with no choice but to increase police powers. Still, a fair measure of external pressure is evident, both in the case of countries on the road to EU in the 1990s, and in the case of Western Balkan countries. The latter, in particular, were particularly ill-positioned to pursue adequate reforms of their police forces in general and special policies against organised crime in particular.

In general, countries in transition did include selected instruments in their legislation. However, the assessments made as a result of the CARPO project (as outlined above) show that legislative endeavours may signal willingness to adopt a more proactive approach towards tackling organised crime. At the same time, they evidently do not guarantee it, nor a state of preparedness or the resources required to implement a comprehensive policy against organised crime.

4.4 The Path Towards Legitimate Means of Combating Organised Crime: The Case of Slovenia

Failure to implement the existing legislative framework will not only result in a failure to meet the challenge of organised crime, but will at the same time result in a missed opportunity to test the legitimacy of the existing legal framework. How should countries in transition tackle the problem of the legitimacy of these measures? Slovenia's example could be indicative: the issue of such measures' legitimacy is an ongoing concern. Slovenia's path towards effective and legitimate means to tackle organised crime is well-documented and deals with the most problematic of issues: the transparency and accountability of such policing policies. In Slovenia's case, the Constitutional Court of the Republic played a leading role in challenging the police powers as they were foreseen by the legislative. It should be noted, of course, that such a challenge would simply not be possible if Slovenia had not established a transparent system for the statutory regulation of such measures. The following example shows, however, that simply providing a statutory background for the means of combating organised crime does not suffice. Securing 'legal-logical' legitimacy, to borrow the term used by Kertesz and Szikinger, does not guarantee the legitimacy of such measures from a substantial point of view. The Slovenian statutory framework of measures aimed at organised crime has been—still is—under constant (mostly judicial) scrutiny. Issues of legitimacy, transparency and accountability of policing organised crime have come to the forefront in each and every case.

4.4.1 *Covert Investigative Measures: Development*

By 1998, Slovenian legislation incorporated the well-established corpus of special investigative measures intended to combat organised, economic and other serious crime. The Criminal Procedure Act, passed in 1994, regulated measures of covert communication surveillance, covert eavesdropping and covert access to the computer systems of banks and other legal persons pursuing financial or other economic activities (Article 150 CPA). In 1998, the new Police Act regulated covert tracking and observation, undercover operations, covert police cooperation and the use of modified identification and other documents.

The provisions of the Criminal Procedure Act came under fire for the first time in 1998, when the Constitutional Court issued its first ruling on the matter of special investigation measures. Provisions of the CPA were found unconstitutional on several counts. The Court's reasons offer an insight into the complexity of securing legitimate policing policies. The Court did not find such measures illegitimate *per se*. It rather provided the Slovenian legislator with a typical assessment of the legitimacy of such measures, specifically focusing on the policing of organised crime. Clearly, choosing and regulating methods of policing organised

crime involves a balancing act: on one hand lies respect for human rights and the rule of law, on the other are the dangers posed by the unchecked spread of organised crime. Perhaps most interesting of all was a reference to the political ramifications of organised crime: ‘the state has a duty to combat organised crime that threatens the security of its citizens and—in excessive forms—also the democratic government, i.e. the state itself’ (my translation). Reference to the political dimension of organised crime is not a coincidence: the legitimacy of such investigation measures rests on the need to provide the state with ‘measures that are equal to the activities and methods applied by organised crime’, i.e. measures that are applied covertly by technical means.

On a more specific level, Slovenian legislation against organised crime dating from before 1998 suffered from its lack of provision for transparency and accountability. In particular, it suffered from a shortage of mechanisms to secure judicial accountability as exercised in particular criminal proceedings against those suspected of organised criminal activity. Within the Slovenian context, these issues have been concentrated on the need to provide efficient judicial control prior to applying such investigative measures. The Slovenian Constitution provided the Slovenian legislator with a clear starting point: search and entry, as well as communication surveillance are in principle allowed upon a judicial order (Article 36 and 37). The application of these norms, however, was lacking in the early legislation. One might, again, say that the requirements of legal-logical legitimacy were satisfied. However, things were still not done as they should have been, indicating a lack of functional legitimacy.

In general, the transparency and accountability of policing policies demand that the police share sufficient information with those charged with supervising policing activities. In particular, exercising judicial control over secret investigative measures requires the police to present the court with sufficient specific data to establish criminal activity on the part of specific individual(s). This level of information, and the burden of proof that the police carry, was deemed too low to guarantee adequate judicial control. In fact, the statutory provisions allowed for a minimum of information that might not surpass the level of mere speculation as to the criminal activities of an alleged perpetrator. After the ruling of the Court, the level of information required was increased—the police are required to produce evidence of specific, concrete criminal activity by the suspected individual. In other words, the courts must not be in a position where they are forced to trust the police assessment of the need to order covert investigative measures.

Later on, provisions of the Police Act on special investigation measures, too, came under constitutional scrutiny. The reasons for a ruling that those provisions were also unconstitutional, reflect the issue of transparency and accountability. Under former Article 49 of the Police Act, measures such as covert observation and the use of undercover operatives could be ordered by the Director General of Police. The provisions were considered insufficiently specific and did not meet the criteria of *lex certa*. The legislation following the ruling of the Constitutional Court specified the nature and the manner in which such measures may be

executed and transferred the competencies of the Director General in this respect to the courts (specifically, the investigative judge) and the state prosecutor.

The Slovenian example brings an important lesson: the legitimacy of policies on policing organised crime lies in the legitimacy of the democratic society. The police policies feared most in pre-transition regimes—secret, with all-pervasive surveillance and control—are deemed illegitimate by the very nature of the regime such policies serve. Applying the same methods in a different normative environment is, however, deemed acceptable. Nevertheless, it must be noted that the process of legitimising covert investigative measures is a delicate one, just as any other balancing act is. Experiences with the post-2001 ‘war on terrorism’ and the methods applied by supposedly democratic states (most notably, the USA) warn us of the need to keep in mind what actually makes a society democratic and where its democratic values lie.

4.4.2 Covert Investigative Measures in Practice: The Separation of Security and Police Intelligence Gathering

The separation of the security secret services and police intelligence was, as mentioned above, one of the landmarks in the path towards democratic policing. Slovenia’s example illustrates a peculiar yet all too real situation the police and secret services faced at the beginning of transition: namely a lack of equipment to undertake communications surveillance. In Slovenia, the problem received a fair amount of attention as it, too, came under the scrutiny of the Constitutional Court (Decision No. Up-412/03) and was thus carefully examined.

After 1991, the separation of the security intelligence service and the Ministry of Interior was initiated. In September 1993, the security service and the Ministry of Interior concluded a confidential agreement on their mutual relations pending final separation of the Ministry and the Slovenian Intelligence Service. According to the agreement, as reported in the court’s decision, the Intelligence Service was obliged to execute measures pertaining to the secret surveillance of telecommunications, including the tapping of telephone lines, independent recording of telephone conversations and independent documentation of such information as was collected during the process. Such information was later on presented as evidence before a court of law.

The courts recognised the technical problems with the existing equipment (or rather, the absence of it) that the Slovenian police faced. Interestingly enough, regular courts were sympathetic enough to putting such practices on a statutory basis, viewing the Secret Service’s actions as cooperation between two state bodies as allowed under the CPA. The Constitutional Court, however, was not so supportive, stressing the fact that the Service was independently carrying out communication surveillance for the purposes of criminal investigation, and thus acting without due competence. The court stressed the need for the transparency of

surveillance measures, emphasising the competence of the police to perform such surveillance under the CPA. Among other arguments, the following addresses the key issue of transition: 'It must not be neglected that, instead of police, the surveillance was carried out by a security intelligence service that bears no competence to investigate classic crime (trafficking in drugs—P.G.) in a democratic society'. In other words, the technical problems of criminal justice bodies do not warrant such intrusion upon the right to communication privacy.

The agreement remained in force until 11 April 1997 and was then replaced by a new arrangement, the contents of which remain unpublished. The number of investigations carried out under the new agreement remains unknown to the public.

4.4.3 Transparency of Police Intelligence-Gathering Activities

Demands for effective judicial control thereby insist that policing activities be transparent. Policing organised crime typically involves not only the use of undercover operatives but also of informers and other intelligence sources within criminal groups. Clearly, in order to secure effective investigations and protect the security of intelligence sources, the data collected requires a certain degree of secrecy. At the same time, the judicial follow-up to such policing practices may require that sensitive data, including the identity of police sources and undercover operatives, be disclosed.

The Police Act of 1998 secured a statutory basis for the protection of sensitive data. Article 56 of the Police Act required a police officer (or an individual cooperating with the police) to keep secret the state, official or other classified information she/he encountered while performing secret duties, including the identity of a source that has filed a report, provided information or filed a complaint. A police officer (or an individual cooperating with the police) could only be relieved of the obligation to keep such information secret by the Minister of the Interior, when this was in the interest of criminal proceedings and did not endanger the life or personal safety of an individual, upon a request from the competent body.

Such protection of sensitive data was wide-reaching. It provided a basis for withholding such data from other persons, including a state prosecutor, judge and—most importantly—the suspected person and his/her defence lawyer. Such a prohibition to disclose sensitive data therefore inescapably brings into question the effectiveness of the judicial control over policing activities and the pursuit of procedural guarantees afforded to defendants in criminal procedure. Nevertheless, it took more than a decade for the courts to recognise fully the need to establish effective control mechanisms over investigation intelligence collecting practices.

The need for a different arrangement for protecting sensitive police data first arose when Slovenian case-law began to apply the right of defendants to examine or have examined witnesses testifying against them [Article 6(3)d of the

Convention for the Protection of Human Rights and Fundamental Freedoms]. Such a right clearly demands the discovery of the witness who is to be examined. Initial practice regarding the examination of undercover operatives involved questioning the co-ordinators of operations and reading reports filed by the undercover operative in question. The operative himself did not need to take the stand and was not examined before a court of law. By 2005, the necessary legislation providing for the protection of witnesses was introduced, both outside (Witness Protection Act 2005) and inside the court-room (amendment to the CPA in 2004, introducing Article 240a CPA). In the latter case this included allowing the possibility of examining a witness whose identity still remained unknown, by means of applying necessary technical measures and giving the court the power to prohibit all such questions which might lead to the witness's identity being disclosed. In the same year, the Constitutional Court (Decision No. Up-518/03) found a breach of the right to examine witnesses appearing against the defendant when statements by undercover operatives were used as evidence without the operative taking the stand. At the same time the court recognised the need to apply the protective measures that the legislature introduced. The result is a well-known compromise, recognised and supported also by ECtHR case-law: on one side, the police are required to disclose information about undercover operatives or other persons cooperating on a restricted basis, that is to the judge and court personnel at least; and on the other, the court is allowed to review policing practices in (organised) crime investigations by examining such witnesses.

The imperative of securing effective judicial control, as stressed by the Constitutional Court case-law, was further developed by regular courts. The central issue remained the nature of information the police are required to provide the court in cases of covert investigations. For instance, courts have rejected the exclusive use of statements which the police had claimed it collected from anonymous sources, regardless of how detailed they appeared to be. Instead, such statements must be corroborated by sources that allow the courts to assess the information independently. Similarly, courts have developed fairly sophisticated criteria for the admissibility of statements, collected from police informers and other sources. In brief, although the police are not required to reveal their informants' or operatives' identities, they should provide facts that allow the court to assess the (subjective) reliability of the informer and the (objective) 'truthfulness' of the information provided (i.e. circumstances in which the information was acquired).

Finally, in 2011 the Constitutional Court ruled that Article 56 of the Police Act was unconstitutional (Decision No. U-I-271/08). If we wanted to put the decision in the perspective of democratic policing values, the reason behind the ruling is the lack of judicial supervision for protecting sensitive data. The court found that the Act, which allowed for the exclusive competence of the Minister of Interior to relieve a police officer from duty in order to protect sensitive data, runs contrary to the principle of judicial protection of human rights, especially the defendant's right to have adequate facilities in which to prepare a defence [Article 29 of the Slovenian Constitution; Article 6(3)a of the Convention for the Protection of

Human Rights and Fundamental Freedoms]. Instead, it was found necessary to entrust the final decision on the disclosure of such data and thereby the supervision of police activities to an independent tribunal.

4.4.4 Covert Investigative Measures: Hesitancy from the Courts in Assuming Supervisory Role

The examples presented above all demonstrate the fairly active role taken by the Constitutional Court in such matters. At the same time, however, it also indicates the fairly reserved attitude typical of the lower Slovenian courts when it comes to accepting their supervisory role over police conduct in policing organised criminal activity. The reasons that might lie behind such an attitude have not been explored: yet given their power to challenge any legal provision they apply before the Constitutional Court, we may speculate that the courts in fact place undue trust in the conduct of the police in general, or else fail to recognise the importance of human rights in securing a transparent, accountable and legitimate criminal justice system.

The following account seems an example of the latter: a lack of sensitivity towards the basic human rights and freedoms embedded in a democratic society. The Slovenian legislation of 1995/1998 on covert investigation methods failed to provide an adequate basis for the covert production of recorded traffic communication data. Nevertheless, investigative judges have regularly practiced such measures and have requested telecommunication operators to provide them with such data. The lack of an explicit statutory basis for such practice did not however pass unnoticed. In June 1996, the Supreme Court of the Republic of Slovenia passed a general opinion on the issue. This stated that such a measure could only be ordered by a court of law; in its reasoning it indicated the analogous application of existing provisions on covert communication surveillance as a possible legal basis. The courts accordingly adopted this protocol, even though they recognised that the measure intrudes upon communications privacy in a way that technically requires specific statutory regulation under the Slovenian Constitution; not to mention the demands of ECtHR case-law (as in the well-known case of *Malone vs. UK*). Not until 2004 did the legislator provide the courts with the required statutory basis in Article 149b of the CPA.

4.5 The Path Towards the Rule of Law: Wherein Lies the Paradox?

How do the measures necessary to challenge organised crime stand up to the principles of democratic policing, in particular those of decentralisation, (judicial) accountability and transparency? It is obvious that implementing the means to

combat organised crime holds great potential for the violation of human rights and the principle of the rule of law. Therefore, we need to consider an inherent contradiction between the nature of such measures and the values of democratic policing. At face value, it appears that combating organised crime requires the very same methods commonly used by pre-1989 regimes to uphold the pre-transition political system. Combating organised crime requires centralised law enforcement agencies, cooperation from other state and private agencies (e.g. banks and other financial institutions and companies) and the application of secretive investigation measures that allow for a limited judicial control (or, indeed, none at all). Rules on asset forfeiture, combined with a reversed burden of proof that rests on the presumption of illegally obtained assets, dramatically lowers the benchmarks that law enforcement agencies must satisfy in a court of law to secure confiscation of property.

At the same time, combating organised crime is, to a certain extent, an enterprise of a political nature. The dangers that organised criminal activity poses to established democratic systems are well recognised, and range from tax evasion policies, to threats to the state's monopoly on the use of physical force, to full blown state capture by means of corruption and the transfer of illegally obtained proceeds of crime into the sphere of legal economic activities (Dobovšek 2005, p. 301 *et seq.*). Although some argue that the threat of organised crime infiltrating economy and politics has been overestimated (Paoli and Fijnaut 2006, pp. 318–319), this is no reason to ignore the political dimension of organised crime and the political dimension of policies directed against it.

It is the nature of such policies combating organised crime that puts the values of democratic policing to the test. The paradox of reforming policing in transition societies lies in the seemingly divergent paths they follow towards implementing and upholding the rule of law. While it is reported that countries more successful at tackling organised crime are also more successful at securing the rule of law (Van Dijk 2007, pp. 46–47), it is the very tools they use that countries in transition have attempted to reform. In other words, what is it that makes, for example, covert surveillance unacceptable in a socialist regime, and acceptable in a democratic society? In order for a police reform to succeed, a transition country must be able to provide a clear and convincing answer to this question. Paradoxically, the only way to test the legitimacy of policies aimed at combating organised crime is through applying the available tools, in a manner that enables the existing mechanisms of democratic control over the police to carry on functioning. More specifically, the example of Slovenia shows that the burden of finding the balance between the dangers of such methods and the dangers of organised crime, will, in the end, rest with the judiciary. Indeed, a public, transparent judicial follow-up to investigations is a necessary requirement for guaranteeing the legitimacy of policing policies in transition countries—and elsewhere.

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Chapter 5

Penal Policy, Crime and Political Change

Miklós Lévy

Abstract This chapter deals with the development of criminal policy, and penal policy in Hungary after the political transformation of 1989–1990. The free parliamentary elections held in the spring of 1990 ended 40 years of ‘socialist rule’ in Hungary. The change of regime significantly affected the problem of crime and penal policy. The number of recorded crimes was 1.7 times higher in 1989 than in 1980, and 1.5 times higher again in 1999 than in 1990. The increase slowed down in the second half of the decade and stopped in 1999; crime rates have been stable ever since. In the first years after the change of regime, the significant increase in crime coincided with the decline in imprisonment rates resulting from the new ‘reductionist’ penal policy. However, in 2009 ‘three strikes’ rules and in 2010 mandatory life imprisonment were introduced to the Hungarian Penal Code. A policy of zero tolerance policy and an ‘expansionist penal policy’ arrived in Hungary with the center-right government which was formed in May 2010. This study pays special attention to the driving forces and features of penal policy over the past 20 years. Sentencing practice is also discussed. In the course of this chapter the characteristics of sentencing practices in the Czech Republic, Hungary, Poland and Slovenia are compared. The chapter also gives an overview of the changes in crime in Hungary in 1988–2010, particularly with regard to property crimes, economic crimes, murders, alcohol-related crimes and drug offences. The conclusion of the author is that the nature of the political system fundamentally determines the characteristics of penal policy. The latest developments in the field of penal policy indicate that the reaction to crime has become a political issue in Hungary. The reason for extending the scope of criminal law, the stricter penal policy and as a consequence the increasing prison population is not the ‘heritage of the socialist past’, but a phenomenon of ‘governing through crime’ and the penal populism of the government.

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5.1 Introduction

The transformation which occurred in Hungary in 1989–1990 changed the previous political and economical rules along with the country's presiding value system. A few examples will illustrate the changes: Until 1989 the events of October 1956 were officially labeled a counter-revolution in Hungary. Any ceremony commemorating the first day of the revolution, October 23rd, was banned until the late 1980s. Since the political changes in 1989, 1956 is remembered as the year of the revolution and October 23rd has been declared a national memorial day. This is to commemorate the day in 1989 on which Hungary was declared simply a Republic rather than a 'People's' Republic.

In the 1970s those working in the private sector were hardly tolerated in Hungary, and were often considered suspicious persons. Before 1988, private enterprises could not be established. However, an Amendment of the Constitution in 1989 stated: 'the Republic of Hungary recognises and supports the right to enterprise and the freedom of economic competition' (Article 9.2 of the Constitution of the Republic of Hungary).

Until 1989, when somebody was unemployed for a lengthy period they were held as being in violation of Article 266 of the Hungarian Penal Code (offence of the Criminal Unwillingness to Work). This offence was punishable with imprisonment of up to 1 year, reformatory and educative labour or a fine. The reason for this behavior being punishable was that in the 'socialist system' full employment was a key social value, and thus everybody was required to work. This offence was repealed in 1989. Since 1990, unemployment in Hungary (typically 10% a year) is considered as a 'natural consequence' of the market economy. The unemployed are—with certain restrictions—entitled to unemployment benefits.

The examples above demonstrate the content and direction of the changes. The monolithic social model which existed in Hungary before 1989 has been replaced by a pluralist model based on parliamentary democracy, free elections, a market economy, human rights and cultural diversity.

In criminology it is generally accepted that political and social changes affect crime trends and their impact on crime control institutions. (See e.g.: Eisner 1995, pp. 19–20; Heidensohn 1991, p. 10; Karstedt and Bussmann 2000, pp. 1–3). This tendency prevailed in Hungary. For example, the registered crimes annually per 100,000 inhabitants in Hungary from the 1960s to the mid-1980s was on average around 1,150; between 1986 and 1989 it stood at around 1,843; but by 1992 had risen already to 4,326; and in 1995 was 5,056. There were 191 murders in 1989; 307 in 1991; and 313 in 1994.

On 31 October 1990, the Constitutional Court abolished capital punishment in Hungary, the first extensive amendment of the Penal Code after the transformation in 1993 moderated the punishment system. Consequently, sentencing practices have changed as well. While in 1990 nearly a quarter (23.8%) of all convicts were sentenced to non-conditional imprisonment, in 1995 this percentage had dropped to just slightly more than 10% (12.5%). In the first period of the transformation the

dramatic increase in crime was associated with the easing of the penal policy and sentencing practices. Bárd (1991) defines the fundamental reason straightforwardly: 'the new democracy was established as a denial of authoritarian regimes' (p. 83).

The changes occurring in Hungary stemmed from the disintegration of the 'Soviet union' and the so-called collapse of the Eastern Bloc, and the subsequent shift from a 'socialist' society to a capitalist 'society'. Each country represented in this book was part of that process. Although the differences between the experiences of transformation in each country are not irrelevant, in the content of the changes the similarities between them are more significant. (On the differences, however, see, e.g. Lévy 2000, pp. 36–37).

Fattah (1994) pointed out the main common element, in observing that the essence of social changes in Central and Eastern Europe in the early 1990s was 'the move from authoritarianism to democracy, from restrictions to freedom, from state control to individual autonomy' (p. 44).

Another common feature—as the other chapters of this book make clear—was the sudden rise in crime in the first period of transformation, as well as an easing of penal policy. The common background for this in the affected countries was the wish to catch up with Europe and to meet the requirements of 'European criminal law'. This meant the following: 'At the time of the change of regime, and to some extent afterward, the new democracies regarded as European everything that was different from the standards of the country in the past decades; as a negation. When the motto of catching up with Europe was heard everywhere, European criminal law and criminal policy were used in this sense of mere negation as well. Although it was not indicated precisely what "European" means, there was a consent that it contains in itself the limitation of the spread of criminal law and the easing of its irrational severity' (Bárd 2003, p. 5).

The main features of crime problems changed after the first decade following the transformation, although in some cases within the region the process took a different direction. Thus, the increase in crime stopped in Hungary in 1999 and the crime rates have been stable ever since. The number of murders declined: since 2005 the number of registered murders was lower every year than the 1980s, when capital punishment still existed in Hungary.

However, in the late 2000s, an increasingly draconian penal policy was adopted. In 2009, the Penal Code entered a provision equivalent to 'three strikes' sentencing legislation and in 2010 a mandatory life sentence was introduced. As a result the rate of non-conditional imprisonments and the prison population itself are rising. Crime trends and penal policy are developing in the opposite direction once more. This chapter basically deals with the issues of what factors influenced penal policy in Hungary during the two decades after the transformation, and what is described and characterised in the criminal law legislation, particularly with regard to the penal system. In this context, the next section will review the evolution of crime in Hungary from 1988 onwards, especially crimes against property, economic crimes, murders, alcohol-related crimes and drug offences.

In a section on penal policy, the chief elements of sentencing practices will be discussed and the characteristics of the Hungarian situation will be compared to sentencing practices in the Czech Republic, Poland and Slovenia. In the final part of the chapter some conclusions will be offered to summarise the relationship between the political and social changes and penal policy, working from the foregoing analysis of the Hungarian context and the comparative survey of other penal systems in the region.

5.2 Changes in the Crime Situation in Hungary 1988–2010, Particularly with Regard to Property Crimes, Economic Crime, Murders, Alcohol-Related Crimes and Drug Offences

In Hungary the number of recorded crimes between the middle of the 1960s and 1980 was a yearly average of 120,000. This means that the crime frequency rate when calculated per 100,000 inhabitants stood at almost 1,150. In this period the annual average number of offenders was around 80,000; and the frequency rate of offenders was ca. 700. The number of juvenile offenders was typically about 7,000 yearly, the frequency rate per 100,000 inhabitants was a yearly average of 1,230. The crime detection figures for recorded crimes were about 75% at this time. In the aforementioned period the rate of crimes against property was about 55%, the rate of violent crimes was 10%, while that of traffic crimes was 13%.

The number of recorded crimes increased gradually from 1980 to 1988, then following the change in regime, increased drastically until 1999, when the crime detection figure decreased, the structure of registered crimes altered.

In 1988, the year before the change in regime, the number of recorded crimes was 185,344, and the frequency rate was 1,784. Following the change in the regime, by 1992—as may be seen in Fig. 5.1—the number of recorded crimes increased about two and a half times from that in 1988, which in pure numbers meant 447,215 crimes and a frequency rate of 4,326. In this year 78.4% of recorded crimes were crimes against property, 6.8% traffic offences and 5.5 violent crimes. The number of recorded offenders—as also shown in Fig. 5.1—and its frequency rate, however, did not increase in the same proportion. In 1988, the number of offenders was 82,329; in 1992 140,405; while the frequency rate was 828.5 and 1,358.2. The explanation for the lower development rate was the deterioration of crime detection figures, which fell back to 50% by 1992.

In the period since the change of regime, the number of recorded crimes and recorded offenders reached its peak in 1998. At this time the number of the former was 600,621, with a frequency rate of 5,926, the number of the latter was 147,689, with a frequency rate of 1,457.2. Among the offenders recorded in 1998 the number of juveniles was almost 13,000, making the frequency rate per 100,000 inhabitants circa 190. The structure of the crimes did not change, as compared to that seen in 1992.

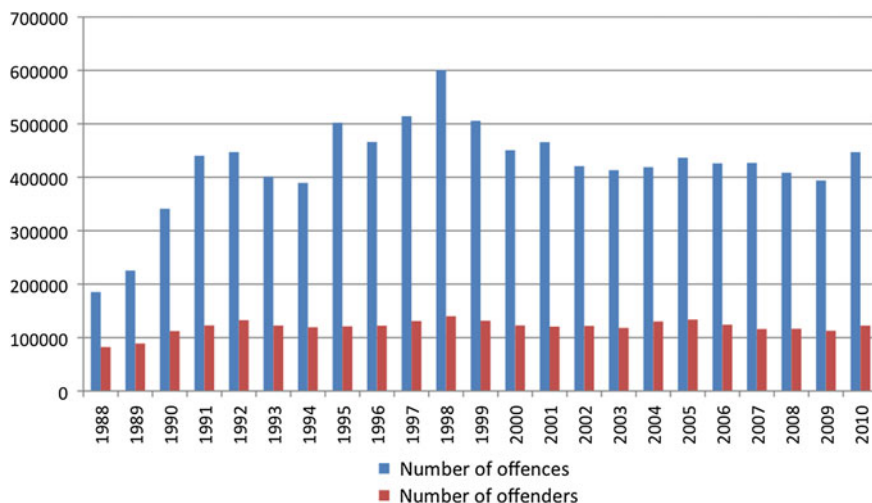


Fig. 5.1 Number of recorded crimes, 1988–2010. *Source* Tájékoztató a bűnözésről 2010 [Information booklets on the crime situation, 2010] Budapest: Belügyminisztérium és Legfőbb Ügyészség. [Chief Prosecutor Office and Ministry of Internal Affairs]

With the stabilisation of the new system the increase in recorded crimes stopped, moreover, between 1998 and 2003, with the exception of one year it decreased, and between 2003 and 2008 it remained stagnant.

There was a slight increase in recorded crimes and the number of recorded offenders and the frequency rates in 2009–2010.

In 2010, the number of recorded crimes was 447,186 and the frequency rate was 4,465.5; the number of recorded offenders was 129,945 and the frequency rate was 1,297.6. The number of juveniles in the same year was 11,248 and the frequency rate was 2,440.7. The crime detection figure for this year was 50,5%.

The frequency rate of recorded crimes in 2010 was roughly the same as in 1991, with much the same situation concerning the frequency rate of recorded offenders. In 2010, almost two-thirds (61.3%) of recorded crimes were crimes against property, 8.96% were violent crimes, while 3.7% were traffic crimes. When the structure of registered crime in 2010 is compared to the situation in 1992, the result shows a decrease in the proportion of crimes against property and traffic offences, but an increase in violent crime.

The most typical criminal offence in Hungary is theft. In the past few years about 40% of recorded crimes were theft, about 25% of which were burglaries. One-third of thefts were not severe criminal offences, involving smaller sums and property of lesser value (to a maximum of 200,000 HUF, which is equivalent to roughly 750 EUR).

The picture with regard to economic crime, which does not comprise a significant share of overall crime, but regarding the obtainable gain and the damage caused is still severe, has not changed considerably during the period.

To be more specific, economic crimes related to privatisation and certain banking activities and financial transactions (e.g. gaining of unlawful economic advantage, crime of bankruptcy, agreements in public procurement procedure and concession proceedings restricting competition, credit fraud, insider trading, capital investment) have increased in number, but their proportion (3% of the total registered crime) has not changed significantly (in 2010 it stood at 4.7%).

Among violent crimes those of a less serious nature are most common. One-third is taken up by anti-social behaviour. The rate of robberies has not reached 10%, while the rate of rapes has not reached 1% in the past 5 years. Regarding robbery, armed bank robbery is to be considered a new and relatively frequent crime after the change in the regime, since the second part of the 1990s. Although the rate and number of rapes are both low, each year extremely brutal forms of this offence, including gang or group rape, do occur.

Among violent crimes the pattern displayed by murder after the change in the regime is especially remarkable. Between the middle of the 1960s and 1980 the number of recorded murders never exceeded 237. Directly preceding 1990, there were 206 murders in 1988 and 191 in 1989. As may be seen from Table 5.1 after 1990, till the following year, the number of murders increased by 50%, and the 1991 rate even increased until 1994. Public opinion and several professionals blamed this steep rise on the abolition of capital punishment by the Constitutional Court on 31 October 1990.

In 1995, however, the increase stopped, and as may be seen from Table 5.1 a significant decrease set in after 2000. After one temporary increase in 2005, the number of murders decreased to a level even lower than that at the time of the change in regime. Since 2006, the increasing trend has dropped away decisively.

One of the major risk factors behind violent crime in Hungary is alcohol consumption. Alcohol consumption per capita for the total population in Hungary per year was around 11 l in the last past two decades, while for the population aged 15 and over it was around 13.5 l per year. Over the examined period every fifth registered offender had typically been under the influence of alcohol when committing a crime. More specifically, every third perpetrator of a violent crime had been under the influence of alcohol at the time of the offence.

Drug-related crimes are less common. Among recorded crimes they comprised a portion between 2003 and 2010 of on average 1.4%. Yearly fluctuation, and the fact that the rate at the beginning of the 1990s was only 0.1%, is explained by the strengthening of criminal law, and not by the drug situation or drug-related crimes becoming more dangerous. It should be borne in mind that 90% of recorded drug abuse crimes each year are acts related to prohibited use, while less than 10% are crimes of supply and trafficking.

The key factors in Hungarian criminality are the varied concentrations of population in the country and other regional differences. Among Hungary's 19 counties and the capital the frequency rate of crimes is by far the highest in Budapest: in 2010, for example, the rate there stood at 6,433.4. Compared to this the national average in the same year was about 4,000, while the average for the counties was 1,240.8. At the same time, however, insofar as the place of residence

Table 5.1 Number of murders in Hungary, 1990–2010

Year	No. of murders
1990	201
1991	307
1992	307
1993	298
1994	313
1995	280
1996	267
1997	281
1998	287
1999	250
2000	205
2001	254
2002	203
2003	228
2004	209
2005	164
2006	174
2007	156
2008	147
2009	140
2010	135

Source Tájékoztató a bűnözésről (2010). *Information booklets on the crime situation*. Budapest: Belügyminisztérium és Legfőbb Ügyészség
Chief Prosecutor Office and Ministry of Internal Affairs

of offenders is concerned, the frequency rate is higher in counties in the eastern part of the country and the capital was listed only 18th in this ranking in 2010.

In the development of crime in Hungary over the past 20 years three periods can be distinguished. The first phase saw a drastic increase in crime 2 years directly after the transformation. The frequency rate of registered crimes in 1992 (4326) was nearly two and a half times the level recorded in 1988 (1.784). Following a 2-year decrease a further continuous increase followed, lasting until 1998—but with different dynamics. The third period began in 2000. The chief characteristic for this period is stability, with the frequency rate varying from 4.200 to 4.300 yearly. This means that Hungary falls within the ‘middle’ group of European countries and is to be counted among the EU countries with low crime rates (Papp 2009, p. 38). It must be added that in Hungary the statistics for registered crimes cover all criminal offences specified in the Hungarian Penal Code, and thus also include traffic offences. On the other hand they do not include the so-called administrative offences. Criminal statistics do not contain thefts, frauds and embezzlements which do not exceed a particular financial threshold (currently 20,000 HUF, approx. 75 EUR). It should also be noted that national victim surveys, which would be important to become acquainted with the real

extent and characteristics of the total crime, have not yet been accomplished in Hungary.

Examining the structure of the registered crime it may be observed that—although the proportion is decreasing—crime against property is still dominant. In the first half of the 1990s, 75 out of 100 registered crimes were property crimes; in the second half of the 2000s this stood at 65 out of 100. The rate of recorded economic crime is not significant. Criminological research, however, and a number of media investigations and the related news in the media indicate a high level of hidden criminality in this area. While violent crime shows a rising trend, the number of murders has declined. The drug problem has hardly affected the crime situation in the last two decades, as both the number and proportion of the drug-related crimes were low. On the contrary, the real drug problem in Hungary, the significant levels of alcohol consumption and the high number of alcohol-abused persons, remains a decisive risk factor with respect to violent crimes.

5.3 Development of Criminal Policy, Particularly Penal Policy, in Hungary

5.3.1 On the Terms of Criminal Policy and Penal Policy

In this study the terms ‘criminal policy’ and the equivalent ‘criminal justice policy’ cover legislation and other decisions of the state and the government concerning criminalisation, conditions of criminal responsibility, the punishment system and the implementation of sentences. ‘Penal policy’ here means legislation and other state decisions (e.g. the prison administration’s budget) on the penal system. The following section of this chapter will give an overview of the development of penal policy in Hungary, focusing on the criminal law legislation in relation to punishments *for adult offenders* from the mid-1980s to the present day. Before this, however, [Sect. 5.3.2](#) below contains a brief overview of the Hungarian penal and sentencing system concerning adult offenders.

5.3.2 The Hungarian Penal and Sentencing System Concerning Adult Offenders

In Hungary, the Penal Code of 1978 (hereafter: HPC) which was several times amended, contains the basic institutions of the sanction system, such as punishments, measures and sentencing rules.¹ HPC entered into force on 1 July 1979.

¹ Provisions relating to juveniles and militaries are given in the Penal Code but in separate chapters. But a special Act contains criminal sanctions on legal persons (Act of CIV 2001).

Although the length and degree of punishments varied in the past 30 years and more, the system itself and certain varieties of punishment did not change. This means the following:

- The punishment system is dualist in nature: it contains penalties and measures. The penalties are divided into principal and secondary penalties and the principal penalties are imprisonment, community service and a fine. Imprisonment can be divided into two groups: (1) life imprisonment, (2) imprisonment lasting for a determinate period. The secondary penalties are exclusion from participation in public affairs, disqualification from a profession, disqualification from driving motor vehicles, a ban on entering certain areas, expulsion and fines imposed in addition to imprisonment. The measures are admonition, probation order, compulsory psychiatric treatment, forfeiture, confiscation and probationary supervision.
- The Penal Code determines the purpose of penalty as being the social interest of general prevention and special prevention (Article 37).
- The punishment system is relatively determined. The General Part of the Penal Code contains the general maximum and minimum strength of all types of penalties and measures. In the Special Part, each offence is given a penalty range with the type of primary penalty or penalties applicable to it. If the offence is punishable with imprisonment, the penalty range always determines a special maximum, and in many cases a special minimum length of sentence. Nonetheless it is for the courts to take these minima and maxima into consideration, to decide on the sanction on a specific case, based upon the circumstances and its own conviction. The elements to be considered can be found in Article 83 “Principles for Infliction of Penalty” of the Penal Code: “Remaining mindful of its purpose (Section 37), punishment shall be inflicted within the framework defined by law in such a way that it be commensurate with the dangerousness of the crime and of the perpetrator to society, with the degree of culpability and with other aggravating and mitigating circumstances”.

The court also has the option of not applying the general minimum and maximum sanctions laid down in the General Provisions. For example, according to the same Article of the Penal Code mentioned above (83), if the court feels that the minimum sentence would be too rigorous, it may give a lower sentence, bearing in mind the relevant provisions of the Code (Article 87). Further circumstances may include the offender’s level of participation in the crime and the extent to which the offence was fully accomplished. A more rigorous sentence than the special minimum may only be applied in cases of special and multiple recidivists, multiple violent recidivist, members of organised crime groups and ‘concurrent offences’.

- The Code provides the possibility, under certain conditions, of suspended imprisonment and probation, (conditional sentencing), and also of conditional release.
- Special provisions apply to juveniles and members of the armed forces. These can be found in the relevant chapters of the Penal Code (for more on the sanctioning system of the HPC, see Karsai and Szomora, 2010, pp. 110–131).

The Criminal Procedure Code No. XIX of 1998 also contains institutions which lie within the scope of penal policy. These are: conditional discharge, mediation, conditional suspension of criminal proceedings (diversion). A mutual feature of the three institutions is their power of depenalisation, namely that in the case of certain statutory conditions existing the proceedings may be terminated without any sanction being imposed, even at the pre-trial stage.

It must be added that due to the amendment of the HPC in 2009, disqualification from a profession, disqualification from driving motor vehicles and expulsion have become 'principal penalties' (according to the terminology adopted in the amendment with respect to 'penalty'). These provisions entered into force on 1st May 2010.

5.3.3 The Penal Code During the Socialism

The Penal Code of 1978, which was accepted by the parliament of the day, was a product of socialism, and its version of so-called 'soft' dictatorship (Bihari 2005, p. 303). Creating this new Penal Code also served to strengthen 'socialist legitimacy', a socialistic version of the rule of law principle. The HPC was completed after several years as a result of professional and scientific preparatory work. The multi-volume publication, including the preparatory work documents, also shows that various institutions of the Hungarian Socialist Workers' Party, which was the central element of the political system, were involved in the drafting process (Laszlo 1979). The competent bodies of the party were approved to submit the different versions of the Code to the Parliament.

In relation to the former Penal Code of 1961 the most significant advances in the area of the punishment system made by the HPC were the following: emphasising the exceptional character of the capital punishment; the introduction of the daily-fine system; the extension of offences punishable with fines and reformatory-educative labour instead of imprisonment; and the extension of probation orders to adult offenders. However, at the same time, the punishment system set forward by the HPC remained still 'imprisonment-centered'. The ministerial explanatory notes explained that emphasis with the following reasons: imprisonment, as the penalty having the strongest preventive effect, is needed. 'Imprisonment directly serves the protection of society through the isolation of the perpetrator. Notwithstanding this security aspect, the correctional educational task of punishment cannot be carried out without it' (Explanatory Notes to the Act of IV of 1978, 1979, p. 79).

One of the custodial sanctions was the maximum security prison, which was a security measure. This sanction was ordered against multiple recidivists when they were punishable at least with 2 years' imprisonment. The prisoners against whom such security measures were ordered, completed periods of imprisonment in maximum security prisons of between 2 and 5 years.

The HPC of 1978 reflects a stricter penal policy than was common in Western countries, but was created in a crime situation with better indicators in comparison

to these countries. At that time in Hungary, as mentioned in the previous section, the number of registered crimes was 120,000 on yearly average. This constituted about 1.150 registered offences per 100,000 inhabitants. Between 1978 and the transformation, the punishment system of the HPC was only slightly modified with the introduction of community service under the category of ‘reformatory and educative labour’. But after the transformation, penal policy and in consequence the punishment system of the HPC changed significantly.

5.3.4 Most Important Changes of Punishments and Sentencing Rules for Adults, 1979–2010

Table 5.2 shows how the most important institutions of criminal law and criminal procedure of the penal policy developed with regard to adult offenders in the period 1979–2010.

Table 5.3 shows the changes to general minimum and maximum sentences of fixed-term imprisonment.

The two tables indicate that Hungary’s penal policy changed after the transformation. However, they also indicate that the changes were not finished with the modification of HPC in 1993. In the next section an overview will be given on the amendments of the Penal Code and Criminal Procedure Act, decisions of the Constitutional Court regarding the punishment system, as well as the determinants of some of the changes.

5.3.5 Democratic Transformation in 1989–1990

In the spring of 1990 the first free elections in 40 years were held in Hungary as a result of ‘roundtable discussions’ taking place over the previous year. When a government was formed the transformation took place peacefully. The democratic rule of law based on a power-sharing, multi-party system with full recognition and protection of human rights took over from the ‘one-party system’ and ‘socialist democracy’. The basic document of the new political and legal arrangements was the Constitution of 1949,² which was amended to accord with the rule of law

² One of the characteristics of the transformation in Hungary was that no new Constitution was instituted immediately. The important codes, which were adopted by a ‘one-party’ Parliament before 1990, were not repealed the new multi-party Parliament, but modified for adoption into the new system (e.g. the Penal Code). This was because the political forces participating in the transformation held the rule of law to be a guiding value for the process. It is referred to by the Hungarian Constitutional Court as the ‘Rule-of-Law revolution’, in which the Court determined the essence of the transformation.

Table 5.2 Comparative table on specific punishments and sentencing rules for adults in Hungary, 1979–2010

Types of punishments and related institutions	1979	1985	1993	1999	2003	2010
Capital punishment	+	+	-	-	-	-
Imprisonment	+	+	+	+	+	+
~ For life (with eligibility for parole)	+	+	+	+	+	+
~ For a definite term				~ 'real' life impr.	+	+
Maximum security prison for multiple recidivists	+	+	+	+	+	+
Conditional release	+	+	+	-	-	-
Fully suspended sentence (prison, fine)	+	+	+	+	+	+
Reformatory and educative labour	+	+	Community Service	+	+	+
Fine	+	+	+	+	+	+
Probation order (conditional sentencing)	+	+	+	+	+	+
Sentencing rules	+	+	More power to the judge	Less power to the judge	More power to the judge	~ 'Three strikes' rules (2009, 2010) ~ Less power to the judge
Depenalisation option:	+	+	Admonition Diversion	Admonition Conditional discharge	+	+
Admonition				Diversion (with restrictions)	+	+
				(without restrictions)	+	+
						Mediation (2006)

Note + the institution was set in the Penal Code in that year
 - the institution was not set in the Penal Code that year

Table 5.3 General minimum and maximum of fixed-term imprisonment in Hungary, 1979–2010

	1979	1985	1993	1998	2003	2010
General minimum	3 months	3 months	1 day	2 months	2 months	2 months
General maximum	15 (20 ^a) years	15(20 ^a) years	15 (20) years	15 (20) years	15 (20 ^b) years	15 (20 ^c) years

Note ^a If on aggregate a penalty and subsequently aggregated penalty

^b If the criminal offence was committed in a criminal organisation, if committed as special or multiple recidivist, an aggregate or subsequently aggregated penalty applies

^c If the criminal offence is punishable with life imprisonment or fixed-term imprisonment. If the criminal offence was committed in a criminal organisation, or if committed by a special or multiple recidivist, an aggregate or subsequently aggregated penalty applies

established in the transition taking place in 1989–1990, and also with the requirements for membership of the Council of Europe.³

The modified contents of the new Constitution took account of international conventions on human rights and set new limits on the power of the state in the field of criminal law. The legality principle [Art. 57 (4)] of the Hungarian Constitution, (hereinafter referred to as HC) and the prohibition of cruel, inhuman or humiliating treatment or punishment [Art. 54 (2)] are representative examples.

In the course of the transition, in 1989 the Hungarian Parliament eliminated the institution of maximum security prison from the penal system, under the ‘theoretical scruples and negative experience of practice and execution’ (Nagy 2010, p. 402).

5.3.6 Abolition of Capital Punishment in 1990

The first change made to the penal system after the transformation of 1990 was the abolition of capital punishment. In the original version of HPC capital punishment was the statutory penalty for 26 criminal offences, which always, however, carried alternative sanctions. These capital offences were typically political and military crimes. Between 1980 and 1989 on yearly average three death sentences were pronounced and carried out, always for ‘first degree’ murders. The last execution in Hungary was carried out in July 1988 (Nagy 2010, p. 318).

In 1989, the Parliament abolished capital punishment only for political crimes. Full abolition was insisted upon by the Constitutional Court. On January 1, 1990, the Court declared capital punishment unconstitutional and annulled the provisions of the Penal Code related to the death sentence (Decision of 23/1990. (X. 31.) AB). The decision of the Constitutional Court was based not on the

³ Hungary has held membership of the Council of Europe since November 6, 1990.

aforementioned international protocols against cruel and inhuman punishment, but on Art 8 (2) of the Constitution. This article states that the substantive contents of any fundamental right whatsoever may not be limited by statute. The Constitutional Court ruled that capital punishment is unconstitutional because the provisions on capital punishment not only limited the substantive contents of the right to life and human dignity, but represented its complete and irrecoverable nullification.

As indicated in Table 5.1, immediately after the abolition of capital punishment the number of murders in Hungary increased. Public opinion and some members of the legal profession blamed abolition for this drastic increase in murders. However, as also shown above, the rise ended in 1995. The data from the last few years shows that the annual number of accomplished murders which was lower has by now dropped below the level seen before the transformation. This trend confirms the results of researchers that abolishing the death sentence did not influence the frequency of murder (Horváth 2004, p. 123).

5.3.7 Penal Policy in 1990–1994

The first large amendment of the HPC after the transformation took place in 1993 (Act XVII of 1993). The amendment made treatment instead of punishment possible for the first time in cases of drug offences of lesser gravity, decreased the general statutory minimum of imprisonment from 3 months to 1 day and also decriminalised prostitution. The Act widened the options for alternative sanctions to custodial sentences and abolished the exceptionality of moderation of statutory punishment; in other words, increased the judge's freedom of choice in determining the sentence. The penal system was also changed. The justification of the Bill was not based upon the rise in crime seen during that period, but on the following principles: 'The provisions of the Bill are guided by the principles and proportions of criminal policy that provide basis for the transformation of criminal law. Therefore, the Bill approaches to an even greater extent the principle of fair sentencing considering the gravity of the offence. The Bill accepts the universally acknowledged theory that the intervention of criminal law must be limited rationally. Therefore, the circle of offences is narrowed down, as it does not wish to persecute those persons who are already more or less victims' (Explanatory Notes to the Act of XVII of 1993, pp. 363–364).

The penal policy of the conservative, centre-right government was determined essentially by the specific socio-psychological situation created by the transformation, which resulted in orientation towards the penal policy of Western countries. This effort coincided, moreover, with what a lot of Hungarian criminal justice scholars had been emphasising before 1990, namely the need for an effective, humane and rational penal policy.

5.3.8 The Amendment of the Penal Code in 1998

In the first period of the transformation, despite the significant increase of crime, the crime problem was not part of politics. Penal policy was considered merely one specific part of public administration. But this situation changed in the mid-1990s. The rise in crime and the widespread public fear it generated took up more and more of the media's attention. The "fight against crime" became a permanent topic of political statements and press conferences.

Before the general elections of 1998 more "mafia-style" murders or attempted murders occurred in Budapest. In this context the country's former prime minister said that "Hungary almost has it all—but not public safety": (Korinek 2007, p. 475).

Public safety first became a leading topic in Hungarian political campaigns during the 1998 elections. Political parties published their criminal policy programs in a scientific journal ("Internal Affairs Review") dealing specifically with questions of crime and crime control.

The subsequently victorious conservative party (The Fidesz-Hungarian Civic Union, hereafter: Fidesz) promised more stringent punishments, including "real" life imprisonment, and severer sanctions against drug dealers. On election, the government party kept its promises in this area. The amendment of the HPC in 1998, which entered into force on the 1st of March 1999, made the penal system significantly more stringent. The measures instituted included a general minimum for prison sentences of 2 months' imprisonment and new powers for judges to impose life sentences with no possibility of parole, thus delivering the "real" life imprisonment they had guaranteed.

Sentencing rules were also changed. The amendment of the HPC significantly restricted the judge's freedom in sentencing. The amendments aimed to make sentencing practice stricter. The alternative options for sanctioning or rehabilitating drug offenders have been gradually narrowed. The explanatory notes of the Act of 1998 gave the reasons for this increased severity as follows: "at a time when we see such manifestations of crime, a strict fight against it is necessary, and criminal law should insure the adequate instruments...". The above-mentioned document also emphasised that the Act of 1998 "enhances the ability of the state to react" and that criminal law "must be legitimated by common opinion and must follow the sense of society" (See more Lőrincz 2009, p. 171).

5.3.9 Penal Policy of the Socialist-liberal Governments

Public safety was also a campaign theme in the election in 2002, despite the decreasing tendency of crime. Slogans in the manifesto of the winning "Hungarian Socialist Party" promised "Life safety—Public Safety—Rule of law". The program of the social-liberal government inaugurated in Spring 2002, made a strong statement on public safety: "The focal point of our strategic aims concerning

public safety is complex security, which means protecting safe subsistence, socially and politically, health care and public health safety, the right to cultural services, order in public and private areas, and adaptation to moral standards of society” (Korinek 2007, p. 484).

After the elections in 2002, and then in 2006, a socialist-liberal government coalition was formed. However, the government resigned in 2009 and until the elections held in 2010, Hungary was led by an “expert” government, which was supported by the formerly governing coalition parties.⁴

The penal policy adopted between 2002 and 2010 can be divided into two phases. The first lasted from 2002 to 2009 and the second between 2009 and 2010.

5.3.9.1 Penal Policy in 2002–2008

The main drivers of criminal and penal policy in the first years of the period 2002–2009 were the requirements necessary for the country to join the European Union. In addition, the new government wanted to diverge from the previous administration’s perception of crime control, on the basis of research on criminology and criminal justice, and criticism of criminal justice professionals. The new government’s position was that in the fight against crime policy should be based on two pillars: one being criminal policy, and the other crime prevention (Bárándy 2003).

A development of the probation service related to Hungary’s accession to the European Union on May 1st, 2004. The aims of the reform were to broaden the range of non-custodial sanctions and to increase the efficiency of parole (Gönczöl 2010, p. 132). The Probation and Legal Aid Service began work in July 2003.

The development of the Social Crime Prevention Strategy broadly followed the aims of the EU. The commitment of the contemporary government to prevent crime saw that the Strategy was presented to Parliament in 2003, which discussed it and adopted a decision.⁵ The Strategy emphasises that “social crime prevention is a complex task for society as a whole, which aims at improving the quality of life by creating safe conditions for the whole population and reducing of crime” (Strategy 6. point).

Act CXXXV of 2005 on the Assistance of Victims and Restoration of Damages and Loss was adopted by the Hungarian Parliament in order to meet the requirements of the European Union; in addition the mediation institutionalised in 2006, entered into force in criminal proceedings on January 1st, 2007.

⁴ After the resignation of government of Ferenc Gyurcsány on April 14th, 2009, Prime Minister Gordon Bajnai formed a new government. In the Bajnai government some ministers were members of the Hungarian Socialist Party, while others were independents not affiliated to any political party. Two parties supported the government in parliament: the Hungarian Socialist Party and the Alliance of Free Democrats.

⁵ Parliamentary Dec. 115/2003. (X.28) OGY on the National Strategy of Social Crime Prevention.

The other driver of the new government's crime-control policy after 2002 was replacing the penal policy of the former government with a new, "dual-track" penal policy. This determined that serious, violent offenders and recidivists should be treated differently to perpetrators of less serious crimes, first-crime offenders and occasional offenders. This policy was partly realised by the amendment of the Penal Code in 2003. The provisions of the amendment of 2003 concerned precisely those provisions of the amendment of 1998 that were responsible for increasing the severity of punishments. The concept of the statute "does not agree with the ideas that formed the basis of the amendment of 1998, especially that of expecting the mechanical aggravation of statutory punishments to effectively diminish crime rates".⁶ Part of the new provisions served to lower immediate imprisonment and the prison population. In the interest of this the sentencing rules had to be changed again. The judges regained the freedom of action in the area of sentencing which the 1998 amendment of the HPC had removed. In petty drug offences treatment instead of punishment became more widely applicable than was previously the case. It must be noted that in codifying the mediation in criminal proceedings a provision was added to the HPC in 2006 which allowed criminal procedure to be halted in cases of criminal assault, traffic or property offences punishable by up to three years' imprisonment, if offenders in the mediation procedure reimbursed the harm caused to the victim, or made other amends for the harmful consequences of their crimes.

5.3.9.2 Penal Policy in 2009

In 2009, the HPC was substantially amended. The purpose of these amendments was threefold: (1) to allow stricter action against serious violent crimes, (2) to provide a higher standard of protection to victims through criminal law, (3) to reform the sanction system. Several factors can be found in the background of the amendment in 2009 and its purposes.

A number of tragic violent crimes, which provoked outrage in Hungary, explain the move towards greater retribution and stronger victim protection. Two of these must be mentioned. One was a murder in a village in north-east Hungary (Olaszliszka) on October 15th, 2006. A 44-year-old teacher was practically lynched by some local gypsies. The offenders thought that the teacher had run over a little girl, who was their relative, when she was running through the street. The young girl fell into the roadside ditch. A very popular Romanian handball player (Marion Cosma) of the leading Hungarian men's handball team (Veszprém) was the victim of the other crime: he was stabbed in a disco club in Veszprém on the February 8th, 2009, and died. On the ninth day after the murder, two members of the strongest opposition party of the Parliament, Fidesz, submitted a so-called

⁶ Explanatory Notes to the Act II of 2003. *Igazságügyi Közlöny (Official Gazette of the Ministry of Justice)* 2003.2.

“three strikes” draft proposal to Parliament. (www.parlament.hu/irom38/08875/08875.pdf) The central element of the proposal was the category of “violent recidivist” and it aimed to punish such offenders with irreversible life imprisonment. In the justification of the draft proposal the following challenge emerged: “the dramatic increase of the number of serious and violent crimes has made it clear in new areas that the government has miscarried and that public security cannot be restored in Hungary without its immediate resignation.” (Quoted by Tóth 2009, p. 5) The draft proposal referred to the dramatic increase of the number of serious violent crimes in Hungary and the positive results of “three strikes” legislation in Slovakia and the USA. Of this justifying argument it should be noted again, however, that insofar as domestic criminality is concerned, as the detailed criminal statistic data set out above (see Sect. 5.2) shows clearly, in Hungary “there is no trace of either a dramatic general increase or an increase in this crime circle” (Hack 2010, p. 3).

However, in testing the climate of public opinion, which was deeply affected by the two murders mentioned above, in April 2009 pollsters “found that the respondents took a bad view of public security and that 59% of the population aged between 30 and 39 years saw the solution in the aggravation of punishments” (Hack 2010, p. 3). The series of murders (“gipsy-murders”) which began on September 29th, 2008 also had a strong negative impact on the general sense of public security. Up to their arrest on August 21st, 2009 the offenders killed six people, all of whom were gypsies.

Upon the draft proposal made by the opposition—which was somewhat less harsh than the original version—the “three strikes” rule was incorporated into an amendment of the HPC in 2009 which legislated for stricter action against serious, violent offenders. According to the justification of the act these rules were designed to enable the “effective and strict action against serious violent crimes.”⁷ The amendment introduced the category of “violent multiple recidivist”. According to the new provisions a multiple recidivist was a person who has served two prison sentences non-conditional for violent criminal offences and against whom another criminal proceeding has been initiated on a charge of violent crime. The new rules allowed stricter sanctions and exclusion from certain benefits (e.g. probation). But they did not require—because of the respect restored to the discretion of the judge in determining sentence—the imposition of a mandatory sanction. Basically, however, the elevation of the upper limit of fixed-term imprisonment from 15 to 20 years (e.g. if the offender was a special or multiple recidivist) brought in stricter penalties for serious violent crimes. The new regulation of “justifiable defense” as grounds for indemnity from sanction, which expanded the right of persons to defend themselves when suffering violent assault, served the interest of victim protection. In addition, if victims are rendered more vulnerable and less capable of defending themselves by their position or status, murder attempts or assaults upon them are automatically treated as more serious offences.

⁷ Explanatory Notes to the Act LXXX of 2009. *Complex Jogtár Plusz*, 10.07.2009.

The amendment of 2009—based on preparatory work of several years—significantly altered the penal system of the HPC. One of the aims of the changes was to introduce rules giving a wider range for individualising sanctions, and thereby increasing the freedom of the court's decision. The reform of the punishment system outlined above in [Sect. 5.3.2](#), in seeking to make the combination and application of sanctions more flexible also served this aim. The other aim was to reduce non-conditional imprisonment, and ensure that it remained an “ultima ratio” in nature. In this interest, the 2009 amendment incorporated the possibility of partial suspension of sentence alongside the existing measure of full suspended imprisonment. Among other changes to the penal system the significant increase of the minimum and maximum amounts of fines and the severity of the rules of parole should be emphasised. The 2009 amendment entered into force in a differentiated way. The provisions referring to violent multiple recidivists entered into force on the August 9th, August 2009, the new rules for fines on January 1st, 2010, and the amendments to the penal system on May 1st, 2010.

5.3.10 Penal Policy of the FIDESZ-KDNP Coalition Government in 2010

The amendment to the HPC in 2009 was actually part of the preparations for the parliamentary election in 2010. In 2009, it was already probable that the strongest opposition party, Fidesz, would win the elections. The chief concern was that Fidesz together with their ally, the Christian Democratic People's Party (hereinafter referred to as KDNP), would gain a two-thirds majority for their coalition. During the campaign the Fidesz focused on the question of public security as well as the economy. This was especially the case before the second round of the election on April 25th, 2010, when all that was really at stake was the question of whether these parties would win their two-third majority. During this period the head of the Fidesz, Viktor Orbán, promised in an interview in relation to public security that on getting into office “we shall restore public order in parts of the country, where today it seems to be hopeless” (InfoRádió/MTI, 12.04.2010, <http://tv2.hu/tenyek/video/orban-viktor-a-közbiztonsagrol-tenyek-riport>).

In the elections of 2010 the right-wing conservative coalition of Fidesz-KDNP finally did win a two-third majority and obtained 68.13% of the parliamentary seats. Public security figured prominently in the activity of Prime Minister Viktor Orbán's new government, which set its program for “National Co-operation” before Parliament on May 22nd, 2010. In a section of their manifesto entitled “It's time to restore order in the country”, the following announcements (among others) were made on matters of criminal and penal policy: “During the period of socialist government [i.e. the governments of the previous eight years] people have felt that the law does not protect law-abiding citizens, does not prevent criminals from committing crime, and does not take the part of the victims of crime but rather of

the offenders. Because of the acts of the socialists after 2002 fewer people have been imprisoned and more people are free to disturb law and order without any consequences... After the elections one of our first steps will be to increase the severity of the Penal Code... Perpetrators of crimes against human life and property will be severely sentenced. In many more cases the sentence of life imprisonment without parole should be imposed... The “three strikes” law, already introduced in many countries, will remain a deterrent. The full force of law, longer sentences, the more frequent use of life imprisonment and greater protection for victims will restrain offenders and make it clear to members of society that Hungary is not a paradise for the criminals” (www.kormany.hu/download/c/27/1000, pp. 45–46, download: 20. 11. 2011).

To comply with this part of the program the Parliament began by adopting Act LXXXVI of 2010, making a necessary amendment to the HPC in the interest of improving the public security. One part of the amendment linked with this study has strengthened the legal sanctions incurred by misdemeanours against property (e.g. theft under 20,000 Ft/approx. 70 EUR), firstly by transferring the investigation of such cases from the notary as administrative clerk to the police, and also, in consequence, by making it possible to sanction both adults and juveniles committing such offences not only with a fine, but also with confinement. The option of confinement as a sanction allows the possibility of arresting offenders caught in the act.

A short time after the formation of the new government in May, the Penal Code was amended. On June 8th, 2010 Parliament passed Act LVI of 2010 on the amendment of the Penal Code (hereinafter referred to as the 2010 amendment of the HPC). The 2010 amendment of the HPC initiated real “three strikes” rules, brought in harsher provisions on special and multiple recidivists and limited the freedom of the court in determining sentence.

The prefatory material justifying the act which introduced the “three strikes” rules gave the following reasons for the new stricter measure: “The manifestation of the unambiguous will of the voters in the elections of 2010 obliges the Parliament to make the measures of criminal law policy supported by the constituents come into force as soon as possible. Such a measure of criminal law policy is known in several of the United States and in neighbouring Slovakia as a “Three Strikes” Act, and is supported by the subscription of hundreds of thousands of citizens in Hungary”.⁸

By this amendment of the HPC, the prison sentence for violent multiple recidivists convicted of their third violent crime against a person is automatically doubled. If a sentence increased in this manner exceeds 20 years, or if this third crime could incur a sentence of life imprisonment, then the offender must be sentenced to life imprisonment (Art. 97/A of the HPC).

The 2010 amendment of the HPC again brought in provisions limiting the freedom of the court in deciding sentence, which was introduced by the

⁸ Explanatory Notes to the Act LVI of 2010. *Complex Jogtár Plusz*, 31.07.2010.

amendment in 1998 and repealed in 2003. The main point of these provisions is the principle of “median term punishment”. This means that the judge should regard the median of the length of a possible sentence as the standard, and impose it as a fixed term of imprisonment. This is to say that conviction for an offence incurring a term of between 2 and 8 years in prison means at least 5 years’ imprisonment. If the judge then goes and imposes a sentence of less than 5 years, he/she must give a detailed explanation for declining to enforce the median term.

The 2010 Amendment of the HPC entered into force from July 23rd, 2010.

5.4 Sentencing Practice and Political Changes from a Comparative Point of View

5.4.1 Sanction System of the Penal Code

The sanction system used by the HPC is a so-called “relatively determined” system. The essence of this system typical, above all, of civil law countries is that the determination of the sanctions and the sentencing is divided between the legislature and the judiciary. What this means for the HPC has already been touched upon in [Sect. 5.3.2](#). The characteristics of Hungarian sentencing practice may be considered as a common product of the legislation and sentencing by the courts. The rate, how “common” it is, depends basically on the legislation in force, namely on the legal provisions for imposing punishments and the sentencing power of the judge. From the perspective of the judge the characteristics of sentencing practice are influenced by the severity of the offence, the personal circumstances of the offender and the judge’s conception of the aim, meaning and usefulness of each penalty he or she prescribes.

In this part of the study the sentencing practice for adult offenders in Hungary between 1985 and 2010 will be summarised. In the course of doing so it will deal with how the transformation in 1989–1990 influenced sentencing practice and the characteristics and changes it brought in after 1990. Hungarian sentencing practice will then be compared to that of the Czech Republic, Poland and Slovenia. The comparison will cover the rate and kinds of penalties imposed yearly, and also changes occurring therein.

5.4.2 Sentencing Practice in 1985–2010

The following table summarises how the practice of sentencing adult convicted offenders developed in Hungary over roughly the past 25 years ([Table 5.4](#)).

Table 5.4 Sentencing practice in Hungary, 1985–2010—Adult convicts

Convicts, total	Capital punishment ^a		Imprisonment total		Of which: suspended imprisonment		Of which: immediate imprisonment		Community service		Fine		Other			
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%		
1985	54,851	100	2	48.3	26,477	48.3	11,780	21.5	14,697	26.8	2,684	4.9	21,079	38.4	4,608	8.4
1990	42,538	100	–	37.9	16,121	37.9	6,005	14.1	10,116	23.8	676	1.6	18,641	43.8	7,094	16.7
1995	77,029	100	–	29.8	22,969	29.8	13,682	17.7	9,287	12.0	869	1.1	38,442	49.9	14,749	19.1
2000	87,689	100	–	34.5	30,279	34.5	18,537	21.1	11,742	13.4	2,754	3.1	40,220	45.9	14,436	16.5
2003	86,722	100	–	34.2	29,744	34.2	18,449	21.1	11,295	13.0	3,794	4.3	39,110	45.9	14,074	16.2
2006	90,324	100	–	30.3	27,332	30.3	17,860	19.8	9,472	10.5	5,390	6.0	41,838	46.3	15,762	17.5
2007	81,531	100	–	30.3	24,736	30.3	16,258	19.9	8,478	10.4	5,174	6.4	38,949	47.7	12,672	15.6
2008	78,991	100	–	31.9	25,210	31.9	16,543	21.0	8,667	11.0	5,748	7.3	35,745	45.3	12,228	15.6
2009	80,618	100	–	32.7	26,377	32.7	17,018	21.1	9,359	11.6	6,658	8.2	33,654	41.7	13,929	17.2
2010	82,789	100	–	34.1	28,277	34.1	18,392	22.2	9,885	11.9	9,517	11.4	28,705	34.6	16,286	19.6

Sources: Statistical year books of Hungary. Central Statistical Office, Budapest

^a The capital punishment was abolished in Hungary on 31.10.1990

5.4.2.1 Sentencing Practice During the Socialism

Before the transformation of 1989–1990 Hungarian sentencing practice was “imprisonment-centred”. The rate of imprisonment within the overall number of penalties imposed on yearly average was 43–48%. Only in 1988 did this rate fall below 40%. More than half of the prison sentences imposed were non-conditional. In the 1980s every fourth offender convicted each year was, sentenced to non-conditional imprisonment. In this indicated period the annual rate of fines being imposed was between 34 and 39% (Source: Information booklet on law enforcement and sentencing practice, 1988, Budapest, Chief Prosecutor Office, 1989).

As established earlier in [Sect. 5.2](#) of this chapter, the actual crime situation of the time did not justify such severity.

The “socialist” character of such sentencing practice can be attributed in part to the autocratic political system of the day, and partly to the imprisonment-centred punishment system of the HPC and the approach of the judges (Gönczöl 1990). During the 1980 judges were usually oriented to the seriousness of the crimes in imposing question, and tended to ignore the question of offenders’ personal circumstances (Gönczöl 1990, p. 70).

5.4.2.2 Sentencing Practice in 1990–2010

After the transformation, despite the dramatic increase in crime in the early 1990s sentencing practice was significantly altered. In 1995 only slightly less than a third of all sanctions imposed on adult convicts were prison sentences. In that year every 12th convict was sentenced to non-conditional imprisonment and half of the penalties imposed overall were fines. The break with the previous pattern of sentencing practice is explained by the transformation of the political system and the 1993 amendment of the HPC discussed above.

In a further reversal, since 1998 the rate of imprisonment has increased and in parallel the rate of fines being imposed has decreased. In 2003 more than one-third of all imposed penalties were prison sentences. The reason for this increase was primarily the greater frequency of suspended prison sentences. The background of the change in sentencing practice was the penal policy of the new government that came into force in 1998 through the amendment of the HPC that year.

Between 2003 and 2008 the rate of imprisonment decreased again. In 2007 only every 10th adult convict was given a non-conditional prison sentenced non-conditional. The rate of fine imposition increased; it reached nearly 48% in 2007. This sentencing practice, which again reversed the trend of earlier years in the post-transformation period, bore a direct relation to the change of government in 2002 and the subsequent amendment of the HPC in 2003.

Since 2008 sentencing practice has swung back once more in the other direction. The rate of imprisonment has been increasing, with fines again becoming less common, but with a significant increase in community service. These changes,

Table 5.5 Prison population rates per 100,000 inhabitants in Hungary

Year	Prison population per 100,000 inhabitants
1988	193
1990	122
1992	153
1995	121
2002	178
2004	164
2006	147
2007	143
2009	153
2010	160 ^a

Note Including pre-trial detainees. Their proportion per year since 1990 has been ca. 25%

Source International Centre for Prison Studies, (<http://www.kcl.ac.uk/depsta/icps>, 04.07.2010) and National Headquarters of the Prison Service, Budapest

^a *Estimated data*

again, are traceable to the new penal system introduced by the amendment of the HPC in 2009, which entered into force on January 1st, 2010.

The trend of the changes was intensified by the amendment of the HPC in 2010; the effect of which will be discussed in the following subsection.

5.4.2.3 Development of Prison Population

The development of the prison population is both a mirror and a consequence of penal policy and sentencing practice. The following table illustrates the prison population in Hungary between 1988 and 2010 (Table 5.5).

In the 1980s the number of prisoners in Hungary was between 17,000 and 24,000 on yearly average. Among the prisoners the rate of pre-trial detention was between 12 and 14% (Lőrincz 2009, p. 206).

In the years directly after the transformation as a consequence of the already discussed penal policy and sentencing practice, the prison population significantly decreased. While the prison population which clearly “belonged” to the previous system was 22,543 in 1987, in 1995 it was 12,454. That latter figure was the lowest prison population reached in the period after the transformation.

Since 1995 the prison population has alternately increased or decreased, and since 2007 it has been permanently increasing. The prison population on December 31st, 2010 was 16,328; higher than in 1989, 1 year before the transformation, when the prison population measured 15,928. One of the leading functionaries of the Hungarian prison system wrote the following about the year 2011: “...on March 7th, 2011 the number of prisoners was 17,067. The number of offenders in penal institutions has been increasing continuously, an increase which

can be measured every 10 days and which, if it continues at the present rate, will bring the domestic prison population to exceed 18,500 in number by the end of the year” (Csóti 2011, p. 7). The main reason for the increase is that the number of short-term prison sentences—for terms of up to 1 year—has decreased in comparison to previous years, “but the number of longer sentences (for 1–3 years, 3–5 years, and over 10 years) has simultaneously increased” (Csóti 2011, p. 7).

The increase of the prison population, however, was not matched by a proportionate extension of capacity, leaving Hungarian prisons increasingly overcrowded. While the so-called “overcrowding index” measured 118 in 2008, in 2010 it had risen already to 133.

5.4.2.4 Main Patterns of Hungarian Sentencing Practice

Two main patterns emerge from the foregoing review of Hungarian sentencing practice between 1985 and 2010. One is the pattern in evidence before the transformation, one characterised by an imprisonment-centered approach, and consequently higher rates of non-conditional imprisonment, and the less frequent use of non-custodial sanctions. The overall incarceration rates exceeded those typical of Western European states.

After 1990, as the transformation oriented the Hungarian system towards western political and social structures, sentencing practice also followed this direction, and the second pattern developed. In this, a fine became the more typical punishment, the rate of non-conditional imprisonment significantly decreased and the number of non-custodial sanctions increased. In this respect the period 1990–1995 was certainly favourable, and one can still observe that while Hungarian sentencing practice diverged from “socialist”, “Eastern European” practice, it had not “arrived” at a Western European pattern (on this see: Kertész 1994; Kőszeg 2011; Papházi 2011). In 1998–2002, then from 2010 on, sentencing practice again took on some features of the previous pattern, because of the specific penal policy of the day rather than the essence of the political system as a whole (e.g. the average length of non-conditional prison sentence in 2001 was 4 years and 1 month; Lőrincz 2009, p. 172, “higher rate of non-conditional imprisonment”).

The next part of this chapter will deal with the sentencing practice of other CEE member states involved in the present project (the Czech Republic, Poland and Slovenia). The comparison covers these countries since—beyond the common characteristics of EU membership—they share many similarities in the field of political changes made at the beginning of the 1990s, in addition to which these states already became members of the Council of Europe at the same time. (Hungary: on November 6th, 1990, Poland: on November 26th, 1991, Slovenia: on May 14th, 1993, the Czech Republic on June 30th, 1993).

5.4.3 Sentencing Practice After the Transformation in the Czech Republic, Poland and Slovenia

5.4.3.1 Sentencing Practice in the Czech Republic

Before the transformation of 1989–1990 the sentencing practice of the Czech Republic was strongly representative of the East European pattern. (The Czech Republic was part of Czechoslovakia until January 1st, 1993.)

As Table 5.6 indicates, even in 1990 slightly more than three-quarters of the penalties for adult convicts were prison sentences. In the 1980s one-third of adult convicts were sentenced to non-conditional imprisonment. As a result among the former socialist countries of East and Central Europe (excluding the Soviet Union) the rate of imprisonment in the 1980s was highest in Czechoslovakia (see Table 5.9).

The Czech divergence from the Eastern European pattern only began in the mid-1990s. This process then intensified in the early 2000s. One of the explanatory factors is that—as discussed in the study contributed by Cejp and Scheinost to this volume—although the Penal Code of Czechoslovakia of 1961 was replaced only in 2010 by the new Code of the Czech Republic, the previous one was amended several times after 1990. The changes also affected the provisions related to sentencing practice.

In spite of these changes, imprisonment still dominated the sentencing practice of the 2000s, but within this continuing pattern the rate of non-conditional imprisonment did actually decrease. In the period under discussion the most typical form of punishment in the Czech Republic was suspended imprisonment. The low rate of fine imposition and other sanctions also indicates that suspended imprisonment was the typical alternative sanction.

According to Zdenek Karabec the main reason for the lack of divergence from the sentencing practice of the former political system was that the penal policy was extremely subordinate to general political interests and objectives. The same author states, in evaluating Czech penal policy between 2004 and 2007: “Penal policy in our society is a major field of political rivalry; this obviously brings with it no little risk of populism” (Karabec 2009, p. 27).

5.4.3.2 Sentencing Practice in Poland

In Poland directly before the transformation sentencing practice was also largely imprisonment-centred in character. The data for 1985 in Table 5.7 also shows that more than a half of prison sentences were suspended. The rate of non-conditional imprisonment did not comprise a third of all sanctions and the rate of fines being imposed was over 10%.

The decreasing rate of non-conditional imprisonment and as a consequence of this the decrease in the prison population between 1990 and 1995 shows another divergence from the Eastern European pattern of sentencing practice.

Table 5.6 Sentencing practice in Czech Republic, 1985–2008—Adult convicts

Convicts, total		Capital punishment ^a		Imprisonment total		Of which: suspended imprisonment		Of which: immediate imprisonment		Community service ^b		Fine ^c		Other	
Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
1985	48,755	100	5	34,382	71	15,498	32	18,884	39	—	—	—	—	3,555	7
1990	16,521	100	0	12,576	76	7,254	44	5,322	32	—	—	—	—	2,133	13
1995	54,957	100	—	48,276	88	35,724	65	12,552	23	—	—	—	—	4,978	0.7
2000	63,211	100	—	49,731	79	35,617	56	14,114	22	7,084	11	3,571	6	642	1
2003	66,131	100	—	45,473	69	35,676	54	9,797	15	13,592	21	2,941	4	1,474	2
2006	69,445	100	—	51,861	75	41,864	60	9,997	14	12,273	18	2,685	4	1,402	2
2007	75,728	100	—	53,419	71	43,548	58	9,871	13	12,496	17	4,558	6	1,216	2
2008	75,761	100	—	52,412	69	42,157	56	10,255	14	11,193	15	5,307	7	993	1

Czech data was provided by Simona Diblíková

^a Abolished in 1990

^b In the sentence system since 1996

^c Initially included in “Other”

Table 5.7 Sentencing practice in Poland, 1985–2008—Adult convicts

	Convicts, total		Capital punishment ^a		Imprisonment total		Of which: Suspended imprisonment		Of which: Immediate imprisonment		Community service		Fine		Other ^b	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
1980	201,194	100	8	100	102,831	51,0	58,261	28,9	44,57	22,1	28,632	14,2	22,920	11,4	46,386	23,4
1985	180,969	100	17	100	113,002	62,4	60,856	33,6	52,146	28,8	15,385	8,5	22,112	12,2	30,200	16,8
1990	107,664	100	–	–	81,328	75,5	52,177	48,5	29,151	27,07	5,339	4,9	20,401	18,9	557	0,5
1995	196,655	100	–	–	138,359	70,3	106,027	53,9	32,332	16,4	7,379	3,7	50,885	25,9	32	0,0
2000	222,785	100	–	–	174,223	78,2	143,482	64,4	30,741	13,7	14,789	6,6	33,699	15,1	–	–
2003	415,933	100	–	–	269,753	64,9	233,055	56,0	36,698	8,9	52,763	12,7	93,274	22,4	143	0,0
2006	462,937	100	–	–	315,202	68,1	272,653	58,9	42,549	9,2	57,918	12,5	88,407	19,1	1410	0,3
2007 ^c	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
2008	420,729	100	–	–	289,269	68,8	250,774	59,6	38,495	9,1	40,643	9,7	89,011	21,1	1806	0,4

Polish data provided by dr. Witold Klaus

Data for 1980–2000: Melezini (2003), *Punitivność wymiaru sprawiedliwości karnej w Polsce w XX wieku [Punitivity of criminal justice in Poland in XX century]*, Białystok; for 2003 and 2006: Siemaszko (ed.) (2009), *Atlas przestępczości w Polsce 4 [The atlas of criminality in Poland 4]*, Warszawa; for 2008: *Concise Statistical Yearbook of Poland 2011* (2011), Warsaw

^a Capital punishment was abolished in Poland on 01.09.1998

^b Conditional suspension of criminal procedure is dominant in this category between 1980 and 1985

^c Data for 2007 is not available

After the Polish Criminal Code of 1997 came into force, replacing the Penal Code of the socialist period—the rate of the non-conditional imprisonment continued decreasing in 1998 and the rate of fine imposition stabilised at around 20% of all imposed penalties on yearly average. However, the increase seen in the prison population since the beginning of the 2000s indicates again the return of an Eastern European pattern of sentencing practice. This paradoxical situation can be traced back to a drastic increase in the number of adult offenders. The number of adult offenders in Poland by the mid-2000s was double what it was in 2000. The incarceration rate slowly reached the rate seen before 1980. To explain this, Buczkowski, Klaus, Kossowska, Rzeplinska and Wozniakowska-Fajst emphasise in their study in this book how criminality was also politicised in Poland, again largely through a culture of “penal populism” stirred up by the media. (See: [Chap. 2](#)) According to Krzysztof Krajewski—whose work is cited in the aforementioned chapter—the high incarceration rate and the highly punitive nature of Polish society supporting it are products of the communist heritage, consequences of the former totalitarian regime.

5.4.3.3 Sentencing Practice in Slovenia

Compared to the countries discussed above, and other former Yugoslav states, Slovenia possessed a fundamentally different sentencing practice even before independence in 1991. The penal system and the sentencing rules of the Penal Code of 1977 were accorded with “treatment” ideology (Petrovec 2007, p. 327). That is to say; Slovenian sentencing practice matched the Western European pattern even before the political changes. Before 1991 less than 20% of the sanctions imposed on adult offenders were sentences of non-conditional imprisonment. By 1995 the rate of the non-conditional imprisonment (among other penalties) decreased further from the level of 1991 (Table 5.8).

However, the Slovenian Penal Code of 1995—as Aleš Završnik points out in his chapter for this book—involved a definitive shift to a “just desert” philosophy of sanctions and the Minor Offences Act of 2005 and the newest Penal Code which entered into force on the November 1st, 2008, show the influence of the penal managerialism. Although as a result of these reforms the length of the imprisonment, the number of the criminal offences, the number of convicts and the incarceration rate have increased (See Table 5.9), sentencing practice in Slovenia will probably continue following the Western European pattern. Among the countries involved in this project Slovenia is the only one which Tapio Lappi-Seppälä counted among countries with a modern penal policy in his comparative research on the application of imprisonment (Lappi-Seppälä 2011).

Table 5.8 Convicted adult offenders by penal sanction, Slovenia, 1985–2009

Year	Total N	Judicial admonition		Fine		Immediate imprisonment		Suspended sentence			
		N	%	N	%	N	%	Total		Fine	Impris.
								N	%	N	N
1985	13,528	269	2.0	4,607	34.1	2,424	17.9	6,113	45.2	241	5,862
1990	9,842	253	2.6	2,112	21.5	1,637	16.6	5,762	58.5	134	5,628
1995	3,462	140	4.0	329	9.5	550	15.9	2,409	69.6	11	2,398
2000	6,304	120	1.9	346	5.5	1,099	17.4	4,693	74.1	38	4,655
2005	7,718	144	1.9	591	7.6	1,299	16.8	5,629	72.9	22	5,607
2006	8,119	83	1.0	565	6.9	1,284	15.8	5,923	72.9	12	5,911
2007	8,685	93	1.0	659	7.6	1,180	13.6	6,672	76.8	14	6,658
2008	8,739	103	1.2	616	7.0	1,251	14.3	6,673	76.4	15	6,658
2009	8,035	–	–	376	4.7	1,124	14.0	6,401	79.7	9	6,392

Slovenian data provided by dr. Franc Brinc

Table 5.9 Imprisonment rates in the Czech Republic, Hungary, Poland and Slovenia 1988–2010

	Czech Republic	Hungary	Poland	Slovenia
1988	Not applicable	193	N/a	75 ^a
1995	190	120	170	31
1997–1998	215	135	145	40
1999	225	150	145	50
2003–2005	190	164	209	56
2009–2010	208	153	217	67

Sources www.kcl.ac.uk/depsita/rel/icps/worldbrief.php

Eurostat: Statistics in focus, 36/2009

Nagy and Juhász 2010, p. 11

^a Data for Yugoslavia

5.4.3.4 Comparing the Sentencing Practices of the Czech Republic, Hungary, Poland and Slovenia

The overview above shows that among the four countries discussed here, in Slovenia the transformation was not followed by a change in the previous pattern of sentencing practice. Sentencing policy and practice were already adequate before the new political changes were implemented when the state became independent. At the other extreme, however, the pattern of sentencing practice has changed, albeit with varying length and intensity in the Czech Republic, in Hungary and in Poland. All three of these countries—and Hungary first and most intensively—began to move away from the imprisonment-centred Eastern European pattern. This distancing process was characteristic even in the period when criminality increased significantly in these countries. However, this process continued even as the increase in criminality dropped away and stabilised in extent. The sentencing data and the figures in Table 5.9 relating to the development of

prison populations in particular show that in all of these countries—including Slovenia—sentencing policy has become stricter.

The common explanatory factors for these figures in all the countries discussed here—according to Krzysztof Krajewski—include the powerful effect of the populist conception of democracy, the new kind of “presentation” of questions related to criminality in the media, the failure to heed the opinion of experts and academics in the course of implementing penal reforms and consequently the extension of penal populism in public discourse, politics and the penal policy (Krajewski 2010, p. 10).

The role and consequences of these factors are not, however, the same in the four countries. The sentencing practice and prison population rate in Slovenia remain adequate as compared to Western European consensual “welfare” democracies. On the contrary the sentencing practice and prison population of the Czech Republic, Hungary and Poland increasingly evokes the once-abandoned Eastern European pattern. The next point of concern for this study will be to interpret this process, by focusing on Hungary.

5.5 Explanatory Framework of the Characteristics of Hungarian Criminal Policy 1988–2010

5.5.1 Five Aspects of the Explanatory Framework

As the foregoing overview demonstrated, penal policy has been changed several times in Hungary in the last quarter of a century. The penal policies which emerged in this period cannot be described in terms of “mitigation-tightening”. To examine these developments here, it makes sense to place penal policy within an explanatory framework consisting of five aspects.

The first aspect is the character and quality of the political system in which policy is drawn up and implemented. As Susanne Karstedt points out, “the specific features of democratic values and institutions decisively shape penal systems in contrast to autocracies, and they also account for differences between democracies” (Karstedt 2010, p. 4).

The second aspect is the social model on which criminal policy is based. In classifying types of criminal policy according to their social preconceptions and priorities, the work of Anton Duff (1995) should be considered. Duff draws a distinction between “exclusive” and “inclusive” criminal policy in the field of crime control. Criminal policy assumes an exclusionary character when it considers what kind of institutional system we need to deal with “them”, a socially separate class of threatening offenders who exist in distinction and opposition to “us”, the law-abiding citizenry. On the contrary, criminal policy becomes inclusive when it focuses instead on what kind of institutions is appropriate for us as equal citizens, members of the same society (Duff 1995, pp. 17–36).

Table 5.10 The two types of the criminal justice policy according to Nils Jareborg

Defensive model	Offensive approach
<i>Common aim</i>	
Protecting individuals, communities, public interest and interest of the state through the threat of punishment and sentencing	
<i>Aim</i>	
Protection of individuals against abuse of power	Contributes to solve social problems and conflicts
<i>Approach</i>	
Rule of law and jurisdiction cannot be subordinated to the needs of crime prevention	Quick action in case of social problems
The state is a potential enemy	The state is an ally

The third aspect is the priority given to the rule of law by criminal policy. To understand this aspect a theoretical division proposed by Nils Jareborg should be taken into account. Jareborg distinguishes two types of criminal justice policy. One of them is the “defensive” model as the ideal type supported by Max Weber, and the other is the model based upon an “offensive” approach (Jareborg 1995, p. 20, 24).

The following table summarises the main characteristics of the types of criminal justice policy (Table 5.10).

The fourth aspect is the type of penal policy adopted. The typifications followed here are based on classifications proposed by Sonja Snacken (2006). Snacken—using categories developed by Rutherford (1984) and Bottoms (1977)—distinguishes between three types of penal policy. These are (a) reductionist policies, (b) expansionist policies, and (c) bifurcation (Snacken 2006, pp. 144–145). These distinctions are based on, what the aim of the policy is, reducing or increasing the prison population. The “bifurcation” penal policy distinguishes between the dual aims of penal policy with respect to “petty” offenders and “serious” offenders. The fifth aspect is the relationship between theory and penal policy, namely how political decisions rely on the research findings of criminology and criminal justice scholars.

The possible variations in this relationship, according to classifications set out by Kerezsi (2009), are as follows:

- (a) the co-operating (service) model, “in which the political sphere requires the development of criminal policy and applies the results of the criminological and criminal justice sciences”;
- (b) “the submissive model, in which the political power applies professional proposals subserviently without recognising its own political responsibility”;
- (c) “the cynical (negative) model, in which the political power “makes itself independent,”... This criminal policy regards crime control and the identification of its instruments only as political issues” (Kerezsi 2009, p. 97).

The background factor acting upon the framework for interpreting penal policy is how criminality is actually developing, and how it is perceived as developing.

The typical reasons for penal policy reforms are namely the quantitative and qualitative changes in criminality in a given country.

5.5.2 Main Features of the Criminal and Penal Policies Between 1988–2010

The following table summarises the main features of the criminal and penal policies adopted in Hungary between 1988 and 2010 incorporating the aspects mapped out above (Table 5.11).

The table shows that in Hungary during the first period of the transformation the nature of penal policy was determined by the content of the transformation itself: comprising, in short a democratic, liberal conversion. The desire for democratic reform of criminal justice was also one of the chief forces driving the institutionalisation of democracy in Hungary in the transitional period (See Karstedt 2010, p. 1). This resulted in a defensive, reductionist penal policy with a subsequent reduction of the prison population, in addition to a dramatic increase in crime. Professional experts and academics were involved in the reforms. The euphoria of transformation and democratisation subsided during the period leading up to the change of penal policy implemented in 1998. In the course of reforming criminal law the new government was basically not driven by the values of the transition (e.g. concerned with reducing the prison population), but instead alluded to the increasing crime levels and the urgent and justified demand from society for a “hard fight” against crime. Consequences of this change of mood included the ensuing expansionist penal policy, which ignored expert opinion and research findings, and an increasing prison population. In 2002 the change of government has brought another new turn in penal policy. In the background of the subsequent policy changes the work of experts and new research findings are clearly visible.

The problem of the crime became a political issue in Hungary during the preparations for the 2010 election. The penal policy reform carried out by the “expert government” in 2009 simultaneously reflected this politicisation (by passing the “soft” “three strikes” Act) while declining to take a populist turn in penal policy by proposing an “expert-guided” adjustments to the sentencing and punishment system of the HPC.

However, an official shift towards populism did come with the change of government in 2010. During the campaign the fight against crime was made an essential question for the eventual winning party for the purposes of garnering more votes, even though registered crime was not significantly increased in the country at that time. The government—since it held the two-third majority requisite for such measures—thus announced a penal policy which was unprecedented in the post-transformation period. The HPC of 2010 was the product of an explicitly populist penal policy, adopted without heeding expert recommendations, research findings or the opinion of the opposition, and denigrating the values

Table 5.11 Main Features of the Criminal Policy and Penal Policy in Hungary, 1985–2010

	1985–1989/1990	1993	1998	2003	2009	2010
Trend of crime before the reform	Slightly increasing	Dynamically increasing	Dynamically rising	Decreasing	Stable	Rising slightly
Political system (Lijphart 1999 and Karstedt 2010)	Autocracy	Consensus democracy	Consensus democracy	Consensus democracy	Consensus democracy	Majoritarian democracy
Criminal Policy (Duff 1995)	Mixed character (Lévy)	Inclusionary character	Exclusionary character	Inclusionary character	Mixed character (Lévy)	Exclusionary character
Criminal Justice Policy (Jareborg 1995)	Offensive approach	Defensive model	Offensive approach	Defensive model	Mixed approach (Lévy)	Offensive approach
Penal Policy (Snacken 2006)	Expansionist (Rutherford, 1984)	Reductionist (Rutherford, 1984)	Expansionist (Rutherford, 1984)	Bifurcation (Bottoms, 1977)	Bifurcation (Bottoms, 1977)	Expansionist
Relationship between ‘theory’ and ‘policy’ (Kerecsi 2009)	Partly co-operating model	Co-operating model	Negative model	Co-operating model	Partly co-operating model	Negative model

incorporated in penal policy since the time of the transformation (e.g. by declaring that the decrease of the prison population indicated the weakness of the government). One of the consequences has been that the prison population is now dynamically increasing and is close again to the rate seen at the time of the transformation.

The consensual period of the transformation has been replaced by a *majoritarian* version of democracy in Hungary; in which form of government penal policy is an important instrument for retaining a majority.

The idea advanced by Jonathan Simon of an administration “governing through crime” is now valid in Hungary, since crime has become integral to government strategy (Simon 2007). It should be stated that the spread of expansionist penal policy and the growth of the prison population in Hungary should basically be attributed to this new governmental and cultural priority, and not by the “heritage of the socialist past”.

5.6 Conclusions

The transformation of the late 1980s and early 1990s in Central and Eastern Europe, and further events in the ensuing period prove that political changes not only affect the way criminality develops, but also penal policy. The governments which enforced the inchoative democratic content of the political changes humanised and rationalised the rigorous imprisonment-centred penal policies of socialist regimes by focusing on the considerations of human rights. In the last decade, however, to a varying extent in different countries of the region, this model of penal policy has been effaced, and a radically different kind has forged ahead instead. As Katalin Gönczöl declared of this new penology: “the traditional values and guaranteed destructive force of penal policy can prevail almost unhindered... in democracies with a little or no democratic traditions” (Gönczöl 2011, p. 6).

Before the transformation of their autocratic political system, formerly socialist Central and Eastern European countries imported and implemented, under external duress, some of the solutions enforced by Soviet penal policy. However, in our days, the sovereign governments of post-transformation developed democracies have adopted populist penal policies quite voluntarily.

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Part IV
Emerging Types of Crime

Chapter 6

Organized and Economic Crime: A Common Problem

Martin Cejp and Miroslav Scheinost

Abstract This chapter deals with the phenomenon of organized crime that has emerged as an urgent and serious problem in all transition countries. The authors analyze the influence of the profound political and economic changes that formed the basis of the shift from a totalitarian regime into a democratic, market-oriented society. Rising crime rate and the growth of new forms of crime were concomitant circumstances of this process. Serious economic and financial crime emerged, using and abusing the new economic situation, especially the process of privatizing former state property. Organized and economic crime have often been very closely linked: nevertheless the authors document the key differences between these two categories of crime. From the data currently available and the comparative analysis it allows, it can be stated that the developmental characteristics, forms and features of organized and economic crime among the states in question are very similar, even when an extraordinary factor as beneficial for crime as the armed conflict in the Balkans is taken into account.

6.1 Organized Crime, Economic Crime and Transition

6.1.1 The Formation of a New System and the State of Anomie

Most of the countries that embarked on transition in the early 1990s witnessed an increase of recorded crime within their borders. With regard to this problem, these countries all had certain features in common: the trends and forms of crime they

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experienced were similar, as were the conditions and background factors which encouraged crime to develop.

Within this general pattern, organized and economic crime rank among the most serious forms of criminal activity: the danger they pose to the society is more than sufficient reason for devoting a chapter to them in this book. The present discussion works from the definition of ‘organized crime’ given in the United Nations Convention against transnational organized crime.¹ Economic crime is therefore understood as unlawful economic activity bringing financial profit or other gain at the expense of a specific economic subject (a state, legal entity or natural person), comprising an act or acts that break criminal law and are accomplished in an economic setting using economic instruments.²

Van Dijk and Mayhew, in their study “Criminal victimisation in the industrialised world”, argued that a high crime rate is the price paid for living in a rich, urbanized, and democratic society (van Dijk and Mayhew 1993). The countries discussed in this work clearly aspired to such a society in pursuing the changes required by transition. However, the increase of crime generally, at times in new serious forms, should not be viewed as a sign that this goal for society was realized; but rather as a consequence of wishing for it in the first place.

All of these countries experienced a radical transformation both economically and politically. The common denominators of the economic transformation were far-reaching changes through the rapid privatization of state property, the redistribution and new accumulation of capital, and the hurried—even headlong—formation of a market economy. Although the opening of economic borders was essential for democratic and market changes, it also opened the door to criminal activities from outside. New institutions and democratic mechanisms for managing society were formed in states, where the natural development of democratic relations had been stifled for decades. The organs of state, which bore the historical burden of public distrust, were left weakened by radical changes in both constitution and personnel. The police and judiciary were among the authorities most deeply affected and undermined by this process; and were then, moreover, overworked in the face of rising crime. As a rule, such profound social change and even revolution will shake the established norms of social behavior, social regulation, and governing institutions: ideal conditions, in short, for the situation predicted by Durkheim’s concept of ‘anomie’ to develop.

¹ The UN Convention against Transnational Organized Crime, Article 2. <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

² Scheinost, M., et al. (2004) Výzkum ekonomické kriminality (Research on economic crime). ICSP, Prague.

6.1.2 Adaptation Strategy and Enterprise Theory

When viewed in terms of anomie, the rise in crime in general and in organized and economic crime in particular can be understood as results of the social disintegration and disorientation brought by fundamental and ongoing changes in values and behavioral patterns. Some theorists and researchers interpret the increase in crime as the outcome of a rational choice, an adaptation strategy adopted with the aim of exploiting new conditions quickly and effectively (Lubelcová 1998). From the outset, the transition process brought not only high positive expectations and aspirations based on a new model of social success, but also relative impatience, weakening moral standards and frustrated consumerism. The newly 'opened' environment did not give equal opportunities for all to achieve their goals in a way that conformed to social mores; and this, with the resulting increase in social differentiation, could only strengthen the incentives to fall into crime (Scheinost 2005).

While examining the social and economic roots of organized crime in transition countries from this angle, it is also useful to take into account the explanation offered by 'enterprise' theory (Smith 1980). This theory understands the activities of organized crime organizations through the market mechanisms of supply and demand. A legal market does not satisfy potential buyers of illegal goods and services, and sometimes does not even sufficiently satisfy those interested in legal products. High demand for illegal goods (such as drugs) or services (e.g., the organization of illegal migration) or scarce legal goods (clothing, cars), combined with relatively low risk and high gain, provides all the incentive needed for illegal groups to enter the market and organizes the supply it demands (Kenney and Finckenauer 1995: 41).

Naturally, ethnic and cultural factors and imported influences also played a role in the formation of criminal groups and organizations in the countries studied, but enterprise theory provides the most reasonable overall explanation for why they arose and developed so rapidly.

In placing organized crime into a broader social and economic context, we should bear in mind that the desire for a maximum return on effort and investment at minimum cost is both general and natural. The simplest way of achieving this desire is to work with others on the basis of a division of labor and functional role. In an environment governed by law, this is accomplished by organizing business or trade and coordinating specific activities to achieve the maximum possible levels of productivity. The same motives and principles are true of the criminal environment (Vold and Bernard 1986). Criminal operations, unlike legitimate businesses, will be characterized by one further element, i.e., defences against detection and punishment, but the basic parallel still holds.

Effective organization and a receptive market are prerequisites for a thriving business, whether legal or illegal. Organized crime can therefore become part of a society's normal structure of supply and demand. It satisfies a legal or illegal demand for goods and services that, even if legal in themselves, are procured or

provided illegally. This means that organized crime profits from a symbiosis with customers—or ‘clients’. One may therefore often speak about organized crime as being “victimless”. This is not strictly true, but it does express how the object of interest for organized crime often takes the role of customer rather than victim.

This model of organized crime can be observed in the countries concerning us here. The rapidly emerging demand for drugs and cars (in satisfying which some of the countries in question acted as the source of the ‘product’ and others as its destination), the development of the sex industry, the huge numbers willing to pay for help in illegal migration, the expansion of the stolen art trade, and the demand for weapons from the Balkan warzone, to name but a few ‘areas of growth’, all created demand which criminal groups and organizations catered for, benefited from, and, of course, encouraged further.

6.1.3 Organized and Economic Crime: Similarities and Differences

It could be said that organized crime operates mainly as an adjunct to the legal economy and is primarily focused on the customer or client. Economic crime, however, attacks and directly harms entities on the legal market and usually has no customers since it has nothing to offer. The typical modus operandi of economic crime is fraud and embezzlement. One could see organized crime as complementing the legal economy “from outside” and damaging it indirectly, while economic crime attacks and harms the economy directly and “from within”.

Another difference is that economic or financial crime does not necessarily require the existence of a specially organized entity, namely the formation of a structured and hierarchical group of criminals. Economic crime is generally skilled and well organized, but works by diverting legitimate activities and operations to serve its own purposes. Perpetrators of economic crime may act individually, exploit existing legal institutions from the inside or the outside, cooperate where the benefits are reciprocal, and join forces in corrupt measures without necessarily being forced to form criminal groupings. From this point of view a very helpful concept has been developed which views economic or white-collar crime as “organising” rather than “organized” crime (Van Duyn 2006, p. 195).

This is not to say, of course, that criminal groups specializing in economic crime do not exist. Intersection with organized crime is possible, although organized crime networks are not usually involved in fraud or similar crimes from the outset. However, at some stage an organized group may learn of the huge profits economic criminals have made and exploit this knowledge by trying to blackmail them. In another scenario, the perpetrator of an economic crime may himself solicit contact with the world of organized crime to gain support against other partners or competitors. In any case, the activities of such entrepreneurs sooner or later descend increasingly into more conventional forms of crime. Actions must be

kept secret, steps are taken to eliminate witnesses, and the circle of those that must be bribed constantly expands. Sometimes rival criminal economists will start to settle matters between themselves, hire bodyguards and thus become integrated into criminal organizations or even build their own. This leads to the gradual interpenetration of economic and organized crime (Cejp 1997). Conversely, organizations initially focused on other types of crime can of course expand their activities or carry them over into the economic field by investing illegal gains, making illicit financial transactions and investments (Albanese 1995). The illegal profits of foreign criminal organizations would typically be invested, for example, in property and service-based firms. This development can be seen within Central and East European transition countries.

6.2 Comparing Organized and Economic Crime in Transition Countries: Common Features, Similar Developments

The countries in question share many traits in the development and status of organized and economic crime and the factors supporting such activity. The first common denominator is of course the transition process itself, which was based on similar principles throughout the region and had similar consequences in all countries with regard to crime. Differentiating factors, on the other hand, include the diverse geographic position and nature of certain countries and the varying intensity of specific internal and external forces: the southern ex-Yugoslav countries, most obviously, were uniquely affected by the military conflicts they endured throughout the 1990s.

6.2.1 Elements of Organized and Economic Crime during Socialism

None of these transforming countries was spared from a new wave of organized crime and serious economic crime. It would be wrong to assert, however, that these manifestations of serious crime emerged from thin air. Although the problem of organized crime was given little public attention under socialist regimes because this phenomenon was regarded as something foreign to socialism, it was still in evidence during that era, as research on the development of organized and economic crime in these states has established (Baloun and Scheinost 2002; Plywaczewski 2004; Póczik 2011).

In the state-planned economy, which became a permanently “in-short-supply economy” (in the words of the Hungarian economist János Kornai), the black market was in scarce and much-desired goods and services flourished.

There were, of course, certain differences. In Czechoslovakia, the economy was completely nationalized, whereas Hungary and Poland retained at least certain elements of a private sector. However, the imbalance between supply and demand in all the countries concerning us here gave rise to ventures which sought to satisfy at least part of that demand. Since this was impossible under the regulations of the legal economy, it took place in the ‘shadow’ economy. Here this illicit economy did not grow to the scale it reached in the former Soviet Union. But some of those involved obtained considerable wealth by speculating in rare goods, stealing state property, and, not least, illegally exchanging foreign Western currencies. They were then in a position to use this profit, *inter alia*, as initial capital in the subsequent privatization of state property. As Plywaczewski (2004) has pointed out, some of the more recent bosses of organized crime in Poland ascended from these earlier ranks. Signs typical of organized crime were evident, for example, in the way prostitution was operated in Czechoslovakia and Hungary, although this did not yet take the form of organized human trafficking for sexual purposes.

These elements of organized crime developed in different economic and social conditions and in relative isolation in each country. The crime groups which existed then were not large-scale organizations and their market was relatively narrow. Yet some of their activities bore the hallmarks of organized crime, the organizers benefited from contacts within both the state and the black market or, for example, through cooperation with security authorities. It created a hotbed of crime, one of the factors behind later developments.

6.2.2 New Situation: New Conditions

The transition process gave rise to new social and economic conditions. Major assets changed hands, opportunities opened for the free movement of people, goods and capital, and the necessary legislation was passed only slowly, often with delays and frequently only plugging gaps in legal norms, with mixed efficiency and success. The reconstructed or newly created bodies of state power and the law enforcement authorities were only gradually coming to grips with the problem of controlling previously unseen forms of crime in a situation where more traditional varieties were proliferating. Central Europe and the Balkans were an appealing prospect for organized crime groups from abroad; offering new territory for the development of drug trafficking (the so-called “Balkan route”), the trade in stolen cars, organizing illegal migration, trafficking in persons—especially women for sexual purposes (Nikolič-Ristanović 2009)—and so forth. Poland, Hungary, the Czech Republic and Slovakia found themselves on the main routes for illegal migration, drug trafficking, and the trade in other commodities (cigarettes, alcohol).

6.2.3 Infiltration of Organized Crime from Abroad

Central Europe and the Balkans were penetrated by criminal organizations from Europe and Asia, and, in the area of the drugs trade, from South America and Africa; they were also infiltrated by rapidly growing criminal organizations from the former Soviet Union. With regard to drugs and human trafficking, these countries were initially mainly transit territories, but then became source countries (with synthetic drugs and their precursors exported mainly from Hungary, the Czech Republic and even Poland). In certain respects, they gradually became target countries (for trafficking in drugs—heroin, cocaine, marijuana; and trafficking in women for sexual purposes).

A factor specific to the Balkan states was the war, which stimulated the black market trafficking in weapons and in drugs, triggered population movements, and raised the demand for illegal migration. The weakening of state powers and administrative structures caused by transition was here even more pronounced as a result of the armed conflict, which opened up a still wider field of play for organized and economic crime.

Organized crime was initially viewed in Central European countries as a phenomenon imported from outside; this was largely true. Criminal organizations entering from abroad established their areas of interest, engaged in competitive conflicts which occasionally escalated into violence, and defined their spheres of influence. These groups exploited the new opportunities to invest the proceeds from crime into real estate and other assets (money laundering), cultivated a backdrop and contacts, and developed direct criminal activities. Localized forms of organized crime also began very quickly taking shape, as the groups from abroad attracted domestic collaborators, contacts, agents, assistants, executives, etc. Some groups, especially from Western Europe, were more open to such cooperation. Others, particularly those of Chinese origin, were more reserved, but in general the arrival of foreign organized groups stimulated the creation of networks of associates. Gradually, groups of three kinds arose (and still exist): some were composed only of foreigners, some were mixed, while others consisted solely of the citizens of the country concerned (purely “domestic” groups). So far as foreign crime groups are concerned in the region, Poland is dominated by Russian-speaking groups, the Czech Republic by Russian-speaking, Balkan and Asian groups, and Hungary by East Asian groups, as well as groups from some West European countries and the Balkans; in the Balkan countries, activity by Turkish groups (especially in drug trafficking) is often obvious.

6.2.4 The Rise of Domestic Forms and Internationalization of Organized and Economic Crime

Purely “domestic” organized crime groups, initiated and controlled by native offenders, began forming at a relatively early stage. ‘Home grown’ economic

crime was also quick to develop, and to interconnect itself with organized crime. In this context of indigenous criminals, Plywaczewski writes of two ways in which both strains of criminal operation gathered strength in Poland in the early 1990s. The first originated in upper levels of power and responsibility (the so-called ‘top-down’ variety of organized crime), as corrupt public officials and politicians who exercised control over strategic sectors of the economy abused their positions. The second type involved criminal activities at low-lying and illicit levels of society which then crept upwards: in this ‘bottom-up’ organized crime the traditional criminal underworld—reorganized and newly stimulated—formed the source of the crime networks. Plywaczewski notes that these two layers often met half-way. The elite needed selected members of the underworld as collaborators and partners, while the underworld needed protection and a means of legalizing its profits. Intermediaries between the levels were often former members of the security authorities (Plywaczewski 2004). The pattern of development followed by organized and serious economic crime was evidently not confined to Poland. Póczyk notes links between highly developed organized crime groups, legitimate bodies and organizations, and officials in local and regional government; this alliance provided a platform for organized crime to climb into show business, casinos, the media, the property market etc. (Póczyk 2011).

It must be pointed out that the growth of serious organized and economic crime took place in all transition countries, i.e., not only in the countries of Central Europe which had to transform from a closed and mandatory economy, planned and managed by the state, but also in the ex-Yugoslavian countries where it was an economy based on a unique principle of socialist self-management which was subject to overhaul (Jager 2011: 108; Dobovšek 2008). Even Slovenia, where at least the largest bank and profitable firms were retained in national hands or under state control, did not avoid serious cases of economic crime (e.g., that of the “Zemona cartel” of building firms which made enormous profits from a state contract to construct highways. The firms involved were able to divide among themselves colossal sums of public money. Their co-operation in a cartel agreement raised the total cost of the highways by an estimated 30%.) This case can be seen as a typical example of “self-organising economic white-collar crime” (Jager 2011; Vehovear and Jager 2007).

An important and common feature of organized crime as it emerged in these countries was its internationalization. The point at issue here was not just the cooperation, as mentioned above, between foreign groups and organizations with local accomplices and collaborators. Another factor was that even purely domestic groups, i.e., groups composed entirely of citizens of the country concerned became involved in international networks and maintained contact with foreign partners. This was characteristic of groups consisting of local criminals that were involved in organizing illegal migration, as well as trafficking in stolen cars, drugs, etc. This does not mean that these smaller domestic groups were subordinate to major international organizations; rather, it entailed cooperation between relatively independent cells operating on their own and covering certain parts of the route for the movement of “goods”. Essentially they were “commercially” involved in the network of international activities.

Organized crime and serious economic and financial crime became interlinked; contacts were established with legal governmental and economic structures, the media and politics. Organized crime was internationalized quickly, in relative terms, both with regard to the structure of their organized groups and the network of their external contacts. The spectrum of overall activity was very wide. By now, organized crime had progressed from an initial phase of group formation and penetrating official and legitimate bodies for support, to a phase of consolidation in which areas of interest were demarcated. Serious violent crimes ensued, apparently in the course of struggles between rival groups, which bordered at times on acts of terrorism (Póczik 2011). Subsequently, there was an observable trend away from violent crime toward crime of an economic nature. Economic crime generates huge revenues and often allows criminals to operate on the edges of the law, thus reducing the chances of their prosecution.

This is a grave development, since it sees the uppermost echelons of criminal structures investing in legitimate businesses and involving legal firms in their operations. At its highest level, organized crime geared toward the economic sphere develops influential networks in business and official circles, whereby it benefits from public budgets, contracts, and state-run companies. Alongside their representatives' business activities, carried out under the cover of legal commercial entities, crime groups established within these circles are also able to exert a covert and illegitimate influence on central and regional government bodies.

Rather than a solid structure, what one sees here is a system of free, interoperable, and permeable networks holding funds, influence, and/or contacts. The creation of these networks is currently the greatest risk associated with organized crime in conjunction with economic crime.

6.3 Development and Forms of Economic and Organized Crime

The development of serious economic and organized crime can be shown in more detail by taking the Czech Republic as an example.

6.3.1 Economic Crime

In nature and scale, economic crime as it developed during the transition period is incomparable with that of the very early 1990s (and the pre-1989 period even more so), given the fundamental change in economic relations which society subsequently witnessed. In the Czech Republic, economic crime constituted just the 5% of the number of all criminal offences in 1990–1994; yet by 1997 the figure was 7.5% and in 2002 had risen to 11%. It now stands at approximately 10%. Moreover, the damage caused by detected economic crime is striking. In absolute terms, it cost about 560 million € in 1995 and as much as 1760 million € in 2001, a year

in which it accounted for almost 80% of the damage caused by *all* recorded crime.³ It is also reasonable to assume that a significant part of economic crime is hidden in “dark figures”, i.e., latent crime which goes either unreported or undetected.

The new economic relation structures in the Czech Republic also introduced new forms of crime into the economy. Alongside economic crimes already known in societies with a market economy, but previously non-existent in a state-planned and controlled socialist economies, there appeared more which proved quite specific to the conditions created by transition from a planned to a market economy.

Furthermore, in the Czech Republic the transition was largely based on fundamental ownership structure changes. The structure of these relationships was transformed by broad privatization and so-called ‘restitution’, i.e., returning property from the state to its original owners or their descendants. The forms of economic relations had also to be innovated so that, because of newly formulated economic interests, they were consistent with the modern, generally applicable principles of free economic behavior. The market economy system was adopted very quickly, with almost reckless rapidity. Capital was redistributed and newly accumulated under legislation which was one step or more behind this process and thus regulated the rules of economic behavior on an ex-post rather than an ex-ante basis.

The maxim of this process was that speed was of the essence and that it should not be slowed by in-depth checks and the application of strict legal standards. This meant that the space that had been opened up for businesses could also be accessed for various illegal economic activities (Baloun and Scheinost 2002).

One of the most significant legal developments in the Czech Republic after the change of political regime was undoubtedly the elimination of the distinctions between various types of ownership; as a result, criminal law protection preferring social ownership became meaningless, but on the other hand, sufficient regulations and penalties were not set for transferring property into private hands or for the fundamental change from a planned to a market economy.

The Criminal Code (Act No 140/1961) was amended many times after 1989. Yet these amendments were often only circumstantial responses, dictated by emergent events and the needs of the moment; deeper intervention with a broad-based and conceptual approach to criminal law was only marginal. A new Criminal Code, summarizing changes in approach and detailing particular provisions relating to economic crime did not come into force until the beginning of 2010. However, very often is hard to define whether a given economic activity transgresses non-criminal legal standards (e.g., those of business law or financial regulations) or whether it breaks the criminal code itself. For this reason law enforcement personnel often criticize the quality and clarity of these non-criminal standards for failing to make effective sanctions possible.

Simultaneously with these ongoing amendments, judicial, law enforcement and governmental institutions underwent far-reaching staff changes. In addition, newly

³ Source Statistics of the Czech Police.

formed administrative state institutions had to be staffed. As in the economic sphere, new appointments brought people who often had little or no practical experience of carrying out these expert activities. This situation of cumulative novelty, in which the nascent business community (including a number of banks) was only just beginning to understand the tools offered by the emerging liberal market, and where the state still lacked qualified professionals to protect its economic interests effectively, exposed the economy to attack.

These conditions were somewhat unique and probably had a significant influence on the scope and forms of economic crime. For example, it was easy to get a bank loan for dubious business plans, knowing that they would not be strictly examined and that the state could not allow key banks to fail. It was tempting to take advantage of the fact that the courts could not review the decisions of the privatization commissions that played a key role in the privatization process. These factors are illustrative examples of the context and conditions of the time (Scheinost 2008).

The sudden possibility of freedom in business affairs without proper definition of the limits of competition, along with often ill-considered material and support for certain “enterprising” individuals in the early 1990s, conspired to create the conditions for illegal financial machinations and various new forms of economic crime such as asset-stripping, property, and tax fraud.

Fraud in the sale of light fuel oil can be taken as an example. This took place on a large scale not only in the Czech Republic, but also in Hungary and elsewhere. In its related activities it also had a wider international dimension. Fraudulent schemes caused the state losses which ran into millions of € and delivered huge profits into the hands of the perpetrators. The *modus operandi* was to declare diesel fuel as light fuel oil. The profit was made from the difference in the price and level of taxation of these two—otherwise interchangeable—products. The cases of “light fuel oil fraud” bore the unmistakable signs of organized crime groups, in the division of tasks, the planning of specific operations, the involvement of entire networks of suppliers, customers and distributors, and in the use of international connections, corruption, competitive disputes and occasionally outright violence.

Another example is the phenomenon of asset-stripping (known as “tunnelling” in Czech), which, broadly speaking, means illegal activity directed against manufacturing, commercial and financial companies and enterprises. Or to put it more bluntly, asset-stripping involves fraudulent operations aimed at surreptitiously “tunnelling” into a prosperous company and mining its assets. These operations are carried out by persons in positions that give them influence or control over the companies under attack, to allow the transfer of assets to other entities for their own benefit (Baloun and Scheinost 2002). This form of crime became widespread and brought down many privatized enterprises and companies, as well as financial institutions.

Several general features typified economic crime during the transition period. Establishing financial market institutions (cooperative savings banks, investment funds, pension funds, etc.) proved extremely easy; the credibility of the founders, who in some cases had very dubious personal histories, was not examined. It was

relatively easy to “anaesthetize” the governing bodies, place effective power in the hands of a few individuals, and virtually eliminate internal controls while avoiding external monitoring over an extended period. Regulatory activities in the economic sphere were clearly very poor in general.

As for the offenders themselves it has been shown that perpetrators of economic crime are in general often academically intelligent people and that there is a clear tendency toward a higher level of education (some forms of economic crime prove especially attractive for white-collar criminals). That said, however, in the Czech context these offenders do not confine their activities to the often intellectually complex domain of economic crime. A substantial proportion of them learned what they know of economics through their own business practices rather than by obtaining formal qualifications and thus offenders with a lower level of education have also been known to cause a considerable amount of damage. That is to say, economic crime in the transition period was not the privileged area of ‘white-collar’ activity it is usually thought to be, but was also committed by people coming from other social strata (whom, of course, in time we find among more traditional “white collars”).

It is striking that approximately one-fifth of perpetrators are repeat offenders, especially since this finding was made after 2000, which suggests that even those with prior convictions have relatively easy access to the business world. The Czech situation was characterized not by the high qualifications and creativity of the perpetrators, but more by the relative ease with which this crime could be committed, aided by the gullibility and inexperience of the victims. Indeed, this gullibility is still exploited, albeit in a partially changed form, e.g., by the widespread advertising of financial institutions offering “advantageous” loans: typically borrowers who succumb to this advertising later find themselves unable to make repayments, are sucked into a spiral of ever increasing debt and progressively lose all their property. The prevailing “simplicity” of the perpetrators is evidenced by the fact that the proceeds of crime were used significantly more for their own use than for investment to expand existing or create new legal economic activities.

Despite the fact that economic crime tends to follow simple patterns of behavior, a great deal still goes undetected.

Research conducted by the Institute of Criminology and Social Prevention in 2000–2003 sought the views of law enforcement employees regarding the latency of economic crime. We asked their opinion on how much economic crime remains undetected each year (Table 6.1)

The vast majority of respondents from all three legal bodies clearly consider the latency of economic crime to be very high. Only 3–6% of respondents believe that up to 40% of economic crime goes undetected; 23% of judges, 33% of prosecutors, and 37% of police officers put the figure at more than 60%.

Table 6.1 Extent of latency of economic crime (% of respondents' answers)

Profession	Up to 20%	Up to 40%	Up to 60%	Up to 80%	Over 80%	No answer	Total
Judges (n = 105)	1%	5%	13%	18%	5%	58%	100%
Public prosecutors (n = 82)	0	6%	17%	24%	9%	44%	100%
Police officers (n = 32)	0	3%	25%	31%	6%	35%	100%

Source Scheinost et al. 2005

6.3.2 Organized Crime

In the Czech Republic, as in other countries, organized crime began to flourish after 1989 in connection with the transition process. The Czech Republic's advantageous geographical position exposed its open borders to greater abuse for criminal purposes. There was an increased movement of illegal goods, capital, services, and people. Over time, the Czech Republic gained importance not only as a transit country but also as a destination country in its own right. Various international groups established themselves here. In addition to those foreign groups, Czech citizens also became involved in organized crime immediately after 1990. Czechs either collaborated with certain foreign groups or set up business independently. These people were recruited mainly from the sphere of the shadow economy.

6.3.2.1 The Structure and Extent of Criminal Organizations

The structure and extent of criminal organisations operating in the CR can be estimated either from official police reports or the regular expert investigations carried out annually since 1993. The panel of experts is composed mostly of police officers from specialized police units, numbers between 20 and 25 people, and has been questioned each year as part of research into organized crime carried out by the Institute of Criminology and Social Prevention. Working from this research, for the sake of illustration, certain basic trends in quantitative and qualitative indicators can be summed up.

Estimates of the number of people involved in organized crime, however, are very approximate. The estimates of Police Headquarters for 2007 state that there were roughly 75 active groups with about 2,000 members in the Czech Republic (Zpráva o situaci v oblasti veřejného pořádku 2007). Experts estimated that, from 1993 to 2008, external associates accounted for more than half the members of such criminal groups. In 2009, the figure was a little lower. External associates provide diverse services to criminal groups, e.g., they often carry out fictitious transactions, are used within dummy companies, are fictitious users of items put to criminal purposes, sign invoices and submit tax returns, etc. They are increasingly establishing contact with the authorities.

In terms of the nationality of the perpetrators of organized criminal activities, there are slightly more foreign nationals than Czechs. Specifically, in 2009 experts estimated that foreign participants comprised 55% and Czechs 45% of organized crime groups. In addition, we can also estimate that approximately half the groups are mixed, almost a third are composed of entirely of foreigners, and only about a quarter are purely Czech. In mixed groups, groups headed by foreigners are slightly more prevalent, with Czechs performing auxiliary roles.

The share of organized crime taken up by foreign nationalities splits into three groups of decreasing size and power. Taking the strongest first, in the long term, the foreigners most frequently involved in organized crime in the Czech Republic have consistently been Ukrainian and Russian. After 2000, Vietnamese and Albanian nationals entered this strongest segment, and their share has steadily increased ever since. Since 1998, the relative representation of Chinese in the group has declined somewhat. In the 1990s, this strongest group also included citizens of the former Yugoslavia. With the final disintegration of Yugoslavia into several smaller states, the share of Yugoslavs contracted significantly.

The middle group consists of Romanians (whose share is rising) and Bulgarians (whose share is falling). In 2008, Chechens joined this group. Nigerians and Dagestanis are also involved. They are followed by Poles and Croats. After 2000, the estimated number of Slovaks rose, but by 2008 experts did not record them in significant levels. In 2009, however, Slovaks had risen to the head of the medium group, among Bulgarians, Romanians, and Chechens.

In the third group, which consists more of individuals than gangs, there are more than 15 nationalities: Palestinians, Israelis, Serbs, Moldovans, more recently Hungarians, Armenians, Arabs, Macedonians, Turks, Mongols, Georgians, and finally Italians, Dutch, Germans, Lithuanians, and in previous years Latvians, Estonians, and Iraqis.

6.3.2.2 Forms of Organized Crime

Since 1993, annual expert estimates have also been made of the most widespread forms of organized crime in the Czech Republic. This regular survey can be used to compare trends from 1993 to 2009. The most widespread activities are consistently car theft, organized prostitution, and, from 1994, the production, smuggling, and distribution of drugs. These three have been occasionally joined for shorter or longer periods by some of nearly four dozen other activities. Thus, from 1993 to 1998 the most widespread activities included the theft of works of art, and in 1996 and 1997, 2002, and 2005 fiscal, credit, insurance, and bill fraud, with highly fluctuating degrees of corruption occasionally appearing just behind the most common activities. Between 1998 and 2004, the most widespread activities of organized criminal groups included illegal migration but this activity has waned since 2005. The year 2006 showed further changes, with money laundering and the forgery of documents, money and coins becoming more common, accompanied by a jump in cyber crime. Since 2005, the illegal manufacturing and smuggling of

alcohol and cigarettes has come to the fore. In 2008, drug distribution and organized prostitution maintained their longstanding place among the most widespread activities. There was a decline in car theft, while illegal immigration continued to decline, as did art theft. There was a rise in corruption, blackmail and protection rackets, illegal debt collection, the counterfeiting of CDs, bank fraud, and cyber crime.

There was another rise in financial crime in 2009. Activities such as legalizing the proceeds of crime (money laundering), corruption, tax, credit, insurance and bill fraud, bank fraud, establishing fraudulent and fictitious companies, and credit card fraud worked their way up among the traditionally most common activities, such as car theft and producing, smuggling, and distributing drugs. Computer abuse for criminal activities has also become more common. Organized prostitution, including trafficking in women, very widespread until recently, is declining. The theft of works of art continues to decrease. Illegal migration is slowly falling.

Some of the changes indicate how organized criminal groups replace certain operations as they grow less lucrative with others that become more attractive in this respect. For example, thefts of works of art stood alongside car thefts as one of the most common activities of organized crime in the first half of the 1990s. The sophisticated registration of monuments (except those belonging to the church) and the cooperation of other European states probably led to the gradual decline of these crimes in the second half of the 1990s, and since 2000 they have fallen to a negligible level. Similarly, illegal migration declined after 2005. In connection with organized crime, violent crime against the public or even between criminal groups is not common in the Czech Republic. Organized groups evidently make high profits in the easiest way possible, through contacts, corruption, and negotiation, and, apart from when it comes to 'settling accounts' within a group, they clearly do not need to engage in serious acts of violence. In recent years, in contrast, there has been a significant increase in illegally producing and smuggling alcohol and cigarettes, and crime associated with computer systems. The table for 2009 is given as an example. (See Table A.1 in Appendix)

6.3.2.3 Changes in the Character of Organized Crime

By monitoring long-term trends changes in the qualitative characteristics of organized crime can also be described. These can be broken down into roughly three basic categories.

The first category pertains to changes in the overall nature and internal structures of organized crime.

Organized crime has stabilized, expanded, and become institutionalized. The level of organization has increased. Organized crime is now being committed in the upper realms of certain spheres. It is more sophisticated and efficient and encompasses more areas. In addition to being better organized than it once was, organized crime now has better technology at its disposal and makes more use of the Internet. There has been a significant increase in the wealth of the different

groups involved. Individual groups have divided up the market in illegal goods and services between themselves. Organized crime is more dangerous than in the 1990s because those who control it are now more cloaked in anonymity and control crime indirectly. Criminals are using increasingly sophisticated means to escape detection.

The second category consists of changes in the way crimes are committed. In this respect, the activities of organized criminal groups make less obvious use of violence, concentrating instead on more economic crime and fraud, and more corruption. The radius of activity is expanding to embrace more areas. For example, illegally producing and smuggling alcohol and cigarettes, CD counterfeiting, and cyber crime are now prevalent. There is a risk of an increase in the illegal import and export of hazardous waste, human trafficking for forced labor, and the abuse of EU funds.

The third category involves changes related to the expansion of organized crime into social structures. Organized crime now has sufficient contacts, it is established and has a background. It is reaching further into state administration and developing larger scale activities in the economic sphere. It is establishing contacts within the police and other security forces. Organized crime has an influence on the media. Profits from illegal activities are laundered in legal business operations. In this respect, organized crime is causing more damage and has a worse effect on the economy. The fact that the perpetrators already occupy high positions in the business community, and have connections in politics, local and regional government, the media, etc., makes it difficult to detect their crimes, and also means that organized criminals can exploit their contacts to publicly discredit the authorities involved in detecting and convicting them and their contacts.

6.4 Threats, Problems, Dilemmas

The social threat posed by economic crime and organized crime is obvious. The focus should not just be on the damage caused, even though this in itself is overwhelming. The key point is that organized crime undermines the very foundations of democracy and the rule of law, affects social structures, and distorts the way they function. National borders are no obstacle; its activities are a truly global phenomenon and have rightly been described as one of today's global threats (Adamoli et al. 1998). Cases of economic crime have a destructive effect on social morale by directly damaging citizens (e.g., account-holders and investors in targeted financial institutions, employees of asset-stripped companies, etc.) and because they are difficult to detect, prove, and prosecute. This could encourage the idea that some of these cases and perpetrators are virtually impossible to prosecute, which in turn leads to a weakening of confidence in the institutions and guarantees of a democratic rule of law.

It seems a paradox that the number of victims of economic crime is higher than the number of victims of general crime. The victims of economic crime are not

only the direct target of criminal attacks, usually legal entities operating in the economic sphere, or the state, but also citizens, not only as depositors or employees of the entities targeted, but also as customers affected by price manipulation, poor quality products or services, as residents of sites affected by a company's behavior toward the environment, and as citizens of a state suffering from the consequences of holes in the national budget due to tax evasion, abuse of state resources, etc. (Economic Crime 1981). Economic crime has an extraordinary social and economic impact on the internal stability of the state. Among other aspects, it affects the basic components of public revenue (taxes, duties, fees), the threat to which challenges the long-term, sound functioning of the state mechanism. In this respect the nature of economic crime is well known and is by no means confined to transition countries.

The same factors can be cited in relation to the damage caused by organized crime. Although organized crime, as mentioned above, focuses more on the "client" rather than direct attacks on victims, these "clients" also find themselves in dependent, subordinate roles, and the harm they suffer is evident (as consumers of drugs, migrants, etc.). The fact that organized crime affects state structures and violates applicable norms on a large scale ultimately harms all citizens of the state or states.

When analyzing economic crime it is very difficult to determine the line between unethical behavior, behavior that draws on all possibilities at the very edge of current legislation, and behavior which goes beyond the boundaries of the law. In addition, there is a problem in the relationship between practices which involve the transgression of laws and other norms that regulate economic behavior, but are not criminal in nature, and types of economic activities that do violate criminal law. This problem, among other things, lies in the fact that economic norms are often toothless and do not bring sufficient sanctions when violated. This gap cannot be easily bridged by applying penal sanctions and such attempts have prompted reasonable criticism of the extensive use of criminal law and over-criminalization of economic behavior. With some exaggeration, it might be said that the scale of economic crime is determined to some extent by the scope to which criminal law is applied in practice to the behavior of economic operators. However, in the economic sphere criminal law has only a subsidiary nature. This means that criminal repression should be applied only as a last resort, when other means, primarily economic in nature, have fallen short. But it should be borne in mind that criminal law does not have the resources to eliminate or significantly reduce the factors that cause or facilitate economic crime.

Organized crime and economic crime function in a certain symbiosis; they are intertwined. This interaction compounds their power, influence, their seriousness, and the threat they pose. The interlinking of organized and economic crime and their increased influence on politics, the economy, government, media, public life, etc., is the biggest threat and risk they pose for the future.

6.5 Perspectives

In a survey of experts carried out in the Czech Republic in 2010, two-thirds of the specialists consulted expected to see changes in the nature and activities of organized crime in the relatively short term (up to 2015). They assessed that by 2015 the most widespread activities of organized crime will be corruption, producing, trafficking and distributing drugs, human trafficking, cyber crime, money laundering, car theft, and tax fraud. Closely behind these will come theft, blackmail and collecting protection money, credit card fraud, other forms of economic crime, trafficking in weapons and, low down the list, organized prostitution.

In a more pessimistic scenario, organized groups are expected to extend their radius of action to other criminal activities. Crime in the economic sphere, which produces high profits, is set to rise. Organized crime will invest more in the legal economy. Extensive fraudulent banking transactions and the “tunnelling” of subsidies from the national budget and EU funds can be anticipated. It can be assumed that organized crime will speculate when the Czech Republic adopts the euro, with an increase of currency counterfeiting. Sophisticated fraud in the field of tax crime will proliferate, as will the practice of forming chains of companies to collaborate in transactions over worthless goods (with a view to fictitious exports and price increases with the addition of VAT refunds). Rises in the fraudulent evasion of excise duty on fuel, alcohol, and cigarettes are predicted. Real estate fraud will become ever more common. Organized criminal groups will use information technology more than they do at present. In particular, there will be a significant increase in cyber crime and crimes committed using computer technology. A higher degree of concentration by criminals on the IT and Internet sphere may gradually threaten information systems and communication technologies. Further growth will occur in credit card abuse and document forgery. Economic crime will increasingly move into the realm of organized crime.

A characteristic feature will be a further increase in the wealth, power and influence of organized criminal groups, and their efforts to infiltrate legitimate business operations. In connection with their growing affluence, organized crime groups will be able to pursue more sophisticated conspiratorial strategies and enhance their security: financial gain, that is, will bring proportionate improvements in the efficacy of criminal methods. Internet communications will be used as a matter of course; skilled professionals will be recruited to collaborate.

Internationalization will continue. In the international context, a broadly discernible movement of goods, capital, and persons can be expected: there will be an influx of criminal personnel from China and Africa, Asian communities will expand and penetrate the economy. Tensions between groups coming from Asia will rise. The main perpetrators of organized crime will no longer be located in the Czech Republic—crime will be controlled from outside Czech borders.

There are concerns that organized crime will develop its links with central government and even regional and local government, and that it will influence the legislature and the executive branch, all through the corruption of staff at the

relevant government authorities. The scope of organized crime will also spread to municipal politics, especially where the allocation of large public contracts is concerned; procurement will be manipulated by corruption and clientelism. There will be attempts to influence and sponsor political parties, along with efforts to influence the work of the courts, public prosecutors, and the police, to hold office in government, and to engage in nepotism and corruption. Organized crime groups will also attempt to curb the activities of specialized police units.

External social factors are cited as reasons for these trends. In general, the expected growth of organized crime is associated with the overall decline of Western society, the rise of extremism, the overall poor global economic and social situation, the economic crisis, increased unemployment, immigration, and EU enlargement. Some risk factors prompting this rise are linked to the nature of organized crime groups and their internal structuring. The established structures of organized crime are being refined; external associates operating in liaison with criminal structures will increasingly penetrate interest groups; the level of technology, knowledge, and expertise will rise, the technical and financial background will expand, and conspiracy will spread.

A slightly more optimistic scenario is also possible, however, assuming some degree of stabilization (i.e., not deterioration) is achieved, and certain factors are supported. For this it will be necessary to starve organized crime of the conditions in which it can develop, and cut or at least restrict its interconnection with the economy and public administration. A significant role should be played by the international community in exerting common and coordinated pressure for effective action both nationally and internationally. A guide for this initiative could be the UN Convention against Transnational Organized Crime, the mechanisms of which are gradually being implemented and consolidated. Other tools for common effective action against organized crime, corruption, money laundering, drug trafficking, human trafficking, etc., are also available, in the form of similar international documents and institutions at the level of the UN, EU, Council of Europe, and other organizations.

Thanks to international cooperation and improved communication systems, information transfers between judicial authorities should become faster and collaborative police work more successful. An area in which more action should be taken to secure more effective cooperation between states, but where there is great inertia and a number of problems, is in the gradual harmonization of national legislation to overcome gaps, which international crime effectively exploits, naturally, to elude investigation and prosecution. Initial steps such as *Corpus Iuris* should be followed by others.

Individual countries obviously face specific problems and manifestations of organized crime within their territories, and will continue to do so, but managing these issues will be increasingly tied to cooperating with other countries in the EU and beyond. Steps taken by states to strengthen the capacity and efficiency of their crime control institutions and to improve legislation and other mechanisms of state power should therefore, to the maximum possible extent, take into account the need for international coordination and joint action.

With regard to economic crime, functioning market economies have self-cleansing regulators which were absent in transition countries. If we were to be optimistic, we might note that they are still in the making and will play a more significant role than before in combating economic crime.

Tools other than criminal law must have a decisive influence in this area. In particular, a high-quality, clear definition of the framework of business and competition is required. This should include appropriate regulation on legal relations connected with business and economic activities in general, including rules to allow the swiftest possible punishment of infringements. Factors such as adequate quality-control mechanisms and a sound state apparatus are also instrumental. The existence of effective non-criminal sanctions for breaches of non-criminal standards and an emphasis on applying them should therefore play a key role in preventing economic crime.

However, high-quality criminal and non-criminal law does not in itself guarantee the effectiveness and success of the fight against crime. A persistent problem was, and to some extent still is, a shortage of skilled and specialized employees among law enforcement authorities—the police, prosecutors and courts. Finally—and this goes for both economic and organized crime—positive changes must be made to the social value system, whether in strengthening the sense of respect for ethical standards of conduct in business, or bolstering the ability to reject the carrot offered by organized crime.

Appendix

Table A.1 Estimate of the most widespread activities of organized crime in the Czech Republic in 2009

	Activity	N = 30	%
1.	Car theft	26	87
2.	Money laundering	26	87
3.	Corruption	26	87
4.	Producing, smuggling and distributing drugs	25	83
5.	Tax, credit, insurance and bill fraud	25	83
6.	Banking fraud	24	80
7.	Establishing fraudulent and fictitious companies	23	77
8.	Credit card fraud	23	77
9.	Organizing illegal migration	22	77
10.	Document counterfeiting	22	77
11.	Abuse of computers for criminal activities	22	77
12.	Organized prostitution and trafficking in women	21	70

(continued)

Table A.1 (continued)

	Activity	N = 30	%
13.	Illegally producing and smuggling alcohol and cigarettes	21	70
14.	Burglary (housing, chalets, shops, warehouses)	21	70
15.	Customs fraud	21	70
16.	Forgery of cheques, cash, coins	21	70
17.	Forgery of CDs and similar media	20	67
18.	Theft of works of art	19	63
19.	Gambling	19	63
20.	Recovery of debts to order	18	60
21.	Bank robberies	18	60
22.	Receiving stolen goods	18	60
23.	Trafficking in humans for forced labor	17	57
24.	Blackmail and protection rackets	17	57
25.	Eliciting money with the promise of large returns	16	53
26.	Misuse of EU funds	15	50
27.	Murder	15	50
28.	Crime against information and communication technologies	13	43
29.	International trafficking in weapons and explosives	12	40
30.	Illegal imports and exports of hazardous waste	8	27
31.	Trafficking in human organs	1	3

Note The experts were allowed to cite 10 possibilities (only six in the surveys between 1993 and 2003). We set the aggregate index so that the number of respondents who cited the respective nationality in first place was multiplied by 10, in second place by 9, etc., and in 10th place by 1. The overall index is the sum of these multiples

One point cited in the index, for example, means that only one of all the experts stated the respective nationality (in 10th place)

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Chapter 7

Corruption as a Metaphor for Societies in Transition?

Velinka Grozdanić and Igor Martinović

Abstract In transitional societies in which contradictory value systems exist simultaneously, because rapid transformations have led to a neglect of old values and new ones have not yet been established, new social deformations appear or old ones intensify. Those deformations (the lack of a stable legal framework, a failure to develop democratic mechanisms, public opinion and civil society, a decline in the influence of established codes of behaviour, a poorly functioning tax system, nondevelopment of the market and financial systems, economic instability, profiteering through transformation and privatisation of state enterprise, manipulations by the political elite and the instability of the rule of law in general) tend to have a great impact on the level of crime in transition societies. One of the most prominent types of crime in those societies, if not the most prominent, is corruption. Transition is an ideal set-up for all sorts of corrupt behaviour, but some are especially dangerous, namely the so-called 'state capture'. Although all countries in transition are susceptible to corruption, some of them have kept it to a bearable level while others have sunk into large-scale corruption. The difference between those two groups has been attributed to their historical inheritance as well as their particular experiences of transition.

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7.1 Introduction

Although corruption has always been considered a threat to the basic values of civilisation, it was and still remains a faithful companion of human society. This old phenomenon, immanent to all societies, has changed in its phenomenology during the course of history, was in different ways rejected on moral grounds or socially condemned and today is regarded as the most persistent problem facing modern society. Today corruption is present to a larger or smaller extent throughout the world. And precisely because of its universality and omnipresence it is considered a very dangerous problem in modern times.

However, it is necessary to note that even though the subject under discussion is an old and universal issue, even today many questions concerning corruption are left unanswered or the answers are not unambiguous. Thus, one gets stuck even when trying to define precisely what corruption is.¹ There are a multitude of very different definitions—sociological, legal, political, economical, etc.—but, corruption is most often considered the abuse of public service for personal gain (for more definitions, see Kregar 1997; Tanzi 1999).

Likewise, ambiguity surrounds the question of the causes of corruption. So, from a moralistic point of view corruption is a pathological phenomenon per se and represents a moral anomaly in holders of public office. From the functionalist perspective corruption occurs as a response to a situation of general social hopelessness, particularly in transition societies in which patterns of social regulation and integration lose functional sense. The legalistic viewpoint emphasises the importance of the rule of law which, when upheld, leads to the reduction of corruption. The institutionalist perspective sees the causes of corruption in the influence of institutions to which the individual belongs, on his behaviour through the shaping of his value system. From the aspect of the common interest, the causes of corruption lie in the fact that public officials subordinate public interests to the achievement of personal material gains (for more details, see Derenčinović 2001, pp. 87–107).

The greatest agreement exists concerning the consequences of corruption. Although here we can speak about numerous and various political, economical and social consequences, there is no doubt that corruption represents a major threat to the rule of law, democracy, human rights, fairness and social justice; that it hinders economic development, and endangers the stability of democratic institutions and the moral foundations of society.² Precisely these numerous and dangerous consequences, which finally constitute the negation of law and nullify the rule of law

¹ Etymologically, ‘corruption’ derives from the Latin word “*corrumpere*” (“*cum*” and “*rumpere*”) which means to pervert, corrupt, deprave; spoil, rot; taint (Bekavac et al. 1998, p. 68).

² Agreement Establishing the Group of States against Corruption—GRECO—Council of Europe Committee of Ministers, Resolution (99) 5 Establishing the Group of States against Corruption, adopted on 1st May 1999.

itself, oblige all states to pursue numerous means of preventing and suppressing corruption. It is, therefore, not surprising that the international community—international and regional organisations, international non-governmental associations, governments of individual states—engages in a manifold effort to establish anti-corruption norms.³

In spite of their greatly differing aims and content (in standardising international economic business activities, increasing political responsibility, imposing greater institutional limitations on power, the strengthening of civil society and a range of criminal law, civil law and administrative measures for the suppression of corruption) all international documents are focused on fighting corruption, especially in its most dangerous form—when connected with organised crime. Namely, corruption is one but sophisticated method (as opposed to violence and protection rackets, blackmail and extortion) of organised crime. Corruption directly connects organised crime to the political establishment with the aim of protecting organised crime from exposure or prosecution. However, the ambitions of organised crime could be far larger than the benefits achieved merely by committing criminal offences. When organised crime attains its ultimate goal of attaining power in politics or economy, it will no longer be possible to establish the corruption that led to such a state of affairs. In this entanglement of criminals, the political elite lies the greatest danger of corruption. Therefore, the suppression and prevention of corruption is a priority for modern society.

In order to suppress corruption successfully, one should get to know it well: its manifestations, its frequency, its reach, how it occurs and certainly the causal factors which condition, enable, stimulate and maintain it. Today the topic of corruption receives a huge amount of international attention. There is a vast expert and scientific literature on corruption, numerous researches, many round table discussions, debates, all reaching conclusions and proposing measures against corruption. Nevertheless, in spite of or precisely because of that, there is still the impression that corruption is largely an unknown entity. This impression is fortified by the fact of content indeterminacy of the concept of corruption itself, which directly influences how the distinction is drawn between immoral but legal activities and punishable corruptive crimes. In turn this effects how we identify corruption and its causes at all. If we limit the concept of corruption only to the most serious violations of moral values, which in contemporary societies are determined as corruptive criminal offences and for which criminal sanctions are proscribed, we obtain a clear criterion for demarcation between noncriminal and criminal. However, it is still uncertain if the real phenomenological picture of corruption, particularly its volume and frequency, can be wholly comprehended. Namely, the “dark figure” of unknown criminality which exists in almost all

³ Today there are numerous international documents (resolutions, conventions, recommendations, decisions, strategies and codes) of the United Nations (UN), Council of Europe (CE), European Union (EU), Organisation for Economic Co-operation and Development (OECD), World Bank, International Chamber of Commerce (ICC), Organization of American States (OAS), etc., on suppressing corruption.

criminal offences is manifested most of all in corruptive crimes. The subject under discussion is secret criminal offences in which all protagonists participate in criminal activities, and thus all have a great interest in remaining undiscovered so as not to be exposed to criminal prosecution. That is why it can be said that the official statistical data concerning corruption in a certain country is just the “tip of the iceberg” of the total corruptive crimes there. Thus it is not surprising that in studying corruption, the attitudes and perceptions of individual examinees on corruption are examined far more often than official statistics. Of course, we cannot rely on such perceptions alone to understand the real situation, but combined with empirical research (anonymous surveys and interviews) of personal participation in corrupt activities, serious scientific analyses of received data and further expert assessments, they offer a very useful impression of the spread and dynamic of corruption. Today many international institutions and non-governmental organisations have begun measuring corruption using different methods of collecting and processing data. Accordingly there are numerous sources of statistical data on corruption. The most well known among these are: the Corruption Perception Index (CPI), the Global Corruption Barometer (GCB), the Business Environment and Enterprise Performance Survey (BEEPS), the World Bank Institute (WBI), Nations in Transit (NIT), etc. As uniform criteria for measuring the frequency and volume of corruption still do not exist, one could say that the task of measuring it represents a challenge for researchers. Addressing this concern, critiques of the statistical methods used to measure corruption are given considerable prominence, often justifiably (Berlinski 2009, pp. 77–79). However, what statistical measurements lack in exactness, for methodological reasons, they compensate for by focussing public attention on the problem of corruption, encouraging discussions about it and strengthening the resolve to fight it.

7.2 Corruption in Transition Countries

7.2.1 Common Characteristics of Corruption in Transition Countries

The commonly observed paradox that a state of constant change provides the most stable base for today’s global information society seems truer than ever. This is especially so with regard to societies in transition, which have, in spite of countless differences (cultural, historical, geographical etc.) one thing in common: they all transferred from an economic system characterised by central planning to a system characterised mainly by the free market (World Bank 2004). The subject under discussion is an extremely complex process, which implies radical reforms of political and economical institutions. In such conditions of radical change countries in transition have been confronted with a peculiar institutional and value vacuum, in which the old system is at the “point of death”, while the new one has

still not entirely “come of age”. In such countries one in fact finds parallel contradictory value systems, because the hastened transformations were brought on the neglect of old values. The consequence has been a widespread state of confusion, disorientation, frustration and uncertainty. The nonexistence of a stable legal framework, underdevelopment of democratic mechanisms, public opinion and civil society, a decline in the influence of established ethical codes of behaviour, a poorly worked out tax system, the underdevelopment of the market and financial systems, economic instability, profiteering from the transformation and privatisation of social capital, manipulation of the system by political power holders, are only some of the numerous outcomes. In short, the situation represents a “fertile ground” for crime in general, and especially for corruption.

Why should, of all the forms of crime to be found in transition countries, precisely corruption demand particular concern? In order to answer this question it is crucial to notice that transition takes place parallelly on two tracks: political and economic. On one side, transition countries are faced with the fact of not having fully constructed democratic institutions. The more recent history of these countries was marked by the rule of totalitarian regimes in which state institutions represented more a decoration that served the legitimacy of the ruling party, than organs with real power. In spite of the external monolithic unity of the socialist system, it became clear that this system was corrupt at its core; which, by the end of the 1980s, finally came to the surface. Soon it became obvious that, although omnipresent and at glance omnipotent, socialist state institutions were not mature enough to accomplish the task of making a painless transition into a political-economic system along the lines of that found in Western countries.

There was the additional problem that the pre-socialist democratic tradition in a certain number of transition countries was weak or even nonexistent. The historical inheritance of these countries is characterised by the alternation of one authoritarian order with another. Authoritarian states with no constitutional checks and balances working in practice to moderate a monopoly on executive power are corrupt by definition alone. With a heritage of subjugation or dictatorship, the political elites of individual transition states could not find anything in their countries’ histories on which they might build a foundation for a new democratic order. On top of these difficulties, many transition countries also saw extended inter-ethnic conflicts, and even wars that resulted in the breakup of multinational societies. This generated an additional chaos in the anyway difficult process of transition, causing individual countries to fall significantly below the levels of economic, social, political and cultural stability they experienced during the decades of socialism.

We should also briefly clarify just why institution building is so essential in the context of preventing corruption. During the decades of socialist government, institutions were inherently resilient, to a certain degree, to corruption on any great scale. The centralised control of the economy, including tight checks on the system of payment, ensured that there were fewer opportunities for corruption to proliferate, while the proclaimed ideology of equality acted as a “floodgate” which made it impossible for individuals to acquire conspicuous wealth. When this

“floodgate” broke, the way became clear for the members of the social elite, whose own private interests had a massive influence on the structure and work of government institutions. According to the World Bank (2000b), the following factors facilitate such an influence: “(i) the rewriting of an unprecedented volume of laws, regulations, and policies; (ii) the extraordinary redistribution of wealth from the state to the private sector; and (iii) the virtual absence of institutions either within or external to the public sector that could effectively check the abuse of public office during the transition in many countries”. In such circumstances, countries in transition were threatened by what is perhaps the most dangerous form of corruption—the so-called “state capture”. This term comprises “the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials” (Hellman and Kaufmann 2001). While the general public perception of corruption encompasses a powerful public official who takes a bribe from a citizen in order to carry out a certain job, state capture involves an essentially different situation. Here, namely, a powerful entrepreneur takes the initiative, and bribes politicians and civil servants in order to shape government policy to aid his own private interests. Thus, a vicious circle is created in which imperative institutional reforms are blocked by those who should be the fiercest advocates of such change: politicians and bureaucrats (Hellman and Kaufmann 2001).

Corruption in the form of state capture is particular characteristic of countries in transition. Research for the World Bank (2000b), entitled “The Origins of Corruption in Transition Countries,” goes some way to explaining why this should be so: “The environment for state capture by private firms does appear to be generated by a certain minimal threshold of political and economic reforms. Partial political reforms that break with the previous communist system but do not provide new mechanisms of accountability such as political competition, internal checks and balances, or civil society oversight generate the greatest opportunities for a narrow set of private sector interests to capture the state. In these countries, the extent of civil liberties (and other checks on abuse of power) is insufficient to counterbalance the loss of control that resulted from the dismantling of the communist system. Yet the figure suggests that once a threshold of political reforms has been crossed, the extent of state capture inherent in the transition process can be constrained to significantly lower levels.” (The Origins of Corruption in Transition Countries, n. d.)

7.2.2 Corruption in Individual Countries

Although all transition countries are particularly sensitive to corruption for the above-mentioned reasons, they have very different experiences of this harmful social phenomenon. Thus it is necessary to consider the specific of social conditions that have influenced the forms and causes of corruption in individual

countries, and only then offer some general conclusions on corruption as a general metaphor for transitional societies.

“Transition” is applied to an extremely wide geographical and cultural range of countries (as far apart as e.g., Hungary, Turkmenistan, Vietnam): the following discussion will focus on the transition states of Central and Eastern Europe. The states shall be grouped here according to geographical and historical criteria.

7.2.2.1 Poland, Czech Republic, Slovakia, Hungary

Poland is a country with a long tradition of sovereignty (from the tenth century, with interruptions). In the period before the Nazi occupation, it was one of the more developed European parliamentary democracies. However, World War II and the post-war period significantly altered the demographic and economic picture in Poland, which became a country of the Eastern Bloc, although with a somewhat “softer” regime than the majority of other communist countries. The early 1980s, with the formation of the trade-union “Solidarność” and the support of Poland’s traditionally strong Catholic Church, saw the beginning of the end of the communist system. The first multiparty elections in Poland (as in the Eastern Bloc more generally) were held in the year 1989, and gave “Solidarność” a convincing victory. The new government promptly embarked on far-reaching economic reforms, which yielded results relatively quickly. Poland thus went through the first stage of transition without significant social upheaval. However, having adopted anti-corruption legislation on the model of the Western countries (Lynam 2005), in the past years the Corruption Perception Index⁴ (hereinafter: CPI) has recorded a marked upward shift: from 4.2 in 2007 to 5.3 in the year 2010. In spite of the positive trends, the evidence suggests that the construction industry and match-fixing rings pose an especially grave problem (Transparency International 2009).

Like Poland, the Czech Republic is also an “old” European state. It was part of the Habsburg Monarchy from the sixteenth century until the end of World War I. In 1918 a new European state emerged—Czechoslovakia, which inherited a great part of the Austro-Hungarian industry, and was among the most developed countries of the world. The interwar period was characterised by economic prosperity and a parliamentary democracy, but with the rise of the communists to power the situation changed and initiated a period of slower growth with frequent economic stagnation. The most significant event for the democratisation of Czechoslovakia was the first multiparty elections in the year 1990, held at the

⁴ Using statistics from Transparency International, the most quoted source of knowledge on the distribution of corruption, the so-called Corruption Perceptions Index (CPI) scores the levels of corruption in individual countries on a scale from 0 (highly corrupt) to 10 (very clean). The figures on which these results are based are generated from a number of sources, mainly combining reviews of processed data on the experiences of top-level businessmen in foreign countries with reports on the extent of corruption of analysts from ten independent organisations.

height of the “Velvet Revolution”. Three years later Czechoslovakia fell apart, after which the Czech Republic and Slovakia continued their transitional paths independently. Privatisation measures and other economic reforms begun during the time of the joint state were however continued, and by 1998 most of the national economy had been privatised. Although the transition into a market economy had been implemented by what was called by some “shock-therapy”, this country avoided most of the obstacles seen elsewhere during the transitional period. According to data of the Statistical Office of the European Communities—Eurostat, the Czech Republic today is a developed, high-income country, one of the leading countries of Central and Eastern Europe, with growing export and foreign investments. Yet notwithstanding such economic growth, corruption is far from having been eradicated. According to the words of one of the Czech experts on corruption, there is a particular problem with the “narrower and narrower connections between politics and business” (Cunningham 2009). The Czech CPI for the year 2010 came to 4.6.

Slovakia was a constituent part of the Kingdom of Hungary from the tenth century until the end of World War I. In the interwar period it was the poorer part of the newly created Czechoslovakia, which became one of the world’s most developed and most democratic countries. After a brief period of separate existence as a Slovakian state during World War II, Czechoslovakian unity was restored after the war, this time under the wing of the communist regime. Following the “Velvet Revolution”, Slovakia and the Czech Republic parted in peace and continued with transition processes initiated in the late 1980s. When the premiership of Vladimír Mečiar ended amid accusations of authoritarianism and corruptness, the late 1990s saw an economic upsurge of Slovakia. This intensified further in the period after 2002, when liberal economic reforms were initiated. Since then, Slovakia has borne the nickname “Tatra Tiger” for its quick economic growth. However, good economic figures and improvements in the sphere of human rights have not substantially reduced the country’s levels of corruption: the Slovakian CPI in 1998 totalled 3.9, while in 2005 and 2010 it amounted to 4.3. According to data from the World Bank (2000a), most Slovakian citizens do not believe the level of corruption has changed greatly since the 1990s; Slovakia’s business community, however, thinks differently: almost 50% of those polled in the business sector consider the period from 1994 to 1998 to be the most corrupt since democratic changes were introduced, while less than 20% of the same group hold the same view of the period after 1998.

Hungary, like the Czech Republic and Slovakia, was part of the Habsburg Empire, the most powerful Central European state, until the end of World War I. In the interwar period the Hungarian Kingdom was proclaimed in which parliamentary democracy was established, albeit with strong authoritative tendencies. Following 1945, Hungary became a communist satellite state. After an unsuccessful democratic upheaval in the 1950s, János Kádár came to power, and ruled the country until the end of 1980s. His method of rule was popularly known as “goulash communism”; the idea being that the Hungarian system involved a stew in which the toughness of communism, its basic ingredient, was softened

somewhat by greater respect for human rights and some elements of a market economy. Hungary entered transition in 1990, when the first free elections were held. The first year of transition was characterised by an economic downturn, followed by a mild recovery. However, in the late 1990s the situation was significantly improved by foreign investments, and Hungary achieved higher growth rates with a decline in unemployment. As for corruption, in this country it proved all too tenacious: the economic upturn did not lead to corruption disappearing, but only to a change in its form. By this, classic corruption was increasingly replaced by “high corruption”, above all in the sphere of business. The state remained a strong economic entity, to which the business activities of a great number of companies became, in consequence, closely related to it; a proximity which opens considerable scope for corrupting the bureaucracy and the political elite. The main area of opportunity for corruption thus becomes the “intersection between the public and private spheres when a state exercises significant regulatory control over the economy” (Transparency International 2009). The Hungarian CPI in 2010 totalled 4.5, reflecting an ongoing gradual decline in the standards from, for instance, 1998 to 2005, when the index measured 5.0. It is therefore evident that in the recent years this country, as a result of the factors discussed here, has made little progress in terms of rooting out corruption.

The four countries considered in this section have many common characteristics: all were parliamentary democracies during the interwar period and belonged to the Eastern Bloc from 1945 until the end of the 1980s, although the severity of the communist regime varied in each depending on the historical moment. Since those in question are ethnically relatively homogenous countries, during the 1990s none saw more significant interethnic problems, which contributed to a relative stability during transition. Nevertheless, the institutional and moral vacuum opening up between the old and new orders was a major criminogenic factor here, and was especially detrimental in the field of corruption. When the restrictions on personal gain set by the communist system were dropped, in addition to the classic corruption seen at a “low level” of power (the bribing of physicians, police officers and similar functionaries), one witnessed the appearance and growth of more dangerous “high level corruption”. This was characterised by the intertwining of the highest political and bureaucratic authorities with influential branches of the business sector. Given this development, the fight against corruption transmogrified, yet still more pervasive corruption presents a challenge for the future.

7.2.2.2 Countries of the Former Yugoslavia

What are now states in the territory of the former Yugoslavia had a very heterogeneous history up to 1918. While Slovenia and Croatia⁵ were part of the Central European Habsburg Monarchy from the end of the middle ages until the end of the

⁵ Until 1699 the larger part of Croatia also lay within the borders of the Ottoman Empire.

First World War, during roughly the same period Bosnia and Herzegovina, Montenegro, Serbia and Macedonia were part of the Ottoman Empire—a highly corrupt state in which the sale of official functions was a widely spread practice as central authority became progressively weaker. In 1878 Montenegro and Serbia regained their independence, while Bosnia and Herzegovina became an Austro-Hungarian protectorate. Macedonia, Kosovo and the Sandžak area remained within the borders of the Ottoman State up to the Balkan Wars, on the eve of World War I. Tempestuous historical events and frequent population migrations led to the creation of a “Balkan Melting Pot”. The process of state-formation seen elsewhere in Europe in the course of the nineteenth century was delayed in this region until the end of the twentieth century.

In 1918, with the formation of the Kingdom of Serbs, Croats and Slovenes, later renamed Kingdom of Yugoslavia, a period of Yugoslav state unity began. The period of parliamentary monarchy in the 1920s was characterised by considerable political conflicts, conditioned among other things by the differing social, political, cultural and religious inheritances of the individual peoples of Yugoslavia, by disparities between levels of economic and technological development in separate regions, different preferences with regard to constitutional models, etc. The events that followed (the murders in the Yugoslav Assembly, the royal dictatorship and the murder of King Alexander) contributed to a further radicalisation of the political scene. The Kingdom of Yugoslavia offered perfect ground for corruption of the “classical” variety to flourish (for more details, see Kulundžić 1968). In such conditions stable economic growth and the construction of functioning democratic institutions were impossible. The fact that the majority of the population was rural and for the most part illiterate posed an additional problem, while the industrial and economic centres were limited mainly to the northern and western parts of Yugoslavia. Social and economic instability, the proliferation of corruption and the growth of interethnic tensions comprised the overture to the region’s experience of World War II, in which an array of belligerent sides with multiple alliances being struck and severed depending on circumstance.

The newly established Federal Yugoslav State under the leadership of Josip Broz Tito, following the conflict between Tito and Stalin in 1948, escaped from the Soviet Zone of influence and continued independently on its socialist path. The political system was decentralised, while a special form of market socialism (so-called self-management) was established in the economic sphere. Economic reforms, accompanied by abundant Western help, brought rapid economic growth. However, the solution of numerous economic crises by borrowing from abroad, investment of capital gained in expenditure, and not production, the absence of developments in civil society in addition to a single-party monopoly without mechanisms of public control over government authority, represented fertile territory for corruption. The beginning of a great economic crisis in the year 1980 marked the beginning of the end of Yugoslavia. Ethnic tensions were renewed, escalating into war in 1991.

The onset of war interrupted economic reforms designed to liberalise the Yugoslav economy. In individual republics power was seized by nationalist movements,

a peaceful transition into market economy and the formation of democratic institutions did not come high on the list of priorities; the primary goal was the creation of autonomous, ethnically homogenous states. From 1991 onwards the former Yugoslav republics had an independent developmental path that resulted in a very uneven level of economic and institutional development among the newly created states, and ultimately in very different levels of corruption.

The most positive example of the transition process is represented by Slovenia, which was economically the most developed republic even during the time of the joint Yugoslav state. As an ethnically homogenous state, it almost entirely evaded inter-ethnic conflicts and subsequent war. The elected democratic authority implemented cautious economic reforms, with the aim of achieving a wider social consensus. As opposed to the majority of other transition countries, Slovenia limited the takeover of domestic business entities to foreigners, preferring, in privatisation, domestic corporations and Slovenian nationals. Although as an export-oriented economy it was struck deeply by the financial crisis of 2009 and subsequent recession, Slovenia still has the highest GDP (Gross Domestic Product) of all the countries in transition. In conditions of a stable and thought-through economic and institutional course of post-socialist development, the level of corruption is markedly low in relation to other transition countries. This is shown by the CPI for Slovenia, which measured 6.4 in 2010, the best result among all transition countries except Estonia (with a CPI of 6.5). Slovenia thus manifests less corruption than Italy, Greece, Spain and Portugal, and is not far behind an established democracy such as France (CPI 6.8). This of course does not mean that Slovenia has completely avoided corruption scandals (e.g. a recent affair related to the acquisition of armoured vehicles); however, neither its citizens nor the international organisations perceive corruption as a highly significant problem (Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy, 2002).

Croatia, the second most developed of the former Yugoslav republics, has had a varied experience of transition. The first multiparty elections held in 1990 were won by the party of Franjo Tuđman, whose most important aim was winning Croatian independence. Croatia had to fight for secession in the Croatian War of Independence, in which much of the country's economic resources were destroyed. Privatisation of the former social property took place alongside the ongoing chaos of war in the 1990s, with an abundance of irregularities in the process, and only few subsequent prosecutions. The experience of war, authoritarian rule and suspicious privatisation has led to Croatia's economy lagging behind a number of ex-Eastern Bloc countries which were in a considerably poorer starting position back in 1990. Thus Croatia did not surpass its GDP level from the pre-war year 1990 until 2004 (Veselica and Vojnić 2005), although the situation began improving in 2000. Until to the recent global crisis Croatia achieved solid economic growth, stronger international links in trade, diplomacy and tourism, and a solid record in asserting human rights and developing democratic institutions. From an exceptionally low CPI of 2.7 in 2005, Croatia advanced to 3.4 in 2005 and 4.1 in 2010. However, in addition to the repercussions of corruption scandals which unfolded during the nineties, Croatia has been shaken more recently by revelations concerning the government led by Ivo Sanader from 2003 to 2009.

Of all the states emerging from the breakup of Yugoslavia, ethnically heterogeneous Bosnia and Herzegovina suffered the greatest loss and damage. Over 100,000 people were killed in the war, while many more lost or were exiled from their homes. Economically and institutionally, Bosnia and Herzegovina was completely destroyed by the time the Dayton Agreement brought open military conflict to an end in 1995. The post-Dayton Bosnia and Herzegovina became de facto an international protectorate with a unique, asymmetric and extremely complex state structure, in which central authority remains very weak. Inter-ethnic tensions among Bosniaks, Serbs and Croats continued after the war, not only contained and also exacerbated by the makeshift Dayton system of authority, which enables numerous obstructions of government institutions. To this day Bosnia and Herzegovina remains trapped by the unanswered question of its future constitution, so progress on economic issues or the construction of a democratic society has been very slow. The circumstances sketched out above are ideal for a bonanza of criminal activity, particularly corruption. From 2003, the year measurements of the corruption perception index started, Bosnia and Herzegovina does not record progress but rather constancy in the form of negligible decline: from a CPI of 3.3 in 2003 to 3.2 in 2010. The country is rife with suspected corruption, most of which meets with no legal consequence (e.g. the privatisation of the Bosanski Brod refinery or the Aluminij Mostar company, etc.).

Serbia was an active antagonist in the hostilities which gripped Croatia, Bosnia and Herzegovina and Kosovo. The aggressive politics of Serbian President Slobodan Milošević brought condemnation from the Western world and economic sanctions from 1992 to 1995. Serbia remained largely isolated internationally until 2000. Notwithstanding a relatively favourable starting position in 1990 (Serbia was the third most developed republic in Yugoslavia), under Milošević Serbia sank completely, economically as well as politically. The Serbian experience of transition began with a change of government in 2000, and since then Serbia has begun recovering economically, democratising and rebuilding its international relationships. The first measurements of corruption also date from these years; the Serbian corruption perception index taken in 2003 totalled 2.3, which is a score comparable with that of locations as troubled as Zimbabwe and Sudan. In the year 2010 the index measured 3.5, but corruption still remains an enormous problem, especially “large-scale and systemic state capture, which is the root of widespread corruption (...) acquiring such proportions in Serbia that it may undermine the success of its transition” (Pešić 2007, p. 11).

In the early 1990s the political leadership of Montenegro, the smallest republic of the former Yugoslavia, aligned itself to the war politics of Slobodan Milošević. One of the less developed republics thus found itself in international isolation, leading the state to rely on organised crime as a financial resource, with smuggling as a form of “state enterprise” (Sisti 2009). It is widely suspected that the political leadership of Montenegro itself participated actively in black-marketeering, channelling the money gained in criminal activities not only for the purpose of financing state expenses, but also for personal gain (Sisti 2009). In conditions which supported a tight connection between the governing hierarchy and

suspicious business circles, corruption bloomed. A movement away from the Serbian political leadership in the late 1990s, however, and a turn towards pro-European politics brought democratisation and economic development. The first measurements of the corruption perception index in Montenegro date from its independence in 2006. From 2007 (CPI 3.1) to 2010 (CPI 3.7) a slight progress was recorded; yet suspicions persist of a strong connection between the political leadership with criminal organisations during the 1990s.

During the 1990s Macedonia managed to avoid the devastation caused by war elsewhere in the region. However, peaceful transition was obstructed by ethnic tensions between Macedonians (64% of the population, according to a census of 2001) and the Albanian minority (25% of the population), which in 2001 escalated into armed conflict, along with a military clash with Greece over the name of the country. The economic prospects of Macedonia, the poorest republic of the former Yugoslavia, were additionally weakened by a Greek economic blockade and the UN sanctions on Serbia, an important foreign trade partner. The improvement of the security situation in the country and wider region after the calming of ethnic tensions helped the Macedonian economy to begin reviving. Alongside the greater stability, the political elite made stronger efforts on behalf of Euro-Atlantic integrations, and in this context began a more vigorous anti-corruption campaign (e.g. operation “Snake Eye”, following the arrest of 68 roadway tollbooth workers in 2008). Advances in anti-corruption politics and applied measures were commended by the European Commission in its 2007 report (Nikolovski 2008). This progress is also reflected in the perception of corruption: while the CPI of Macedonia in 2003 was a low 2.3, in 2010 it grew to 4.1, which although relatively low, is still a better result than any country in its immediate vicinity has achieved.

7.2.3 The Influence of Historical Inheritance and Transition Experiences

Corruption represents a significant problem in all transition countries. Its proliferation results from the fact that transition involves deep institutional and economic transformation, the speed and comprehensiveness of which leave much space for many negative social phenomena to thicken and flourish. However, corruption does not manifest itself in equal degrees in all transition countries. Analysis of the experiences of the ten countries presented in the previous two sections indicates that the level of corruption depends on the following factors among others:

- (1) The historical background of individual countries, namely:
 - a. their experiences of the pre-socialist period—countries that have a long tradition of sovereignty, or were part of the European multinational monarchies (e.g. Czech Republic, Hungary, Slovenia) had better starting grounds for successful transition, and thereby a lower level of corruption;

- b. their experiences of the socialist period—countries of the former Yugoslavia, which had a “softer” socialism, with admixtures of market economy and greater human rights, enjoyed a better starting position than countries that belonged to the Soviet Bloc.
- (2) The conditions facing transition in individual countries, in particular:
- a. the presence of inter-ethnic tensions and conflicts (which generated additional turbulence for an already complex transition process in countries of the former Yugoslavia);
 - b. the determination of political elites in fighting corruption (Macedonia and Poland constitute a fairly positive example in this respect).

The influence of the above-mentioned factors can be confirmed by comparing the corruption perception indexes of the above-mentioned countries. Thus, of all the countries analysed, Bosnia and Herzegovina, which belonged to the Ottoman Empire for a long time, a state with a deep-rooted culture of corruption has the lowest corruption perception index (3.2). After the communist period, the country was devastated by war in the 1990s, after which ethnic tensions persisted, as did disunity among the political elite and a general weakness of the institutions of central authority. Slovenia, which was part of the Habsburg Monarchy and in the period up to 1990 benefited from “softer” Titoist socialism, has the highest index (6.4). Slovenia evaded the misery of warfare in the 1990s, and took advantage of good starting grounds for peaceful and successful transition. In such conditions, logically, corruption remained in relatively acceptable limits.

There is no doubt whatsoever that the historical inheritance of a certain country is one of the key factors behind its experience of transition and, equally, that it significantly influences the level of corruption in a given society.

7.3 Corruption in Croatia

Corruption in Croatia represents a serious social problem; a problem, moreover, which is considered to be a systematic phenomenon with a basis in all structures of society. The bribing of civil servants, nepotism in employment and assigning positions of trust to persons with a conflict of interest are everyday occurrences in Croatia’s public life (Budak 2006, p. 93). Transition has shown its dark side very harshly here. Aggression against Croatia also contributed to this, especially the destruction caused by war and its numerous consequences. Additionally, transition in Croatia was synchronised with the large-scale theft which took place with privatisation and other economic transformation measures. Privatisation was little else than a general plundering of social property. A redistribution of social wealth occurred, whereby a smaller part of the community got their hands on the bulk of formerly social property, while the majority of the population lives in straitened circumstances or is downright poor. New classes of gainers appeared, who while

claiming to be entrepreneurs were really common thieves, exploiting the absence of stable social codes to give free rein to principles of power, force and ruthlessness (Kregar 1999, p. 14). One cannot help feeling that immorality, greed and corruption were woven into the young state from the very start. Through the desperate circumstances brought on by privatisation and recession, a moral catastrophe has overtaken Croatia, one which is equally, if not more damaging than the physical calamity brought by war. In this context, the numerous indicators of great corruption in Croatian society are not surprising.

7.3.1 The Perception Index of the Spread of Corruption

The statistical research of Transparency International confirms the perception of a high level of corruptness in Croatian society. Thus in 1999, the first year measurements were taken, the corruption perception index totalled only 2.7; Croatia came near the very bottom of corrupt societies, at a very bad 74th place of 99 investigated countries. At that time Croatia had a level of corruptness equal to that of the Ivory Coast and Vietnam, while, for example, India, Columbia, Macedonia, Romania, Ghana, Egypt, Nicaragua, Senegal, Mozambique, Zambia, Zimbabwe, etc., had better scores. Alongside the democratisation of the country taking place after 2000, the CPI indicated slow shifts towards improvement: in 2000 it measured 3.7, and in 2001 3.9. From 2000 until 2006 the index was in stagnation and saw a mild decline (from 3.8 in 2002, to 3.7 in 2003, 3.5 in 2004 and 3.4 in 2005 and 2006). In 2006, consequently, corruption in Croatia was considerably more widespread than in 2001; however, it was still less pronounced than in the late 1990s. In 2006 Croatia was 69th of 163 investigated countries. Then in 2007 there was a leap in the index value from 3.4 to 4.1, and Transparency International itself listed Croatia among the 13 countries with the highest positive shift in a year. In 2008 the index underwent a further growth to 4.4, only to return, in 2009, to the level of 2007 (4.1). Today, the level of corruption in Croatia is higher than in any state in the European Union except the countries of Southeast Europe (Romania, Bulgaria and Greece).

As for the opinion of citizens on the spread of corruption, Transparency International's research from 2005 can be taken as indicative: it suggests that 89% of citizens hold that corruption in Croatia is very widespread. Around 70% of the population considers that government officials accept gifts; 72% believe that they often accept small gifts, while 69% is convinced that they accept high value gifts. Almost 70% of the people believe that functionaries often receive money or commissions. The citizens consider that the most corrupt of the government institutions are the judicial system (80% claim that corruption in administration of justice is widespread), and health care (79%). The most law-abiding state institution according to the data in this research is the military: only 40% of examinees believe the armed forces are corrupt. According to this survey the greatest guilt for the spread of corruption in Croatia lies with a lack of political will

and the inability of the authorities to prevent corruption (85% of citizens emphasise this as one of the reasons). The public considers non-governmental institutions and associations of citizens (34%) as the greatest combatants against corruption, while the courts are at a low 8% (Transparency International 2005).

Similar results followed empirical research carried out in Croatia in 2008 on a sample of 1,168 citizens. The sectors perceived as being most corrupt are the judiciary (23%), political parties (18%) and health care (15%). Although as much as 72% of survey respondents are familiar with cases of corruption and bribery in their surroundings, only 4% of them have reported corruption. Among the causes of corruption in Croatian society, respondents frequently refer to the widespread habit of giving bribes (27%) and customs inherited from the past (21%). They consider the most successful combatants against corruption to be the media (22%), individuals (16%) and non-governmental organisations (16%). And while only 7% of respondents consider that corruption has decreased in the last 5 years, 28% consider that it is the same, and as much as 45% believe that it has increased (Leburić et al. 2010, pp. 81–92).

These predictable results came from empirical research on a representative sample of the adult population (1,002 persons). It was carried out in 2010, in the midst of the financial and economic crisis still shaking Croatian society, and also in the midst of revelations of numerous corruption scandals, which probably explains why Croatian citizens retain a high respect for their defensive and repressive organisations (the military, police), while their trust in institutions that form the pillars of the democratic system is very different. In that respect, political parties, although an essential part of the pluralistic system, are held in extremely low trust of the citizens, and only slightly better off are the trade unions which directly deal with the social situation of employees. Citizens place a pronouncedly low trust in the Government and Parliament because they perceive them as generators or inefficient “cleaners” of corruption (Sekulić and Šporer 2010).

An abundance of interesting results emerged from the analysis of data collected in interviews with high-positioned representatives of the six target groups—the media, the legal system, the police, and the political, economic and civil sectors (Štulhofer et al. 2008, pp. 10–18). Most respondents defined corruption as the abuse of power that allows individuals and groups to accomplish their goals by avoiding or breaking the law, disregarding regular procedures, and finally, undermining the social order. They claimed that corruption is a grave problem, expressed the view that Croatia is a highly corrupt society and claimed that corruption is present anywhere where the state is still the owner. The increase of corruption was associated with structural changes related mainly to the transition processes. One of the major effects of corruption reported in the interviews was an erosion of social norms: the values of social justice, solidarity and morality are being replaced by self-centred ruthlessness and opportunism. Another effect of corruption mentioned was the suboptimal performance of the whole system, especially in terms of its economic and social efficiency. Also, increasing mistrust in institutions, as well as increasing poverty, distorted social priorities, inefficient investments and wasted resources were pointed out. However, the most interesting

result was that the participants were highly critical of corruption “away from home” but found none or little to condemn inside their own institutions or social group. The report’s authors attribute this to a poor understanding of corruption, one that is all the more inadequate in view of the conflict of interest and abuse of public authorities it involves, and also the interviewees’ wish to protect their own reputations by covering up immoral behaviour among close associates (Štulhofer et al. 2008, p. 27).

7.3.2 The Extent, Structure and Dynamic of Corruption in Croatia

The official statistics of the Republic of Croatia show quite a different picture of crime. According to official data on reported, accused and convicted persons, corruption in Croatia does not pose a considerable problem at all. This evident discrepancy between empirical research and official statistics is above all the result of the great “dark figure” which lies behind the state figures. Since the subject in question, corruption, involves the so-called secret crimes (which neither the corruptor nor the corrupted have any interest in reporting), corruption is difficult to discover and when discovered is difficult to prove for the same reason. Besides, official statistics record only very specific so-called “corruptive” criminal offences. As a matter of fact, corruption as such is not legally determined, meaning that corruption as a criminal offence does not exist. Corruption is a generic notion encompassing a series of criminal offences that share some common element of corruption. In the Criminal Code of the Republic of Croatia there are several such criminal offences, but for the purpose of statistical analysis here 10 typical “corruptive” criminal offences will be processed: Accepting a Bribe, Offering a Bribe, Accepting a Bribe in Economic Operations, Offering a Bribe in Economic Operations, Malpractice in Bankruptcy Proceedings, Abuse in Performing Governmental Duties, Illegal Intercession, Unfair Competition in Foreign Trade, Abuse of Office and Official Authority and Money Laundering.

The numerical data from Fig. 7.1 show an increase in reported, accused and convicted adult persons for such crimes during a researched period of 8 years. So from 2009 as compared to 2002 this number has increased to approximately 48% in reported persons, 56% in accused persons and 51% in convicted persons. From this one can conclude that in recent years citizens have increasingly reported corruptive crimes that criminal procedures are undertaken against a growing number of persons and that more and more are prosecuted and punished for these criminal offences.

The graph suggests a great filtering out, in the numbers decreasing from reports through indictments to legally valid convictions. The road from criminal reports to convictions is always long and often quite uncertain because of many procedural reasons (since frequently circumstances may exist that prohibit

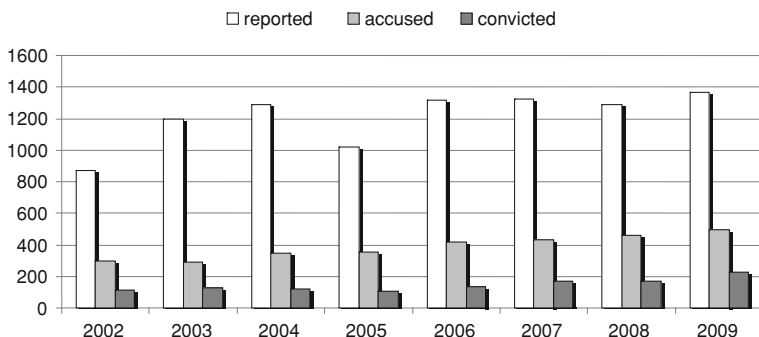
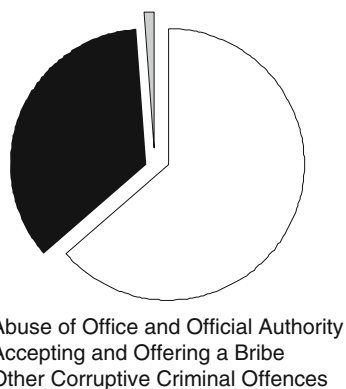


Fig. 7.1 Adult persons reported, accused and convicted of corruptive criminal offences from 2002 to 2009 (Državni zavod za statistiku 2009)

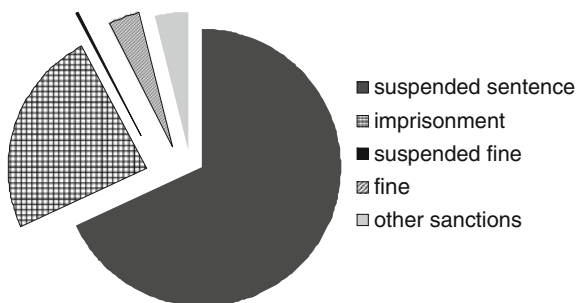
Fig. 7.2 Convicted persons—the structure of corruptive criminal offences from 2002 to 2009



criminal prosecution—e.g. the statute of limitation, an act not being a criminal offence, circumstances that exclude guilt, lack of evidence, etc.). However, with regard to corruptive crimes the number of discontinued reports is above average. There could be many reasons for that: it is very difficult to prove crimes that are generally committed without witnesses; or the fact that citizens perceive many forms of behaviour as corrupt, although they are not proscribed as criminal offences; or the nonefficiency of the judicial system in answering the demands of society regarding corruptive crimes.

In this given period two corruptive crimes predominate above all others: Abuse of Office and Official Authority, with as much as 63.6%, and Accepting a Bribe and Offering a Bribe with 35.3%. All other corruptive criminal offences comprise only 1% (Fig. 7.2). All three mentioned criminal offences are classified in the Croatian Criminal Code as Criminal Offences against Official Duty. The *ratio legis* of these incriminations is self-evident—it involves ensuring that an official duty is performed in a lawful, fair and efficient manner, which in turn means protecting the rights of all those who daily come into contact with persons who have public

Fig. 7.3 The structure of adult persons convicted for corruptive crimes according to criminal sanctions from 2002 to 2009



authority and guaranteeing that they may efficiently realise such rights according to law. Yet a corrupt administration is precisely the greatest obstacle for upholding the principle of the rule of law on which such rights rest.

Suspended sentences prevail among pronounced criminal sanctions for corruptive criminal offences (Fig. 7.3). They account for as much as 68.1% of all pronounced sanctions—in this connection 67.9% are suspended imprisonments and 0.2% suspended fines. Non-suspended punishments make up 28% of cases (with 24.3% being prison sentences and 3.8% fines). Notwithstanding the generally held principle that the criminal law with its repressive sanctions is only the *ultima ratio societas* and that prevention is always a far better solution, this very high number of suspended sentences is still surprising. Suspended sentences are very lenient criminal sanctions and tend to be a frequent solution in the Croatian courts in general. Suspended sentences annually comprise around 63.5% of all sentences. However, as the official statistics demonstrate, suspended sentences are even more common for corruptive crimes. Bearing in mind the danger corruptive crimes pose to Croatian society, it seems that the sentencing policy is much too lenient and that it unjustly diverges from the Criminal Code, which has determined serious punishments of imprisonment for all corruptive criminal offences (e.g. 1–8 years for taking bribes). So, the question remains—what kind of message is sent in a quite corrupted society when the perpetrators of corruptive crimes are punished with the most lenient sanctions?

Since abuse of office and official authority predominate so strongly in the total number of corruptive criminal offences in the Republic of Croatia, further statistical indicators should be considered to gain a more detailed insight into the relationship between these criminal offences and sanctions imposed on their perpetrators.

The Abuse of Office and Official Authority is shown as being on the increase in all reports, all indictments and all convictions (except in 2005, and a small drop in reports in 2008). Therefore, in 2009 as compared to 2002, the increase shown is as much as 57% for reports, 81.6% for accusations and 143.1% for convictions (Fig. 7.4).

So far as this criminal offence is concerned, the filtering down of the numbers from reports to convictions is even more pronounced (the ratio of reports to convictions being 13.2%).

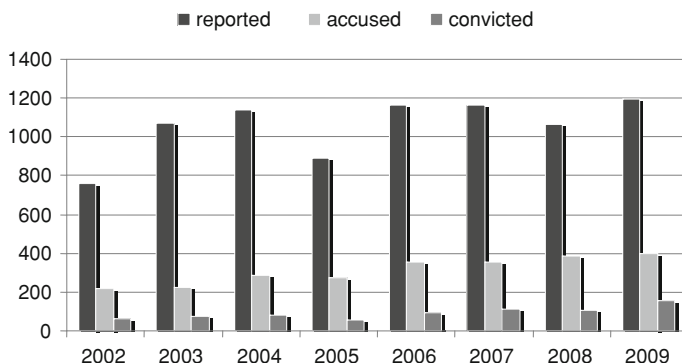


Fig. 7.4 Reported, accused and convicted adult persons for abuse of office and official authority (Article 337 CC) from 2002 to 2009

Insofar as the annual report of the State Attorney addresses the criminal offence of abuse of office and official authority, the most frequent points of complaint involve reports made by citizens against judges, state attorneys and officials in other bodies of government authority and administration, from dissatisfaction with official decisions. As a rule, these complainants claim that civil servants and officials have committed crimes only because they have not decided in their favour. In other words, the reports offer little by way of evidence to support or dismiss their claims, providing no basis for investigating their allegations further.⁶ Nevertheless, even if this is so, there is still no doubt that the large number of reports in relation to accusations shows a great mistrust on the part of citizens in the work of judicial and administrative bodies, and a great dissatisfaction with their decisions.

The sanctions for Abuse of Office and Official Authority largely fit the picture of punishment for corruptive criminal offences in general, so suspended sentences prevail. However, it should be noted that in recent years, especially in 2009, the percentage of prison sentences increased significantly: while the proportion of imprisonment in relation to suspended sentences in 2002 totalled 18.5%, in 2009 it was 41.8% (Fig. 7.5).

The statistical data given above shows the volume, trend and structure of corruptive criminal offences in Croatia in the 8-year period from 2002 to 2009. However, what cannot be seen from such data alone is the level or degree of the danger of these crimes. From these numbers one cannot see if the subjects under discussion are sporadic individual cases of bribery (e.g. bribery of policemen) or the bribing of government officials highly positioned in government or public services. Concerning this it could be said that until 2006 criminal reports were dominated by so-called “street corruption”. During the years 2006 and 2007 there

⁶ Godišnje izvješće o radu državnih odvjetništva u 2008 (Annual Report on the Work of the State Attorney’s Office in 2008), www.dorh.hr.

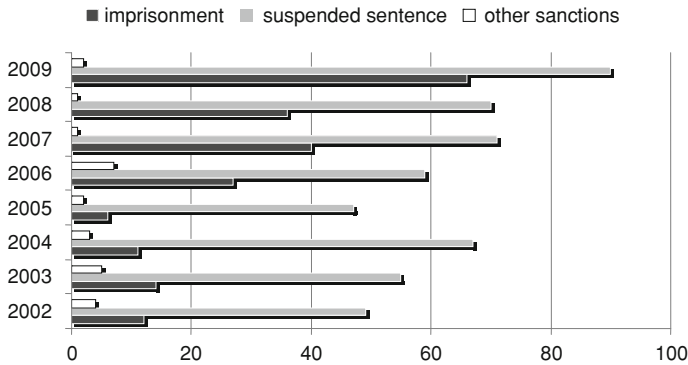


Fig. 7.5 Criminal sanctions imposed on convicted persons for abuse of office and official authority (Article 337 CC) from 2002 to 2009

are more and more criminal procedures for corruptive criminal offences at a medium and higher level (Novosel 2008, p. 109). This trend has continued, so today in Croatia we have criminal procedures for corruptive crimes in motion against university professors, judges, expert witnesses, bankruptcy trustees, former deputy ministers, the ex-prime minister and other persons highly positioned on the scale of social responsibility.

7.3.3 Croatian Anti-Corruption Legislation, Aims and Reality

In the Republic of Croatia's legal system there are a number of regulations providing the foundation for anti-corruption rules. In addition to criminal legislation—the Croatian Criminal Code and the Criminal Procedure Act, there is also the Act on the Office for the Suppression of Corruption and Organized Crime and international legal instruments to which the Republic of Croatia is a signatory. Croatia has also accepted all the relevant instruments of international law pertaining to corruption and has incorporated them into its national legislation.⁷ In these national statutes

⁷ Namely, those instruments are as follows: the Council of Europe Criminal Law Convention, the Additional Protocol to the Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention and United Nations Convention against Corruption. The other domestic legal acts that regulate this field are: the Act for Preventing Conflict of Interest in Exercise of Public Office, the Act on the Responsibility of Legal Persons for Criminal Offence, the Witness Protection Act, the Law on the Prevention of Money Laundering, the Act on Financing Political Parties, Independent Lists and Candidates, the Public Procurement Act and the Law on the Right of Access to Information. Besides that, the National Programmes for the Suppression of Corruption, Strategies for the Suppression of Corruption and Plans of Action with clear measures, determined deadlines and clear allocations of responsibility to institutions for the advancing fight against corruption were enacted and in the meantime revised.

the goals are placed ambitiously high. Among other things, the affirmation of “zero tolerance” against corruption and strengthening the responsibility and transparency of state authorities is emphasised. In this way it was hoped the trust in state institutions would be stronger.

This list of numerous anti-corruption regulations clearly shows that Croatia has done a lot on the normative level. It has established a solid legal framework for successfully suppressing and preventing corruption. This is always the first step, but here it can be nothing more than that, because the normative framework alone will have no effect on corruption without adequate implementation.⁸ However, besides that, and as opposed to previous years when most proceedings were instituted for less significant “street corruption” offences, the trend of criminal procedures in the past 3 years shows greater investigation and prosecution of corruptive crimes at the medium and high level. It could also be said that these criminal procedures, with great support from the media, are doing something to lift the Croatian public’s confidence in the state bodies responsible for uncovering and prosecuting corruption, and at the same time sensitise citizens to the issues of corruption in general and increase their consciousness of the need to suppress it.

However, and in spite of that, corruption in Croatia (bearing in mind all the methodological defects which might impair the measurements) is still perceived as being very high. Although perception never perfectly reflects reality, but only the examinee’s subjective estimate, it strongly influences behaviour. Believing that they live in a corrupt society in which they cannot rely on law, but on “acquaintances and connections”, people search for alternative ways of realising their rights; and in doing so continue to generate corruption. Besides that, feelings of unpleasantness, even disgust towards the corrupt system when an ethical minimum is not respected, easily transform into apathy, cynicism, personal isolation and passiveness (Kregar 1997, p. 24). Equally, a corrupt country’s reputation abroad discourages foreign investors and attracts organised crime.

Therefore, there is no reason for satisfaction. Too much time has passed without a real political will to stand up against corruption. As a matter of fact, one could define several phases with different approaches to corruption in Croatian society over the past 20 years of transition. The first and longest was a phase of complete disregard for corruption. This phase corresponds chronologically to the first years of independence, the war years, and also a post-war period. Although it can be said that in this period the issue of corruption as compared to the defence and liberation of the country could not be the first priority, it should be noticed that it was precisely during this period, through the privatisation of public property, that the most unscrupulous robbery through corrupt practice occurred: this period also saw the stratification of the society into new classes of pronouncedly rich and decidedly poor, which gave impetus to corruption by making it a social phenomenon.

⁸ The point is corroborated by a great deal of research: see for example the study comparing anti-corruption legislation in Albania, a young democracy which shows a high degree of corruption, and the Netherlands, one of the “consolidated democracies”, which, according to the same criteria, belongs among states with the least corruption (Peci and Sikkema 2010: pp. 101–118).

The second phase was characterised by declarations of a fight against corruption, but these were mainly conditioned by the pressure of negotiations for accession to the European Union, and without a true political will for serious action against the main perpetrators of corruptive crimes. However, this external influence did see the establishment of a solid legal framework for opposing corruption. The third phase, which began a few years ago and continues to this day, is characterised by numerous criminal procedures for serious corruptive criminal offences against highly ranked public officials.⁹ In the meantime, during transition from one phase to another, corruption took hold over and intertwined itself with Croatian society. The public lost trust, not only in the genuine political will to solve the problem of corruption, but also in the actual abilities of the present political elite to make more significant shifts in that direction. Therefore, there is no doubt that corruption today in Croatia represents a great professional challenge above all for the administration of justice, especially for criminal prosecution bodies; and that the fight against it will be long, difficult and utterly uncertain.

7.4 Concluding Considerations: Anti-Corruption Perspectives in Transition Countries

Transition is a difficult, long-lasting and painful process. Many countries in transition went through intense economic, financial, fiscal, political and moral crises. In some of them the “transition picture” was considerably blurred by war and its consequences. Exactly such crisis conditions provide a strong impulse for numerous criminal activities. Although all the countries analysed in this chapter went through or are still going through transition, their experiences are very different. These different transition experiences are above all results of a historical inheritance of the pre-socialist and socialist periods, and also of numerous other factors of which some have been discussed above. However, one must not forget that the level of democracy and transparency of the established political framework is not only merely the sum of different historical circumstances, but also depends on the will, knowledge and possibilities of the elected political elites to fill the transitional vacuum and make a smooth transfer into the new system. It is perfectly clear that these different experiences of transition have resulted in different degrees of corruption in individual countries. States which have had an easier and less painful transition during these years record lower levels of corruption. This cause-and-effect connection seems obvious. Noting this causal nexus also shows the direction for future measures against corruption. It seems that one only needs to follow the experiences of developed Western democracies,

⁹ At this moment a criminal procedure is underway for a number of corruptive criminal offences (which allegedly brought millions of Croatian Kunas in illegal gains) against the former Minister for the Economy, that is, former Deputy President of the Government and former Prime Minister.

which indeed have not eradicated corruption, but have brought it under control using the spectre of anti-corruption reforms. The shape such measures must take is well-established: transparent political systems, transparency of public finances, efficient monitoring mechanisms, particularly over those in positions of authority (executive authority is controlled by the legislative body, and the legislative body is controlled by the citizens through free and independent media) because the essence of a political democratic system in any country is nothing other than controlling those in authority so that they always operate the levers of power on behalf of public welfare and not personal interests; also related to this is the strengthening of civil society as a permanent controller of the authorities; precise and clear legal regulation (statutes and ethical codes of behaviour) and its consistent application to all offences without any exceptions; the independent, moral and competent administration of justice as well as a modern, organised, professional and efficient bureaucracy; just and effective methods of collecting taxes, and the fostering of an understanding that corruption is not only a question of law but also above all of civilisation.

Since corruption today exists everywhere in the world and even in highly developed countries, as news of frequent corruption affairs in the west bears witness,¹⁰ it is delusional to expect that corruption will be overpowered for good when transition is completed. Indeed, the globalisation processes that have taken hold of modern societies have had a parallel effect in making crime—especially organised crime—transnational. In that way, corruption as the most important method open to organised crime for concealing criminal offences, avoiding governmental control and legal mechanisms, and also for consolidating an influence on the economic and political elites of a certain country, is guaranteed a “future and longevity”. And it is precisely this danger which makes the stringent and continuous investigation of corruption such an urgent matter, backed up with consistent legal proceedings and punishment so as to send a clear and unambiguous message that not only is corruption socially unacceptable, but also that it does not pay. This is the easier part of the task. Besides that it is imperative, as a part of

¹⁰ The past two decades have been marked by numerous corruption scandals in Western democratic countries. Thus, for instance, in Germany the public prosecutor in Bonn issued an indictment against former Chancellor Kohl because of a series of financial donations to his party. Richard Grasso, president of the New York stock market, was forced to resign in the autumn of 2003 because he gave himself a fine present to the amount of 140 million US dollars as a “personal benefit”. Joseph Ackerman, the Swiss president of the Deutsche Bank was accused of “breach of trust”, euphemistic wordplay covering the accusation that he had profited by business transactions while filling a dual post as manager of the Supervisory Council and Compensation Committee of the telecommunications company Mannesmann (for more details, see Brioschi 2004, pp. 172–177). Concerning corruption in Great Britain, a country that has always been considered the “mother of parliamentarism”, in the introduction to a book detailing their investigation of corruption in the British Parliament, the authors write: “Can such thieves and impostors truly strut about the Westminster Palace, concealing party-related vileness in numerous layers of mummified British parliamentary rules. Now we know they can” (Leigh and Vulliamy 1997). We also encounter a true “abundance” of corruption scandals in Italy, one of the founders of today’s EU (see e.g. Newell 2007, pp. 97–120).

the political culture, to develop an awareness of the danger corruption poses not only to society in general, but also the individual who participates in corrupt activities with specific financial benefits and who in doing so loses his moral integrity and human dignity. This is the more difficult part of the task because man has, through his long history, shown he changes conditions around him much more easily, quickly and more successfully than himself. Therefore, it can be expected that sooner or later all the countries presently in transition shall bring that process to an end. One might also reasonably presume that this will significantly decrease the problem of corruption, that is, reduce corruption as a systematic phenomenon, with sporadic cases of corrupt and greedy individuals emerging here and there. However, one can by no means presume that the exit from transition will solve the problem of corruption in these countries. For the history of human society, which shows that corruption has always been with us and that it is omnipresent even today, raises many doubts about such a presumption. Hence, it seems that it is more correct, proper and truthful to speak of corruption as a metaphor for human society in general and not a metaphor for the society in transition.

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Chapter 8

Human Trafficking Between Profit and Survival

Vesna Nikolić-Ristanović

Abstract The aim of this chapter is to analyse the trafficking of human beings in Central and East European transition countries from a criminological perspective. The chapter explores the general characteristics of human trafficking as well as socio-demographic, criminal and penal characteristics of traffickers. In addition, it explores some criminogenic factors that contribute to trafficking in human beings, including the interconnection between various factors and their influence on the motivation and rationalisation of criminal behaviour. Finally, criminal policy on traffickers is analysed and assessed in relation to the larger context of human rights, social inclusion and democratisation. The chapter starts with comparative analyses of trafficking in human beings in Central and Eastern Europe, and then takes Serbia as a case study.

8.1 Introduction

To a great extent, the contemporary social context, national and global, is responsible for the problem of the trafficking of human beings growing ever worse. Although it is a form of crime that has a long history, the socio-economic changes brought about by globalization, neoliberal capitalism, transition and the growing number of conflicts contributed to an expansion of human trafficking in all its forms in recent decades.

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Macro-social changes have influenced further small-scale changes in people's everyday lives, particularly including women, but also men and children. Such changes are reflected in the continuously growing instability of social status and the general insecurity in almost all countries today, which is why some authors refer to it as the risk society (Beck 1992). The contemporary world in its entirety is faced with recession, growth in unemployment, but also with the expansion of irregular and illegal markets, and the incorporation of an informal economy into the formal one (Ruggiero 2001, p. 64; European Commission 2007). Overall, the distinction between legal and illegal activities has generally become less clear and pronounced than it once was.

All of the aforementioned changes have been felt more intensely in the transition countries of Central and Eastern Europe. What is especially stressful for these countries is the speed and the accumulation of changes along with the harsher struggle for survival (Nikolic-Ristanovic 2002, 2008). With that, parallel to the de-stabilizing of social status, the spread of poverty and the increasing gap between the rich and the poor, the process of transforming from a socialist to a capitalist economy has also had to take place in the context of fragile institutions and uncertain rule of law. Economic changes have often had all the traits of uncontrolled primary capital accumulation, which in some countries is also connected to war profiting (Nikolic-Ristanovic 2008).

Thus, it is not unusual that since the 1990s the above-mentioned social context, together with the geographical position of Central and Eastern Europe, influenced an expansion of human trafficking in this area. The major trafficking channels go either directly from poor and unstable countries in Central and Eastern Europe to Western countries, or indirectly from other poor and unstable countries, and on through Central and Eastern Europe into more stable/affluent countries. Thus, Central and Eastern Europe became a crossroads for the most important channels of human trafficking, such as Balkan (going from and through the Balkan region), Central-European (going from the Middle and Far East, Central Asia, Afghanistan and Bangladesh, through Central and Eastern Europe), Eastern (from countries of the former Soviet Union, through Poland), Eastern-Mediterranean (from the direction of Turkey, through Romania and Bulgaria), North-European (from Baltic transition countries to Nord Europe), as well as Nord-African channels (from north Africa, going partly through Central and Eastern Europe) (Copic 2008).

While the sufferings of victims and the victimisation-related factors have been identified and explored in a number of academic works, the traffickers and criminalisation risks have only quite recently become the subject of research. Bearing in mind this imbalance, this chapter will analyse human trafficking in this region from a criminological rather than a victimological point of view. The chapter considers the general characteristics of the trade in human beings as well as the socio-demographic, criminal and penal characteristics of traffickers. In addition, it explores criminogenic factors that contribute to human trafficking, including particularly through their influence on the motivation and rationalisation of criminal behaviour. Finally, criminal policy on traffickers is analysed and assessed in relation to the larger context of human rights, social inclusion and democratisation.

The chapter will begin with comparative analyses of human trafficking in Central and Eastern Europe, and then focus on the case study of Serbia. The comparative section is based on analyses of available data, including in particular information from the U.S. Department of State's *Trafficking in persons report* for the year 2009¹ (U.S. Department of State 2010), for the following countries, selected as being representative of human trafficking in Central and Eastern Europe: Albania, Bosnia–Herzegovina, Croatia, Macedonia, Serbia, Kosovo, Montenegro, Bulgaria, Romania, Moldova, Poland, Czech Republic, Hungary, Slovenia and Slovak Republic.

8.2 Human Trafficking in Central and Eastern Europe

8.2.1 *General Traits of Human Trafficking in Central and Eastern Europe*

Most Central and East European countries are countries of origin, but also routes of transit and increasingly points of destination for victims of trafficking. However, some countries (e.g. Albania and Latvia) are purely 'supplying' countries, while Poland and Estonia are source and destination, but not transit countries. Slovenia, although an earlier country of destination, origin and transit (Dobovsek 2007), is apparently no longer considered a country of origin (U.S. Department of State 2010). There are differences concerning the type of trafficking in question—with regard to who is the victim and what kind of exploitation is intended. Some countries are origins for some kinds of trafficking victims but destinations for others and vice versa. Also, there is a growing trend of increase in human trafficking, particularly in Balkan countries (Surtees 2008a). Moreover, in recent years the trafficking within the Balkan region has been generally increasing as well (Europol 2006; Surtees 2008a; Nikolic-Ristanovic 2009a).

Trafficking in women, as well as children and men occurs in most Central and Eastern European Countries. Women are predominantly subjected to trafficking for sexual exploitation, while men are most often victims of trafficking for their labour. Women, too, however, are also increasingly trafficked for labour exploitation and marriage, while men are also, although less often than women enslaved for sexual exploitation. Trafficking in children is mostly related to begging, sexual exploitation, forced labour, adoption, marriage and theft.

Destinations for trafficked women from Central and Eastern Europe are mostly West and South European countries such as the Netherlands, Belgium, France, Austria, Italy, Germany, Finland, Switzerland, Sweden, Denmark, United

¹ The U.S. Department of State Report is chosen since it contains highly comparable information about both the phenomenon of human trafficking and the social responses to it, as obtained from both governmental and non-governmental sources in individual countries.

Kingdom, Greece, Italy, Spain and Cyprus. Apart from these, trafficking destinations include also non-European countries such as: Turkey, Australia, the United States, the United Arab Emirates, Israel, Lebanon, South Korea, China, South Africa, Vietnam, Thailand, New Zealand and the Middle East.

Some Central and East European countries recently also became important human trafficking destinations. Within Central and Eastern Europe the main destination countries are Russia, the Czech Republic and Poland. Russia became the main East European destination for trafficking in persons for forced labour. In the Czech Republic and Poland, women from other Central and East European countries are enslaved into prostitution. Also, both men and women are subjected to conditions of forced labour in the construction, forestry, agricultural and service sector industries. Some of the victims were also forced to beg (U.S. Department of State 2010).

Within the Balkan region, the main destination countries/regions for trafficking are Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Kosovo. Today, victims in these countries are trafficked for sexual and labour exploitation, including begging. These countries are mainly destinations for trafficking in women and children, but some of them, such as Montenegro, Croatia and Slovenia, are also important destinations for male victims. Croatia became a destination through the development of tourism and the need for seasonal work. The growth of sex tourism along the Adriatic coast is also in evidence (Golubovic-Skec and Radeva-Berket 2010). The above-mentioned countries are mainly destinations for victims from other Balkan countries. This is different in comparison to the 1990s and early 2000s, when these countries, particularly Bosnia and Herzegovina and Kosovo, were among the main destinations for women from other Central and East European countries (Nikolic-Ristanovic 2003).

Balkan countries in general, and Serbia and Macedonia in particular, have for a long time been the most important transit countries for all forms of illegal trade, including smuggling and human trafficking (Nikolic-Ristanovic 2004). Thus, apart from being a final destination for trafficked victims, these countries have also been temporary or 'false' destinations on the way to Western Europe. In recent years, more Balkan countries, including in particular, members of the former Yugoslavia, became source countries for the trafficking of not only women and children, but also men. Recently, increasing trafficking (especially of men) with legal documents has been observed (Surtees 2008b; Copic 2009).

8.2.2 What Do We Know About Perpetrators of Trafficking in Central and Eastern Europe?

The findings uncovered by research to date offer some, but mostly limited, information about traffickers. For example, Surtees collected primary data on traffickers from trafficked persons who were assisted in ten countries in South-East

Europe and was able to show that the traffickers in those cases were citizens of the countries in question, or citizens of surrounding countries, although some recruiters were also foreign nationals (Surtees 2005, 2008a, b). A similar situation is reported from other parts of the region, in countries such as the Czech Republic (Scheinost 2000). In general, the nationality of recruiters is consistent with the nationality of victims (Surtees 2005; EUROPOL 1999; Lsocik and Wiczorek 2011). In Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Serbia, Montenegro and Romania there are criminal groups which include both nationals and non-nationals (Surtees 2008a).

The research so far available for South East Europe and the Western Balkan also offers some data on the gender of traffickers, i.e. recruiters. Although in the majority of countries men still seem to make up the larger part of recruiters, a trend is also showing an increase in victims recruited and trafficked by women (EUROPOL 2006). This trend has been noted in particular in Moldova, Romania and Bosnia-Herzegovina. The contingent of female recruiters were for the most part women who had themselves been recruited and then encouraged by the traffickers to invite their friends to work abroad as well (Surtees 2008a). Many of the female traffickers, who were charged and convicted, were themselves victims of trafficking (Surtees 2005).

However, in Albania, unlike most of the other countries analysed, victims were recruited almost exclusively by men. The situation is very similar in Montenegro and Kosovo (Surtees 2005). On the other side, in Macedonia, the majority of victims of trafficking for sexual exploitation in 2004 were recruited by women. This represents a shift from the previous year, when the majority of recruiters were male. A similar pattern has been detected in Serbia and Moldova as well. Victims of trafficking for labour exploitation in Macedonia were also increasingly recruited by women, while in Moldova the situation is the opposite: they were increasingly recruited by men.

In all countries male-female couples also figure as recruiters/traffickers. In these cases the woman usually recruited the victim, while the man dealt with transportation and/or exploitation. In Bulgaria, most victims trafficked for begging, labour and delinquency were recruited by a male-female couple. Also, in this country recruiters of Bulgarian victims trafficked for adoption were mainly of Roma origins, both from Bulgaria and the destination country. There were also victims recruited by recruiters of Turkish ethnicity.

Data on trafficking in children in Kosovo and Serbia showed that traffickers of children are often their parents or some other family members who force them to beg (UNICEF 2004; Copic 2009). Also, in Albania, recruiters of children, victims of trafficking for the purpose of labour exploitation, begging and delinquency, were most often blood relatives (Surtees 2005).

Examination of the literature on the characteristics of the trafficking in persons showed that there are no significant differences between the profiles of criminal groups who commit trafficking in female and those who commit trafficking in male victims (Kovacevic-Lepojevic and Dimitrijevic 2009). The existing knowledge about trafficking in people shows that criminal groups who commit it can have

various organisational structures. The relationships among members and management of a criminal enterprise can be vertical, i.e. hierarchical (on a corporative model), but in contemporary societies it is more often horizontal (on a network model). Myth about hierarchically organised professional criminal enterprises involving lifelong professional criminals is increasingly being replaced by empirically confirmed facts about its 'essentially local, opportunistic and entrepreneurial character' (van Duyne, quoted by Taylor 1999, p. 167).² In accordance with that observation, Europol's data (2006) suggest that the mafia-style, hierarchical trafficking networks are not seen on a regular basis in the Western Balkans. A similar trend has been noted in other CEE countries. This means that more and more trafficking groups are being identified in which the persons involved have close family ties or a previous criminal relationship and operate as equals allotted specific roles. They either do not have previous criminal records or were already engaged in the so-called shadow economy and/or crime before 1989 (Scheinost 2000; Nikolic-Ristanovic 2009b; Lsocik and Wiczorek 2011).

Traffickers in people work both as individuals and within the frame of criminal networks, which take forms of high-medium-or low-level organized groups (EUROPOL 2006; Spencer et al. 2011). This division is mostly based on the distribution of roles and powers, which may exist among individuals within a core criminal group or among further groups which are part of a larger criminal network. Also, every phase of trafficking can be carried out by a specialized (medium-level) criminal network, which is in turn part of a broader, national or international, criminal network. A EUROPOL report mentions the UK sex industry, in which particularly the Eastern/Central European sector is dominated by a network of smaller groups who co-operate in moving victims around the country in response to market forces (EUROPOL 2006). Scheinost noticed something similar in the Czech Republic, where the ringleaders of international organisations tend to operate outside national borders, while lower level staff operates within Czech territory. On the other side, Czech citizens occupy positions as smugglers: drivers, persons providing transport and accommodation. In most cases they are low-educated youngsters (Scheinost 2000).

Analogous to the distinction between criminal networks is the distinction between individual traffickers themselves. So far, research (Schloenhardt 1999; Scheinost 2000; Nikolic-Ristanovic 2009b) has identified the following key positions for members of a criminal enterprise, bearing in mind the job they are performing, and the education and skills they possess:

² Such a criminal enterprise may comprise a smaller or bigger group of people, can be of national, regional or international character, but it can also take the form of a 'family business' (Luptakova et al. 2004; Nikolić-Ristanović et al. 2004). Very often, these organisations, apart from trafficking in people, deal in other criminal activities as well, particularly drug trafficking. In addition, some associates may act as independent individuals who perform individual tasks ad hoc or, less often, on a permanent basis. Schloenhardt calls these individuals 'amateur traffickers'. They usually operate in the vicinity of borders, using their own boats, taxis and lorries (Schloenhardt 1999, p. 215).

- Arrangers/investors: competent persons who invest in trafficking in people and supervise its overall functioning.
- The traffickers at a middle-ranking managerial level, responsible for organising certain phases/tasks such as recruitment, transport, accommodation, final exploitation, etc.
- Amateur/low-level traffickers who deal in various criminal activities and are mainly hired ad hoc and not on a permanent basis:
 - Persons who recruit and transport victims.
 - Guides and crew members responsible for the transfer of migrants.
 - Persons who rent their own flats or houses as temporary accommodation for migrants, etc.

Arrangers/investors are rarely arrested and punished, mid-level managers slightly more often, while those in the lowest positions are the most exposed to arrests and punishments. Bearing in mind that there is no contract, order is maintained among ‘employees’ by the use of threats, intimidation and violence. The functioning of the criminal enterprise, i.e. the entire business, is also secured from external threat by the use of violence and deterrence against witnesses and victims, as well as the corruption of state officials (Schloenhardt 1999; Scheinost 2000).

8.2.3 Who are the Victims and Traffickers Known to Crime Control Agencies in CEE and How Effective are Current Anti-Trafficking Policies?

The number of victims who are known to the authorities and non-governmental victim support organisations varies from country to country, but on average it has been and still is quite low, in spite of all the efforts made so far for their identification and assistance.

Among the countries under discussion, the smallest number of victims in 2009 was identified in Macedonia—7, and the biggest in Romania—780. In the majority of countries, less than 100 victims were identified, while the number of identified victims was above 300 in only one country (U.S. Department of State 2010). The numbers of convicted traffickers were also on average quite low, and the countries with the largest and smallest numbers of identified victims are also the countries with the largest and smallest numbers of convicted traffickers. This may suggest two poles of effectiveness in anti-trafficking measures in Central and East European transition countries.

The number of convicted traffickers in 2009 varied from 0 in Macedonia and 183 in Romania. In most of the selected CEE countries the number of convicted traffickers was below 50, while only in one country, Romania, it was above 100. In the majority of countries there was an increase in the number of convicted

traffickers in 2009, as compared to 2008, while in several countries the number of convicted traffickers decreased. The decrease took place in Bosnia–Herzegovina, Croatia, Macedonia, Slovenia and Hungary. The available data suggest that convictions for sex trafficking predominated in the 2009 figures while convictions for trafficking for labour exploitation were much rarer—amounting to 3 out of 83 in Bulgaria and 2 out of 6 in Croatia.

The data seem to reveal both similarities and differences in the criminal policies in different countries. The principal similarity is the fact that more lenient sanctions (short imprisonment sentences, suspended sentences and fines) still constitute a large part of sanctions, while imprisonment for longer than 5 years is rare in the majority of countries. In Bosnia and Herzegovina, for example, only trafficking cases involving organised criminal networks have received high sentences. Other cases display wide variations in the length of sentences, even when there is comparability in the nature and gravity of the offences (OSCE 2009). However, Moldova and Romania seem to be the exceptions, since a considerable number of traffickers were sentenced to imprisonment for more than 5 years (43 out of 65 in Moldova, and 54 out of 183 in Romania).

In some countries, such as the Czech Republic, there is a trend towards a decrease in prison sentences for traffickers, while in other countries there is an increase in imprisonment, following the general pattern of a stronger policy against traffickers created mostly through decisions in the appeal courts. Quite the opposite situation exists in Kosovo, where a large majority of traffickers sentenced to imprisonment by first instance courts remained free on appeal (U.S. Department of State 2010).

In the majority of countries complicity from police and other state authorities have been discovered. In some countries it leads to arrests, but not to convictions in all. For example, in Bulgaria two government officials were convicted in 2009. In Montenegro, three policemen working as guards in night bars were arrested in 2010 for their suspected involvement in the forced prostitution of girls. They were charged later with abuse of authority. In Bosnia–Herzegovina in 2010 the government arrested 16 suspects in official positions, including the Deputy Mayor of Srebrenica, local religious officials, school officials and police officers, for their alleged involvement in the trafficking and forced prostitution of a Roma girl. In Serbia, a deputy district prosecutor and two police officers convicted for public abuse of office and trafficking received suspended sentences and 3 years' probation. The prosecutor had sexually exploited some of the victims (U.S. Department of State 2010; Mijalkovic et al. 2011).

Apart from the direct involvement of state officials in the trafficking, there are also indications of significant trafficking-related corruption. Predictably, it seems that such corruption seriously impairs the effects of legal reforms and other anti-trafficking efforts in transition countries (U.S. Department of State 2010).

8.3 Human Trafficking in Serbia

Long before transition, the geographical position of Serbia made its territory an important transit zone for various types of illegal trade. However, it was only in the 1990s that it started to face trafficking in human beings as well. At the beginning of the decade, Serbia was mostly a transit and, on the whole, temporary destination for women from other East European countries. However, later on it increasingly became a country of origin as well, with trafficking in children and men compounding the existing trafficking of women.

The fact that some very important routes for trafficking people pass through its territory, connecting Southern and Eastern Europe, as well as the Middle and Far East and northern parts of Africa with the Western world, poses practical, but also conceptual and methodological problems in studying the situation in Serbia.

On one side, there is a high expectation among the Serbian police and judiciary that traffickers and agents of organized crime can be prevented from entering Western Europe and smuggling illegal migrants/victims of trafficking. On the other side, when such people are detained in Serbia it is not so easy to determine what the intention of traffickers are: are they transporting people for exploitation or are they only transferring illegal migrants across Serbian borders. This creates the difficulty of identifying exactly when human trafficking is taking place and when Serbia is being used as a transit country. This difficulty is important, since it can lead to the legal provisions for smuggling migrants being wrongly applied to human trafficking offences. This problem was later partly overcome by introducing a separate offence of smuggling people into the Serbian Criminal Code (2005), for which the same sanctions are prescribed as for human trafficking.

However, the factual problem still exists for researchers and policy-makers trying to establish the scope of both kinds of crime. Since the cases where no evidence exists to prove human trafficking has taken place, are treated as cases of smuggling human beings, the judicial statistics cannot be trusted in that regard. This, together with poor statistics from the state and victim services, leads to a lack of reliable data about human traffickers and their victims in Serbia. These gaps are being partly filled by academic research which, compared with other countries in Central and Eastern Europe, is quite developed in relation to this type of crime. For this reason in analysing the situation in Serbia, I shall rely mainly on academic research and only partly on other data as and when required.

8.3.1 Characteristics of Human Trafficking in Serbia

As mentioned above, Serbia is a transit country, but also a destination and increasingly an origin for victims of different forms of human trafficking: trafficking for sexual and labour exploitation, begging/delinquency, marriage and adoption. Female victims are mostly trafficked for sexual exploitation, domestic

work and marriage, while male victims are trafficked primarily for labour exploitation, including begging and delinquency (Copic 2009). Both male and female children are trafficked for begging.

Trafficking for sexual exploitation is nowadays less visible than before, and it tends to be disguised behind legal activities. Recently, there has been an increase in the trafficking of people (especially of men) with legal documents, and, as in other Balkan countries, of an internal and regional trafficking in women and children. This latter particularly relates to trafficking in children, who are mostly transported to Croatia, Macedonia or Montenegro (Copic 2009). In cases of trafficking in men, however, the most dominant kind is transnational trafficking that entails crossing one or more state borders. Smuggling and trafficking channels are mostly the same and basically follow migration flows from Asia, and from or through the Balkans to Western Europe. The routes for trafficking in men from Serbia go towards Southern Europe (for example, Malta), Eastern Europe, i.e. Russia and the Middle East. The United Arab Emirates and Saudi Arabia are frequent destinations in the Middle East.

In the cases of foreign victims, their countries of origin tend to be China, Turkey, Albania, Afghanistan, Pakistan, Kazakhstan, Moldova, Romania, India, Bangladesh and Macedonia. Research carried out by the Victimology Society of Serbia identified two main directions for the movement of trafficked persons. The first goes from or across Moldova and Romania towards Serbia, while the other extends from the South towards the North or West, i.e. from the direction of Kosovo, across the territory of Serbia, towards Hungary or the Republic of Srpska and Croatia, and then further towards Western Europe.

Since 2006 and 2007 there has been a decrease in trafficking victims from the direction of Romania and Bulgaria, which earlier was one of the main routes for trafficking in women in the region (Nikolić-Ristanović et al. 2004). The key factor explaining this is the entrance of Bulgaria and Romania into the EU. This can also partly be explained by the strengthening of the border control by the Bulgarian and Romanian authorities, which Europe mandates. Related to that is the fact that this change made the trafficking routes from Serbia to Hungary far busier, since it enables direct entrance into the EU and, thus, makes further movement towards the West easier. Another change of trafficking route is connected to the socio-political situation in Kosovo. At the end of the 1990s and the beginning of 2000s, Kosovo was an important destination for trafficking in persons, especially women, while nowadays a rather reverse direction of movement is noticed—from the direction of Kosovo and Metohija towards the North, which is becoming a more dominant direction for almost all forms of migratory movement, including human traffic (Copic 2009).

8.3.2 Human Traffickers in Serbia

Available data about traffickers in Serbia are based on three types of information: information from surveys on trafficking in Serbia, collected through interviews

with persons who were in some way in contact with victims, including police officers, prosecutors, social workers, judges and journalists; data from official statistics on reported, prosecuted and convicted persons; and data from research based on analyses of criminal court verdicts (Nikolic-Ristanovic 2004, 2009a, b, 2011). These data will be presented and analysed in this section.

The first survey on human trafficking in Serbia (in women, children and men), conducted by the Victimology Society of Serbia in 2003 (Nikolic-Ristanovic et al. 2004), showed that traffickers are mostly men aged between 30 and 50 years. Also, according to the findings of this survey, those who buy, transport and sell victims are mostly persons younger than 25 years of age who already have a criminal record. Many traffickers were women (especially in cases of trafficking in women), mostly as recruiters, but also as assistants, business and border transport organisers, or as those in charge of the technical part of the operation (for example providing forged documents and finding accommodation). In addition, married couples (men and women) appeared together in the role of recruiters, especially in cases of trafficking women. Research carried out by Surtees reached similar results: recruiters for labour and begging in Serbia were men as well as women (Surtees 2005).

The same Victimology Society survey also showed that most traffickers were citizens of the *State Union of Serbia and Montenegro*,³ but that foreign citizens were also involved (especially for recruiting victims in their countries of origin and transporting them through Serbia) (Nikolic-Ristanovic 2004). The survey on male trafficking in Serbia, also carried out by Victimology Society of Serbia, obtained data on a total of about 83 individuals involved in 52 cases, who, in the period 2003–2007, trafficked adult or underage males. The findings of this survey showed that about 90% of traffickers were male. They were aged mostly between 25 and 40, and mostly had families, i.e. they were married, with children. The majority of traffickers were Serbian citizens, but a smaller number of foreigners, who were recognised as male traffickers and who came from Germany, Jordan, Pakistan, Macedonia, Bulgaria, Malta and Montenegro, were also identified. Traffickers were in general individuals of a lower educational level and their professional backgrounds reflected this: they were predominantly agriculturists, taxi drivers, manual workers, caterers and vehicle mechanics (Copic 2009).

According to the same survey, in cases of trafficking boys, women appear somewhat more frequently as perpetrators than in cases of adult men trafficking (Copic 2009). Similarly, another study showed that among traffickers in minors (male and female) a key role is played by members of the victim's immediate or extended family, while in the cases of trafficking in adult men, the role of the traffickers is either taken generally by individuals unknown to the victims or those with whom the victims had made social contacts as acquaintances and friends (Mijalkovic 2009).

³ This was the name of the country at that time. In 2006 the state was divided into two countries, Serbia and Montenegro.

In the cases of trafficking in boys, the perpetrators are often mothers, grandmothers and other female relatives. But they rarely trafficked only boys. More often their victims are underage persons of both sexes. Among the traffickers in boys, individuals of a Roma background are most dominant, while, among traffickers in adult males, a considerable percentage is taken up by individuals of Albanian nationality from the territory of Kosovo and Metohija or from the south of Serbia (Copic 2009).

The traffickers in boys mostly played the role of exploiters and those selling or surrendering the victim to others for further exploitation. However, in cases of boys being trafficked in groups with adult men, the role of the traffickers most often included the accepting and transporting of the victims, and then their accommodation and transfer across the state border. Less often it included recruitment, and rarely direct exploitation. Not surprisingly, the majority of those who identified as traffickers in men or groups of adult and underage males were taxi drivers or drivers, often hired ad hoc (Copic 2009).

The traffickers committed their crimes either individually (as solo and ad hoc perpetrators or within small groups often with close family ties) or within organised crime groups (either loosely or highly organised networks). Most often several individuals were involved as perpetrators in trafficking in adult and/or underage male. Most frequently two individuals were involved (in 16 cases or 57.1%), and less often a larger number of perpetrators. However, none of the identified cases of male trafficking was treated by state agencies as being part of organised crime. Consequently, these cases did not fall under the jurisdiction of the Special Department of the District Court in Belgrade for organised crime, even in spite of the fact that in some cases the court's verdicts stated that the accused and convicted parties committed their offence within a criminal organisation (Copic 2009).

8.3.3 Factors Influencing the Criminal Behaviour of Traffickers

The survey on male trafficking in Serbia also did much to establish profiles for mid- and low-level traffickers in Serbia and their roles in criminal enterprise.⁴ The information was obtained from interviews with 12 imprisoned (male and female) traffickers. At lower organisational levels the men were recruiters, drivers, guides or were employed to rent houses or flats for migrants to stay in temporarily during transfer. The women meanwhile were mostly involved in recruitment. At the middle level, men performed the role of recruitment and transfer organisers, while both men and women were involved at a middle level in exploiting victims as 'nightclub' (i.e. brothel) owners (Nikolic-Ristanovic 2009b).

⁴ Unfortunately, those from the highest level were not in prison, i.e. available for interview, at the time the survey was conducted.

The survey showed that traffickers performing tasks at the lowest level in the criminal enterprise commit trafficking as part of a continuing search for employment in the informal market. Those who operate at higher levels do so as part of maintaining a stable and diversified criminal career. People hired in human trafficking at the lowest levels often face instability in employment, ‘doing everything and anything’, and have suffered economic hardship immediately prior to taking a criminal job in the sphere of human trafficking. They tended to accept ad hoc jobs offered by people they knew, or used to have either part-time or even full-time legal jobs while also being involved in criminal activity. Some traffickers working at a low level do not directly see any profit from their actions, as one sees with women who are forced to hand over any money gained to their partner.⁵

According to the answers of convicted traffickers, none of the low-level workers had a long-term arrangement. The men would generally get offers from mid-level ‘managers’ whom they knew as friends, acquaintances and/or legal or semi-legal employers. All women were involved in human trafficking through their partners or husbands, who played similar (low-level) or more important (mid-level) roles in the trafficking network.

A hallmark which the interviewed male traffickers had in common was that they had all been involved in the war in the territory of the former Yugoslavia (as soldiers or as policemen). The male interviewees who had been engaged at the lowest level had physical and mental health problems as a direct consequence of the war, while this was not the case with those working at the middle-ranking level.

Men involved in trafficking at the lowest level generally became involved in the trade as a result of the Yugoslav war in the following ways, either:

- During the war, upon being wounded and becoming refugee (and, for example, becoming involved in selling smuggled commodities).
- After the war—upon facing economic problems related to the war and refuge (for example, beginning work ‘off the books’).

Traffickers working at the lowest level do not make any profit (for example: women do not get any money or are forced to hand it over to their partner) or they make very little money (on average 100–300 EUR).

The impact of structural victimisation and the informal economy on dealing with trafficking in people is shown in its most drastic form in the case of children who are hired to guide illegal migrants, sometimes being of their own age, across the border between Serbia (Kosovo) and Albania for symbolic amounts of money (e.g. 20 EUR).

At entirely the opposite extreme, traffickers working at the higher levels experienced the wartime and post-war circumstances as an occasion for developing their criminal activities and for quick enrichment—for fulfilling their

⁵ This part of the chapter is largely based on my analyses in Nikolić-Ristanović (2009b). For more detailed analyses see also Nikolić-Ristanović (2009a).

American dream. They have been involved in various forms of illegal trade, mostly drug trafficking and human trafficking/smuggling, for a long time and on a permanent basis—as a stable and principal job. They tended to become involved in informal/illegal activity at the beginning of the war (in illegal trade in war-affected territories, for example opening bars in Kosovo after KFOR arrived)—upon coming from abroad, losing jobs in the police or shifting into a new kind of trade that better suited the changed social circumstances. Their main motive for getting involved in human trafficking was a bigger income. Some of the human smugglers in Serbia had luxurious houses and otherwise were very wealthy.

It is not unusual for some of the mid-level traffickers to have been criminals who, during the 1990s, returned to Serbia from emigration to Western Europe, either voluntarily or upon being deported because of their criminal records. This is when they entered the war and began exploiting and expanding the various illegal market activities in the territory of the former Yugoslavia. Some started first with drug trafficking, and then shifted later to trafficking in people.⁶

Although rare, there are also women who have higher positions in the trafficking business, especially as the managers ('madams') or owners of brothels and night bars. In these cases, the war also had an impact on women shifting to earn money in this way. One such woman, convicted for trafficking women for sexual exploitation in her nightclub/brothel in Serbia, explained that she started smuggling alcohol during the war in Croatia, and opened a nightclub in Kosovo immediately after arrival of KFOR. She regards all she ever did as trade, nothing else than what she was trained to do in school. She used to work together with her father, whom she described as a 'good merchant.' She also said that she had made big profits, and acquired a lot of real estate and a stable financial situation.

The Serbian survey also suggests that those who were low-level traffickers during the war advanced and now have managerial or higher level positions, and they themselves recruit young people, especially drivers, who are in a bad financial situation. One convicted trafficker said that when he first became involved he would work for other employers as a driver and by providing space in his flat, but later on he started making deals directly with the Croatian and Albanian sides of the operation.

With low-level female traffickers one sees that gender marginalization, violence from partners and the circumstances of transition were more significant factors in their criminalisation. Women began working in the illegal economy upon being coerced by their partners, but in some cases, their first encounter with the informal economy resulted from the process of transition and the opening of borders in Eastern Europe (i.e. leading to more smuggling of commodities). The partners who took or forced them into trafficking had either an equal-ranking or a higher position (such men were usually recruiters or coordinators of the recruiter networks).

Traffickers continued to look for jobs in informal and criminal economy in the post-war period. On the one hand, this could be explained by the loss of distinction

⁶ For similar see Logonder (2008).

between licit and illicit behaviour and the habit they had acquired of getting work in the criminal economy. On the other hand, the wider social context in Serbia also had its impact through the ongoing scarcity of legal jobs and income, and the slow recovery of ruined institutions and the trust the Serbian public placed in them (Nikolić-Ristanović 2008).

Interviews carried out during the survey on trafficking in men in Serbia suggested firm patterns in the transport of migrants through Serbian territory, especially in Albanians from Kosovo and Albania, and money being made in this way. The survey strongly indicates that human trafficking is a very important source of labour and income for a large number of people, especially for those living in areas near the borders. In addition, Serbia is obviously recognised as a territory where illegal activities are facilitated by insufficient police control and widespread corruption.

The same survey also identified differences in how low- and mid-level traffickers perceive their own criminal activity. Low-level traffickers did not consider their activity to be criminal. They instead thought that they 'were only doing their job'; 'what was normal', i.e. that they 'were helping other people', which suggests that the different neutralization techniques they used to rationalize their actions were much the same as the widespread acceptance of unlawful behaviour as normative (i.e. the classic feature of crime being normalized in a disorganized society). Accordingly, and as a result of their overall socio-economic position, they tend to blame their victims and/or deny their status as victims at all, while seeing themselves as the true victims (mostly of poor economic conditions or misconception) rather than as criminals. In contrast, traffickers from higher levels see themselves as criminals who cannot resist the temptation of using an illegal opportunity to earn money. They had no problem acknowledging that they had earned a lot of money and felt secure financially for the future. Moreover, they devoted more of their time with the interviewers to describing how they had tried avoiding arrest than to rationalising their behaviour (Nikolic-Ristanovic 2009c).

8.3.4 How Risky is it, Being a Human Trafficker in Serbia?

Human trafficking was made a criminal offence in Serbia in 2003. In 2005, in addition to improving the regulation of this particular offence, a new offence of trafficking in children for adoption was put on the statute books.⁷

The criminal law against human trafficking in Article 388 of the Serbian Criminal code (2005) describes this offence in terms of a person committing the following:

Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, their relationship with a dependent, the difficult circumstances of another, retaining

⁷ This part of the chapter is based on the analysis presented in Nikolic-Ristanovic (2011).

identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in selling, hides or holds another person with intent to exploit the said person's labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts.

The prescribed punishment for this basic form of human trafficking is imprisonment from 3 to 12 years. For more serious forms stricter punishments are prescribed, such as: a minimum of 5 years for trafficking of minor persons, if the crime is committed on a regular basis or in a group, from 5 to 15 years if serious bodily injury is inflicted and at least 10 years if the consequence is death of the victim, or if the offence is committed by an organised group. In 2009, punishment was also prescribed for the clients of trafficked victims: from 6 months to 5 years if the victim is an adult, and from 1 to 8 years, if the victim is a minor.

Since 2004 (1 year after human trafficking was made a specific criminal offence) the Serbian Statistics Bureau has included data on reported, accused and convicted (minor and adult) perpetrators of human trafficking in its regular criminal justice statistics. These data may however be a better indicator of how well the Serbian criminal justice system functions than of the phenomenon of human trafficking itself.

Analysis of 16 final court verdicts issued by criminal courts from northern, southern and central Serbia offer some additional information about convicted traffickers. These verdicts were given on 45 convicted traffickers, sentenced in the period 2004–2009, who make 53% of all convicted traffickers in this period. The verdicts were collected by the *Victimology Society of Serbia* in 2009 and 2010 in the context of several research projects (Nikolic-Ristanovic 2009a; Nikolic-Ristanovic and Copic 2010, 2011).

For this reason the following section will draw on the Serbian Statistics Bureau's data, as well as data from criminal verdicts, in analysing the criminal policy against traffickers. In addition, however, I will also look at official statistics and the information yielded about traffickers by criminal verdicts, to supplement the picture given by the research findings presented above.

8.3.5 Reported, Accused and Convicted Traffickers in Serbia in the Period 2004–2009

Between 2004 and 2009 the overall number of persons reported for trafficking in Serbia was 367, out of which 364 were adults and 3 were minors. However, the number of accused and convicted persons is much lower. A total of 96 persons were accused (95 adults and one minor), while 84 were convicted (83 adults and one minor). Since human trafficking was made a criminal offence, the number of persons for whom police reports are referred to the prosecutors had a tendency to decrease rather than increase in Serbia. However, on the other hand, the number of accused, and particularly the number of those convicted, tended to increase.

The data suggest two patterns. On one side, the police display a diminishing efficiency in collecting evidence. On the other side, data on the number of accused and convicted traffickers suggest an increase in the efficiency of prosecutors and judges, i.e. in successful prosecutions of trafficking cases.

Most of the persons reported, prosecuted and convicted are male adults, although females and minors also figure in the statistics.

The number of reported, prosecuted and convicted minors in this period was very small. One minor was reported in 2007 for trafficking children for adoption, and two in 2009 for human trafficking. Only one of those minors was prosecuted and convicted, the one indicted for trafficking in children for adoption. The percentage of convicted minors is much lower in Serbia than in some surrounding countries such as Romania (Vlad 2006).

The number of reported, prosecuted and convicted women is quite significant. For example, women made up 16 out of 71 of those reported in 2007, and 12 out of 39 in 2008. This means that women comprised between one-third and one quarter of those reported for trafficking. A similar gender ratio exists when those prosecuted and convicted for human trafficking are considered. However, it is interesting that the number of men and women accused and convicted for trafficking in children for adoption is almost equal (three women and four men). These figures may suggest that women are more often prosecuted successfully for trafficking in children for adoption than for human trafficking.

Most of the convicted traffickers were sentenced to imprisonment: 58 or 69%, while 26 (31%) were given suspended sentence. Most of the imprisonment sentences were of short duration, i.e. less than 3 years. The longest sentence imposed in this period, according to statistical data, was between 3 and 5 years.

The analysis of court verdicts was mainly focused on the socio-demographic characteristics of traffickers, the nature of the criminal offence the traffickers were involved in and the penalties incurred, as well as on some basic information about the victims.

As expected, the court verdict data also suggest that most of the convicted human traffickers in Serbia are adult males, although the proportion of women involved is also significant. Convicted women seem to be involved in trafficking in women and children more than men, with their chances of being prosecuted being especially high for trafficking in children. The Roma ethnic group is represented with the highest percentage among convicted traffickers (26.7%). The educational level of traffickers was quite low. Not surprisingly, the percentage of unemployed traffickers was very high (46.7%).

No one from the verdict sample had previously been convicted for human trafficking. Also, most of them did not have previous convictions for other criminal offences (62.2%). However, about a third of them were convicted, most of whom did have several earlier convictions (76.4%). Most of the traffickers had been convicted previously for property crimes, while there are also a few who were convicted for violent crimes, such as rape (1) and causing bodily injury (4). Because of the short time since human trafficking was made a criminal offence and

the small number of traffickers so far convicted, a conclusive interpretation of these data is difficult.

Convicted traffickers tend to belong to the middle and lower ranks of the business, with those from the lowest level being predominant. The analysis of court verdicts confirmed the findings of previous surveys which suggest that those who are prosecuted are the traffickers involved in recruitment and transport, while the organisers of the overall criminal business usually escape prosecution. In most of the identified cases trafficking aimed at sexual exploitation, while begging and labour exploitation were less frequent. In two cases traffickers aimed only to sell their victims and get money in exchange. Overall, then, in terms of the chances of being discovered and prosecuted, trafficking in Serbia is disproportionately much riskier for those who derive small material benefit from the business yet play a central role in the actual trafficking, than for those who earn the biggest profit by and are organisers rather than 'workers'.

Although data from court verdicts seem to tell us more about the functioning of criminal justice systems than about the actual situation, it is reasonable to conclude that in reality many more persons are involved as simple 'workers' than as 'investors' and 'managers' in the human trafficking business. The picture given by our findings on sanctions also bears out this conclusion. Most sanctions are short-term prison sentences and suspended sentences. Longer prison sentences are rarely pronounced and they are mainly reserved for mid- and high-level traffickers, or those with long criminal careers.

Most of the trafficking for which traffickers were convicted was internal (53.3%), meaning that all phases of the operation took place within the borders of Serbia. A total of 46.7% of traffickers were sentenced for operating transnationally, out of which 16.6% were working within the former Yugoslavia. There were no traffickers sentenced for both internal and transnational trafficking. The available data also suggest a shift of Serbian traffickers from transnational to internal and regional trafficking because of the lower risks evidently involved.

Traffickers in Serbia are mostly involved in trafficking more than one victim, most of whom are children. However, the data also suggest that these are the traffickers who are most prominent among those convicted, i.e. that the number of victims and their age are the key factors influencing the successful prosecution of trafficking cases, i.e. that in these cases it is easier to prove that trafficking was committed. Similar conclusions may be drawn about the type of trafficking in relation to the form of exploitation intended for the victim, where trafficking for sexual exploitation is most frequent, while awareness of and the discovery rate for trafficking related to begging and labour exploitation is still much lower.

Although they are rarely treated legally as having operated within an organised crime network, in fact most traffickers have served as part of a large organised group whose members had determined roles. As Vlad commented on the similar situation in Romania, it is possible that the problem lies in proving that the organised group exists (Vlad 2006).

Most of the convicted traffickers in the verdicts sample were sentenced to imprisonment (95.6%). The rest received suspended sentences. Most traffickers

were sentenced to 2–4 years (40%), while 26.7% were sentenced to 1–2 years of imprisonment. A total of 13.4% was sentenced to up to 1 year in prison, out of which 66.6% was actually in prison for less than 6 months. Although most of the traffickers were sentenced to imprisonment around or below the legal minimum, the sanctions prescribed for traffickers may be considered rather tough, bearing in mind a very lenient sentencing policy in Serbia's courts, where suspended sentences prevail. Also, bearing in mind that more than half of the sentenced traffickers are those who were involved in recruiting and transporting victims, i.e. those working at a low level, it seems that court policy is mostly proportionate to the role traffickers have played in the overall criminal activity.

However, there are also cases where traffickers of the lowest ranks have been given similar or equal sentences to offenders working at much higher levels and who made a bigger profit. The words of a woman who was convicted for working for her husband as a recruiter of girls for trafficking may be a good illustration of such cases incurring disproportionate sentences: 'He got 6 years, and me 4. For him it is too little, for me it is too much' (Nikolic-Ristanovic 2009c).

8.4 Conclusion

The available data on human trafficking in Central and Eastern Europe suggest that this form of crime is still quite widespread in the region. However, Central and Eastern European countries are no longer only countries of origin and transit for trafficked persons, but have also increasingly become countries of destination, i.e. for the final exploitation of victims. Trafficking in human beings in its various forms is present in these countries and it mostly follows migratory routes, going from countries which have more problems towards those which (seem to) offer more opportunities.

The structural victimisation brought by transition, ethnic conflicts and, in the case of women, gender inequality and gender-based violence, has had a strong impact on creating a vast supply of potential victims, on one hand, and also criminals on the other. The findings we have so far suggest the existence of two groups of traffickers, one taking the profit and the other who engage in trafficking in a struggle for basic survival. In connection to that is the distinction between traffickers who have criminal careers and/or are members of organised groups, and those who engage in trafficking ad hoc, as individuals or otherwise than in regular criminal activity.

However, traffickers without a previous criminal record seem to predominate. This may suggest the attractiveness of 'organised crime' as a labour market for people who have few legal alternatives (Nikolic-Ristanovic 2009b). In addition, the largest portion of convicted traffickers consists of those who act as recruiters and transporters—those working at the lowest level of the overall operation. The small part of this number with convictions is made up of middle-ranking traffickers, i.e. working at a managerial level, with those from the highest level being

convicted only exceptionally. In addition, the high state officials, who are either directly involved in trafficking or facilitate it through trafficking-related corruption, are also rarely convicted. Corruption, weak institutions and the absence of the rule of law seem to be the most important barriers to anti-trafficking measures being implemented more efficiently. Yet in this respect, the law enforcement situation in Central and Eastern Europe does not differ significantly from that in evidence in other countries with regard not only to human trafficking (Kelly 2002, p. 45; Markovska and Moor 2008), but also other illegal markets such as the drug trade.⁸

In other words, those who are most responsible for these crimes and those who take most of the profit remain beyond the reach of the law. On the other side, those with the least power and those who are most marginalized are at the same time those who are the most prone to arrest, prosecution and conviction. However, not only policy regarding the arrest of traffickers but also the sentences passed upon them do not always reflect the position and share of power and profit they hold within criminal enterprise. Thus, crime control mostly reproduces the existing power structures one sees both within transition countries and globally.

However, it is obvious that effective crime control needs to take both repressive and preventive measures into consideration, bearing in mind in particular the above-mentioned different groups of traffickers and the way they mirror existing social structures. For those who have stable criminal careers and/or greater criminal responsibility and profit, or misuse their high official positions, the criminal justice measures must be implemented more energetically and effectively. But, the current criminal law approach to human trafficking must be reconsidered in relation to those for whom trafficking figures largely in their strategies for basic economic survival. While an adequate criminal policy should be oriented primarily toward high- and mid- level offenders, for low- level offenders social welfare and restorative justice measures may be more appropriate. In addition, long-term measures, such as the development in democratic institutions, the concept of a rule of law and, especially, measures of social policy, based on social solidarity, empowering support and social inclusion, may play vital parts in prevention. Such policy must be geared towards increasing the number of legitimate jobs and better access to such jobs for marginalized groups in general, as well as specific programs to provide employment for the said groups. That is how a decrease in the sources of both victims and perpetrators alike could be influenced. In relation to this there is also the need to raise awareness of what trafficking really is among

⁸ Ruggiero, for example, stresses that the social panic connected to the international war against drugs in the 1980s led to an increase in the incarceration rate of users and small dealers, who became part of a 'carceral social zone' and similarly with respect to other marginalised, poor and underemployed sections of society, the economic activities of which both link and blur legality and illegality. 'Prison discipline lowered their social expectations, turning the majority of them into routine criminal workers', with drug users being treated as a 'criminal reserve army' in much the same way as the poor of the era of forced industrialisation were redefined as the 'reserve army of labour' (Ruggiero 2001, p. 24).

those belonging to the vulnerable population groups, not just as to the risks of becoming a victim but also that taking jobs in the illegal economy can make them part of a criminal group and lead to harmful consequences for other people.

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Chapter 9

Juvenile Delinquency and Juvenile Justice in Transition

Hajrija Sijerčić-Čolić

Abstract Parallel to the numerous discussions in connection with adult criminality (especially with respect to organised crime, terrorism, corruption and trafficking) a debate has also been in progress on juvenile delinquency. The changes seen in juvenile delinquency over the recent decades have put transitional countries under enormous pressure. The aim of this chapter is to analyse juvenile delinquency in CEE transition societies from a number of perspectives. It deals with complex social changes which have affected CEE countries and left their trace on juvenile delinquency—in its causes, consequences and trends. These questions are discussed with particular reference to the context of Bosnia and Herzegovina and compared with trends in other transitional countries included in this book. Another purpose of this chapter is to discuss developments in juvenile justice in dealing with juvenile delinquents. This chapter touches on various aspects of juvenile justice and outlines its ongoing development in transitional countries and especially in Bosnia and Herzegovina.

9.1 Introduction

Conflicting assessments of changes in juvenile delinquency over the recent decades in countries in transition (and other European countries) have been the subject of much controversy. Some opinions describe the situation as being perennially desperate, and characterise juvenile delinquency above all as ‘a dangerous phenomenon’, while, according to others, trends in juvenile delinquency are

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(and were) not so dramatic and when compared to the crimes committed by adults, the results were roughly consistent with those from previous periods (Cartuyvels and Bailleau 2010, p. 263). Furthermore, while some research depicts juvenile delinquency as becoming ever more violent (Šelih 2000, p. 222),¹ other work takes the perceived increase of juvenile violence as a consequence of the increasing attention given to cases of anti-social behaviour in the media. Despite the marked increase in the number of juvenile offenders and the number of offences committed by juveniles, some authors believe that while there is no justification for trivialising the situation, there is no cause for panic (Pies and Schrappner 2003).

Due to its complexity as a social problem, changes in juvenile delinquency are always associated with historical, cultural, political, economic or legal contexts and overall patterns of social development. In this connection, the key question is not whether a juvenile has committed an offence during his/her adolescence, but what was the reaction of society to that offence. Studies have argued that delinquent behaviour among children and juveniles is a part of the process of growing up, having shown that two-thirds of normal young people commit at least one petty offence and more than half have done so in more recent years (Brinc 2000, p. 118; Junger-Tas 1994, p. 379).

9.2 Juvenile Delinquency and Juvenile Justice in Transition Countries

Juvenile delinquency and its characteristics and trends occupy very important segments of juvenile justice policy in all transition countries. The following section brings together data on juvenile delinquency from official statistics and several research studies carried out in transitional countries represented in this research project.

9.2.1 *Juvenile Delinquency: Characteristics and Trends*

To offer some information about the state of juvenile delinquency in the reviewed countries we shall refer to data on juvenile criminal offences registered by state authorities (e.g. police, prosecutor's offices and courts, and offices of statistics).

¹ With respect to a number of changes in extreme cases of juvenile delinquency in recent decades, two processes are particularly perceptible and cause for concern: on one hand, there is the fact that there is nothing new about serious juvenile crime. Juveniles (often "junior juveniles" and even children) do and have always committed extremely serious criminal offences (e.g. cruel murders). Yet on the other hand, it is equally undeniable that such violent juvenile offences are and have been expanding in scope and in intensity. Insofar as broader elements and trends are concerned, juvenile delinquency still stubbornly conforms to patterns that emerged in the second-half of the last century (Šelih 2000, pp. 221–224).

In speaking of juvenile delinquency in Bosnia and Herzegovina, it is important to point out in advance that statistics are limited in terms of the period they cover (we only have comprehensive figures for recent years) and also the territory (statistics for recent years apply to the whole of Bosnia and Herzegovina, while those for previous periods are partial and applicable to just one part of the country—i.e. to an urban area in one or other entities of the current state). Since a more detailed analysis of statistics and research on juvenile delinquency in Bosnia and Herzegovina will be given later (in [Sect. 3.1](#)), let us begin here by presenting a broader overview in order to compare some basic trends with other countries in transition (see [Table 9.1](#)). The available information about juvenile delinquency for the period 1992–2005 is limited, particularly for the years 1992–1995 (i.e. the period of armed conflict). On basis of the information we have, in the years after the war, trends in juvenile delinquency oscillated in periods of increase and decrease. Statistics on juvenile delinquency are more reliable for the last 5-year period, which indicates a gradual decrease in the number of reported juvenile delinquents. In Bosnia and Herzegovina juvenile law is not applicable to children, who at the time of the criminal offence were not 14 years of age.

Trends in juvenile delinquency in Croatia in the past 20 years can be viewed on the basis of the number of reported juveniles suspected of criminal offences (also in Croatia juvenile law is not applied to children who are less than 14 at the time they committed an offence). An increase in juvenile delinquency occurred during roughly the 10 years following the war (Cajner Mraović and Stamatel 2000, pp. 515–517; Asquith 1998, p. 39). In 1992 and 1993 there was a sudden increase in juvenile delinquency (the number of reported juvenile perpetrators of criminal offences was around 2,000)² and the trend towards an increase persisted until 2003 (when the number of reported juveniles was 2,909). The number of juveniles reported to have committed criminal offences has been dropping ever since. Thus, data on reported juveniles show that the absolute number has been declining, with 2,731 reported in 2004, although with a slight increase in 2006–2830 (for more details see Bojanić 2010, pp. 190–195).

Data on the trends in registered juvenile delinquency in the Czech Republic (where the age of criminal responsibility is 15) provides an insight into the annual number of juveniles reported for committing criminal offences. In the period between 1990 and 1993 the number of reported juveniles grew and peaked in 1996 when police statistics registered 23,000 juvenile perpetrators of criminal offences. This number was twice as high in comparison to 1990 when about 11,500 juvenile delinquents were registered. Yet 1997 already saw a decline in juvenile delinquency and the same trend in evidence at the end of the 1980s again prevailed by 2003 (for more details see Valkova and Hulmakova 2010, pp. 258–265).

If we take into account the statistics on trends in juvenile delinquency in Hungary, the figures show that the rate of registered offences committed by juveniles (the age of criminal responsibility is 14) was increasing from 1980

² In 1990 the number of reported juvenile perpetrators of criminal offences stood at around 1,400 and in 1991 at 1,100. For more details see Cajner Mraović and Stamatel 2000, pp. 514–517.

Table 9.1 Trends in reported juvenile delinquency

States	The last 10 years of the twentieth century (1990–1999)	The first 10 years of the twenty-first century (2000–2009)
Bosnia and Herzegovina	Oscillating levels in the years after the war	An upward trend continuing for 5 years before a gradual but constant decline
Croatia	A sudden and continuous increase	Increase continues then slowly drops away
Czech Republic	A sudden increase in the number of reported juveniles, a period of constant high levels and then a declining trend	Stable declining trend continues in the number of reported juveniles
Hungary	A more or less apparent increase in the number of criminal offences committed by juveniles	A decline in the number of criminal offences committed by juveniles and then a slight increase to persistent high levels
Poland	After an increase in the number of criminal offences committed by juveniles, a gradual decline	A trend of gradual decline, with occasional slight increases
Serbia	An increase in the number of criminal offences committed by juveniles and of reported juveniles followed by a significant downward trend	A downward continuous trend in juvenile delinquency
Slovenia	A moderate increase in the number of reported juveniles and the number of criminal offences committed by juveniles	A decline trend in juvenile delinquency followed by relative stability the volume of juvenile delinquency has been relatively stable

onwards, with a significant rise lasting more or less from 1989 to 1998 (the absolute number of offences committed by juveniles in 1990 was around 40,000; in 1998 it was around 60,000). After that decade, registered offences committed by juveniles declined until 2003 when once again there was a slight increase in juvenile delinquency and in the period of 2004–2006, the number rose steadily to above 40,000. The number of adult offenders also increased in this period (for more details see Varadi-Csema 2010, pp. 674–681).

In Poland (where the age of criminal responsibility is 13), the trends in reported juvenile delinquency can be monitored according to police statistics, which have been available in this country since 1990. The overall number of offences committed by juveniles recorded by the police had been rising in the period 1990–1995 (the number of recorded offences committed by juveniles in 1990 was approximately 60,500, 72,000 in 1993 and 82,500 in 1995).³ After this period no clear

³ The number of juvenile delinquents more than doubled between 1984 and 1994. Namely, the juvenile delinquency rate per 10,000 of the population for the age group 13–16 was 58.6% in 1984 and 78.7% in 1993. See Asquith (1998), p. 39.

trends could be observed and up to 2002 and 2003 the number of juvenile offences dropped back to the 1990s level (the number of recorded offences committed by juveniles in 1999 was around 70,000, in 2002 and 2003 around 63,000). The number of recorded offences committed by juveniles has been rising gradually since 2004 (from 2004 to 2006 it was between 70,000 and 77,500). Although in recent years there has been a change in juvenile delinquency (which is to say, a slight increase in the number of recorded offences committed by juveniles), the overall impression is of a rather stable level of reported juvenile delinquency in Poland (for more information see Stando-Kawecka 2010, pp. 995–1003).

In recent decades, the rate of offences committed by juveniles has fluctuated in Serbia (where juvenile law is not applied to children who were less than 14 when they committed an offence). The dynamics of the offences committed by juveniles in the past 20 years point to a systematic decrease in their absolute numbers in the mid-1990s, while in recent years the proportion of offences committed by juveniles in Serbia's overall crime figures has been on average twice less than what it was in the mid-1990s. This is also indicated by data collected from research and statistics by state authorities (e.g. the police and courts), which recorded an increase in juvenile delinquency from the mid-1980s over the subsequent decade and a decrease in juvenile delinquency after 1995. Researches show that the declining trend is intense and, for example in 1995 the number of criminal offences committed by juveniles was 20,379, while a decade later in 2005 this number was 7,757. Finally, since 2002 the number of criminal offences committed by juveniles has not only been in decline but also stable at around 7,500 criminal offences per year (Simeunović-Patić 2009, pp. 77–101). Similar trends are observable in terms of the number of juvenile offenders. At the beginning of and during the 1990s that number was around 5,000 (in 1993 the number of reported juveniles reached the highest level—at around 7,000 suspects). In the late 1990s that number started to decline and in the following years the number of offenders reported to police stabilised (for more details see Škulić 2010, pp. 1199–1205).

In the recent decades, Slovenia (where the age of criminal responsibility is 14) has not experienced an increase in juvenile delinquency. Reports on juvenile offences and juvenile offenders increased at the beginning of the 1990s (e.g. in 1990 the number of reported offences committed by juveniles was 4,300, and in 1992 it was 6,770) and began falling at the end of the decade (in 1999 the number of recorded offences committed by juveniles was 4,709). Since that time there has been a decreasing trend in offences committed by juveniles, and in 2006 the number of recorded offences committed by juveniles was 2,527. An analysis of the data on juveniles reported to the police shows a similar pattern when it comes to juvenile offenders. Namely, in the early 1990s that number reached a peak (3,443 juveniles were reported in 1992) and then the number of reported juveniles declined (it was 2,937 in 1999). The past decade has also been characterised by a downward tendency, so that in 2006 the number of juveniles reported to police stood at 1,550 suspects (for more details and figures see Filipič 2010, pp. 1265–1268).

Since statistics are not always a reliable indicator of changes and social developments, they do not tell the whole story so far as juvenile delinquency is concerned. In other words, because national systems have their own parameters for measuring juvenile delinquency statistically, we must be very careful in assessing the situation and changing to it in juvenile delinquency from one state to another (Jehle et.al. 2008, pp. 246–247; Cajner Mraović and Stamatel 2000, p. 509). However, we may draw some general conclusions: a dramatic explosion of juvenile delinquency statistics was not found in any of the transition countries, although countries in CEE did see a growth in juvenile delinquency, both in the number of juvenile delinquents and in the number of offences committed by juveniles. The increase in juvenile delinquency rates was concentrated in the 1990s: the principal increase occurred, that is, during turbulent years for the region, amid the experience of complex economic, political, demographic and social changes in these countries. It is also surely reasonable to identify the social changes related to new political and economic systems being established as a strong factor in juveniles becoming involved in delinquent behaviour.⁴ That said, regardless of the reported increase in juvenile delinquency, ‘the numbers still have not reached the levels experienced by some countries in Western Europe’ (Asquith 1998, p. 39). Statistical data does not show an increase in juvenile delinquency. On the contrary, trends in the reported delinquency of juveniles have remained rather stable and in some cases, a decrease has even been noted. Despite this generally stable background, however, in recent years there has been a slight increase in juvenile delinquency in some of the states reviewed above, as indicated in Table 9.1.

Analysing empirical studies on juvenile delinquency in transitional countries in recent decades casts further light on delinquent behaviour and attitudes to it:

- (1) The representation of juvenile delinquency in crime rates. Rates of juvenile delinquency are extremely important to gain a general overview on adult crime. The results of a survey conducted in transition countries show that trends in juvenile delinquency compared to trends in adult crime suggest that juvenile delinquency did not contribute significantly to a growth in the overall number of recorded offences in recent decades (for more detail see the European Sourcebook of Crime and Criminal Justice Statistics 2010).⁵ Despite surveys and statistics indicating that during the period observed, an increase in adult crime rates

⁴ The political and economic changes in transition countries gave rise to difficulties for the majority of the population, especially for children and young people. For details see the other chapters in this book.

⁵ For example, the percentage comprising juvenile delinquency in Bosnia and Herzegovina of the total number of recorded offences over the past decade ranges from 8 to 12%. The percentage of overall national crime made up by juvenile delinquency in the other countries discussed here are as follows: Croatia—10.5, Czech Republic—7.2, Hungary—12, Poland—9.1, Slovenia—7.4. Statistics for Serbia are not available. For details see European Sourcebook of Crime and Criminal Justice Statistics 2010.

in transition countries was higher than in juvenile delinquency (e.g. in Slovenia, the number of crimes committed by adult offenders increased by 100% in the last 10 years, while the share of juvenile delinquency in the overall crime figures have been decreasing (see Filipčič 2010, pp. 1265–1266), juvenile offenders are given greater public attention and concern.

- (2) Offences committed by juveniles. Concern has been expressed with regards to particular categories of offences and structural changes in the way different forms of offensive behaviour are classified (Asquith 1998, pp. 39–42). Generally, the most frequently reported offences committed by juveniles are non-serious. Yet research also shows that violent offences are predominant among juveniles. This fact is not borne out in official criminal statistics, where property offences constitute the larger part of juvenile delinquency. An explanation could be that violent juvenile offences tend to go unreported and are part of the ‘dark figure’ of crime in society (Steketee and Gruszczynska 2010, p. 124).
- (3) Causes of juvenile delinquency. It is evident that social, economic and political changes during the early 1990s in transition countries also influenced changes in juvenile delinquency. Juvenile delinquency in post-war transitional countries (Bosnia and Herzegovina, Croatia, Serbia) also shows oscillations, especially during the wartime and immediate post-war periods. However, it would be wrong to simplify the causes and reduce them only to war which brought numerous traumas to everyone, to children, juveniles and adults alike in the territory of the former Yugoslavia, and especially in Bosnia and Herzegovina.

9.2.2 Current Development of Juvenile Justice in Individual Countries

As with their dilemmas over adult crime, modern societies face a similar choice as to whether they should intensify repressive responses to juvenile offenders or to follow the concepts that have provided a framework for dealing with juvenile delinquency for more than a century. Due to the increase in juvenile delinquency, this discussion is becoming ever more complicated and is frequently manipulated by the politicisation of crime. It therefore comes as no surprise that demands for stricter punishment or for strengthening the concept of restorative justice as an alternative to traditional responses to juvenile delinquency figure strongly in this ongoing debate.

As in other European countries, the law on juvenile delinquency in transition countries is either part of the general criminal law or exists in separate juvenile legislation. The number of transition countries which have a separate law on juvenile offenders has been increasing. However, even if dealing with juvenile delinquency within general criminal law, the various national legal systems are familiar with the specific standards necessary for juveniles and a juvenile delinquent is not treated by the criminal justice system in the same way as adult offenders.

With regard to those systems of legal provisions on juveniles and juvenile delinquency, all transitional countries can be classified into three groups: the first group, which is also the largest, includes those countries which adopted the European trend of separating juvenile delinquency and juvenile delinquents from the general criminal code and enacted special and comprehensive juvenile justice legislations, some earlier (e.g. Poland in 1982) and some later (e.g. Croatia in 1998, the Czech Republic in 2003 and Serbia in 2006). The second group includes those countries whose legal systems retained the idea of re-educating, offering assistance and implementing special measures for juveniles within their general criminal legislation (or specific provisions on juvenile delinquents within their substantive and procedural criminal law and law on enforcement of criminal sanctions), enriching this particular legal position as they did so with new forms of help for juvenile delinquents (Hungary, Slovenia). The third group includes only Bosnia and Herzegovina with 'a parallel system of provisions on juveniles' because here, in the Brčko District of Bosnia and Herzegovina and in the Federation of Bosnia and Herzegovina specific rules for juvenile delinquency can be found in the substantive and procedural criminal laws and law on enforcement of criminal sanctions, while in the Republic of Srpska comprehensive juvenile justice legislation is in force (*the Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings*). These provisions shall be discussed in more detail below (Sect. 9.3).

In the framework of reform and legislative trends in juvenile justice in transitional countries, a typical feature of all is their attempt to preserve and improve a special approach towards juvenile-based on providing of help, encouragement, rehabilitation, reintegration into society, restriction of criminal measures, while expanding the use of alternative measures and restorative justice (Dunkel et al. 2010, p. 1813, pp. 1849–1853). Thus, the 100-year-old tradition of special legal measures for juveniles in Europe is also part of the legal and cultural heritage of transition countries.

9.3 Juvenile Delinquency and Juvenile Justice in Bosnia and Herzegovina

In Bosnia and Herzegovina—as elsewhere in the world as well as in other transition countries—juvenile delinquency has proven to be a complex and changing phenomenon.⁶ In the past decade, juvenile justice has figured prominently in public and academic debate in Bosnia and Herzegovina. It has formed part of discussions about criminal policy; juvenile justice is a subject of research in

⁶ Bosnia and Herzegovina is composed of two entities, the Federation of Bosnia and Herzegovina and the Republic of Srpska, and one district, the Brčko District of Bosnia and Herzegovina. In Bosnia and Herzegovina the population is estimated at 3.85 million. The population of the Federation of Bosnia and Herzegovina is estimated as being 2.32 million, and that of the Republic of Srpska as 1.43 million. The population of the Brčko District of Bosnia and Herzegovina is roughly 0.1 million.

sociology, criminal law, criminology, penology, psychology and other fields dealing with children and young people.

The structure and scope of juvenile delinquency in Bosnia and Herzegovina is largely influenced by several factors, including the consequences of the armed conflict of 1992–1995, the complex political and economical situation, the destabilised role of families in raising their children and aggressive behaviour from peers (particularly in schools and on the streets). Such trends manifest themselves in the field of juvenile justice, not in terms of dealing with juveniles through legislation, but in determining strategic issues within the juvenile justice sector such as: (1) securing financial means for development of juvenile justice, (2) building institutions for juvenile delinquents (institutions both for educational measures prescribed as specific criminal sanctions and for juveniles requiring special treatment), (3) the development of effective programmes within disciplinary juvenile centers, (4) establishing special juvenile sections within courts, prosecution and law enforcement agencies, (5) further training for judges, prosecutors, law enforcement officers and social workers, (6) the development of restorative justice and restorative programmes, and (7) the development of juvenile delinquency prevention programmes in communities and schools.

9.3.1 Juvenile Delinquency: Characteristics and Trends

In order to give the most realistic possible assessment of juvenile delinquency in Bosnia and Herzegovina it is necessary to provide data which allows one to analyse its scope and characteristic oscillations. It is also important to examine the structure, causes and consequences of juvenile delinquency.

Only limited information about juvenile delinquency is available for the period 1992–2005. Reliable data is still scarcer for the war years of 1992–1995. The figures we do have for this period cover only one part of Bosnia and Herzegovina, the entity of the Federation of Bosnia and Herzegovina. In this entity, 2,675 offences were committed by juvenile offenders from 1992 to 1996. The number is difficult to evaluate because of its geographical limitedness but also because it is not certain that it even includes all criminal offences committed by juveniles in the given entity (see the Assessment of juvenile justice in Bosnia and Herzegovina 2011, p. 5). This is hardly surprising given the priority of other issues naturally assumed in that extremely difficult period. The following decade also provides little more in the way of definite statistics in juvenile delinquency. However, on the basis of what we have, in the years after the armed conflict, certain trends are clear enough. For example, according to statistics from the Prosecutor's office and the Ministry of Internal Affairs in the Republic of Srpska, data concerning Banja Luka (the entity's largest urban with around 200,000 inhabitants and also one of the larger urban areas in Bosnia and Herzegovina) indicate that reported criminal offences committed by juveniles fell significantly during the years immediately following the war, from 281 offences in 1995 to 171 in 1999 (Assessment of

Table 9.2 Trends in reported delinquency of juveniles in the entity of the Republic of Srpska

Year	2002	2003	2004	2005
Reported juveniles	635	676	1,039	942

Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini (2006, p. 6)

Table 9.3 Trends in reported delinquency of juveniles in the entity of Federation of Bosnia and Herzegovina

Year	2002	2003	2004	2005
Reported juveniles	762	601	917	1,178

See: Statistički godišnjak/ljetopis Federacije Bosne i Hercegovine (2009, p. 372) and Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini (2006, p. 6)

juvenile justice in Bosnia and Herzegovina 2011, p. 5). Subsequent years, however, saw a steady increase once more (see Table 9.2).⁷

As regards the entity of the Federation of Bosnia and Herzegovina, 1,343 criminal offences committed by juveniles were reported in 1997, out of which 445 occurred in Sarajevo (the capital, with around 430,000 inhabitants; see Assessment of juvenile justice in Bosnia and Herzegovina 2011, p. 5). Analysis of the cases of juvenile delinquency brought before the Municipal Court of Sarajevo during the period 2000–2005 indicates a downward trend in the number of cases in comparison with previous years (*Delinkventno ponašanje: empirijska studija* 2008, pp. 301–303). Oscillations of juvenile delinquency in the entity of Federation of Bosnia and Herzegovina have continued in subsequent years with a tendency towards increase. For example, according to data from the Federal Office of Statistics, in 2002 there were 762 juveniles who had committed criminal offences, and in 2005 there were 1,178 reported juveniles (see Table 9.3).⁸

On the basis of the information available for the first decade after the war, the following can be cautiously noted: (1) the publication of statistics on juvenile delinquency has been periodic and incomplete; (2) criminal offences committed by children (i.e. persons under the age of 14) have been jointly published with criminal offences committed by juveniles, which makes clear insight into the issue impossible; (3) oscillations are evident in rates of juvenile delinquency, but with an overall tendency towards an increase; (4) the majority of reported criminal offences seem to be offences against property, offences against life and limb and violent criminal offences. Other criminal offences are rarely committed by juveniles; (5) but there is a considerable number of juvenile criminal offences which simply went unreported.

⁷ Some sources indicate that these statistics also include minors under the age of 14 who cannot be held criminally liable. Therefore, the exact extent of the increase over the whole period is uncertain. For details see the Assessment of juvenile justice in Bosnia and Herzegovina (2011), p. 5.

⁸ See note 7.

Table 9.4 Juvenile delinquency in Bosnia and Herzegovina: the number of reported juvenile offenders (police statistics 2006–2010)

	Brčko Distrikt of Bosnia and Herzegovina	Entity of the Federation of Bosnia and Herzegovina	Entity of the Republic of Srpska	Total Bosnia and Herzegovina
2006	151	1,739	859	2,749
2007	198	1,727	761	2,686
2008	105	1,592	710	2,407
2009	67	1,344	823	2,234
2010	57	1,177	831	2,065

See Muratbegović (2011, p. 2)

Table 9.5 Juvenile delinquency in Bosnia and Herzegovina: the number of reported criminal offences committed by juveniles (police statistics 2006–2010)

	Brčko Distrikt of Bosnia and Herzegovina	Entity of the Federation of Bosnia and Herzegovina	Entity of the Republic of Srpska	Total Bosnia and Herzegovina
2006	–	–	1,120	–
2007	–	–	1,260	–
2008	72	–	1,157	–
2009	47	–	712	–
2010	59	1,317	770	2,146

According to Muratbegović (2011, p. 2)

Statistics are more reliable for the last 5 years. According to police figures for 2006–2010, the numbers of reported juvenile offenders are given in Table 9.4.

The table above clearly shows a gradual decrease in the number of reported juvenile delinquents. When the statistics for Bosnia and Herzegovina are cross-referenced with the figures already provided for other transition countries some common trends become visible: juvenile delinquency is decreasing across the region. This decrease is observable nevertheless in the wake of pronounced increases in juvenile delinquency in almost all the transition countries discussed earlier, surely as a result of complex social, economic and political changes.

According to the same sources, the numbers of reported criminal offences committed by juvenile offenders are given in Table 9.5.

As the chart shows, the information is incomplete since it covers only one part of Bosnia and Herzegovina. For 2010, the information is more reliable for the much clearer picture it gives of the number of reported criminal offences committed by juvenile offenders. The overall impression is heartening—the statistics indicate a trend of decrease in the reported juvenile offences (including the Brčko District of Bosnia and Herzegovina and the entity of Republic of Srpska). But taking into account the unreliability of statistic data we should remain cautious about drawing a premature conclusion.

If we compare the rate of juvenile delinquency rate in Bosnia and Herzegovina on the basis of these figures with official data from other European countries, Bosnia and Herzegovina emerges with one of the lowest rates of such behaviour in Europe. The average rate of juvenile delinquency in European countries in 2006 stood at 191 juvenile offenders per 100,000 inhabitants, whereas in Bosnia and Herzegovina this rate amounted to only 72 offenders. Today the figure is 74 juvenile delinquents per 100,000 inhabitants, as compared to 156/100,000 in Slovenia or 158/100,000 in Croatia (for details see the European Sourcebook of Crime and Criminal Justice Statistics 2010 and Muratbegović 2011, pp. 1–3).

Despite the fact that statistics indicate a tendency towards a decrease in the post- conflict period, the debate on juvenile delinquency in Bosnia and Herzegovina emphasises other points relating to this complex issue. These include: (1) recidivism of juvenile offenders,⁹ (2) the age of juvenile offenders, especially with reference to the disturbing fact that more and more children, (i.e. before turning 14) violate the law,¹⁰ (3) the great likelihood of juveniles who started criminal activities earlier reoffending (see *Delinkventno ponašanje: empirijska studija* 2008, p. 195, 212, pp. 301–303. et al.),¹¹ (4) the perpetration of criminal offences in groups, and (5) the perpetration of extremely serious violent offences by juveniles (Sijerčić-Čolić 2009, p. 5).

The perception of juvenile delinquency in its social context reveals some other characteristics. Police statistics also indicate that the largest part of juvenile delinquency comprises crimes against property (even upto 90%, according to some sources), then crimes against life and limb (e.g. murder, aggravated murder, bodily injury, affray) and offences against public order and peace (Muratbegović 2011, pp. 1–2). Some encouragement is offered by the other evidence suggesting that more serious forms of juvenile delinquency (e.g. serious thefts, serious bodily injuries or the trafficking or consumption of drugs) are low (Enforcement of alternative measures for juveniles: legal, institutional and practical issues 2010, p. 26).¹² In regard to gender profile, as elsewhere, the rate of male offenders significantly prevails over female offenders.

⁹ Indicators in the entity of the Federation of Bosnia and Herzegovina and the entity of Republic of Srpska gives a number of about 10% of juvenile offenders becoming recidivists. Cited from: *Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini* (2006, p. 5).

¹⁰ The statistics covering all of Bosnia and Herzegovina shows that most juvenile crimes are committed by young persons aged between 14 and 17. A trend of younger and younger children coming into conflict with the law has also been observed. See *Delinkventno ponašanje: empirijska studija* (2008, p. 298).

¹¹ See also: *Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini* (2006, p. 5).

¹² This does not mean that juveniles do not commit such offences. On the contrary, sometimes the form such rare offences take is more concerning than the question of frequency. See, *Enforcement of alternative measures for juveniles: legal, institutional and practical issues* 2010, p. 27, and *Delinkventno ponašanje: empirijska studija* (2008, p. 194) and etc.

9.3.2 *Development of Juvenile Justice*

In the former Yugoslavia, the system of dealing with juvenile offenders was based on a rehabilitative principle and employed special criminal sanctions, with educational measures being applied to juveniles between 14 and 18 years of age (at the time of committing an offence).

After the dissolution of the Yugoslav federation, and after the subsequent war, the typical reforms of other transitional countries were also initiated in Bosnia and Herzegovina. The entire fabric of criminal legislation was altered and, with it, the system of juvenile justice too. There were numerous reasons for these changes, four were particularly prominent: (1) ensuring the efficiency of criminal procedure in fighting against crime, (2) protecting the rights and freedoms of the suspect/defendant, (3) accepting international standards (for efficiency and human rights protection) and (4) the harmonisation of criminal legislation within Bosnia and Herzegovina (Sijerčić-Čolić 2001, pp. 599–600).

The development of laws pertaining to juvenile justice and juvenile delinquency (within the development of criminal justice and criminal legislation) can be viewed through four independent, yet connected stages.

The first stage begins with the process of ‘inheriting’ legislation from the former Yugoslavia (in 1992 and 1993) and did not result in changing the legal position of juveniles in the criminal law. The concept according to which the legal position of juvenile delinquents must be substantially different from the position of adult offenders was carried over. The second stage was marked by the enactment of new criminal legislation in the entity of Federation of Bosnia and Herzegovina in 1998 and in the entity of Republic of Srpska by limited amendments to former Yugoslavian criminal legislation in 1997 and by the enactment of the Criminal Code and Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina in 2000. This stage will be remembered for the ‘new spirit’ it introduced to regulate the legal position of juvenile delinquents: alternative measures¹³ for juveniles were introduced and a trend towards lowering the use of institutional measures gained pace. Progression to a third stage may be dated to 2003 on account of three innovations: new criminal legislation for adults came into effect; educational recommendations were extended throughout Bosnia and Herzegovina¹⁴; and the first draft of a comprehensive juvenile justice law

¹³ Or “educational recommendations” as an alternative for the treatment of juveniles who commit less serious offences. Educational recommendations were introduced in the entity of Federation of Bosnia and Herzegovina in 1998, and in the Brčko District of Bosnia and Herzegovina in 2000.

¹⁴ In this stage educational recommendations were introduced into the criminal legislation of Bosnia and Herzegovina and the entity of the Republic of Srpska.

(‘*The Law on Juvenile Offenders*’) was presented.¹⁵ A fourth stage started in late 2008 after great public consternation when juveniles committed a number of very serious and violent crimes that had previously been very unusual in the country’s social and cultural setting (murders in public places, cruel murders, aggravated robberies). Under pressure from the public and owing to the seriousness of crimes, additional amendments, in accordance with international conventions and obligations and based on an analysis of the case law of juvenile delinquency, were incorporated into the first draft of a separate juvenile justice law (dating from 2003) which became the ‘Draft of Law on Juvenile Offenders and the Legal Protection of Children and Juveniles in the Criminal System’. This was submitted to the parliament of Bosnia and Herzegovina but was unfortunately not passed. However, following these events, a Ministerial Conference in June 2009 confirmed that these legislative activities had been implemented in a harmonised manner at the level of the two principal state entities and the Brčko District of Bosnia and Herzegovina (for more details see Sijerčić-Čolić 2009, pp. 6–7). So in January 2010 the entity of the Republic of Srpska adopted the *Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings*.¹⁶ This Law came into effect on 1 January 2011. In March 2010 the *Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings* was adopted on its first reading in the Parliament of the entity of Federation of Bosnia and Herzegovina. This Law is expected to be passed on its second reading (during 2012) and will become effective 1 year after entering into force (during 2013).¹⁷ The same legislative activities have been carried out in Brčko District of Bosnia and Herzegovina (*the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings will become effective by the end of 2012*).

9.3.3 Legal Position of Juvenile Offenders: The Current Juvenile and Restorative Justice

The current development of juvenile justice and juvenile delinquency legislation in Bosnia and Herzegovina stands at the crossroads, and at the same time is moving in direction of separate and comprehensive juvenile justice legislation.

The new separate juvenile legislation (*The Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings*) contains chapters that systematically address issues of juvenile delinquency. In this context, the law includes provisions on the application of substantive and procedural criminal law on juvenile delinquents, the organisation of sections within courts, the execution of sanctions

¹⁵ The draft resulted from a research project on young people In conflict with law in The Light of Topical Problems Concerning Juvenile Criminal Justice in Bosnia and Herzegovina (2002–2003). The project was implemented under the auspices of the Open Society Fund for Bosnia and Herzegovina and UNICEF. This first draft was never entered into the parliamentary procedure for adopting legislation.

¹⁶ “Službeni glasnik Republike Srpske”, no. 13/2010.

¹⁷ The Law enters into force on the eighth day after its publication in the *Official Gazette of the Federation of Bosnia and Herzegovina* (Article 202).

imposed on juvenile offenders and also criminal offences committed *against* children and juveniles. Also, the most important general characteristics of the new comprehensive juvenile justice legislation are: insistence on concern for the welfare of a juvenile in conflict with the law, concern for improving the young person's personal values of taking into account his/her age and best interest, his/her development and prospects for rehabilitation and assuming a constructive role in society, efforts to resolve the case by imposing educational recommendations, using modern pedagogical, psychological and penological knowledge and experience in the course of criminal proceedings and the execution of criminal sanctions; promoting individual programmes based on a comprehensive consideration of the maturity of a juvenile, his/her age, education level, previous life and conduct in a social environment, types of delinquent behaviour and the circumstances under which the offence was committed and improving the minimum rights protected in criminal proceedings.

The development of the criminal policy and juvenile justice policy in Bosnia and Herzegovina and the consolidation of criminal justice system and juvenile justice have taken the form, *inter alia*, of a legal and institutional framework for juveniles in conflict with the law. One of the main tendencies in dealing with juvenile offenders over the past 10 years in Bosnia and Herzegovina has been oriented towards introducing alternative forms of response to juvenile delinquency. In providing for educational recommendations as alternative measures to be applied outside criminal proceedings to juveniles who commit less serious offences, juvenile legislation in Bosnia and Herzegovina joined a broader modern criminal and political endeavour to respond to juvenile criminal behaviour through giving greater priority to extrajudicial forms of intervention and imposing criminal sanctions only when the correction of juveniles cannot be achieved by other means or when it is required by the gravity of offense. Educational recommendations in Bosnia and Herzegovina have a common, 'umbrella' goal, which can be described as follows: avoiding criminal proceedings against juveniles who commit less serious offences, influencing a juvenile not to commit a new offence, respecting the interests of juveniles, avoiding his/her stigmatisation, respecting the interests of the victim of criminal offence and reducing the case load in juvenile justice.

Despite these changes and new possibilities for diverting juvenile cases from the judicial process, the general assessment to date is that educational recommendations have not yet taken roots in the practice in Bosnia and Herzegovina. All the research conducted so far yields the same picture—educational recommendations are imposed rarely.¹⁸ This is confirmed by the following:

¹⁸ The interviewed prosecutors and judges for juveniles most often cited the following reason for this: the legislator did not specify the sufficient detail in the procedure for implementing correctional recommendations as an alternative method of addressing juvenile delinquency, serious criminal offences that do not carry the possibility of imposing educational recommendations occur more often in reality than is thought (Maljević 2006, pp. 432–433), educational recommendations are not applied more frequently because juveniles do not show a willingness to be reconciled with the victim (Enforcement of alternative measures for juveniles: legal, institutional and practical issues 2010, p. 61), the lack of specialisation in judges, prosecutors and social workers and the lack of financial and human resources (Muratbegović 2011, pp. 67–68).

- (a) research under auspices of the Open Society Fund for Bosnia and Herzegovina and UNICEF revealed that in the entity of the Federation of Bosnia and Herzegovina in the period between 1998 and 2001 only 10% of the interviewed judges for juveniles and 29% of the interviewed prosecutors had used alternative measures to close cases of less serious offences committed by juveniles.¹⁹
- (b) Since December 2006 the Human Rights Department of the OSCE Mission in Bosnia and Herzegovina has been monitoring the implementation of juvenile delinquency legislation, including the diversion of juvenile offenders towards other extra-judicial procedures. Findings in this field indicate cases where extra-judicial procedures of redressing less serious criminal offences are not applied, not even in the most appropriate cases and when completely in compliance with the law. On the other hand, the few cases where educational recommendations were imposed do show that alternative measures are a very good method of addressing juvenile delinquency (OSCE Mission to Bosnia and Herzegovina 2009).

According to the available data, approximately 50% of all cases of juvenile offenders end in dismissal (either by public prosecutor or by the court). In these cases, the juvenile population remains without an adequate response from society to their deviant behaviour (Vranj 2008, pp. 731-734). Therefore, the general juvenile delinquency situation, the number of reported juveniles, the number of juveniles involved in the criminal procedure and the number of criminal sanctions imposed show that there needs to be a more intensive application of alternative measures.

9.3.4 Concluding Remarks

The trends of juvenile delinquency in Bosnia and Herzegovina can be explained within the context of the general conditions influencing juvenile delinquency in other transitional countries. Problems that are often discussed in this respect are as follows: the character of juvenile delinquency, taking into account the question of whether it has a more specific national or more global character, measures taken for preventing juvenile delinquency, criminal sanctions for juveniles and alternative measures aimed inter alia at avoiding criminal proceedings (Sijerčić-Čolić 2009, p. 1). Comparing these trends in juvenile delinquency with other transition

¹⁹ See: Mladi u sukobu sa zakonom u svjetlu aktuelnih problema maloljetničkog krivičnog pravosuđa u Bosni i Hercegovini (2002, pp. 22–25). The studies continuously performed and completed since 2001 to date, focussing on juvenile delinquency, have also shown that educational recommendations are not imposed on juvenile offenders. See, e.g.: Gurda (2009, pp. 137–138); Enforcement of alternative measures for juveniles: legal, institutional and practical issues (2010, pp. 59–63); Muratbegović (2011, pp. 62–63 and 67–71).

countries we cannot confirm that the situation in Bosnia and Herzegovina is significantly different.

Long-term solutions in suppressing juvenile delinquency in Bosnia and Herzegovina have been proposed in the Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010) adopted in 2006. The implementation of the Strategy began on eighth of May 2008 with the Council of Ministers of Bosnia and Herzegovina appointing a Coordination Body for the assessment of implementing the strategy. Given the complexity of the issues it addresses as well as different approaches to solve them, the aim of the Strategy was directed towards bringing legislation, policies and practices in the field of juvenile justice into line with international standards and good practice from others countries, in the context of current social, economic, cultural, political and legal factors and circumstances in Bosnia and Herzegovina.

A critical review of juvenile delinquency and responses from the domestic juvenile justice made the creation of the new strategic document possible. In particular, within the 2011 activities plan of Council of Ministers—the Ministry for Human Rights and Refugees initiated the drafting of the new strategic document in field of juvenile delinquency and juvenile justice in Bosnia and Herzegovina for 2011–2014 (the official title of the document is *Djeca u sukobu sa zakonom u Bosni i Hercegovini 2011–2014—strateško usmjeravanje aktivnosti*). This strategic document identifies activities for competent authorities at all government levels in Bosnia and Herzegovina dealing with ‘children in conflict with the law’ and, in other words, sets out to support the process of adopting action plans from previous initiatives begun by the earlier *Strategy against Juvenile Offending for Bosnia and Herzegovina for 2006–2010*, which was not implemented fully within the planned timeline.

However, studies on adolescence delinquency risk factors indicate that social responses to juvenile delinquency are extremely complicated. Those responses are as complex as the phenomenon of juvenile delinquency itself.

9.4 Juvenile Delinquency and Juvenile Justice in Transitional Countries: Assessment and Outlook

While considering juvenile delinquency in the transition countries we have to take into account the influences acting on the process of socialisation, a young person undergoes in any society, as well as those more specifically typical of transition countries. In these, the numerous and extremely deep changes have certainly affected the life of the younger generations. As for Bosnia and Herzegovina, as well as Croatia, one must add to these circumstances the likelihood of youngsters having suffered both war-time and post-war traumas. The consequences of war, of wide ranging social changes such as the drastic rise of poverty, the loss and replacement of traditional value systems and the traditional role of the family, along with many other-related factors, all increase the risk of socially unacceptable behaviour increasing or intensifying among young people.

Generally, juvenile delinquency in transitional countries increased during the first of the process. This is hardly surprising. History generally shows that delinquency rates are higher as a response to large-scale social change. Western Europe in the period immediately following the Second World War offers a pertinent example. The search for new forms of juvenile justice in the West at that time was, in large part, a response to a growth in delinquency and criminality (Asquith 1998, pp. 38–39). Today, juvenile delinquency in CEE is declining, with occasional slight increase. But, there is particular concern about the increasing number of violent offences committed by juveniles, recidivism and young people beginning delinquent ‘careers’ earlier.

By comparing recent research on juvenile delinquency in other European countries one can conclude that the trends are more than similar. The available descriptive data does not indicate a general trend in the development of juvenile delinquency, while differences are visible between European countries, where transitional changes took place a long time ago and those countries which are still undergoing a (possibly violent) transitional process. Considering historical, cultural, economical, social contexts and others, countries in transition and other countries face similar problems such as a growth of juvenile violence rates, the task of creating juvenile courts and securing funds for doing so, developing restorative justice, passing universal and regional international standards, initiating preventive measures and programmes and implementing a better economical and political organisation of society, to name but a few aspects of a manifold challenge. It seems reasonable, to point out that many countries besides those undergoing ‘transition’ are experiencing great strain in the effects of globalisation and economic crisis on their juvenile crime policy, their general criminal law systems and societies at large.

The oscillation one sees in juvenile delinquency statistics, recidivism of juveniles and increasing gravity of offences committed by more dangerous juvenile offenders frequently furnish arguments for a state of alarm in attitudes to juvenile delinquency and a call for more severe punishment of juvenile offenders. What impact do such calls have on movements for reform in transitional countries over the last 20 years? Bearing in mind the research discussed earlier on the current developments in juvenile justice by transitional countries, we may conclude this chapter with the following remark: in general, from the early 1990s onwards, there has been dynamic developments in legal reform in juvenile delinquency and juvenile criminal policies (Dunkel et al. 2010, pp. 1816–1817). As we saw, some countries have adopted separate legislation for juveniles (as previously mentioned in, e.g. Croatia, Czech Republic and Serbia), while some countries are in the process of preparing to adopt separate legislation (e.g. in Bosnia and Herzegovina). What are the common characteristics of juvenile justice developments in transitional countries? What is clear is the fact that ‘the development of an independent juvenile justice system is a prominent feature’ (Dunkel et al. 2010, p. 1816). In addition to the foregoing, the following trends are notable in contemporary juvenile justice policy across the region: the acceptance of international standards on juvenile justice and its principle of *the best interest of the child*, the

development of due process standards, strengthening the special educational needs of juveniles who committed criminal offences, taking into account that imprisonment is a measure of the last resort and an exception to be reserved for very serious juvenile offenders, the restriction of deprivation of liberty, and greater emphasis on elements of restorative justice (e.g. diversion, mediation and victim–offender reconciliation). In general, juvenile crime control in transitional countries (like in most European countries) ‘does not support the idea of a “punitive turn”, but instead of an orientation towards human rights and the rehabilitative ideal, although the lack of infrastructure and implementation of educational programmes becomes evident’ (Dunkel 2011, p. 13).

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Part V
Deconstructing Transition(s)

Chapter 10

Crime, Class Control, Structural Violence and Social Formations “In Transition”

Zoran Kanduč

Abstract The old theme of “crime and punishment” is undoubtedly quite important for understanding so called (post)transitional societies. To begin with, the concept of “crime” has been used as a powerful ideological weapon in the extremely hurried process of destructively constructing a capitalist post-socialist society. The defunct “socialist” system has been unanimously condemned by victorious contra-revolutionary and bourgeois forces as a “totalitarian regime”, i.e. the “crime of all crimes”. Consequently, basic transitional experiences (e.g. denationalization, privatization, intimidation, the extortion and humiliation of the “work force” in its various forms, etc.) could be interpreted as a collective punishment for the abhorrent crime(s) of “socialism”. On the other hand, “crime” (encompassing various forms of predatory, fraudulent and corruptive activities) has functioned as a more or less “normal” means of accumulating capital, wealth and prestige and also for solving more trivial—material and “moral”—problems. Hence, the distinction between legitimate and illegitimate acquisitive activities or between illegally and legally “organized crime” has become increasingly blurred. However, it is essentially “structural violence” (e.g. unjustified inequalities, socially unnecessary heteronomous work, the growth of precarious jobs, irrational organisation of profit-oriented economy, ecological destruction, etc.) that is the most harmful phenomenon in actual political formations, determined, moreover, by a profound and manifold crisis in the global capitalist system. Also, what has become evident enough is not only the grotesque obsolescence of the ruling capitalist ideology (and of its core cultural values), but its puzzling stupidity that could be described as a determining characteristic of the spirit of “our” dark, brain-dead, vertiginously accelerated post-modern times.

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10.1 “Transition” as a (Post-modern) Passage from the Lethal Crisis of “Socialism” to the Structural Crisis of World Capitalist Economy

Let us start by posing an apparently simple question. What is actually meant by “transition”? Well, this neutral (“innocent”) word normally refers to some sort of passage (presumably of a limited duration) from a certain “point of departure” to a certain “point of arrival” (understood as a “telos”, i.e. the purpose or aim of that “voyage” through historical time and social space). Yet, in the last two decades at least, the term “transition” has been almost exclusively (and even somehow compulsively) associated with post-socialist societies (and their national states),¹ as they proudly emerge from “totalitarian” regimes and enthusiastically enter the brave new world of democracy, freedom, human rights, the rule of law and—let us not forget—the market economy (with its many advantages, particularly in its greater repertoire of captivating consumer goods and accompanying choices). Leaving aside the differences between those countries (differences embedded, in many ways, in nationally and culturally specific variants of what was simply labelled “socialism”), there were surely good reasons for sharing this “master signifier” (or linguistic “common denominator”), particularly in the (manifestly “liberating”) experience of the implosion/collapse of their political and economic systems and—even more importantly—their resolute will to build a new type of society (with all its subsystems). In doing so, all basically followed the “holy” neo-liberal and neo-conservative models of Western (that is to say global) capitalism. Therefore it is no surprise that fundamental “transitional” processes were mainly directed by a supposedly greater Other, orchestrated strictly in accordance with the Western “Ich Ideal”, characterized by what one might call hypermimicry: the slavish (or at least apish) imitation and mindless (or possibly just naïve) acceptance of the suggestions, advice and imperatives delivered by foreign experts, politicians, diplomats or agents/functionaries of “the supra-national state of capital”² (e.g. WTO, IMF, the World Bank, European Union, NATO and the OECD).³

¹ Sometimes, the term “transition” refers also to the societies/states that managed to break with military-led authoritarian regimes, generously supported by the USA (e.g. Argentina, Chile and other Latin American countries), or post-apartheid South Africa (see Klein 2009, pp. 171–257). However, the concept of “transition” could also be understood otherwise, for example as: (a) post-modernization (see Hardt and Negri 2003, pp. 120–133); (b) the transformation of “Fordist” (or industrial) capitalism and its regimes of (global or local) accumulation (see Virno 2003, pp. 83–100, Gorz 1999, pp. 27–32); (c) a structural crisis in the historical world system (i.e. the capitalist world economy) or the passage to some new system or systems (not necessarily better than the existing one). See Wallerstein (2004, pp. 223–226).

² For a critical view of capital as the “sole possessor of sovereignty” (Marco Revelli), see Gorz (1999, pp. 14–16).

³ This attitude—clearly reflecting the deeply rooted feeling of inferiority towards the West (core states of capitalist world system)—cannot be described as something completely new (say as an

In any case, post-socialist “transition” is over now. What are its main achievements? For one thing, obviously enough, converted societies (“in transition”) have become—in an astonishingly short period of time indeed—compatible with the West or, in other words, conformable to its economic, political, ideological, legal, media and cultural structures. Officially—that is to say, to the politically correct perspective (or in the tippy eyes of quickly enriched winners, not to mention frightened “cadres” of the swiftly transformed system or confused intellectuals in great need of some cheap, easily obtainable ideological “opium”), the “transition” was undoubtedly “a success story”, in spite of some undeniable “deficiencies”, “weaknesses” or “aberrations” which are preferably to be attributed to the deplorable heritage of former regimes, die-hard residues of a socialist mentality, a temporary or interim vacuum of appropriate values or acute “anomie” (Durkheim), the immaturity of new-born democratic institutions, unfitness, the incompetence or even unwillingness of numerous “backward” individuals and groups to adapt themselves to living and working in a context of “freedom” or to accept fully the requirements of new realities (e.g. the imperative of self-sufficiency or self-reliance), inconsistency in copying the theoretical dogmas of free-market economy, and so forth. Hence, the general picture of (post)transitional social formations has to be judged as an undisputedly positive one, for, all in all, the sum of advantages exceeds to a large extent the list of negative phenomena. Moreover, every strictly radical (either social or artistic) critique of the results of turbulent transitional transformations should be interpreted as an eye-opening (or eye-closing?) symptom of one’s ignominious adherence to

(Footnote 3 continued)

emotional disposition which emerged suddenly after the death of “socialism”). On the contrary, it could be observed much earlier. Not only numerous “ordinary” working people but also their political and ideological avant-garde (leaders and members of Marxist–Leninist communist parties, including of course managers of social or state capital) showed quite often great respect (not rarely combined with envy) to the various economic achievements of their capitalist enemies or competitors. In this regard, there is really no break (or discontinuity) between socialist and “transitional” times. In addition, it has to be taken into account that “socialist” states were—despite their relative isolation (softened in many way as time passed)—parts/units of a world system determined strictly by brutal capitalist “logic” (and its functional “imperatives” accompanied with various structurally generated sanctions, i.e. rewards and punishments). See Wallerstein (1999, pp. 14–15). Moreover, “socialist” and capitalist social formations shared a firm, unshakable belief that endless economic growth should be treated as the most important developmental goal, indeed as the aim of all aims (crucial criterion for measurement, comparing or assessing their respective successfulness). See Hamilton (2007, p. 17). Besides, there were also many similarities at the “instrumental” level, e.g. the complex division of social labour, industrialization, “Fordist” regulation of basic societal relations and activities (including of course mass standardized production and consumption). Hence, it comes of no surprise that, in many regards, “socialist” societies looked like a caricature of their Western paragons. In the post-socialist transitional context the caricature merely became more accentuated, often to the point of being almost grotesque.

bolshevist or communist—that is, a totalitarian or even “criminal”—ideology⁴ (e.g. in the sense that opposing capitalist society/economy is equivalent to opposing democracy, human rights, the rule of law, personal freedom and indeed everything of unquestionable value in contemporary culture).

Yet, the unpleasant question necessarily arises. Namely, how do we explain a widespread (or even growing) disappointment, dissatisfaction, disillusionment, distrust of “democratic” apparatuses (e.g. political parties and their leaders, parliament and its members, the government, judicature in general and criminal justice system in particular, etc.), cynicism, apathy (combined with a withdrawal into the—more often than not very reduced—private sphere), despair, fear (e.g. of future, under- or unemployment, humiliating poverty, loss of desirable, acceptable or at least tolerable social status ...), resentment, envy, anger, hatred and (a big surprise?) nostalgia for the “good old socialist times”? Obviously enough, these emotions are not without (necessary and sufficient) grounds, given e.g. the frenzied competition for jobs, business opportunities and “positional” consumer goods, a breath-taking eruption of greed (euphemistically called “lust for gain” or simply “egoism”, mostly of a narcissistic or even infantile variety), the rapid normalisation of corruption, organised clientalism, polarization, fragmentation and atomization of “society”, the dissolution of solidarity, the dismantlement of the social state (which is styled as a victory for the “Fordist” working class’s history of struggles), growing inequalities between the very rich and the very poor, or between overpaid winners and underpaid (or “normally” paid) losers, the bizarre worship of private property & ownership (and a corresponding denigration of what is or at least should be treated as public, social or common resources⁵) ...

⁴ Post-socialist transition is characterized by a seemingly curious explosion of anti-communism, in spite of the fact that there is really no communist threat left (since ex-communists—or rather once loyal members of the bygone ruling party—for the most part either evaporated or converted almost miraculously into democrats, liberals, conservatives, nationalists, defenders of human rights, ruthless managers, the money-hungry private owners of once “social” firms, inventive businessmen, bold entrepreneurs, successful traffickers in arms, financial magicians, influential lobbyists, public relation experts, value-freed academics, tireless propagandists of free-market economy, etc.). How could this paradox be accounted for? Well, quite easily, especially if we bear in mind that anti-communism is essentially a pro-capitalist ideology. Moreover, anti-communism is an extremely dangerous, even pernicious ideology. Think, for example, of McCarthyism, which destroyed numerous careers and lives of critics of capitalism. Pay regard to those who were intimidated into silence to retain their jobs. Give consideration to the overthrow of governments, suspended democracies, bloody military interventions, the installation of tyrannical right-wing dictatorships, normalized torture, systematic terror and many other more or less routine atrocities performed in defence of the business community, corporations, the capitalist class or a thin minority of super-rich (and their faithful clients). See Hunt (1990, pp. 176–180).

⁵ Žižek (2009, pp. 428–439) distinguishes between three categories of “the commons” (Negri and Hardt), i.e. “the shared substance of our social being whose privatization is a violent act and which should also be resisted with violence, if necessary”, namely: (a) the commons of culture (e.g. language, knowledge, infrastructures of transport, electricity, post, networks of communication, etc.); (b) the commons of external nature (e.g. oil, water, air, forests and the natural habitat itself); (c) the commons of internal nature (e.g. the biogenetic inheritance of humanity). According to Žižek, “It is this reference to ‘commons’—this substance of productivity which is neither private nor public—which justifies the resuscitation of the notion

In addition, the reality of “democracy” turns out to be primarily a bad joke or, to put it slightly more precisely, a fiction (albeit a very useful one for ruling elites, including of course the national ones operating in many respects as “compradores”⁶) or a media-covered (and also media-directed or generated) “spectacle” for citizens transformed into generally passive observers and quasi-consumers choosing sporadically among various “products” (advertised in more or less the same manner as cars, washing machines, shampoos or other “indispensable” commercial goods), that normally share the same pseudo-political platform (while differing in this or that personal “trait”⁷). Moreover, the most important decisions (or policies) are usually presented as sheer (“iron”) necessities. For instance, it is said that—in a supposedly “open” society—there is no alternative but to join the mystified EU (a political directorate characterized by what is benevolently designated as a “deficit of democracy”, a vertiginously complex bureaucratic structure subservient to the pecuniary interests of big business, corporations, banks and mysterious “financial markets”) and follow obediently its neo-liberal agenda (or the “monetarist rule” of the autocratic European Central Bank),⁸ to enter NATO (and participate obsequiously in its aggressive military or terrorist⁹ campaigns or “missions” as they are also misleadingly termed), to privatize public sectors, to raise the age of retirement, to reduce workers’ rights, to accept precarious labour (as a very special “gift” to younger generations of would-be proletarians, e.g. the sellers of “immaterial”, cognitive or emotional labour), to continually deregulate the economy, to rescue the financial system by generous socialization of its enormous losses, to sell out (even profitable) state-owned firms, to pursue eagerly the sacrosanct aim of endless economic “growth” (alongside with hyper-production and hyper-consumption), to reconcile oneself to the fact that global capitalism (as an insatiable, anonymous, impersonal, structurally driven socio-historical process) is “our” ultimate horizon, an unsurpassable background or even a fate beyond social/political control (against which humanity as a collective subject cannot and must

(Footnote 5 continued)

of communism. The commons can thus be linked to what Hegel, in his *Phenomenology*, deployed as *die Sache*, the shared social thing-cause, ‘the work of all and everyone’, the substance kept alive by incessant subjective productivity” (Žižek 2009, p. 429).

⁶ See (Ziegler 2007, pp. 69–72); for a view of *compradores* in Slovenian style, see Močnik (2010, pp. 150–153).

⁷ See Sennett (2008, pp. 108–118).

⁸ For a critical view of prevailing Slovenian perceptions of “Europe”, see Mastnak (2001, pp. 10–15). The author points out that membership of EU implies transformation of the Slovenian (formally still a “sovereign”) state into a “province” or “region”, servile to the “dictatorship of European bureaucracy”. Referring to “Europe” has indeed functioned as a ready-made justification for introducing “unpopular” (but seemingly “necessary”) political and legal measures. Anyway, when the European Union’s icy institutional architecture, ideologically correct discourse and the impenetrable fog produced by unreadable, indigestible legal provisions are put into parentheses, the key message of its managing elites appears quite unambiguously. To put it very crudely: “You must work more, better and faster, you lazy, coddled pigs!”.

⁹ For a detailed description of NATO’s secret terrorist activities (directed in the main against left-wing “internal enemies”) in Western Europe during the cold war (after the Second World War), see Ganser (2006).

not fight¹⁰), and so forth. Therefore, it comes as no surprise that more and more would-be voters become conscious of the vacuity (or even silliness) of “free and fair” elections functioning quite clearly as a façade for what could also be conceived of as a “dictatorship of the bourgeoisie”.

Well, what about “freedom”? The period of transition is often rapturously described as a “liberation” or “emancipation”. So, are the members of (post)transitional societies freer than they were before (under oppressive “totalitarian” regimes)? Leaving aside the arduous (insoluble?) metaphysical problem of “free will”, it can be argued that particularly the so-called “negative” (Berlin) or “abstract” (Hegel) forms of freedom¹¹ of action have actually been enlarged in many regards (perhaps mostly at the level of consumer choice, where frequently an almost expert knowledge is needed to pick out the “right” yogurt, tooth-paste, sneakers, T-shirt or jeans); principally, as it seems, due to the relaxing of legal and moral restraints (and an accompanying loosening or even disintegration of formal and informal social control). Yet, the dissolution of the “symbolic order” (collective normative boundaries) is in itself very problematic process, not only because it stimulates the “malady of infinite aspirations” (Durkheim) or because it is primarily advantageous for exploitative employers (whose power and arrogance are rapidly growing in the context of a still “work-based” or “wage-based” capitalist society characterized by structural unemployment, precarious jobs and generalized insecurity¹²), socially/politically irresponsible rich tax-evaders, daring entrepreneurs (preferably operating at the very edge of legality or morality) and the shameless plundering of public funds/resources, but also because it generates popular demoralization, widespread distrust and cynicism, all sorts of “techniques of neutralisation” (Matza and Sykes) or rationalisations of otherwise unlawful or anti-social behaviour, an ethos of fierce competitive individualism (in the merciless struggle “of each against all”), Veblen’s barbarian mentality (in which personal distinction is obtained by violence or deception¹³), various kinds of vulgar primitivism (including chauvinism, racism, sexism, xenophobia and fundamentalism), and so forth. On the other hand, the average quantity (and quality) of personal liberty could also be estimated according to the amount of time (and energy) “sacrificed” in the realm of economic activities (commodity production and consumption). In that case, it can be noted that the “kingdom of freedom” (or of autonomous, self-determined activities *stricto sensu*¹⁴) has been indeed reduced

¹⁰ For a comprehensive analysis, see Žižek (2009, pp. 458–459).

¹¹ Put simply, “negative” or “formal” freedom means above all absence of external restrictions, so that one can do as one pleases (for one is left alone). For other meanings of this controversial concept (such as the ability to give rule or principle to one’s behaviour or realise one’s “genuine” or “real” self as an individual), see Geuss (2005, pp. 67–77).

¹² See Gorz (1999, pp. 52–54).

¹³ See Veblen (2005, pp. 17–20); Hall et al. (2008, p. 101).

¹⁴ See Gorz (1994, pp. 53–60). The true “realm of freedom” is the sphere of everyday life enabling the development of human powers as an end in itself. Obviously, in order to enlarge this

on behalf of the “kingdom of necessities”.¹⁵ It should go without saying that a capitalist economy absolutely does not provide a place where (individual and collective) freedom or autonomy thrives. On the contrary, as for workers, they are subjected to more or less strict control, and to the commands and power of employers or bosses who give orders and assess/sanction their productivity and work performances. In other words, workers are generally—increasingly with all their linguistic, learning, analytic, predictive, emotional, co-operating, communicative and other physical or psychical abilities—subordinated/subjugated to the heteronomy of the ends or normative expectations of their masters (private and “public” functionaries of capital). So, if we add together hours spent at work, at travel to work and back home, and at recovering from work, very little time is left (for autonomous, self-determined activities), often no time (and energy) at all. And even these modest temporal “remains” of the working day are under omnipresent attack from media manipulations, economic propaganda, advertising, marketing and other capitalist apparatuses. It is not merely a paradox to designate such societal formation (and its busy members) as “free”. It is barefaced scoffing.

At any rate, “transition” was evidently a period of huge perturbation and massive transformation related to institutions, organisations, legal regulations, behaviour and motivational patterns, prevailing emotional “tonality”, media functioning ... Yet, at first sight at least (or from the perspective of a distant observer, a hypothetical Martian for instance), it is assuredly diversified material things that have changed the most. Think of innumerable new cars (worshiped objects of popular longing and day-dream), spacious parking places, underground garages, hastily built highways,¹⁶ mushrooming shopping-malls (typical post-modern cathedrals of consumption), multiplex motion-picture theatres (replacing uncompromisingly old-fashioned ones), family-friendly amusement parks, enticing casinos, all sorts of electronic devices or digital gadgets, renovated, white-washed, vividly painted or otherwise embellished public and private buildings,

(Footnote 14 continued)

domain, the time spent at socially necessary work must be radically reduced. See Lefebvre (2008, pp. 170–175).

¹⁵ However, that deplorable fact seems to be to a great extent obscured by the imported psychological doctrine of liberalism. For one thing, this sort of popular ideology defines the individual a priori as a free agent who must interpret what he does (or omits to do) and what happens to him as a “product of his own”, i.e. regardless of external circumstances, situational pressures, role (normative) expectations or manipulations. On the other hand, liberalism functions as a mode of legitimizing commands issued by bearers or performers of power in this or that institution, e.g. a family, school or economic/work organization. To be more specific, a “liberal” boss justifies orders given to structurally subordinated individual by referring to a worker’s “human nature”, “freedom of choice” or “authentic motivation”, e.g. his need of self-actualization, spiritual growth, self-development, intelligence or other “genuine personality trait”. See Beauvois (2000, pp. 155–159).

¹⁶ Seen in the retrospect, it is motor-car fans who could be conceived as members of the most influential “civil” society movement in the socialist system, for it was their basic human rights (to a well-engineered car, fast-moving road and plentiful parking-places) that were implemented with extreme care, respect, haste and consistency (after the victory of “democracy”).

glittering omnipresent advertisements, prestigious designer stores, and so forth. There is certainly no reason for wonder about all that, for it was precisely consumer goods (or even items of material culture in general) being conceived of as an ultimate proof (beyond any reasonable doubt) of the superiority of the Western “way of work” that was probably the crucial psychological incentive for breaking with “socialisms existing in reality” and joining (and catching up as soon as possible with) the heavenly rich world of capitalist well-being (or paradise-like good life). On that (ideologically “deviant”) point both members of the socialist working “classes” and their avant-garde leaders (managers and bureaucrats) agreed (moreover, it was privileged members of party “nomenklatura” that were as a rule the first to have the opportunity of enjoying status-enhancing products imported from the West,¹⁷ e.g. enviable cars). In this perspective, “transition” can be seen as the accelerated materialization of the wettest consumerist (either European or American) dreams. Unfortunately, this fairy-tale happens to have a bitter or at least ambiguous “never-ending” epilogue. Namely, in order to be able to buy (incessantly, if possible) what “really matters”—that is, symbols of (albeit fake) distinction or glamorous signifiers of personal worth and success (not to be confused with cheap “luxury”)—one has to have money, the good of all goods, the god of all gods, the most powerful deity the human mind has ever invented or imagined. So there is the problem: how to get (“catch”) “enough” money (preferably in an elegant and quick way), particularly in the cultural context where the lack of it is to be interpreted as a shameful sign of one’s own incompetence (e.g. lack of talent, intelligence, enterprising or speculative spirit, ambition, courage, resoluteness, conscientiousness, or other individual shortcoming).

To conclude this section, let us pose a final question. How can “transition” be evaluated? Was it a progressive step forward or a historical regression (exemplified, for instance, in a restoration of old hierarchies, a resurrection of feudal aristocracy, a return of “new” poverty and the revival of wage slavery)? Was it a revolution or counter-revolution (epitomized in an arrogant rule of—foreign and domestic—oligarchies or plutocracies), a normalization of society or an aberration (the product of political manipulations, ideological tricks, persuasive Western propaganda and advertising apparatuses, popular simple-mindedness, deficient self-confidence ...)? Probably, “transition” is best designated as an exciting (and at least at the beginning even “trance”-like) trip leading “nowhere” or rather to a (media-reproduced) “eternal present”, determined by a predatory (a- or antisocial) economy, the “irresistible” dictatorship of murky “financial markets” and the quasi-absolute hegemony of instrumental “rationality” (and its imperatives of efficiency, productivity, profitability, “limitless growth” and competitiveness). Paradoxically, “transition” began with the lethal crisis of (localized) “socialism” and ended with entrance into the structural crisis of (global) capitalism, e.g. work, debt, fiscal, financial, pauperization and ecological crisis. In other words, the

¹⁷ For an interesting description of the consumerist inclinations of the Yugoslav party elite (with legendary president Tito in deserved first place), see Pirjevec (2011, pp. 191–199).

“transition” began with the rejection of “socialism” (being conceived as a transitory phase to communism) and reached its destination with what has been called “the communism of capital” (Virno).¹⁸ Moreover, pre-transitional people dreamed about “Europe”, while post-transitional survivors can observe the emergent European nightmare, e.g. rapidly growing insurrectionary multitudes protesting against capitalism and demanding what is officially declared as “impossible”. In that way and somehow ironically, post-socialist “transition” ended in capitalist transition. However, there is absolutely no guarantee that the “train of history” is on the side of the “wretched of the world” (the exploited, oppressed and ideologically fooled classes), for instance in the sense that the global transition of a capitalist economy will lead to some “better” world, that is, a more egalitarian, democratic, just, free and rational one. On the contrary, pessimist scenarios are much more probable, particularly because we cannot expect that the ruling economic and financial elites (supported by myriads of well-paid experts, mercenaries and quasi-slaves willing to fight or even die for their quasi-masters) will renounce their power, privileges and stolen wealth peacefully, without violence, terror and bloodshed.

10.2 Transition as Collective Punishment, Theft of the Century, Normalized Crime or Deviant Normality? Yes, Please

Obviously, crime and punishment have become very prominent and, needless to say, extremely problematic phenomena during (and after) the post-socialist “transition”. Roughly speaking (and summarizing the popular opinions in question), crime (particularly of the so-called “economic” variety) is apparently too successful/efficient, while the criminal justice system seems too unsuccessful/inefficient (due to—as it is often supposed—a lack of material and human resources, purges of politically unsuitable employees, corruption, the exodus of many capable and experienced cadres to better paid jobs in the private sector, and so forth). However, what is really new is the massive and spectacular entrance of various forms of crime (and its protagonists) into the “liberated” media space. Namely, crime-related bad news has literally flooded newspapers (of both the “serious” and “yellow” kinds), radio and television broadcasts. In addition, figures accused or connected with crimes (i.e. individuals suspected, prosecuted,

¹⁸ What that designation implies is not only the ideologically camouflaged socialisation (or collectivisation) of the externalized cost of production (e.g. connected to pollution or unemployment caused by “work-saving” technologies or the “flight of the factories” to the “heavens abroad”) or rescuing corporations and investors who are “too big to fail”, but the fact that characteristically communist aims or ideals—first of all the reduction of socially necessary work and the national state’s power—are now pursued (and increasingly carried out) under the parasitic command of capital. Needless to say, the consequences of these processes are not only scandalous, but catastrophic. See Virno (2003, pp. 97–99).

indicted or condemned of this or that criminal offence) and their self-assertive, overpaid lawyers are regularly given opportunities to address diversified media audiences, proclaiming their innocence offendedly (or even outragedly), accusing their accusers, complaining about police work, poking fun at agents of the criminal justice system or affirming that they are victims of a politically motivated plot. What that media parade of reputed and “real” criminals often amounts to is a state of affairs characterized by the unpleasant impression that perpetrators of crime are becoming increasingly fearless, audacious, self-confident and powerful (not only in relation to actual or potential victims, but also in their capacity to shirk responsibility or evade punishment, including informal or moral sanction). Subsequent repercussions include a widespread feeling that one must take one’s own precautions against the risk of falling victim to crime, mostly unaided by the repressive state apparatus or in the “best” case (if one can afford it) by the help of a growing commercial security industry (selling—and advertising—private police services, techno-preventive devices, anti-burglary doors, self-defence courses and other useful stuff of that kind).

Anyway, to begin with a criminological commonplace, what is (not) or should (not) be treated as “crime” is quite often (or even very often, as indeed it is in the normatively confused or “anomic” context of post-socialist “transition”) a highly controversial, contestable “matter”. Speaking abstractly and considering the hardcore provisions of modern criminal law (i.e. acts of physical violence, theft and deception), “crime” could be defined as a violation of the right some “legal person” (whether capitalist or worker, well-off or poor) has to dispose freely of what he or she happens to own (e.g. human body, money, material or immaterial goods, and so forth). In this sense, crime attacks or at least threatens the possibility of normal voluntary exchanges between bearers of property rights.¹⁹ Consequently, what is conceived as the worst crime from the perspective of the ruling capitalist (legal) ideology, is the radical transformation of the structure of property relations (protected—in an ominous “last instance” at least—by repressive state apparatuses), that is, revolutionary expropriation of expropriators (involving the socialization or collectivization of natural resources, factories, enterprises, banks, insurance companies and other key resources in the economic and social infrastructure). Therefore, it comes as no surprise that “organic intellectuals” of the post-socialist bourgeois counter-revolution have picked out this particular conception of “crime” in order to condemn retrospectively or, in fact, demonize the

¹⁹ “Violations of normal exchange can be distinguished in the following way: Some threaten the very possibility of free exchange by depriving people of the ability to dispose of their property. Other violations threaten not the possibility of free exchange but its success in meeting the wishes of the exchangers. What threatens the very possibility of exchange are acts of violence that overtly block the capacity of individuals to exercise their wills, acts of theft that overtly bypass the capacity of individuals to choose how their property is disposed of, and acts of deception that have the same effect, so to speak, behind the backs of their victims. These are so serious that must be prevented in advance—and that requires a standing threat of punishment” (Reiman 1998, p. 208).

by-gone regime(s). As is already well known, the “logic” of this verdict is founded upon the following equation: socialism (the result of communist revolution, being “as such” an evil *par excellence*) equals totalitarianism which is normatively the same as the “crime of all crimes”. Regardless of the absurdity of the interpretation in question, the transition’s destructive construction of a capitalist market society can indeed be seen as a historically unique—and to a great extent repentantly self-imposed—collective punishment for the abhorrent crime(s) of “socialism existing in reality”. Clearly, this complex—inevitably severe but nevertheless absolutely just—chastisement involves pursuing many aims, such as: (a) retribution (“you have to resign the rights you had in socialist system”, “you have to feel economic/job insecurity and social incertitude”, “you have to tolerate growing inequalities in material wealth”, “you have to suffer exploitation, extortion, humiliation and subjugation by private and public bosses”); (b) deterrence (“you have to accept the capitalist mode of production and consumption, if you want to avoid extreme poverty, individual insignificance or even a huge, pernicious economic catastrophe at the level of society”); (c) incapacitation (“you have to sacrifice—by free contractual agreements, of course—most of your time, energy and freedom to non-autonomous, alienating activities, determined by economic rationality”); (d) rehabilitation and re-socialization (“you have to accept the ideology of work-as-value”, “you have to be proud of selling your ‘work power’ and of being the liberal slave of your temporary master”, “you have to show sincere gratitude to your employer for giving you the precious privilege of serve him eagerly with your body, soul and heart”, “you have to become a new man, an active, productive, efficient, competitive, self-disciplined, self-motivated and self-sufficient person”, “you have to improve yourself, preferably by intensive work therapy”); (e) preventive control performed by “democratic” politicians and intellectuals (employed in the media and educational systems), NATO, EU, ECB and other institutions of global governance (e.g. WTO, IMF, OECD, WB); (f) restitution and pecuniary compensation (first of all in the form of denationalization and the indemnifications given to the direct and indirect victims of communist crimes); (g) “lustration” (the removal of persons, things, names and concepts involved in the “criminal” theory²⁰ and practice of a “totalitarian” regime).

Needless to say, “socialist systems existing in reality” (and changing significantly as time passed) can and should be criticised on many grounds. In addition, they can be variously described (by means of concepts such as “state capitalism”,

²⁰ “A few days before the Czech municipal and Senate elections, on October 16, 2006, the Ministry of the Interior of the Czech Republic banned the organization the Communist Youth League (KSM). What was its ‘criminal idea’ on account of which, according to the Ministry of the Interior, the KSM deserved to be banned? The fact that its program advocates the transformation of private ownership of the means of production into social property, thereby contradicting the Czech constitution ... To claim that demand for social ownership of the means of production is a crime is to say that modern left-wing thought has criminal roots” (Žižek 2009, p. 404).

“capitalism without capitalists”,²¹ “dictatorship of bureaucracy”, “politically authoritarian regime”, “system based upon a typically modern disciplinary governance”,²² “peripheral social states”, and so on). However, they surely cannot be stigmatized as “totalitarian” political formations, especially if this sinister term (invented by Italian fascism and afterwards widely used as a Western propaganda weapon during the cold war) is supposed²³ to refer to a quasi-perfect (and long-lasting) control over society and, moreover, to a deeply ingrained internalization of official state ideology (e.g. ideals, values, aims, world-view, etc.) by its members, due to the efficient propaganda system strictly monopolized by the power elites. As a matter of fact, in this very regard “socialism as it really existed” was a miserable “story of failure”. What the “system” actually managed to create was primarily a depoliticised outward obedience (or compliance) from “working people” in exchange for doubtlessly tangible advantages (which seem like “paradise lost” after the victory of the counter-revolution), e.g. job security, regular pay, relaxed work discipline coupled with extended leisure time (granting the “right to laziness”²⁴) and a relatively high “social wage” (in terms of apartments, health care, education and pensions), alongside a progressive liberalization of cultural life generally. Besides, because official ideology (the “state religion”) was clearly identifiable (and indeed very complicated), it was quite easy to distance oneself critically from it (or practice it ritually as some sort of virtually meaningless babble). Capitalist elites (“oligarchies”) in Western “liberal democracies” are, on the other hand, much more successful in maintaining/protecting their class rule, founded upon anonymous, invisible, arcane “market forces”, “dull compulsion of economic relations”, a sophisticated system of “conceptual” indoctrination of well-paid cadres and—perhaps above all—a gigantic ideologically harmonized media apparatus²⁵ (tightly connected to the advertising and marketing industry) of which the crucial message to atomized masses can be summarized²⁶ as that of the “cult of wealth”: “*Enriches vous!* Money is the royal road to a good life, epitomized in ‘romanticized’ commodities symbolizing status, complacent identities, distinctive images, self-fulfilment, excitement, pleasure, security, and so on.

²¹ See Močnik (2010, p. 178).

²² See Hardt and Negri (2003, pp. 228–230).

²³ See Hobsbawm (2000, pp. 386–388).

²⁴ See Bilwet (1999, p. 99); Hobsbawm (2000, p. 482).

²⁵ “That much social control is supported today by mass media, however, does not mean that there is currently a greater ‘fragmentation’ and ‘indeterminacy’ of meaning than in the past. It is not even that clear that there is a ‘greater complexity’, if we take into account that the increasing centralization and standardization of the mass media is probably contributing to a reduction in the *diversity* of message-production [...] In fact, in the actual interaction of everyday life, ‘fixations’ of meanings that are cogent and powerful, even if somewhat contingent, do happen and are strongly connected to the operation of mass media of communication” (Melossi 1997, p. 62). For a precise analysis of media manipulations in the “society of spectacle”, see Kara-Murza (2011, pp. 403–437).

²⁶ See Canfora (2006, pp. 321–324).

So, imitate the rich! Follow their lead! Take pains to become as successful as they are! But, meanwhile, let them delight placidly in their affluence! And remember, they really deserved it!” Accordingly, this type of “active” (“positively” motivating) class control endeavours to allure the individual into the trap of the “magic circle” of heteronomous (that is, abstract, alienated or alienating) work and commodity consumption (efficiency-fixated bourgeois hedonism).²⁷ In other words, the “system” (functioning “automatically” or “without the subject”, so to say) tends to reduce one’s whole life to the mould of commodified or reified economic activities (with increasingly intertwined “labour” and “leisure”²⁸). What this implies is that one is expected to design one’s abilities, potentials, needs, wants, desires, aims, fantasies or aspirations according to the requirements of the roles of worker and consumer.²⁹ In that sense the demands this sort of system makes on those living within it may indeed be interpreted as “totalitarian” in nature.³⁰ Moreover still, “capital” (particularly in the form of mystified “financial markets”) tries subordinating whole societies/nations to its parasitic rule, even to the point of general pauperization or destruction (not only in the Third World but now also in Europe, as the recent sad example of Greece shows).

Yet, regardless of the undeniable importance of consumerist “theory” and practice (*conditio sine qua non* for the realization of the extracted surplus value from exploited workers in the production process), we should avoid overrating its role in the proliferation of capitalist rule. Namely, generalized consumption (enabled by full employment and relatively high wages) has been used as a method for disabling subversive or radical demands from the proletariat as early as in the Keynesian, *dirigiste* period of industrial capitalism, founded upon a “historical” compromise reached by organized labour, employers and the chief (right- and left-wing) political parties. But, as is well known, the Keynesian project failed, irrespective of its undisputable successes (in terms of robust economic growth, employment, the rising material living standard of the working masses and the development of an extensive “social” state). Why? It transpired, in hindsight at least, that even such a comprehensive and inclusive policy could not absorb key class antagonism and consequently establish a long-standing social “peace” and

²⁷ As Scheerer and Hess have shown, in order to buy various symbolically (and emotionally) charged commodities, one must conform to the work ethic: “And the harder one works, the more one needs to compensate for everyday alienation in leisure time. But with all leisure time compensations being ever more linked to commodified reifications, one must be ready to sell one’s soul to the only system that both creates, shapes and—at least partially or virtually—fulfils these wants, thus making capitalism something like a latter day catholic church” (1977, p. 120).

²⁸ “Consumer culture has become like an arms race in that most consumption is defensive, an effort to avoid humiliation and the possible destruction of the self’s fragile place in the vicious social process of identification” (Hall et al. 2008, p. 108).

²⁹ Ironically, one is supposed to accept (“internalize”) the capitalist system’s necessities (and contradictions) freely, i.e. as a formal owner of oneself. The paradoxical consequence of this coerced “freedom” (in objectively subordinated structural position or “role”) is quasi autonomous rationalization of one’s “liberal slavery”. See Beauvois (2000, pp. 192–204).

³⁰ See Kurz (2000, pp. 111–112).

political “stability”. On the contrary, what ensued was a radicalization of workers’ struggles, for generalized economic security threatened the very basis of capitalist discipline, force and power, which is of course a fear of indigence.³¹ Unsurprisingly, one of the principal measures of capitalist neo-liberal restoration following the politically turbulent sixties and seventies was the re-introduction of job insecurity, massive unemployment, a huge human surplus on the labour market with accompanying generalized fears. So, it is basically a systematic intimidation of actual and potential workers (not merely seduction by means of consumerist baits) that functions as a foundation of capitalist discipline and command (hierarchical power relations). And it goes without saying that this holds true, *mutatis mutandis*, also for post-socialist capitalisms.

Anyway, let us return to the (post)transitional (would-be “totalitarian”) consumerist societies. With regard to more or less conventional crime an interesting phenomenon can be observed, namely the broadening of the “traditional” category of criminals (situated mainly at the margins of society) by a diversified group of “new” offenders, often occupying high and even the highest positions in state apparatuses, private firms and “civil” society organisations. Just look at the following list of criminal “new-comers”: presidents and first ministers, ministers, diplomats, leaders and “respectful” members of “political” parties, judges, public prosecutors, lawyers, notaries, elected representatives of the “people”, army officers, police and secret service officials, businessmen, directors, managers, bankers, stock-exchange speculators, financial “magicians”, mayors, medical doctors, academics, scientists, artists, journalists, professional sportsmen, clerics, leaders of humanitarian organisations, functionaries of sport clubs, and so on. Obviously enough, this “new breed” of criminal perpetrators is in many way quite specific, for such law-breakers are usually very intelligent (or at least well educated), influential, normally (or even excessively) socialized, well-off, vocationally successful, belonging to influential families, famous or respected. Assuredly, they are not characterized by the deficits that to the perspective of modern criminological (either psychological or sociological) positivism are to be understood as “causes of crime”. On the contrary, relatively powerful offenders enjoy a wide range of opportunities (for both legal and illegal enrichment), huge amount of “negative” freedom, various forms of “capital” and—it must not be forgotten—great immunity (or even untouchability) in relation to formal and informal social control mechanisms. In addition, the motivation for this sort of crime seems quite

³¹ For a detailed analysis of the internal contradictions of the Keynesian project, see Bembič (2011, pp. 219–226). As the author has pointed out, it was Polish economist Michal Kalecki who, as early as in 1943, predicated the resistance of the capitalist class to the policy/imperative of full employment. In the article entitled *Political Aspects of Full Employment*, Kalecki argues that in the context of stable full employment dismissal from service/job cannot function as an efficient disciplinary measure. As a consequence, the social position of capitalist boss is weakened and the class consciousness of the proletariat is strengthened.

normal,³² in fact “one and only”, namely the desire for the quick, easy, effortless acquisition of money, respecting the fundamental “categorical imperative” of “eroticized” capitalist culture: catch the cash, steal as much as you can (preferably from public resources or what in the past was social, collective or common property), for when the theft (or plunder) is big enough (and its protagonists are weighty enough) it becomes—almost prodigiously, so to say—“just” business or politics “as usual” (or “a job well done”).

What about the property crimes of the less powerful (and consecutively, as a rule, also less successful) perpetrators? Can they be interpreted as a sort of rebellious reaction to injustices suffered or relative deprivation? Well, roughly speaking (and running the risk of overgeneralization in the matter in question), it seems that this kind of (very “conventional”) crime is best interpreted as a quasi-utilitarian strategy of (individually or structurally) disadvantaged, atomized individuals endeavouring to avoid social insignificance, the humiliating status of being a loser (or “nobody”), sore lack of attention or recognition, and so forth. In this sense, relatively unprivileged offenders are very similar to their more powerful and respectable “colleagues”,³³ in that they are all deeply immersed in the dominant, intensively “eroticized” consumer culture and its core competitive, acquisitive, narcissistic, hedonistic values of “rugged” or “cool” individualism³⁴ (accordingly, this kind of property crime is apparently “half” or partially deviant, that is, “merely” in the light of a restricting or insulating normative framework, while remaining conformable to the chief orientation of prevailing capitalist ideology). On the other hand, it is “expressive” crime (or deviance generally) that is preferably reserved for “true losers” (“soldiers” of the growing army of economically “superfluous” young men), engaged in seemingly aimless acts of vandalism,³⁵ the ritualistic (nihilistic?) “molecular wars” fought by football “supporters”, the use and abuse of illegal drugs (which became very popular and easily available in transitional times, due to the regular supply provided by expanding networks of organized crime), physical violence directed towards hated immigrants or other members of despised minorities (e.g. gays).

³² For a thorough analysis of the “normalization” of crime in post-modern capitalism, see Lee (2002, pp. 134–160).

³³ The similarity between a business criminal and a more “conventional” (or ordinary) one has been already stressed by Veblen’s unforgettable assertion: “The ideal pecuniary man is like the ideal delinquent in his unscrupulous conversion of goods and persons to his own ends, and a callous disregard of the feelings and wishes of others and of remoter effects of his actions; but he is unlike him in possessing a keener sense of status, and in working more consistently and farsightedly to a remoter end” (Veblen 2005, p. 75).

³⁴ As Hall et al. (2008: 191–213) have shown, much of contemporary property crime can be explained as being instrumental in nature, that is, as a means of acquiring the symbolism of conspicuous consumption (required to construct “imaginary solutions to imaginary problems”), without the ignominy of having to labour like anonymous and inferior members of the “herd”.

³⁵ For an excellent analysis of the expression of “amorphous negativism”, see Sloterdijk (2009, pp. 300–310).

Finally, what about women? Well, they are certainly not at the forefront of either “white-collar” or “street” crime. Yet, it has to be pointed out that they are in many ways in a better structural position (in the context of hyper-consumer culture) than relatively deprived men, particularly if they are young, attractive or beautiful, for, in that case, they can find or choose a lucky “prince” (or rather a series of them) without much effort and give him the opportunity/privilege of paying, some way or another, for their precious sexual or emotional favours (love included, sex taken for granted, dirty money accepted). This option (or, in other words, this method of attaining status enhancing “positional” goods) might perhaps seem a slip (or regression) in a traditional role of woman, but what are the alternatives? Underpaid, uncertain or precarious work in formal or informal service economy, for example? Or maybe prostitution (commercial sex) in the narrower sense of the word? Besides, let us not forget one of the key messages of the dominant neo-liberal ideology that runs as follows: “You should exploit every competitive advantage or opportunity in order to enrich yourself! It is by no means shameful to prostitute yourself some way or other, if you do that successfully or remuneratively enough! It’s a free world! And remember: you can not possibly escape the endless competition, the rat race which awards really invidiously big prizes to a minority of happy winners, as the majority of less happy losers look on.”

Generally speaking, crime (in its multiform variations) is perhaps the main “added value” of post-socialist transition. Especially, this holds true for much widespread corruption,³⁶ provoking (among other socio-psychological repercussions) extensive distrust in new economic elites (and their clients and supporters), key institutions of the national state, self-styled “democratic” politicians or political parties and even many of the organisations of “civil” society. On the other hand, endemic corruption is often described as a symptom of the ineffectiveness (or non-functioning) of the “legal state” (or “rule of law”), particularly its control mechanisms (e.g. police and investigative forces, public prosecutors, courts/judges, etc.). Yet, it must be emphasised that the impotence of the

³⁶ Of course, corruption is by no means a phenomenon exclusively characteristic of (post)transitional societies. On the contrary, political corruption is an altogether normal and, moreover, even indestructible attribute of the capitalist world economy (in this regard, see Wallerstein 2004, pp. 150–151). For an “anti-criminological” analysis of corrupt exchanges in Italy, France and Great Britain, see Ruggiero 2001, pp. 124–156. For a detailed description of institutionalized and legalized corruption in the USA, see Starikov (2011, pp. 63–83). Badiou (2008, pp. 89–91) even argues that corruption is to be understood as an essence of “democracy,” representing first of all the key interests (and functional imperatives) of capitalist economy, or indeed of any political system of which the central goals are private and collective enrichment, permanent economic “growth”, endless accumulation and the “untouchability” of the property of super-rich owners. On the other hand, according to Hart and Negri (2010, pp. 151–155), corruption must be interpreted as capital’s expropriation, segmentation, control and privatization of what is socially produced by common action and thinking. Corrupted forms of the “common” are also to be found in the most important social institutions of capitalist society, that is, in the family, corporation and nation.

repressive state apparatus is in many respects intentionally (“politically”) produced and maintained, for it is obviously in the interests of greedy (and excessively powerful) individuals, groups, networks and lobbies that it remains ineffective.³⁷ However, regardless of the evident crises of legality of the “democratic” national state, we must bear in mind that it is not only massive disrespect for many constitutional and legal provisions that is a problem. Irrespective of widening “civil disobedience”, it must be stressed that it is the bourgeois law “as such” that constitutes (“in itself”) a huge political problem, for it permits the externalization of too many costs of production, protects private ownership of the means of material and mental production and favours in still other ways the domination of the capitalist class. Besides, it contains numerous bizarre, obviously out-dated legal provisions. Consider, for example, the weird, even scandalous fact that the Slovene criminal code still incriminates assisting a suicide. Yes, if one wants to help someone commit suicide (i.e. to leave this world in a self-determined or meaningful way), one risks criminal punishment. Crazy, but true! Or at least very sad, for what this prohibition logically implies is that one’s right to an autonomously conceived and performed exit from life is not really or fully recognized, in spite of much pompous talk of human dignity and individual liberties.³⁸ Be that as it may, in general, one of the most problematic aspects of the law is surely the right to inherit huge amounts of accumulated (even legally or illegally stolen) property. Accordingly, due to the valid law of inheritance one can be born as a rich or materially privileged individual (or as a member of “leisure class”³⁹). Inheritance law is thus one of the main generators of an almost “eternal” social and human “evil”, that is, of morally, politically and economically unjustified inequalities in material wealth (tightly linked to the division of people into quasi-masters and quasi-slaves). Therefore, this right must be abolished or at least radically restricted.⁴⁰ Is the suggestion in question utopian? Maybe at the present,

³⁷ According to Machiavelli, the only remedy for corruption is as follows: “well-ordered republics” must “keep their treasuries rich and their citizens poor” (quoted in Skinner 2000, p. 80). What Machiavelli had in mind is above all a suggestion that body politic has to favour common and public wealth, while there has to be also a strict normative limit up to which individual citizens are permitted to accumulate private resources. Such a policy is surely based upon persuasive arguments. Moreover, it is what actual societies, envenomed by normalized corruption, really need. In other words, it is excessive private/privatized riches that have to be abolished (and its bearers shamed).

³⁸ If the right to self-determined death was consistently recognized, one could buy whatever means (at one’s choice) were necessary for this ultimate act. Additionally, one could realize it in a special, intimate setting, e.g. in a public suicidal house.

³⁹ For a classical elucidation of the term “leisure”, see Veblen (2005, pp. 21–23).

⁴⁰ Phillips also sees no reason why the right of inheritance should be allowed to continue: “If a renowned opera star, for instance, is entitled to his or her exceptionally high earnings, then it is not morally impermissible for this person to provide expensive sorts of food, a large house, or rare books, for his or her spouse and children. Nor is it objectionable that vast amounts of knowledge and information are passed on to the latter, even though these are the result of the parent’s privileged position. There is no justification, however, for the idea that the rich parent should also be entitled to pass on the vast wealth and holdings that he or she has accumulated” (1986, p. 431).

but we should not forget that in the past many clerical titles (e.g. the right to be a bishop) and political positions or functions were hereditary. This is nowadays mainly impossible, although, even in what we presume to be morally and politically superior “Europe”, there are still numerous anachronistic remains of “yesterday”, bizarre relics of the feudal past, die-hard political dinosaurs in legally protected Jurassic park, namely so-called kings, queens, dukes, duchess, counts, countesses, princes, princesses ... Besides, if the post-socialist transition has been marked or even determined by the breath-taking theft of the century⁴¹ and depressing levels of corruption, should we permit that stolen or pillaged wealth will be passed to subsequent generation(s)? Unfortunately, the only realistic answer is probably—yes, of course! Why not? Why bother with that? Is not the Western model of “democracy”—when stripped of ideological camouflage—basically a “licence to steal and exploit” the poor and deprived masses, preferably under the auspices of the “rule of law” (while the subordinated “people” are led to form an impression that this is the manifestation of their will, as expressed in “free and fair elections”)?

10.3 Concluding Remarks (Oh, How the Ghost Sings!)

Post-socialist “transition” is a complex process with many—perhaps mostly, or at least increasingly unpleasant—aspects. *Prima facie*, the history of transition has seen the creation of an almost unprecedented reservoir of opportunities for legal, illegal, semi-legal, semi-illegal and who-can-tell-if-it-is-legal-or-illegal enrichment or, in a word, an earthly heaven for all sorts of scoundrels, fraudsters and despoilers, working alone or preferably in formally or informally organised networks (“brotherhoods” that also of course accept capable or at least beautiful and attractive “sisters”) and in pseudo-political parties (providing almost irrefutable alibis and consequently impunity or immunity in relation to control mechanisms, media and public relations support, access to legal and illegal business opportunities, generous loans from state-owned banks, well paid, pleasant jobs, etc.). Therefore, it come as no surprise that the relatively short—although extremely

⁴¹ It should be remembered that the expression “theft of the century” does not refer only to the criminal or unlawful acquisition of wealth and to the apparently legal but morally questionable “drainage” of companies by their leading managers (or “owners”). Moreover, it cannot be attributed merely to so-called tycoons (post-modern “robber barons and baroness”, as it were), i.e. to the select gang of the most successful, unscrupulous and money-hungry pillagers. No, the “theft of the century”—e.g. denationalization and privatization—has been perpetrated mostly according to the letter and the spirit of the law (in this sense it is the law itself that was and still is criminal, so to say). In other words, it was a collective, politically orchestrated project, based on widespread consensus and the indispensable support of experts (particularly lawyers). In Slovenia, for instance, privatization certificates were warmly accepted (like a sort of gift from heaven inviting everyone to transmigrate into the capitalist body), not to mention an exceptional opportunity to buy state-owned or social apartments at extremely low prices.

accelerated—history of “transition” is full of so-called (rather inappropriately) “scandals” and “affaires”, revealed by the media and widely known to most either from personal experience or informal hearsay. In this way, the eye-opening theft of the century has been quite a transparent phenomenon which has triggered various emotions in the public, such as anger, frustration, envy, resentment or even hatred towards the new power elites and an overpaid class of privileged “happy-go-lucky” types. Also, the complicated question arises as to how to distinguish between those who accumulate wealth legally, lawfully or legitimately and those who do so illegally, unlawfully or illegitimately. What is the difference between fraud and enterprise, between organized crime and organized capital, between deception and advertising⁴² (and “public relations” or marketing), between exploitation and theft, between owning or managing a bank and robbing it, between liberal freedom and (liberal) wage slavery, and so on? Or, what is more: can wealth (and of course the wealthy) ever really be justified politically or morally? Although the answer to this question would clearly seem to be a firm negative, it is psychologically (and ideologically) very difficult to reconcile this value judgement with a more or less general (and deeply ingrained) wish for money, the magic key which opens all doors of the consumerist paradise and entitles one to “pecuniary reputability”,⁴³ personal distinction or membership of a prestigious “leisure class”. Namely, you can indeed quite easily despise rich people (e.g. because of the “questionable” origins of their property, their social and political irresponsibility, their tax frauds and tax evasions, arrogance, hypocrisy, etc.), but it is almost impossible (at least without heroic effort) to remain indifferent to their most important “personal trait”, that is, to their invidious richness. Moreover, the ultimate attraction of money (in fact the only quasi-religious authority in the secularized, “rationalized” or disenchanting world) has been enormously intensified by the irresistible (and without doubt warmly welcomed) invasion of foreign commodities, luxury and branded consumer goods (with the West’s sacred cars taking honourable first place), glittering images, seductive role models and paragons (the exemplars of undeniable “success stories” or at least “breathtaking human beauty or sex-appeal”), i.e. ideals ready-made for imitation, and by an explosion of economic propaganda and commercial

⁴² For a critical analysis of the deceptive nature of advertising and the marketing “industry”, see Hamilton (2007, pp. 77–86). What is in this respect probably even more alarming, is the sad fact that one is exposed to subtle manipulation of this kind from as early as infancy: “Research recently carried out by the national Consumer Council (undated) led them to declare the existence of a ‘new shopping generation’, and the marketing industry continues to invent ever more ingenious methods of inculcating messages about consumer products into the psyches and cultural lives of young children. By the age of ten 78% of children list shopping as one of their favourite activities and they have been inducted to the world of brands and labels; the average child of this age displays extreme familiarity with 300–400 brands” (Hall et al. 2008, pp. 94–95).

⁴³ “The basis on which good repute in any highly organised industrial community ultimately rests is pecuniary strength; and the means of showing pecuniary strength, and so gaining or retaining a good name, are leisure and a conspicuous consumption of goods” (Veblen 2005, p. 58).

media glorifying the glamorous lives of famous individuals (or families), focusing on an hedonic aristocracy, showing precious symbols of individual distinction and encouraging domesticated, commoditised, controlled,⁴⁴ “cool” and functionally normalised forms of “deviance” (“you have to be different, not like the others, possibly the special one!”).

Anyway, to generalize the problem in question, it could be stressed that the main product of post-socialist transition has been a more or less typical post-modern society, characterized by a disorganized/deregulated predatory economy (linked to the dictatorship of fictitious financial capital), national state’s loss of (political, economic, cultural and legal) sovereignty and an accompanying crisis of legality, legitimacy and rationality, the progressive eclipse of democracy,⁴⁵ widespread fear and anxiety (generated by the unholy trinity of insecurity, uncertainty and instability), the regular plunder of society’s resources (e.g. by the quasi-institutionalized tax evasion by means of a complex network of “heavens abroad”), class control based upon an “endless creation of needs, wishes and aims”⁴⁶ (coupled by simultaneous “endless dissatisfaction and frustration” being an irreplaceable emotional engine for the capitalist *perpetuum mobile*), the domination of neo-liberal and neo-conservative policy (propagated and enforced by trans-national power apparatuses and intellectual cadres, “priests” of global capitalist rule), the polarization, fragmentation and atomization of “society”, rapid growth of “atypical” (flexible, precarious, informal and poorly remunerated) jobs, a continuing reduction of welfare rights and provisions, the increasing power of economic organisations (and of their owners and managers or, in a word, employers in general) as forms of “everyday governance” (i.e. the direct, decentralized and more often than not authoritarian rule of private property⁴⁷), and so forth. If this holds true, then we have to pose the following question: what is “post-modernization” (of which the post-socialist “transition” is but a historically belated episode)? Well, in our opinion at least, it can be best described as a political—in fact counterrevolutionary—response from the globally ruling

⁴⁴ See Hall et al. (2008, p. 168).

⁴⁵ As Canfora (2006, pp. 358–360) has pointed out, the ideal of democracy must not be misidentified with a type of constitution, political system or form of government. Also, “democracy” is not a synonym of “parliamentary system”. Namely, democracy is primarily a specific constellation of class relations determined by “the predominance of demos”. To put it another way, “egalitarianism is the very essence of democracy” (Bobbio, quoted in Canfora 2006, p. 259). Accordingly, economic and social inequalities are the key enemy of democracy (see Wallerstein 2004, pp. 157–165). “Democracies” as they really exist are in fact “mixed systems” combining the “electoral principle” and the reality of oligarchic power. Moreover, in the post-modern context, it is freedom that is winning a victory over democracy—that is, of course, not freedom for all, but freedom for the rich (individuals, families, regions and nations).

⁴⁶ For a concise analysis of that type of (“opiatized”) “social” control, see Scheerer and Hess 1997, pp. 119–120.

⁴⁷ For a description of the “new governance”, see Lee (2002, pp. 121–127).

capitalist classes to “revolutionary” movements⁴⁸ associated with the mythical year 1968 that could be subsumed under the term “the great refusal”. What was refused? Briefly, the answer is—abstract work.⁴⁹ In that sense, the “refusal” was clearly an anti-capitalist rebellion (provoking a serious “crisis of governability”) for it was oriented towards the very heart of class exploitation and oppression (in the context of Keynesian state policies stimulating the growth of production and demand by fiscal and monetary measures).

What followed, as is well known, was an ongoing history of class warfare in which capitalists are gaining the upper hand over labour (e.g. by means of the “exodus” of capital and the repressive use of “work-saving” technologies). Consequently, the end result of post-modernization is the (intensive and extensive) expansion of “structural violence”. Needless to say, this sort of (anonymous or “objective”⁵⁰) violence (ingrained in the very “nature” of capitalism and remaining unchanged in spite of incessant changes going on around it⁵¹) should not be designated as “criminal”, for it cannot be attributed to single events or persons, although it is undeniably much more harmful than both “white-collar” and “conventional” crime. Well, what is really new with regard to systemic violence is the fact that it is ever more evident (poorly normalized or naturalized by the ruling capitalist ideology). Indeed, the absurdity of contemporary (“casino”) capitalism has become not only visible enough, but almost palpable even to “common sense”. Think of the fact that the principal products of the post-modern capitalist economy are precisely industrial waste (e.g. ever growing piles

⁴⁸ For a more detailed analysis, see Hardt and Negri (2003, pp. 216–223); Virno (2003, pp. 84–86); Wallerstein (2004, pp. 53–58).

⁴⁹ As Gorz has pointed out, mass rebellion was focused on imposed work rhythms, wage differentials, enterprise discipline, bullying foremen, close monitoring by bosses, supervision by means of regulations, an exploitative capitalist regime (based upon the forced extraction of unpaid surplus labour), and so forth: “These were all so many ways of refusing to accept not just the oppressive organisation of the big factories, large-scale offices and big department stores, but the permanent, quasi-institutional pursuit of class compromise—a pursuit which was the very cornerstone of the ‘Fordist compromise’. The social movements of the years 1967–1974 consciously took their stand away from the terrain marked out by the institutions of the state-society. Instead of making demands, they sought to change ‘life’ for themselves—to change what conditioned it and what it was made up of. [...] Contrary to the forecast of the founders of the welfare state, social protection and benefits had not reconciled populations with capitalist society, nor had the procedures for permanent negotiation and arbitration defused social antagonisms. In fact, the opposite was the case” (1999, pp. 10–11).

⁵⁰ As Žižek has shown, structural violence is inherent to the “normal” functioning of the capitalist system: “Systemic violence is thus something like the notorious ‘dark matter’ of physics, the counterpart to an all-too-visible subjective violence. It may be invisible, but it has to be taken into account if one is to make sense of what otherwise seem to be ‘irrational’ explosions of subjective violence. Benjaminian ‘divine violence’ is precisely the direct subjectivization of (or, rather, the direct subjective reaction to) this objective violence” (2009, p. 481).

⁵¹ For a condensed description of the main sources of indignation that have (over the last two centuries) continually fuelled the criticism of capitalism, see Boltanski and Chiapello (2005, p. 37).

of used cars and other consumer artefacts), social waste (e.g. destruction of social bonds and collective solidarity) and, last but not least, human waste (e.g. redundant incarnations of “labour power” or exhausted and burnt-out victims of inexorable employers). Consider the existence or creation of bizarre and totally useless (or even socially harmful) jobs, particularly in the service sector. Take into account the irrational distribution of socially necessary and useful work. Look at the unprecedented wealth and conspicuous luxuries enjoyed by the thin top layer of humanity. Note the capitalist management of technological rationalization that is used as a means for intimidating workers. Reflect the fact that gains in productivity generate un-, under- and over-employment instead of liberating people from poverty and stressful, tiresome or stupefying work. Just fancy that the officially recommended remedy for the crisis caused (somewhat paradoxically) by over-production and over-accumulation⁵² is “more of the same”, i.e. more production, more work, more competition and more accumulation. And so on, and so forth. Accordingly, it is the tolerant, active, voluntary and even creative participation (not only of have-nots and have-littles, but also or in fact particularly of have-plenty members of the “middle class”) in the proliferation of a systemic craziness that should be interpreted as a sign that stupidity has become the chief characteristic of the post-modern “objective spirit”. What this implies is not merely the fact that individual “instrumental” rationality (related to following one’s interests) results in collective irrationality. Namely, it is the individual rationality assumed to lie behind this irrationality that must be called into question.

Finally, it could be acknowledged that, in a sense, post-socialist transition has been a “success story”. Ex-socialist men and women have quickly (indeed almost overnight) learned key (explicit and, still more, implicit) lessons given by foreign and domestic politicians, advisers, businessmen, experts, academics and journalists. Yes, transition has its winners and losers, innocent and guilty criminals, and it has produced numerous social and personal problems. Yet, the average individual (so-called “little man”) is now free to indulge himself in huge trafficking (on the market of humans self-represented and self-managed as pseudo-commodities), selling himself (*in extenso* and *in intenso*) to the “best” master. Is this the “good life”? It must be! Namely, as we were told on many occasions, there is no alternative (*nota bene*: in an “open”, “free” and “democratic” society there is just one right and necessary way, even if this is a “road to nowhere” or just a route to the “eternal present”, endless competition, a daily economic and status war, i.e. a situation in which “every man is enemy to every other man and where life is clean, polite and long”). Work and consume (at least cheap “luxuries” made in China or elsewhere in the Third World)? Yes, why not. And if this is not enough, one can find self-actualization (and with it happiness) in love, for this emotion is definitely “all we need” (and, presumably, cannot be purchased by money), especially when it is followed by good-humoured, harmonious family life and the procreation of

⁵² For a comprehensive analysis of the chief consequences of “over-accumulation” (Marx), see Kurz (2000, pp. 81–84).

new human beings. So, the post-socialist “transition” is now primarily a narrative (tragedy, comedy or tragicomedy?) with its own cast of heroes, villains, prophets, followers (the proverbial silent majority), saints, priests, believers, good and bad guys/girls, monsters, demons, angels, critics, observers, supporters... Of course, there are many stories about “transition” among which some are undoubtedly more influential than others (indeed, some are dominant and others are subordinated or even ignored). But, it is still a narrative dealing with “our” past, present and future. That is why we have to be extremely careful in that regard, for stories have consequences (personal and other ones).

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