

# Chapter 1

## Crime and Crime Control in Transition Countries

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**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

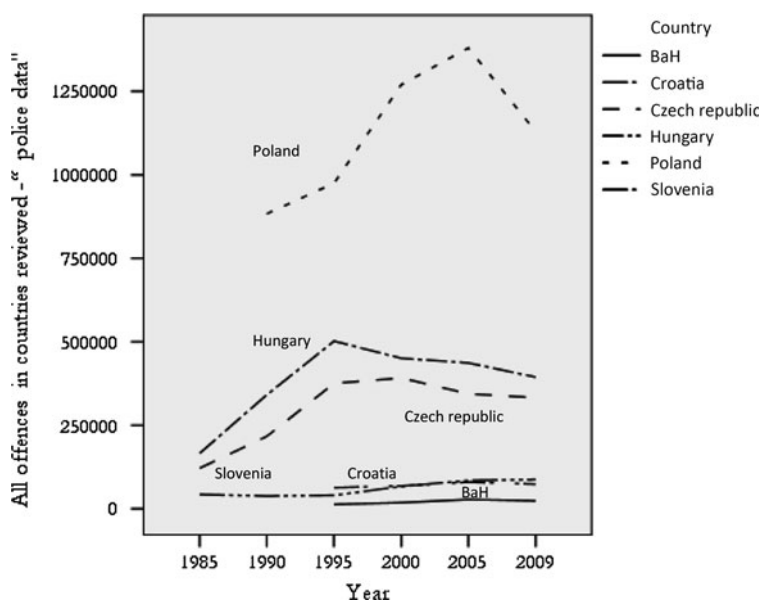


Chart 1.1 Criminal offences in the countries reviewed, 1985–2009, from police data

### 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



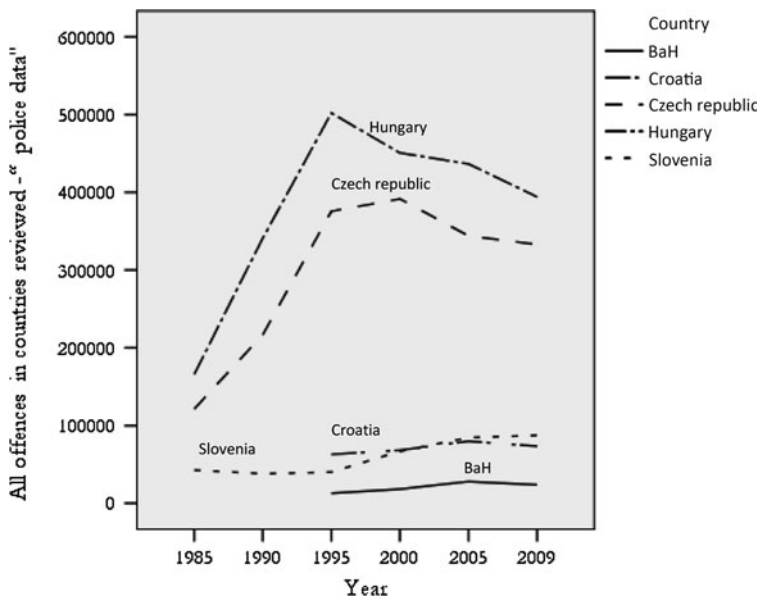


Chart 1.2 All offences in countries reviewed—'police data' (BaH, Croatia, Czech Republic, Hungary, Slovenia)

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.

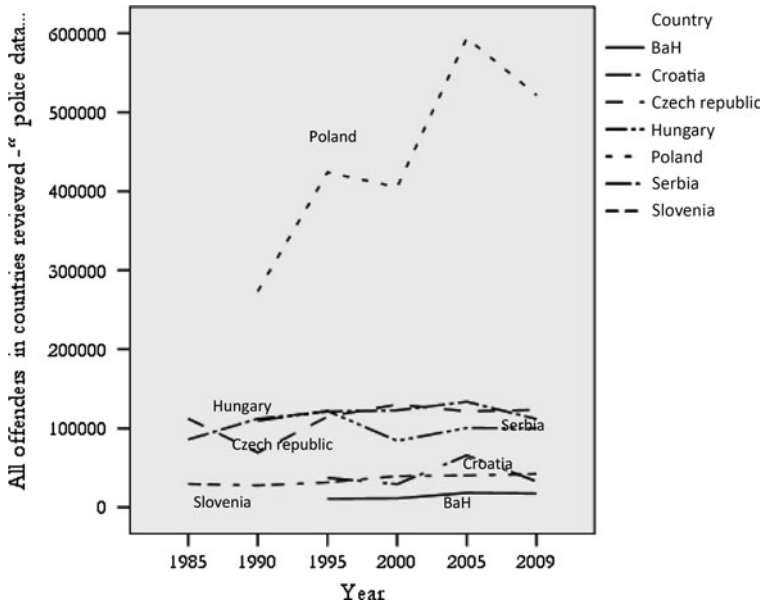


Chart 1.3 Criminal offenders in countries reviewed, from police data, 1985–2009

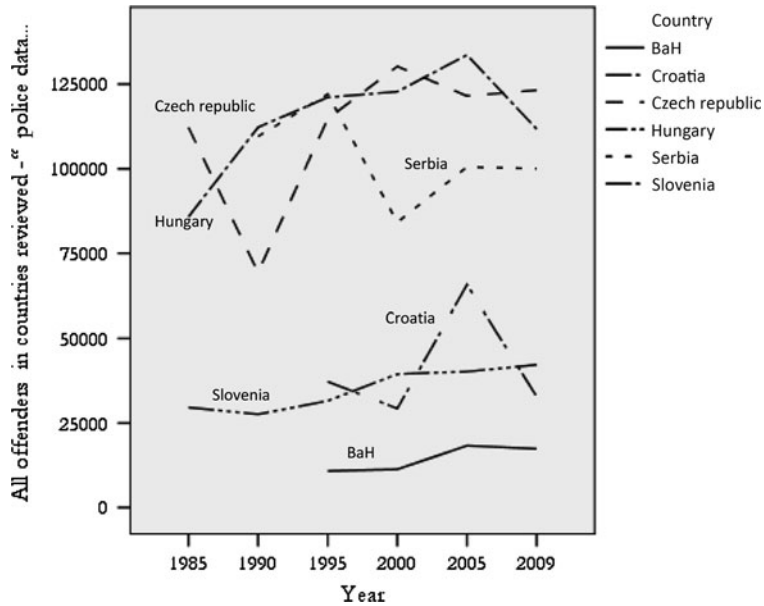


Chart 1.4 Criminal offenders in countries reviewed, from police data, 1985–2009 (BaH, Croatia, Czech Republic, Hungary, Slovenia)

**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).

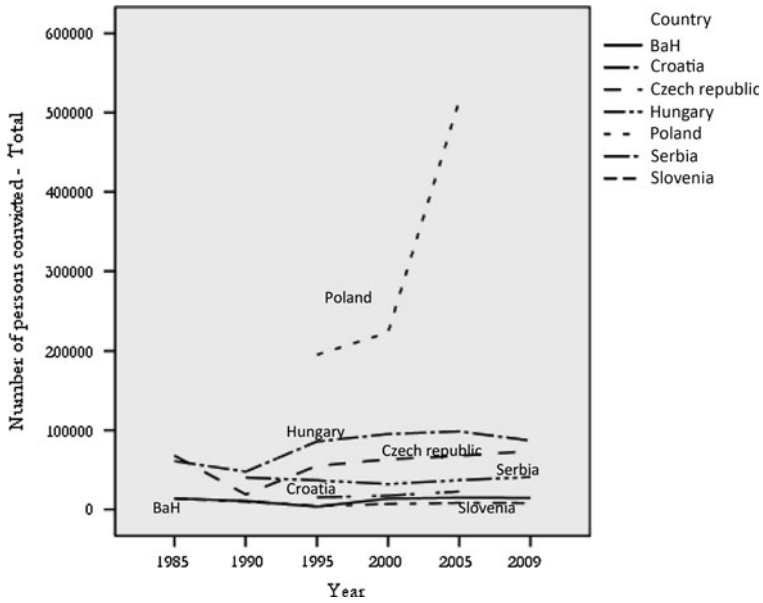


Chart 1.5 Sentenced offenders in the countries reviewed, 1985–2009

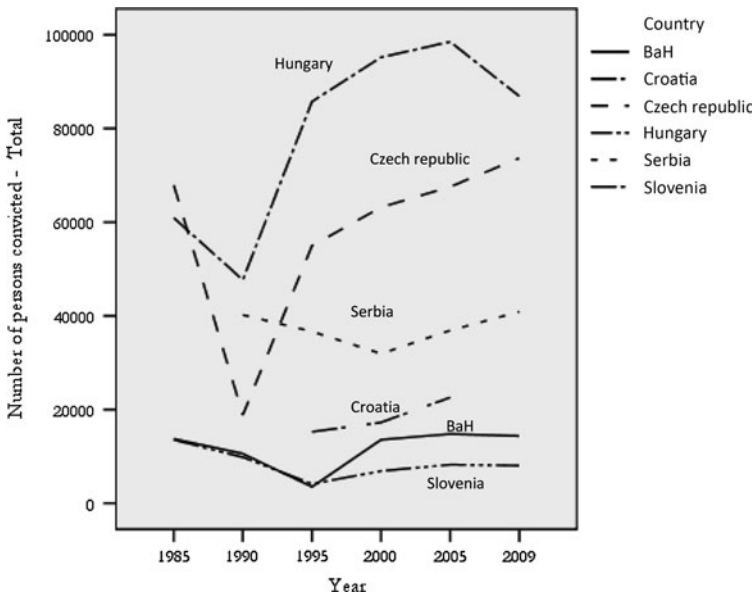


Chart 1.6 Sentenced offenders in the countries reviewed, 1985–2009 (BaH, Croatia, Czech Republic, Hungary, Slovenia)

**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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