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

Abstract

Since old times it is the rule to prevent undesirable, especially criminal behaviour by punishment. In medieval times most brutal sanctions are used – and as was the obvious result also in that times, with no or small effect. At the same time, the attitude to the punishment has never been straightforward. Beccaria [3, 107] wrote that we should "prevent crimes than to punish them"; it means that criminal prevention must be concentrate in "rewarding virtue." The scientist also believed that "in countries and over time with the most severe punishment most brutal crimes had been done." The effect of criminal sanctions is small, if ever given. This is shown on the background of empirical research from the USA, Finland, Germany, Switzerland and Portugal and on the basis of different groups of criminal behaviour. All international empirical results show a missing or in best cases small crime preventive effect of sanctions. The reasons are discussed. Alternatives to harsh sanctions mostly are cheaper than and as successful as sharp punishments. Nevertheless crime politicians are asking for sharper punishments, here populist ideologies might play an important role.

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

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

was intended to maximize the criminal justice system's deterrent and selective incapacitation effect"[27, 2].

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

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

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

The most striking example in the matter of the effectiveness/ineffectiveness of tough sanctions is Finland. By 1950, the number of convicts in Finland was 187 people. Compared with other countries in Northern Europe, such as Denmark (88), Norway (51) and Sweden (35) the level of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hofer and Ham emphasized several decades ago that the political demands to toughen criminal penalties largely dictated by "pure ideology" and "concealment of reality. General prevention claims to secure basic societal values which in reality are specific interests of various power groups. General prevention pretends consensus where there is conflict. Penal legislation is to a considerable extent the attempt of specific groups to secure their specific interests – not so much

in respect to what actually is criminalized, but with regard to what is *not* criminalized” [14, 268]. “General prevention is based upon fear and threat. It is at least partly repressive in its character. It does focus on individuals rather than on structures” (P. 270; Lee 2001). Clear (2008, P. 125f.) wrote: “If the problem of mass incarceration is the large number of people who go into prison and how long they stay there, then the solution is for fewer to go in and for shorter stays”. As emphasized by Braman [6, 224]: “The question ... is not merely how to punish and deter offenders, but how to encourage and strengthen the bonds that make families possible, give life to community, and ultimately determine the character of our society as a whole”.

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

This imposition requires additional intensive rehabilitation in order to motivate people to change their behavior. Modern criminal political tendency toward increased penalties, increased prison terms and the number of prisoners is in the wrong direction. Prisoners were motivated by the possibility of parole at the appropriate cooperation and behavior change. Additional load, which in this case will test the probation service, may be partially reduced through the active involvement of volunteer labor [22]. As Dalley asks: “In short, the remaining question is a simple one: Do we pay now, or later?” (Dalley, 2002, P. 262).

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