

Justice and sentencing traditions in Central and Eastern Europe

Written by: Dr. Vira Zemlyanska,
Restorative Justice Project Associate, Ukrainian Centre for Common Ground, Kyiv

Despite the high and constant development of alternative sanctions, measures and procedures such as community service, conditional caution, probation supervision and Restorative Justice programmes in Western countries, they are slightly spread in Central and Eastern Europe (CEE) where they have been introduced only since the Fall of the 'Iron Curtain'. In some Central and Eastern European countries (for example, Czech Republic, Slovakia) the first mediation and probation initiatives appeared in the middle of 90s, but in others they were undertaken only after 2000. Development of alternative sanctions is closely connected with legal and cultural traditions of the country, where those can be either a supportive factor in its implementation, or a challenge. In this article I will analyse the difference between criminal justice and sentencing traditions in Western and Eastern Europe, and try to explain challenges meeting the current legal reforms running in CEE.

Post-socialism justice. If we say Central and Eastern Europe, we mean all European post-socialism countries. Central and Eastern Europe is rather a political division than a geographical. Any country belonging to Central or Eastern Europe is either former Soviet Union republic or USSR satellite. All these countries have been separated from the West during the Cold War and all of them have had similar legal systems.

There are a number of common features of the criminal justice systems there, such as the criminal policy, the system of sanctions, as well as the public opinion on crime and punishment.¹ The recent research of the International Centre for Prison Studies shows that in Russia, Belarus, Ukraine, Moldova, to a certain degree also in Romania, Bulgaria, Czech Republic, Slovakia, Hungary and Poland exists a highly punitive criminal sanction system, using detention as a main tool of punishment and long term imprisonment resulting in high number of detained people. Accordingly, there are overcrowded prisons, increased recidivism, difficulties of reintegrating offenders into the communities and there is low community participation in the processes of offenders' resocialisation.²

Country	Prison population total (no. In penal institutions incl. Pre-trial detainees)	Prison population rate (per 100,000 of national population)
Belarus	52,500	532
Bulgaria	11,060	143
Czech Republic	18,830	184
Hungary	16,700	165
Moldova	10,729	297
Poland	79,087	209
Russian Federation	763,054	532
Romania	39,015	180
Slovakia	8,891	165
Ukraine	198,386	416

Table 1. Central and Eastern Europe Prison Population List (prepared by Roy Walmsley, International Centre for Prison Studies, February 2005)

¹ Hanganu, S. (2004). Ideologies in sentencing in Central and Eastern European countries. Presentation made at the 1st ARGIS Seminar, Budapest October 16-18, 2004

² Ibid

The medium rate of detention in the 15 countries of European Union before its extension on 1st of May 2004 was 97 detainees per 100.000 inhabitants on the 1st of January 2004.³ As we see, the number of detainees in post-socialism countries significantly higher than in Western ones.

In order to reveal the causes of this situation, it is important to consider criminal sanctions before the 90's. Under socialism the penal system was unable to set itself completely free from the legacy of the sadly notorious Stalinist GULAG. The word "GULAG" comes from the Russian abbreviation for "General Department for Work Camps", a structure created in the Soviet Union for administrating those camps where the convicted persons were serving their punishment. Initially the so-called 'political' criminals were sent to these camps who had different ways of thinking and who were opposing to the dictatorship. They were usually sentenced for long-term imprisonment. Since their number was very high, these camps had to be built not as usual prisons with individual cells, but as barracks, where the prisoners were not only living but also were working. Afterwards these camps (also called "colonies") have been used for imprisoning other types of offenders as well who were punished for different kinds of offences.⁴

While Western European democracies underwent a process of liberalisation in their criminal justice and penal policies after World War II, which included abolition of the death penalty and the development of alternatives to imprisonment, the criminal justice systems of socialist countries did not experience the same type or degree of liberalisation. Contrary to Western world, prison in the Soviet Union was seen as the norm. Peculiarity of the Soviet regime was that prisoners' work was regarded as central to the advancement of the Soviet economy.⁵ Yuriy Kalinin, deputy Minister of Justice of the Russian Federation, suggests that Soviet system had been founded first and foremost on the concept of deriving profit from the labour of convicted prisoners and ensuring compensation for the evil which had been perpetrated by the prisoners. He points out further that when the socialist system collapsed, many of the ideological and economic conditions which had provided the basis of the old penal system disappeared and as a result the foundations of the penal system began to collapse as well.⁶

After the collapse of the USSR Central and Eastern European societies experienced the greatest impact of the transition period from socialism to capitalism accompanied by painful reforms, in economic, political and social fields which resulted in major changes in the nature and extent of crime. Crime rates throughout the region exploded and showed overall upward trends which continued throughout the next decade. Some of the biggest increases were seen in property offences. The median rate for domestic burglary in 2000 was 72 percent higher than the rate in 1990, while that for motor vehicle theft in 2000 was 236 percent higher than in 1990.⁷ The impact of the surge in crime on citizen attitudes has been significant. Post-socialist publics have demonstrated high levels of fear of crime and feelings of insecurity. At the same time, they generally continue to perceive the police as corrupt or as serving the interests of the state or private interests rather than those of the

³ Ibid

⁴ Ibid

⁵ Available at: http://www.newhumanist.org.uk/volume120issue2_more.php?id=1375_0_35_0_C

⁶ Kalinin, Y (2002). The Russian Penal System: Past, Present and Future, A lecture delivered at King's College, University of London, November 2002

⁷ Aebi, M. (2004). Crime Trends in Europe from 1990 to 2000, Crime and Crime Control in an Integrating Europe, in Plenary presentations held at the Third Annual Conference of the European Society of Criminology, Helsinki, Kauko Aromaa and Sami Nevala (eds.), Helsinki: European Institute for Crime Prevention and Control, p.43

community.⁸ The International Crime Victim Surveys (ICVS) indicated that of all the major regions of the world, citizens in the countries in transition of CEE feel least safe, with 46 percent saying they feel safe in the street, while 53 percent feel a bit unsafe or very unsafe.⁹ In 1995, for example, 40 percent of respondents in the Czech Republic felt insecure on the street near home after dark, while 35 percent of Poles felt insecure.¹⁰

Due to increased crime and fear of crime in society, rates of imprisonment have steeply increased in recent years in the majority of Central and Eastern European countries and have led the trend towards a more punitive criminal justice policy and increasing number of prisoners.¹¹ This is obviously due to strong public and political support for a tough response to crime but also to the underdevelopment of a powerful community sanctions and measures sector, i.e. the partial or total absence of the infrastructure necessary to implement non-custodial sanctions and measures properly.¹² However, it is not the only reason for punitive character of the criminal justice in this region. Other key-factors include traditional inquisitorial character of Soviet and post-Soviet criminal procedures and the slow and inefficient pace of court and investigative procedures. There are two characteristics of the Soviet inquisitorial justice system. Firstly, the court plays the role of prosecutor, insofar as it is obliged to carry out its own independent investigations into cases in order to complete any elements omitted in the work affected by the criminal investigation agencies or under other preliminary investigations. As a result, ordinary courts acquit only 1 – 1,7% of defendants. The second dominant characteristic of the system is that the defendant is not treated as a human being endowed with specific legal rights, but as the object of more or less impartial investigation. As a result of tortures used frequently during investigation the prison population continues to rise as a result of basing convictions on defendants' own self-incrimination, in particular in former Soviet Union republics.¹³

It is of note that there are considerable discrepancies between the Western European and the Central and Eastern European prosecutor's role in justice system. In Western Europe a relatively high degree of prosecutorial discretion was recognised as a prerequisite for efficient administration of justice and was perceived as a perfectly normal element of the criminal justice process. However, for many law-makers in Central and Eastern European countries, such discretion did not seem acceptable. They would rather go for strict application of the principle of mandatory prosecution.¹⁴

Current reforms. Since the Central and Eastern European countries have signed international agreements and joined the Council of Europe, the situation with criminal justice there has started to change to better side. First of all, these countries have announced legal reforms aiming on making criminal justice more democratic and transparent. Secondly, programmes have been initiated in order to introduce

⁸ Krajewski, K. (2004). Crime and Criminal Justice in Poland, 1 (3) European Journal of Criminology, p. 398

⁹ Zvekic, U. (1998). Criminal Victimization in Countries in Transition. Rome: UNICRI, p.82

¹⁰ Los, M. (2002). Post-communist fear of crime and the commercialisation of security, 6 (2) Theoretical Criminology, p. 166-168

¹¹ Saar, J. (2004). Crime, Crime Control and Criminology in Post-Communist Estonia, 1 (4) European Journal of Criminology, p.521-522

¹² Rau, W. (1999). Countries in Transition: Effects of Political, Social and Economical Change on Crime and Criminal Justice, 7(4) European Journal of Crime, Criminal Law and Criminal Justice, p. 360

¹³ Available at: http://www.penalreform.org/english/frset_map_en.htm

¹⁴ Rau, W. (1999). Countries in Transition: Effects of Political, Social and Economical Change on Crime and Criminal Justice, 7(4) European Journal of Crime, Criminal Law and Criminal Justice, p.358

alternatives to imprisonment and to pre-trial detention as well as to implement probation and mediation.

However, the introduction of justice reforms has met a number of challenges in Central and Eastern Europe. Firstly, there is a fundamental mistrust in police and the judiciary amongst the population, lack of confidence in the impartiality of judges and mistrust in the independence of the judiciary from the executive power. Lack the respect of society, a phenomenon dating back to the Soviet era, when the party dominated all jurisprudence, and courts were an appendage of the local party committee. As a result of this phenomenon the classical understanding of applying for a court as applying for justice is ruined, a person would largely go to court as a last possibility to gain redress. Besides, the courts and the law enforcement bodies have since the Soviet times traditionally been on one side of the barricade – fighting crime and ignoring protecting the interests of justice, and the rights of a human being.¹⁵ Secondly, there is a lack of infrastructure connected with implementation of alternative sanctions and measures. Some Ukrainian judges in private conversation mentioned that they prefer to pass suspended imprisonment instead of community service (alternative punishment introduced in Ukraine in 2001), because they do not know who and how will supervise execution of community service.

However, despite the temporary difficulties meeting the justice reforms, the implementation of alternative sanctions, measure and procedures have been gradually developed in CEE, partly due to enlargement of the European Union and legal reforms conducted towards European integration and building of democratic society.

¹⁵ Pushkar, P. (2003). The Reform of the System of Criminal Justice in Ukraine: The Influence of the European Convention of Human Rights, 11 (2) European Journal of Crime, Criminal Law and Criminal Justice, p. 209-213