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CONTENTS

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An Empirical Analysis of Cracow Citizens' Fear of Crime in 2014–2016

The aim of the study is to present the results of a quantitative research study entitled "Security in Cracow", which investigated the fear of crime among the city's citizens in the years 2014–2016. Under the *Agreement for Security* concluded between the City of Cracow and the Jagiellonian University in 2014, the survey is held two times each year. Both the Agreement and the concept of the presented research arose from the moral panic that was visible in Cracow in the second half of 2013, following several cases of serious offences committed by football hooligans and a widely publicised homicide of a young student in September 2013.

Empirical analysis of the fear of crime faces numerous theoretical and methodological problems. For the purpose of the present research, an operational definition of fear of crime was adopted, according to which fear of crime is similar to the psychological construct of attitude, comprised of three components: cognitive, affective and behavioural. The research was additionally intended to verify the selected hypotheses on the causes of fear of crime, that is the victimisation hypothesis, the vulnerability hypothesis and the reduction of social control hypothesis.

The research was conducted via telephone interviews (CATI, *Computer Assisted Telephone Interviews*) six times – in March and September 2014 (N = 1815 and N = 1770), June and September 2015 (N = 1808 and N = 1811), April and September 2016 (N = 1820 and N = 1803). The sample was representative for the gender, age and the district of the city's residents. The questionnaire included 33 items: 13 items on the demographic and social participants' characteristics, and 20 concerning: a) problems and threats encountered in Cracow, b) the respondents' sense of safety in Cracow, their district of residence and the nearest surroundings, c) victimisation, the likelihood of becoming a victim to a crime, the means adopted to prevent crime, and d) the attitudes towards the services responsible for security and public order.

To measure the fear of crime, an index was constructed based on the questionnaire items referring to its three components. In the light of the results of the past six rounds of the study, the level of the citizens' fear can be estimated as low. However, a moderately sized group of citizens was identified whose fear of crime was at a considerable level and who – in future research – ought to be addressed in a more qualitative manner to explore the underlying causes of their fear.

Evidence was found to support the victimisation hypothesis, according to which fear of crime is correlated with the experience of being an actual victim of a crime. Additionally, the vulnerability hypothesis that claims fear of crime results from perceiving oneself as a potential target of criminal activity was partially corroborated

in the light of the obtained results. Evidence was found to support the fear of crime paradox with reference to gender, though not to age differences. Finally, the reduction of the social control hypothesis states that fear of crime is related to the condition and strength of the local communities. The obtained results suggest that the respondents' fear of crime is correlated with the perceived disorder in the nearest surroundings, but no evidence has been found that it is related to the disintegration of neighbourhood ties.

Fear of crime remains an important social issue which influences the quality of citizens' lives on the individual (personal) level, the level of local communities and on the macrosocial one. To maximise citizens' security, it is essential to undertake actions addressed to the objective (minimisation of threats and/or dangers) and subjective (focus on citizens' sense of safety) understanding of safety.

The research in question is unique on both the national and the international level. Periodical analyses of this sort based on the same research questionnaire provide a rare opportunity to investigate temporal and spatial dynamics of the phenomenon in question. The authors believe that the presented research will contribute to scientific discussion concerning the methods of measuring fear of crime and will allow the safety stakeholders to recognise the need for research-based community crime prevention programmes.

Ewa Habzda-Siwek

Offences Against Life and Health in the Light of Statistical Data

The aim of the research presented in the article is to show the amount, structure and dynamics of the offences against life and health that are defined in Chapter XIX of the Polish Penal Code 1997. The article offers an analysis of the data on the offences against life and health based on the publicly available statistics for the years 1999–2016.

In the analysed period, two main trends relating to the amount of crime should be identified. The first, encompassing the years 1999 to 2003, was an upward trend, followed by a downward trend that accelerated in the second decade of this century. In fact, since 2011 there has been a general, spectacular and significant drop of crime in Poland, also including offences against life and health.

For the purpose of the analysis, offences against life and health are divided into four main categories: homicide, assault or battery, bodily injury and other crimes (not included in the above-mentioned categories). Based on the offences recorded by the police in the years 1999–2003, the number of all offences against life and health exceeded 35,000 in 2003. Then, the number of such offences was relatively stable (about 31,000-32,000 per year) and has decreased to about 18,000 since 2011.

Generally, over the analysed period, the number of offences in three of four categories: homicide, assault and battery and bodily injuries, has shrunk several times. The only exception to the general trend relates to the offences under Art. 160 of Criminal Code (defined as "exposing a human being to an immediate danger of loss of life or bodily injury or impairment of health") that is invoked, among others, in cases of parental neglect, distribution of designer drugs or even as allegations of medical malpractice.

The significant drop in crime during the second decade of the 21st century asks for an explanation. The first possible reason for this is that a crime drop has been observed in many countries, seems to be a common and international phenomenon and, as such, it also applies to Poland. The second explanation, probably the most important one, is that the crime drop in Poland has been due to the systemic changes in the recording of crimes.

First of all, in 2013 a new police information system was introduced, which led to some problems with making it compatible with the old one. In parallel, in the same year, a substantial change in the recording of juvenile delinquency was adopted. According to the new methodology, offences committed by juveniles are recorded by the police only after juvenile courts confirm the fact that a juvenile has indeed committed a crime. The problem is that there is no rule that would oblige juvenile courts to give such information back to the police. It could possibly have a strong impact on the statistics of crime, especially regarding assault and battery and bodily injuries, as juveniles used to be a significant group of individuals suspected of such crimes. To make it clear, the data about ascertained crimes in Poland do not include punishable acts committed by juveniles.

Furthermore, the investigation and proceedings carried out by the prosecutor's offices and entrusted to other competent bodies than the police are not included in the official police data. It all means that, since 2013, the range of the police data has been substantially limited and does not reflect incidence of crime in full.

The third possible reason for the falling number of crimes is the effect of the demographic processes. It should also be taken into account that the population of adolescents in Poland is currently at the lowest level since World War II.

The article discusses four main categories of the offences covered by Chapter XIX of the Penal Code.

The category "Homicide" is not a simple one. It includes manslaughter (Art. 148 § 1), murder (Art. 148 § 2 describes different forms of such felony: killing with particular cruelty, in connection with hostage taking, rape or robbery, for motives deserving particular reprobation, and also with the use of explosives). The Polish Criminal Code also has provisions relating to heat of passion manslaughter justified by the circumstances (Art. 148 § 4 of the Penal Code). According to the data recording by the police, in the analysed period the number of homicide cases has decreased by more than 50%!

"Bodily injury" is a very broad category that also covers causing serious bodily harm, which includes, among others, deprivation of sight, hearing, speech or the ability

to procreate, or inflicting a serious crippling injury, an incurable or prolonged illness, an illness dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation (Art. 156 § 1 of the Penal Code), stipulating a heavier penalty if the consequence of an act is death (Art. 156 § 3 of the Penal Code) than for causing a bodily injury or an impairment to health other than specified in Art. 156 Penal Code (Art. 157 § 1 of the Penal Code). If the bodily injury or an impairment of health does not last longer than seven days, prosecution will be brought on a private charge. Over the analysed period, most of these cases were qualified under Art. 157 of the Penal Code. The total number of bodily injuries has been slowly decreasing over the analysed period, reaching about 60% of the initial amount.

"Assault and battery" (Ar. 158 and Art. 159 of the Penal Code) is also a very broad category and includes brawling (the perpetrator who participates in a brawl is responsible for the complicity in the act that means an immediate danger to life or may lead to a bodily injury) and battery, when the role of the victims and the offenders are clearly determined. Since 2011, the police data have shown a spectacular drop in the number of assault and battery – to one third of previously recorded cases. It is undoubtedly a side effect of the change in the algorithm of recording punishable acts committed by juveniles.

The conclusion is that the changes in the methodology of recording ascertained crime by the police have limited the range of available data on crime. Therefore, interpreting the data on offences against life and health has now been made more difficult as the punishable acts of juveniles are no longer included in the police information system. In such a situation, possible ways of gathering data on crime and their interpretation should be reconsidered.

Moreover, there is an urgent need to develop and conduct criminological research on offences against life and health.

Paola Cavanna

Labour Exploitation in the Italian Agricultural Sector: "The Way of Production"

Despite a solid legal framework, labour exploitation seems to be "the way of production" in the Italian agricultural sector, built around the goal of cutting costs and maximising profits through underpayment of wages. Long working hours and underpayments, physical and psychological violence, the control over the workers' mobility and extra-payments for food and water have led the media to decry the existence of "modern slavery". The paper aims to provide a picture of the phenomenon, overcoming a stereotypical perception of victims while challenging the assumption that criminal law is

the panacea. Indeed, the contention is that a better understanding of the phenomenon and its complexities might suggest a more promising range of tools for action.

The article is divided into three sections. After an introduction of the issues at stake within the EU context, official statistics on recorded crime at the global, European and national levels are presented and their reliability discussed. All available estimates and official statistics on recorded crime can only ever show a fraction of the full volume of the phenomenon as defined, captured and processed by institutional mechanisms. Importantly, victims – the key resources of information – are reluctant to report their experiences to the authorities since they fear deportation. This places huge challenges on the identification of potential cases. The second section focuses on the Italian agriculture and its own peculiarities (e.g. prevalence of undeclared work and illegal gangmastering). Italy is at the centre of the reflection to provide tangible examples within a global perspective, at the intersection of labour market and migration policies. Four cases are analysed to grasp the complexity of the context in which exploitation occurs: i) a case of slavery in the Apulian countryside; ii) "double exploitation" of Romanian women in Sicilian greenhouses; iii) the case of the Sikh community exploited in Central Italy, and iv) exploitative working conditions in the "quality food" product chains in the North of Italy. This paper seeks, indeed, to follow the teaching that criminology stands as the empirical basis for criminal law. Such a focus on cases is intended to develop a conceptual model of the business of labour exploitation to deepen the understanding of its *modus operandi*, expanding the knowledge about how labour exploitation allows businesses to turn a profit. The very lesson to be learned is that, in Italy, labour exploitation seems to be "the way of production" rather than a "few bad apples". As a result, consumers can easily come into contact with labour exploitation whenever they eat, although they are increasingly pressing companies to act responsibly. The third section investigates who is a victim of labour exploitation, bearing in mind that stereotypes influence social perceptions regarding victims of crime. The reality coming out is more complex and fraught than what media usually report. Indeed, media tend to reproduce stereotypical images, involving extreme violence and control, organised crime groups and illegal immigration, missing a wider discussion of what would need to be changed to prevent exploitation from penetrating food supply chains. Subsequently, the concept of corporate crime is introduced. This may help to conceptualise labour exploitation as made up by the organisation's structure, also shedding light on labour exploitation as a form of negligence by the State. Finally, specific policy recommendations are made for strengthening the currently available redress, leaving criminal law tools as the last resort. Society needs a long-term targeted and multi-level strategy addressing, in a coherent way, the many intertwined factors that leave workers vulnerable, both individual factors (e.g. poverty, discrimination, precarious legal status, etc.) and deficiencies in the regulation of labour market and the global economy (e.g. general lack of economic opportunities, cuts in the social services budgets, lack of legal and viable migratory channels, etc.). On the contrary, toughening the State response to vulnerable workers who have fallen in breach

of immigration regulations will have the effect of locking more people into systems of "modern slavery" without any hope of protection from the law.

Going beyond the most traditional "black letter" methodology in legal research, the paper addresses "law in action". Researching "in law", legal texts and relevant case-law will work as a backup to understanding the current legal framework aimed to counter labour exploitation. In researching "about law", the economic and sociological implications are taken into account in order to gain empirical knowledge and an understanding of how the law and legal proceedings impact on the parties involved. This is done also for the purpose of evaluating the effectiveness of the current (intertwined) legal framework and, if needed, to facilitate a future change in the regulations.

Justyna Włodarczyk-Madejska

Cooperation of Juvenile Courts with Supporting Institutions in the Adjudication Process

The article analyses the cooperation of juvenile judges with supporting institutions in the adjudication process on the basis of the research project conducted at the Department of Criminology of the Institute of Law Studies of the Polish Academy of Sciences in 2016, entitled: "Cooperation of juvenile courts with other institutions in the application educational and corrective measures". The aim of the research project was to examine how juvenile courts practically implement the assumptions resulting from the Act on Proceeding in Juvenile Cases, especially its Article 32b, which provides that juvenile judges have a duty to collect information about the juveniles and their environment in the course of the proceedings – directly or indirectly (by the supporting institutions). The last of them have been defined as an organised team of institutions that cooperate with each other in order to achieve common aims. Cooperation has been defined as "a type of social process to achieve a common aims". In the course of the project, two kinds of research were conducted. The first of them included national surveys addressed to juvenile judges, professional family probation officers, experts from diagnostic teams, the second – individual in-depth interviews with selected representatives of these groups. The national surveys comprised: 162 juvenile judges, 556 professional family probation officers and 177 experts from diagnostic teams, which accounted for, respectively, 16%, 28% and 33% of total population for each of these groups. The individual in-depth interviews were conducted with 30 respondents, 10 in each group.

On the basis of the research, it can be assumed that, in general, the cooperation of juvenile judges with professional family probation officers and diagnostic teams is good. This is an average value. It means that, in some courts, cooperation is more

efficient than in others. The main evidence that provides knowledge about juveniles is the environmental interview; 70% of judges declared that the order regarding the preparation of an interview is issued in each case. None of them chose this category of answers in the question about the diagnostic opinion. Both the national survey and the interviews demonstrate the lack of interdependence between the type of case and the frequency of the order to prepare an environmental interview. This dependency occurs in relation to the diagnostic opinion. The probability of commissioning the preparation of such evidence is higher in cases in which the court intends to rule an isolation educational measure or corrective measure. There are different practices of asking questions to the supporting institution. The questions, especially about the cause and degree of demoralisation (88%), suggestions about the measure and the direction of further impacts (86%), and personality characteristics of the juveniles (79.6%), are more often addressed to the diagnostic teams. The conducted research confirmed a high degree of convergence of the judgments with the recommendations of the supporting institutions (an average 78.5% with diagnostic teams and 54.7% with professional family probation officers). Juvenile judges were asked to evaluate evidence containing information about the juveniles. The judges recognised the diagnostic opinion as the most helpful evidence in the decision-making process (87.7%); whereas 85.8% of them also underlined the importance of the environmental interview. There is no doubt about nearly the same perception of the purpose of the functioning of the supporting institutions by the respondents of all the three surveyed groups. They agreed that these institutions are necessary and the juvenile justice system could not exist without them. These institutions provide information allowing conducting complete diagnoses of the juveniles and their environment, and thus determining the most needed measure; as such, they help to make the decision on the application of the most appropriate measure in each case. The article also includes theoretical analysis and analysis of the applicable regulations. Each of them confirms the existence of assumptions and premises to create a "model system of proceeding with juveniles."

Magdalena Grzyb

Gender Equality and Violence Against Women. Understanding the So-called Nordic Paradox

According to the prevailing assumption, the main cause of violence against women is a structural inequality between men and women. That idea is common in international human rights discourse, widely accepted on political level and enforced by several scientific studies. The structural nature of violence against women means that it is gender-based violence and one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. It is a manifestation

of historically unequal power relations between men and women which have led to domination over, and discrimination against, women by men, and have prevented full advancement of women.

Logically thinking, achieving gender equality would lead to the elimination of violence against women. Respectively, in societies with greater gender equality, where women enjoy better rights, have a better footing towards men, greater legal protection and access to power, they also should be less vulnerable to violence based on their gender. The most gender-equal countries in the world are Scandinavian countries – Sweden, Norway, Iceland, Denmark and Finland.

Yet, the recent EU-wide victimisation survey on violence against women (Fundamental Rights Agency 2014) produced startling results. It turned out that the highest rates of violence against women (in almost every single aspect, intimate partner violence and non-partner violence) were reported in the Nordic countries, particularly in Sweden, whereas countries considered traditional and conservative, e.g. the Mediterranean countries or Poland, revealed a lower prevalence of violence against women. The FRA results on Scandinavian countries were coined the "Nordic paradox".

The main problem is this: is really gender equality a factor reducing or increasing the likelihood of violence against women's victimisation? Is the subordinate position of women typical of more conservative societies a protective factor against violence against women? And are actually the FRA study results sufficiently reliable to draw such conclusions?

The first section of the paper discusses the FRA results regarding the Scandinavian countries and presents it against a larger picture of gender equality indicators. The next section examines the possible explanations for differences between countries offered by the authors, which are mainly methodological and contextual ones, such as: cultural acceptability to talk with other people about experiences of violence against women, higher levels of disclosure about violence against women in more gender-equal societies, patterns of employment or lifestyle or levels of urbanisation, differences between countries in the overall levels of violent crime and drinking habits in particular societies.

The third section reviews the previous research findings, looking at the relationship between gender equality or women's status and violence against women. There are two chief hypotheses tested in the studies: the ameliorative hypothesis (violence against women will fall along with greater gender equality) and the backlash hypothesis (if women remain in their subordinate position, men are less threatened and less likely to resort to violence against them). Overall, the studies showed mixed results, depending on the used measures. Furthermore, most of the them were conducted on the US data, and their application to the European context is doubtful.

The final section presents some theoretical explanations from the critical sociology field. The three most relevant theories suitable to explain the "Nordic paradox" and the relationship between gender equality and relatively high rates of violence against women include the variety of patriarchy theory of G. Hunnicutt, the hegemonic

masculinities of R.W. Connell and J. Messerschmidt and the symbolic violence of P. Bourdieu. All of these theories critically frame the use of violence by men as a means of upholding their superior position towards women.

Monika Płatek

Rape. When an Old Term Acquires a New Meaning. A Consequence of False Sameness

The Council of Europe Convention on preventing and combatting violence against women and domestic violence (further: CETS210, Istanbul Convention, Anti-violence Convention) became part of the Polish legal system on 1 August 2015. The Istanbul Convention incorporates a specific legal provision on rape, namely Art. 36 CETS210. It states that the Parties should take the necessary legislative or other measures to ensure that the intentional conduct described in Art. 36 CETS210 is criminalised. Article 36.1a CETS210 states that rape takes place when engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object.

Rape is respectively regulated in Art. 197 of the Polish Criminal Code 1997 (further, k.k.). However, the context of Art. 197 k.k. significantly differs from the wording of Art. 36 CETS. Whereas Art. 36 CETS protects freedom, autonomy and sexual autonomy of the person, Art. 197 k.k. protects merely sexual freedom combined with protecting the social customs. In order to establish the presence of rape, one needs to prove the presence of violence, psychological aggression and/or deception. Protecting social customs implies an additional burden because it allows evaluating the behaviour of the victim rather than the one of the perpetrator. The Istanbul Convention is oriented on eager elimination of violence against women and domestic violence. Therefore, it establishes that the Parties should take the necessary measures to promote changes in the social and cultural patterns and behaviour of women and men with a view to eradicating prejudice, customs, traditions and all other practices which are based on the idea of the inferiority of women or stereotyped roles for women and men (Art. 12.1 CETS210). It is within this line that rape regulation should follow.

The question that is tackled in this article is as follows: to what extent does the difference in the legal description of the act of "rape", and the difference in protected values by legal provision in Art. 36 CETS210 and in Art. 197 k.k. make an ontological and normative difference? Are they not possible to be reconciled? Or, is the mere difference in the words describing what "rape" not an obstacle to achieving the goals expected by Art. 36 CETS210?

The problem is not an artificial one especially in view of the fact that the Polish legislators did not amend the text of Art. 197 k.k. upon the ratification of CETS210.

It would suggest that the Polish legislator was of the opinion that there is no definite difference between Art. 36 CETS210 and Art. 197 k.k. The text examines what happenes when an old term acquires new meaning.

Is Art. 197 k.k. despite the lack of amendments filling the value required by Art. 36 CETS210? Or, is the sameness expected by the Polish legislator false? By demonstrating vital differences in the protected values and the action required establishing the presence of the rape, I call for amendments to fulfill the state legal obligations to observe the Istanbul Convention.

The article deals with the ontological difference in the legal concept behind the text of Art. 36 CETS210 and Art. 197 k.k. While Art. 197 k.k. is built on the concept of sexual freedom, Art. 36 CETS is developed on the concept of sexual autonomy. I elaborate on that.

The changes in the protected values incorporated in Art. 36 CETS210 lead to abandoning the concept of sexual freedom established in Art. 197 k.k. and adopting the concept of sexual autonomy. While the former concept of sexual freedom, as in Art. 197 k.k., uses violence, psychological aggression and/or deception to establish the presence of rape, for sexual autonomy as defined in Art. 36 CETS210 the line is crossed where the consent was not present. While sexual freedom limits freedom to to refusal, sexual autonomy demands the presence of consent. Not violence, aggression or deception, but the lack of consents matters.

The term and concept of sexual autonomy was first explored by the European Court of Human Rights in the landmark European Court of Human Right (further ECHR) judgment *M.C. v. Bulgaria* (No. 39272/98). The case is thoroughly analysed to further illuminate the difference between the two concepts behind the different approaches to defining "rape".

The article, however, starts with an in-depth introduction to the goal of the Istanbul Convention, which is to place the issue of rape in a proper perspective. Apart from a criminological analysis of the concept of rape, the article discusses the values protected by, respectively, Art. 36 CETS210 and Art. 197 k.k. and compares the similarities and actual differences. A similar examination is related to the description of "rape" in Art. 36 CETS and Art. 197 k.k. Last but not least, the subject is evaluated, taking the Polish criminal dogmas into consideration.

The conclusion of the examination leaves no room for assuming that Art. 197 k.k. fulfills the requirement stipulated by Art. 36 CETS210. It is, therefore necessary, to amend Art. 197 k.k.

Joanna Narodowska

The Correlation Between Aggression Towards Animals and Aggression Towards People in the Light of Records Research

Brutalisation of crimes involving violence, as well as crimes connected with physical and verbal aggression in public life can be observed in the Polish society. At the same time, the media inform about these pathologies in diverse ways. The problem of crimes involving violence against individuals is a classic area of criminological research. In Polish criminological literature, problems associated with violence towards animals are set aside from the basic considerations concerning the problem of violence. It is noted that this theme is the subject of many English-language publications. In American criminological literature, it is indicated that the perpetrators of abuse (perpetrators of domestic violence) also use violence against domestic animals as so-called "substitute objects". There is no indigenous empirical research confirming or falsifying the hypothesis on the existence of such a correlation. Therefore, the main aim of this work was to define, on the basis of the results of the author's research, if there is any relationship between the phenomenon of aggression towards animals and propensity for agression towards people. Moreover, the author formulated the following research problems: have the perpetrators of crimes involving cruelty to animals been previously convicted, particularly for any crimes of aggression? What kind of crimes were they? Is it possible to specify the common features that characterise perpetrators who use violence against animals and people? What factors play a leading role in the criminogenic process concerning perpetrators of crimes of aggression?

The work is divided into five parts. The first, called "Introductory Matters", offers a review of the *status quaestionis* and definitions of the basic concepts which appear in the subsequent parts of the paper (violence, aggression, legal status of animals, cruelty to animals). The second part summarises the methodology of the author's research. The applied research method involved researching documents, done by using the records research technique (indirect observation). The research tools included the author's questionnaire of records research consisting of 34 questions grouped in five categories: preparatory proceedings, court proceedings, trial (the first and the second instance), the perpetrator's deed, the victim of crime, the perpetrator of crime. The subject of analysis covered the contents of the court records in criminal cases with legal validity concerning Article 35 of the Act on the Protection of Animals. Therefore, only the finalised court proceedings were researched. The research included 59 criminal proceedings instituted against 61 persons accused of a prohibited act in the form of animal killing or violence against animals. The research was conducted in the first half of 2017 in the District Court in Olsztyn (2nd Criminal Department and 7th Criminal Department). The time range of the research included the period 1997–2016, i.e. since the entry into force of the Act on the Protection of Animals until the end of the research,

considered as full calendar years. The author researched all criminal cases that ended with a final judgement. On the basis of the established criteria, criminal cases were selected in which the relationship between the use of violence by perpetrators towards animals and people was ascertained. Further analysis was applied to 23 criminal cases, in which 21 perpetrators were convicted. The third part discusses the research results. The data collected for the purposes of criminal proceedings have provided basic information concerning the gender and the age of the perpetrator, his/her education, marital status, employment, prior criminal history, legal qualification of the committed crimes and the statement whether the perpetrator was under the influence of alcohol or drugs at the time of committing the crime. On the basis of personal and cognitive data of the perpetrators of crimes punishable under Article 35 of the Act on the Protection of Animals and the forensic and psychiatric opinions drawn up for the purposes of criminal proceedings, the characteristics of the studied population were presented and the factors that could play an important role in the genesis of acts of aggression (risk factors) were identified. In the fourth part, the selected criminological theories explaining the reasons for the aggressive behaviour were referred to specific cases of the examined perpetrators. The work ends with a conclusion which provides a verification of the researched hypotheses for the purposes of the paper.

Jadwiga Królikowska

Judiciary Sentencing in Legal and Sociological Research in 2012-2014

This article presents selected results of a legal and sociological research project entitled "Penal cultures. Cultural context of criminal policy and criminal law reforms. Legal, penological, historical, sociological, and cultural (anthropological) analysis of criminal law reforms in Poland against the background of European and world trends", conducted in 2012-2014 on a sample of 160 Polish judges. The research was carried out using the questionnaire method supplemented with in-depth interviews with 12 judges. The questionnaire was sent by email to all the presidents of district, regional, and appellate courts in Poland with a request to pass it to their judges. The questionnaire was accompanied by a recommendation letter from the Vice-Rector for Scientific Research at the University of Warsaw with the information about the research unit, that is about the Professor G. Rejman Division of Culturally Integrated Legal and Social Studies and the European Centre for Penological Studies at the University of Warsaw. The questionnaire was either sent back in bulk from individual courts, or the respondents sent it back individually by post or email to the university address provided.

The punishment phenomenon was examined in a processual approach. The researchers adopted the hypothesis that criminal judges were the first link in this process and knew more about punishment and punishing as social and legal phenomena

than the general public. The presented research refers thematically to the studies carried out by Bronisław Wróblewski and Witold Świda before World War II, reported in their book *Sędziowski wymiar kary w Rzeczypospolitej Polskiej. Ankieta* [The judiciary sentencing of punishment in the Republic of Poland. A Questionnaire], published in Vilnius in 1939. Similarly to those studies, the present research asks questions about the determinants of the judiciary dimension of punishment, but it emphasises more strongly the cultural, philosophical and moral dimensions of punishment attitudes displayed in sentencing.

The statements of the respondents show a varied level of the judges' knowledge about matters concerning the socio-cultural and psychological aspects of punishment. They also reveal a strong legal orientation of views and remain within the set of notions and theories focused on law. Similarly to the Vilnius pre-war studies, the judges' statements show a strong formative influence of lawyers' education curricula implemented at all levels of education.

The results of the research carried out in 2012-2014 illuminate the judges' views on the goals and functions of punishment and punishing. They show the declared hierarchy of the most important variables defining professional decisions regarding the sentences imposed by the judges. They show the influence of systemic and cultural variables on the professional attitudes and motives of the judges' decisions in this matter.

The judges' statements on the effectiveness of penalties in individual and general prevention are generally subdued. Although these factors are taken into account in the process of sentencing, there is no deep conviction about their high impact. It is significant that the research shows a clear distancing of the judges from the assumption that they may be subservient to influences from their superiors, scholarly authorities, public opinion or the decisions of colleagues in similar matters. Independence is declared by judges to be an important feature of their professional ethos and applies to all sources of influence. On the other hand, what the judges indicate as variables relevant to their decisions on sentencing are the personal and family conditions of the perpetrator and their potential for rehabilitation, which may occur as a result of criminal sentencing and end the state of impunity. The respondents also indicate that the fairness of a sentence and the doing of justice to the offender is a significant aspect of the court's action.

Although the research procedure in this case was strongly grounded in empiricism, this was not its main distinguishing feature – it was the conducting of research in the culture of methodological and theoretical integration of the empirical material. It makes it possible to deduce a complex structure of the researched process and to undertake an analysis explaining many more variables than would appear in the disciplinary mono analysis.

Piotr Stępniak

On the So-called Good Penitentiary Practices. An Empirical Picture and Several More General Theoretical Reflections

The article discusses the issue of good penitentiary practices. It fits into the discussion about how to work with inmates in prison, what axiological and substantive basis offers an alternative, new logic of interactions against the crisis of penitentiary resocialisation. According to the author, this discussion should be concentrated on the following questions: what can be achieved in prison conditions; how to work with prisoners; what goals should be present in penitentiary work. One of the ways of working is, therefore, good practice. The author discusses theoretical and methodological aspects of research on good practices and defines them. He points out that what is usually referred to as a good practice is an action that has brought concrete, positive results, has some potential for innovation, is durable, repeatable and applicable to similar conditions elsewhere or by other entities.

According to the author, the sources of good penitentiary practices can be sought in various areas of knowledge, experience and legal regulations. Most importantly, he indicates: praxeology and pragmatism, realism (with regard to what can be achieved in a total institution in given organisational, social and economic conditions), wisdom and experience of prison staff (conformism), international prison rules, penitentiary national law and pedagogical interaction models. All these sources are discussed in detail.

In the further part of the article, the results of research on good penitentiary practices are discussed. They were carried out between January 2015 and September 2016 in five largest prisons from the area of the District Inspectorate of the Prison Service in Poznań (prisons in Poznań, Gębarzewo, Krzywaniec, Rawicz and Wronki). They were all of a closed type. The study covered a group of 180 convicts and 32 educators. In addition, 100 personal files were analysed for the manner of penitentiary work described in them.

Research shows that employment of convicts was the most desirable activity, especially appreciated by the educators. In their opinion, referral to work organises time, sets the rhythm and structure of the day. The work environment is also outside of the cell. The convicts can go out, meet people from outside prison. This is especially valuable in a closed-type penitentiary. Daily performance of professional duties develops a work habit, teaches responsibility, cooperation, understanding and duty.

The second type of desirable interventions was organising and facilitating contacts with relatives. The third one was implementation of, and engaging convicts in, various penitentiary programmes. The programme offers possibilities for innovation and can be repeated. It also provides an opportunity to use specialist preparation and inventiveness of its author (prison educator). The author of the article estimates

that only the development and use of penitentiary programmes can be considered a good penitentiary practice according to the criteria given in the article. Other types of influence pointed out by educators and convicts lie simply in the good performance of duties by the prison staff. Therefore, they do not provide a starting point to propose some new theoretical concept of penitentiary interactions.

Commenting on these findings, the author assesses that the scientific way of defining good practices is clearly not in line with how they are understood by prison staff. The former is determined by the criteria indicated in the article, the pragmatic realism of the other. It results from the pressure of prison conditions, and it is not enough to generalise it to the theoretical level.

Therefore, in the final part of the article the author poses the question how the obtained results can be used. In response, he states that the actions indicated by the respondents as desirable can be divided into two groups. The first one includes general penitent actions (e.g. differentiation of impacts on prisoners into long-term and short-term ones, intensification of interactions aimed at managing the prisoners' free time, matching interactions according to the sentence execution's phase), whereas the second refers to interactions aimed at intensifying an individual approach to prisoners (e.g. an individualised plan of serving the sentence, better knowledge of the convicts, paying more attention to their interests, reacting to their problems).

In conclusion, the author of the article states that its findings provide the basis only for formulating a catalogue of methodical, organisational and functional guidelines. He gives examples of such directives as well as the actions indicated as desirable by prison's educators and inmates.

The article ends with the remark that the catalogue of methodical guidelines is a kind of a prison penitentiary code, assuming the use of means and methods that can potentially be implemented in prison conditions.

Małgorzata Szwejkowska

In Search of Effective Methods of Prison Rehabilitation – An Example of the United States

In its introduction, the article characterises - in a most comprehensible way - the main objectives of criminal sanctions and their role in preventing crime, according to the most commonly expressed opinions on the subject from American scholars. It is followed by a brief history of assessing the risk of committing an offence in the United States in recent decades. The risk assessment process was developed before World War II as a tool to predict possible recidivism in the case of inmates released on parole, but it has been in more common use since 1980s. While the "What works?" movement initially emerged in the United States, one needs to remember the publication of Robert

Martinso's report that created the "Nothing works" (concerning prison rehabilitation) doctrine. It aided the justification of severe changes in punitive prison policies in the 1970s that continued well into the 1990s, with the slogans "tough on crime, tough on the causes of crime" being more prominent. It took more than a decade to re-establish some hope in prison rehabilitation programmes and allow the paradigm shifts to happen – from the retribution "being tough on offenders" policy to more creative approaches towards offenders. By constructive approaches to working with offenders, one means the use of effective methods and techniques to alter criminal behaviour of inmates to prevent their possible relapse into crime (crime prevention).

The main goal of the article is to present the most fundamental system in the US criminal justice system that is most commonly applied nowadays: the Risk-Need-Responsivity (RNR) model and its principles to offender assessment. The aforementioned principles were laid down by Canadian scholars, Donald Arthur Andrews and James Bonta. In that model, "risk" means the identification of specific factors that are associated with recidivism (in general, depending on a specific crime, e.g. sexual offenders or offenders who committed violent crimes). Andrews and Bonta argue that a number of factors need to be considered in any comprehensive theory of criminal behaviour, including biological or neurological issues, inheritance, temperament and social and cultural factors, while also noting that criminal behaviour is a multi-factorial issue. "Need" assesses criminogenic needs and targets them in prison treatment programmes for elimination, while "responsivity" intends to maximise the offender's ability to learn how to combat possible recidivism through rehabilitative intervention, providing cognitive behavioural treatment – with the said intervention being tailored to the learning style, motivation, abilities and strengths of the offender.

Risk assessment is applied during different stages of the criminal procedure: before sentencing and during the period of time when the criminal sanction is executed, i.e. while serving a custodial sentence. It must be noted that, in the US justice system, judges are not the only people obliged to assess the potential risk of an offender relapsing into crime in the future. Prison officers are also tasked with such assessment. Through the application of the RNR model, it is possible for the prison staff to divide inmates into specific groups, depending on security levels and adequate treatment programmes. In that case, the assessment tools based on the RNR model not only allow a prediction of a possible relapse into crime, but also a proper allocation of convicts to rehabilitation programmes provided within prisons. A convict undergoes an evaluation before and after the treatment. Such evaluations are imposed on most prisoners, so performing them does have an impact on the financial and human resources of a given penitentiary unit.

The most important question, "What works in prison?" is answered by the majority of scholars through propositions of providing cognitive and behavioural skill programmes to the convicts. They have clear criteria to ensure that objectives, methods and application of rehabilitation programmes correspond with the needs of criminal offenders. The conclusion of the research is meant to prove that providing offenders

with such treatment (based upon the RNR model) may have a positive effect on reducing the risk of relapse into crime in the future. However, the appropriate methods of treatment are based not only on psychotherapy (or, sometimes, on pharmacological treatment), but also on education, vocational training, personal development, strengthening self-control mechanisms and improving interpersonal skills.

Anna Jaworska-Wieloch, Olga Sitarz

Prisoners' Rights in Penitentiary Practice in the Light of the Internal Orders of Penitentiary Units and ECHR Jurisprudence

The present state of scientific knowledge suggests that individuals cannot be deprived of fundamental human rights. Human dignity must be respected and protected, especially in the case of individuals in difficult circumstances. Prison is certainly not an easy place to be. People in custody can feel lonely, separated from their families, friends or working life. The difficult situation that they are facing can lead to loneliness, susceptibility to diseases, an increased risk of aggression and severance of family ties. People in such a situation can easily fall victim of assaults on human dignity. That is why the ruling elites should make every effort to ensure their rights.

In those circumstances, prisoners' rights must be guaranteed by law. In accordance with the principle of proportionality enshrined in Article 31 section 3 of the Constitution of the Republic of Poland, the rights and duties of persons remanded in custody have to be regulated by legislation, mainly by the Executive Penal Code. In addition, according to the rules laid down in Article 4 section 2 of the Executive Penal Code, imprisoned persons retain their civil rights, and any restrictions on their rights may be justified only if they are stipulated by law and valid decisions based on statutory grounds. However, it should not be overlooked that the final shape of the rights of persons remanded in custody is influenced by secondary legislation and even decisions of the director of a penitentiary unit or other officers. By way of example, prisoners' visiting rights have to be guaranteed by law. For example, if the relevant legislation ensured that the prisoner has the right to visits by the family every month, such visits could preferably take place at a convenient time, e.g. at weekends.

The aim of this paper was to confront the legal acts with statutory and international regulations which impact on the situation of prisoners. This situation was compared with the decisions of the European Court of Human Rights. Internal orders of penitentiary units laid down by their directors were analysed from two perspectives. Firstly, the authors verified if the directors implemented their internal orders in pursuance of the law. The issue is that any limitation on the vested rights has to be based on law. Secondly, it is important how selected human rights are respected in the internal orders and whether any such limitations are justified in the light

of the applicable law and ECHR jurisprudence. For example, such issues as water and bath availability, the right to use electricity, walking conditions, right to visits by family and friends, telephone contacts and access to the Internet, practising faith were examined during the research. Penitentiary isolation impacts on the prisoners' freedom, especially in some types of penitentiary units. Therefore, particular attention should be paid to improve the detention conditions. However, it should not be forgotten that the deprivation of liberty is punishment in itself. There is no need to cause unnecessary suffering, especially without legal grounds. By the same token, it is not necessary to make the burden of isolation heavier. The authors pointed out solutions inserted into penitentiary, accessing its relevance. Any restriction of the prisoners' rights must have a legitimate basis laid down by law. The financial standing of countries, prison overcrowding and an insufficient number of officers cannot be an excuse for any government. The penitentiary system should be organised in such a way as to ensure full respect for the rights of all prisoners. The paper also points to the lack of detailed regulations in individual units, despite the obligation for such regulations to exist. As well as other problems, there is also the issue of regulations which became too wide and general, contrary to the principle of legal certainty. In effect, it is difficult to enforce in practice some rights which are not expressly conferred by law.

Anna Matczak

Victim-offender Mediation in Poland – The Lay Perspective

Restorative justice is a complex and multi-faceted concept, the introduction of which does not happen in a socio-political and economic vacuum. Every society engages with restorative justice in its own distinctive way as it is the society – lay people – that is always on the receiving end of restorative solutions. In this article, I draw on my doctoral research that explores qualitatively how a small number of Polish people understand punishment and justice, and how their narratives inform the viability of restorative approaches to justice in Poland. In other words, I propose to consider a macro-sociological perspective, and how lay people's understanding of punishment and justice should be seen as an avenue by which to explore certain preconditions for the viability of restorative justice.

Poland's socialist past, change of the political regime, post-communist "accession" to the international community in the West and a high level of religiosity (among many other factors) make Poland a fascinating object of study that can, at the same time, offer insights about restorative justice in other societies. Restorative justice, introduced in the form of victim-offender mediation, was part of the post-1989 political ambitions to change the Polish penal landscape and join the international community in the West. There were a number of forces behind the establishment of restorative justice in Poland.

Given that the concept was introduced at a time when the Polish society was dealing with the socialist legacy and creating a new democratic reality, it was also hoped that mediation could serve as a fast-track remedy and act as an ancillary mechanism to reduce the sudden spike in court workloads after the fall of communism. In the case of Poland, it seems that the exceptionally limited interest in mediation and the paucity of anticipated outcomes of victim-offender mediation is the problem. In order to explore the viability of restorative justice in the Polish context, one must therefore look beyond the legal basis and formal logistics which have been already in place for many years.

My research opens up new debates on the viability of restorative justice, and this article in particular fleshes out the nature of the participants' perceptions of victim-offender mediation. In this article, I first briefly introduce the Polish model of victim-offender mediation. I then discuss the nature of the initial responses to mediation based on the participants' knowledge of, support for, and any experience of, victim-offender mediation. This is followed by the discussion on how the participants' views on mediation were articulated in the shadow of the Polish criminal justice system. Next, I explore why the participants viewed mediation as a business-like encounter and, finally, I explore the participants' perceptions of apology – something that came up as one of the most interesting findings of the study.

The aim of this paper is to argue that the viability of restorative justice should be approached as a process that is influenced by broader socio-economic, political and even linguistic factors. Although the Polish model of victim-offender mediation was inspired by the restorative justice concept, the narratives of my lay participants suggest a number of socio-cultural obstacles to the further development of restorative justice in Poland. Despite a limited knowledge of victim-offender mediation among the study participants, it is clear that support for mediation is negotiated and conditional. Although victim-offender mediation was mainly perceived not as a punishment, the role and purpose of this practice was discussed against the background of the Polish criminal justice system. Although the relationship might be defined as "uneasy" (see Shapland et al. 2006), restorative justice, since its conception, has been interwoven with the two. One of restorative justice's central hopes was to establish an alternative system of crime resolution that would eliminate the infliction of pain. However, the trajectory of restorative justice solutions in many countries demonstrates that the functioning of a majority of them is dependent on criminal justice agencies. Given the close and inseparable relationship between the two, I argue in my research that the ways in which lay people perceive the criminal justice institutions affect their perceptions of alternative conflict resolutions. Then, as it emerged in my fieldwork, the study participants' perception of harm suggests that mediation might be seen as an avenue to focus on the financial side of the reparation, and as result might achieve something other than restorative goals. The narratives of my study participants also explore the difficulty of acknowledging apology as a genuine element of the restorative encounter. This could be due to looking at apology through the lens of court apology, sociolinguistic

or cultural reasons. John Braithwaite in his book *Restorative Justice and Responsive Regulation* (2002) rightly indicated that "we are still learning how to do restorative justice well" (p. 565). Nevertheless, the question whether a perfect restorative justice programme is ever possible remains open.

Jan Widacki

Leon Wachholz: The Forgotten Polish Criminologist

Leon Wachholz (1867-1942) was a professor of forensic medicine at the Jagiellonian University, Cracow (Poland).

He made his way into the history of forensic sciences as an eminent specialist in forensic medicine, promoter of experimental methods and a teacher of a whole generation of Polish professors of forensic medicine. He tutored professors: Jan Olbrycht (Cracow), Włodzimierz Sieradzki (Lwów), Stefan Horoszkiewicz (Poznań), and wrote the first modern Polish handbook of forensic medicine, published in Cracow in 1899.

Leon Wachholz was also a historian of medicine, the author of many interesting articles in the field, whereas his scientific achievements in the field of criminology, although attractive and valuable, now remain practically unknown.

Nevertheless, in the late 19th and early 20th centuries, it was typical of forensic medicine professors to deal with criminology. Those who did include pioneers of contemporary criminology, to mention for example Cesare Lombroso in Italy or Alexandre Lacassange in France. Therefore, Wachholz's interest in criminology was natural for his time.

Wachholz's first work in criminology was the higher doctorate ("habilitation") lecture *O obłędzie moralnym z punktu widzenia antropologii kryminalnej* ("On moral insanity from the point of view of criminal anthropology"), published in 1894.

His most valuable contributions to criminology include *Wojna a zbrodnia* ("War and crime"), published in 1922 in Poland and Germany, and *Alkoholizm a przestępstwo* ("Alcoholism and crime"), published in 1927.

Other notable works in criminology, more exactly in forensic sexuology, included *O przewrotnym popędzie płciowym* ("On perversive sexual drive"), published in 1892, and *O morderstwie z lubieżności* ("Murder motivated by sex", in German: "Der Lustmord"), published in 1900.

Both above-mentioned works show a visible influence of Richard von Krafft-Ebing (author of the famous *Psychopathia sexualis*), in whose Viennese clinic Wachholz held an internship immediately after graduation.

Wachholz's point of view on the aetiology of crime was expressed in the book *Medycyna kryminalna* ("Medicine for investigators") written together with Professor

Jan Olbrycht, as well as in the extensive eulogy published after the death of Cesare Lombroso (1910).

Wachholz's works in criminology prove that the his view on the aetiology of crime and the criminal gradually evolved. Why do people commit crime and acts of violence?

As far as he seemed to follow the individual (anthropological, biological aspects, like Cesare Lombroso or Richard von Krafft-Ebing), in his later works he appreciated the impact of social factors on crime (e.g. Alexandre Lacassange, Gabriel Tarde or Franz von Liszt). Ultimately, his views placed him among positivists-multicausalists such as Enrico Ferri. Later, in the early 1930s, having read Johann Lange and Heinrich Kranz on the criminality of twins, he remained within the realm of multicausality, yet was ready to recognise the biological, individual element as dominant.

Towards the end of his life, in 1937, Wachholz formulated his original theory of criminality, which he called "The Right of Contrast" (in Polish: *prawo kontrastu*). Making some reference to metaphysics and categories of "good" and "evil", he diverged from the fundamental foundations of positivism, which he had followed nearly for all his scientific life.

Anna Szuba-Boroń

The Image of Criminal in the Prose of Sergiusz Piasecki

Twenty years of personal experience in crime-related field that furthermore inspired reflection on the reasons of crime made a Polish writer, Sergiusz Piasecki, interesting for forensic sciences. His life started with a turbulent and difficult childhood, he matured among the turmoil of the Soviet Revolution and joined the guerrillas fighting Bolsheviks, finally to graduate from the School of Infantry Cadets in Warsaw and be assigned to the Lithuanian-Belarusian Division in Vilnius. After the Bolshevik War, being a decommissioned soldier, Piasecki painfully experienced life in poverty. This was when he began to earn his sustenance by smuggling. He later entered a few-year-long cooperation with the 2nd Division of the High Command of the Polish Army and became an intelligence agent. In 1926, being unemployed again, he robbed a suburban train. In accordance with the law in force, the summary court sentenced him to death. However, the President of the Republic Ignacy Mościcki pardoned Piasecki, exchanging the penalty to 15 years in prison. Piasecki served 11 years of his sentence in the prisons of Lida, Nowogódek, Rawicz, Mokotów, Koronowo, and finally in the toughest prison of the Second Republic – at Święty Krzyż (the Holy Cross) near Kielce. The 20 years from 1917 to 1937 were the period decisive for the writing realism and thoroughness of descriptions of the criminal world and presented protagonists, as well as analyses of psychological and social circumstances that lead individuals to the path of crime. Beginning with Piasecki's first published book *Kochanek Wielkiej Niedźwiedzicy* (*Lover*

of the Greater Bear, aka *Lover of the Ursa Major*) whose author enjoyed a quite unique status of criminal prisoner, and which presented the facts of life of smugglers on the Polish-Soviet fringe in 1922–1924, the precious study of the criminal world was continued in the trilogy *Jabłuszko*, *Spojrzę ja w okno*, and *Nikt nie da nam zbawienia* (*Apple*, *Shall I Look into the Window*, and *No One is to Redeem us*). In *Żywot człowieka rozbrojonego* (*Life of the Human Disarmed*), the protagonist moves through all the levels of conflict with the law, and the reader follows the process of his reflections to become familiar with the impact of the external world on the dramatic choices made.

The work of Piasecki follows the current of prose keen on social environment of the 1930s, based on authenticity and autobiographic experience, and whose cognitive values result among others from the personal involvement of the author, who corroborates knowledge based on experience and direct contact. It is a specific type of participatory observation: a method of researching criminal phenomena where the observer is part of the criminal world.

The goal of the writer, which he actually frequently emphasised, was the eagerness to share the knowledge on criminals with the society, with the provision that the criminal world he portrayed was multidimensional rather than just a separate, specific social group, standing out from among the "normal" people. He also paid special attention to the life's circumstances that can "make" anyone a criminal. It is also characteristic of Piasecki to juxtapose criminals against people who are "mechanically" honest. In examining the writer's views on crime, such a ploy demolishes the positivist division of the society into criminals and decent people. Honest by default, many a decent citizen proves to be a bad man. On the other hand, many derailed outcasts from the society are in fact good and truly honest. Some stories presented by Piasecki are quite precise illustrations of theories in the crime sciences. In his descriptions of the demimonde of the Minsk thieves, Piasecki described them in terms very close to those presented by Edward Sutherland in *The Professional Thief*, a book written by a professional thief with Sutherland's sociological commentary.

The history of literature knows many writers whose works were based on the introspection of their respective authors, and whose content allows delving into the social reality of a given time and an insightful analysis of criminal personalities, as well as an attempt at defining the factors that influence criminal behaviours. Such a knowledge of the human/the criminal is especially well articulated in realistic prose (Balzac, Zola, Faulkner, Steinbeck, Marquez, Remarque, Piasecki, Nachalnik, Wiskowski, Mironowicz). Certainly, the belles-lettres play a special role in this context, providing a source of knowledge, especially if by the virtue of the vicissitudes of his or her life and thoughts the author can convey information helpful in explaining and understanding the assessment of the phenomena investigated by criminal sciences.