

Deterrence and Incapacitation Effects of the Criminal Sanctions

Vesna Stefanovska*

Associate professor at the Faculty of security-Skopje

Natasa Jovanova**

Assistant professor at the Faculty of security – Skopje

Abstract

When we study prevention as a broad approach and response to crime, we inevitably study preventive role of the criminal justice system which can be seen through a number of interventions and processes. Those are: processes of criminalization, tightening the penal policy, imposition of criminal sanctions, as well as through the process of their execution. All those processes and interventions can exert preventive influence through the effects of incarceration and incapacitation, general and special deterrence, rehabilitation and increased supervision and control over the offenders in the community. But their positive impact is put under question and in this regard, in this article, we open up current debates about the crisis of legitimate preventive effects of the punishment. In addition, a special emphasis is given to the Macedonian criminal justice reforms in the last decade. Brief analysis of the new amendments of the Criminal code (increased incriminations, prescribing more severe penalties and the introduction of new criminal sanctions) will show that crime and crime control are dynamic phenomena, susceptible of modern and global processes in society. However, the current system of crimes and punishments in the country opens up a number of questions: whether the new incriminations and additional criminal legal protection of certain values (family and children) can make a special and general preventive effect or whether the new incriminations have deterrent effect on offenders and potential offenders? In the absence of appropriate research and research results in our country, this article opens up several concerns and issues which are challenge for further studies by the scholars and other professionals in this area.

Key words: *deterrence, incapacitation, crime prevention, punishment, offenders.*

1. Introduction

Criminal justice system and criminal law have a function to protect, not only citizens and society from crime but also fundamental freedoms and human rights by abuse of power. Both of them are accomplished through repressive function of the state. That's way; the criminal justice system is a form of formal crime control, as opposed to

* E-mail: vstefanovska77@gmail.com.

** E-mail: natasa.akademija@yahoo.com.

preventive policy that exercises its activities and tasks outside that system. Distinction between penal and preventive role of the crime control is understandable for pragmatic reasons and is based on the repressive nature of the measures imposed by the criminal justice system that limit or control certain behaviors and phenomena and reveal, prevent and punish the perpetrators. However, while studying prevention as a broad approach and response to crime, we inevitably study the preventive role of the criminal justice system. We do this for the following reasons: the purpose of the criminal justice system is to reduce the crime, and therefore we talk about its function in crime prevention, the aim of the sanctions is to prevent and deter the offender (and potential perpetrators) to commit crimes and that's why we talk about preventive purposes of criminal sanctions, the activities and measures of the criminal justice system are taken both, before and after the execution of certain crimes in order to prevent, detect and deter potential offenders. So, we talk about the preventive purpose of the activities and measures of the criminal justice system.

Given the above, apart to protective and repressive function of the criminal justice system, in this article we put emphasis on its preventive role i.e. on deterrent (through special and general prevention as main purposes of the criminal sanctions¹) and incapacitation effect of the punishment.

In addition, a special emphasis is given to the reforms in the Macedonian criminal legislation in the last decade (2004 - 2016). Brief analysis of the new amendments of the Criminal code (increased incriminations, prescribing more severe penalties and the introduction of new criminal sanctions) shows that crime and crime control are dynamic phenomena, susceptible of modern and global processes in society. However, the current system of crimes and punishments in the country opens up more questions: whether the new incriminations and additional criminal legal protection of certain values (family and children) can make a special and general preventive effect or whether the new incriminations have deterrent effect on offenders and potential offenders? In the absence of appropriate research and research results in our country, this article opens up several concerns and issues which are challenge for further studies by the scholars and other professionals in this area.

2. About the preventive role of the criminal justice system: introductory remarks

Criminal justice system, respectively the system of crimes and criminal sanctions is exercising its preventive function through a number of interventions and processes that are part of penal policy. It is a state policy design not only by the criminal justice system (the police, prosecution and judiciary), but also by the legislative authority through the processes of incrimination and prescription what behaviors would be considered as crimes due to their social danger and seriousness of the consequences (Arnaudovski, 2013: 46). Therefore, the manner in which the penal policy is running has a major impact on the prevention of crime, both as an individual human act and as a mass social

¹ According to the Macedonia Criminal Code (article 32), objectives of the punishment are, besides the exercises of the justice, (1) to prevent the perpetrator to commit crimes and his re-socialization and (2) to exert positive influence on others to avoid crimes (Official Gazette of the Republic of Macedonia, No. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14).

phenomenon. So, the preventive role of the penal policy can be recognized through (1) the processes of criminalization, (2) tightening the penal policy, (3) imposition of criminal sanctions, as well as through (4) the process of their execution. The same *process of criminalization* of the new human behaviors as crimes and education of the public with the new incriminations fulfills moral and educational function of the criminal law. This means that simply by stipulating what human actions are going to be incriminated as crimes can increase collective belief in traditional social values, as Kanduc names *positive general prevention* (Kanduc, 2009: 70). In terms of *prescribing severe penalties* for certain crimes, it is presumed that severity has preventive effect in reducing crime, although, many findings (Tonry, 2008, Wright, 2010, Vito F. Gennaro at all, 2006) show that it has limited effect. Besides, *the process of determining criminal responsibility* and the imposition of criminal sanctions can affect preventively, not only for the concrete offender, but for all potential offenders. This effect is greater if the imposition of sanctions is certainly and immediately after the commission of the offense. And, at last, the *manner of executing criminal sanctions* in penitentiary institutions or in the community has a significant impact on rehabilitation and re-integration of offenders, which in turn, are the basis for reduction of recidivism.

All those processes and interventions can exert preventive influence through the effects of (1) incarceration and incapacitation, (2) general and special deterrence, (3) rehabilitation and (4) increased supervision and control over the offenders in the community (Mackenzie L. Doris, 1997). The *incarceration and incapacitation* of the offenders have a preventive effect because they are temporarily or permanently deprived of their freedom in correctional institutions, and actually are moved from the society. At the time of confinement, they are prevented and unable to commit crimes. *Deterrence* has a preventive effect with the imposition of criminal sanctions which can be special (to concrete offender) and general (to potential perpetrators). This means that the thought of the perpetrators of the possibility to be sentenced creates fear which deters. *Rehabilitation programs and treatments* are directed to re-socialization of the convicted offenders. By development and improvement of the social and cognitive skill of the offenders, the skills for stress and aggression management and for conflict resolution and by the chance to gain certain working qualification, the offender might strengthen his capacity and can be able to live life free of crime. On the other hand, the *enhanced supervision and control of offenders in the community* have a preventative effect with the increased surveillance and threat that if they commit a crime, than they will be returned to penitentiary institutions or that punishment will be replaced by another, more severe sanction.

3. Criminal sanctions and the concepts of deterrence and incapacitation

3.1. Theoretical background

The basics of criminal law and the purposes of punishment are established with the Classical (and neoclassical) School of criminology before and after the French revolution (1789-1799), who introduced revolutionary changes in the perception of the crime, the offender, his responsibility, and system of criminal sanctions. The Classical School laid down the foundation for understanding the preventive role of the criminal justice system and the penitentiary institutions. For example, Beccaria (1738-1794) in 1764 in

his short publication "*The crime and punishment*" has set the basic tenets of the criminal law and the basic functions of penalties, while Feuerbach (1775-1833) also set the thesis for general deterrent effect of punishment. The basis is that the punishment for the potential perpetrators represents a threat that will be applied and therefore has deterrent effect from committing crimes. In addition to general prevention, the founders of the Classical School have written for the special prevention as one of the objectives of the sanction which meant, not just to punish the concrete offender, but to deter him from further crimes. Actually, deterrent effect of the punishment is based on intimidation, which is supposed to happen when the punishment is proportionate and inevitable. In particular, Beccaria (1764) is known for his views on proportionality, swift, severity, reliability and the certainty of punishment. In this sense, the sentence must be proportionate to the seriousness of the offense, because the crime is prevented not by severity of punishment, but with its inevitability (Arnaudovski 2007: 164). This means that penal policy should avoid severe and disproportionate penalties in terms of the seriousness of the offense. This is in line with the thesis that severity of the penalties does not deter offenders to commit more serious crimes.

In short, the theory of deterrence assumes that sanctions (those which are already imposed and those which represent threat that will be imposed, like *Damocles sword over the heads of the offenders*) will intimidate and deter perpetrators (and potential perpetrators) from committing crimes. The basis of that effect is that they pose a threat and risk for punishment and cause feelings of fear. In that sense, deterrence will be effective when motivated offender to commit an offense refrained from commission, because of fear of the consequences (Wikstrom, 2008: 376). So, the concept of deterrence based on the threat of punishment, presumes that offenders are rational and can calculate with the consequences of their actions, both with the gains and losses. The later means that the criminal justice system relies on trust and expectations that the penalties will deter crime, and the former, that if the losses exceed gains, motivated offender will commit a crime. Such a choice is a calculated risk and for offenders, in certain situations, is not worth to take it (Paternoster, 2010: 783).

In addition, the penalties have to be certain, swift and severe. In that sense, surveys which study deterrent effect usually want to consider (1) the relationship between severe penal policy and deterrence, (2) the citizens' perception of severity, certainty and swift of the punishment and (3) the familiarity of citizens with the penal policy in their country. Empirical findings regarding the effect of deterrence of envisaged and imposed penalties are disappointing, and the same, as the rehabilitation treatment doesn't work, "deterrence doesn't work", either.

3.2. *Certain empirical findings*

Relationship between severe penal policy and deterrence

Pursuit for effective preventive criminal policy reshapes the criminal justice system and the perception of the offender as an enemy who should be punished. Criminal justice system is, also, perceived as too "lukewarm" to the crime, and therefore, instead to re-integrate and rehabilitate, the penal purpose, after 70s is shifted to greater protection of victims and to the public (Selih, 2009: 47-48). Thus, the old ideals of welfare, like *help, advise, be a friend* are abandoned (Garland, stated in Owen, 2007). In such conditions, in the late 20th-century, crime control systems move to two trends. The first response is adaptation including greater rationalization and commercialization of the functions of the criminal justice system (in particular, the formation of multiagency

partnerships for crime prevention). The second answer is committed to applying prison sentences and zero tolerance policing (Hughes & McLaughlin, 2003). The latest tendency is in line with the theory that the punishments, in particular the prison sentence will deter the offender from reoffending. But, soon after the severe criminal policy was established, it has shown its weakness and not promising effects in crime reduction.

For example, under the influence of the theory of deterrence, the United States adopted many amendments to tighten penal policy. One concerns the increased application of the death penalty, which relies on data which shows that each execution saves eight (Ehrlich, 1975) or 18 lives (Dezhbakhish, Rubin and Shepherd, 2003). Despite the few positive views about the effectiveness of the death penalty in reducing crime, most findings suggest that it has not a deterrent effect. Even, it can increase suicide because of its brutality (Paternoster, 2010: 783). Ultimately, we can say that the death penalty (or state execution) legitimizes the use of violence, showing that it is permitted to kill a man for a serious crime (Vito F. Gennaro, Maahs R. Jeffrey, Holmes M. Ronald, 2006: 60). In addition to the above, the research results gathered by the National Research Council (USA) in 2012 and published in the *Deterrence and the Death Penalty Report* (Nagin, Pepper, 2012) show that the death penalty has no effect on murder rate. Therefore, one of the recommendations is that deterrence should not affect and should not be taken into account when judge consider whether to impose it for more severe crimes (referred to Daniel S. Nagin, 2013: 24).

Another reform to penal policy is the right of citizens to carry concealed weapons, although no positive link is perceived between carrying a weapon and the rate of crime, on the other side. Moreover, that reform is contradictory to the increase of the penalties for gun crimes. However, despite the imposition of more severe sanctions for gun crimes, statistics show that even those sanctions have no deterrent effect and impact on reducing gun crime (Raphael I Ludwig (2003), stated in Daniel S. Nagin, 2013: 35).

An important reform in American Criminal Law is the adoption of "three strikes and you are out" Law, which has been passed, first in California in 1994 and then in many US states. That law provides that after third offense and after second sentence, the offender may be sentenced to imprisonment of minimum 25 years (Paternoster, 2010: 783). The argument is that more than a three crimes (after imposed sentences) are an indicator of offender's danger, consistency and failure of rehabilitation applied during previous convictions. Research on the effectiveness of the Law showed that serious crimes are reduced up to two (2) %. For example, by 2002, based on the Law, over 42,000 offenders have been convicted (Vito F. Gennaro, Maahs R. Jeffrey & Holmes M. Ronald, 2006: 263). According to another study (Helland & Tabarrok, 2007), the rate of apprehension is reduced by 20 % for those who committed two crimes (Nagin S. Daniel, 2013: 37).

In short, the analysis which is based on the initial thesis that the severe punishments and long-term prison sentences increase public safety and reduce recidivism shows that the rate of recidivism, instead to be reduced, is increased by 3%. The explanation is that when inmates serve longer sentences, they, as a result of prison life under strict institutional regime, lose social contacts in the community. Such loss of links with the outside world reduces the chances of restoring normal social relations after release from penitentiary institutions, which increases the risk for recidivism, on the other hand. Thus, those studies (Cook, 1984, Nagin, 1998, Van Hirsh, 1999), have proven that severe penal policy has no, or has limited deterrent effects.

Perceptions of citizens for the certainty, swift and the severity of the punishment

Related to citizens' perception of certainty, swift and severity of the punishment, within the surveys are set several research hypotheses: (1) *the greater certainty of legal sanction is, the lower the crime rate will be*, (2) *the greater severity of legal sanction is, the lower the crime rate will be* and (3) *the greater speed of legal sanction is, the lower the crime rate will be* (Paternoster, 2010: 784). About the connectivity of the variables can be found different views among scholars, especially about the impact of the severity on the reduction of crime. Majority believes that the certainty of punishment causes a stronger deterrent effect than the severity of the stipulated sanction. This position is supported by the survey data on public opinion about the certainty of arrest and punishment. Namely, the data confirm that the citizens build their opinions based on their own and others' experience. For example, those who are discovered and caught while committing a crime believe that the certainty of the punishment is inevitable (Paternoster, 2010: 809). Also, the answer of the question: *what has greater deterrent effect, severity or certainty of punishment?* depends on the willingness of the offender to take the risk of committing the crime. For example, severity of punishment exerts much more influence on decision of those offenders who are not willing to take the risk. Conversely, certainty of punishment has a greater deterrent effect for those offenders who are willing to take the risk. It follows that, certainty has a stronger influence on motivated offenders to commit a crime (Becker, 1968 stated in Mendes, 2004: 64).

Regardless of the factors which affect the perceptions of citizens, the criminal justice system needs to increase its efficiency and to increase the level of risk for the perpetrator to be caught and sentenced. This is due to the fact that penal policy relies much more on incarceration and the fear of punishment rather than on rehabilitation and reintegration of the offenders in the community (Sparks & McNeill, 2009).

Familiarity of the citizens with the national penal policy

Deterrence has an effect assuming that citizens are aware of the current punitive policies (about the criminal acts and their penalties). Hence, when considering the general and special prevention of criminal sanctions, we also need to consider the following questions: (1) whether the potential offender knows which activities are crimes? (2) if he knows, whether that awareness affects his decision to commit a crime? and (3) If he knows the law and the implications for certain crime, whether he will respect the law? Those questions are subject to certain studies, and one has shown following findings: (1) 22% of the questioned inmates knew exactly what is the length of the prescribed prison sentence for the committed crime, (2) 18% had no idea of the punishment, but they knew that the act is a crime and (3) 35% of the inmates said that they even didn't think about the possible punishment before the crime. Those findings are indicator that a large percentage of citizens are not fully aware of the prescribed crimes and the penalties in their national criminal legislations (Robinson H. Paul & Darley M. John, 2004: 174-176).

Similar data were obtained in another study conducted on inmates in California. Many of them said that before committing the crime, they were not aware, nor knew about the envisaged sanction for the concrete crime (Paternoster, 2010: 804-805). In fact, citizens build their perceptions based on their own intuition and attitudes of justice that often differ from the legal rules. The fact is that perceptions of threat of punishment are strongly associated with current levels of punishment, which suggests that the criminal justice system fails to establish proper crime control through transparent

policies on certainty, the severity and swift of the punishment (Paternoster, 2010: 810). Notwithstanding, when we investigating the effect of deterrence, it is important to examine the decision-making process on whether to commit the crime because that process is connected not only with the perceptions of their sentence, but also with the *suitable opportunity* and with other situational circumstances (Robinson H. Paul & Darley M. John, 2004: 177-178).

4. Relationship between the prison sentence, the concept of incapacitation and the rate of crime

The concept of incapacitation relies on the proposition whereby, until the offender is imprisoned, he cannot commit criminal acts outside the prison. This means that if society confines more offenders, crime will decrease. In addition, crime reduction will follow as result of long-term imprisonment and as result of their frequent application. This logic was followed by the policy of incapacitation and incarceration which becomes dominant in the US in the 80s and after. Consequently, in the United States between 1990 and 2000 have been registered an increase of the prison population and reduction of crime. Statistics show that for 23 years, the prison population is gradually increasing and from 200,000 thousand prisoners in 1980, their number reach two million prisoners in 2003, which is 10 times more. However, such a drastic variation in the use of imprisonment slightly reduces crime rates. For example, 10% increase in incarceration results in a 2% reduction in crime.

But, despite these findings, however, we cannot determine with accuracy whether the reduction in crime is a result of the effect of deterrent or due to the incapacitation of offenders (Paternoster, 2010: 803). This dilemma arises because, for example, in Canada in the period from 1993 to 2001, crime is decreased by 10%, but the rate of imprisonment is increased. This means that, in the case of Canada, the policy for frequent use of prison sentences is not crucial for reducing crime at that time (Paternoster, 2010: 819). Other studies show that the penalty for murder, rape and physical assault, does not reduce their number. Therefore, the effect of incapacitation and length of the prison sentences cannot be justified as a means to achieve crime prevention (Nagin S. Daniel, 2013: 5). Although the penal policy is based on several effects, the analysis and researches cannot determine which effect what and how much influence exert, because they might have both, positive or negative impact, and instead to reduce, might increase the crime. Therefore, because of (methodological) problems to estimate how much crime will be reduced while offenders are in prison, and because of the increase in the prison population, the scholars are oriented towards two strategies related to the incapacitation effect: (1) incapacitation and incarceration of smaller group of high risk offenders and (2) reduction of long-term imprisonment for low-risk criminals.

The first strategy starts from the assumption that a smaller percentage of offenders are responsible for a greater percentage of crime. Therefore, we should identify the perpetrators who are likely to re-commit serious crimes for which are prescribed longer prison sentences. Thus, the public will be protected from dangerous offenders. *The second strategy* aims to reduce the prison population or to decrease the length of the sentence for those offenders, who do not pose a risk to the public and therefore, there is no need of prolonged isolation from the outside world. Such strategies (first and second), although seem contradictory, they complement one another. The first wants to

protect the public from high-risk offenders, while the second to reduce the negative consequences of long-term imprisonment for low risk offenders. In that context, because these strategies are based on risk, the risk need to be carefully identified in order to avoid possible abuse because, as Sutherland and Grease (1978) had claimed, the danger of offenders should be manifested, not assumed (Sutherland & Cressey, 1978: 659), in order to avoid possible abuses in determination *situation of risk*.

5. Criminal sanctions in the Republic of Macedonia and prevention of crime

5.1. Introductory remarks on the reform of the Criminal law

Macedonian criminal law is subject to constant reforms and amendments. It is the result of persistent social and global processes that influence and impact on threats to fundamental human rights and freedoms, on the threat to the security and the quality and quantity of crime in our country. Such processes and consequences, actually affect the efficiency or inefficiency of the existing criminal law system (the system of criminal sanctions) to respond and to deal with them. It causes many changes within period of 20 years (from 1996 to mid-2016) and the Criminal Code of the Republic of Macedonia in that period was amended more than 24 times². At that time, significant reforms have been made in 2004, 2008, 2009 and in 2014. Those reforms have included new criminal sanctions, new crimes and new serious forms of basic crimes and more severe sentences.

Significant changes in 2004 are the introduction of: (a) alternative measures in the system of criminal sanctions (conditional termination of criminal proceedings, community service, house arrest), (b) criminal liability of corporations, (c) serious (qualified) forms of certain crime, such as domestic violence, when the child is a victim etc.), (d) new incriminations (for example certain forms of cybercrime, crimes against power, against the state, against the judiciary, etc. and (e) tightened penalties for many crimes. With the reforms in 2008 and 2009 has been extended the confiscation of property, introduced serious aggravating circumstance for hate crimes, introduced new crimes against morality and sexual freedom, against the cultural heritage, against public finances, payment and economy and public order. Also, many crimes got higher prison sentences. The reform in 2011 introduced a special register of convicted of crimes against sexual freedom and morality and trafficking in human beings. In this regard, the Ministry of Labor and Social Policy in 2012 adopted a *Law on a special register of persons convicted for crimes of sexual abuse of minors and pedophilia*³, in which photography and information about the perpetrators shall be made public on a website of the state Institute for social Affairs. The latest amendments to the Criminal Code in 2014 increase the maximum prison sentence of 20 years (previously 15 years). Respectively, the offender may be sentenced to imprisonment of 40 years (previously 20 years) for those cases for which the law prescribes life imprisonment. The new punishments include *ban on attending sports competitions (Article 38 d of the Criminal Code)* and a new security

² Official Gazette of the Republic of Macedonia, No. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14.

³ Official Gazette of the Republic of Macedonia, No. 11/2012.

measure *chemical castration* (Article 65 a). The latest amendment introduce new crimes against life and body, against sexual freedom and morality, the environment, the cultural heritage and against humanity and international law, and (d) tightened penalties for certain crimes, especially for crimes against sexual freedom and morality when committed against a child.⁴

Mentioned reforms of the Criminal Code show that, although on the one hand, they have introduced certain alternative measures and victim-offender mediation in order to decrease the imprisonment rate, on the other hand, more legal changes have increased the prison length for many crimes. Thus, in the last 10 years (2004-2015) in the Republic of Macedonia criminal sanctions are increased for at least 70 crimes, which represent about 1/5 of all crimes in the Criminal Code. For most crimes (and qualified forms) the prison sentence is increased: (1) from a minimum of three to a minimum of four years, (2) from a minimum of six months to at least one year and (3) from a minimum of at least three years in prison. This trend of penal policy in the country shows that, due to the seriousness of the consequences and the object of protection (sexual morality and sexual freedom, the state, property and family), the criminal justice system increases its repressive policy towards the offenders who attack and jeopardize those values which should be protected. It shows that the legislator, on the one hand follow public demands for greater protection of vulnerable victims, and thereby for harsher treatment of offenders, and on the other hand, for increased protection of public safety. In fact, the threat of public safety requires harsher treatment for perpetrators of crimes against the state and against the public order.

5.2. *Some statistics of condemned offenders and imposed sanctions in the Republic of Macedonia*

The movement and the rate of convicted offenders in one country are indicators of many situations. They indicate the quantity of crime, the effectiveness of the criminal justice system in the detection and prosecution of offenders, the severity or leniency of the judicial system and the exercise of the preventive effect of punishment. On the other hand, the movement and the rate of convicted offenders are, also indicators for the realization and effectiveness of preventive policies outside the criminal justice system. But which factors and what impact they have on the number of convicted offender should be subject to permanent and long-term analysis and research. Although, either criminologists or other scholars for criminal law which deal with these issues cannot give full answers, however, legal reforms and policy for crime prevention must be based on proper scientific analysis and knowledge. Through analysis of the crime statistics (for example, of the convicted offenders and imposed prison sentences) in a certain period can be considered only the officially registered convictions, not the real crime, because the crime is not just a number, and due to a dark figure of crime.

⁴ For example, the prison sentence for *Sexual assault on a minor under 14 years (art. 188)* of 2004 is increased four times (in 2004, 2006, 2008 and in 2014), from a minimum of four years imprisonment in 2004 to a minimum of 12 years imprisonment in 2014 with the last amendment of the Criminal Code. Also, for criminal acts: *Rape of a helpless person (art. 187)*, *Rape by abuse of position (art. 189)*, *Mediation in prostitution (art. 191)* and *Incest (art. 194)*, both, the minimum and maximum of the prison sanction are drastically increased. For example, from (1) three months to three years imprisonment, (2) from three to five years and (3) from three months to five years imprisonment.

In this context, the number of convicted offenders in the country for 15 years (2001 to 2015) has been steadily increasing. Besides crimes against sexual freedom and morality, which have small fluctuations, the number of convicted offenders for crimes against property, against public order and against official duty for a period of 15 years, has doubled or tripled. For example, according to the State Statistical Office⁵, in 2001 2.133 offenders who had committed property crimes were convicted, while in 2015, that number was doubled, i.e. 4.295 offenders were convicted. Or in 2001, 310 offenders for crimes against public order were convicted, while in 2015, that number reached 821 offenders. Another example shows that from 2001 until 2015, the number of convicted for crimes against official duty is gradually increasing, and from 66 convicted offenders in 2001, that number in 2015 has reached 201.

In terms of imposed sentences, statistics show a slight increase in imprisonment and fine in the last five years (2011-2015), while a small decrease of probation (conditional sentence). Considering that the number of convicted offenders has decreased in 2015, while the number of prison sentences is increased that year, we can assume that the use of imprisonment, compared to other sanctions, is much more imposed in recent years.

Regarding the length of the prison sentence in the Republic of Macedonia, there are small fluctuations of the imprisonment of six months to two years in the period 2011-2015. But in 2014 and 2015, the imposition of a prison sentence of two to five years is significantly increased. For example, in 2012, i.e. in 2013 was issued 271, i.e. 359 prison sentences of two to five years, while in 2014 and 2015 that number was 610 or 606. Also, statistics indicate an increase in long-term prison sentences ranging from five to 10 years, and in 2015 the number of life imprisonments (and prison sentences over 15 years) is also significantly increased.

Table: Overview of the imposed prison sentences according to their length
Source: Annual Reports for perpetrators of Crime of State Statistical Office⁶

Offenders sentenced to prison sentence % (percentage)	2010	2011 %	2012 %	2013	2014 %	2015 %
up to 6 months	997	1230	1206	1148	1372	1276
% (percentage)	38,4	40,7	43	37,5	39,1	36,2
From 6 months to 2 years	1199	1386	1226	1421	1403	1491
% (percentage)	46,1	45,9	43,7	46,4	40	42
From 2 years to 5 years	331	302	271	359	610	606
% (percentage)	12,7	10	9,6	11,7	17,4	17,2
From 5 years to 15 years	46	74	74	114	97	120
% (percentage)	1,8	2,4	2,6	3,7	2,8	3,4
From 10 years to 15 years	21	18	27	27	24	24
% (percentage)	0,8	0,6	1	0,9	0,7	0,7
Over 15 years and life imprisonment	2	10	3	3	1	7
% (percentage)	0,1	0,3	0,1	0,1	0,02	0,2
Total offenders sentenced to prison sentences	2596	3020	2807	3064	3507	3524

⁵ www.stat.gov.mk

⁶ stat.gov.mk

The current prison statistics show that the length of imprisonments which are imposed is gradually increasing. This sentencing policy is a consequence of both, more punitive law (having in mind the latest amendments of the Criminal Code) and more punitive courts policies. Such policies raise many questions for further studies and debates: *does this punitive penal policy turn back the perception of the offender as dangerous and a risk to public safety? Does our society only rely on penal policy for the crime control, which is primarily repressive and retributive? And whether and how much the new harsher and severe punishments could accomplish intimidating and deterrent effect on offenders and on potential offenders?* These questions and concerns should be subject to analysis and research because the introduction of significant reforms that deeply touch and concern the fundamental human rights should be constantly checked and their effectiveness in achieving its intended purpose should be under permanent scrutiny.

Regarding incriminations, criminal law should actually accomplish its educational and moral - educational function by acquainting the public that certain behaviors are illegal and punishable. For that purpose, it is useful to find out how much the public is acquainted with the crimes and new incriminations in the Criminal Code. Ignorance, on the other hand means that criminal law should increase and strengthen its transparent and educative function. Through study and evaluations, we can observe and verify the usefulness and justification of certain reforms, including the possibility to fulfil both, special and general prevention as main purposes of the punishment. Because if the new reforms such as (1) the ban on attending sports competitions, (2) chemical castration, (3) severe punishments for hate crimes, (4) publication of the register of pedophiles and (5) many new incriminations and increases of the penalties, fail to prevent and deter offenders from further crimes, than we should put into questioning their existence and imposition. Criminal law should be respond to crime as a social and deep social problem because if it fails to reduce the crime, then we should raise and support other mechanisms to solve these social problems.

Also, excessive criminalization of criminal law and the severe penal policy reveals the problem of the penal system, which consequently becomes selective and can cause new dangers (Rodriguez, M. Anabela, 2003: 201). In other words, the criminal law should not be turned into an instrument in the hands of the ruling class that wants to discipline offenders and citizens in general.

Conclusions

In a world of globalization, migrations, terrorism and political struggle between left and right political wings, hate, fear and uncertainty is increased among citizens. In such conditions of increased uncertainty and threatening of the fundamental human rights, the public demands severe penal policy and public condemnation of the perpetrators. Criminal justice system, instead to rehabilitate the offenders, turns towards greater protection of victims and the public and toward harsher treatment of offenders. In particular, the penal policy in many countries is becoming more severe in 90-is, because is assumed that by increasing the severity of punishments and with their frequent application, the crime will be reduced. The backgrounds of this policy, apart from the theory of deterrence, comes from new policies based on risk, which become the dominant way of managing all types of problems, including crime, as well (O'Malley, 2010: 3). The intention is to reduce the risk of victimization and recidivism, which are

considered as everyday risks in modern society. Part of these policies is the increased imprisonment which is seen as a mean to remove the risk of society. It starts from the assumption that if the offenders cannot be rehabilitated (in line with the paradigm "nothing works") the risk can be reduced by imprisonment (O'Malley, 2010: 24). Also, the new repression which can be recognized through the "law and order" paradigm, talks about being *taught on crime*. It is implemented by new incriminations, namely by criminalizing minor offenses, which wide the net of crime control, as well. Another sign of increased repression is the central role that is given to the victims, because their feelings and needs become justification for repressive penal response. Previously, they had a marginal role in the court trials, and in the late 20th century, their right to "revenge" is highlighted and becomes a leading force in the penal system. Third, as Selih notes, the criminal policy increasingly becomes central to any election campaign. The views of politicians who often call on *law and order* and on *severe penal policy* play an important role in determining the election result, and that calls are expected to be justified after elections (Selih, 2009: 52).

In addition, the failure of rehabilitation and reintegration treatment of offenders, lays in the fact that it is vain to punish offenders one by one, out of the social context in which they act and which produces the crime. Crimes, although are individual human behaviors and are related to certain subjective factors, represent the product of interaction and action of many social macro and micro factors. Hence, any attempt to eradicate crime through greater repression is vain, because crime cannot be considered only as a statistic within the criminal justice system. Limitation only on the legal elements (place, time, manner of execution, harm) means looking only to certain situational factors which affects the commission of crimes. Also, considering only offender and his responsibility gives short-term results. His punishment and imprisonment, does not address the causes of crime, but leaves them aside. And so long as society relies solely on the criminal justice system as the only solution to reducing crime, it also grows. This is in line with the radical criminological theories, respectively the peacemaking criminology (that strongly advocate for restorative justice as crime response) which derive from the premise that the traditional criminal system is violent and causes suffering. Specifically, penal policy expressed by the repressive measures of social control through formal and strict court trials prove that sentences do not reduce crime, the proceedings are stigmatizing for offenders and do not meet the needs of the victim (Barak, 2005).

Regarding the concept of general deterrence, the justification of punishment can be found in a future fact. For example, we punished the offender in order to exert positive influence on other potential offenders to avoid crimes. This means that the state, through the criminal law, wants to threaten the entire population, which creates a suitable climate for the application of repressive laws, and thus to legitimize repressive measures. For example, the introduction of rubber bullets (Persak, 2009: 115), the electronic monitoring (leg or arm) bracelets (O'Molley, 2010: 4), the increase of the length of the prison sentence etc. represent a legal basis for the state's right to discipline its citizens. Most of the public agree with such a policy, because they require more severe punishments and want *just desert* for the offender. But in terms of general-preventive effect of the punishment and deterrence, we raise a few questions: *Is it possible to apply sanctions (and other measures) in the name of deterrence not only to potential offenders who have a potential to commit a crime, but also to all other citizens who don't have any potential to commit a crime?, are all citizens potential perpetrators?, is*

the policy of risk justified for all citizens? and Does the policy of deterrence increases the feeling of fear and insecurity among the citizens? Considering the challenges and the crisis of the new penal policy, as quoted by Kambovski (2002), general prevention is reasonable and justified, but only to the extent that do not enter in the space of undisputable human rights. Moreover, it can be achieved, not by severity of the punishments, but by their certainty and swift, and, in that part, the criminal law should do its function (Kambovski, 2002: 79). Because the criminal justice system exists and operates under the assumption that criminal sanctions will achieve their goals, their prescription, imposition and implementation should be treated and monitored in light of the special and general prevention.

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