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[1] ***Did not submit any papers***
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Helsinki, August 2001

Joachim Enkvist

ON GLOBALIZATION OF CONTROL:
TOWARDS AN INTEGRATED SURVEILLANCE SYSTEM IN EUROPE

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In 1985, Germany, France and the Benelux countries entered an agreement in the little town of Schengen in Luxembourg. The agreement, which was formulated in general terms, aimed at mutual recognition of visas between the countries and strengthened police cooperation. The major point of the agreement was to abolish national border controls between the countries, while at the same time strengthening controls along common external borders. Strengthened police cooperation was envisaged as a method of enhancing the external border controls as well as making up for the internal "deficit" created by the disappearance of national border controls.

In 1990 the same five countries entered a new agreement, again in Schengen. This agreement, which is usually referred to as the Schengen Convention, is a convention implementing the Schengen agreement of 1985. It regulates a long series of crucial questions concerning national and common external border controls, police cross-national "hot pursuits", police cross-national data cooperation, including registration of persons and objects, and so on. In effect, the convention opens for wide ranging registration and surveillance of large population groups in the countries concerned.

Full membership in the Schengen cooperative arrangement has always been restricted to EU-countries. Until 1999 the Schengen Convention was an inter-governmental agreement outside the EU, and the individual member state had the right of veto. After the convention was signed by the original five countries, Italy, Spain, Portugal, Greece and Austria joined the agreement. Great Britain and Ireland stood outside, wanting to maintain their national border controls intact.

An important change in Schengen matters took place in 1999. At the EU summit in Amsterdam in June 1997, which concluded a lengthy conference with complicated negotiations (de Zwaan 1998) between the governments of the EU countries, the EU ministers decided to integrate the Schengen system, lock, stock and barrell, into the EU structure, partly in the first (supranational) pillar and partly in the third (inter-governmental) pillar. The

Schengen Executive Committee was to be supplanted by the Justice and Home Affairs Council (JHA) in the EU structure. The Amsterdam Treaty was signed by the foreign ministers on 2 October 1997, and entered into force on 1 May 1999.

The integration of Schengen in the EU structure will give the various Schengen arrangements, including the vast data-based registration and surveillance system, added momentum and influence. In addition, the "disappearance" of the whole Schengen arrangement into the fragmented hundreds of EU-bodies and work groups, and among the tens of thousands of intricate EU documents, will make the Schengen activities, which have been difficult enough to monitor as separate Schengen activities, even more hidden and almost impossible to scrutinize and criticize -- at least for outsiders.

The Nordic EU member states – Finland, Sweden and Denmark – have also ratified Schengen within the EU, and the Nordic non-EU members – Norway and Iceland – have entered a so-called ”agreement to collaborate” in Schengen matters with the EU (the latter countries do not have access to the EU decision-making bodies, but are members of a so-called Joint Committee outside the EU structure, and may make suggestions and proposals, but do not have the right to vote). At the time of writing, Great Britain and Ireland still stand outside, but on 20 May 1999 the two states formally applied for participation in some of the Schengen activities, notably those related to law enforcement, including participation in the joint data-based registration and surveillance system. The application was made pursuant to Article 4 in the Schengen protocol of the Amsterdam Treaty, and was favourably received by the JHA Council.

Through Schengen, then, a widespread system and network of police cooperation, data registration and surveillance -- from Iceland in the North to the Mediteranian in the South, and from the tip of Portugal in the West to the German/Polish border in the East -- is in the making, and is a reality as the 2000s begin.

Space forbids discussion of all aspects of the Schengen system. In this chapter, I will concentrate on the cross-national, data-based registration and surveillance system, with its auxiliary supplementary information exchange, which has been operative since 1995. After having reviewed the major Schengen institutions and issues relevant to this, I will move on to discuss some of the many other data-based registration and surveillance systems which are in the making within the EU. On the way and towards the end of the paper, I will raise the question of whether we are moving towards an extensive, integrated registration and surveillance system -- a vast, amalgamated police-based data system, with various specialized branches, which, if this is the developmental direction, may function both on the individual and the aggregate level: Individuals may be subjected to particular scrutiny, while large population groups may quickly be sorted out for surveillance and "special treatment".

The development which seems to lie ahead, is another aspect of the so-called globalization process which currently is taking place in economics, politics, and so on. At present, police control is also globalized, based on advanced information technology.

Bureaucratic registers have been used for both of the above-mentioned purposes -- individual and aggregate registration, surveillance and "treatment" -- before in European history. On the individual as well as the aggregate level, the fate of the Jews and other population groups in the 1930s and 1940s is a case in point, and there are many other examples.

An excellent -- and tragic -- concrete example, is the way in which the Germans occupational forces in Norway during World War II used various existing registers, established for other purposes, in persecuting the Norwegian Jews. Over 50 % of the 1 400 Jews in Norway in 1942 were exterminated, while the figure for Denmark was under 1 % out of 5 600 (and under 0.5 % out of 2 300 for Finland). Why the much higher percentage for Norway? There are several reasons, one of them being that Norway had excellent registers pertaining specifically to Jews.The Norwegian Constitution of 1814 barred the entry of Jews to Norway, a prohibition which was abolished in 1851, but as a kind of substitute, separate registration was undertaken:

From 1866 on, the Norwegian Census Bureau specifically registered Jews as a separate group of dissenters. The census was useful for German occupational forces and for the Norwegian nazis. The register of the Norwegian Radio Authorities also proved useful: In 1940, right after the the German invasion, the German authorities ordered the radioes belonging to Jews living in the capital city to be confiscated. The radio authorities had a register which could be used for the purpose. Consequently, the Jews themselves could also be tracked down (Sørbye 1998).

Bureaucratic registers may be used for such purposes by police forces out of control, but also by political authorities when the political wind is right and the time is ripe, as was the case in Norway during World War II. The new, technically extremely innovative, combinable, hidden and uncontrollable data-based registration systems which are presently rushing forward, constitute an increased, enormous threat which cannot be ignored by anyone preoccupied with police and political control after 2000.

In Schengen: SIS

There are two comprehensive registration- and surveillance systems in operation and continual development in Schengen: A data-based registration and surveillance system, and an auxiliary system for supplementary information exchange. The first is called Schengen Information System or SIS. Article 93 of the Schengen Convention states the purpose of SIS:

> "The purpose of the Schengen Information System shall be in accordance with this Convention to maintain public order and security, including State security, and to apply the provisions of this Convention relating to the movement of persons, in the territories of the Contracting Parties, using information transmitted by, the system".

As the provision shows, the stated purpose is very wide and comprehensive, comprising *both* "public order" *and* "State security". No further definitions of these terms are given, which means that just about everything may be included, from acts of qualified terrorism through various forms of social unrest to political demonstrations deemed to be a threat to public order and/or State security by the governments concerned.

Broadly speaking, the information which may be stored in the system may be viewed in terms of three major levels or tiers. Firstly, Article 94.3 of the convention specifies the items which may be included in respect of persons: name and forename, and any aliases possibly registered separately; any particular objective and permanent physical features (an example would be skin colour); first letter of second forename; date and place of birth; sex; nationality; whether the persons concerned are armed; whether the persons concerned are violent; reason for the report; and action to be taken. In other words, the basic information combines objective (sex) and evaluative (estimated violence) items.

But this is just the beginning. The second tier concerns who or what may be registered, and begins with Article 94.1, which stipulates that the items of information may only be supplied when this is required for the purposes laid down in Articles 95 to 100. Articles 95 to 99 refer to persons, while Article 100 refers to objects. Article 95 refers to persons wanted for arrest for extradition purposes; Article 96 refers to aliens who are reported for the purposes of being refused entry ("unwanted aliens"); Article 97 refers to persons who have disappeared or persons who, "in the interests of their own protection or in order to prevent threats", need to be placed provisionally "in a place of safety" (!, TM); Article 98 refers to witnesses (!, TM), persons summoned to appear before the judicial authorities in order to account for acts for which they are being prosecuted, or persons who are notified of a criminal judgment or of a summons to serve a custodial sentence; Article 99 refers to persons who, in compliance with national law, are to be subjected to "discreet surveillance" (!, TM) or "specific checks".

The third tier provides the conditions under which a person may be subjected to “discreet surveillance” pursuant to Article 99, and the information which may be communicated about a person to the police of another country who has entered an alert for discreet surveillance in the SIS about the person. Article 99.2 provides some of the conditions under which discreet surveillance may be used. They are partly rather precise, but partly extremely vague, opening for discreet surveillance of broad categories of people.

Furthermore, and most importantly, Article 99.3 opens for discreet surveillance of political behaviour. Article 99.3 states that "a report may be made in accordance with national

law, at the request of the authorities responsible for State security". In Norway, "authorities responsible for State security" is equivalent to the Secret Police. Such reports may be made when "it is necessary for the prevention of a serious threat by the person concerned or other serious threats to internal or external State security". There is not one word in Article 99.3 about offences or qualified criminal acts. The procedure to be followed by "the authorities responsible for State security", when requesting discreet surveillance, is detailed in a secret so-called SIRENE manual, which I will return to later.

Article 99.4 stipulates the additional information which may be collected and transmitted to the police of another country who has entered an alert for discreet surveillance. The information includes persons accompanying the person concerned (!, TM) or occupants of the vehicle (!, TM). The Norwegian translation of the convention makes clear what the latter term means: Passengers.

In short, the background for storing information in the SIS is wide and discretionary, many items of information are evaluative, and "discreet surveillance" quite clearly opens for political surveillance and surveillance of a wide circle of individuals around the main person.

The Schengen Information System has a central data base in Strasbourg, and national SIS-bases in all of the Schengen states. The national data bases are supposed to have identical information stored, and this information is in turn supposed to be identical with the information stored in Strasbourg. In 1997 the number of access points thoughout the nine states which then were on-line was approximately 48 700.[4] The number of records ("gespeicherten daten", "record entries") stored on 26 March 1996 was close to 4 million. Germany and France were the large users.[5] Information was stored about hundreds of thousands of persons, and the capacity of the system was at that time estimated to 9 million records. For each succeeding year the numbers went up, from 5,6 million in 1997 to over 8,8 million in 1998. The figures are based on the total number of record entries in the SIS on a

[4] Source: Statewatch European Monitor, Vol. 1 No 1, 1998, p. 30, with full text reference to Report dated 25 September 1997 from the SIS Steering Committee.
[5]Source: The annual report of 26 March 1996 from Schengen's Central Group.

single day (for 1998: 5 March), and do not reflect the numbers deleted or added during the course of a year.[6]

In any event, the system is very large. And it will become larger: Expansions are in the making -- further development and technical up-grading of the central SIS-base in Strasbourg, final integration of the Nordic countries in the system, increased compatibility between SIS and numerous other European registration systems, and the like.[7]

The fantastic magnitude of the whole project is more than apparent.

In Schengen: Sirene

SIS, however, is only one of the systems for information exchange in Schengen. The other system, closely related to and intertwined with SIS, is called *SIRENE*, an abbreviation for *Supplément d'Information Requis a l'Entrée Nationale* (Supplementary Information Request at the National Entries). SIRENE is intended to facilitate bilateral and multilateral exchange, mainly of supplementary information about persons and objects registered in the SIS, between the national police authorities in different Schengen countries. The well informed journal *Fortress Europe?* comments on the SIRENE system as follows (December 1996--January 1997, p. 5):

> "SIRENE could best be described as a complex, network-like structure for bilateral and multilateral police and security cooperation between the Schengen countries, including central national offices and a sophisticated computerised information system, enabling the exchange of 'supplementary' data on persons and items prior to the entry of a report in the SIS, or following a hit (positive search) in the SIS".

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[6] Sources: The Annual Report for 1997 from Schengen, as reported in *Statewatch* May--August 1998, p.27; the figure for 1998 as reported in *Statewatch* May—August 1999, p. 22. The figure for 1998 includes 1,2 million personal data entries and 7,6 million entries relating to objects. As a result of the high number in the so-called alias groups, that is, people who have a false second identity, ”only” 795 000 of the 1,2 million personal data entries match actual people. Almost 5,3 million – 70 % -- of the 7,6 million entries relating to objects concerned lost or stolen ID papers. Only about 13 % of the entries relating to objects concerned vehicles, and other objects – banknotes, firearms etc. – showed even smaller percentages (only 2—3 % concerned firearms; sourceof statistical information: *Statewatch* May—August 1999, p. 23). In other words, a vast majority of the entries concerned unwanted aliens, deportation matters, lost identity papers and so on, and not qualified crime. I will return to this point below.

[7] Sources: Work Programme of the Austrian chairmanship in Schengen, fall 1997, p. 8; see also minutes from the meeting of 7 October 1997 in Schengen's executive committee as well as *Information News Letter: Information for People Working in the Ministry of the Interior,* No. 1 Sept. 1997 p. 3.

Through the SIRENE system, police authorities in one country who have arrested a person who is registered in the SIS by another country, may require supplementary information, not stored in the SIS, from the latter country. The SIRENE system has developed alongside SIS, and is far less known and not even mentioned in the Schengen Convention.

The system *is*, however, mentioned in a draft convention intended for the European Information System, EIS, within the EU. With the integration of Schengen in the EU, the SIS will take over the functions of EIS and posssibly be called EIS. But the original. EIS draft convention clearly shows that the SIRENE is designed for exchanging information which is extremely broad and virtually without limits. After having explicitly stated that each of the members states shall establish a SIRENE office with central responsibility for the exchange of supplementary information, the draft goes on to say (my italics):

> "When a report is included or action to be taken is performed, the SIRENE offices shall exchange, in compliance with this Convention and their national law, *such further information as is necessary* to identify the persons or objects reported *as well as other information and documentation relevant* to the follow-up action taken".

SIS, after all, stores fairly limited and standardized items of information. The national SIRENE units, on the other hand, handle far-reaching, non-standardized information or "soft" data. "[S]uch further information as is necessary", and "other information and documentation relevant", are highly imprecise, all-embracing concepts or terms, which may include almost everything. This is also explicitly pointed out by people working in the SIRENE offices. The director of the Portuguese SIRENE office boasted of the SIRENE system in the following words on Norwegian television 10 March 1997 (translated from the Norwegian subtitles by the author):

> "The convention stipulates who has access to the system. But generally speaking, the police has access. They are, of course, at the airports, in the seaports, and can intercept mobile phones. It follows that they have access to masses of information all the time. They don't need to look for faxes. This is a rapid system. It is updated. There are masses of information. And natually the efficiency of the system is much greater than that of the traditional Interpol system".

The police intercepts mobile (and other) phones. The information is exchanged between the SIRENE offices. Communication is SIRENEs main task. Communication of information between the police in different states has been on the increase for several decades. The SIRENE system formalizes and legitimizes the activity, thus greatly strengthening it. There

exists a comprehensive manual for the SIRENE. The manual is secret (confidential),[8] but major parts as well as summaries have leaked out and have already been published (see e.g. *Fortess Europe?,* December 1996/January 1997). Clearly, the range of application is very wide indeed. Firstly, in a relevant article in the convention which is applicable here reference is made to "helping prevent future crime" -- an imprecise category indeed, which implies that no concrete suspicion is necessary. Secondly, reference is made to "prevent offences against *or* [my italics] threats to public order and security". The word "or" indicates that the range of application *goes explicitly beyond any reference to offences or crimes whatsoever*.[9] The article therefore opens for bilateral/multilateral exchange of information concerning highly diffuse matters, matter which may certainly include political activities when defined as a threat. *Fortress Europe?* makes this telling comment (December 1996--January 1997, p. 5):

> ”Compared with the amount and sensitivity of information that can be stored and exchanged by the SIRENE offices, the SIS is actually little more than an Index system."

Like SIS proper, the SIRENE system is undergoing continual expansion. The Work Programme of the German chairmanship in Schengen, fall 1998 (p. 9 in the Danish translation) has this to say about plans for the SIRENE system: ”[M]odernization and acceleration of information exchange on the basis of the final implementation of the SIRENE network.phase II [will be implemented]”.

In Schengen: Crime Prevention?

But what about crime? Is not serious, organized crime a worthy goal for surveillance, Schengen, SIRENE and the lot?

Statistical information from Germany as well as statistical information and reports from Schengen itself, show that the Schengen system of cooperation to a very large extent is focused on *identity papers and unwanted aliens*, such as asylum seekers who have been

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[8]The SIRENE manual is a part of the Schengen *acquis* -- over one thousand pages of binding decisions and declarations made by the Schengen Executive Committee. The comprehensive manual is, along with some other parts of the *acquis*, secret pursuant to a decision made by the Executive Comittee of 14 December 1993 (itself a part of the *acquis,* and thus binding to the participating states). The decision states that the manual (along with the other relevant parts of the *aquis)* “shall” or “should” (from the French “doivent”, in the intermediate zone between “shall” and “should”) remain confidential “[i]ndependently of the different national rules”. This decision, which has largely remained unnoticed, is actually sensational: By internal decree it obliges the participating states to keep the relevant documents secret *regardless of what national legislation has to say about the matter.*

Citations from the Schengen *acquis* are translated from Norwegian or Danish texts by the author.

[9]The crucial word “or” appears not only in the English translation of the convention, but in the French original text as well as in all of the Scandinavian translations.

refused entry and have gone underground. Despite what political authorities and the police say, crime is not a primary target.

For one thing, this is apparent when we look in more detail at a Report from the German Ministry of the Interior, fall 1995. The report showed that close to 70 % of the 2,3 million records ("datenzätze") which up to that time were entered in the SIS by Germany alone, concerned unwanted aliens and identity papers. Of the 2,3 million records, about 700 000 concerned persons. Of these, 600 000, or about 86 %, were registered pursuant to Article 96 in the Schengen Convention, concerning aliens who are reported for the purposes of being refused entry. Some of these may have committed serious, traditional crimes. But surely not the majority: The same report reviews the SIRENE system, which is more detailed, and which indicates that the aliens to a large extent were asylum seekers who had been refused entry in Germany, and who had gone underground (for further details, see Mathiesen 1997 a, p. 51).

The same appears from a Report from the German Ministry of the Interior about the Schengen Cooperation in 1996, delivered to the Federal States in June 1997, and again from the Annual Report on the State of Affairs along the External Schengen Border during 1996, published 20 March 1997, only more clearly so. *The report says nothing about serious control of cross-border crime.* Rather, the returning of third country citizens to third countries, the control of visas, forged documents and so on are reported. Crimes in a traditional sense may be hidden in this materal, but they are hardly conspicuous. A total of 563 423 control actions are reported at the external borders, 41 % concerned refusal of entry from third countries, 28,5 % concerned third country citizens apprehended without a residence permit near the border, 24,5 % concerned the returning of third country citizens to third countries, 3 % concerned third country citizens in the possession of forged documents and 0,5 % concerned "apprehended people smugglers" ("festgenommenen Schleuser"). 4,8 % were unclassifiable due to unreadable report. It appears abundantly clear that *the crux of the matter is a policy of shutting out aliens.* It also appears that in so far as the apprehension of organized people smugglers is a Schengen goal, Schengen border control is a complete failure.

The fact that the crux of the matter is a policy of shutting out aliens, has systematically remained uncommunicated by the media and the authorities.

That the crux of the matter is such a policy, is also abundantly clear from an important and honest report from the Belgian SIRENE office, entitled The Schengen Information System and its Implementation in Belgium (1994).

The Belgian report explicitly states that the SIS is not a "criminal police service", but a service responsible for the control of all aliens who have been or will be refused entry into the Schengen territory.

The Belgian SIRENE report also shows, most importantly, that *the policy of shutting out aliens is intimately related to the maintenance of public order and State security,* thus

corroborating in a very concrete way our earlier reading of the Schengen Convention and other authoritative documents. Concretely, the report states that the SIS is responsible for storing information about ”persons reported by the State security” (that is, the secret police). Such persons may also be aliens, including aliens who reside in the Schengen countries, but they may of course also be other kinds of “trouble makers”. The secret SIRENE manual mentioned earlier provides the procedure for this.

The emphasis on public order and security in a broad sense of the word is also documented concretely in "Draft Schengen Manual on Police Cooperation in Maintaining Public Order and Security", prepared by the Schengen Working Group I on Police and Security 11. June 1997. The draft manual is based on Article 46 in the Schengen Convention -- a very wide and open article (see above). On p. 2, the draft manual says (second italics mine):

> "Cooperation pursuant to the manual shall apply, *inter alia*, to events where *large numbers of persons from more than one country congregate in one or more Schengen States* and where the main purpose of the police presence is to maintain public order and security and prevent criminal offences. Examples of these are sports events, rock concerts, demonstrations [!, TM] or road blockades".

But not only "large numbers of persons" may be involved, because the manual continues as follows (p. 2, my italics):

> "This cooperation shall not be confined to large-scale events but *can also apply to the movement and activities of concentrations of persons, regardless of size*, which may pose a threat to public order and security”.

Small groups of people may, in other words, also be scrutinized, on very vague grounds.

The cooperation may involve more than two neighbouring Schengen States, and may be extended through the Schengen realm. Liaison officers can attend and work with the police of other Schengen States, and should the cirumstances give cause (p. 5),

> "police authorities of Schengen States concerned may, with a view to coordinating operations, set up joint command and coordination centres".

In short: While governments and other responsible authorities emphasize the struggle against traditional, serious international crime as Schengen's main goal, all of the empirical and documentary material in hand clearly shows that the goal is to be found at the cross point between the shutting out of aliens and the protection of vaguely defined public order and State security. The latter concepts may mean almost whatever you like, and may certainly include politically oriented behaviour. Though non-aliens may be involved, now or in the future, aliens presumably constitute the main threat to public order and State security: The Muslim

"threat", for example, represents "a new enemy" after the breakdown of the Soviet Union and the disappearance of "the communist enemy".

This is the reason why Schengen has been called "Fortress Europe". We are reminded of our own historical past.

In Schengen: Data Protection?

The SIRENE offices in the various countries also administer the national SIS bases. As far as the SIRENE goes, there are *no* common data protection regulations (to repeat, the SIRENE is not even mentioned in the Schengen Convention). The absence of a common set of legal rules regulating the SIRENE network has been emphasized as a serious defect by JSA - the Joint Supervisory Authority concerning data protection in Schengen.[10]

As far as the SIS goes, there are data protection rules specified in the convention. It is presupposed that the contracting parties have taken measures at least on the level following from the Council of Europe Convention on Data Protection of 1981. The specific rules are fairly detailed, and many of them may be roughly grouped under two headings: Rules concerning *information quality* and rules concerning *application security.* Rules concerning *information quality* are rules intended to secure the correctness of the information. Rules concerning what I here call *application security* are rules intended to secure the proper use of the information.

However, a whole series of decisive problems are attached to rules such as these.

Firstly, a number of the most important rules concerning information quality -- the right of citizens to have inaccurate data corrected or deleted, their right to ask the national supervisory authority to check data, and so on -- depend entirely on the practical possibility of having access to the data. If people do not have access, the rules are of little help. In the Schengen convention, there are wide mandatory exceptions made, and in many countries the work registers of the police are as a general rule exempt from access.

Secondly, the application of the rules is to a large extent dependent on police practices in various countries, and it is well known that police practices vary greatly. As the Danish professor of law, Peter Blume, has formulated it: "Such differences in legal culture [are] an Achilles heal of such regulations" (Blume 1992, p. 70). Actual data protection is further decreased by the fact, mentioned above, that there is a total of about 49 000 access points to the SIS throughout Europe, and by the fact that the usage of the system is in practice far from only limited to the border police

[10]Source: *Fortress Europe?* December 1996--January 1997, p. 5.

Thirdly, the common Joint Supervisory Authority, JSA, which has been established to control the SIS in terms of data protection, is a very weak agency, largely lacking practical control possibilities and certainly lacking sanctions. The JSA has two representatives from each country. The director of the Norwegian National Supervisory Authority is one of the Norwegian representatives. He had i.a. the following to say about the JSA at a hearing about Schengen in the Foreign Committee of the Norwegian Parliament 5 May 1997 (translated from the Norwegian by the author):

> "It is a small agency. There are two from each country. They have no sanctions, no secretariat, and as of today they do not even have a phone. A substantial part of the documents which we were supposed to relate to, did not exist in an English translation and not in any of the Nordic languages, so if this is not improved, our possibilities of being an Authority -- that is, an authority which is listened to and which is taken seriously by the executive institutions -- are probably rather small".

The problems emphasized by the Norwegian director will hardly disappear if the JSA at long last is provided with a phone. The JSA issued its first activity report in the Spring of 1997. The report covers the period between March 1995 and March 1997, and confirms that the JSA does not have any sanctions at its disposal, that its work is often obstructed by by various Schengen authorities (the agency had at that time considerable difficulties in getting access to the necessary documents), that its budget is very small, it personel small[11] and its authority weak. The JSA is worried about the large number of systems of police cooperation

[11]The 1999 budget proposal for the JSA was 1 050 000 Danish crowns, an increase from 1998. Out of this, 535 000 Danish crowns were earmarked ”personel”. Compare this with the budget proposal of 44 110 000 Danish crowns for the central SIS database in Strasbourg (in addition, the national SIS bases are paid for by the individual countries). Of the 44 110 000 crowns, 33 470 000 crowns were proposed for establishing *SIS I plus* and *SIS II* (source: Memorandum from the Danish Ministry of Justice to the Legal Committee of Parliament, 4 December 1998). Establishing the new SIS generations will take much more than one year, and continual modernization is expected.

which is in the making in Europe (more about this below), and characterizes the various sets of data protection rules which exist as a "legal labyrinth".[12]

A telling example of JSA's lack of control of the SIS system was revealed in November/December 1997. Secret documents with sensitive personal information were found at a train station in Belgium. The documents were accessible to everyone who passed by. Sensitive material was also seized in the apartment of a Belgian who had been arrested. The Danish minister of justice, Frank Jensen, characterized what had happened as "a serious breach of security in the SIS".

Fourthly, even the most precise rules are likely to be inadequate in this area in the light of the rapid and enormous development of IT- and other relevant technology.

A plethora of further systems

Schengen does not stand alone.

As I have intimated already, during the 1990s a whole plethora of other proposals, drafts and actual establishments of registration- and surveillance systems has developed in Europe. A *surveillant state* is rapidly becoming a reality. Schengen appears to be a kind of core system in this plethora, which the other systems relate and are drawn to. I shall very briefly give three examples, or sets of examples, of other systems.

It should briefly be mentioned that there are also other systems in the making, such as the CIS or Customs Information System, which according to a German intiative is also to include ”suspects” who are, or have been in the past, subjects of investigation, and whether or not any evidence of unlawful evidence has been found (see Statewatch European Monitor Vol. 1 No. 2, 1999, pp. 14—15). The CIS in itself and as now planned represents fundamental problems of civil liberties.

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[12] See Activity Report March 1995—March 1997 of the Schengen Supervisory Authority. For a detailed and excellent review of the report, see *Fortress Europe?,* June 1997. The criticism is followed up in later annual reports of the JSA. Within the context of the action plan on the so-called ”common area of freedom, security and justice” (more about this below) ideas about data protection within the third (interstate) pillar of the EU have been debated for several years. A report of 4 February 1999 (5643/99 LIMITE JAI 3; reference documents an Italian initiative, JAI 15, and a resolution by the European Data Protection Commissioners, JAI 16; presented in full text in Statewatch European Monitor Vol. 1, No. 2 1999, pp. 12—14), sets out – as Statewatch summarizes – three distinct areas: 1) the exchange of data between EU member states, 2) ”common data collection” (e.g. Europol, Eurodac, SIS), and 3) exchange of data by ”other bodies”. The report (the Italian initiative) ”deplores, against the background of increasingly intense cooperation in the Third Pillar, the fragmentation of data protection provisions for various complex information systems (e.g. SIS, Europol, CIS) …”, and ”suggests devising uniform standards which would have to be developed and could then be incorporated into new systems (e.g. EIS) as established elements”. This says a lot both about the increasing integration of the information systems, which is openly admitted, and about the problems of regulation. But, as Statewatch comments (p. 12), the report ”does not address the powers and resources which are essential if supervisory authorities are to be meaningful”.

Eurodac

The so-called Dublin Convention (Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities) establishes the principle that a single state is to have the responsibility for handling an application for asylum. The convention contains a series of rules about asylum.

Related to the Dublin Convention there are very concrete plans (in the form of a Convention on Eurodac) of establishing a so-called Eurodac register. Eurodac is designed as a register storing the fingerprints of asylum seekers, but also of other personal data. The register is supposed to be (quotes translated from the Danish version by the author) "a European central register". Forced registration of all asylum seekers over 14 years of age in all EU member states is envisaged. Fingerprints are supposed to be "stored temporarily" in Eurodac's central register "for a period of 10 years". There are only two exceptions from this: The files of persons who have been granted citizenship in a member state are to be deleted, and the files of persons who have been granted status as refugees pursuant to the UN refuge convention are to be barred from general use, and may only be used for statistical purposes. At the earliest five years after the establishment of the central data base, the Council shall consider whether the latter files are to be stored or deleted.

Certain rights to have data corrected or deleted pursuant to national legislation are proposed, but since Eurodac will be a work register for the police, those registered will (like those registered in the SIS, see above) be barred from access to the data in many countries. In order to invoke his or her rights to have information corrected or deleted, the registered person may – again pursuant to national legistation – bring an action before the courts or pursue the issue as a complaint to the compentent authorities. But to bring an action before the courts is a very complicated thing in general, and certainly an enormously complicated road for asylum seekers in an uncertain life situation.

The JHA Council reached political agreement ("global agreement") on the contents of the draft convention 3-4 December 1998.

Independently of Schengen's integration in the EU structure (through the Amsterdam treaty), Schengen will be provided with Eurodac: The Dublin Convention, which constitutes the basis of Eurodac, has already replaced the Schengen rules about asylum.

Recently it was proposed that the scope of Eurodac is extended to the collection, storage, exchange and comparison of fingerprints of so-called illegal migrants, and not only asylum seekers (van der Klaauw 1998, p. 7). In practice, this means the storage etc. of persons who are crossing the EU border without valid documentation - undocumented migrants. Large numbers of undocumented migrants are in practice political refugees from third world countries where visas are necessary in order to enter the EU realm. The extension of Eurodac is planned as a protocol attached to the Eurodac convention.The draft protocol was up for

discussion at the JHA Council meeting 3-4 December 1998, but postponed with a view towards further political preparation. Agreement was reached at the JHA Council meeting in March 1999. In view of the entry into force of the Amsterdam Treaty on 1 May 1999 (see above), the Council presupposed that the EU Commission would prepare a common instrument to supplant the convention as well as the protocol, with a view towards final agreement by the end of 1999.

The history of the issue of fingerprinting “illegal migrants” shows how Schengen and Eurodac concerns are intertwined. The issue was, notably, raised in a decision by the Schengen Executive Committee on 15 December 1997, which advocated the "taking of fingerprints of each illegal third country national immigrant whose identity cannot be established beyond doubt ... and storing of the data for information exchange with other authorities of the member states".[13] The decision on fingerprinting was a part of a larger Schengen action plan effecting, “without delay”, a whole string of specific measures against so-called illegal immigration.[14] The electronic exchange of finger prints is possible via the SIRENE-network.[15], and the proposed fingerprinting would, as Statewatch comments (January--February 1998, p. 1),

> "create a major source of information to be entered into the EU's EURODAC computerised fingerprint database when it comes on line..."

A Joint Control Authority (JCA) is going to monitor the processing of data in Eurodac, and check the lawfulness of transmissions.[16] But while it will have rights to "control" and "examine", as well as make "suggestions for improvement", it will, as *Fortress Europe?* points out (January--February 1998, p. 7), "have no powers to sanction practices in breach of the Convention or of international obligations with respect to the protection and security of personal data”.

Eurodac as a “European central register” is so far without precedent in European history. It will imply long-term or permanent registration and surveillance of (and throw lasting suspicion on) large population groups throughout Europe.

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[13]Source: *Statewatch* January--February 1998, p. 1.
[14]Source: *Fortress Europe?* January--February 1998, pp. 3--4. *Fortress Europe?* observes that less than a month after the meeting of the Schengen Executive Committee, on 8 January 1998, a secretive police meeting took place in Rome, where “police chiefs from the six Schengen countries most concerned by illegal immigration met ... with the Turkish police chief to discuss practical cooperation in the fight against ‘illegal immigration’ ...”. For a presentation of a number of other EU initiatives to fight ”illegal immigration”, see Statewatch European Monitor Vol. 1 No. 2, 1999. The initiatives clearly show how Schengen fits neatly into the EU attempts to control external borders.
[15]Source: *Fortress Europe?* January--February 1998, p. 3.
[16]Source: *Fortress Europe?* January--February 1998.

Europol

The convention which lies at the basis of Europol, with *The Europol Computer Systems*, TECS, is ratified by all EU states. The convention entered into force on 1 October 1998 and Europol became operational on 1 July 1999. Europol is a joint police unit within the EU, originally -- before ratification -- established as a Europol drugs unit (EDU), but with an enormous potential for development. In contrast to Schengen, Europol aims at serious international crime. At the same time, the data protection problems and other issues are formidable.

As a *Statewatch* publication has put it (Bunyan 1995, p. 2),

> "Europol is one of a number of inter-linking EU-wide computer data bases being set up which, once created, will potentially impinge on the rights of a whole range of people for the forseeable future".

The Europol Computer Systems will have three main subsystems.

Firstly, there is a *central information system* (Article 8 in the Europol Convention). Information may be entered about persons who by national law are suspected of having committed or of having taken part in criminal offences under Europol's competence, or persons about whom there are serious grounds, under national law, to believe will commit such offences (Articles 8.1.1 and 8.1.2). In other words, the system is clearly geared not only towards persons suspected of having committed any of the offences in question, but towards persons suspected of participation in a wide sense of the word as well as towards a broad category of possible future criminals and possible future offences -- certainly, a very extensive and diffuse category.

What kinds of information may be included in the central information system? The system may be used to store, modify and utilize (Article 8.2) certain standardized personal data (name, aliases, date and place of birth, nationality and sex), and, "where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change". The most obvious other "objective physical characteristic" is a person's race. In addition (Article 8.3), certain "details concerning the persons referred to" may be included: "criminal offences [and] alleged crimes", "means which were or may be used to commit the crimes", "departments handling the case and their filing references", "suspected membership of a criminal organization" and relevant convictions. The latter data may also be included "when they do not yet contain any reference to persons". For example, "alleged crimes" may be included without reference to any person.

Also (Article 8.4), "[a]dditional information held by Europol or national units concerning the groups or persons referred to in paragraph 1 may be communicated to any national unit or Europol should either so request. National units shall do so in compliance with

their national law". In short, from Articles 8.2 through to Article 8.4 the information which may be included/communicated is continuously widened, ending with the catch-all "[a]dditional information".

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Secondly, there are the *work files for the purposes of analysis* (Article 10 in the Europol Convention). These are special, temporary work files set up for the analysis of specific areas of activity. The work files may contain extensive personal data, not only (Article 10.1 No. 1) about persons registered in the central information system pursuant to Article 8.1, but also (Article 10.1 No. 2-5) about

- possible witnesses ("persons who might be called on to testify"),
- victims or persons whom there is reason to believe could be victims ("...with regard to whom certain facts give reason for believing that they could be victims..."),
- "contacts and associates", and
- informants ("persons who can provide information on the criminal offences under consideration")

In short, a very wide circle of individuals loosely tied to persons who have been sentenced or are under suspicion.

Thirdly, there is *an index system*, designed in such a way that it is possible to determine whether or not a given item of information is stored.

Let us look a bit more closely at the second of these levels, *the work files*. The kinds of personal information which may be stored in the work files are not specified in the convention, only in so-called "implementation rules", given pursuant to the convention. The implementation rules are not to be approved by parliaments, only unanimously by the Council (Europol Convention, Article 10.1). There is already full agreement on the final proposal for implementation rules in the JHA Council (according to minutes from the JHA Council meeting 24 September 1998). The rules were approved by the Europol Management Board in October 1998, pending formal adoption by the Council. The implementation rules stipulate that under certain conditions sexual inclination, membership in political organizations and the like may be registered. It should be noted that the EU data protection directive 95/46EF (article 3.2) explicitly exempts the directive i.a. from being applicable to "the activities of the State in areas of criminal law". Inclusion of the sensitive information mentioned here in other words falls outside the jurisdiction of the directive.

The final proposal for implementation rules applicable to work files (doc. 6100/4/97) allows (in Article 6) the processing of 53 [!, TM] types of personal data about persons registered in the central information system. The 53 types of personal information are grouped in ten categories, for example "personal details" (fourteen types of data), "physical appearance" (two types of data), "identification means" (five types of data; including forensic information such as fingerprints and DNA evaluation results, though "without information characterizing personality"), occupation and related qualifications (five types of data), "economic and financial information" (eight types of data), "behavioural data" (eight types of data; including "life style (such as living above means) and routine", "danger rating" and "criminal related traits and profiles"), and so on.

One of the other categories is named "references to other databases in which information on the person is stored", including Europol, police/customs agencies, other enforcement agencies, international organizations (!), public bodies (!) and private bodies (!).

To reiterate, the above-mentioned types of data may not only be included about persons registered in the central information system, but also about possible witnesses, victims or persons whom there is reason to believe could be victims, contacts and associates, and informants.

To be sure, a joint supervisory body will be established pursuant to Article 24 in the Europol Convention. The draft rules of procedure for the Joint Supervisory Body considered by the JHA Council 24 September 1998, and again by the Council 3-4 December 1998. In the minutes from the latter meeting, taken from the Internet, vague terms like ”reviewing” the activities of Europol to ensure that the rights of the individual are not violated and ”monitor” the permissibility of the transmission of data originating from Europol are used.

A protocol attached to the Europol Convention, pursuant to Article 41.1 of the convention, gives diplomatic immunity for Europol officers within the EU countries. Article 8 of the protocol grants all Europol staff "immunity from the legal process of any kind in respect of words spoken or written, and of acts performed by them, in the exercise of their official functions". The protocol on privileges and immunities is ratified by all EU member states. With the convention as well as the protocol ratified and agreement on the rules of procedure for the Joint Supervisory Body, Europol became operational on 1 July 1999.

The system is planned with a view towards far-reaching integration i.a. with the Schengen Information System. For one thing, article 10.4 No. 1-3 in the Europol Convention establishes a whole range of authorities and bodies within the EU from whom Europol may request information. In a secret proposal of 9 April 1997 the so-called High Level Group on

Organized Crime explicitly recommended, in line with this, that *Europol is given access to the information stored in the Schengen Information System*.[17] This and other recommendations were on the agenda of the Justice and Home Affairs' council meeting 3—4 December 1998 in connection with the action plan on establishing an area of freedom, security and justice, and were also discussed in a report of 26 February 1999 (6245/99 Europol 7). The report i.a. discussed the issue of whether Europol's authority should be extended to actual searches in the SIS (see Statewatch European Monitor Vol. 1 No. 2, 1999, pp. 14—17; pursuant to the Europol Convention Article 3 (1) point 2 Europol has the task to obtain, collate and analyze information and intelligence, but no authority to search). Furthermore, concrete work directed towards facilitiating and easing compatibility between the two systems has been going on for a long time (Frigaard 1996). After the Interpol meeting in Oslo in the Spring of 1999, the head of the Criminal Investigation Department, which will become SIRENE-office and in charge of the SIS when it gets on wheels in Norway, made the following interesting statement (*Aftenposten* 31 May 1999):

> "The Department is already connected with Interpol, and the contact with Schengen is also with us. If Norway gets an agreement with Europol, we will use the same people in our contact with them. …It is important to get an agreement with Europol, especially when you see how closely Denmark, Sweden and Finland are tied to the activity there. Norway has to become a part of the big family".

Once more, such access and integrative cooperation will be greatly facilitated through the Amsterdam Treaty.

Surveillance of Telecommunications

Very quickly now, towards the end, about interception of telecommunications:

In November 1995 a *Memorandum of Understanding on the lawful interception of telecommunications* was signed by the EU countries. The memorandum emphasizes that law enforcement ("combating serious crime and protecting national security") requires such interception. The memorandum refers in general terms to "law enforcement agencies", without any clear delimitation. In the background was an FBI initiative and an important meeting at the FBI academy in Quantico, Virginia. A group of 20 countries, either meeting in Quantico or joining the effort later, may be called the "Quantico group". The group established the so-called "International Law Enforcement Seminar", ILETS, which has operated as a pressure

[17]Source: Personal communication from the editor of *Fortress Europe?,* Nicholas Busch; see doc. 7421/97 JAI 14.

group in the area of interception. Currently, the memorandum is being updated within the EU. A new EU Draft Convention on Mutual Legal Assistance in Criminal Matters will i.a. legitimize such surveillance. Referring to Article 6.2, a-c in the draft convention, *Fortress Europe?* (May 1998, p. 4) comments:

> "The rules are worded so as to enable the interception without interruption in the whole territory of the EU, even of persons, quickly moving between different Member States and using any type of fixed or mobile telecommunication devices and structures."

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Currently, bodies within the EU structure are working to extend the telecommunications plans to the Internet (e-mail) and to new generation satellite mobile phones.

The plans may be found in what has been named the ”ENFOPOL papers”. The documents are very secret. The journal *Telepolis* has, however, revealed som of **them** (http://www.telepolis.de/tp/deutsch/special/enfo6329/1.html). Plans are in the making for monitoring any and all kinds of telecommunication – data, whether encrypted or in clear form, mobile telephony, the new Iridium system and other satelite mobile phoneservices. Says Armin Medosch in a summary of the reports on the ENFOPOL papers (*Telepolis* 30 November 1998 (www as above): They are

> **”**aiming at the central terrestrial masterstation of Iridium in Italy as an ideal spot to monitor telecommunications traffic. But also large clearing houses which handle international phone call billing for the big national operators are mentioned as potential sources for the kind of information European police forces are interested in.”

At the moment, are not a reality, but a set of proposals. But discussions have commenced in the JHA Council. Are, then, plans of this kind technically feasible? The so-called *Echelon* system, which *is* a reality, shows that they are.

While the FBI-EU initiative and related activities mentioned above will serve the "law enforcement community", Echelon serves the "military-intelligence community". Unlike many of the electronic military intelligence systems developed during the cold war, *Echelon* is designed just as much for non-military targets -- governments, organizations and businesses throughout the world. The US, Britain, Canada, New Zealand and Australia are the main participants, with the US as senior partner. A report to the European Parliament by Steve

Wright dated 6 January 1998[18] describes the activities of *Echelon* in the following words which, in terms of the technology described, is also relevant to the plans relating to law enforcement (pp. 18-19):

> "A wide range of bugging and tapping devices have been evolved to record conversations and to intercept telecommunications traffic. ... However, planting illegal bugs ... is yesterday's technology. ... [T]hese bugs and taps pale into insignificance next to the national and international state run interception networks. ... Modern technology is virtually transparent to the advanced interceptions equipment which can be used to listen in. ... Within Europe, all email, telephone and fax communications are routinely intercepted by the United States National Security Agency, transferring all target information from the European mainland via the strategic hub of London then by Satellite to Fort Meade in Maryland via the crucial hub in Menwith Hill in the North York Moors of the UK. ... The ECHELON system works by indiscriminately intercepting very large quantities of communications and then siphoning out what is valuable using artificial intelligence aids like Memox to find key words. Five nations share the results. ... Each of the five centres supply 'dictionaries' to the other four of key words. Phrases, people and places to "tag" and the tagged intercept is forwarded straight to the requesting country. ..."

Echelon's technology is geared towards the interception of telecommunications via satellite. A substantial part of telecommunications today is transported via submarine cables across the oceans. Submarine cables are more difficult to intercept (though easy to intercept as they enter into or come up from the ocean). But the future is with the satellites. On 1 November 1998 the world's first mobile telephone network covering the globe as a whole was opened (and called the world's first "virtual nation" by its promoters). The network is named "Iridium". Others will follow. For example, the satellite network Teledesic (with Microsoft's Bill Gates as one of the owners) is planned to be launched in 2003, and will be used for high velocity Internet. *The point is that Echelon's technology is apparently well suited to the interception of all of these networks.*

It is Steve Wright's point that the US National Security Agency is deeply involved in Echelon. The US National Security Agency, NSA, was established in 1952 by president Harry Truman. This powerful agency plans, coordinates and executes signal intelligence as well as tasks concerning information security. It is concerned with non-defence as well as defence issues. A main point is to break through and understand foreign communications while at the same time protecting the nation's own communication systems. In this double task lies NSA's main goal and competence. NSA is the world's leading cryptological organisation.

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[18]Steve Wright: An Appraisal of Technologies of Political Control, PE 166.499. Revised September 1998.

The NSA is an active agency indeed. In July 1999 The New York Times revealed that the NSA had developed a plan for massive electronic surveillance. The plan, entitled *The National Plan for Information Systems Protection*, was presumably directed towards protecting US datasystems against hackers, data terrorists and enemy states, in other words, information security. The plan, however, included strategies to establish a large scale domestic and international Internet monitoring system, to be used by the FBI. One of the plan's proposals called for the creation of a Federal Intrusion Detection Network, FIDNET, to monitor all network activity involving civilian government departments and agencies. FIDNET was to be linked to a similar system in the Defense Department known as the Joint Task Force-Computer Network Defense (JTF-CND) that monitors all Defense Department networks. Both of them were in turn to be linked to private sector Information Sharing and Assessment Centers (ISAC), which would monitor network activity in telecommunications, banking, and other sectors. The plan was an outgrowth of recommendations made in the October 1997 report of the President's Commission on Critical Infrastructure Protection (PCCIP) and in Presidental Decision Directive 63 (PDD 63) on Critical Infrastructure Protection issues in May 1998. Civil Rights Organizations such as Electronic Privacy Information Center (EPIC) launched a massive criticism of the plan, arguing that the authorities this way would be able to monitor all data traffic, also private e-mail, whereupon the White House stated that the plan had not yet been approved by the President and that it would be undergoing a legal review. The House committee sent the fiscal 2000 budget to the full House with language barring the Justice Department spending on FIDNET. Thus, the plan was temporarily aborted, but it will no doubt be rephrased and turn up again: This is not the first time the NSA has tried to introduce massive monitoring systems. The "Clipper Chip" was its first attempt, also under the Clinton Administration. A chip was to be installed in all telephones, modems and faxes which would make the communication content understandable to law enforcement agencies. Again, massive protests followed (sources: the civil rights' organization EPIC, and the Internet journals Digi.no and ZDNet; http://www.epic.org; http://w3.digi.no; http://www.zdnet.com; http://www.wired.com.

The relationship between the recent NSA initiatives and *Echelon* is unknown,but there is no doubt one.

Towards an Integrated System

The basic point of this paper is that there is a tendency towards convergence and integration between the various registration and surveillance systems -- established or in the making -- in Europe. I have given a number of examples of this on the way.Though there are obstacles and different or conflicting interests involved, the tendency has a momentum on the political as well as the policing levels. The Amsterdam Treaty, which integrates Schengen into

the EU structure, will give added momentum to this tendency. A Schengen which has "disappeared" into the EU structure, will no longer have its own decision making structure, so that amalgamation with Europol, Eurodac and so on will be much closer at hand.

In the horizon we may envisage the contours of a vast, increasingly intergrated multinational registration and surveillance system, with information floating more or less freely between sub-systems, at any time covering large population groups. To be sure, a full technical integration in the sense that virtually everyone in the police would have access to almost every bit of information, would easily undermine secrecy, and secrecy is a dominant police value and functional necessity. In fact, this is today considered a problem in the Schengen context by the Secret Police in several countries (for example Norway). However, as I have alluded to already, the point would be to have special branches catering to special issues, but with extensive cooperation between key people and numerous links between the various branches. Thus, the various systems which I have described could well continue to exist, and there could well be barriers between them, but the barriers would not be there for key personnel or groups of personnel, who could avail themselves of the continually expanding number of links. Judging from SIS figures today (to repeat, available sources indicate that about 700 000 persons are at present registered in the SIS), we must reckon with millions of people in a more or less integrated future system. A minority of persons will be registered because they have demonstrably committed crimes, and another minority because they are concretely suspected of crimes. A large majority will consist of people in an extremely wide circle around such persons, as well persons who in a diffuse sense are viewed as threats to public order and state security and unwanted aliens. The system will be future oriented, geared towards presumed or possible future acts.

To repeat, a vast, amalgamated police-based data system of the kind envisaged above, with various specialized branches, may function both on the individual and the aggregate level: Individuals may be subjected to registration and surveillance, while whole population groups may quickly be sorted out for "special treatment". The system may be used for political purposes by police forces as well as through political institutions.

I have suggested that at present, Schengen is a center of gravity among the plethora of other systems. Schengen is already on wheels. But this may change as the systems proceed towards integration: Now that Europol is operational, and when The Europol Computer Systems really get started (probably toward the end of 2001), those systems may well take the lead and become the central locus of the integrated system. The enormous potential of The Europol Computer Systems, with the various work files in addition to the central information system, as well as the development of operative functions as well as immunities and privileges on the part of Europol's personel, suggest that Europol in the (near?) future will become a center of power, with communication channels and power lines to the other systems.

The Panoptical Machine -- and Synopticism

In short, Michel Foucault's description of modern society as a "panoptical machine" (Foucault Eng. ed. 1979, p. 217; original French ed. 1975) was even more apt than he thought back in 1975, when he wrote his famous book on surveillance and punishment.

The concept of "panopticism", which Foucault borrowed from Jeremy Bentham, derives from the Greek word *pan*, meaning "all", and *opticon*, which represents the visual. In a panoptical situation, a small group of observers -- in principle one observer-- is able to watch a whole multitude of people, and, in a panoptical society, a large segment or the whole population is similarly watched. Foucault, like Bentham before him, described the development of the modern prison as a development towards panopticism. But Foucault goes further. "In appearance", Foucault says, panopticism "is merely the solution of a technical problem, but, through it, a whole new type of society emerges" (p. 216), transported "from the penal institution to the entire social body" (p. 298). Though he did not discuss modern computerized registration and surveillance systems, his analysis may well be utilized as a theoretical framework for an understanding of the development of such systems: The likely development towards a more or less integrated, totalized registration and surveillance system in Europe implies a development towards a vast "panoptical machine" which may be used for registration and surveillance of individuals as well as whole categories of people, and which may well become one of the most repressive political instruments of modernity.

To be sure, panoptical registration and surveillance systems have existed before in history. The Church had them, the Inquisition had them, the Military had them; in a sense, they are archaic (see Mathiesen 1997 b). But never before in history have they been so inclusive, and so technically advanced and innovative, and never before in history have they developed so suddenly and rapidly: Within the span of thirty some years, the computerization of registration and surveillance has suddenly become a reality and developed by leaps and bounds, thus reaching a new and entirely different level of sophistication, and, as I have said, a developmental tendency towards integration.

This is all the more threatening because few institutions exist which might monitor critically what is going on. The various national supervisory committees, Schengen's Joint Supervisory Authority and similar institutions, are, as we have seen, close to worthless from the point of view of control. Parliaments are not equipped with enough knowledge and insight, and not with enough power. And the mass media -- the only set of institutions which in principle has significant power to monitor and even control developments -- is not doing their job. In more detail:

As a parallel to the developing panopticism, there is, through the mass media, a developing *synopticism*. The concept is composed of the Greek word *syn* which stands for "together" or "at the same time", and *opticon*, which, again, has to do with the visual. Not only

are we increasingly moving towards a panoptical situation where the few may see and monitor the many, we are also -- especially through television -- increasingly moving towards an opposite synoptical situation where many may see and monitor the few. I have outlined the details of this double development elsewhere (Mathiesen 1997 b); suffice it here to say that synopticism, where the many see the few, is also archaic: Rome's Colosseum, the emperor admired by the crowd when returning victoriously from the battle, and the Catholic priest giving his sermon from the pulpit in the cathedral are only a few of the many examples. But like the development towards panopticism, the synoptical development, through television, has accelerated tremendously in modern times. Millions, at times hundreds of millions, watch the few that television focuses on. Historically, we have seen many examples of panopticism and synopticism combined. But the historically recent acceleration of the two developmental trends shows particularly striking concurrences in time, as if they were synchronized, and striking similarities in technology as well as overlap in personnel (for details, see again Mathiesen 1997 b).

The synoptical mass media, especially television, contain great possibilities for aggressive and critical control of panoptical institutions. But the possibilities are not utilized. As the synoptical mass media developed, they became increasingly and almost unavoidably interesting as commercial targets. The commercialization of television, and the emphasis on profit following from that, has transformed the latent possibilities of television into an enormous entertainment industry (for details, see Postman 1985) -- the ancient Colosseum one thousand times enlarged. The few who are watched by and produce messages to the many are the VIPs, the entertainers, the celebrated stars, almost a new class in the public sphere, and, on the political level, key political figures in highly staged settings. All of them become entertainers in the service of the entertainment industry, as do the participants in the many television "debates", tranformed and degenerated as they are into regular talk shows. Though there are exceptions, in so-called critical journalism a president's sex life is much more important than his policies. In such a situation, the development of panopticism, though politically threatening and potentially extremely dangerous, is left almost entirely untouched. Monitoring such complex phenomena is left to the narrow journals, conferences and books, in the remote and uninfluential outskirts of public space.

At the dawn of the 21 century, this is what lies ahead in the West: A population born and raised in the age of synoptical entertainment, consequently entirely unprepared for the great potentialities of growing panoptical power.

Even more so: Reminiscient of the 1930s, extremist right wing movements are largely left unresisted and thriving by the unprepared population. Indeed, they are pushed forward by being invited to participate -- and wave the flag -- in the synoptical entertainment business, not because of any democratic right to participate, but because they fit excellently into the many

polarized entertaining "debates" on the television stage. This is not the only reason why the right wing is on the march, but it is one of them. In the hands of an extremist right wing regime, the potentialities of panoptical power will be even greater. Watchful panoptical surveillance of and action against dissident individuals and groups, will be coupled with the political peace, quiet and absence of criticism created and maintained by the synoptical entertainment industry.

Conclusion: An Alternative Public Space?

The situation requires resistance. A full analysis of resistance strategies goes beyond the limits of this chapter (for a discussion, see Mathiesen 1982); here only this about *one* line of thinking:

The key word is, in Norwegian, "alternativ offentlighet", in German "Alternative Öffentlichkeit", in English the much more cumbersome phrase "alternative public space". The point is to contribute to the creation of an alternative public space where argumentation, well founded criticism and principled thinking represent the dominant values. I envisage the development of an alternative critical public space, whether targeted against the globalization of surveillance or other issues, as containing three ingredients.

Firstly, liberation from what I would call the absorbent power of the mass media. I have touched on it elsewhere (Mathiesen 1996): The definition of the situation implying that one's existence is dependent on media interest, media coverage, especially television coverage. Without media coverage, with silence in the media, I presumably do not exist, my organization does not exist, the meeting has not taken place. Relying on that definition of the situation, the actor is inescapably absorbed into the media entertainment business as the only alternative to non-existence, whereupon the content of the actor's message dwindles at the expense of his og her entertainment value. In Western society, it is probably impossible to refrain completely from media participation. At certain cross roads you are faced with a conflict: If you do not say something on television, others of the opposite opinion will fill the empty space. But it is certainly possible to be very selective, and to say "no!" to the many talk shows and entertainment-like "debates" which flood our various television channels. Most importantly, it is certainly possible not to let the definition of one's success and very existence be dependent on the media.

The second ingredient is a restoration of the self esteem and feeling of worth on the part of the grass roots movements. It is not true that the grass roots movements, emphasizing network organization and solidarity at the bottom, have died out. What has happened is that with the development of the mass media with television as their modern spearhead, these movements have lost faith in themselves. An important example from recent Norwegian history of the actual vitality of grass roots movements: In 1993, thousands of ordinary

Norwegians participated in a widespread movement to give refugees from Kosovo-Albania long-term refuge in Norwegian churches throughout the country. The movement ended in a partial victory, in that all of the cases concerning Kosovo-Albanian refugees were reviewed again by the Ministry of Justice. The example suggests that grass roots solidarity even with "distant" groups like refugees did not die out with the Vietnam war.

The third ingredient is a restoration of the feeling of responsibility on the part of intellectuals. I am thinking of a broad range of artists, writers, scientists - and certainly social scientists. That responsibility should partly be directed towards a refusal to become a part of the mass media show business. Partly it should be directed towards re-vitalization of artistic work, writing and research taking the interests of common people as point of departure. This point is not new, but goes, of course, many decades back in Western intellectual history. The area is full of conflicts and problems, but they are not unsolvable.

In the area of penal policy, we have tried to do some if this in Norway, in the organization KROM, The Norwegian Association for Penal Reform. KROM is a strange hybrid of an organization, with intellectuals and many prisoners, with a common cause. By organizing large conferences on penal policy every year (to create a tradition, organizing them in the same place, in a mountain resort outside Oslo), with wide participation from the whole range of professions and agencies relevant to penal policy as well as many prisoners, and also by organizing regular seminars and other activities, we try to create *a network of opinion and information* crossing the formal and informal borders between segments of the relevant administrative and political systems. The point is precisely that of trying to create an alternative public space where argumentation, well founded criticism and principled thinking are dominant values, a public space which in the end may ay least to some extent compete with the superficial public space of the mass media.

The same may be done in the area of surveillance. Again, the public sphere of television and other mass media is not the only public sphere. The point would be for criminologists, sociologists of law and other social scientists, but also for a wide cross section of professions such as teachers, authors, songwriters, actors, musicians and so on, to develop jointly a public space of critique and discussion of the deeply disturbing issues involved. This would necessarily imply some limited participation in the public sphere of television, but mostly it would imply independent public work and publicity through the various channels of communication and networks in which such a broad spectre of professionals is involved. The *joint* character of the effort would probably come gradually, as the movement developed. The excellent journals *Fortress Europe?* and *Statewatch* constitute important beginnings, continuously giving the precise details of what is going on. Others would have to follow up, in and across their respective networks. Plays and novels would have to be written. A modern version of *1984* is in order. Through the development of such an alternative public space of

discussion and critique of the surveillant state, warnings and information could reach sizeable segments of the population. When people are informed beyond the intricate technicalities which are so difficult to comprehend, and get a gut feeling of what is going on, they become worried and engaged. Also, considerable pressure could be brought to bear on the political system. Concern about environment and pollution – an equally technical area -- developed in this way: from almost nothing to a broad and powerful movement. Why not global surveillance? The mass media, including television, might even to some extent follow suit, cynically geared as they are towards "where the action is". They did so in the area of environment and polution. But because of its basic role in the entertainment industry, television is a distrustful ally, and great care should be taken to prevent the surveillant state from becoming an entertainment object where entertainment is figure rather than ground, to use a phrase from gestalt psychology. Entertainment may be a method to further information and engagement (remember Dario Fo), but when entertainment in itself becomes the goal, there is danger ahead. Again, the issue of environment and pollution has unfortunately in part become such an goal for television. The Norwegian soap opera ”Off-shore”, which pictures life and sex on an oil rig, is an example. We should learn from the errors of the past.

We should also note that an alternative public space of the kind I am suggesting has one important advantage over against television as well as other mass media: It would be based on the actual and organized relationships between people. The public space of the mass media, especially television, is in that sense weak: It is a public space which is unorganized, segmented, splintered into millions of unconnected individuals - this is its truly mass character - and equally segmented into thousands of individual media stars on the media sky. This is the Achilles' heel of the public space of the media, where an alternative public space would have an upper hand. A model -- probably unattainable in practice but at least challenging as an ideal -- would be the political and critical kind of *bourgeouise public space* which developed in the "salons" and coffee houses of France and England through the 1700s. This was a public space which finally competed successfully with -- and neutralized -- the once so splendid public space of the Court and the old regime, thus preparing the grounds for the great French revolution of 1789 (Habermas 1962).

To repeat, this is one line of thinking. There are obviously others. None of the roads are broad and easy to walk. Let me conclude by saying that the expanding surveillant state, threatening the democratic fabric of our society as we know it, represents a permanent challenge to those of us concerned, politically and/or scientifically, with the sociology of social control in the widest sense of the word.

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CRIME AND PUNISHMENT IN SCANDINAVIA

An overview

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This short overview of the state of the crime levels and penal systems in the Scandinavian countries, as portrayed by available statistical sources, indicates that the crime level in Scandinavia (as regards traditional offences) is on a par with or lower than that of other European countries. Drug abuse too appears to be average or less widespread in the Scandinavian countries. Increases in crime rates during the post-war period have been very substantial in the Scandinavian countries just as they have been elsewhere in Europe – indicating that the recorded increases in traditional crime in Europe may have common structural roots. The 1990s may have witnessed a stabilisation in theft rates, albeit at a high level. Increasing equality between the sexes might have contributed to an increase in the reporting of violent and sexual offences against women (and children), making these offences more visible. The system of formal control in the Scandinavian countries is characterised by relatively low police density, a falling clear-up rate, the imposition of fines in a high proportion of criminal cases and relatively low prison populations.

Geographically, the Scandinavian countries (here meaning Denmark, Finland, Norway and Sweden) lie on the margins of Europe, and with the exception of Denmark are rather sparsely populated, with a total population of around 24 million. All the countries bar Finland are constitutional monarchies, and all are both protestant and very homogeneous in terms of culture. It wasn't until a few decades ago that the Scandinavian countries began to feel the impact of immigration, this level being highest in Sweden and lowest in Finland. The standard of living in the Scandinavian countries is among the highest in the world and the region's modern political history has been shaped on the whole by the principles of social democracy. Denmark, Finland and Sweden are members of the European Union; Norway is not.

Comparative research into types and levels of welfare has shown a rather clear-cut pattern of national clusters among the EU-member states, characterised by similarity in the welfare mix, as well as in the general distributive outcome in material living standards. The European Union appears to be divided in three such homogeneous clusters (Vogel, 1997):

- **a northern European cluster** (including Denmark, Finland, Norway [not a member of the EU]) and Sweden exhibiting high levels of social expenditure and labour market participation and weak family ties. In terms of income distribution this cluster is characterised by relatively low levels of income and class inequality, and low poverty rates, but a high level of inequality between the younger and the older generations;
- **a southern European cluster** (including Greece, Italy, Portugal and Spain) characterised by much lower levels of welfare state provision and lower rates of

employment, but by strong traditional families. Here we find higher levels of income and class inequality and of poverty, but low levels of inter-generational inequality;

- **a western European cluster** with an intermediate position (including Austria, Belgium France, Germany, Ireland, Luxembourg, the Netherlands and the UK). The UK borders on the southern cluster in terms of its high levels of income inequality, poverty and class inequality.

Against this sketchy backdrop, there follows a reasonably simplistic description of traditional[20] crime (i.e. theft and violence) in the Scandinavian countries, and of these countries' responses to crime.

International crime victims surveys (ICVS)

Because of variations in the rules governing the collection and production of statistics in different countries, it is generally accepted by experts that comparisons based on crime statistics do not in principle allow for the possibility of making cross-national comparisons of *levels* of crime (CoE, 1999b:13). For this reason, when cross-national comparisons of crime levels are considered desirable, the international crime victims surveys (van Dijk, Mayhew & Killias, 1990; Mayhew & van Dijk, 1997; van Kesteren, Mayhew & Nieuwbeerta, 2000) are a great help despite the obvious methodological difficulties which face even these data sets (e.g., partly high non-response rates; cultural differences). The data are collected by means of telephone interviews (using standardised questions) based on random samples of between 1,000 and 5,000 persons from each country. A total of nineteen European countries have participated in the four surveys (1989, 1992, 1996, and 2000), whilst of the Scandinavian countries, Finland has participated in all four, Sweden in three, and Norway and Denmark in one. The offence types covered in the survey are: car theft, motorcycle theft, bicycle theft, burglary and attempted burglary, robbery, theft from the person, sex offences and assault/threatening behaviour.

[20] For a recent comparative assessment of some aspects of non-traditional crimes, see van Dijk & de Waard (2000).

Results from all the surveys conducted between 1989 and 2000, irrespective of how many times the individual countries participated, have been summarised and are presented in the table below.

Table 1. Victimisation over the last year (percentage victimised once or more), 1989, 1992, 1996 and 2000 according to the ICVS project.
Source: van Kesteren, Mayhew & Nieuwbeerta (2000, Appendix 4, Table 1).

	DEN	FIN	NOR	SWE	EUR9
	2000	1989-2000	1989	1992-2000	1989-2000
Car theft	1.1	0.5	1.1	1.4	1.1
Theft from car	3.4	2.9	2.8	4.7	4.8
Car vandalism	3.8	4.4	4.6	4.6	7.5
Motorcycle theft	0.7	0.2	0.3	0.5	0.6
Bicycle theft	6.7	4.5	2.8	7.7	3.4
Burglary	3.1	0.5	0.8	1.5	1.8
Attempted burglary	1.5	0.7	0.4	0.9	1.8
Robbery	0.7	0.7	0.5	0.6	1.0
Thefts of personal property	4.2	3.6	3.2	4.9	4.1
Sexual incidents	2.5	2.6	2.2	2.1	2.2
Assaults & threats	3.6	3.9	3.0	3.7	2.7
All eleven offence types	23.0	18.8	16.4	23.4	22.7
Number of completed interv.	3,007	8,327	1,009	4,707	44,396
Response rate	66%	82%	71%	72%	50%

DEN (Denmark): 2000 only; FIN (Finland): 1989,1992,1996, 2000; NOR (Norway): 1989 only; SWE (Sweden): 1992, 1996, 2000; EUR9: Austria, Belgium, England & Wales, France, (West) Germany, Italy, Netherlands, Spain/Catalonia and Switzerland.

Generally speaking, the level of criminal victimisation is reported to be lower in Finland and Norway[21] than in Sweden and Denmark (however, the Norwegian data refer to 1989 only and the Danish data to 2000 only). For the most part, Sweden lies fairly close to the European average. Similar differences between the Scandinavian countries were also found during the 1980s when comparisons were carried out on results from national victims surveys produced in these countries. At that point the results from Denmark were similar in many respects to those in Sweden (RSÅ, 1990:146 ff.). Denmark and Sweden distinguish themselves (along with the Netherlands) with respect to high levels of bicycle thefts, whilst all the Scandinavian countries on the whole present relatively low levels of car vandalism and robbery. However, the Scandinavian countries score high on assaults/threatening behaviour. There has been speculation that this might in part be explained by higher levels of awareness and lower levels of tolerance among Scandinavian women when it comes to setting limits for the forms of inter-gender encounters that are considered socially acceptable (HEUNI, 1998:132 f, 163, 349, 432).

Additional data from cause of death statistics regarding the mid-1990s indicate (CoE, 1999:43) that levels of homicide in Denmark, Norway and Sweden are on a par with those reported in western Europe (around 1.2 per 100,000 of population), whilst Finland still presents considerably higher frequencies (approximately 3.0 per 100,000 of population), something which had been noted in the criminological literature as early as the 1930s (NCS, 1997:13).

According to various estimates (EMCDDA, 1997: Table 5 & 1998: Table 4; Reuband, 1998:332; EMCDDA, 2000:14), national prevalence rates of "problem drug use" appear to be near average in Denmark and perhaps Norway, and below average in Finland and Sweden as compared to western and southern Europe. An account of the Scandinavian drug scene in the 1990s is provided by Olsson et al. (1997) and of the Baltic Sea region by Leifman & Edgren Henrichson (2000).

The ICVS project surveys not only the extent of criminal victimisation but also other related phenomena such as levels of fear, crime-preventive measures, and attitudes towards and experiences of the police. Asked whether they felt they were at risk of being burgled in the course of the following year, respondents from Finland, Sweden, and Denmark were ranked low (van Kesteren et al., 2000:210). Asked how safe they felt outside in their own neighbourhood after dark, feelings of insecurity were also low among Scandinavian respondents (op. cit., 212; no data for Norway). In response to the question of whether they

[21] Aromaa (2000:19) notes in a recent analysis, however, that Norway "may have lost its previous position as one of the definitive low-crime countries in western Europe".

had installed various kinds of anti break-in devices (such as burglar alarms, special locks, or bars on windows or doors), Finland and Denmark in particular came out far below the average (op. cit., 216).

Trends

Since there are no victims surveys (at either the national or European level) covering the entire post-war period, descriptions of crime trends have to be based on records of crimes reported to the police. Despite the well known shortcomings of official crime statistics, the use of such statistics to compare crime *trends* is an accepted method (CoE, 1999b:13).

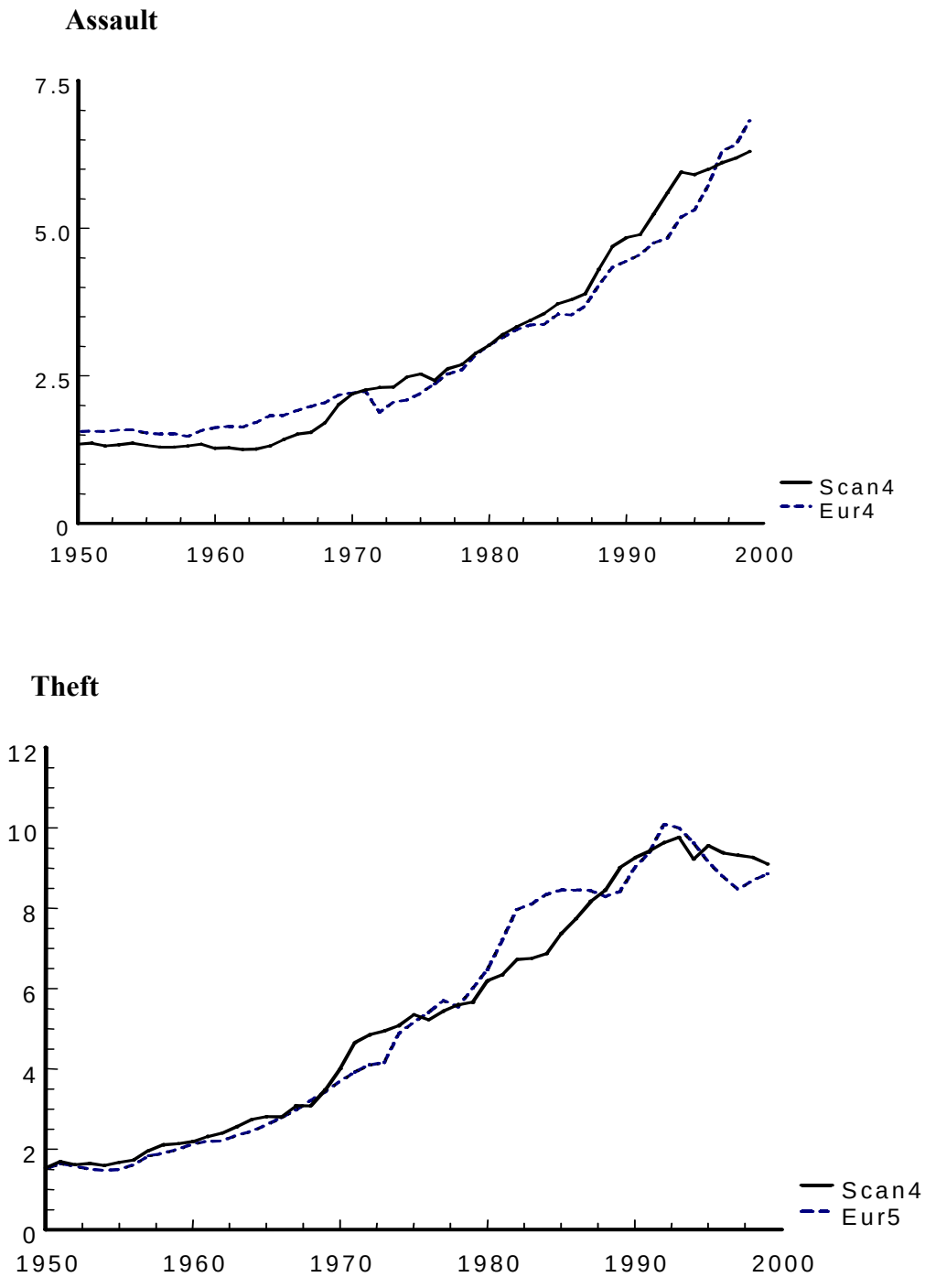
The number of crimes reported to the police has risen in all the Scandinavian countries at least since the beginning of the 1960s. The smallest increase is found in the number of reported incidents of homicide (the number of such reports has doubled, except in Finland where they seem to have remained at more or less the same level). The largest increase is to be found in the number of reported robberies, this being partly due to the fact that at the end of the 1950s robbery was more or less unheard of in these countries, with a total of only 1,200 robberies being registered in these four Scandinavian countries in 1960 (NCS, 1997:72). The increase is probably linked in part to the upward trend in juvenile crime and in part to the emergence of a group of socially marginalised males (NCS, 1997:31). It is nonetheless worth noting that according to the ICVS, robbery levels in Scandinavia still remain below average in an international perspective (see *Table 1* above). When the countries are ranked on the basis of increases in five offence categories (homicide, assault, rape, robbery and theft), Denmark and Norway present the largest increases, whilst the increases are least marked in Finland.

Crime trends in the Scandinavian countries are on the whole much the same as those found in other western European countries. Westfelt (2001) recently compared crime trends in Scandinavia with those in Austria, England & Wales, France, (West) Germany and the Netherlands. He found that all countries reported increases in crime, even though there were periodical local differences. *Figure 1* clearly shows the striking similarity between the trend in registered assault and theft offences in the Scandinavian countries and that in the countries of western Europe. The similarities in crime trends have previously been noted by writers such as Heidensohn & Farrel (1991), Eisner (1994), Killias (1995), Joutsen (1996), Marshall (1996), Aromaa (2000), and Killias & Aebi (2000).

It has been suggested that theft trends in the 1990s may be in the process of changing direction. Up to now, the observations on which such statements are based remain too few for us to be able to speak with any degree of certainty – particularly in light of the fact that we do not have good theories available which would be able to explain such a break in crime trends (cf. Steffensmeier & Harer, 1999). However, the available *national* victim surveys show more or less stable levels in Denmark, England & Wales, Finland, the Netherlands, Norway, and Sweden during the 1990s (Westfelt, 2000:76 *et seq*.); and, interestingly, this stability refers not only to theft, but also to violence. This indicates that the crime trends shown by crime statistics could be significantly inflated by changes in reporting behaviour.

Figure 1. Crime trends (assault and theft reported to the police) in Scandinavia and five western European countries, 1950–1999. Scaled series, per 100,000of population. *Source:* Westfelt (2001; updated).

EUR5 = Austria, England & Wales, France, (West) Germany and the Netherlands; EUR4 = ditto excluding Austria.



The trend in juvenile crime constitutes a special case. The issue has been studied by Pfeiffer (1998) and Estrada (1998). According to Estrada, levels of juvenile crime (i.e. mostly against property) increased in all ten of the European countries studied (Denmark, Finland, Norway and Sweden as well as Austria, England, (West) Germany, the Netherlands, Scotland, and Switzerland) without exception in the decades following the Second World War. In many of these countries this upward trend was broken however, probably at some point between the mid-1970s and the early 1980s. In three countries, however, England, *Finland* and Germany no such break has been visible in juvenile crime trends, and the increases have simply continued. The trends in levels of *violent* offences committed by juveniles differ somewhat from the general crime trend. Here virtually all the countries present increases[22] during the last ten – fifteen years (with the possible exception of *Finland* and Scotland).

The response to crime and the system of sanctions

The number of police per 100,000 of population is lower in the Scandinavian countries than in either southern or western Europe (data for Germany are unavailable). In the mid-1990s the Scandinavian countries reported a total of 183 police per 100,000 of population, whilst western Europe reported 291 (although the Netherlands were on a par with the Scandinavian countries) and southern Europe 395 (CoE, 1999b:78). As is the case in other European countries, however, the clear-up rate has dropped considerably over the years (see *Figure 2*). Exactly how this drop ought to be interpreted is not altogether clear: purely as a drop in police efficiency, for example, or as a result of increases in the number of offences which were always unlikely to be cleared, or as a combination of such factors (cf. Balvig, 1985:12).

The ICVS show that the level of public satisfaction with the police is mixed in Scandinavia (Norway excluded from the comparison). Denmark and Sweden (together with the Netherlands) top the list as regards the extent to which members of the public report crimes to the police (van Kesteren et al., 2000:194). Concerning the way persons reporting crime feel the police have acted at the time the crime was reported, Denmark, Finland and Sweden present a higher than average level of satisfaction in comparison with the other countries (op. cit., 202). However, in the matter of how satisfied the respondents were with the police *in general*, confidence seems to be below average in Finland and Sweden, but above average in Denmark (op. cit., 206).

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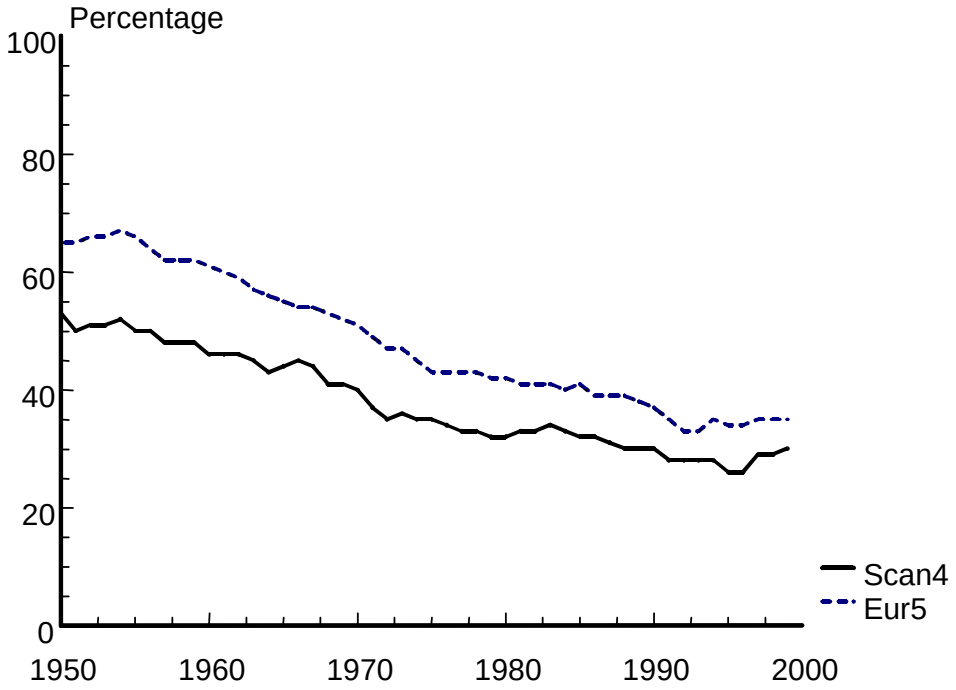
[22] This statement has recently been challenged by Estrada (2001) arguing that studies portraying such increases are far too reliant on official crime statistics. In countries where alternative data are available (e.g., victim surveys, self-report studies, health care and vital statistics), these often present a different picture.

Figure 2. Clear-up rates (all offences covered by respective penal codes) in Scandinavia and five western European countries, 1950-1999.
Source: Westfelt (2001, p. 221; updated).

Eur5: Austria, England & Wales, France, (West) Germany, and the Netherlands.



The ICVS have also assessed attitudes to the kind of sentences dealt out in respect of criminal offences. The respondents were asked to choose which of a variety of sanctions they felt to be most suitable for a 21 year old male being found guilty of his *second* burglary, this time stealing a colour television set in the process. Given the choice between fines, a prison sentence, community service, a suspended sentence or any other sentence, 16 per cent of the Finnish respondents chose a prison sentence (van Kesteren et al., 2000:219). The corresponding figure for the Norwegians was 18 per cent, for the Danish 20, and for the Swedish 26 per cent. The view in the Scandinavian countries does not seem to deviate too much from the European average, with the exception of the English speaking nations and the Netherlands, where prison sentences are advocated to a greater extent.

The following brief description of choices of sanction concerns those imposed for all offences against the penal code taken together (NCS, 1997:78 ff.). A more detailed description, looking at different offence categories, would not have been feasible given the brevity of this overview. Since the majority of offences committed against the penal code are property offences of one kind or another, the sanctions described here are in practise primarily

those imposed for theft offences and the like. The figures refer to 1995. In the case of Norway, the data had in part to be estimated since "misdemeanours" are not included in their entirety in the Norwegian statistics (NOS, 1997: Table 40).

Finland convicted far more people than the other Scandinavian countries (1,238 per 100,000, as compared with 927 in Denmark, 731 in Sweden and 544 in Norway). Finland's unique position may be partially explained by the legalistic approach characteristic of Finnish judicial practise, with its rather strict observance of mandatory prosecution (Joutsen, [1999]) and also, as has been intimated by Finnish experts, by the fact that clear-up rates have been consistently higher in Finland than in the rest of Scandinavia.

In contrast to the other countries, however, 81 per cent of those convicted in Finland received fines (the corresponding proportions in Denmark, Norway and Sweden being 59, 53 and 43 per cent respectively). "Other sanctions" (excluding prison sentences) were used most often in Sweden (42 per cent as against 23 in Denmark and Norway and eleven per cent in Finland). This very rough outline nonetheless captures a number of the essential characteristics of the sanctioning culture of the Scandinavian countries: Sweden still appears as the country where the philosophy of individual prevention, based on a wide variety of sanctions, is most pronounced, whilst Finland most clearly follows the classical tradition of imposing fines and prison sentences as the most common forms of sanction. Irrespective of these differences, fines are used extensively throughout the Scandinavian countries.

When it comes to the use of prison sentences, these are imposed more often in Denmark and Norway – both in relative and in absolute terms – than in Sweden and Finland. On the other hand, prison sentences are longer in Sweden and Finland. This somewhat complicated picture serves as a good indication of the difficulties faced when trying to measure and compare the relative "punitiveness" of the sanction systems of different countries (cf. Pease, 1994).

In addition, we could note that Sweden more or less abandoned the use of prison terms as a means of sanctioning non-payment of fines at the beginning of the 1980s (Sveri, 1998) and that since the mid-1990s electronic tagging has been used as an alternative for certain categories of offender sentenced to up to three months imprisonment (Bishop, 1995; BRÅ, 1999). In 1999 approximately 3,500 individuals served their sentence in this way, of whom 200 dropped out of the programme (KOS, 2000:47).

The Prisons

Despite the above differences in the frequency and length of the prison sentences imposed in the Scandinavian countries, their judicial systems result in prison populations of a similar size. In 1999, the average prison population in the Scandinavian countries was low in a European perspective (59 prison inmates per 100,000 of population; the level being lowest in

Finland at 53 per 100,000 and highest in Denmark at 69 per 100,000; KOS, 2000:104). The corresponding figure for western and southern Europe was 93 per 100,000 (Home Office, 2001:7). The perception that prison sentences are harmful and should thus be avoided as much as possible still has a great deal of currency in the Scandinavian countries (Bondeson, 1998:94).

Unlike in many other European countries, there is no general problem of prison overcrowding in Scandinavia (although such problems can arise in special types of institutions, CoE, 1999c:115 et seq.). As a rule, prisons in the Scandinavian countries are small (between 60 and 100 inmates), modern and characterised by high staffing levels (CoE, 1999a:51 ff.). Open prisons, where security arrangements aimed at preventing escape are kept to a minimum, account for between 21 per cent (Sweden) and 36 cent of prison places (Denmark) (KOS, 2000:105). For this reason the Scandinavian countries, with the exception of Finland, report high levels of escapees in comparison with those of other countries (CoE, 1999a:41).

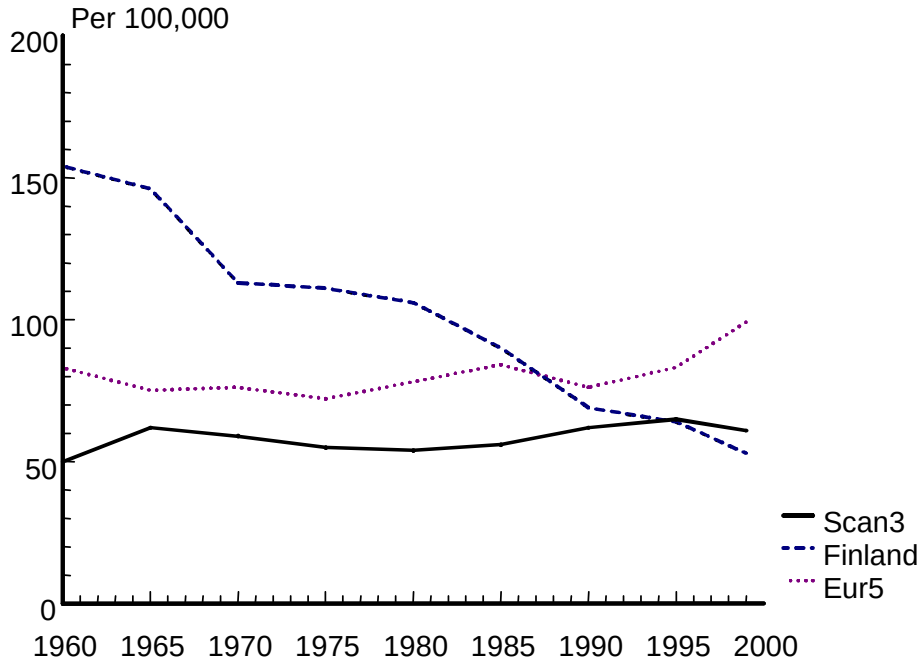
There are very few persons under the age of eighteen in Scandinavian prisons (such individuals account for well below one per cent of the prison population; KOS, 2000:104). The proportion of female prisoners lies – as in many other countries – between five and six per cent, whilst the proportion of foreign citizens among prison inmates varies[23] quite considerably – being lowest in Finland at 5 per cent, and highest in Sweden at 26 per cent (op. cit., 104).

The average length of stay in prison can be estimated (cf. Danielsson, Tab. 1A,B and 2A,B) to be shortest in Denmark and Norway (2.8 months in 1998/99) and longest in Finland (8.5 months; but note Finland's low overall prison population). As regards the number of individuals serving life sentences, on a certain day in 1999 there were thirteen such 'lifers' in Denmark, 59 in Finland and 85 in Sweden (KOS, 2000:104). The life sentence has been abolished in Norway.

[23] Corresponding to the differences in size of foreign population; cf. p. 1 above.

Figure 3. Prison populations in Scandinavia and five western European countries, 1960-1999 (every fifth year). Per 100,000 of population.
Source: NCS (1997; updated)

Scan3: Denmark, Norway and Sweden.
Eur5: Austria, England & Wales, France, (West) Germany and the Netherlands.



Over the last 40 years, prison populations have been fairly stable in the Denmark, Norway and Sweden (see *Figure 3*). Finland constitutes a remarkable exception. There the prison population has shrunk quite considerably since the mid-1970s (1976: 118 inmates per 100,000 of population) and is today lower than that of her Scandinavian neighbours. The roots of the formerly high Finnish prison population may be traced back to the civil war (1918) and its aftermath (Christie, 1968:171). The political mechanisms underlying the recent decrease have been described by Törnudd (1993) and Lappi-Seppäla (1998), who – among other things – concludes that the decrease in the prison population has not [sc. negatively] changed the Finnish crime picture as compared to other Scandinavian countries (op. cit., 27).

Summary

This short overview of the state of the crime levels and penal systems in the Scandinavian countries, as portrayed by available statistical sources, indicates that the crime level in Scandinavia (as regards traditional offences) is on a par with or lower than that of other European countries. Drug abuse too appears to be average or less widespread in the

Scandinavian countries. Increases in crime rates during the post-war period have been very substantial in the Scandinavian countries just as they have been elsewhere in Europe – indicating that the recorded increases in traditional crime in Europe may have common structural roots. The 1990s may have witnessed a stabilisation in theft rates, albeit at a high level. Increasing equality between the sexes might have contributed to an increase in the reporting of violent and sexual offences against women (and children), making these offences more visible. The system of formal control in the Scandinavian countries is characterised by relatively low police density, a falling clear-up rate, the imposition of fines in a high proportion of criminal cases and relatively low prison populations.

The international crime victims surveys (no recent data available for Norway) indicate that fear of crime is comparatively low in Denmark, Finland and Sweden; and that (for this reason) people do not feel the need to take special precautions against the possibility of crime to any great extent. Respondents appear to be fairly satisfied with the performance of the police and also support limits on the use of prison sentences.

It should be remembered that debates on crime policy in the media or among politicians at the national level are rarely based on a comparative cross-national perspective. Conclusions such as those drawn in HEUNI's "Profiles of Criminal Justice Systems" (1998), for example,

on Denmark: "In general, therefore, the data (which is admittedly limited) suggest a relatively low crime problem in Denmark" (p. 134)

or on Sweden: "All in all, therefore, the image one receives from the data on crime and criminal justice is that, at least in the international comparison, Sweden has been relatively successful in its crime prevention and criminal justice policy" (p. 434)

would be rejected by many editorials and politicians as artefacts. Instead, the scenarios painted are not uncommonly quite clear in their inclination towards law and order and the need for more extensive anti-crime measures. Thus, state crime prevention organisations (Crime Prevention Councils) are operative in all the Scandinavian countries (BRÅ, 2001).

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RECIDIVISM RATES ACROSS NATIONS: COMPARABLE OR DIFFERENT?

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Defining and Measuring Recidivism

In this presentation, we examine offender recidivism in Iceland, a modern nation with a population of less than 300 thousand citizens. Recidivism has been defined in several different ways by criminal justice policymakers and researchers around the world. Yet, criminologists typically define the recidivism rate as the percentage of persons exposed to punishment in a given period of time who subsequently reoffend. This is the definition of recidivism used in our study, that is, we followed all those who completed a prison sentence in a given time period.

We measured reoffending in three different ways; a) a subsequent police contact, b) subsequent conviction and finally c) subsequent imprisonment. The data for our study was based on criminal histories from the central database of the Icelandic Prison and Probation Administration. These data include information on criminal convictions, sentences, admissions to prison, and the nature of punishment for all persons released from prison in Iceland between January 1, 1994 and November 30, 1998. Following much prior research, we define recidivism as the percentage of persons released from prison who are reconvicted or reimprisoned for a new offense. Specifically, we follow each member of the sample from the date of his or her release from custody through December 31, 1998 to determine whether they were reconvicted or reimprisoned. In addition, our data include information on police contacts between 1993 and mid-year 2000.

Characteristics of the Total Sample

Before presenting recidivism rates for offenders released from custody in Iceland, it is instructive to examine some characteristics of our sample. Table 1 presents descriptive information for the 3,216 persons released from punishment in Iceland between January 1, 1994 and November 30, 1998. This includes persons who completed a sentence of imprisonment or community service, as well as persons given a suspended sentence during this period. Table 1 describes the types of offenders and offenses included in our research, as well as information on the nature of punishment in Iceland. The figures for year of release indicate that the number of persons released during a given year doesn't vary substantially

across the five years covered by our study. About 37 percent of the sample had served a sentence of imprisonment. Slightly less than 5 percent had served a sentence of community service, and the majority (58.4) percent did not serve time in custody, but rather were given suspended sentences. Similar to other nations, the majority of persons punished in Iceland are male (91.1 percent) and, on average, about twenty-nine years of age. A majority (54.9 percent) of sample members were convicted of property offenses (i.e., crimes with the purpose of financial gain, forgery, and crimes that involve property rights). Convictions for crimes that cause death or bodily injury (16.4), traffic violations (12.8) and drug offences (7.0) were the next most prevalent offenses represented among members of our sample.[24]

Table 1. Characteristics of Persons Released from Punishment in Iceland, January 1, 1994 - November 30, 1998 (N=3,216).

	Percentage
Year of release	
1994	17.9
1995	19.7
1996	22.9
1997	21.4
1998	18.1
Nature of Punishment	
Imprisonment	36.8
Community service	4.8
Suspended sentence	58.4
Sex	
Male	91.1
Female	8.9
Age	
20 years or younger	27.6
21 – 29 years	32.8
30 – 39 years	20.5
40 years and older	19.1
Mean age	*29.2*

[24]The category "other crimes" shown on Table 1 includes the following: crimes against government, personal freedom, public order, privacy, and family life; crimes of perjury and framing, crimes in public office, non-drug crimes that create public danger, crimes concerning profession and income, and various other minor offences.

Table 1. (continued)

	Percentage
Main offence	
Violent crimes	16.4
Financial crimes	33.7
Forgery	12.4
Property crimes	8.8
Sexual crimes	3.6
Traffic violations	12.8
Drug offences	7.0
Other offences	5.3
Prior criminal conviction	
No prior conviction	63.0
1 prior conviction	9.4
2-4 prior convictions	16.0
5 prior convictions	11.7
Mean	*1.53*
Prior imprisonments	
No prior imprisonment	74.9
1 prior imprisonments	9.0
2-4 prior imprisonments	9.7
5 or more prior imprisonments	6.5
Mean	*.88*

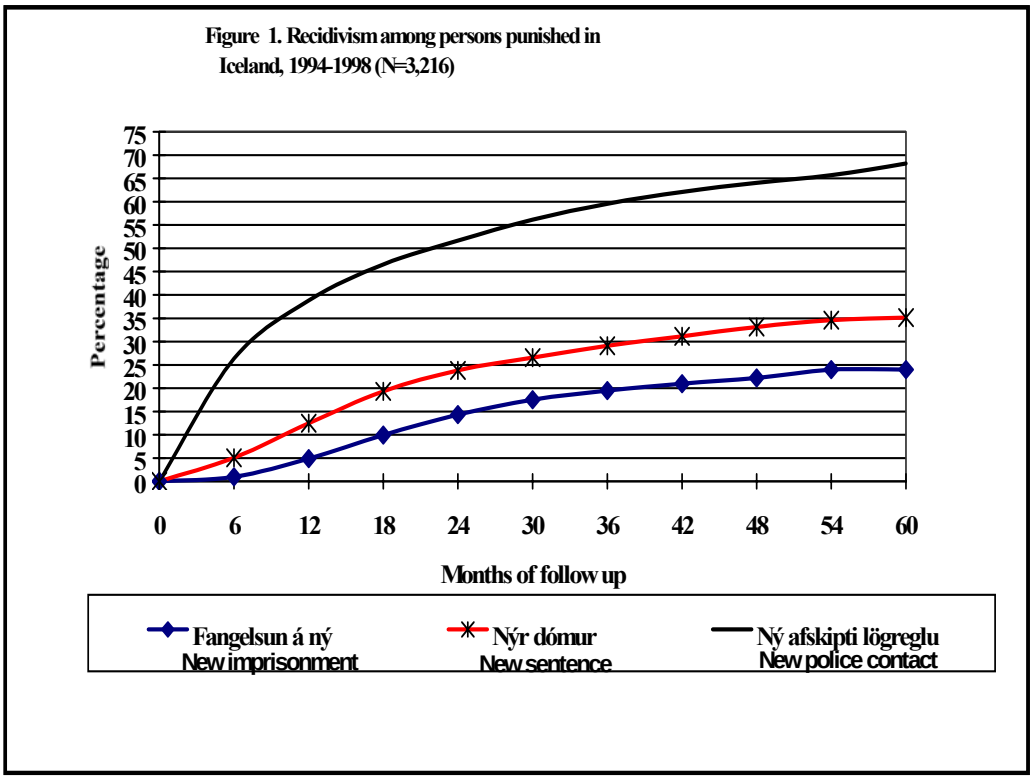
Table 1 also reveals that 63 percent of persons released from prison or community service, or who were sentenced to a suspended sentence between 1994 and 1998, did not have a prior criminal conviction, while more than ten percent of this group had 5 or more prior convictions. Similarly, a large majority (74.9 percent) had no prior imprisonments, while a small fraction of sample members—6.5 percent—had served 5 or more previous terms of imprisonment. On average, the prison sample served just under three months in prison, while the community service sample served about one month and the average sentence given to the suspended sentence sample was 2.5 months (not shown in table).

Levels of Recidivism for the Total Sample

We now turn to one of the central question addressed in our research: What is the recidivism rate for persons exposed to punishment in Iceland? Figure 1 shows rates of recidivism for the total sample, which includes persons given a suspended sentence and persons who completed a sentence of imprisonment or community service. Estimates of each of the three measures of recidivism used in our research are shown: 1)the percentage of persons who were reimprisoned; 2)the percentage who were reconvicted; and 3)the percentage who experienced a subsequent police contact. These rates were computed with the Kaplan-Meier survivor procedure. Reimprisonment rates for our sample are approximately zero for the first six months of follow-up, which likely reflects case processing time. Beginning in the sixth month of follow-up, however, reimprisonment rates increase steadily with 5 percent

reimprisoned within one year, 19.5 percent reimprisoned within three years, and 24 percent reimprisoned within five years. Turning to the results for reconviction, Figure 1 shows that approximately 12 percent of persons released from punishment in Iceland were reconvicted within the first year of their release, 29 percent were reconvicted within three years, and 35 percent were reconvicted within five years.[25] Lastly, Figure 1 shows that more than one-third (38.8 percent) of our sample experienced a police contact within twelve months of completing their punishment, 60 percent had experienced a police contact, within three years, and 68.2 percent had experienced a police contact by the end of the five year follow-up.

In summary, about one-quarter of persons punished in Iceland between 1994 and 1998 were reimprisoned, slightly more than one-third were reconvicted, and slightly more than two-thirds had a police contact within five years following the completion of their sentence.



Recidivism Rates Across Nations

Are the rates of recidivism in Iceland lower or higher than those found in other nations? While the limited geographic scope and variable methodological sophistication of past recidivism research warrants caution in drawing definitive conclusions about cross-national

[25]These reconviction rates exclude convictions for crimes punishable only by fines. Thus, the results for reconviction shown in Figure 1 underestimate overall reconviction rates for our sample.

variation in recidivism rates, the available evidence suggests that Iceland's rates of reconviction and reimprisonment are very similar to those observed in other nations.

Baumer (1997) reviewed twenty-nine recidivism studies conducted in the United States, Great Britain, Canada, Australia, West Germany, and the Netherlands that are generally comparable to the present study. Consistent with past reviews of recidivism research based on U.S. samples (Glaser 1969), Baumer (1997) reports that between thirty-five and forty percent of persons released from prison in the United States are reimprisoned for a new offense within three to six years of their release (e.g., Beck and Shipley 1989; Hoffman and Stone-Meierhoefer 1980). Similar rates of reimprisonment are reported in studies based on samples of prisoners from Canada (Gendreau and Leipciger 1978; Zamble 1990) and West Germany (Ruether and Neufeind 1982). Studies based on samples of Australian prisoners report slightly higher levels of reimprisonment (Broadhurst et al. 1988; Broadhurst and Maller 1990; Roeger 1994), although this may be because of the inclusion of parole violations in their measures of reimprisonment.

Reconviction rates are less consistently reported in studies of recidivism. However, the evidence suggest that approximately forty to fifty percent of persons released from prison in the United States are reconvicted within three to six years of being released from prison (e.g., Beck and Shipley 1989; Gottfredson and Gottfredson 1980). Gendreau and Leipciger (1978) and Van der Werff (1981) report reconviction rates for Canada and the Netherlands, respectively, that approximate those reported for the United States. Reconviction rates reported for Great Britain (Home Office 1990; Kershaw, Goodman, and White 1999; Lloyd et al. 1994; Walker, Farrington, and Tucker 1981; Sampsford and Fairhead 1980) and for West Germany (Ruether and Neufeind 1982) are slightly higher (e.g., between fifty and fifty-five percent are reconvicted) than those observed in these nations.

There is no clear parallel in prior research to the police-based measure of recidivism reported in research. However, it perhaps comes closest to resembling rearrest rates, which are occasionally reported in studies of recidivism conducted in the U.S. While far from uniform, the weight of the evidence suggests that about two-thirds of persons released from prison in the U.S. are rearrested at some point following their release (e.g. Gottfredson 1999).

While there clearly is some variation in recidivism rates within and across the nations included in Baumer's (1997) review, the evidence from these nations indicates that approximately thirty-five to forty-five percent of persons released from prison are reimprisoned for committing a new crime and that between forty and fifty-five percent of persons released from prison are reconvicted of a new crime within six years following their release from prison. Moreover, research conducted in the U.S. suggests that about two-thirds of persons released from prison experience a subsequent arrest. Although it is perhaps premature to draw firm conclusions about the nature of variation in recidivism rates across

nations, we feel confident making the following observation: recidivism rates in Iceland are *not* appreciably lower than those observed in other nations, even though many of these nations have much higher level of incarceration, much longer average sentence lengths, and harsher prison environments than exist in Iceland. In fact what our review of past recidivism studies shows, is that recidivism rates tend to be very similar in different countries, independent of the crime rate found in these same countries.

DISCUSSION

This leaves us with an important question of explaining why recidivism rates appear to be so remarkably similar? This is indeed an intriguing question which has probably many different answers. One possibility is that recidivism represents an important, functional social process. A classic body of sociological literature suggests that, in addition to its instrumental goal of crime prevention, punishment must fulfill an important social function: to increase social solidarity by creating scapegoats and reinforcing the boundaries of acceptable behavior (see Durkheim, 1951 and Erikson, 1966). Thus, the needs for boundary maintenance and functional aspects of social exclusion may override reintegrative forces, even in a nation like Iceland, which has a shortage of human capital which strongly militates against the permanent exclusion of practically anyone. Yet let us not forget that despite a similar and substantial recidivism rate found in different societies, the majority of offenders are however successfully reintegrated after they have been punished for violating social norms. We believe that both of these opposite reactions to law violators, successful reintegration and social exclusion, function to strengthen social solidarity. This also may explain the apparent stability of recidivism rates across nations that are socially and culturally very different: despite all of their differences, they have in common a need to reinforce social and moral boundaries, and they accomplish this in part through reintegration – and in part thru social exclusion.

CONCLUSION

Over the past decade, criminologists and criminal justice policymakers alike have increasingly come to recognize the need for cross-cultural cooperation to understand and prevent crime. Despite this recognition, little cross-cultural criminological research has been conducted owing to the difficulties of bridging everything from definitional boundaries to language barriers in the inherently political -- and therefore sensitive -- arena of crime and justice. Against this backdrop, we hope that our study stands out as an example of what can be achieved through true cross-cultural collaboration. Our study was funded jointly by agencies based in Iceland and the United States, and it involved research teams from both countries. The two teams worked together as one and, in the process, developed an understanding of

offender recidivism in Iceland that placed local concerns in a broader international perspective. Problems often look far worse when viewed only within the context of a given society, and offender recidivism is no exception. When citizens hear that many punished offenders eventually return to crime, it is natural for them to wonder whether the criminal justice system is functioning as well as it could. Viewed within the context of the wider world, however, offender recidivism can look far different. This is especially true for a country like Iceland, which has managed to maintain very low crime rates without recourse to harsh punishment while, at the same time, experiencing levels of offender recidivism that are no higher than far more punitive societies. That is a lesson that Iceland might teach the rest of the world.

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EXTERNAL OVERSIGHT IN NORWAY: DOES IT MATTER?

Thomassen, Gunnar

SUMMARY

External involvement in the investigation of complaints against the police is one of several mechanisms designed to keep police personnel in line and accountable. Analyzing 384 cases in Norway the results are similar to findings in other western democratic countries. Despite external involvement the rate of substantiation is still low. This suggests that the structure and nature of complaints rather than organization, is decisive in explaining the rate of substantiation. However these findings does not in any way imply that external oversight is irrelevant, on the contrary, it may still be argued that external oversight is an essential component in making the police accountable. Both basic legal and democratic principles such as independence and objectivity, as well as public confidence provide compelling reasons for why there should be external oversight. Still, experienced "insiders", whether former or current, is equally important for the quality of the investigation. The challenge therefore seems to be to create a working mixture of professional (police) and external investigation.

The main objective of the police is to provide law and order, and to accomplish this task they have been vested with a significant amount of discretionary power. The police have been given the power to detain and arrest persons, to search and seize property, and to apply various levels of force – up to and including deadly force – in carrying out legal mandates (Kappeler et al, 1994). While this "Leviathan" is widely assumed to be necessary for sustaining a free and democratic society, it can also pose a threat when the police use this force illegitimately. It is therefore crucial to find ways to restrain and control this power and make the police accountable.

Several mechanisms have been designed to restrain power, avoid misconduct, and to keep police personnel in line and accountable. One is to assure thorough and independent investigation of complaints filed against police personnel. This may seem straightforward, but to accomplish both thoroughness and independence may prove difficult, at least if independent investigation implies that everyone having background in law enforcement should be excluded from the process. First, it would certainly be difficult, maybe even impossible, to recruit fully competent and experienced investigators outside the police or without any former experience from law enforcement. Secondly, it may also be argued that the "insider perspective" is crucial providing necessary cultural knowledge and legitimacy within the police force. A certain degree of police-involvement therefore seems inevitable. However to leave it exclusively to the police to handle complaints would be "foolhardy" (Bayley, 1991). A system of pure self-regulation would jeopardize both independence and public confidence in law enforcement. This notion, that some element of external oversight need to be established, seems to have gained foothold in many democratic countries during the last two decades. The question of interest here is whether external oversight has led to any significant changes in the investigation and outcome of complaints against the police.

Complaints against the police in Norway are investigated by Special Investigatory Bodies (SEFO), organizationally independent of the police and subordinate to the Director General of Public Prosecution (Riksadvokaten). Each of these bodies have three members: A chairman with qualifications equal to a Supreme Court Judge, a lawyer with a minimum of two years practicing criminal law, and finally a member with significant experience in police investigation. There are also assigned one substitute to each of the members of these bodies. The primary mandate of the Special Investigatory Bodies is to investigate all complaints alleging that police have breached criminal law in carrying out their duties. Furthermore they also investigates all cases in which police actions have resulted in a person's death and/or serious bodily injury, irrespective whether or not a complaint has been made. General complaints not in breach of criminal law are handled internally while special committees attached to each police district handle allegations of police acting in breach of discipline. Finally, after concluding their investigation the Special Investigatory Bodies make recommendations about further action to the State Attorney who then makes the final decision.

The annual number of complaints filed has increased steadily since the Special Investigatory Bodies were established in 1988. While it was only 401 complaints filed in 1988 the corresponding number for 1999 was 656 (Thomassen, 1999; Submitted). During the same period of time the rate of substantiation has been relatively stable around 7-8 % (Thomassen, 1999). The relatively low rate of substantiated complaints has been a constant source of criticism towards the Special Investigatory Bodies. This coupled with the fact that most members either is or has been employed in the police force, has fueled the assumption that the Special Investigatory Bodies are biased in favor of the police. However, empirical evidence in Norway and elsewhere, shows that the rate of substantiation remains low even if more "civilians" are involved in the process (Loveday, 1988; Reiner, 1991; Maguire & Corbett, 1991; Thomassen, 1999; Waters & Brown, 2000; Brereton, 2000; Herzog, 2000). Rather than system and background it seems like the structural characteristics of these cases are decisive factors in explaining the low rate of substantiation. First of all, a significant share of complaints didn't describe any criminal violations and was therefore automatically dismissed without any further investigation. Secondly, the very nature of policing, often confrontational and controversial, makes police officers susceptible to complaints, and some of the allegations are obviously without any foundation at all. Thirdly, the discretionary nature of policing and human imperfections will inevitably lead to some bad judgement calls, but error of judgment does not automatically constitute a criminal violation, although it may be justly criticized. The individual police officer is thus given a certain leverage for judgmental errors in the line of duty, and several rulings by the Supreme Court have set the threshold for what constitutes a criminal violation, relatively high. Finally the low visibility of many citizen-police encounters provides few eyewitnesses, and with no physical evidence and no witnesses the case is likely

to get dismissed. Furthermore, the fact that the complainant often has a criminal record and hence low credibility will further increase the likelihood of dismissal.

These findings does not in any way imply that external oversight is irrelevant, on the contrary, it may still be argued that external oversight is an essential component in making the police accountable. First, basic legal and democratic principles such as independence and objectivity provide compelling reasons for why there should be external oversight. The danger of bias among personnel with close ties to the police is obvious, although there's a distinct difference between former and current employment in the police force. Secondly, studies from abroad suggest that the general public feel uneasy about the police policing themselves (Maguire & Corbett, 1991; Landau, 1996; Herzog, 2000). Thus, public confidence in the investigation and the police in general is another important reason to preserve a significant element of external accountability. Likewise, it is also important that the primary actors - the police and the complainants - have confidence in these arrangements. Previous research have somehow depressingly found that both parties tend to be dissatisfied irrespective of organization (Maguire & Corbett, 1991; Waters & Brown, 2000; Herzog, 2000). However, findings also suggest that the complainants as well as the police generally favors external oversight, albeit for different reason. Thus, we may safely argue the case for preserving and further develop systems of external oversight. Still, removing all members with former or current police experience is likely to hurt rather than improve investigation, because these members provide both necessary competence and an "insider-perspective" crucial to the investigation. The challenge therefore seems to be to create a working mixture of professional (police) and external investigation.

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DOES NEOCLASSICISM MOTIVATE SENTENCING IN SWEDEN BUT NOT IN NORWAY?

Eva Stenborre

Introduction

Today I am going to present a summary of my dissertation in criminal law about sentencing in Sweden and Norway. The thesis is divided into fourparts. The introduction consists of a presentation and demarcation of the topic, a description of the main goal of the project and the method used in the dissertation. The topic of the thesis is primarily the penal theories and in some extension the justification of the criminal law. These theories have been discussed through the history and replaced by others when the predominant generally has been believed inconvenient.

Part one. The justification of the criminal law and the penal theories

At present there is a lack of a description of the main penal theories in Sweden, why the first part consists of such a description. This theoretical part also concludes some of the most important philosophies of the criminal law and an analysis of trends.

The theories of for example John Locke, Jeremy Bentham, Hans Kelsen, Immanuel Kant, Friederich Hegel, Cesare Beccaria, Anselm von Feuerbach, Enrico Ferri, Franz von Liszt, Axel Hägerström, Vilhelm Lundstedt, J.C.W. Thyrén and Johs. Andenaes are presented.

The developement concerning the different theories is also analysed and this part consist as well of a proposal that tries to explain this developement. Some issues are discussed more thoroughly, for example the effects of the punishment, i.e. why the punishment doesn´t have to be a suffering.

Part two. Sentencing in Sweden and Norway

Part two covers a systematization, analysis and interpretation of the criminal law concerning sentencing in Sweden and Norway. The general opinion is that neoclassicism mainly motivates sentencing in Sweden but not in Norway. The penal theory concerning sentencing in Norway is supposed to be a combination between general and special deterrence with elements of retribution. The difference between these penal theories is mainly that neoclassicism doesn´t pay any attention to special deterrence and to the risk of repeat offending at the choice of sanction, while the combination of penal theories in Norway does.

If it is different penal theories that motivate sentencing i Sweden and Norway this should be evident in a comparison between the two countries´ sentencing rules. The most

interesting issue is therefore if, and in what way, the sentencing norms differ and if the differences can be explained by different penal theories.

The systematization, analysis and interpretation of the law in Sweden and Norway showes that there is in principal no difference between the two countries. The teoretical motivation of the criminal law concerning sentencing is instead a combination between general and special deterrence with elements of retribution in both countries. General deterrence has a superior importance but special deterrence and retribution have also effects on sentencing. The second part showes therefore that even if the general opinion is that neoclassicism motivates sentencing in Sweden but not in Norway, the difference between the countries is instead that there are two chapters with sentencing rules in the Penal Code in Sweden but no general rules in Norway about the principals conserning sentencing and only a few specific ones. The Supreme Courts cases in Norway has instead a significant role by guiding the lower courts.

Part three. The study of criminal cases from the Supreme Courts in Sweden and Norway from 1996 and 1997

This part presents the result of the study of criminal cases from the Supreme Courts in Sweden and Norway from 1996 and 1997. The result from the study is also used in the second part in the description of sentencing in the two countries. I presented the results of the study on the seminar 1999 on Greenland.

The study was accomplished by an analysis of all the criminal cases from the courts from 1996 and 1997. The cases were gone through and all circumstances that were mentioned in the sentences were analyzed, systemazed and interpretated.

The result of the study showes that there were only a few differences between the circumstances mentioned in cases from the two courts and that these differences can´t be explained by different penal theories. The result implicates instead that the sentences from the courts were motivated by the same combination of penal theories, i.e. the combination between general and special deterrence with elements of retribution that I found in part two that motivates the rules in both countries. Accordingly the sentences from the Swedish court were not mainly motivated by neoclassicism.

This conclusion was evident by some circumstances that the courts in both countries mentioned in their sentences. At the choice of sanction for example both courts payed attention to the risk of repeat offending, personal conditions and mercy. As I have mentioned before according to neoclassicism the court should´t pay regard to any of these factors at the choise of sanction. Personal conditions and mercy are circumstances that possibly can have an impact on the execution of the sentence and the selection of the quantity of the sanction

accordingly to neoclassicism but not on the choise of sanction. These factors are instead explained by special deterrence.

Part four. Sentencing without retribution

Part four consists of a proposal concerning some changes of the Penal Code in Sweden. The first proposal regards to the sentencing norms if the theoretical motivation is a combination between general and special deterrence. The norms in the proposal are gathered in only one chapter instead of as present two. The sentencing rules are therefore more clear and as some of them even are changed they for that reason also are more easy to work with. In this part I present some examples of practical cases of sentencing with the proposed theory.

The second proposal in the thesis deals with how the prison-sentence can be changed. At present there are two types of suspended sentences in Sweden, villkorlig dom and skyddstillsyn. Villkorlig dom consists only of the condition not to reapet offending during a period of two years. Skyddstillsyn is about the same as probation. A third type is suggested in the thesis, villkorligt fängelse. This type of suspended sentence exists already in the other countries in Scandinavia, fore example Norway, but not in Sweden. It means that the prison sentence is suspended wholly or partially. As villkorligt fängelse makes the sentencing more flexible it is proposed in the dissertation and therefore examined and analysed in this part.

Other issues discussed in part four are fore example why the court should do a prognosis about the risk of repeat offending when sentencing and the importance of getting the concent from the offender when sentencing, i.e. when the court choses a suspended sentence.

The main argument today against prognosis about the risk of repeat offending is that it is impossible for the court to do such a prognosis about the actions of the offender. But with comparison whith custody, according to the rules in Sweden the court should pay attention to the risk of repeat offending. If the court is capable to do a prognosis when it has to decide if the offender should be put in custody it ought to be able to do a similar prognosis about the risk of repeat offending when the court decides the sentence.

The concent of the offender is already a condition today when the court decides if the sentence should be samhällstjänst, i.e. community sentence order. I propose that when sentencing villkorligt fängelse the court should be able to suspend one part of the prison sentence if the offender agrees with a program specially decided after his needs, for example his problems with abuse.

Questions discussed in the fourth part are: - Is it possible to combine general deterrence and special deterrence with retribution, or is such a combination incoherent? - Are there any penalties today that mainly can be explained with general and special deterrence without elements of retribution? Which penal thery motivates for example villkorlig dom and kontraktsvård (a form of probation that only consists of treatment)? - Which penal theories

motivates in practice the sentencing norms in Sweden and Norway? - Were there any other motives then the penal theories, for instance economical reasons, that lead to the changes of the Penal Code in Sweden 1989 when the to chapters about sentencing were inaugurated?

Part four is closed with summarized conclusions. The aim of the system of punishment lies in the prevention of crime, i. e. general as well as special prevention theories have this goal. The aim of retribution is on the other hand only to punish the offender with a just sanction, i.e. a sentence that regards proportionality between the offence and the punishment. But as there is a risk that a theory that combines general and special prevention with elements of retribution doesn´t regard the aim of prevention enough, a combination with retribution can become incoherent because the elements of retribution means that the sentence has to be a suffering. If the worst comes to the worst retribution means that the punishment doesn´t prevent from crime. This is a fact for instance when an offender has problems with abuse of alcohol and therefore a need of a sentence regarding this problem, fore instance the already existing punishment kontraktsvård. This punishment doesn´t mean a suffering at all, only treatment and rehabilitation, even if it sometimes can be experienced as more severe than a punishment sentenced in proportion to the crime. But as the punishment kontraktsvård can´t be explained with retribution at all a combination between general and special prevention without retribution therefore would be a more convenient way of discribing the penal theories that motivates the Swedish Penal Code concerning sentencing than neoclassicism.

Resumé

The paper is a summary of my dissertation in criminal law about sentencing in Sweden and Norway. The first part consists of a description of the penal theories, some of the most important philosophies of the criminal law and an analysis of trends.

The general opinion is that neoclassicism mainly motivates sentencing in Sweden and that a combination between general and special deterrence with elements of retribution motivates sentencing in Norway. While neoclassicism doesn´t pay any attention to special deterrence and the risk of repeat offending at the choice of sanction, the combination of penal theories in Norway does. If it is different penal theories that motivate sentencing in Sweden and Norway this should be evident in a comparison between the two countries´ sentencing rules and criminal cases. Part two covers therefore a systematization, analysis and interpretation of the criminal law concerning sentencing in Sweden and Norway and part three presents the result of a study of criminal cases from the Supreme Courts in Sweden and Norway from 1996 and 1997. Part two and three showes that it is a combination between general and special deterrence with elements of retribution that motivates the two countries´sentencing.

Part four consists of proposals concerning sentencing in Sweden and issues as why the court should do a prognosis about the risk of repeat offending. The aim of punishment, i.e. the prevention of crime is also discussed. As the aim of retribution is to punish the offender with a just sanction a combination with retribution can become incoherent as the elements of retribution means that the sentence has to be a suffering. As the punishment kontraktsvård (consisting of treatment) can´t be explained with retribution it therefore would be more convenient to discribe the penal theories that motivates sentencing in Sweden as a combination between general and special prevention without retribution than by neoclassicism.

"THE CONSTRUCTION OF THE DRUG PROBLEM IN ST. PETERSBURG"

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Introduction

In this paper I will present some of my ideas for my Ph.D. dissertation. The aim with the dissertation is to study the construction of the drug problem in St. Petersburg, Russia. I will especially focus on how this problem is constructed by different actors. Thus (1) How Russian, Swedish and other international non-governmental interest organisations in St. Petersburg construct the drug problem. (2) How newspapers in St. Petersburg construct the problem. The dissertation will mainly focus on St. Petersburg after the collapse of the Soviet Union, thus post-Soviet Russia and the empirical material will be collected in St. Petersburg. I will introduce this paper with a short background.

Background

Deviant behaviour in the Soviet Union

During the Soviet period, drug addiction was regarded as a characteristic of "capitalism's moral decay" and something that could not exist in a communist society (Morvant, 1996, Kesselman, 1999). Therefore enormous resources were spent on ensuring that this problem were kept out of sight of Western Europe and the United States (Hedlund, 1993). It was not until the mid 1980s that the drug problem was officially acknowledged when Michail Gorbachev introduced his policies of *glasnost* and *perestroika* (Shelley, 1996). As part of perestroika Mikhail Gorbachev initiated an anti-alcohol campaign in 1985-1987 (Lagerspetz, 1994). The aim of this campaign was to reduce alcohol-related violent crimes and suicides, for example, by halving the state production of alcohol (Afanasyev and Gilinskij, 1994, Shelley, 1996). A public information campaign against drugs was also started (Morvant, 1996). Despite the state's increased focus on social problems during perestroika it is not certain that these policies resulted in an improvement of the alcohol and drug situation in the Soviet Union.

The anti-alcohol campaign resulted in severe dissatisfaction over the shortage of alcoholic drinks and therefore the demand increased (Lee and McDonald, 1993). The campaign also contributed to expanding use of drugs since many young people replaced alcohol with drugs (Lee and McDonald, 1993). During the anti-alcohol campaign the Soviet

State eliminated thousands of hectares of poppy fields in the Soviet Republics in Central Asia (Shelley, 1996)[26]. Another measure was to eliminate the production of wine in Central Asia. As a result these campaigns contributed to exacerbate the inter-ethnic relations between the Russian federation and the Central Asian Republics within the USSR (Shelley, 1996). The main problem with the anti-alcohol campaign was, however, that it was carried through ”from above” by the politicians and not by the people as, for example, in the Scandinavian temperance movements.

Drug statistics in the Soviet Union

In most countries it is problematic to estimate the total amount of drug users (Lab, 2000). In the Soviet Union reliable statistics on drug use was an enormous problem. The analysis of drug use was mainly based on official statistics given by the police, disjointed data provided from medical statistics, surveys of young people within "risk zones", or the numbers of patients in hospitals for drug addicted (Kesselman, 1999). However, research on this subject was not encouraged as a result of the Soviet policy of viewing drugs as a disease of capitalist society (Lee and McDonald, 1993). Therefore, there is little reliable data on the number of people who used drugs in the Soviet Union (ibid.). However, after the end of the Soviet empire research on drug issues has been published in Russia, for example by the Institute of Sociology, Russian Academy of Science, St. Petersburg (Afanasyev and Gilinskij, 1994, 1998, Gilinskij et.al., 1994, Gilinskij and Zobnev, 1998, Kesselman, 1999, Kesselman and Matskevich, 2001).

Drug legislation and treatment

The Soviet Criminal Code specified up to three years’ imprisonment for the manufacture, purchase and holding, transporting or carrying of drugs without the intention of selling (Babayan, 1990). A person caught with intent to sell drugs faced up to ten years of imprisonment (ibid.). After the collapse of the Soviet Empire, in 1991, the Russian Parliament passed a new drug law that removed criminal liability for drug taking (Morvant, 1996). However, in April 1998, President Yeltsin signed a new comprehensive law on "narcotic drugs and psychotropic substances". This new law again prohibits use of drugs, which means that this law, in compared to previous legislation, symbolises a more repressive drug policy (Federalniy zakon o narkoticheskykh sredtsv i psykhotropich vechestvakh, 1998, Article 44). However, the 1998 law has been much debated, mainly because of its punitive and repressive

[26] Central Asia includes the former Soviet Republics: Tajikistan, Kazakhstan, Kirghizia, Turkmenistan and Uzbekistan.

tendencies. Gilinskij and Zobnev (1998) argue that as a result of the repressive legislation drug addicts and their relatives will be afraid to seek help from the state because they might be registered by the police and punished.

As a complement to the drug law 1998 an analytical report about drug addiction in Russia was published by the Russian Council of Foreign and Defence Policy (Karaganov et al., 1998). The purposes of the report were a) to describe the situation as regards drug addiction in Russia and b) to suggest measures aimed at fighting the problem both inside the country and on the international arena. According to the report the problem of drug use today has become a national problem and must be referred to as a "direct threat to the national security of Russia" (Karaganov et. al, 1998:12). The report also maintains that the fight against drugs requires more active and elaborated international co-operation. In the report it is also argued that the United States has been the most successful country in the world in fighting drugs because “the number of drug users has decreased by two times in the past decade” (Karaganov et al., 1998:11).

After the end of the Soviet empire attempts have being made to reform and humanise the treatment of addicts in state medical institutions (Morvant, 1996). It has also developed a number of private institutions. Because state medical institutions often are held up by economic difficulties and lack of specially trained rehabilitation staff they do not enjoy a good reputation and, therefore, many addicts and their relatives prefer to seek help from private non-state organisations (Gilinskij and Zobnev, 1998). However, the problem is that the drug user or his relatives must pay the entire treatment cost in the private institutions (ibid.).

Theoretical perspective

This dissertation will be based on the social constructionist perspective. According to that perspective a phenomenon becomes a social problem when it is defined as such by different actors in the society, for example, politicians, scientists, interest organisations or the mass media (Afanasyev and Gilinskij, 1998). A phenomenon can be constructed as a social problem when (1) a group of people recognises something as wrong. (2) this group is concerned about the problem and if, (3) they take steps to correct it (Goode and Ben-Yehuda, 1994). In Western Europe and the United States most social problems have been brought to public awareness by representatives of non-governmental interest organisations (NGOs) (Goode and Ben-Yehuda, 1994). The mass media has also been an important actor in the definition or construction of social problems in Western Europe and the United States. However, in Russia non-governmental interest organisations and independent media are new phenomenon because they were not allowed during the Soviet period.

Method and material

a) Interviews with interest organisations

The Finish National Research and Development Centre for Welfare and Health (STAKES) published a report about the drug problem in St. Petersburg in 1999 (Pakassvirta, 1999). In that report non-governmental interest organisations against drugs in St. Petersburg are divide into three types:

1. The first group includes professionally, skilful and well-motivated organisations, which receive some founding from other countries.
2. The other group includes well-motivated but professionally unskilled organisations, which often are formed by parents or other relatives to drug users.
3. The third group includes organisations founded solely for political or economic reasons. During, for example, the parliamentary election in 1999 some candidates donated money to organisations working against drugs. However, it later turned out that the money had returned to the donors and the organisations had ceased to exist.

In the first part of the dissertation, I will interview representatives from about ten organisations in St. Petersburg, both international and Russian. I will carry out qualitative deep interviews with the representatives for these organisations. Firstly I will focus on the structure of these organisations. For example, how they work with drug prevention, where they get there finance, which target groups they concentrate their work on, if there are any differences between Russian and the international organisations, how they co-operate with the police, social service etc., contact between different organisations and how they change during the studied period. Secondly, I will focus on how these organisations construct the drug problem. I will for example look at how large they consider the problem to be, which drug policy they advocate (for example harm reduction or war on drugs), causes and solutions to the drug problem, and if they see the drug problem as a social, criminal or health problem.

b) Content analysis of newspaper articles

According to Laursen (1994) the mass media engage in structuring and sorting out the reality for us by telling us what should be discussed, what is a problem, or what states of affairs require social and political action. This process is an important part of their influence as agenda setters and opinion makers (ibid.). Lagerspetz (1994) argues that the new political parties are weak in the post-Soviet countries and the institutions of state are being rapidly restructured. For these reasons the mass media has become a powerful independent actor in defining social problems. Within the mass media newspapers are seen as an important actor in constructing and shaping the definitions of social problems in the society (Olsson, 1996).

In the second part of the dissertation, I will do a quantitative content analysis of articles in St. Petersburg newspapers. This analysis will cover three daily newspapers in St. Petersburg: *Smena* (change), *Sankt Peterburgskyie Vedemosti* (St. Petersburg newspaper) och *Nevskoe Vremyia* (Nevskij Times), one evening paper; *Vecherenyij Peterburg* (Petersburg evening) and one weekly paper; *Argumenty i fakty*. The period will cover the first 10 years of the Russian Federation, thus between 1992 to 2002. For example I will look at how many articles about the drug problem that are published, the form of the articles (size and pictures), drug policy tendencies, causes and solutions to the drug problem, how drug punishment or treatment is discussed, and which sources they refer to.

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THE CRIMINAL CAREER AND SOCIO-ECONOMIC STATUS OF DRUG OFFENDERS

Aarne Kinnunen

The paper is based on a study that examines the development of the criminal careers and socio-economic status of persons sentenced for drug offences in Finland (Kinnunen 2001). The data for the study have been taken from Central Statistical Office data on recidivism and demographic variables. The research questions were following:

1. how the criminal career of drug offenders began;
2. how different types of crime are intertwined in these criminal careers;
3. what population groups are most clearly the focus of the control of drugs; and
4. what are the typical characteristics of those in this group.

All indicators of the drug phenomenon (use, morbidity, crime and mortality) have been on the increase in Finland throughout the 1990's (Virtanen 2000). In Finland, the authorities do not maintain any registers on *drug users.* The Personal Data File Act (523/1999) prohibits the registration of data related to the health, illness or medical treatment of individuals. The current study focuses on *persons who have been convicted of drug offences*.

The study data is based on court statistics for the years 1977 to 1996. This provides a follow-up period of 19 years. The study group consists of all of those persons who have been sentenced for a drug offence following a trial in a general local courts in Finland during these years (N=16,952). The statistical data are based on the reports of decisions submitted by the local courts for statistical purposes. The social security numbers of the offenders were used to see whether they have been convicted of further offences. No data are available on the drug-using patterns of the persons in question. The data also do not indicate the specific nature of the drug offence in question, for example whether it involve the use, sale or delivery of drugs. The data do not contain information on what drug was involved in the offence. However, it is possible to separate out the aggravated drug offences.

Special attention was paid to the cohort that consists of those born in 1962 (N=631), since these persons reached the age of criminal responsibility (15 years) during 1977. Consequently, it is for this group that the data provide the longest follow-up period.

The control group that was used in many connections in the study consists of those persons sentenced between 1977 and 1996 who have never been sentenced for a drug offence (N=601,744; of these, 16,320 were born in 1962).

Once data on recidivism had been collected, these were matched with the longitudinal demographic data from the years 1970, 1975, 1980, 1990 and 1995. This was done in order to

obtain information on which demographic groups the drug offenders came from, and what their living circumstances and living situation were.

Of the cohort born during 1962, 21 % had received at least one sentence by the end of 1996 (35 % of men and 7 % of women). At that time, those in the cohort were 34 years old. Similar results have been reported from Sweden (Stattin 1998), UK (Farrington 1992) and Danmark (Kyvsgaard 1998).

Most of the sentences in Finland had been for theft offences. The next most common offences were drunken driving, assault offences, and traffic offences. By the end of 1996, somewhat less than one percent of the 1962 cohort had been sentenced at least once for a drug offence.

The statistical data clearly show that persons who have been sentenced for drug offences have also committed a considerable number of other offences, in particular theft offences, the hiding of stolen property, and joy-riding (table 1).

Table 1 All offences committed by persons convicted for drug offences in 1977-1996 and the proportion (%) of these offences of all criminal offences. Persons born in 1962. (N=631)

Crime	Number of offences	% of all offences
Robbery	255	30
Document forgery	490	27
Capital offence (including attempts)	27	26
Unauthorised use of vehicle	893	25
Theft	4 639	23
Concealment	555	21
Fraud or embezzlement	799	19
Damage to property	673	18
Assault	992	12
Economical crimes	13	3
Other criminal code offences	1 120	15

Those persons who have been sentenced for drug offences have tended to begin their criminal career at a very young age. The large majority were sentenced for the first time already at the age of 15 or 16, in other words immediately after having reached the age of criminal responsibility. The number of sentences in particular for theft offences was large, which suggests that these persons have tended to begin to commit thefts already clearly before reaching the age of criminal responsibility, 15 years.

For one-fourth of those sentenced for drug offences, this drug offence was the first entry into their criminal record. However, by the age of fifteen years so many theft offences have

been committed that, when one looks at the number of offences, the criminal careers clearly appear to have begun with theft. Quantitatively, many drug offences are not committed until after the offender has reached the age of 20 years, at which time there is already a decrease in the number of theft offences.

According to criminological research, the propensity to commit crime decreases with age (see e.g. Steffensmeier et al. 1989). A comparison between the criminal careers of those who have been sentenced for drug offences and the criminal careers of those who have no sentences for drug offences shows that the propensity of those in the first group to commit crime appears to remain on a higher level for a longer time (see fig. 1 and 2). This may suggest that drugs have a criminogenic effect. On the other hand, the data may also indicate a spread in drug offences and a strong increase during the 1990s in the number of persons using and passing on drugs. Problematic drug use is clearly connected to marginalisation where involvement in crime is one element among others.

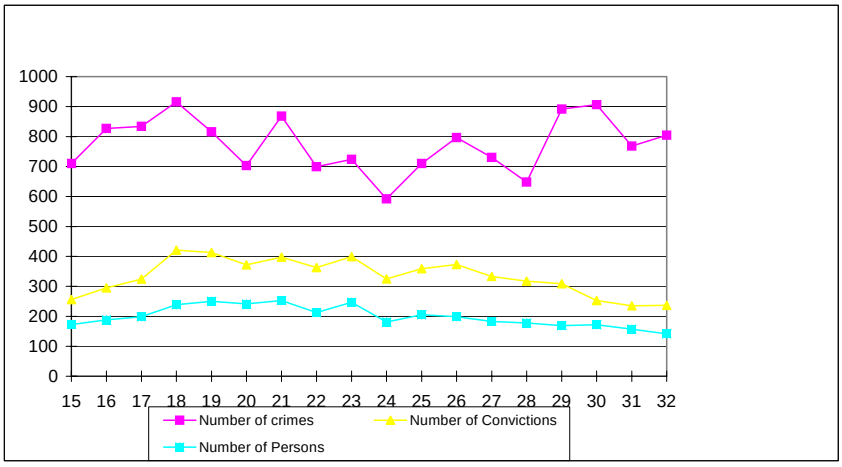

Figure 1 Development of criminal career among persons born in 1962 and convicted of drug offences. (N=631)

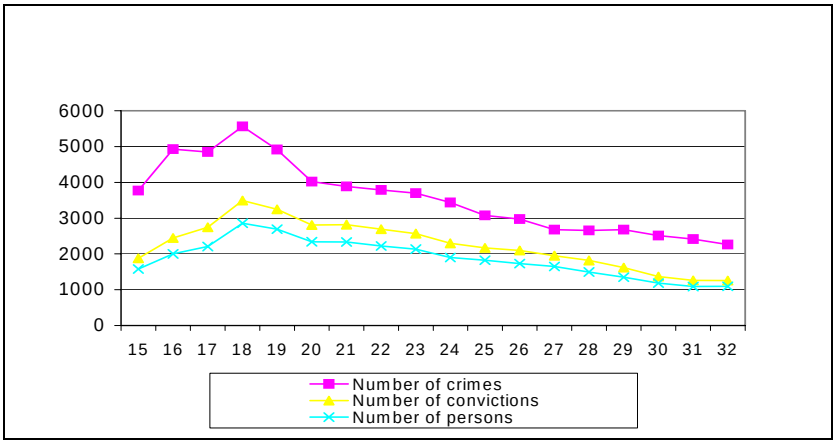

Figure 2 Development of criminal career among persons born in 1962 and convicted of other than drug offences. (N=16 320)

In the study, a cross-section look was taken of the life situation in 1995 of those who have been sentenced for drug offences between 1977 and 1996. At that time, the average age of the persons covered by the study was 30 years. In 1995, only about one-fifth of the persons sentenced for drug offences between 1977 and 1996 were gainfully employed. 43 % of those in the study data had reported themselves to be unemployed, while 28 % were otherwise not gainfully employed. This break-down differs markedly from that of persons who have been convicted of offences other than drug offences: of those in the latter group, 43 % were gainfully employed and 22 % were unemployed (table 2).

Table 2 Main economic activity 1995 of persons convicted for drug offences, of persons convicted of other than drug offences and of whole over 14 years old population

	Drug crime		Other than drug crime		Whole >14 population	
	N	%	N	%	N	%
Employed	3195	19,7	251384	43,1	1932752	46,6
Unemployed labour force	6947	42,8	127838	21,9	476567	11,5
Students	1369	8,4	28823	4,9	454033	10,9
Conscripts	55	0,3	1760	0,3	16204	0,4
Pensioners	1062	6,5	84267	14,5	1102774	26,6
Other economically non-active	2142	13,2	25365	4,4	162 726	3,9
Not known	1447	8,9	63184	10,8		
TOTAL	16217	100,0	582621	100,0	4145056	99,9

Most of the drug offenders who were employed had a low income. Of those in this group, 2 % were entrepreneurs or employers, and 3 % were senior white-collar workers. 12 % of those in this group were employees. The most common occupations reported for those in this group were unskilled worker, machine fitter, mechanic, driver, and various occupations related to the construction sector. There were also a relatively large number of persons engaged in the service sector, such as sales personnel and social welfare work. The persons who have been sentenced for drug offences tended to have less education and less vocational training than is usually the case for persons who have been sentenced in general for an offence.

Illegal dealing with and use of drugs is to a very large extent hidden crime. The apparent problem with data based on court cases is their selectivity, a problem that they share with police statistics on crime. When we examine these sets of statistical data, we should carefully keep in mind the way in which the study data were produced: each of the cases involves an act that has been defined as criminal and considered to be criminal in criminal procedure, and then registered in the files. The end result is statistical data produced above all

by the criminal justice system. The number of cases that are detected is strongly dependent on how the system of control is structured and on how criminal justice measures are directed. It is unavoidable that the criminal justice system focuses more on certain acts and certain groups of actors than on others. Persons who are guilty of offences have a different probability of being detected, prosecuted and convicted. Persons who have already been labelled as criminal and as drug abusers have a greater tendency to be identified and picked up by the criminal justice system. In this way, the convictions have a tendency to accumulate among a relatively small group. The large majority of drug offences that come to the attention of the police is related to the use, possession or purchase of drugs; according to data collected by the National Bureau of Investigation, 65 % of drug offences involve such act (Kinnunen 2000).

The connection between drug offences and property offences is a social reality. The solving of this connection is not subject to simple answers. Drug-related offences are a cause of increasing concern among the public. In addition to ordinary, so-called mass criminality, the public is concerned about the connection between drugs and international organised crime. So far in Finland, this connection has remained a loose one. Even though the connection between drugs and crime is an obvious one, there is no justification for speaking about a simple causal relationship. The use of drugs is a multi-faceted phenomenon which cannot be set down in such simple terms. In addition there is the danger that if the link between drugs and crime is over-exaggerated, this will be taken as justification for excessive control of users by the criminal justice system in the name of crime prevention and general safety.

The present study has clearly lent support to the view that drug crime is strongly connected with other crime, and that the criminal justice system is focused on persons in a poor socio-economic position. Even though Finnish drug policy has developed in a more pragmatic direction at least in the sense that the system of treatment has become more nuanced, the work of the authorities continues to be based on a sectoral approach.

Whenever national drug strategy is formulated, emphasis is given to co-operation between different administrative sectors in decreasing the supply and demand of drugs, and in improving the possibilities that non-governmental organisations have to work in this field (Huumausainestrategia 1997; Valtioneuvoston…1999; Nuorten…2000; Valtioneuvoston… 2000). In practice, the system of control works according to its own logic, and it is rare that social and medical support is tied, for example, to the work of the police. Indeed, among the police and the prison authorities the prevailing mood is that “treatment does not work”, and support measures are not seen to have any perceptible impact on the life of drug users. Drug policy in practice continues to rest excessively on moral strictures and repression. If there is to be an improvement in practical co-operation in stopping criminal careers and drug use, significant changes in attitude are needed in the work of the authorities.

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THE ESTONIAN CRIMINAL INJURIES COMPENSATION ACT -

created in the context of accession to the European Union.

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INTRODUCTION

Both criminologists and political scientists have been instrumental in bringing about significant social and political changes in Estonia. During the past ten year transition period from the Soviet system to the present liberal democratic market economy and society many changes have been brought about directly through the intervention of interested professionals concerned about justice, penal and correctional issues and reform. Similarly, political scientists specialists in the field of international relations have initiated and promoted new relationship development for Estonia with neighboring countries particularly in Scandinavia and in the direction of the European Union.

The joint contribution and reasons for the co-operation of these two groups of professionals in Estonia has not been examined in the past but there seems to be a need to do so today in these fast changing times to better understand the processes involved so as to predict events and rationally plan change. It is important to know more about how changes take place in the criminal justice system and whether efforts to change the system will enable Estonians to more easily join the European Union. Related to this are questions on whether the changes have been brought about in a planned, voluntary and intentional fashion or merely by chance or accident.

With the creation of the Estonian Criminal Injuries Compensation Board as the result of a new legislation adopted by Parliament in 1998 but implemented on January 1, 2001, there is evidence of coordinated contribution. The significance of this for Estonia, Scandinavian countries and the European Union as well as other countries aspiring to become members will be examined.

One can preliminarily conclude from the actions taken in adopting this legislation that Estonia is moving towards a victim of crime based justice policy. Estonians have already demonstrated that they are prepared to adopt most prescriptions and conform to the requirements set out by the Council of Europe, attracted and motivated by the possibility of being accepted into the new union by January 2003.

Estonia is expected by the present coalition government consisting of Fatherland, Reform and Moderates to be asked to join the European Union by the planned date. For their part in preparation for this, they have promoted changes in legislation, public institutions and

social services to meet the requirements of EU policy developers, the Council of Europe and the European Convention. Unfortunately this has been done without consulting and obtaining the support of the general population.

From the statistics and information available in Estonia there has not been any great desire on the part of the approximately 350,000 victims of crime per annum to change criminal policy toward a crime victim policy. This does not mean that they do not have preferences in this area but the views of the man on the street on the major legislative and institutional changes in society the union will bring about may only come out in the responses to questions in the planned national Referendum around the issue of accession to the EU. The fact that Estonia has passed legislation and is working on establishing a Criminal Injuries Compensation system is likely to advance acceptance to the European Union.

Observation reveals that that two goals and directions are being pursued simultaneously by Estonians. One is toward improving the Estonian criminal justice system by making it more responsive to victims of crime and the other is the active development of and strengthening of professional contacts and ties through the work surrounding the development of a system which is acceptable to the EU members. Law reformers, criminologists and sociologists are certainly interested in moving Estonia from a law offender centered Criminal Justice system to one which is more responsive to victims of crime.

Politicians in power and government officials have as their priority the joining to the European Union but may not be fully aware of the possible impact and consequences of using victims of crime legislation and the creation of related services to advance their immediate interests and purposes. This is so because adopting a crime victim criminal justice policy may not be in their long term best interests of the present leading politicians as the population is likely to demand more costly services than the Criminal Injuries Compensation services, for victims of crime in the future.

COMPENSATION HISTORY

From about 1728 to 1686 B.C. the Babylonian Code of Hammurabi already recognized the commitment of the city and governor " to pay compensation to a victim's family if someone is killed. " In A.D. 1917 an Italian criminologist Enrico Ferri commented on the plight of crime victims at the time. He recommended radical changes and made the suggestion that the government should be more involved in helping victims of crime obtain compensation. It may be speculated that the reason was more on moral grounds rather than equity at the time.

The demand for equal rights for all advanced significantly after the WW II. This included equal right for victims with those of law offenders for state financed services. The movement toward crime victim services received great impetus from the civil rights

movements in the US in the 1960's. Great Britain started to show interest in the matter in the 1950's and New Zealand set up a system in 1964. The idea of compensating violent crime victims reached Canada in the 1970's. In Europe Crime Victim Compensation Boards were established by a number of nations independently but was helped along by the formation of the EU and its demands on its members. EU is now extending the demand to have victim services to applicant countries for EU membership. Estonia is among the first to be considered but Latvia and Lithuania are not far behind in the process.

EUROPEAN UNION REQUIREMENTS

EU officials would like to see that Estonia have, among other laws, institutions and social services, equally a functioning Probation/Parole Service, an Ombudsman's Office which meets European standards and a Victims of Crime Compensation legislation and system which is compatible with the European Convention on the Compensation of Victims of Violent Crimes adopted November 24, 1983.

One of the key questions raised is why Estonia has created the legislation and service for victims. Has it been out of genuine concern for victims of crime or merely created a practical means by which politicians can advance their own interests, to internally in Estonia gain votes and be re-elected? The answer may be that it is both. The law reform comes at a good time when advances have already been made in crime prevention programs through the Ministry of Social Affairs and it fits in with the present government program to become more humanitarian and liberal in outlook.

It is necessary to look critically at the legislation and the development level of the Estonian Compensation system as a social service and to try to evaluate the contribution it makes for politicians in forming and facilitating international relations and acceptance of Estonia into the EU by the date and as planned. The development of the legislation and creation of the new crime victim service, if proven effective may serve as an example to other nations aspiring to become EU members, among them Latvia, Lithuania, Poland and others.

THE COMPENSTION OF VICTIMS OF VIOLENT CRIMES

It might be useful to review selected conditions set out in the European convention on the Compensation of Victims of Violent Crimes to better see how closely Estonians have decided to follow the lead provided by EU. The following five articles with specific provisions can be found in the Convention.

Article 2 1. When compensation is not fully available from other sources the State shall contribute to compensate; a. Those who have sustained serious bodily injury of impairment of

health directly attributable to an intentional crime of violence; b. the dependants of persons who have died as a result of such crime.

2. Compensation shall be awarded tin the above cases even if the offender cannot be prosecute or punished.

Article 3. Compensation shall be paid by the State on whose territory the crime was committed: a. to nationals of the States party to this Convention; b. to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.

Article 4. Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependants, loss of maintenance.

Article 8 1. Compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, or in relations to the injury or death. 2. Compensation may also be reduced of refused on account of the victim or applicant's involvement in organized crime or his membership of an organization, which engages in crimes of violence. 3. Compensation may also be reduced of refused if an award or full award would be contrary to a sense of justice or to public policy.

Article 11. Each Party shall take appropriate steps to ensure that information about the scheme is available to potential applicants.

The Estonians in their " Kuriteoohvritele Riikliku Huvitise Maksmise Seadus" which can be translated as Crime Victims State Compensation Law have enacted legislation which is very similar in content to the previously mentioned Convention. The substance and essence of the law related to the five areas dealt with are brought out here and not the exact wording of the legislation.

*Section 2.*Crimes of Violence.

In addition to the conditions mentioned in the Convention, the Estonians will pay in the case of 1. Death, 2. Serious bodily injury 3. An injury which impairs health for at least six months.

Further Estonians recognize injuries sustained while 1. committed due to accident which occurs while an offender is endangering the life and/or health of the victim in which the offender has miscalculated the legal implications of his act. 2. In connection with the victim trying to prevent a crime or its commission by a third party, in arresting or assisting a victim.

Further this applies even though the offender is an underage youth or acting without intention. It applies even when the offender cannot be determined or convicted of a violent crime.

*Section 3.*This part deals with those eligible to receive compensation.

1. Refers to the right for compensation for an Estonian citizen, landed immigrant or someone with a residence permit for a period of time and refugees.
2. In the case of death a dependant can receive compensation. This extends to an unborn child of a pregnant mother.

Article 4 Compensates victims of crimes taking place in Estonia.

An Estonian citizen can receive compensation as a victim of crime if the person was abroad as a student worker, or service related assignment, or other significant reason and in case the victim does not have aright to obtain compensation for the same injury from the state where the offense took place. In case of death the compensation will be paid to the dependant who lives permanently in Estonia.

Article 5 covers what is in Article 4 of the European Convention.

In compensation the following will be taken into account.

1. inability to work
2. the victims medical expenses
3. funeral expenses
4. losses due to the death
5. glasses, replacement teeth, contact lenses and damage to clothing.

Payments will be 50% of the last month's income as determined by income tax records.

The compensation will exclude what the victim receives from other sources.

Section 11 of the Estonian Act reduced compensation where the victim.

1) Was a participant in the crime
2) Contributed to the situation with conduct
3) Has not reported the crime in a 15 day period
4) Has previously been convicted of violent crimes

A dependent of a victim of crime can however receive compensation despite the above mentioned actions.

Compensation can also be refused if the victim refuses to cooperate with the police in solving the crime, determining the offender and testifying against the person.

Article 11 deals with the informing the public of the service.

Estonians have not placed this requirement in the legislation.

The foregoing demonstrates that essentially the Estonian legislation conforms very closely to the requirements of the European Convention. Reformers of the legal and penal system are no doubt pleased with the outcome. Politicians will have to wait to see if brings Estonians closer to acceptance into the EU.

CANADIAN EXPERIENCE

It might however be instructive to briefly review the development and history of victim compensation services in Canada to widen the context in which the Estonian legislation and service to victims of crime will operate in Europe. Estonians seem to have adopted the best features of crime victim compensation systems from around the world.

Canada has a number of Criminal Injuries Compensation Boards where applicants can direct their claims. Some exceptions exist where Provinces provide assistance through Workmen's Compensation Boards or directly through application to the Minister of Justice as in the case in New Brunswick.

The Province of Nova Scotia has an Compensation for Victims of Crime Act which is typical. Selected sections will show that Estonians have incorporated features that extend the rights of citizens to government victim service.

Section 6.1 Eligibility

Where any person is injured or killed by any act or omission in the Province of any other person occurring in and resulting from,

a. the commission of a criminal offence mentioned in the schedule.
b. lawfully arresting or attempting to arrest any offender or suspected offender or assisting a peace office in attempting to make and arrest or
c. lawfully preventing the commission of any offence or suspected offence, or assisting a peace officer in preventing or attempting to prevent the commission of such offence or suspected offence
d. the victim
e. a person who is responsible for the maintenance of the victim
f. where the death of the victim resulted the victims dependents or any of the or the persons who was responsible for the maintenance of the victim immediately before his death or who has on behalf of the victim or his estate incurred, reasonable expenses or other pecuniary loss or damages.

Compensation is also providing for unmarried spouses.

The Ontario Act is an example of the types of injuries that are compensated by the Criminal Injuries Compensation Board.

a. expenses actually and reasonable incurred or to be incurred as the result of the victims injury of death
b. pecuniary loss incurred by the victim as the result of partial disability affecting the victims capacity to work
c. pecuniary loss incurred by dependents as a result of total or partial disability affecting the victims capacity for work
d. pain and suffering

e. maintenance of a child born as the result of rape
f. other pecuniary loss resulting from the victims injury and any expense that in the opinion of the board is it is reasonable to incur.

THE ESTONIAN CONTEXT

Estonia has made concerted efforts at developing a Probation/Parole Service. On May 1, 1998 a service was developed which took into account the Canadian system. Today the service employs 176 officers and supervises approximately 7000 law offenders. A proposal had been made in 1994 by a Canadian advisor that the services include victim of crime psychological counseling by Probation/parole officers as well as using restitution extensively to compensate victims. It was decided by the Estonian government that the development victim of crime services would be delegated for development by the private social service sector but in fact a Criminal Injuries Compensation Board would be set up to complement the service to law offenders as part of the Crime prevention policy developed under the leadership of the Ministry of Justice.

Such as service has been in development for the past year in Estonia at the Ministry of Social Affairs, with a fund of 1.3 million Kroons and a national system set up in 16 sectors in the country with four District offices administering the applications and distribution of funds. While to date no applications have been received and no funds have been distributed it is expected that the program will start to function in 2001 and be able to demonstrate to EU officials in the year 2002 that it meets the standards for such a service.

Assessment of the effectiveness of the Estonian crime victim service should be made in comparison to the development of the Estonian Probation/Parole Service and that of the Institution of the Ombudsman which began functioning as part of the office of the Legal Chancellor earlier this year. Both have been necessary systems adopted from and developed on the models of other countries but experiencing “growing pains“ due to the resource limitations, both financial and human, existing in Estonia at this time of its economic, political and social development. However, all three new services are steps in the right direction as seen by criminologists and politicians.

While more established systems may function at higher levels of performance the developing system in Estonia must be judged to some extent by a different criteria. That being, is the legislation up to world and EU standards and is it in proportion, in size, budget and professional staff resources to other victim services offered to for example, by the Probation/parole service to law offenders, the Ombudsman to the general public suffering at the hands of government officials. EU officials will want to know whether the service has

been developed as a show piece or will truly functions to be able to serve persons from all EU countries equally with those member countries with which it will be linked after accession.

CRIME VICTIMS IN ESTONIA TODAY

Crime victims have become a public issue after discussion about economic co-operation with the EU and migrant labor questions as it is expected that there will be an increase in the movement of people in search of work and other opportunities to improve life. Along with this there is expected a movement of unemployed persons who are seen by some as a risk population. Discussions are under way to limit the free movement of people during the next five or seven years to allow for adjustments to be made. The same limits may be applied to persons who become victims of crime in the new member countries. Preparations and adjustments such as developing appropriate services will have to be taken into account before equal services can be expected to be given by the new member country.

The media has given extensive accounts of the number of law offenders who have come to Estonia to seek " greener pastures " but failed and became foreign guests in the criminal Justice and Penal/ Correctional system. On the other hand Estonians have been seeking fortune in greater numbers in other EU countries. A colony of organized crime members and associates of Estonians has developed near Malaga in Spain. Prostitution in Finland and illegal business dealings with Russia are also noted. The criminal activities of Estonians now extend to most EU countries to include the drug trade, prostitution, car thefts, business frauds as well as violent personal crimes. Whether foreigners in Estonia compared to Estonians abroad commit more crime is not accurately measurable. However, the number of victims of crime seems to be at least constant if not growing. There are 50,000 registe4rd crimes in Estonia per annum and the estimated number of victims of crime is 350,000 in a population of 1.4 million people.

Similarly victims crime have found their way to Estonia. Tourists, others seeking novelty, adventure and even crime opportunities in a new area where they are yet not well known can be easily detected, apprehended and convicted have found Estonia a land of opportunity. They become victims of crime. Other persons have left Estonia to become victims elsewhere. For example recently a student from the Euro University was killed in Stockholm, Sweden. Statistics are not available at this time on the balance of trade, in victims.

THE FUTURE OF CRIME VICTIM SERVICES

American experience has shown that crime victim services need to be improved. The recommendations made by one exert in the field include the following:

a. The application procedure should be simplified and streamlined. In Estonia the system is in process of being developed but to date no clients have sought out the service.
b. The Board is authorized to make emergency awards within forty-eight hours. It is not envisaged that this could be implemented under the present human resource conditions.
c. The custom of waiting to see if the victim is reimbursed by other agencies is abandoned. Awards could be made on the fact of victimization. Estonians have not experienced this problem.
d. The Compensation Board could pre-train personnel in other social service agencies to re-screen applicants. Estonians plan to use existing government employees to handle the small caseload.
e. Bilingual staff members should be employed. This remains to be seen but in Estonia Russian speaking persons are necessary.
f. A widespread public information program should be instituted. It has been noticed that no information about the availability of the service has taken place.

The above indicates that the service handled by government officials will experience the above mentioned problems and that the Estonian system may also experience them. If the problems are not solved within the next year, it may delay the full functioning of the program and thus also delay acceptance into the EU. Experts in Estonia are aware of the possible problems related to implementation of victim services. Politicians accept this as acceptable in a developing system.

Estonia drew up legislation and set up services through the Ministry of Social Affairs as part of the national crime prevention program. Estonian recognized the need to not only appear to be serving the public who were becoming victims of crime in increasing numbers, and not yet having the resources to obtain insurance or private security to better to protect themselves and cover the attendant losses to being victimized but also were reportedly motivated by the EU accession talks and negotiations going on.

Public discussion about the options in victim services took place and 2,4 million Kroons was spent in 1999 – 2000 on developing victim services in Estonia. At this time no one organization is providing psychological assistance throughout Estonia but crisis telephone lines exist and public, as well as police and ambulance service personnel have received training and education. The public is still to a large extent left without effective service. It may be that the establishment of the Criminal Compensation Board will also be seen more as a ploy for being accepted into EU than providing real service to a large part of the population of Estonia who need assistance. Violent crime may be popular but involves a very small percentage of the population.

There are good reasons for setting up victim's services and professionals in Estonia have recognized the following:

a. it promotes victim centered criminal justice system development
b. It is humanitarian
c. It is a social welfare idea supported by a segment of the population
d. It indicates that the state is willing to accept some responsibility for not being able to prevent and control crime
e. It provides equitable justice
f. It establishes reciprocity in relationships
g. It may lower the feeling of outrage in victims
h. It expresses public solidarity and sympathy toward victims of some crimes
i. It is an example of an idea that can be expanded and used by existing systems helping citizens.
j. It promotes co-operation between victims and the Criminal Juastice system which needs their assistance as witnesses

CONCLUSIONS

The primary purpose for examining the development of a crime victims Act and Service in Estonia was to determine if it was contributing to reform which is leading Estonia towards adopting and developing a more victim centered criminal justice policy. The expert professionals, including Estonian criminologists and social scientists who have welcomed this direction have been joined in by politicians who are interested in having Estonia join the European Union by 2003.

By examining the specifics of the EU backed Convention for victims and comparing it to the Estonian system with reference to Canadian developments it is possible to conclude that Estonia is ready for acceptance into the EU because it has developed legislation and a victim service that meets world standards.

The value of the EU has been primarily in motivating action on the part of Estonians. They set new standards. Examples of the systems of other EU member countries were made available. The possibility of a victim service helping to join the EU has motivated politicians. EU member states and other countries with Canada among them have offered guidance and training and education assistance. Follow up will come at the time of negotiations for acceptance into the EU.

Comparing the development of the Estonian Probation/Parole Service and the Ombudsman's office the present crime victims service being developed at the Ministry of

Social Affairs must be viewed positively. The EU membership question has resulted in action being taken, without further delay and in the right direction as far as professionals and politicians are concerned. Violent crime victims are likely to benefit the most from the Estonian Crime Victims Board. This legislation and related services in Estonia are part of a small but significant step in the direction of crime victim policy development and has enabled Estonians to related to EU countries as an equal work partner. This can be educational and serve as a useful example to other countries wishing to become European Union members.

VIRTUAL VIOLENCE: NATIONAL AND INTERNATIONAL ASPECTS OF CRIME PRESENTATION ON LITHUANIAN TV CHANNELS

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The presentation of violent crime in mass media is a new topic neither for criminology, nor for communication studies. The popularity of this genre can be explained by two factors: first, by the civic duty of the democratic media to inform people about the most acute and important problems in society, among them – about violent crimes, and, second, - by elemental fact that media are an industry, and there is a big public demand for such attractive symbolic goods as the virtual violence. Unfortunately, civic and commercial functions of mass media very often contradict to each other, and virtual violence is a good example of such disagreement. Indeed, while there can be a lot of discussions and interpretations about the impact of violence in media on individual behavior, the social consequences of the presentation of violent crime on TV or press more than obvious: it leads to the over-estimation of crime situation in the society and creates kind of the moral panic among inhabitants[27]. In such circumstances people are eager to support radical and non-democratically means for "combating criminality" than - humanistic crime control and prevention policy. Due to this fact the over-presentation of violence in media should be matter of concern not only for civic activists, who are worried about its impact on children, but also for those, who are interesting in the institutional development and improvement of criminal justice system, in implementations of new democratic and humanistic forms in penal policy.

However it would be mistakenly to suggest that virtual crime, as well as virtual violence is extremely a national phenomenon expressing cultural traditions, moral stance of society, or situation in the media market. Virtual crime - differently than real crime - does not have the national jurisdiction, and in the modern *global village* it freely fluctuates across the boarders. Violent crime presentations on the main Lithuanian TV channels could be taken as an example of such international virtual crime penetration into national audience.

The analysis of crime and violence presentation on Lithuanian TV channels had been made in 1999-2000 at Vilnius University in the framework of the program *Juvenile Justice in*

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[27] See: Cohen, Stanley. Folk Devils and Moral Panics: The Creation of the Mods and Rockers. London: MacGibbon & Kee. 1972; Gunter, Barrie and McAleer, Jill. Children & Television. (2nd Ed.) London: Routledge. 1997 p. 91; Howitt, Dennis. *Crime, the Media and Law.* Chichester: John Wiley&Sons. 1998, p. 29-34.

Lithuania: Education and Public Awareness Campaign that have been coordinated by Lithuanian Centre for Human Rights and financed by United Nation Development Programme. It sought two tasks:

1. to analyze quantitative parameters of the criminal justice related information in news and special ("law and order") programs;
2. to evaluate the amount of violent video information on TV screens.

Four national TV channels were selected for monitoring: LTV (controlled by the Government), TV3, LNK and BTV (all three were private channels). These channels presented the crime related information mainly in news and special programs; crime themes also had been touched in films, but in pure imaginary form. The information related to criminal justice on Lithuanian TV channels was monitoring during two periods:

from 1999.10.15 until 1999.12.30, and

from 2000.02.15 until 2000.05.15.

The news were observed daily – one evening edition for each channel.

Following special programs had been selected for monitoring:

TV3 – ***X sektorius (X Sector)*** - 21 telecasts;

LNK – ***Visiškai slaptai (Top Secret)*** -13 telecasts (monitoring during II period);

LTR – ***01-02-03*** - 9 telecasts (monitoring during I period);

BTV – ***Kruvinoji banga (Bloody Wave)*** - 124 telecasts.

Films on TV channels were observed during one period: from 2000.02.15 until 2000.05.15. Films had been watched:

During workdays - since 6.00 p.m. until 11 p.m., and

During weekends – since 5 p.m. until 12 p.m.

There were analyzed 317 films (general length 19630 min.) on TV3, 325 (18055 min.) – on LNK, 114 (5945 min.) – on LTV, 305 (919024 min.) – on BTV.

Results of monitoring.

In Lithuanian electronic media information about the criminal justice problems was usually reduced until simple description of crime events and fitted into the context of general information about crime situation in society. The following figures and tables present crime related information in news, special programs and films on main Lithuanian TV channels.

TV Channels.

The Figure 1 shows how TV news programs on Lithuanian TV channels have presented crime related information:

TV Channel	The average of all video reportages in one news telecast		The average of crime related video reportages in one news telecast		The average of duration (in sec.) of crime related video reportages in one news telecast	
	I Period	**II Period**	**I Period**	**II Period**	**I Period**	**II Period**
TV3	16,9	16,8	2,4	2,2	103,2	115,6
LNK	16,5	16,2	1,9	2,2	89,9	73,5
LTV	15,5	15,7	1,5	1,5	79,1	75,2
BTV	13,8	12,4	0,8	0,7	0,5	28,0

Table 1. The average of number and duration of crime related video reportages in news programs of main Lithuanian TV channels during two periods of monitoring (1999.10.15-1999.12.30 and 2000.02.15-2000.05.15)

As one could see, crime occupied visible place in TV new programs. Among four national channels only BTV showed descend interests to crime related information in its news program. However it could be explained by the fact that during monitoring period all crime related information on this channel had been presented in special program *Kruvinoji banga.*

The amount of crime related information in news program can be also evaluated from the next Figure 1 and 2, which present the weight of crime related reportages among all reportages:

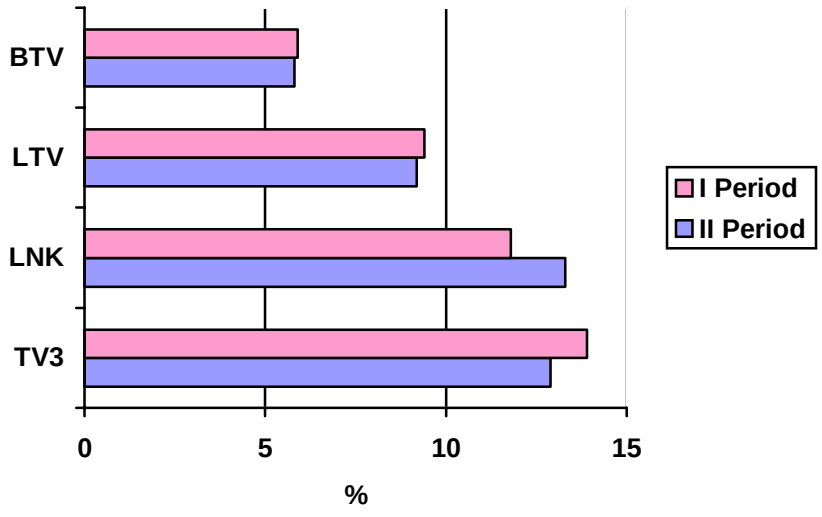

Figure 1. The weight of crime related video reportage among all video reportages in TV news programs (%)

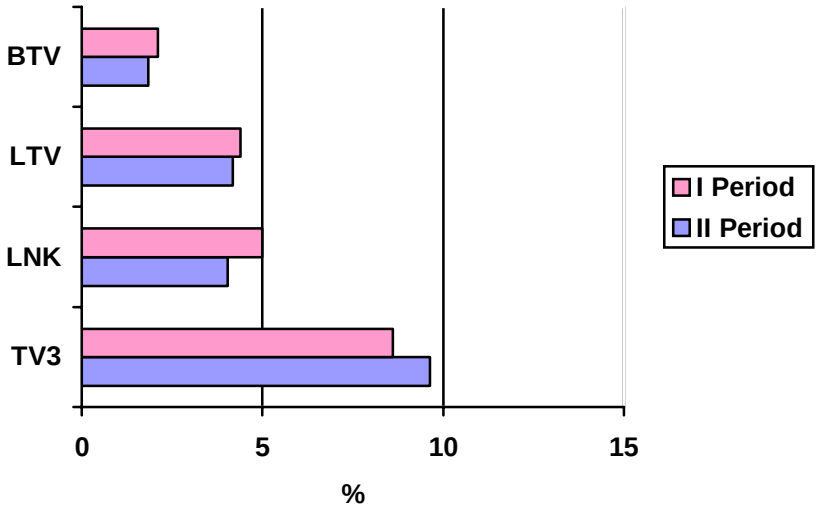

Figure 2. The duration of crime related video reportages comparing with the duration of TV news.

Figures 1 and 2 show obvious "leadership" of two popular private TV channels – LNK and TV3 - in presentation of crime related reportage in news programs. However, same differences one can observe in the structure of video information about crime events. Following figures 3 and 4 show the proportion between domestic and foreign crime related information:

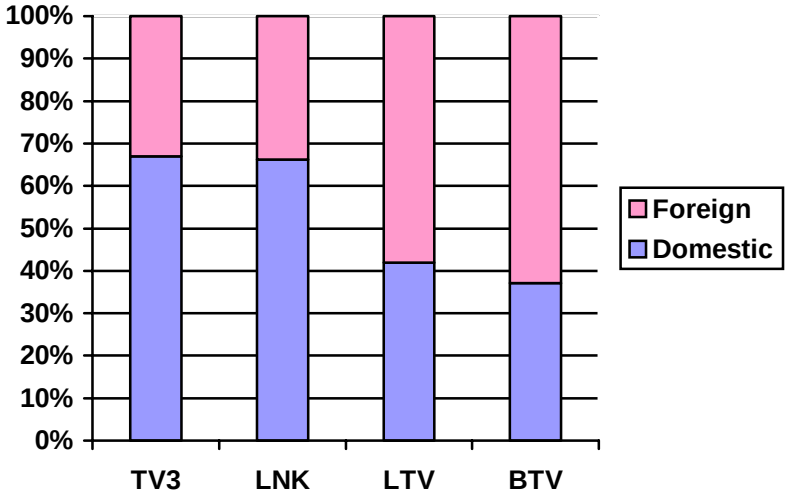

Figure 3. Proportion between domestic and foreign crime related information in news programs on Lithuanian TV channels 1999.10.15-1999.12.30

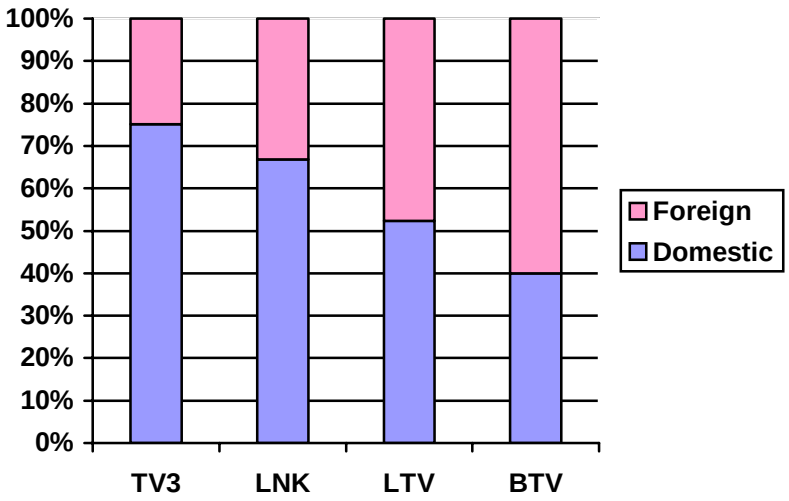

Figure 4. Proportion between domestic and foreign crime related information in news programs on Lithuanian TV channels 2000.02.15-2000.05.15

Leaders in presentation of crime related information – news programs on TV3 and LNK – emphasized domestic events, while news on LTV and BTV – foreign ones. These channels also differently presented violence in their news programs:

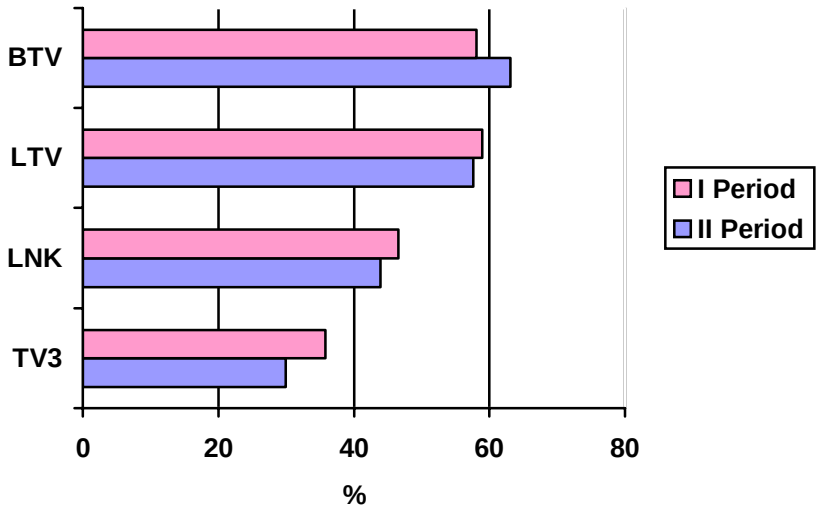

Figure 5. Video reportages about violence (%) in crime news on Lithuanian TV channels.

The "leadership" of LTV and BTV concerning presentation of violence could be explained by above-mentioned fact that these channels in their news programs translated more crime related information from abroad. However, this kind of information is produced and transmitted by international news agencies, which – in accordance with demands of media

market - are oriented to exclusive information. Violence, without doubt, is a kind of such exclusive information.

The monitoring of main Lithuanian news programs, on the one hand, clearly showed that crime news is enough popular genre on national TV channel, but from another – discovered "imported" character of violence in national TV crime news.

Special programs

Special programs are directly devoted to the problem of criminal justice in the country and due to this fact crime related information there had mainly national connotation.

The general amount of crime related information in special TV programs is presented in following Table 3:

TV channel	The average of video reportage in one special program's telecast		The average of crime related video reportage in one special program's telecast		The average of audio reportage in one special program's telecast		The average of crime related audio reportage in one special program's telecast	
	I Period	**II Period**	**I Period**	**II Period**	**I Period**	**II Period**	**I Period**	**II Period**
TV3	13,6	9,9	9,8	8,1	5,5	4	4,8	4
LNK	0	8	0	6,8	0	5,5	0	3,5
LTV	18,8	0	10	0	9,5	0	4,3	0
BTV	9,4	10,6	5,4	5,2	8,3	7,9	4,4	4,2

Table 2. The average of video and audio reportages in special TV programs during first and second periods of monitoring.

Figures clear showed that the amount of crime related information in special programs was much bigger than in news program. It worthwhile to note that, although the intensity of crime presentation in the program *Kruvinoji banga* (BTV) was not the highest among other programs, nevertheless due to the daily translation, it was the real leader in crime presentation on Lithuanian TV market.

Next Pictures 6 and 7 present intensity of violent information in TV special programs:

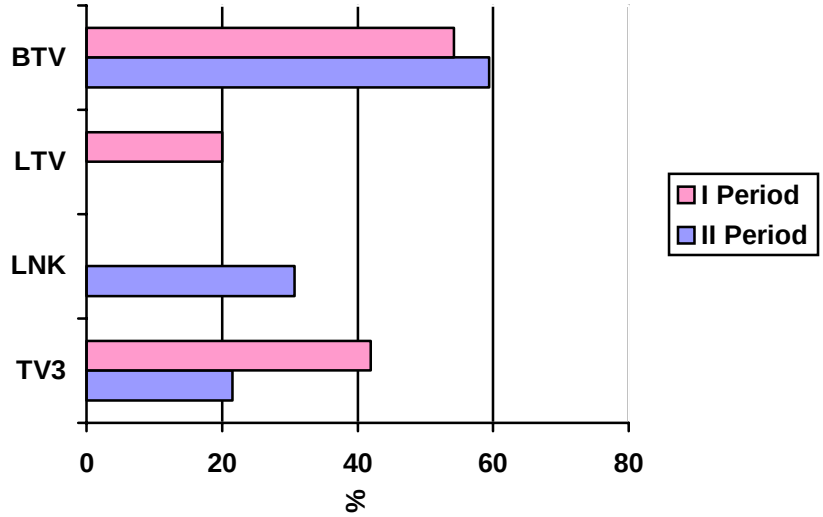

Figure 6. Amount of violent video reportages (%) among other crime related video reportages in special programs of Lithuanian TV channels.

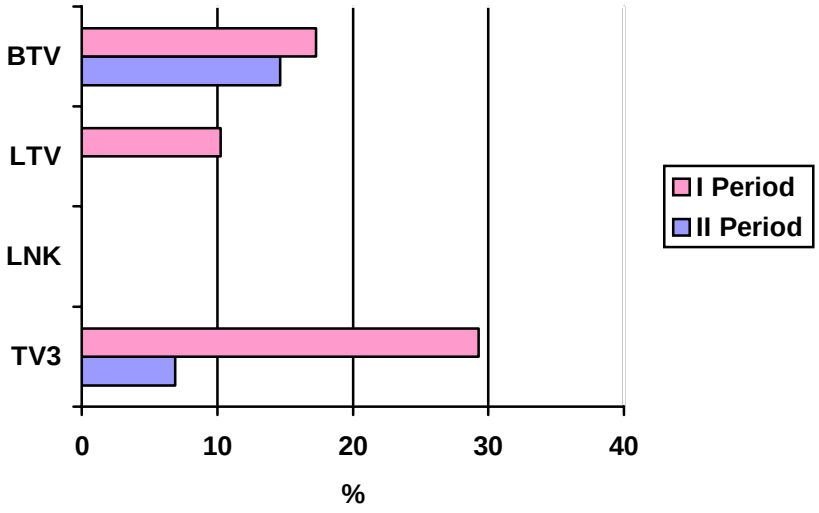

Figure 7. Amount of violent audio reportages (%) among other crime related audio reportages in special programs of Lithuanian TV channels.

The leadership during monitoring period belonged to special programs from BTV and TV 3: both were eager to emphasized video or audio violent information in their crime-related reportages. However differently from news program the high proportion of violence in the video reportages was "supported" by national criminal resources.

Monitoring of special programs showed that the structure of the presentation violent crime was similar to news program at least in two cases – for BTV and TV3. For other

channels - LTV and LNK – violence in their special programs occupied fewer places than in crime news.

Films

Films on TV screens rarely inform their funs about real social problems, including the problem of criminal justice. Viewers usually are able to recognize imaginary character of film scenes and do not identify them with reality. However films' heroes and their behavior could influence viewers, especially if later experience the trouble with socialization, i.e. if traditional societal institutions like family, school, church, etc. cannot help to individual to become a full and equal member of society. In such case films can provide viewers with new patterns of social behavior, show possible solutions of concrete problems or conflict situations. Depending on the quality of films, such influence could be as negative, as positive. In criminal films characters usually demonstrate brutal and violent way in solving problems, and due to this fact they could negatively influence behavior of viewers, especially of juveniles.

The weight of criminal films on main Lithuanian TV channels is presented in following Table 5:

TV channel	Weight of criminal films by number		Weight of criminal films by length	
	Working day	Weekend	Working day	Weekend
TV3	1,8	7,1	3,2	10,0
LNK	15,1	23,4	16,1	24,4
LTV	7,9	21,1	8,6	15,2
BTV	18,4	44,2	25,9	40,1

Table 3. The weight of criminal films (%) among all films on Lithuanian TV channels.

As one can notice, the biggest interest to criminal films had been showed by BTV and much less – by TV3. The similar tendencies could be observed in presentation of violent scenes in films:

TV channel	The average of violent scenes in all films		The weight of the length of violent scene among all films	
	Working days	Weekends	Working days	Weekends
TV3	3,4	5,0	0,7	0,9
LNK	6,3	11,3	0,9	2,1
LTV	2,0	3,0	0,5	0,4
BTV	9,8	23,8	1,2	1,8

Table 4. The average of violent scene and weight of length (%) in films on Lithuanian TV channels.

The less "violent" channel from this perspective was LTV and TV3, the leader – BTV. Next table 7 shows the structure of violence in films on TV:

TV channels	Weapons' usage	Fighting	Torture	Sexual abuse	Explo-sion	Homicide
TV3	528	389	75	12	46	86
LNK	1197	603	216	23	138	167
LTV	125	88	4	5	7	39
BTV	2054	1148	179	39	201	327

Table 5. Number of elements of violence in films on Lithuanian TV channels during second monitoring period.

As one can see from this table, the most popular scenes in films were usage of weapon and fighting, especially on BTV and LNK channels. After - homicides (BTV), tortures (LNK), and explosions (BTV).

Analyzing the possible negative influence of films on the audience, it is important to pay close attention not only to the intensity of the criminal films translation per day, or to the number of violent scenes in the films. No less important to learn the distribution of violent scenes during TV translation.

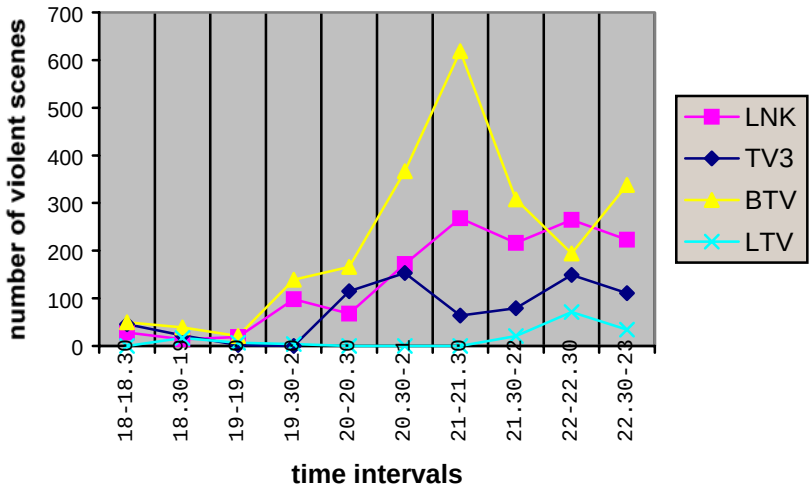

Figure 8. The distribution of violent scenes during working days on Lithuanian TV channels.

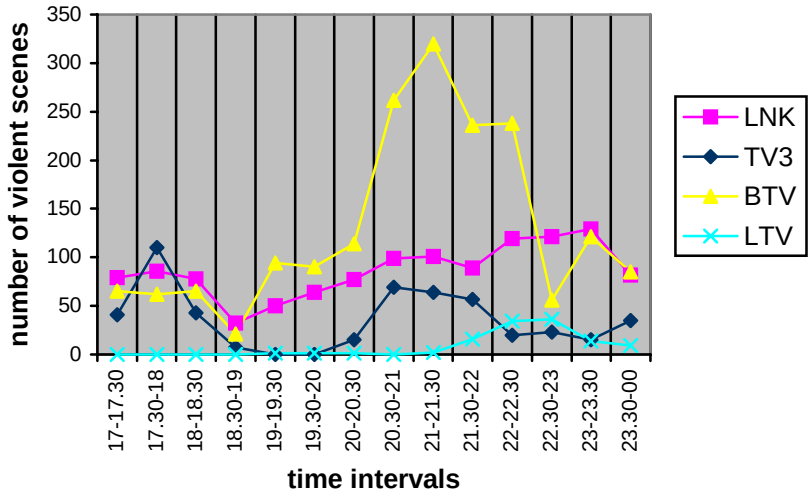

Figure 9. The distribution of violent scenes during weekends on Lithuanian TV channels.

Figures 8 and 9 clearly show that each TV channel has it own "schedule of violence": the maximum of violent scene on BTV fitted in the period 21:00-21:30 (as for working days, as for weekends); LNK – 21:00-21:30 and 22:00-22:30 – for working days and 23:00-23:30 – for weekends; TV3 – 20:30-21:00 and 22:00-22:30 – for working days and 17:30-18:00 – for weekends; LTV – 22:00-22:30 – for working days and 22:30-23:00 – for weekends. Having in mind that the most popular watching interval for viewers is from 19:00 until 21:30, it is easy to realize that among TV channels only LTV intentionally or not tried to protect their viewers against the virtual violence on the screen. In this context it is worthwhile to notice curious policy in films translation on BTV: differently than in other channels, the maximum of violence there fitted in the interval from 20:30 until 22:00 (57,7% of all violent scenes – for working days, and 44,7% – for weekends.

The above-mentioned results shows that majority of scenes of violence fitted in the most popular watching interval of many Lithuanian channels, and due to this fact could negatively influence young audience. Unfortunately, limited resource of research in question did not allow deeply investigate this issue and to verify the hypothesis about negative impact of virtual violence on the audience.

Also it was interesting to learn the geography of the violence in films. The most "violent" BTV channel demonstrated films from Russia, USA, Great Britain, France and Canada. Less "violent" LTV channel demonstrated films from Nordic countries, Germany, Poland, and Lithuania. As one can see virtual violence in case of films has obvious international character.

The quantitative analysis of crime related information on main Lithuanian TV channels clear showed that while the problems of criminal justice *de facto* had been reduced until

simple crime events presentation on TV screens, there was an obvious orientation of TV channels to the violence. It looks like many representatives of TV channels seriously supposed that virtual violence is the best-selling production for their audience. The social cost of such narrow-minded policy is not reflected and calculated by them. However, although the "policy of violence" on Lithuanian TV had national roots, the violent content of video information very often had international origin – especially in case of crime news and film. Due to this fact the problem of reducing virtual violence in society cannot be solved only on the national level; it needs international cooperation as well.

ASPECTS OF ORGANISED TRANSNATIONAL CRIME IN COUNTRIES OF TRANSITION

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Criminological Research centre of Latvia

The development of organised crime is one of the most common problems of the XXth century. One of the most dangerous aspects is transnational. To get the **concept of the organised crime**, logical borders of it should be clear. The first definition is given in USA 1968, it says that organised crime is illegal actions, committed by highly organised members of the group, connected with are involved in illegal providing of goods and services. Some scientists just name all the types of the organised crime. Anyway all the scientists agree that no ideal definition can be created. **Internationalization of modern society** gives certain consequences in the development of crime. Development of transnational economical, social and cultural connections gives transnational character to organised crime. Only cooperation among countries can solve the problem. To fight the organised crime economical, political situation of the entire region should be taken into account. Internationalization definition includes that transnational crime is when criminal groups are committing crimes in the territory of other countries, establishing more or less stable network.

Most common are terrorism, drug trafficking, different kinds of corruption etc. Without special mechanism single countries are helpless. From objective side- if the power and force of criminal group exceeds the abilities of local justice, from subjective side- if high rank authorities are involved. The **Evolution of criminogenic factors** and socialcultural factors are developing together. There are a lots of criminogenic economic trends, but the most dangerous are trend of regional differentiation; enforced immigration from developing countries to European countries The immigrants cannot get job there and involve into organised criminal groups; concentration of new technologies in particular countries; the urbanization, connected with protection of local agriculture. The **Evolution of socialcultural factors** is not so dangerous. It is mainly connected with the immigration. If the country does not care about the social and cultural assimilation of immigrants and doesn't provide appropriate social care *ab initio*, it can cause dangerous consequences. The examples of this process are Algerians in France, Italians in the USA etc.

There are certain **measures to prevent transnational organised crime.** One of the mains is the reaction of internationalization. European Council and European Union have faced to serious problem- protection of traditional criminal justice. Different from other areas,

countries are trying to avoid internationalization in this sphere. Reaction can be enacted ether as subordination or as coordination. To make cooperation successful:

1) all the cooperative mechanisms should cover as wide area as possible;
2) all the countries should honestly follow the conventions;
3) all the countries should have the necessary financial and technical support;
4) The information exchange and the coordination if measures system should work perfectly.

To fight the transnational crime, the **cooperation in prevention of international organised crime**, is vital. The cooperation is being established as in the European Union, as with certain countries (for instance Russia and Latvia). Also important is the cooperation in the Council of Baltic Sea countries and UN.

PREVENTION OF LAUNDERING OF PROCEEDS DERIVED FROM CRIMINAL ACTIVITIES A FUNDAMENTAL ELEMENT FOR FIGHTING ORGANIZED CRIME

Aldis Lieljuksis,
Bureau of money laundering prevention, Latvia

Issues:

1. *Situation with money laundering prevention.*
2. *Tasks to be dealt with in the legislative and organizational areas in the nearest future.*

Today, speaking about the global problems concerning the fight against transnational organized crime, I will dwell on – to my way of thinking - an extremely essential element of combating it – prevention of money laundering. The necessity of dealing with and reinforcing of the work directed towards prevention of money laundering on an international level is determined by the following factors:

- along with the development of the situation in the global economics when various countries are involved in the processes of goods and services production, in order to finance them, credit and financial institutions of several countries are also involved which leads to the increase in the international circulation of monetary instruments;
- alongside with the development of legitimate economics also develop underground economics, including shadow economics, and organized crime which for the purposes of financing and money laundering needs both legitimate, subject to control and safe financial institutions of different countries and less controlled offshore credit institutions or completely non-controlled and unsafe ones as those located in the countries of Pacific islands – Palau, Nauru, Vanuatu. One can expect that for the purpose of avoiding confiscation, organized crime structures will more actively use offshore territories and countries with low customer identification requirements for transfer and hiding away of their assets;
- it has been stated that there is a certain correlation between shadow economics and the possibilities of money laundering – the higher the level of shadow economics – the more difficult it is for the law enforcement authorities to detect money laundering, especially on an international level. According to the calculation by the Ministry of Finance, the level of shadow economics has increased from 25% in 1993 to nearly 40% in 2000. It is clear that the proceeds of the organized crime structures comprise a notable part of the shadow economics which calls for more effective combating of this particular criminal area;

- the development of electronic settlement systems makes it possible to move huge financial assets in the global financial space in a short time which hampers the ability of law enforcement to trace the flows of assets, to find illegal proceeds and confiscate them. In such a situation it is necessary to elaborate and introduce precise mechanisms of account opening and freezing;
- organized crime manages to launder the proceeds of the lucrative business of drugs, arms, alcohol and tobacco production and smuggling by means of legal business activities which results in damage to the legitimate business and competition, however, the most alarming is the fact that the assurance about being able to escape punishment and the assurance about the weakness of the state is growing in the mind of the organized crime and that the organized crime takes real steps to reinforce their role in economics.

To follow up, it is important to state what measures are taken, what effects they result in, what are the problems and what is to be done to drastically improve the situation.

The fight against money laundering has been around for nearly 20 years. During this period of time an appropriate legislative basis as well as various authorities has been established, certain experience has occured. Let us take a look at the situation in the areas of money laundering prevention and its combating. After regaining of independence and up until now combating of money laundering can be split into three periods – awareness of the problem in theoretical terms when Latvia, driven by the will to participate in international processes, adopted a number of international instruments. To this very day we have become a party to all international instruments connected with fight against money laundering – Vienna and Strasbourg Conventions, UN Convention On Transnational Organized Crime, we have implemented nearly all of the 40 FATF recommendations, we have established and implemented the necessary legislation for credit institutions. Work in regard to financial institutions is still under way. There is no reason to complain about the lack of political will during that period.

The next stage concerns the establishment of appropriate authorities. At this stage we are evidently stuck right in the law enforcement area because no appropriate money laundering prevention units have been created under the authorities fighting organized and economical crime. On the other hand, requests for additional financing for creation of the necessary units from the part of these authorities meats no support. This, in turn, indicates to the lack of political will in regard to creation of a strong anti-money laundering system. The negative tendency is upheld by the lack of clear understanding of the significance of the issue, denial of the experience of other countries as well as a certain reluctance from the part of those who fight money laundering. The results attained will be discussed a bit later. It goes without saying that such a situation satisfies also the organized crime formations. Thereby, the efforts of those who are involved, that is, of financial institutions, credit institutions, the financial

intelligence unit and of the Prosecutor's Office in the capacity of a monitoring body are fruitless since the possibilities to identify the flow of illegal proceeds and their sources, to freeze and confiscate them are not made use of. Moreover, the possibilities of the Control Service are not utilized in detection of predicate offenses. The low effectiveness of the current system reveals itself in some figures. In 1999 the total amount of damage arising from all criminal offenses amounted to Ls 62 035 664 but in 2000 – Ls97 472 512. That is a 30% increase. In 1999 property has been frozen in amount of Ls 62 977 or 0.1 % from the amount of total damage but in 2000 in amount of Ls 2. 072 174 which is 2.1% from total damage amount. Such a situation is unlikely to satisfy.

Finally the third stage with a look to the future. It is necessary to enhance the legislative basis and extend the number of predicate offenses at least to the extent the requirements of the UN Convention On Prevention of Transnational Organized Crime provide, an affective account freezing system is to be developed, the mechanisms of freezing and confiscation are to be improved in accordance with the international requirements. As far as organizational side is concerned – specialized units to deal with money laundering are to be established under the State Police and the Financial Police as well as within the Organized Crime Bureau - whose task would be detection of money laundering related offenses.

Further I will dwell on the measures that are to be carried out on an international level. At the moment, to my way of thinking, it is crucial to solve (as effectively as possible) the issues of customer identification in banks, international cooperation of information exchange and the detection of specific criminal offenses. These topical matters I will look into in detail. We have discovered that by using the gaps in customer identification procedures some "businessmen" open accounts with the help of false or stolen documents. I believe that it is impossible to succeed in the fight against money laundering if there is no opportunity to identify the actual natural persons who operate with the accounts.

- over the past two weeks we have carried out a questionnaire addressed to the FIUs of various countries to find out the customer identification procedures in banks. We have received replies from Belgium, Bulgaria, New Zealand, Aruba, Sweden, and Bermuda. The spectrum is quite comprehensive. As far as customer identification is concerned, the situation is similar in these countries – namely – customer identification is a requirement. The differences arise from the procedures. Firstly, by specifying concrete types of documents that can be submitted we see that those are passports and identification cards. The Latvian law only talks about documents that contain identifying information, which could also be a hunter's card or an employment card. The legislation of Bermuda mentions "reasonable requirements". Other requirements provide that the accept of a notary of that country where the account is opened is necessary for the document copies that are submitted (Bulgaria, Aruba). As a common drawback comes the impossibility to check the authenticity of documents, that is the

inaccessibility of appropriate databases containing passport and I.D. card samples for credit institutions. Except for Sweden and Belgium, the issue regarding the situation when there is a possibility to open accounts without personal appearance with the help of Internet is not solved. I believe that this particular procedure calls for an extremely concrete procedure to prevent persons who are practically impossible to identify to open accounts and operate with them;

- The international cooperation problem is linked to information exchange among countries, which are not members of the *Egmont* group. Germany may be mentioned as an example since it is not a member of the Egmont group and it has not established a uniform authority responsible for cooperation. Thereby the information exchange is hampered. The work done in the area of international agreements on classified information does not stand the critics. Taking into account the fact that the operative information on organized crime is classified as a state secret, without such an agreement the cooperation is possible more in theoretical and training terms. At the moment such agreements, effective in Latvia, have been signed with Lithuania, Estonia, Czech Republic, Italy, Germany. The efforts of the responsible bodies should be enhanced in the nearest future.

Latvia has a good cooperation experience in detection and investigation of specific offenses. Unfortunately, I cannot produce a single example in regard to any sizeable organized crime assets confiscated by Latvia in any other country as a result of international cooperation. I do hope that the working group on the new Criminal Procedure will prepare the necessary amendments to the legislation of Latvia which would foster freezing and confiscation, value confiscation of illegal proceeds and provide for a possibility to share assets with other countries. However, that will not be enough without appropriate education of officers conducting operative activities concerning detection and freezing of organized crime assets.
I do hope that the overall work does not fail and we will succeed in showing the world the true power of a democratic country in the fight against organized crime. Thank you very much for your attention.

FIGHT OF ORGANISED CRIME, TENDENCIES OF DEVELOPMENT OF ORGANISED CRIME FROM THE POINT OF VIEW OF CRIMINAL POLICE OF LATVIA

(Summary)

Vilnis Kipens,
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One of the most difficult and complicated forms of crime is organised crime, because it at most affects political, economical and legal processes of society. Organised crime is becoming more and more complicated and international, members of organised crime commit crime in more than in one country.

As one of biggest stimulus in development of organised crime in Baltic States there can be named process of re-independence, which creates totally new circumstances of economic life. Sharp decrease of state property and increase of private property strengthen inadequacy not only between different groups of population, but also made changes between criminal groups. After getting independence of Baltic States international organised crime groups "wake up" and start to estimated chances of Baltics as new market for drugs, source of prostitution, trading and trafficking in arms, contraband, illegal immigration and money laundering. Criminal groups from Russia became especially active.

Today we can say that there are attempts to increase influence from the side of Russian organised crime groups, through Russian "thieves in law", and attempts to redistribute spheres of interest. That is also explanation for sharp increase of number of ordered murders of leaders of organised crime groups. Instability inside criminal world can be observed, because of above mentioned redistribution of spheres of interest and emergence of small criminal groups, who totally ignores rules and leaders of criminal world, called "those without limits". In one word we can say that all this influence stability of criminal groups in Baltic States.

Bearing in mind all mentioned, we can prognose that in 2001 there will be:

1. Redistributing of common "treasury" of criminal groups after changes in influence;
2. Increasing influence level of criminal group of Haritonov, after its leader's (I.Haritonov) releasing from prison in this year;
3. Influence and pressure of Russian criminal groups will go on.

Situation of organised crime

- Groups, which are involved in organised crime, have constant hierarchy: leader, "treasury" holder, leaders of brigades, members of brigades, sponsors, and involved persons. Every of these categories have strict duties;
- Dominant part of members are men, but there have been changes, especially in connection with economic crime;
- Co-operation of criminal groups can be observed not only in criminal activities, but also in entertainment business and another kinds of business;
- Co-operation with adequate groups in other countries (Russia, Lithuania, Germany, etc.) in spheres of contraband, and illegal transition.

Criminal groups in Latvia

Group of Haritonov – is called after its leader's surname. Have support from adequate groups in Russia. Act in biggest cities of Latvia. Main activities – racketeering, contraband, thefts of cars and giving back these cars to owners for payment.

Group of Volvac – have wide contacts with Russia, Israel, United Kingdom, Germany. This group now has divided in two separate groups. Main activities – contraband, money extortion.

Group of chechens – very poor information about this group, because o fit nationality. But it is known that this group is involved in oil business in Ventspils (biggest city dealing with oil), bank business, building business, and in spreading of forged money.

Group of "Pardaugava" – controls a part of territory of Latvia. Main activities – economic crime and money extortion. Huge co-operation with Russia.

Group of "Adu" – main activities – thefts of cars. Group always tries to deal things in diplomatic ways (by mediators). Have support from Russia and biggest part of small groups in Latvia belongs to this group.

According to informal information, there are 150 criminal groups and brigades in Latvia.

Main criminal activities in Latvia

As mentioned above, there are 5 biggest groups in Latvia, which is difficult to divide in clear groups by activities, because they consist of small groups which are specialised in certain towns, areas, or activity. Almost every group in Latvia is involved in oil and its products contraband, illegal trading of weapons, money laundering, prostitution, illegal trade of drugs, money extortion, etc.

There can be observed consolidation of interests of groups in great extent. Organised crime is developing and affect more and more new spheres of life. Criminal groups create legal enterprises, invest money in legal economy, and real estate.

Due to strengthening of international co-operation of criminal groups, Latvia has become a transit country for drugs and contraband. Contraband is close involvement with corruption of state officials. There can be observed also increase of stolen cars, which have been deliver to Russia, Belorus and other countries. Criminal groups have wide contacts with officials in all these countries.

Main areas of activities

- Main activities of criminal groups of Latvia is located in biggest towns and Riga (capital of Latvia);
- Criminal groups co-operates with similar groups in Germany, Poland, the Netherlands, Finland, Estonia, and Lithuania; this co-operation is connected with drug trading and trafficking, car thefts and co9ntraband;
- Criminal co-operation is increasing in direction to Russia.

DEFINITION OF ORGANIZED CRIME IN LATVIA'S CRIMINAL CODE AND IN UN CONVENTION ON PREVENTION OF ORGANISED TRANSNATIONAL CRIME

(Summary)

Aleksejs Loskutovs,

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In Article 21 of Criminal Code of Latvia which is in force today, **organised group** is defined as stabile association of more than 2 persons, which is created with purpose to commit mutually (at least one) serious or very serious crime; participants of this group have divided their duties before committing crime.

UN Convention provides that **organised criminal group** is association of at least 3 persons, which act for constant period of time and act mutually with purpose to commit one or more criminal offence provided in convention, and therefore directly or not directly get some kind of financial or other benefit. Besides that:

1. **Serious crime** is criminal offence which can be punished with imprisonment for at least four years or severe punishment;
2. **Structured group** is criminal association who's occasion is not accidental for immediate committing of criminal offence, where formal division of roles is not necessary element, and participants can changed for crime to crime.

All that means that there is differences between definition of organised crime in Latvia's Criminal Code and UN Convention:

Criteria	**Criminal Code of Latvia**	UN Convention
Number of participants	More that two persons	At least three persons
Stability	Stable association (stable "staff")	Act for constant period of time, ***participants can change from crime to crime***
Purpose	To commit criminal offences or serious or very serious crimes	To commit one or more serious crime or criminal offences with purpose to get direct or not direct **financial or different benefit**
Division of roles	Participants **have divided** roles before committing crime	Division of roles **is not obligate provision**, but actions must be in accordance

The definition of UN Convention is very similar to Definition of **"group under advanced agreement"**, these two phenomena have identical definitions. That is why we need to separate these two definitions in Latvia's legislation and UN Convention. Due to all this, there was suggestion that Criminal Code must be changed – term "organised group" can be used only in context of Convention, but term "organised group" in Latvia's Criminal Code will changed to "criminal association". In this case we must take to account, that definition of Criminal Code in comparison with definition of Convention, provide highest level of organisation – it is stable association, with stable "staff", and division of roles in advance.

In March 29, 2001 in Latvia a working group was created with purpose to work out changes in Latvia's Criminal Code for harmonisation with UN Convention and EU Anticorruption Criminal Law Convention.

After active discussions this working group prepared new redaction of Article 21 of Criminal Code, which include all before mentioned.

INVOLVEMENT OF THE ORGANISED CRIME OF THE CZECH ORIGIN INTO THE INTERNATIONAL NETS OF ORGANISED CRIME

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Starting points.

It is used to say that the phenomenon of the organised crime started to be important only after the downfall of previous communist regime. Nonetheless, there existed certain domestic forms of criminality, especially economic (illegal foreign currency exchange, smuggling of scarce commodities, organised prostitution, etc.) which bore certain features of organised crime. They arose, though, in conditions of relative isolation, from a purely domestic base, involving no foreign elements. They existed in a situation that was not comparable to that found in countries with different social and economic systems. They did not develop into large criminal organisations and they acted mostly without involvement into the international nets of crime and without contacts with the ”true” organised crime.

After 1989, our society underwent a deep transformation which represented a ”sine qua non’ condition for the development of a democratic society and market economy. Nonetheless, this transformation also highlighted some risk factors that affected the penetration and evolution of organised crime in our country (as in other countries in transition).

Looking at a map, it is clear that the Czech Republic holds an advantageous geographic position between the states of the European Union on one side and those of the former socialist block on the other. There exist favourable conditions for the movement and utilisation of goods, capital and people, both within the legal and illegal economies. The CR can serve as a point of transit or stepping stone for the penetration of criminal activities from the East and Balkans into European Community countries (e.g. in the case of organised illegal migration and drug routes), as well as for the expansion of criminal activities in the opposite direction (e.g. in the case of the trade in stolen vehicles).

Thus, for objective reasons, after 1989 the CR became quite attractive for international organised crime. During a relatively short period of time, foreign criminal organisations established in the CR cells of their international network. These were involved in the drug trade, illegal migration, the import and export of stolen vehicles, the trade in women, and probably also in illegal economic operations including money laundering. Conditions for the development of new forms of domestic organised crime were also created.

Therefore the research on organised crime which has been carried out by the Institute of Criminology and Social Prevention focused not only to the organised criminal groups coming from abroad but also on the establishment and activities of organised crime of domestic origin including the role and involvement of Czech citizens and groups in the activities of foreign criminal organisations and inetrnational nets.

Findings.

Statistics of registered criminal activity demonstrate, to a certain extent, the degree of organised criminal activity in the CR. But this information can serve merely as an approximate indicator of the possible level of organised criminal activity in the CR due to the fact that so-called organised crime was not reported separately in CR crime statistics and cases of organised criminality, if organisation per se was proven, were usually prosecuted as so-called organised groups which is not the same matter as the qualitatively higher level of organised crime.

Analysis of statistical data, based on Czech Police statistics for the period between 1993 and 1998, shows more significant manifestations of organised criminal activity especially in the field of the illicit production and possession of drugs, organised illegal migration, violation of regulations pertaining to the exchange of goods with foreign countries and extortion. It was statistically confirmed that organised forms of criminal activity are mainly the domain of younger persons, but not of youths below the age of 18 (the age of people prosecuted for criminal acts committed as part of an organised group is usually between 18 and 30).

The proportion of foreigners prosecuted for criminal activities committed as part of an organised group is rather on the decrease in favour of Czech citizens.

The statistical data must be of course complemented by **analysis of other sources** of information as is the analysis of previous researchs, expert inquiry and case analysis. Previous research by the ICSP showed that there exist, in the CR, criminal organisations of domestic origin. Yet, these facts, also obtained from the penitentiary setting (MARKUSOVA, 1997), so far indicate a rather lower degree of organisation within these domestic groups, i.e. groups consisting solely of Czech citizens, or organised and controlled by Czech citizens.

Expert opinions (i.e. mainly those of Czech policemen from the special police units, state prosecutors and judges) represented one of the main sources of information on the research subject. In the *expert survey*, three quarters of respondents cited personal experience with groups of Czech origin that may, in a working sense, be labelled as criminal organisations. The existence of Czech organised groups (criminal organisations), though, is

acknowledged by almost all those questioned, and the existence of developed or stabilised groups by more than one half of the experts.

Experts also confirm the co-operation on an operating and service level between Czech citizens and foreign organisers of criminal activity. In relation to foreign groups, Czech groups rather play the role of service-providers, or suppliers-customers. Even groups that are trying to operate more independently can not forgo connections to foreign criminal organisations. The independence of Czech criminal groups, or organisations, is nevertheless thought as possible in the area of economic criminality.

According to the experts, it may be determined that current Czech criminal organisations are more specialised in individual types of criminal activities. Based on the general model of organised crime organisation and activities, such specialisation marks a lower stage of criminal organisation development. Czech criminal organisations concentrate especially on criminal activities associated with drugs, and on the theft and smuggling of vehicles. Another area of activity may be termed economic and financial criminality. Experts are of the opinion that this represents the most serious activity of Czech criminal organisations. A whole continuum of forms, from so-called ”white collar’ sophisticated criminal activity to criminal activity which clearly meets the criteria of organised crime, may be assumed. The third most widespread group is represented by activities related to organised prostitution, pornography and the trade in women. Other activities are also represented in Czech criminal organisations, but on a relatively smaller scale.

The information acquired points to the present relative instability of the Czech organised crime scene. It may be concluded that this scene includes both criminal organisations that have attained a certain degree of stability and development, and ”ad hoc” groups that are undeveloped and unstable, yet capable of undertaking criminal activities with signs of organisations.

According to experts, members of Czech criminal organisations are mainly recruited from groups engaged, already before 1989, in the so-called grey economy; from social classes thus far unaffected by criminality; and only thirdly from among the classical criminal elements. The presence of persons from other specific social groups, though not excluded, appears only marginal.

Although some of the opinions expressed by these experts indicate that Czech organised crime, as yet, lacks a stable form and rather represents a lower stage of development on the criminal organisation scale; others suggest that operations and methods typical of developed organised crime function even under current conditions, i.e. within Czech criminal organisations. These involve the use of corruption, legal concealment of illicit activities, violence and extortion, attempts at perverting the course of justice or influencing political and

administrative organs or the press. In this regard, rapid progress is apparently being made. The danger signalled by experts can not be underestimated, especially as these opinions have been formulated by professionals working within the criminal justice system. Furthermore, this danger can not be underestimated as, according to expert opinion, the Czech organised criminal scene will continue to develop. True, this development may be toward single-purpose, specialised, yet stabilised organisations, that base their dealings on the division of spheres of interest with organisations of foreign origin.

These expert opinions should carry great weight; nonetheless, they should be confronted especially with the information acquired from **the analysis of concrete cases.**

The cases compiled and analysed should not be considered a representative sample of organised criminal activity. It was practically impossible to put such a sample together, as there is no basic set grouping all such cases, given that there exists no unified record. The individual analysed cases were thus selected on the basis of consultations with representatives of law enforcement authorities. The analysed cases of criminal activities related to the illegal drug trade, illicit drug production, the organisation of illegal migration, trading in stolen cars (smuggling and insurance fraud), and trading in radioactive materials. Thus, despite the restricted sample size, this sample presented an overview of a wider spectrum of criminal activities.

Several *common features* were noted in all the cases analysed: striving to achieve long-term, great profit through systematic, methodical and organised criminal activity involving several persons with mutually assigned tasks and distinct levels (positions) within the criminal activity organisation (leader-organiser and subordinates-operators). All the cases also involved an international element (operations, contacts and activities of the involved perpetrators extend abroad).

Additional features were noted in some cases: involvement of police force members in criminal activities, involvement of qualified specialists, use of legal help, co-operation with external services (forgery of stamps), concealment of criminal activities behind the facade of a legal company; all of which may be seen to represent signs of a higher developmental phase.

The foreign connection is characteristic of all the cases analysed. In those cases where Czech citizens worked as the executive force of foreign organisers (e.g. couriers), this connection is clear. However, a foreign connection can be detected also in those cases where Czech groups operated relatively independently.

Only a minority of Czech members of the groups analysed had a criminal past. Most members had no criminal record, and a relatively large proportion of them purported to be businessmen. Most belonged to a younger age category (up to 35 years).

Concerning the *economic criminal activity*, the available data indicates that it undoubtedly represents a qualified and well-organised criminal activity, with the typical involvement of so-called white collar perpetrators. Though this activity does not necessarily require the existence of organised groups or criminal organisations, there may follow - and according to our experience in our conditions there does - an affiliation with violent criminal activity (covering tracks; physical liquidation or intimidation of witnesses, partners, competitors, etc.). This may represent one of the developmental stages of organised crime.

Conclusions.

In summary, it may be said that, as far as the role of Czech citizens in relation to foreign organised crime groups is concerned, their presumed role of either service providers (maximally reaching the middle managerial level within such foreign groups), or of executive members has been confirmed. Besides this, Czech citizens in the pay of foreign organisations assume responsibility for those activities taking place within the CR (storage, transit of goods etc.).

Penetration of Czech citizens into the middle-echelons of foreign organisations was detected especially in relation to organisations concerned with the illegal drug trade; particularly in the case of organisations of Balkan origin. The association and active role of Czech re-emigrants, or Czech citizens who have lived or live for some time abroad and are acquainted with foreign criminal activity, has been clearly demonstrated, especially in the area of drug-related criminality. Certain information published in the press also points to the active (and highly qualified) links between Czech perpetrators and the international network of so-called money laundering operations.

Experts as well as the results of analysis of selected cases of criminal activity all concur on the existence of organised groups of domestic provenance whose structure and activities, to a certain extent, bear the features of organised crime. So far, these groups are not inter-connected and have not developed into large, clearly structured criminal organisations. They may lack a clearer division between middle and higher echelons of management, but they exhibit features of organised crime.

The endeavour to achieve long-term, high profits through systematic, methodical and organised criminal activity involving several persons who divide the tasks at hand among themselves, and who occupy various levels (positions) within the criminal organisation concerned (leader-organiser, subordinate-operator) may be considered the typical feature of the cases studied.

All the cases analysed also featured an international element (the competence of the members involved, their contacts and activities extended abroad). Czech groups function relatively independently, but they either receive from abroad or from foreign organisers (usually, no doubt, the representatives of international criminal organisations) goods (e.g. drugs), or they receive job orders (e.g. for the transport of migrants, for the delivery of goods-cars, etc.). This does not mean that Czech groups are part of international organisations or that they are directly administered by them. Rather, it indicates that they play the role of some sort of independent ”sub-contractors” or ”smaller distributors” functioning on a ”business” basis. This shows that, if Czech groups want to evolve more developed organised criminal activity on a larger scale, they will have to link up with the international networks of criminal organisations (data from the legal economy indicating that the Czech market is too small, apparently also holds for the criminal sphere).

In the case of some groups, additional features were noted: the participation of police force members in criminal activities, the participation of highly qualified specialists, the use of legal help, the co-operation of external services, the fronting of criminal activity by a legal companies. All this may be seen as a sign of higher levels of development of the groups concerned.

These groups appear more developed or advanced in some types of criminal activity (theft and smuggling of cars; organisation of illegal migration; trade in women).

The activities of organised groups of Czech origin in the area of economic criminality represents a very complex problem. Nonetheless, according to experts and some professional sources, this represents one of the most serious activities of domestic provenance. In a way, these activities could be considered as characteristic of emerging ”domestic” organised crime, as, to a great extent, they reflect specific features of our society and economy in the process of transformation. They take advantage of shortcomings in the administration, management, control and normative revision of the economic and financial spheres. Their finacial operation often go across the national borders. Corruption - at first associated with the specificity of the transformation process and now focused on influencing state regulatory and management decisions and influencing criminal justice organs - is considered to be an important factor. The question remains, though, to what extent these groups, albeit undoubtedly involved in highly profitable and very well-organised criminal activities and probably often making use of corruption as a safeguarding practice, may be considered as proponents of classical organised crime. Or whether they rather represent sophisticated so-called ”white-collar crime” devised on an ad hoc basis. It is conceivable, though, that these possible manifestations of white collar crime may extend (and probably do) into specific forms of organised criminality that may correspond to the definition of organised crime.

Thanks to the composition of their membership, some domestic groups represent an extension of criminal groups that existed prior to 1989. This indicates that some current perpetrators of organised criminal activity are recruited from groups engaged in the so-called grey economy before 1989. At the same time, we may note a rise in the intellectual potential of these perpetrators, the specialisation of the criminal activities involved, the targeting of high (and quick) profits, and the participation of perpetrators recruited from among younger, and so far impeccable citizens (no criminal record). On this point, expert opinion and data from case analysis concur (and in the case of perpetrator age, so does the statistical data). All these may be considered to be prominent features of developing Czech organised crime which is undoubtedly involved into the international nets of crime.

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CRIME IN RE-INDEPENDENT ESTONIA

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The bloodless re-independence of Estonia in 1991 marked the beginning of a new era in every Estonian's mind – the beginning of independent statehood, first of all associating with personal liberty and improvement of life. It did not turn out exactly that way.

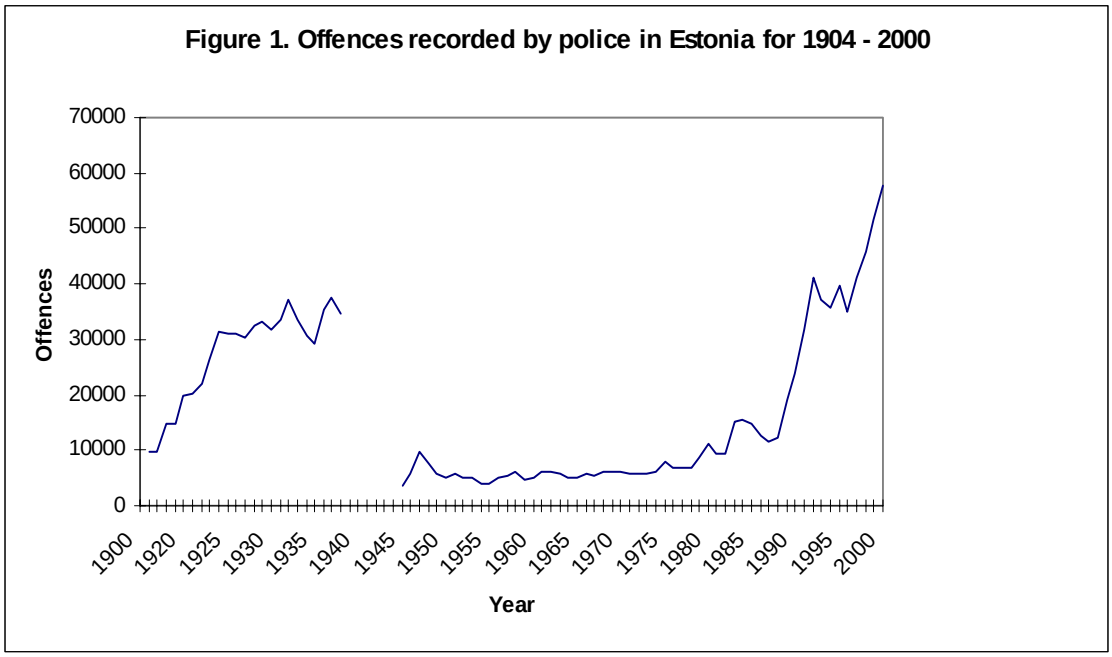
Current political and economic situation in Estonia is poor. Besides freedom, re-independence brought along a lot of problems, the most important of them are economic difficulties that are the result of too liberal economic system. It was accompanied with ruthless financial stratification of the population, rapid increase of unemployment and accumulation of national wealth into the hands of a limited group of nouveau riche, often with obscure, if not criminal background, and that arose serious doubts or even shattered many persons' faith in social justice and better future of Estonia.

Ordinary or "Absolute" Crime

1. Explosive Increase of Crime

There are serious doubts about whether the state authority has any will or capability to preserve safe society, as the state authorities are alienating from people more and more. The consequences are evident – explosive increase of crime. Crime, as one form of injustice that has been registered in law enforcement agencies, reveals itself in a great variety of single crimes that assault the lives, health and property of people. This in its turn means that the basis of social coexistence fall to pieces and the living conditions of the members of the society deteriorate.

For instance, crime has increased in Estonia on the average of 13 % per year (about 5600 crimes per year) during the last five years. The number of crimes registered in the police in year 2000 – 57 799 crimes – was the highest of the last century and the crime level in Estonia is twice (!) as high as in Lithuania and Latvia – the number of crimes per 100 000 residents was 4198 in Estonia, 2225 in Lithuania and 2113 in Latvia. At the same time the data concerning crime in the Baltic States are absolutely comparable.



The author has analysed the dynamics of crimes registered in law enforcement agencies in the territory of Estonia during the 20th century and found that: 1) at the end of the tsarist period (1904-1917) the level of crime was a bit lower than at the beginning of Estonia's re-independence (1919-1923); 2) during "canonical" Soviet period (1950-1980) the number of registered crimes was five times less than in 1919-1938 (to ensure the comparability of data, only the part of crimes that are statistically counted nowadays are taken into consideration); and 3) during the Soviet period the level of crime was seven times less than the crime level in re-independent Estonia, and even ten times less than the number of registered crimes in the last couple of years.

There is no point in making this difference doubtful by referring to potential distortions in the number of crimes that were registered in the Soviet militia – in this society the income differences were relatively small and there was practically no unemployment, and the militia did not work worse than the police now.

But, why was the crime data kept secret in Soviet era? That was due to the fact that crime did increase after all, and this fact did not fit into the ruling ideology according to which the crime level had to decrease together with the development of socialism.

The crime curve on Figure 1 shows first of all crimes committed by employees and unemployed (usually belonging to the lower and middle social classes) or the so-called absolute crimes. However, the crimes committed by owners, employers, wealthier public and municipal officials (usually belonging to the wealthier social classes), such as economic crimes, corruption, etc. are often not reflected in crime statistics.

The number of secret thefts in Estonia is also remarkably higher than in Lithuania or Latvia. If there were 2769 secret thefts per 100 000 residents committed in Estonia in 2000, then the corresponding figure was 1438 in Lithuania and only 1210 in Latvia. Statistics concerning murders and attempted murders is to our detriment as well. There were 14 murders and attempted murders per 100 000 residents in Estonia, while in Lithuania the number was 11 and in Latvia only 9. If the loss caused by crime was 0.5 billion kroons in Estonia in 1993, then in 2000 the loss was already 2 billion kroons or four times more. What we are still not able to measure is the moral loss.

2. Disclosing Crimes

The main task of police is to disclose crimes. However, the results in this area become worse and worse.

Figure 2. Recorded offences and clearance rate in Estonia for 1986-2000

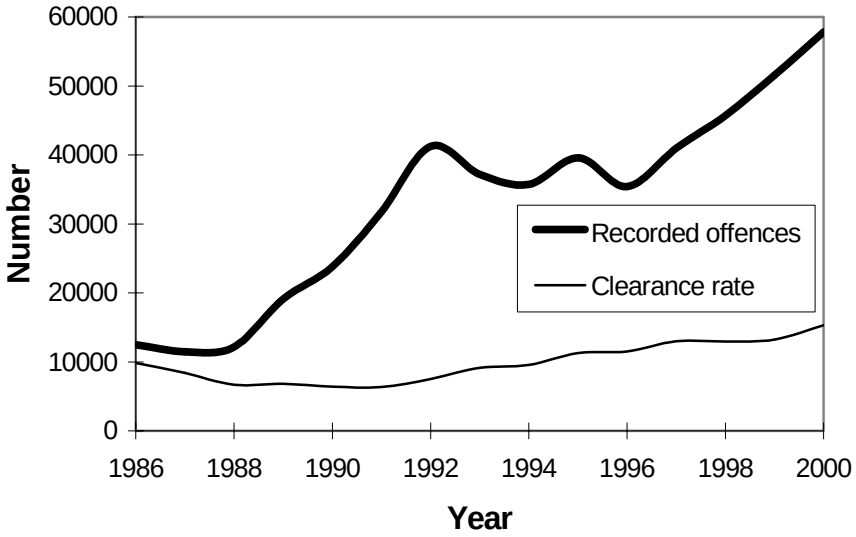


Figure 2 shows that the number of undisclosed crimes has constantly increased. The first abrupt increase of crimes took place in 1980 – the year of the Moscow Olympics (the Olympic Regatta took place in Tallinn). The number of crimes that were registered at that time established a record – 11 125 crimes, 2212 of these remained undisclosed, compared with the number of undisclosed crimes during the preceding period (1965-1979), which was 150-600 undisclosed crimes.

The second abrupt increase of undisclosed crimes took place in 1983 when the number of undisclosed crimes was 5025. The next rise left undisclosed already 11 906 crimes.

Henceforward the number of undisclosed crimes has increased all the time, reaching to 42 482 in 2000. What conclusion can we draw on this?

First, Estonian Police is capable of disclosing 14-16 thousand crimes in a year. The truth is that the number of disclosed crimes nevertheless increases from year to year. If the police disclosed 6350 crimes or 20% of crimes in 1991, then in 2000 the number of disclosed crimes was 15 317 or 26.5% (not taking into consideration the crimes that were committed last year).

Secondly, the majority of persons who have committed crimes during the period of re-independence, or ¾ of criminals, will not get within the reach of law enforcement agencies and walk free among the law-obedient citizens.

Thirdly, we do not know when the quantity of committed and undisclosed crimes exceeds the tolerance level of law-obedient population.

However, compared with us, about two times more crimes are disclosed in Latvia and Lithuania. In 2000 42.9% of crimes registered in the police were disclosed in Latvia, 40.4% in Lithuania and only 26.5% in Estonia.

3. Increase of Drug Crimes

The increase of drug crimes is simply terrifying and this influences the increase of crime as a whole remarkably. If only 27 drug crimes were registered in Estonia in 1993 and 51 drug crimes in 1995, the number was 297 in 1999 and 1581 in 2000 (increase compared with 1999 is 5.3 times!).

What has been done to restrain drug crimes, I mean what has the government, led by the Prime Minister Mart Laar, done? Nothing, except empty words. And yet, explosive infection with AIDS and passing on HIV-virus in North - East and North Estonia is connected with abrupt increase of drug crimes.

Organised Crime or Illegal Economy As The Main Part of Economic Crime in Estonia

Factors endangering the security of Estonian legal economy can be divided into two: a) coming from abroad, mainly from Russia; and b) internal or illegal economy. Below I discuss the internal security threats in greater detail.

Organised crime in its contemporary meaning started in Estonia at the end of the 1980s. At that time money obtained from enterprise, the obscurity of transactions that earned such money, society's twofold attitude towards businessmen, and the laws and law enforcement agencies "keeping silent" created fertile ground for the growth of organised crime. Criminal profit was mainly came from extortion and from the so called protection offering. At that time Estonia differed from the other regions of the Soviet Union as for the more rapid development

of enterprise, and its geographical position was much more favourable, being Russia's gate to Europe.

Regulating legislation and economy to some extent on the one hand, and a bit better work of law enforcement agencies in disclosing criminals on the other hand, but also new opportunities that arose in connection with Estonia's re-independence took our criminal community to traditional income sources of the criminal world in the middle of the 1990s: a) the money was earned from illegal weapon trade and drug business; b) arranging prostitution and gambling were taken under control; and c) various tax- and excise fraud schemes were elaborated.

As we look at the development and outcomes of organised crime at the beginning of the 20th century, the following tendencies can be pointed out:

1) successful functioning of organised crime is not possible without corruptive contacts in public sector;
2) the main income of the criminal world is drug business and smuggling of excise goods;
3) the groups of organised crime legalise criminal profit via money laundering;
4) passing over of the leaders of the criminal community into legal business is a fact;
5) the criminal community is especially interested in co-operation with politicians.

1. Successful functioning of organised crime is not possible without corruptive contacts in public sector

We can not hide the fact that organised crime achieves its real strength and influence only when it has established reliable relations with corrupt public or municipal officials. Criminal groups are interested in single contacts to commit some specific crime as well as in constant corruptive relations, i. e. in having the so-called "one of their own people" in a public institution. They often use mediators, so an official may have no knowledge of the criminal leader who has persuaded him/her to criminal co-operation.

Another option for criminals is to send previously recruited or other reliable persons to work in public offices. Corrupt public officials may be co-operators of an organised criminal group, but at the next stage they can already belong to such group, thus creating a criminal group in the meaning of Estonian Criminal Code, Article 196/1.

Today we can differentiate the following areas, more liable to corruption, that interest criminal groups most of all:

a) to obtain illegally various advantages or licences from the state or municipality;
b) to obtain economically favourable contracts and preliminary information concerning the arrangement of public or municipal deliveries and orders;

c) additional opportunities for corruption are created when public and municipal functions are passed over to private persons. Giving public tasks to private persons is a very actual problem in Estonia. Corruption and security risks that accompany such phenomenon have had much too little attention. Although the tendency of giving public functions into the hands of the private sector is generally positive, as the private sector is said to manage the property more carefully, the process of assigning the assets must be very attentively observed;
d) criminal groups are interested in gaining access to international money, among others to the money coming from the funds of the European Union;
e) to create corruptive contacts with an aim to carry out smuggling and excise frauds;
f) to create corruptive contacts in law enforcement agencies with an aim to have assistance and protection when problems arise and to gain access to police information. This is a typical internal security risk with what the internal inspection units of law enforcement agencies and security police units all over the world combat. On the other hand, to combat organised crime successfully, it is very important for the police and surveillance officials to find co-operators from the circles of criminal world itself.

State's counteraction in areas that are more liable to corruption can lie in disclosing corrupt officials via the institution's own internal inspection, but also making the activity of law enforcement agencies more effective.

The term corruption can not be defined uniquely, but the following types of crime evidently belong to this category: improper use of position, neglect of official duties, official forgery, taking and mediating bribe, dispossession by abuse of position. Into this category belong also defrauds with the participation of officials, smuggling and tax frauds. In addition to officials who act as associates of criminal groups there is another group of officials who endanger the security of economy. These are officials who take advantage of their position in their own interest or in the interest of their relatives or acquaintances, and by that earn corruptive profit.

Although Estonia is considered on international level to be a state with the lowest level of corruption among the states of East and Central Europe, we can not make a conclusion that there is no corruption in Estonia (if this opinion is true at all?). Corruption has not disappeared from Estonia and it has accompanied the current government that is connected with the privatisation of the power stations and the railway. There have been several attempts to privatise these objects to Italian and Russian criminal groups. The government's viewpoint has continuously been such, as if nothing remarkable has happened, and due to that the decrease of government's reputation among population is unprecedented.

2. The main income of the criminal world is drug business and smuggling of excise goods

The main income sources of organised crime in Estonia are drug business and smuggling of excise goods. Both of these are crimes of international scope that can not function continuously without the help of corrupt public officials. As both, the drug market as well as the excise goods market is extensive, the activity of criminal groups can be restrained only by law enforcement agencies. At the same time, drug business, and even more so smuggling, are the direct threat sources for state's financial activity, expressed by shortages in state budget's income.

The number of drug addicts is increasing rapidly and the age group that uses drugs becomes younger and younger. A person's nationality, sex, material and social status play less and less role among drug addicts.

Smuggling of excise goods is another profitable branch of illegal economy besides drug business. As smuggling is more safe than drug business and the penalties in case of being caught are smaller, this is just the type of crime that "produces" the greatest profit for the criminal world currently. For instance, the income from different excise taxes was planned to be 4 billion kroons in 2000, i.e. about 15% of the state budget.

The Customs Service, the Border Guard, the Police and especially the Security Police have carried out successful operations in connection with smuggled alcohol. In spite of that business with illegal alcohol has become quite profitable for the criminal world. According to one scheme the illegal spirit is brought to Estonia from across the border. In addition to imported illegal spirit vodka is also bottled in Estonian "factories". According to estimations, Estonian business of illegal alcohol is under the control of 5-7 criminal groups. And according to the estimations of different specialists, illegal spirit forms 30% of the whole alcohol market at the moment.

Import, production and marketing of illegal alcohol is closely connected with the business of illegal tobacco. That branch of illegal economy is also under the control of Estonian organised criminal groups.

However, the greatest problem at the moment is fuel excise tax frauds. According to different estimations about one third of fuel sold in Estonia remains untaxed.

3. The groups of organised crime legalise criminal profit via money laundering

Criminal world launders money to cover crimes and those who commit them, to cover the origin of their criminal money, to use criminal money in developing business and to influence the state's politics and economy.

The Money Laundering Prevention Act is in effect in Estonia only since 1st July 1999. Together with taking effect of this Act the Money Laundering Data Bureau started its work

under the subordination of the Police Board. Institutions and entrepreneurs must inform this Bureau of revealed money laundering suspicions. Last year the Bureau received more than 300 such notices. The Data Bureau analyses received information and, if needed, forwards it to the bodies of investigation who initiate a criminal case.

At first sight, money laundering might even seem to be economically profitable for the state or enterprise. Accession of additional money, and quite big money, to legal enterprise would after all enliven the state's economy. In reality, a company that functions due to dirty money will soon be in a situation where the owners of this money, i.e. criminals, will take over the company. Money laundering is just the area that guarantees the strength of organised criminal world.

4. Passing over of the leaders of the criminal community into legal business is a fact.

Organised criminal groups try to penetrate into Estonian legal economy since the beginning of the 1990s. An increase tendency of the so-called white collar crime could be observed since the same time. The former leaders of the criminal world want to step out of the "dirty game" and for that purpose they direct their illegal financial means to legal business.

The other and much frequent scenario is that they do not forget to take with them the manners and methods of illegal business, and for the sake of greater profit the "businesslike" criminals commit new crimes, above all tax frauds and deceiving their business partners – that is why threats or even physical revenge can not be excluded. Such tendency can mainly be seen in the larger regions of influence of Estonian criminal groups – Tallinn and North East Estonia – and such tendency exists among both, Estonian and non-Estonian "authorities".

5. The criminal community is especially interested in co-operation with politicians

When the organised criminal groups are still weak and creating their positions, their most important purpose is to earn as much money as they can by any means. That is how the criminal groups that acted at the end of the 1980s and at the beginning of the 1990s can be characterised.

On the next stage the criminal groups have gained certain material security and they have some free money that can be used either to commit large-scaled crimes or to invest into the legal economy of the state.

There is no doubt that today the criminal world of Estonia has made its way to politics on state as well as on municipal level. In the situation where the financial purposes of the criminals have been realised and the criminal structure works quite well, the leaders of illegal economy have plenty of opportunities to start to influence the state politics and economy. If the criminal world penetrates into state politics and economy more and more, we may soon find ourselves in a situation where the highest power is not carried out by people via their

representative bodies, but by the “council” of some criminal group. Such danger, in larger or smaller amount, exists in every country.

If criminal contacts and criminal money start to influence the state’s political and economic decisions, it will impose direct threat on the state’s constitutional order. Evaluating and preventing such danger is the function of the Security Police of Estonia.

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As a conclusion it should be said that organised crime and corruption, or shortly illegal economy, is and will be the internal source of threat for Estonian economy. The task of law enforcement agencies is to analyse such risks constantly and to apply countermeasures by way of preventive means as well as by disclosing committed crimes.

In a concealed way organised crime and corruption expose to danger every enterprise and citizen in the state, and that is why the best counterblow to criminal world and corrupt officials is the mutual trust and co-operation between the state’s law enforcement agencies and law-obedient citizens.

TRANSNATIONAL CRIME AND IT'S PREVENTION PROBLEM IN LITHUANIA

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The global mobility of the population is a specific feature of the present-day period. Thus, the people from the European Union and other developed countries travel a good deal: every year approximately 200 million of the European Union population as tourists go from one country to another or visit each other's country. They make about 40 per cent[28] of the total number of the tourists in the world. With the re-establishment of independence and the collapse of the "iron screen" Lithuanian citizens also have the opportunity of travelling to other countries, and foreigners visiting our country. Therefore the volume of foreign tourism to Lithuania is increasing.

In addition, already for almost 50 years economic integration, as well as broader social integration, is taking place in Europe. First of all environmental problems and those related to more rational, more economical and safer use of natural resources, which may be handled more easily at the existence of the greater economic potential, and health care problems have become a common concern.

On the other hand, the common social and economic space for crime spreading is being formed, still more common crime prevention problems in the European (and all the world) countries come into existence, and their solution by common efforts also becomes very urgent.

Lithuania, sharing the same fate as other similar countries, joined the common European integration process somewhat later; therefore it has not gained sufficient transnational crime prevention experience so far. Lithuania, in fact, completes recreating a democratic society and market economy. It is very important for Lithuania to develop and implement the system of measures that would help to stop threat relating to organized crime and corruption.

No doubt, transnational crime manifests itself in different forms, but among the most dangerous is transnational organized crime, which is only in part reflected in crime record indicators in various countries, since its major part remains latent (in terms of crime

[28] Anna Wergens. Crime Victims in the European Union. – Sweden, 1999, p. 37.

registration and their disclosure). It is also possible to judge about the scale of organized crime by collateral comprehensive specific features of a social and economic situation in Lithuania (as in other countries). Organized crime groups inside the country are not that dangerous, therefore it is easier to "fight" with them; more effective organized crime and corruption prevention and control is possible. However, here one bears in mind the fact that with the market relations extended in Lithuania (as in one of the transit countries between East and West) and legal economy gaining still more strength, organized crime (and corruption) shall acquire features, characteristic of the structures operating in many countries, taking up illegal markets, satisfying and creating the demand for prohibited goods and services. The "consolidation" (unification of strong groups in the competition process) and "internationalization" of this phenomenon are observed, and for their neutralization the appropriately unified and international efforts are needed. However, the indicators (direct and collateral) of organized crime in a separate country cannot be complete without its record at a transnational level. Therefore organized crime is inevitably constituted of its national and transnational parts.

It is possible to presume that organized crime structures started forming in the then Soviet Union, during Gorbachev's "perestroika", before the recreation of an independent state of Lithuania. Within the period of independence, organized crime had quite good conditions for development, since new state bodies of Lithuania were rather weak; the legal basis, even though developing rapidly, was insufficient to properly regulate the economic and other social relations in the transitional period. In addition, as was mentioned, borders became open. This statement has a double meaning: first, the Lithuanian border regime already was not as that of the totalitarian country, and was the same as in other democratic countries; second, because of the weak activity of the state bodies, responsible for border protection in the first year of independence, border control was not of an adequate level as in democratic and developed countries. Additionally, the geographic position of the state of Lithuania is also of importance, since Lithuania as a Central European country is a bridge between Western and Eastern Europe. On the other hand, Lithuania is also a bridge between Southern and Northern European countries, besides it is a marine country. Therefore all these factors predetermined a very rapid manifestation in our country of the types of criminal activity (or their signs), traditionally attributed to organized crime:

1) smuggling, including goods falsified and improper for use;
2) trafficking in people (especially women and children);
3) problems of transit of prohibited substances and their partial "settling" in Lithuania;
4) flows of illegal emigrants through Lithuania, as well as manifestations of specific diseases and terrorist behaviour, not characteristic of Lithuania;

5) manifestations of the lowest rank organized crime activity – racketeering, accompanied by violence against citizens and destruction of their property, other violations of the human rights;
6) the rapid spreading of corruption, both domestic (administrative) and major, supreme state level – state capture corruption;
7) the so-called money laundering operations in Lithuania and foreign states;
8) national and international fraud manifestations in Lithuania (both at a state body and private business level);
9) the general intensification of illegal and criminal mobility at a state and transnational level.

Traditionally, crimes against person (interpersonal crimes) are not related to organized crime activity in the developed democratic countries. However, on the basis of investigation of the development of violent crimes within the past ten years in Lithuania, it is also possible to presume the possibility of the formation of a certain demand for hired assassins (murders for hire): "professional" groups may also service other criminal groups, “business” world people, and separate “clients”. Previously, hired killers were only from the neighbouring countries. This is an especially dangerous form of organized (transnational) crime and therefore this problem should be given special attention in organizing comprehensive research. As a matter of fact, crimes committed by professional assassins are disclosed with more difficulty, therefore premeditated murders at the moment are more latent than 10 years before; much more time and funds are used for their disclosure, and the officers from law enforcement institutions must still more improve their qualifications and be better technically supplied.

Thus, the just recreated state of Lithuania, with its state administration and self-government institutions starting to form and strengthen, and the state itself being poor, had at once to start solving problems requiring considerable material and mental resources, without experience of their solution under new conditions. Certainly, Lithuania joined the United Nations Organization; it became a member of the Council of Europe and is seeking membership of other international organizations – the NATO and the European Union. However, not only such countries like Lithuania, but also more advanced democratic and rich countries face still more common problems to be overcome only by efforts at an international level.

The United Nations Organization started solving the most urgent problem of impact in respect of transnational crime. In December 2000, the United Nations Organization adopted the Convention against Transnational Organized Crime (with protocols). One of the objectives of this Convention is to promote cooperation of various countries in the efficient prevention of transnational organized crime.

Article 3 of the said Convention gives a concept of transnational organized crime to be used when applying this Convention. The concept of transnational organized crime covers the following specific features:

1) if a premeditated crime, attributed to organized crime, is committed in more than one state;
2) if a premeditated crime, attributed to organized crime, is committed in one state, but the major part of its preparation, planning, guiding and execution control is carried out in another country;
3) if a premeditated crime, attributed to organized crime, is committed in one state, but with the participation of a criminal group operating in more than one state;
4) if a premeditated crime, attributed to organized crime, is committed in one state, but its essential consequences are in another state.

The states, when carrying out transnational organized crime prevention, operate jointly on the parity basis, but without violation of each other's sovereignty, territorial inviolability, and its jurisdiction competence when providing legal assistance.

A concept of an organized and structurally formed group, laid down in Article 2 of the aforementioned Convention, corresponds in its essence to a concept of an organized criminal group in accordance with the acting criminal laws of the Republic of Lithuania. Thus, with the existence of the discussed conditions, the Republic of Lithuania could sign and ratify the said Convention without any difficulty. A certain problem here could be that the acting criminal laws of the Republic of Lithuania foresee a full (final) list of crimes, attributed to grave ones. In fact, a list of grave crimes indicates crimes that are most typical of organized crime. Meanwhile, Article 5 of the Convention recommends all premeditated crimes, committed by a criminal group, to treat as "serious crimes" (i.e. grave crimes). However, a new Criminal Code of the Republic of Lithuania, adopted on September 26, 2000 (but still not enforced), tackles this problem in a way that is similar to the Convention.

The Convention focuses a good deal of attention on the international measures for prevention of money laundering, on the discussion of corruption criminalization. As a matter of fact, special attention in the Convention is given to a corruption partner from a foreign state or international organization, as well as to the criminal, civil and administrative responsibility of legal persons.

The Convention would help the Republic of Lithuania to specify the application and improvement of Lithuanian laws on property confiscation from the organized crime participants (as well as from other natural or legal persons), as well as to make use of the international cooperation services when implementing property confiscation.

The states - participants of the Convention can conduct common investigation of the organized crime activity according to multilateral and bilateral agreements between the states

or by separate agreement in each specific case. Tracking with the use of electronic means and agency operations in this case shall be performed pursuant to the acting laws of the specific country, but countries by agreement may transfer the execution of criminal justice procedure to each other.

The Convention specially focuses on the protection of witnesses, their relatives and other acquaintances in the transnational organized crime criminal procedures. If necessary, these persons may be transferred for residence into other countries. This issue is of special importance for the small countries in terms of population and territory, like Lithuania. In addition, it is foreseen that each country to the extent of its opportunities shall provide assistance and protection to the victims of transnational organized crime. Since in Lithuania no sufficient help to crime victims exists, this problem should be tackled at legal and other social level.

In addition to the problems, mentioned (and not mentioned) in the report, the Republic of Lithuania should solve when signing and ratifying this Convention, it is important to discuss what has been done in Lithuania in the field of prevention of organized crime, including transnational crime.

Common political measures and programmes. The state of Lithuania is undertaking important and as seems to be reliable measures in executing organized crime prevention and control. Already in a number of the programmes of the Government of the Republic of Lithuania (these programmes are approved by the Seimas of the Republic of Lithuania) organized crime and corruption prevention, i.e. comprehensive elimination of causes and conditions, predetermining those phenomena, using not only legal, but also social, economic, financial, organizational, information, analytical and other measures, is recognized as one of the major tasks of crime control.

The main prevention and control guidelines are foreseen in the action programmes approved by the Government: in 1999, a comprehensive and long-term programme for organized crime and corruption prevention was approved, separate branch programmes: economic crime prevention, drug control and drug addiction prevention, migration process control and other programmes are being created and implemented. National corruption prevention strategy is under preparation. The main principles of organized crime and corruption prevention are also foreseen to be enforced in a new concept (programme) of national crime control in Lithuania, oriented to the prevention of this phenomenon at the beginning of the 21st century, i.e., under new conditions of integration of our country into the European Union.

The political will of the state to prevent organized (transnational) crime and corruption is expressed in numerous laws, forming the normative basis of such activity.

Anticorruption (prevention) laws constitute an important block of such laws: the Law on Declaration of Property and Income of the Population (obligating state officers and persons involved in certain activities each year to declare the acquired registered or valuable property), the Law on Coordination of Public and Private Interests at the Official Service (obligating state officers to present declarations on the existing private interests and prohibiting them to participate in adopting or carrying out decisions, related to their personal interests), the Law on Public Procurement, the Law on Financing Political Parties and Political Organizations, the Law on Financial Control of Companies, etc. A new integral Law on Lobbying Activities was prepared and adopted. It is necessary to note that a new integral Anticorruption Law (probably the fundamentals), foreseeing the incorporation and systematization of the norms of the above-mentioned laws, is under preparation at the moment.

The laws on the extension of the opportunities of state institutions in effecting organized crime and corruption control should be discussed separately. Alongside the Law on Money Laundering Prevention also valid in the Republic of Lithuania are:

The Law on Organized Crime Prevention, which grants quite extensive powers to the state institutions executing organized crime prevention and control in seeking to ensure that activity, which is so important for the state and society, would be efficient. In accordance with the provisions of the Law, if there exist serious grounds to consider the person to be involved in the activities of the criminal association or he belongs to it and therefore can commit a law offence and cause grave circumstances, the court may impose on him certain preventive obligations, e.g., not to contact persons indicated by the court, to inform the authorized police officer of all transactions with their value exceeding LTL 2000, to temporarily give over a legally acquired firearm to the police institution, not to have and keep other arms, etc.

To ensure the fulfilment of obligations under the law, the Criminal code contains an article foreseeing the criminal responsibility for failure of their fulfilment. At present the provisions of the said Law are being improved, taking into account the necessity to reduce possibilities for the restriction of human rights.

The Law on Operational Activity, foreseeing that with the primary checked information available on the belonging of the person to the criminal association and upon receiving the judge's sanction, the state officers with the appropriate powers may temporarily restrict the right of the suspected person to dispose of the property possessed, obligate to declare the property and income, may use electronic tracking measures, etc. This Law at the moment is also being improved (due to the mentioned grounds).

A certain network of **institutions** executing organized crime and corruption prevention and control exists in Lithuania. The Police Department under the Ministry of Interior Affairs has a specialized Service for Organized Crime Investigation. A separate unit, the Tax Police Department, is established for financial crime control and prevention.

A separate specialized organized crime and corruption investigation unit is functioning at the General Prosecutor's Office of the Republic of Lithuania. The State Security Department carries out certain functions in this field. The Special Investigation Service (SIS) is an important specialized institution with the main function of corruption prevention and control. This is an independent institution, accountable only to the President of the Republic of Lithuania and the Seimas. Mention should be made of the Chief Official Ethics Commission (an institution set up by the Seimas), the main functions of which is to control the implementation of the Law on Coordination of Public and Private Interests at the Official Service and the Law on Lobbying Activities and to carry out corruption prevention. Thus partly it is possible to state that in our state still there is no institution able to cover the totality of problems relating to organized crime and corruption control and prevention. Such situation has certain pros and cons, whereas the most important of these is the difficulties related to ensuring coordinated activities. However, the already mentioned Anticorruption Law under preparation foresees the creation of the corresponding coordination council that should be constituted of the top state officers. Probably, this is one of the ways of problem solving.

The **administrative courts** have been functioning in Lithuania for several years already. These are courts of special competence, which may be also addressed by the persons facing the public administration abuse on the part of officials, improper performance of their duties, dragging the performance of actions within their powers. It is expected that the broader possibilities of the population for control of the activities of officials and state officers ensured in such a way will also have a considerable anticorruption effect.

Crime, its prevention and control are interdepartmental problems. In 1997, the Seimas of the Republic of Lithuania, the President, the Government, the Supreme Court and other institutions together with the United Nations Development Programme representation office in Lithuania established the **Centre for Crime Prevention in Lithuania,** a methodical institution coordinating crime prevention, assisting the state and the public to professionally form and implement crime prevention, including organized crime, policy, strategy and tactic.

The Republic of Lithuania seeks to strengthen **international cooperation** in the field of organized crime and corruption prevention and control. The state has already joined the majority of the European Union conventions, regulating international criminal legal assistance, as well as the corresponding United Nations Organization documents. A number of bilateral agreements regulating the appropriate interstate relations have been concluded with the USA, Russia, Poland, and the Baltic States. The border protection is being strengthened. Here special attention is focused on the Eastern borders, which are one of the first possible serious obstacles to trafficking drugs from Asia via the CIS space into Western Europe.

Lithuania is actively participating in the activities of the universal International Organization Interpol. Lithuania was also an active participant of the UNO Ad hoc Committee for the preparation of the Convention against Transnational Organized Crime. The regional cooperation contacts are also being expanded with the European Union – in 1998, a multilateral agreement was signed between the European Union and the states candidates, including Lithuania, – the Pre-Accession Pact on Organized Crime. It is important that this Pact foresees the signing of an agreement that will allow the contacting officers of the states candidates for membership of the European Union to cooperate in the Europol activities. Cooperation between the Baltic and Scandinavian states is being developed. The position of the Baltic special purpose forces in the organized crime prevention and control process is being strengthened.

Finally, it is necessary to stress that reforms taking place in Lithuania and novelties implemented are supported by scientific criminological and crime victim research, conducted at Lithuanian scientific institutions, possessing scientists in the field of criminology. According to the expert evaluation of criminologists, the optimum contribution of funds and their rational use for the scientifically grounded organization of crime prevention may significantly reduce the considerably higher "criminal" losses, currently experienced by the states and their population.

WHICH OF INTERNATIONAL DEVELOPMENT ASPECTS AND THE CZECH REPUBLIC INTERNAL PROBLEMS IN THE EARLY 21ST CENTURY MIGHT BE MISUSED BY TRANSNATIONAL CRIME

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Last year, we joined the processing of Central European crime development prognosis. This research project has been coordinated by the Police Force Academy in Bratislava (directed by its President, Ass. Prof. R. Chalka and Prof. K. Holcr). Under the project, we focus on forecasts of crime in general - property crime, violent crime, and economic crime. In addition, we are dealing with the development of organized and drug-related crime.

An important part of the forecasts of crime and some of its specific forms is the analysis of so-called **wider social environment.** Without a general view of the development of Czech society in contemporary world conditions, thoughts of crime development would be isolated.

When we started to deal with thoughts of future crime development in 2000, a possibility of gaining a more general view of the development of Czech society was very limited. The prognostic teams, which were formed in the Czech environment in the late '70s, disintegrated after 1990. Their existence in that time, however, had one advantage - the teams' collected and exchanged knowledge from various fields. Publications in which their authors attempted to summarize the development since 1990 were sporadic - but we used them in our prognosis. (It relates particularly to these authors: Machonin, Tuèek, Veèerník, Matìjù.)

Fortunately, in 2000 a large team was formed (directed by Prof. M. Potùèek), who, in barely a year, prepared the „Vision of the Development of the Czech Republic until 2015". The study included all aspects of life. (The author of this paper also participated in the preparation.) The knowledge was processed so that the development in the last ten years was summarized for every area, external and internal development trends, external and internal threats, and development opportunities were established. Three mainline scenarios and so-called wildcards presented possible acute threats. The study ends with setting forth priorities for the Czech Republic.

This comprehensive work became the main basis for our thoughts on the interdependencies of the development of society and crime. We also made use of summarizing publications and of the results of our research of social causes of organized crime.

I can only present an information outline in my paper due to limited space. It should show which aspects we focused on. In that connection, I am going to mention only a few examples in more detail.

The first aspect that has to be taken into account in the forecast of the development of Czech society and crime development prognosis are the **contemporary world problems.** In the world, increased interlinking of political, economical, military and cultural aspects of life is taking place. There is a worldwide free flow of capital, goods, funds, information, people and spreading of global mass culture, certain type of values, morals and life style.

Globalization may have its positive aspects. In the framework of globalization, human rights are asserted responsibility of individuals and their efficiency increase. The global market may activate potential not used so far. Mutual knowledge of one another can improve, and the experiences of developed countries can be used.

Globalization, however, has a number of adverse aspects. Differences between developed countries and backward regions grow. Consumer life style prevails. Environment devastation is being transferred from developed to less developed countries.

Certain positive and negative aspects of globalization may influence the growth of crime. For example, opening the borders results in free cross-border movements of illegal commodities, funds originating in crime, arms, criminals and their victims as well. Criminal structures can endeavor to gain influence in transnational corporations ruling the world. The world of crime may also exert in civilized countries, the activities that are banned because of being inhuman or harmful for the environment. The crime can include initiatives supporting weapons trafficking, exports of hazardous wastes, suppressing human rights, etc. Even the media can be penetrated by the world of crime. It will try to use media to influence politics and/or public opinion and for increasing demand for illegal commodities and services.

Other negative phenomena of today's world may also contribute to the growth of crime. Increasing differences between developed and underdeveloped countries may result in situations where drugs, prostitutes, cheap labour, objects of art would be smuggled from underdeveloped into developed countries. From developed countries, vice versa, would be smuggled arms, funds for the support of illegal activities, stolen motor vehicles, and hazardous wastes.

The world of crime may make use of regional, religious, ethnic and social conflicts. In the globalized world, consequences of conflicts may occur even in locations completely different and far away from their sources, such as in Brussels or Strasbourg.

Many problems are linked with the integration of former eastern bloc countries with democratic countries. The issue concerned is the amalgamation of still incompatible systems. (Just recall what trouble brought the unification of Germany.) In all post-communist countries, organized crime and economic crime have increased. Either the already existing forms expanded, or they are newly developed. At the same time, they started to spread over the world. There must not, however, be forgotten that this expansion - due to transnational characteristics of organized crime and economic crime - often works both ways.

How social measures against crime will be applied is substantially dependent on whether the Czech Republic will or will not become an EU member state. In the event of becoming an EU member, the Czech Republic would become part of the active anti-crime policy of the UN, Council of Europe and EU. These activities are exerted as a help to those countries to be aligned with the most developed ones. They should also guard these countries against criminal expansion from outside. If we become an EU member state, we shall become part of the territory protected against this expansion. If we don't, we could then become one of those countries against whom protection measures are to be taken.

In the analysis of the future, we must be aware of the EU non-admittance alternative. If we were not admitted, two options would basically occur. The positive option would highlight the quality of life based on freedom, self-recognition and solidarity. The negative option might bring about the peril of formation and strengthening of non-democratic régimes, populism, nationalism and xenophobia. A big gap could arise between a small number of nouveaux riches and the majority of the surviving population.

Among numerous visions regarding the development of environment, I would like to point out the threat caused by global warming (and cooling down at the same time). If towns and intensely populated areas are flooded and if potable water becomes a really rare commodity, this could result in many political and social conflicts. These could certainly be made use of by the world of crime.

At the end of the section dealing with crime and world development, I have to express a quite dark vision. At the beginning of the 21st century, there may be expected that the risks linked with crime will probably prevail over all other risks. The whole world will be threatened by crime on an increasing scale. In particular, by transnational organized crime and economic crime.

In the second section, I shall only mention the fundamental internal problems in Czech society for information.

There were no reliable analyses available in the **internal policy** segment in the first half of the '90s. No long-term strategies or concepts were formulated. Party interests were asserted, neglecting the public interests. There was certain reluctance toward setting forth-clear rules. Undesirables interlinking of political and economic powers were occurring. Political parties financing system was not consistently solved. Political parties did not have ample electorate and membership. Consequently, they did not have ample choice of candidates for responsible positions. In the early '90s, crime issues were underestimated, and up to the mid-'90s, the danger of organized crime was belittled. Political parties and politicians have low credit among the public.

In the beginning, **public administration** also lacked vision. One of the worst features was poor human resources policy. Many long-time professionals left. Those who remained

were burdened by routine, narrow specialized approaches to work. They mostly were not capable of solving problems conceptually. A number of new people came to responsible positions without having professional qualifications. In our conditions, a possibility of high-quality professional training for public service was - and still is - missing.

Thus arose a substantial endangering factor - amateurism. Amateurs are more susceptible to being bribed or asking for bribes. They handle information irresponsibly. They more often allow themselves to be seduced or misused for cooperation with the world of crime.

The public administration is also too politicized. There occur interlinks between the legislation and the executive power. In the Czech Republic, regional and local governments are still not developed in a manner, which would constitute state-of-the-art democratic structures. Local policies could play a role in crime prevention on a local level, in particular in the containment of property-related and violent crime. The protection of public spaces and citizens' property and life security should play an important role.

The analysis of the **legal system** could be an extra topic. Here, I am going to mention just a few aspects. The legal system responded to changes in Czech economy too slowly. Insufficient privatization process legislation enabled many untrustworthy persons to gain large assets and economic power. Measures against making legal the benefits from criminal activities were adopted too late. The shortcoming also involved unsatisfactory capital market protection, a too soft condition for issuing trading certificates and licenses and business licenses. A limiting factor were also gaps in customs and tax regulations resulting in economically unfavorable practices in a firm, not being prosecuted.

During the '90s, the non-existent legislation against crime was mostly supplemented and harmonized with European standards. Their consistent enforcement, however, has been lagging behind.

Since 2001, maybe 2002, a concept of life-long education and training of prosecutors and judges will be adopted. Also the level of legal awareness of the public is very low.

In the field of **economy**, crime may benefit because some legal standards are missing. Ownership rights are not sufficiently guaranteed. Creditors are in a disadvantage regarding debtors. It was dangerous to over-estimate the role of market principles. This led to focussing on short-term effects. Apart from that, it did not guarantee a socially fair distribution of assets. In respect to crime, the liberal market became a free market for illegal commodities and services. In a too liberal environment, security of citizens may become a commodity as well.

For most people, no substantial changes of their **social status** took place after 1989. Comparing the '80s and the '90s 79% of economically active population remained in their status category. There were upward movements of 14%, and downward of 7%. However, polarization is increasing. The difference between the top and bottom brackets has increased.

The upward movements have been either deserved, or not. In respect to crime, some of the members of the narrow *nouveaux riches* started to contact the world of crime. They mostly had former experience in the field of illegal economy. They started to apply practices usual in the criminal environment in their activities. They often contacted criminals on their own. On the other hand, the world of crime was trying harder to contact powerful and rich people in order to use their liaisons, funds and influence. Racketeering attempts have also been made.

On the other hand, we would be interested to know to what extent the world of crime would make use of people in distress or threatened socially or existentially. In some foreign organized gangs, ordinary members - those without jobs, money or property, often act as pawns. This assumption has not been verified in Czech environment. People unsuccessful or unemployed are still not interesting for organized crime - neither as cooperators nor as clients.

The almost all-encompassing term of **culture** covers in our study a number of segments. In the life style segment, for example, crime can abuse life strategies based on keeping laws and despising work. In the same way, some people's tendencies toward an orientation to mediocre or pseudo values may be misused. It is also demotivating if some people gain success by obviously immoral means.

Lack of friend and neighbor relationships may also be abused and result in a weakening of social control. A negative attitude towards aliens and ethnic minorities also open to abuse.

A number of negative elements are in the education system, for example not enough possibilities for sensible use of leisure time. In most cases, the family does not fulfill educational functions either. People often do not behave responsibly in respect to their health. Under such circumstances, the availability of drugs is increasing and the number of drug addicts grows. The culture segment may probably involve the abuse of computer systems as well.

The media may also play a negative role. These - provided that they do not keep certain reservations from depicting violence - may trivialize or glorify it. Sometimes they present violence as the only way to solve situations. Negative phenomena also include media presentations of inappropriate behavior models or raise doubt about law enforcement activities. In extreme cases, they are able to manipulate public opinion in a way beneficial to the world of crime.

The culture segment also involves scientific knowledge. If crime is the subject matter of a systematic scientific analysis backed by international experience, then measures against crime could be considered and thus effective.

At the end I would like to remind that this study only mentions briefly certain knowledge from a more extensively conceived research. The research itself is more general. We try to cover the widest spectrum of possibly occurring circumstances that might be misused by the world of crime. It is understandable that such a general view would be absolutely superficial

if not supplemented with detailed in-depth research of particular aspects. It is therefore necessary to combine both approaches.

CIVIC RESOURCES IN ANTI-CORRUPTION ACTIVITIES

Dr. Laima Zilinskiene

Transparency International - Lithuanian Chapter

Lithuania as many other countries of Central and Eastern Europe today faces the problem of corruption that negatively influenced the implementation of free market principles and democratic values in society. However corruption is not only the domestic problem - it has negative impact on whole region of Central and Eastern Europe.

According to the World Bank Report *Anticorruption in Transition: A Contribution to the Policy Debate*, (2000) many countries of this region like Poland, Czech Republic, Slovenia, Hungary, etc. belong to a group of countries with medium state capture and administrative corruption index. By the first indicator - state capture index - Lithuania is closed to this group of countries and is example of the state with more or less transparent system of legislation. These findings were indirectly affirmed also by PricewaterhouseCoopers Report *The Opacity Index* (January 2001). According to presented data Lithuania by so-called *O-Factor* occupied the second place (after Hungary) among such countries of East and Central European region as Russia, Romania, Czech Republic, and Poland. However the level of administrative corruption is much worse in Lithuania than in Czech Republic, Slovenia, Poland, and etc. According to administrative corruption index Lithuania are nearer such countries as Russia or Kazakhstan. In other word, Lithuania belongs to the group of countries, which medium state capture and high administrative corruption. The main problems of such countries are connected with week public administration, lack of control and accountability, public trust for the public service, and insufficient civic activity.

These statements can be illustrated by following finds, which have been gained by recent sociological researches in Lithuania.

About Lithuanian businessmen attitude toward the problems of public administration one can decided from the results of the opinion poll that had been done by *Baltic surveys* in February-March, 2001, the main problems of the business development depend on immature administrative skills (57%), incompetence (13%) and corruption (8%).

However more interesting results had been gained from the research under the title *Do Lithuanians Need The Transparency In Politics?* It had been organised by Transparency International - Lithuanian Chapter in 2000-2001.

According to this research, authorities and society in Lithuania are not doing enough curbing corruption. No strategic anti-corruption program and effective prevention system of corruption exist in Lithuania. For public life, it is urgent task and it's achievement.

One cannot say, that there are no actions in Lithuania against corruption, dishonesty of officials. But the question is: do we have enough political and civil consciousness in Lithuania, which can allow systematically and effectively fighting corruption?

Lithuanian Parliamentary election held on October 2000, was a good opportunity to see how the main Lithuania parties and Lithuanian residents estimate corruption and other related questions. During December 2000 - January 2001, the analysis of anti-corruption initiatives in published election programs of the main political parties and the survey of the opinion of Lithuanian residents about corruption were made?. The tasks of these surveys were to evaluate anti-corruption activities of political parties programs, methods of theirs implementation and prospective results, to show attitudes of politicians and residents towards general problems of corruption and "civil sensitiveness" for the corruption problem in the electoral political rhetoric.

The analysis of the anti-corruption initiatives in the programs of the main political parties showed, that the Lithuanian Liberal Union and Homeland Union / Lithuanian conservatives pay more attention to corruption problem in their programs than other parties. In the programs of these two parties not only urgency of corruption problem is mentioned, but also are discussed the means how to control corruption. New Union / Socialliberals also discusses corruption as one of the pressing problems in Lithuania, but their program is limited to common principles of the reform in law system and public administration system. Corruption as urgent problem is mentioned in the program of A. Brazauskas Socialdemocratic coalition, but concrete ways for solution of this problem are not discussed.

The survey on anti-corruption initiatives of the political parties showed, that there is systematic understanding of the corruption, but concrete anti-corruption strategy is missing in political parties programs. None of the parties pays special attention to the corruption's issues, i.e. this question is not emphasised as one of the important, and so anticorruption activity is not the priority when parties come into power.

Unfortunately, not only political parties pay enough attention to the questions of anti-corruption strategy in their programs, but also Lithuanian residents are doing the same. The survey on the opinion of Lithuanian residents shows that only 28% of Lithuanian electorate said that concrete anti-corruption means in party program were important for their voting decision and only 29% of Lithuanian residents said that party list without the suspected in corrupted candidates had influence on their voting decision. However, but more than half of Lithuanian residents (68%) think that political parties are corrupt or very corrupt and 63% think, that the Parliament which was elected by public is corrupt or very corrupt. In this context, it is not a surprise, that the political parties are rated the worst in regard to their efficiency of anti-corruption activity. The conclusion can be made that Lithuanian residents do not understand their own responsibility for elected authority well enough: they think that

corruption is a natural phenomenon of governing institution's, and it does not depend on the will and control of citizens.

This hypothesis is confirmed by the resident's attitude towards the efficiency of methods of the fight against corruption. 84% of residents think that severe criminal sanction is the most effective mean to fight against corruption. Also results of the survey showed that is a big potential for the civil initiatives - about 78% of residents indicated that public information is important in curbing corruption. 63% of Lithuanians confirmed, that mass media is the most effective institution in anticorruption activity.

The surveys showed, that Lithuanian residents need political transparency and publicity, that there is lack of understanding that first of all it is the matter of resident's civil maturity, how the formation of the political authority is going. Without such maturity and will even the best anti-corruption strategy will not succeed.

ILLEGAL ENTREPRENEURS
IN THE BALTIC AREA 1920 – 1940, A COMPARATIVE STUDY

Hans Andersson

The prohibition era in the United States is well known among students of organized crime, and analyzed in a number of well written essays, more or less focused on the connections between crime and restrictions.[29] But similar systems of prohibition were also established in Finland, Norway and on Iceland, while in Sweden an intricate system of rationing was implemented in 1917.[30] How this system of rationing affected crime in Sweden has not been the subject to much scientific research.[31] Today a study has, however, become more needed, because of the establishment of what may be labeled as organized crime in Sweden and the entire Baltic region during the last decades. My aim is to examine the patterns of organization and entrepreneurial methods among smugglers and dealers in illegal liquor.

I have made a comparative study of Stockholm and the American city of New Orleans. There are several structural reasons for this choice. The two cities were for example of the same size and have similar coastlines, ideal for smuggling. The choice of New Orleans is also historically motivated. The construct of organized crime in the western culture was born in New Orleans, after the murder of the chief of Police David Hennessey on the 15th October 1890. Italian immigrants and the Mafia were blamed for this deed. A large number of Italians were arrested, with no other evidence than their ethnic origin. The prison was stormed by a mob and eleven Italian prisoners were lynched. The incident and the moral panic that followed gave rise to the perception of the Mafia as a large secret criminal organization.[32]

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[29] See for example: Andrew Sinclair*, Prohibition : the Era of Excess*, London, 1962; Joseph Albini, *The American Mafia. Genesis of a Legend*, New York 1971; Kenneth Allsop, *The Bootleggers: the Story of Chicago's prohibition*, London 1961; Thomas M Coffey, *The Long Thirst. Prohibition in America 1920-1933*, New York 1975; Humbert S Nelli, *The Business of Crime. Italians and Syndicate Crime in the United States*, New York 1976.

[30] Per Ole Johansen, *Markedet som ikke ville dö, forbudstiden og de illegale alkohol-markedene i Norge og USA*, Oslo 1994. See also Jorma Kallenautio: "Finnish Prohibition as an economic Policy Issue", in *Scandinavian Economic History Review*, 1981.

[31] There are a few examples, such as "Den illegala rusdryckshanteringen", Jill Björ, in *Den svenska supen, en historia om bränvin, Bratt och byråkrati*, pp 190-228, mainly focused on the institutional development of the control system.

[32] This murder as well as the moral panic that followed in its wake is described by Christopher Duggan in *Fascism and the Mafia* (page 43-45) as well as by Humbert S. Nelli in *The Business of Crime, Italians and Syndicate Crime in the United States* (New York 1976).

Before getting down to the activities of the illegal entrepreneurs, I will describe the *Bratt system*. The study will be concluded with some comparative remarks.

Ivan Bratt's system of rationing

During the nineteenth century there was in most of Europe as well as in North America a problem of heavy drinking. This was certainly the case in Sweden too. According to a study of the apprentice culture in a medium sized, but by Swedish standards early industrial town, the average consumption for grown males was 2,6 liters of *brännvin,* the traditional Swedish hard liquor, a week, not included beer and other beverages.[33]

During the First World War a physician in Stockholm, Ivan Bratt, proposed that alcoholic beverage should be rationed. People should be allowed to purchase and consume in proportion to how much they could handle. The war had made people used to rationing, in Sweden as well as many other countries. The Bratt system, combining rationing with a state monopoly on the distribution of liquor was implemented in the year 1917 and preserved till October 1955 – the abolishment nicknamed the "Swedish October Revolution".

In short, every respectable citizen was issued a book of account, called "motbok". This qualified him or her to buy a certain amount of hard liquor in any one of the state shops. Unmarried men were allowed to buy more than unmarried women, two as compared to one liter a month. Married men at the age of 30 even more, three liters, while married women were not entitled to their own books. It should also be noted that wine was to be purchased in any amount, but was at this time not consumed by ordinary people in Sweden. Beer was only produced and sold with a rather low percentage (2,8 %) of alcohol.

Furthermore, in restaurants you were not allowed to drink without eating, or at least ordering food. The amount of *brännvin* you were entitled to buy while eating in a restaurant was limited, to 7.5 centiliters at lunch and 15 centiliters at dinner. There was a habit though of going to different places to get several meals and drinks. You could even just take a walk around the block, enter the same restaurant and be served the same meal again (if you had not eaten it) with a new set of drinks.

Not only married women, but also a lot of men, such as drunkards, thieves and other convicts, were not entitled to have their own *motbok*. Also, to many men three liters of hard liquor, even if there was a possibility to add it's equivalent in other forms than the traditional *brännvin*, was not considered enough for one month's consumption. The restrictions therefore gave incitement to smugglers, production of moonshine liquor and other criminal activities.

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[33] Lars Magnusson, *Den bråkiga kulturen. Förläggare och smideshantverkare i Eskilstuna 1800-1850.* Stockholm 1988.

The Smugglers and the Liquor Squad

The smuggling of liquor in Sweden during this period seems to have been concentrated to a few regions, most notably the Stockholm area. According to the writer Olof Monthan, 75 % of the smuggled liquor got in to the country through the Stockholm archipelago, with its thousands of islands.[34] The illegal trade in liquor in the Stockholm region during the period in between the wars was organized in the following ways:

Ships from Germany and Estonia were frequently lying outside the Swedish territorial waters with a cargo of industrial alcohol, carrying something like 95 % of alcohol that had been quite legally bought by a foreign or Swedish entrepreneur in Tallinn or Hamburg.

The actual smuggling was carried out with fast motorboats, which went out to these ships. The smugglers purchased liquor, for about one Swedish *krona* a liter, and carried up to 3 000 liters, into the Stockholm archipelago. The geography of the area made it possible to hide the contraband in small lagoons, later to be and transported into Stockholm by boat or motorcar.[35]

These operations could be financed in several ways, whereof two were common. A professional smuggler would go out in a boat of his own, with a few hands to do the job. But more often a businessman would lend or hire a boat, to a loosely organized crew. In the city the retail prize of industrial liquor was around ten *kronas* per liter. The figures on prizes and the likely amount to have been purchased were of course changing over time. My examples are taken from the memoirs of police captain Blomberg, who at the time was chief of the "liquor squad" in Stockholm.[36] They are, however, supported by court records and other material.[37]

There are also examples of this medium class of entrepreneurs carrying out the whole line of transport in smaller boats. Again it could be either a professional smuggler in a boat of his own, or a boat that was supplied by a wealthy citizen, who may have been financing the trip, while other men carried out the actual transport across the Baltic.

In the last line there were smaller scale entrepreneurs, who bought the industrial alcohol, bottled it and mixed it with water, maybe adding some sugar or brandy as flavor. These bottles were sold at something like four *kronas* a piece in the streets. As one liter of

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[34] Monthan: "I Dalarö talar man alltjämt om smuggling", STF:s årsskrift 1979, *Södermanland.* There is, however, no account given for where this figure comes from, how this estimate is calculated.
[35] The rate of the krona was somewhere around 3.76 to a dollar, in 1924 and during most of the period, *Sveriges riksbank 1668-1924*… Bd V, Statistiska tabeller B. Växelkurserna, sid 166. Stockholm 1931.
[36] Gustaf Blomberg, *Bakom polisens kulisser*, Stockholm 1968.
[37] For example: *Bland langare och langarekunder : Några iakttagelser rörande den olaga sprithandeln* Stockholm 1927. A "participant observation" study made among dealers and drinkers in Swedish, mainly Stockholm, flophouses and harbors.

industrial alcohol was good for up to eight bottles, there was a neat profit to be made even on this smaller scale. The dealers do not seem to have been organized except in very loose networks. It was necessary to know where to get the industrial liquor and other supplies, as well as how to sell it without getting caught. These dealers also seem to have been socializing a lot with each other and sometimes sharing small apartments, if not staying in flophouses. Their age was usually over 30 years and they rarely had any other kind of occupation.

Aside from smuggling, there was *moonshine* production of alcohol. During the First World War there was a lot of homemade liquor in the black market of Stockholm. After the armistice, homemade liquor was substituted by imported industrial alcohol from Germany and Estonia. In rural areas people continued to produce their homemade liquor. This was almost the only crime that was more frequent in rural than in urban courts. [38]

An estimate of the smuggling of liquor in Stockholm and its surroundings is made through an examination of the diary of custom cases in the second department of the magistrates of Stockholm (see fig 1). While there are a few cases of smuggling things like cigarettes, coffee and even automobiles, the great majority concerned alcohol. And this was the only kind of smuggling that really worried the authorities and (part of) the public opinion. In the period before and during the First World War there were only few custom cases. According to Blomberg the smugglers were more hard-boiled than the moon shiners. At least they who came from the other side of the Baltic often fired shots at the police and custom officers doing their duty.

The police and customs officers had a strong economical incitement in their struggle against the smugglers. They were awarded with one third of the value of confiscated goods, as well as vehicles or other equipment that was used by the smugglers they managed to catch. Therefore they also invested money in buying or hiring boats and motorcycles themselves, to be more efficient in their efforts. The confiscated liquor and vehicles could bring a good profit for the police officers. Blomberg, however, complained that when the fines got higher than about 400 *kronor* the smugglers or dealers preferred going to jail for a month or two. Especially during wintertime, the sentence was appreciated as a form of vacation. He also claims that while the police and custom officers could sometimes make some good extra money, the smugglers made fortunes.

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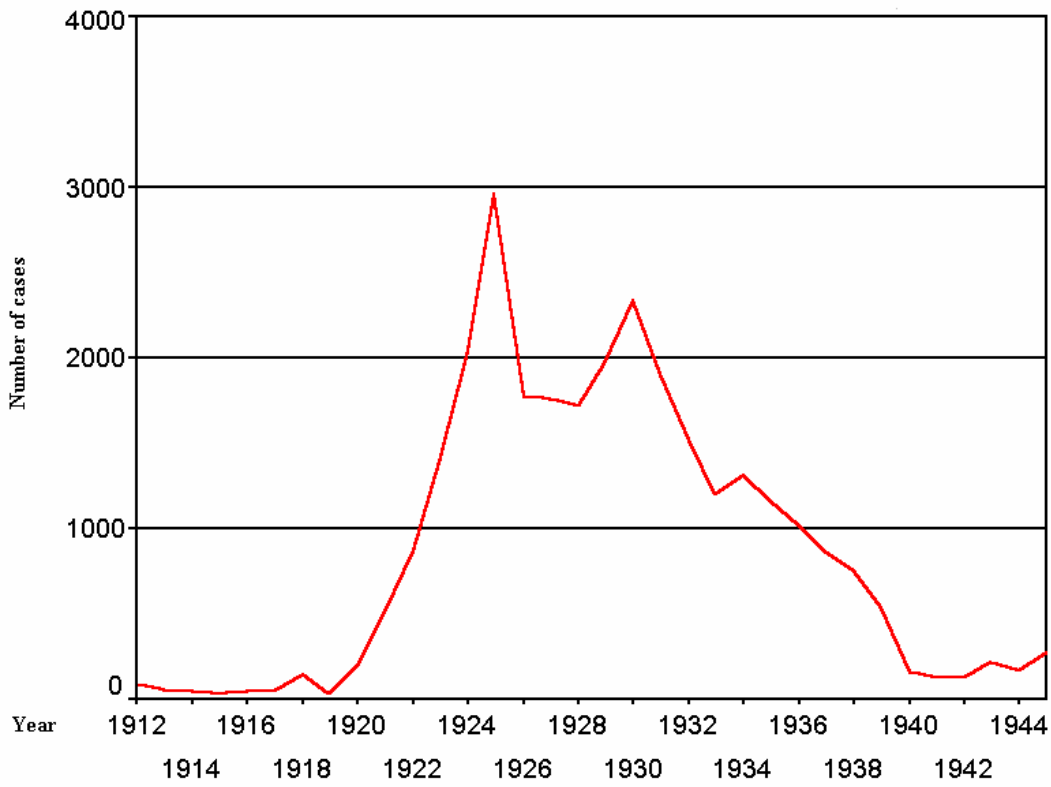
[38] See Hans Andersson: **”Spritsmuggling i mellankrigstidens Stockholm: illegala entreprenörer i ett komparativt perspektiv” i *Ekonomisk brottslighet och nationalstatens kontrollmakt*, ed Hans Sjögren och Leif Appelgren. Stockholm 2001.**

Fig 1. Custom cases 1912 – 1945.



Source: Diaries for custom cases at the Magistrate Court of Stockholm, second department (Stockholm's rådhusrätt, andra avdelningen, rådhusrättens arkiv), Stockholm City Archives.

One consequence of the system was a lack of cooperation between the police and customs officers. Both wanted to make the catch themselves and collect the money for the confiscated goods. This incitement and the fierce competition may, however, not been decreasing the efficiency of the struggle against smuggling. Blomberg was critical to this system, mainly because the customs had better boats that could outrun the police. The smugglers however, as usual, owned the fastest boats.

Most famous of the smugglers was Algoth Niska, born in Viborg 1888. He was active in the trade with his own ship as early as in 1921. During the late 1920.s he served two terms in Finnish prisons, then retired in Stockholm to write his memoirs. It seems to have been difficult to quit the habit though, and during 1932 he was indicted three times for smuggling.[39]

With a motorboat, that he had bought for money earned on the movie rights on his memoirs, Niska had sailed out to the "liquor ship" *Vilmos*, lying outside the Swedish territorial

[39] Second department of the Magistrate Court of Stockholm, case 290 and 571, 1932, Stockholm City Archives.

waters. According to Niska, he had gone there to look for a fisherman's son that had ran away from home. He claims to have bought petrol and oil, which he transported back into the archipelago in the kind of canisters that were normally used by liquor smugglers. For some reason, he hid these canisters on a small island close to a summerhouse he was renting.

The canisters were found empty, but the court did not believe his story. Niska was convicted for having unlawfully taken into the country 240 liters of liquor and one bottle of cognac. He was sentenced to three months of hard labor and his motorboat confiscated. As the liquor was not found it was assumed that he had sold it and he should reimburse the crown with 1083 *kronor*, and another 84 *kronor* for the cost of a horse ride for one of the witnesses.

Gender

A gender perspective has so far, contrary to mainstream social science, not been salient in the research on organized crime. It may be argued that the role played by women in organizations of crime, was reduced to merchandise or symbols of status. How manliness was constructed in the press or popular culture, regarding features such as drinking behavior and attitudes to violence, promises to be a most fruitful field of research. In this paper I will briefly compare the construct of gender in the memoirs of Niska and Blomberg.

The autobiography of the notorious smuggler Algoth Niska starts with a poem: As the autumn winds are blowing, every true smuggler gets an itch to go out in his motor boat to meet the vessels that are lying in wait outside the territorial waters. Niska and his brave colleagues, (though some maybe with less noble motives than himself), in the spirit of Vikings, Phoenicians and other daring voyageurs of the seven seas, with their cargoes of magical liquid bring glamour and joy to the homes in Nordic countries. Spinsters of both sexes, sitting in parliament had in their folly denied people this elixir.[40]

Otherwise he pictures women as admirers, mistresses and helpers who hide him when the police chased him among the islands. Some of these women may have been prostitutes, especially the numerous ladies in Hamburg, described as displaying a traditional German hospitality. This fits well in the idea of the role of women, adding glamour to the hero, in the male world of organized crime.

The way women appear in Blomberg's book is very different. They are either described as hinders in the work of the police or as informants, and as such despicable. He frequently uses derogative expressions describing women, both the mad temperance fanatics that disturbed the work of the Liquor Squad, and the telephone operators in the archipelago that used to warn the smugglers when the police was approaching. It is also said that old women

[40] Algoth Niska: *Mina äventyr*, Stockholm 1931, free quote.

often spread gossip to harm personal enemies. Even if the police did not find anything in a raid, it was bad for the reputation of a person to have his or her home searched.

In their memoirs, both Niska and Blomberg displayed a romantic lust for adventure, similar to the attitude of boy's stories. Niska portrays himself as a knight, struggling against the oppression in the dull republic of stamp collectors (referring to Finland). Blomberg also seems to love the hide and seek game played with the smugglers, spiced with an occasional brawl or gunfight. In fact, the ideal of manliness displayed by Blomberg and Niska is quite similar, they describe themselves as independent, reliable, adventurous but non violent.

Comparative remarks

The actual smuggling of alcohol was carried out largely in the same way in Stockholm with its archipelago and New Orleans and the swamps and bayous along her coast. The first step in smuggling was legally acquiring of alcoholic beverage abroad. Then the liquor was transported on a mother ship to a certain point outside the respective territorial waters. Small, rather fast motorboats brought the cargo ashore. In New Orleans, however, it seems more usual that one person remained owner of the liquor during this process, while in Sweden the men that brought the contraband into the country, first bought it at the mother ships and then sold it in the city. Linked to this difference was the habit of hiding cargoes of liquor in lagoons, as was frequently done in the Stockholm archipelago, but would not have been necessary if the same person was transporting, or arranging the transport in the next phase.

In Stockholm, the liquor was sold to street dealers who transformed the industrial alcohol to a more palatable drink. The dealers seem to have been completely unorganized, independent entrepreneurs, though relying on networks – to be able to find buyers and sellers – in order to make a living on their illegal affairs. In New Orleans there was established, as in the rest of the USA, a system of illegal distribution, either in so called *speakeasies,* or camouflaged as soft drink stands. These different ways of distribution may probably best be explained by institutional differences. In Sweden there were legal bars and restaurants, but they were too closely surveyed and controlled to function as a basis for illegal distribution; in USA the lack of legal opportunities to sell liquor together with the prevalent corruption made it both necessary and possible to establish illegal bars and liquor stores. Another difference was the nature of the contraband, in Sweden industrial alcohol but in New Orleans as in the rest of the USA regular brands of whisky, rum etc.

I will here in some detail consider the two important issues of violence and corruption, crucial to the concept of organized crime.

Violence

Niska never describes himself or his crew as violent, though they always carry guns aboard their boats. Once when they have unloaded a cargo at a small dock in the archipelago, a customs ship shows up. One of the crew, nicknamed Canadian Jack, brought their arsenal, consisting of two shotguns, one Parabellum and one Browning, out of the cabin. Niska was shocked: "You don't intend to shoot at them are you?" But it's only an "Indian trick" made up by Canadian Jack. They fire several volleys in the air, to attract the attention of the custom officers, who take up the chase. The smugglers manage to lure the patrol boat away from the dock, and when the distance is safe they put on full speed leaving the enemy behind.[41]

Blomberg's stories show a more positive attitude towards violence than Niska's. He likes to give account of wild brawls with notorious dealers. Once an ex boxer tries to kill the police officer with an ax, calling him "damned pound cop" and worse things that Blomberg does not want to write down. Pound (or "pund") was a nickname for the beer bottles, used to sell industrial alcohol mixed with water. Blomberg tells that he had recently been operated, for a bleeding gastritis. Nevertheless, he managed not only to stay alive, but also to keep a hold on the suspect, while they were rolling around in a dimly lit coal cellar. At last his colleague appears and ends the fight with a sharp blow. He also has stories of gunfights on the ice at night, while chasing suspected smugglers on primitive snow scooters ("sparkstöttingar", equipped with light engines).

According to the New Orleans News Papers the unwritten laws among persons engaged in the illegal liquor trade, or what was called organized crime, demanded that squealers must die.[42] The story under this headline is however loosely linked to what has actually happened and fits better into a perspective of "organized crime" as a social construct. A study of Swedish papers reveals the same tendency to exaggerate the adventurous and violent side of smuggling, both concerning competition between gangs and the attempts from police and customs to stop the illegal activity. A similarity is thus that by media in both cities strives to fuel something of a moral panic.

[41] Niska, 1931, p. 28
[42] *Times-Picayune*, 30/8 1925, New Orleans City Archives.

Fig 2. Average number of homicides in Stockholm and New Orleans 1911-1940.

Period	Stockholm	New Orleans
1911-1920	8,4	72,6
1921-1930	5,2	92,6
1931-1940	7,5	80,5

Source: Statistisk årsbok för Stockholm 1945, table 54. New Orleans Police Department, Reports on Homicides, microfilm in New Orleans City Archives.

The over all rate of homicides shows that the attitude towards violence was different in Stockholm and New Orleans (see fig. 2). In both cities, however, the lethal violence is to a quite small degree connected with the "organized crime" or affairs of illegal entrepreneurs.

Corruption

There are several incidents showing that the Swedish system was not free from the plague of corruption. Still the examples are quite of another range than the political machine of Martin Behrman in New Orleans. His opponents were blaming him for taking bribes from the illegal gambling and the semi-illegal prostitution, even before prohibition.[43]

New Orleans has had a long reputation for corruption in politics as well as the police force. An example of the prevailing corruption is three police officers that were suspended in 1924 after taking bribes from Italian gangsters.[44] The local or state police and administration often paid no attention to prostitution and bootlegging, if not to make their own profit from it. At least the latter was regarded as an honorable trade and if not all together without it's perils, it gave a good profit. The greatest threat to the illegal entrepreneurs was not the police but highjackers. Stealing cargo of illegal liquor was not regarded with the same tolerance as smuggling and sometimes smugglers even tried to sue the highjackers.

I have not seen any evidence of the Police in USA should have had gained any substantial profits from being efficient in their struggle against the bootleggers. Their poor salaries made them inclined to take bribes.[45] But in Sweden the competition between forces in gaining the rewards, a third of the value of goods confiscated as well as fines, provided a good incitement for their efforts.

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[43] *Times-Picayune*, 17/1 1920, New Orleans City Archives.
[44] *Times-Picayune*, 15/10 1924, New Orleans City Archives.
[45] Louise Vyhanek, *Unorganized Crime, New Orleans in the 1920s*, 1998

Both Niska and Blomberg claim that ordinary people did not consider it a crime to distill *bränvin*, or even smuggle liquor into the country. Nobody was regarded as less decent if they were caught and convicted for these offenses.[46] The lack of moral of a dishonest businessman, called Silk Olav ("Siden Olle") seriously upset ethics of Niska. Silk Olav man was himself a great illegal importer of liquor, but the Police did overlook his activities because he sometimes helped them to catch his colleagues and competitors.[47]

If the cooperation between Police and criminals really was as elaborate as Niska claims, there may be reason to say that there existed a certain degree of corruption within the police of Stockholm at the time. There are further indices of this, but rarely can any proof be obtained. For example Blomberg himself tells a story of how he overlooks the activities of an old fisherman in the archipelago. Still, it is obvious that the level of corruption in Stockholm was very low compared to New Orleans. But this does not seem to have resulted in any greater difference in the strategies of illegal entrepreneurs in the two cities.

Illegal entrepreneurs

In the 1920s, in spite of structural and institutional differences, the market for illegal liquor in Stockholm and New Orleans, according to contemporary estimates may have been of the same size and the trade was organized in similar fashion.[48] Minor differences occurred in terms of ownership, distribution and the kind of alcohol handled. Therefore, the value of confiscated goods could be higher in New Orleans, even if the amount was greater in Stockholm. In neither city were the illegal entrepreneurs inclined to use violence, and it does not seem as corruption would be a necessary prerequisite for what may be labeled organized crime, as the bootlegging trade was as great in Stockholm as in New Orleans.

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[46] Blomberg 1968, p. 98
[47] Niska 1931, p 80
[48] Vyhanek, 1988, p 77; Hans Andersson, "Smuggling och alkoholkultur, en komparativ studie av Stockholm och New Orelans på 1920-talet", in *Spiritus* 2000, p 44.

CRIME COMMITTED BY PEOPLE FROM EASTERN EUROPE – THE POLICE PERSPECTIVE

Ellen S. Kittelsbye and Elisabeth Næss

We have been working for the Norwegian National Criminal Investigation Services (NCIS) as sociologist/criminologist for four– and two years. Our main task have been strategic criminal analyses.

In this paper we will present the police view on East European crime in Norway. This is not based on research, but rather on daily police inputs. Nevertheless this is our comments on what the police find important.

Through hearsay and the media, people in Norway have got the impression that

- East Europeans in Norway are heavily into organised crime
- Northern Norway has been invaded by the Russian mafia
- Criminal organisations from Eastern Europe are advancing towards Northern Europe
- East European mafia have become aware of the market and profit potentials in Norway. Norway is becoming an attractive target.

Naturally, we tend to think that there must be something to these allegations as they reach us through the tabloid press and right-wing political parties. They do influence people, and also the police, of course. In our morning meetings (at the norwegian NCIS) there is all the time talk of the importance of checking East European cars, drivers and passengers. To have this group under control is considered a very important task, and that this work should be strengthened.

But a very exaggerated view of the situation is prevailing:

- "… they take drugs into our country across the border in the north of Norway!" But so far, this year, only one single person carrying drugs has been intercepted on this border.
- "..and mind you, they're organised!" EU's definition of organised crime is based on a number of criteria. There must be collaboration between three or more people over a period of time, they must engage in serious crime, and the aim must be profit and/or power. Janis from Lithuania comes to Norway to get rich. He fits EU's definition perfectly: He comes to Norway with his brother. They have been to Norway several times already. They obtain their profit by stealing razor blades that they send back to a reception apparatus, usually their mother and uncle. The stolen goods are sold on the local market by the receiver of the stolen goods, who happens to be their cousin.

This example illustrates the drawbacks of such a definition of organised crime, putting Janis into the same category as the hardcore, organised, criminal gangs. The heading in the Norwegian press after Janis' visit could well have been:

"Russian mafia with family connections to Lithuania have been raiding Oslo. The business community fears that the mafia has come to stay."

Such headings sell. But when you go deeper into the matter and behind the populist wording, you don't have to be a researcher to see that the reality is quite different.

Of the total number of crimes committed in Norway, the number of East Europeans from the Baltic countries, Poland, Russia, Romania, Yugoslavia and Bosnia Hercegovina charged for criminal offences equals 3,7 %. In 1999 31 519 people were charged with criminal offences, 27 528 of them were Norwegians, while 1 167 were East Europeans.

This tells us that the threat they represent is not exactly extensive.

Nevertheless, there is a problem. Not because of the extent, but:

- Some East Europeans are involved in quite serious crime in Norway. Some of them occupy key positions in criminal networks that cover several countries.

  - The drug import business seems to be particularly well organised. Heroin is smuggled to a large extent to Norway from Afghanistan, Pakistan and certain neighbouring countries via the Balkans and through Europe. There is also a new itinerary further north, which passes through former Soviet states and Russia. Amphetamine is smuggled into Norway from Poland and the Baltic states – particularly Estonia.

  - Illegal immigration has become extensive, and seems to be very well organised. The police have documented a close connection between illegal passing of human being/illegal stay in a country and trafficking in human beings. Trade in women is a form of crime which has been growing during the last years. Oslo Police District has analysed the phenomenon in Oslo and concludes that the number of women working in the indoor prostitution business is growing. Previously the criminal aspect of this trade was mainly related to prostitution. Today, however, a hardening of the business has taken place and the infrastructure around the women is linked to criminal organisations, which invest the proceeds from this "industry" into other types of illegal activity.

  - Some use very violent means to obtain what they want. We have seen this in connection with both robberies and illegal money collecting.

The majority of the criminals from Eastern Europe, however, commit crime for profit. The offences are generally not very serious, but the criminals are very active and mobile. They commit a series of offences over large geographical areas.

Generally speaking, it seems that East Europeans commit different types of offences according to their nationality. A simplified survey of the situation is as follows:

- There are few delinquent Estonians in Norway (20 people arrested in 1999). They seem however to be involved in serious crime (mainly drugs and special amphetamine traffic), and they seem to be collaborating with the Norwegian criminal groups.
- Delinquents from Latvia are also few (only 7 people arrested in 1999) and they do not seem to represent any serious threat in Norway.
- Delinquents Lithuanians represent the largest group (456 people arrested in 1999). They seem to be behind organised serial crimes for profit. They very often use their own cars. The stolen goods seem to be sent back home by mail. Some of these criminals tend to use more violence in their criminal activity than other East European nationals.
- Delinquent Poles constitute an quite large group in Norway (225 people were arrested in 1999). As the Lithuanians, they seem to be behind serial offences for profit. Some of them seem to be involved in different forms of smuggling of drugs, special amphetamine, alcohol and cigarettes.
- 170 Russian nationals were arrested in Norway in 1999. This group also seem to be involved in organised serial offences for profit, as the Lithuanians and Poles.

- It looks as if the serial criminals have a very good idea of how the Norwegian police is organised and exploit this. The offences are usually committed in smaller places. When they have operated in one district for a while, they move on to another.

- The police is organised in such a way that cases committed in one's own district are being prioritised. Therefore similar offences with similar modus but committed in different districts are often discovered by pure coincidence. The police meet too seldom across the district borders, and the respective local police records do not communicate. If we want to catch these mobile criminals and to prosecute them, the investigation must be co-ordinated. This requires that one district take on the responsibility for the investigation and the prosecution, with the consequent financial burden on already strained budgets.

- Some of the East Europeans exploit the Norwegian asylum possibilities. Some of the applicants have heard of Norway's well-developed social security system, and want to settle down here. Some apply for asylum even though they know that their application will be rejected, but they use the processing period to commit crimes. When arrested under such circumstances, the humanitarian aspects must be weighed against the crime combating aspect. Some applicants will argue that they fear a brutal treatment in their home country if they are sent home, either by the police or by organised criminal groups which they claim to be working for.

CONCLUSION

Criminals from Eastern Europe do not constitute a major problem for Norway. If the police have the impression that this is a field that requires intensified efforts, we think that this may be explained by the fact that the crime situation in this group has developed over a relatively short time span. In 1996 the percentage was 1.3, or 350 people indicted, against 1 167 in 1999, or 3.7 %. The increase since 1996, mainly constituted by the Lithuanians, should explain why the police spends so much time in discussing and controlling people from Eastern Europe.

For journalists and police officers working with cases involving East Europeans, these problems are viewed as very central and important. Police officers tell us that East European crime milieus are hardening and that the criminals are willing to commit crime of a more violent nature and that the threshold for committing crimes for money is very low.

The constantly recurring theme in our discussions is how and why the criminal activity is considered so well organised. And finally we take the liberty to comment on the use of the expression "organised crime". It has become an in-word, sometimes employed to deliberately to exaggerate the gravity of a phenomenon, which they say is becoming more and more international and incomprehensible. The notion of organised crime is defined and used differently according to which purposes it serves, be it political, personal or law enforcement interests.

CONSIDERATIONS ON GLOBALISATION, INFORMATION TECHNOLOGY, SURVEILLANCE SOCIETY, LEGISLATION AND CRIME PREVENTION - AN OTHER ALTERNATIVE

Jesper Stecher

This is a big mouthful and from far very specific, but my main aim is to question the way we think when it comes to legislation and protecting the individual against the increased possibility of state coercion in a more and more globalised world in regard to information technology.

What I am going to present is not so much based on research, but rather based on the knowledge I have required working with computers for years.

Some argue, that the postmodern society is a threat against societal cohesion. Everything becomes more and more split. Values and norms seem to constantly differ. We go from an "us" perspective towards a self-centered perspective, namely "I", where it is the individual rather than the group that counts.

As values becomes more and more self-centered, this tends to increase fear on matters regarding the individual such as property, violence or crime in general, which again leads politicians to act on peoples fears in order to show force, but also defragmentation of society tends to create the need for control.

What we see is that legislation tries to protect the individual from being registered or monitored on one hand, and on the other lots of exceptions showing the exact opposite.

What I am thinking of is i.e. the Danish The Act on Processing of Personal Data (Act No. 429 of 31 May 2000) entered into force on 1 July 2000. The act implements Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

In this act - that now is implemented - as far as I know - in all EU-member states, credit information agencies, processors of data such as public authorities, internet providers, phone companies, television companies etc. must store digital data information over a certain amount of time for future criminal investigation. The data is protected by law, but is it safe to say, that this data cannot be misused or that it is properly protected? And what about liability?

Right now a new initiative by EU governements wants to back demands on retention of telecommunication data for up to 7 years.[49]

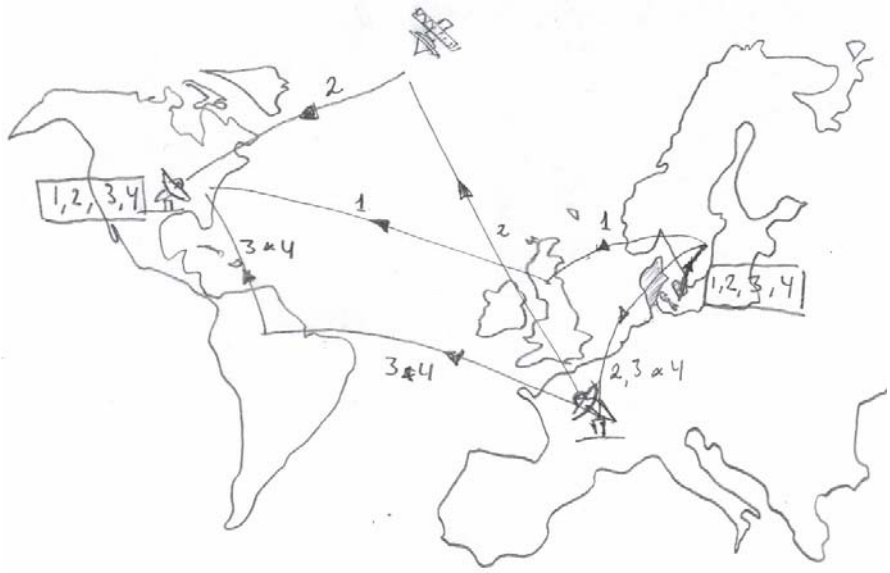
[49] http://www.statewathc.org/news/2001/may/o3Benfopol.htm

To describe this problem, I have to explain how information technology works in very general terms, and I will use the internet as example.

It is an assumption, that the internet grants us anonymity. *One could say, in order to work, information technology has to be based on surveillance*.

How is this?

What you see on this figure is either a request for getting a homepage or sending a mail. The information is sent in many different packages. Each containing information on sender, receiver, number of packages, time information etc. in order to collect and assemble the information properly at the reciever-end, but also to make sure, that if one of the routes is out of order, the lost packages will be resent by another route. This is called a double handshake.



Sender and receiver information contains IP-numbers. These relate to the computer that is sending and the one to target for retrieval of the web-site or receiving the e-mail.

Log-file example:

```
Received: from cicero1.cybercity.dk (cicero1.cybercity.dk [212.242.40.4])
        by usr05.cybercity.dk (8.11.2/8.11.0) with ESMTP id f4NAk7E10419
        for <cfs9001@vip.cybercity.dk>; Wed, 23 May 2001 12:46:07 +0200
(CEST)
        (envelope-from XXXXX@socmed.ku.dk)
Received: from pubhealth.ku.dk (mail.kubism.ku.dk [130.225.108.10])
        by cicero1.cybercity.dk (Postfix) with ESMTP id 2E66915FF74
        for <cfs9001@vip.cybercity.dk>; Wed, 23 May 2001 12:40:27 +0200
(CEST)
Received: from musvit (musvit [130.225.108.144])
        by pubhealth.ku.dk (8.9.3/8.9.1) with SMTP id MAA07808
        for <cfs9001@vip.cybercity.dk>; Wed, 23 May 2001 12:40:29 +0200
(MET DST)
Message-Id: <2.2.32.20010523104034.0071fdf4@mail.kubism.ku.dk>
X-Sender: lone@mail.kubism.ku.dk
X-Mailer: Windows Eudora Pro Version 2.2 (32)
Mime-Version: 1.0
Content-Type: text/plain; charset="iso-8859-1"
Date: Wed, 23 May 2001 12:40:34 +0200
To: "Jesper Stecher" <cfs9001@vip.cybercity.dk>
From: XXXXXXX <XXXXXX@socmed.ku.dk>
Subject: RE: undervisning til november 2001
Content-Transfer-Encoding: 8bit
X-MIME-Autoconverted: from quoted-printable to 8bit by usr05.cybercity.dk id
f4NAk7E10419
```

It is this information, that is contained in the log files, that in many cases contain sensitive information, that at least is registered at the above mentioned bodies, pinpointing a given individual and therefore sensitive information protected by various protection acts. But not all of the above-mentioned bodies stick to store log-files or transport information. Some also stores the actual message, information, pictures, transaction etc.

The information can be send over satellites, telephone cables, TV cable, wireless via antennas, through optic fibres and even electric cords. This is what we popularly call the web.

All the different transport routes get connected in different knots or routers. It is in these knots, that the log-files are needed to make sure, that the information reaches its goal.

Storage-medias like hard disks becomes cheaper and cheaper and larger and larger in capacity. Also storage or packing algorithms becomes better and better, which again means, the costs of storing these types of information becomes adequately cheaper, which again leads to the assumption, that more and more information will be stored and therefore can be retrieved by either the police or other public authorities in case of investigation/prosecution or in case of hacking, which again can lead to more social control.

Can we rely on either the authensity of this stored information or if the stored information is protected well enough?

Somewhere about 80-90 % of all operating systems on this globe are made by Microsoft, based on the DOS-system, which is close to a monopoly, and better known as Windows in various editions.

Windows is far from a secure system. Some of you may have heard about the Back Orifice-hacker program that untill last year could be downloaded from the net, so that hacking could have become more or less a household activity.

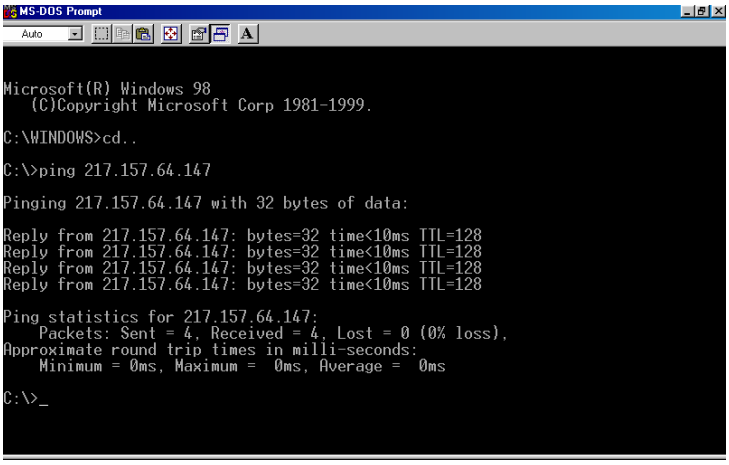
But entering a computer, a server, a router etc. is not that difficult, as soon as you have retrieved the IP-number.

Once again in general terms, so that I will not commit felony, I will try to demonstrate how easy it is to enter another system.

Windows has a ping-command.

What you see below is what is called a dos-prompt or window in where you write the ping-command and link it to a given IP-number or a distant computer while you are on-line.

The picture shows, that 4 small information packages are sent to an other computer (in this case my own at the given time) and that these packages are received. The two computers have interlinked and communicated and confirmed there was a limited but successful access.



This you can do with all on-line computers, servers etc. no matter if there is a firewall that should protect a given database or hard disk from an intruder.

Further more it is possible to retrieve information on the structure of the server, router, mainframe or hard drive. How and where files and programs are. The problem is how to get access to do or change things?

With this information one can ping more precisely and find a weak spot either in the firewall, programs etc. and fill out the ping-line with a command-line that grants one access to

the specific target one wants to penetrate the next time one logs on the target. This is popularly called a "Trojan Horse".

In other words. With the proper skills one is always able to enter a given system and retrieve information or even get control over the accessed system.

The only security there is on data is delay. This also goes for encryption, however this is far more difficult, but any algorithm can be broken - either faster with the adequate resources or slower with enough time at hand.

Are we leaning towards a surveillance society in the so-called "global village"?

To try to overlook this question, one may have to look in many different directions.

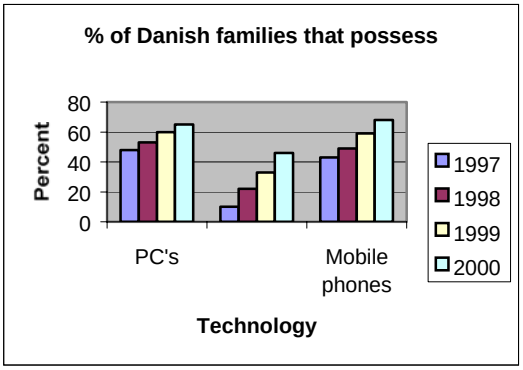
Surveillance society is not happening just because of control, legislation and government, like in Orwell's famous novel 1984. The paradox is, we create the foundations ourselves by purchasing and using information technology at a speed, that no government can demand, and at the same time neglect to ask ourselves, how can we really protect ourselves from abuse either from authorities or privates?

Over the last couple of years globalisation and competitiveness have been the arguments for mergers and centralisations all over the world. Telephone companies, banks, internet service providers etc. have merged. Not only within their branches but also as crossovers in various branches, and public services have interlinked their databases in order to run cross-referencing searches. Partly for statistical reasons, partly to be able to investigate various crimes, partly to provide the citizens with better service and partly to obtain control.

Enormous amounts of information on each of us are stored every day, and stored by a relatively few major companies and public services. The information ofcourse is confidential, but it is there.

We get internet connections, we buy mobile phones, digital phone lines, we use credit cards, we install web cams, we use social security cards etc.

As an example of this development, see the chart below.



Source: Statistics Denmark, 2000

The chart shows how many families have acquired some of the information technology goods over time in percent for the years 1997 - 2000 in Denmark.

Today almost half of the families, and therefore far more than half of the population in Denmark have online access. Even more so when it comes to mobile phones. And this development is still increasing.

Denmark does not differ much from the rest of the industrialised world when we look at the development on this matter.

All over there is an increase in either use of and purchase of these new technologies, and with these new technologies we buy groceries, goods, rent movies, pay bills, order theatre tickets, make phone calls, download programs and entertainment, let books at the library, order holidays, send e-mails, watch cable, get recorded by web cams or CCTV[50], check up on our children in the kindergarten etc.

As shown earlier; log files that can tell about our habits, social status, illnesses, whereabouts, movements, what we read, eat, buy or sell, think, who we communicate with, our political beliefs etc. are stored in longer or shorter periods every time we use this rather new technology or the systems are used about us. Information that more or less can be retrieved, collected and registered showing rather sensitive information about us - even as individuals. All due to the IP-number or a similar technology. Every time we use passwords or pin-codes when using the various technologies, it is almost certain, that the log-files can be identified and related to the specific individual.

But it is not only us using these new technologies or getting on-line that develop.

Also the technologies keep developing. The net gets faster and can contain even more information than in the past. This is also the rule for servers, routers, chips etc.

The speed is essential for the usability, but also the various apparatuses develop.

Today some companies forbid participants in meetings to bring along their mobile phones. The phone has a microphone. This can from a distance be turned on, even though the phone appears shut down, and thereby be tapped.

Computers and in near future digital televisions can be tapped the same way.

Basically privacy is a commodity that is going to be more and more rare.

As much as the technology makes our daily lives easier, they may become a disadvantage to us - at least in regard to privacy - or rather as loss of privacy.

Today research is done on face-recognition from digital images. The recognition-rate is close to 100 %[51]. Also there is done research on voice-recognition. Every voice has its own

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[50] Closed Circuit TeleVision
[51] http://www.faceit.com/faceit/tech/ferets.html

pattern that can be described in an algorithm. Does this work out, one will be able to "log on" to the algorithm and listen to one person's particular voice in a big crowd.

With more and more digital cameras (and maybe even microphones) in the public- as well as the private space - on borderlines etc. this can be a very effective or very scary tool in crime-investigation and social control. And the more this digital technology gets connected with the various webs and databases the more likely it is, that we all will get caught in committing smaller or larger crimes or get excluded because we are registered in some database.

One question, that comes to mind is what types of crime will be prosecuted when more and more crimes will be detected? What will happen to penal codes and criminalisation? Will this make the justice system evne more injust and retributive, than we know it today?

This last thing may even prevent us from travelling, shopping, buying real estate, getting jobs, a life- or health insurance etc.

But the real problem is, as I see it, how can we control what is stored about us where and when, and can this information be trusted as reliable?

I don't have much time left. I will therefore speed things up and the rest will appear even more superficial than it is ment to be.

When we once again look at legislation; integrity of the private sphere is still a fact. We have, as I mentioned in the beginning protection acts, where information stored about us, is confidential. In our constitutions and human rights acts, privacy for the individual is not questioned.

But as I have tried to show to you, privacy in today's technological society, seems more and more violable, because the systems are based on communication. The technology is rather easily penetracable, wherefore the safety of information can be questioned.

Not only in regard to the actual information, but also in regard to its validity.

Digital information consists of binary codes or chaines of plusses and minusses. It should not require too much imagination, that it is farely easy to change a plus or minus here and there, as soon as one has established access. It seems to me, that datavalidity is becoming in danger of getting invalid, unless vi do something. But what?

All over the globe the privacy-rights seems to weaken. I would have liked to make a tour de force through legislation, but a few examples however are needed:

In England the "RIP-bill" or "Regulation of Investigatory Powers"[52] was amended July last year. The bill demands, that Internet Service Providers must install a "black-box" that grants police and intelligence services access to real-time-monitor any user movement on the net.

The Wasenaar-Convetion deny among many things memeberstates the use and export of strong encryption in order to ensure investigation.

The EU-parliament discussed on Tuesday the 29th of May 2001 a report that states that the intelligence- or surveillance system "Echelon" exists. A system that can tap, possibly encrypt and register information sent by satellite, various cables and cords and the internet in real-time.

An other example close by is the Schengen Treaty, which runs the SIS - Schengen Information System. A system, that on 'half-secret basis', can register persons for their criminal activities and for suspicion of the same.

Particularly Europol should make one worried. Europol is granted immunity from legal process and immunity from search, seizure, requisition, confiscation and any other form of interference. Europol is not granted operational powers, but in the preamble it says: "Europol shall enjoy the privileges and immunities necessary for the performance of their tasks in accordance with a Protocol setting out the rules to be applied in all Member States". Europol has no fiscal control and a rather limited control on its activities. It can store information in its own databases, information it can obtain in almost any way it sees fit and without any actual control[53].

The examples are numerous, and so are the violations, but instead of discussing the irreversible openness built in the information technology, everybody expresses concern regarding the lack of public control. In most written comments on the development of agencies, that are granted exceptions from the various protection acts, people express their concern for the lack of public control. They ask - so to speak - for more public control over the controllers and registrators.

But because the information technology is based on storing information - what I call "surveillance", it seems to me rather logic, that no matter how many people or other bodies we grant the power to control and ensure that the right of privacy is not violated, they will never be able to do so.

Once again I would like to ask; what can we do?

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[52] http://www.hmso.gov.uk/acts/acts2000/20000023.htm
[53] http://europa.eu.int/eur-lex/en/lif/dat/1997/en_497A0719_01.html

This is where the alternative solution comes in:

The suggestions that now follows will seem very far out and totally upside down from what we think as proper today.

The only way - as I see it - we can grant the individual the rights that we believe in at the present, is to give us all access to any public or private database. Each of us should have the right to check out any information stored, not only on ourselves, but also on others. This means, we should be granted access into all police and public authority databases, as well as corporate and private databases.

We should be granted the right to question the stored information, and the registrating authority should then be forced to verify and document the authensity of the stored information. If they fail to do so, the information must be erased.

This could - I believe - not only lead to a more self-restrictive and therefore more authentic registration, but also further the cohesive process within societies. Further more, this could lead to a far more effective crime prevention then we know of today. Would you continue committing crime, if you knew someone was on to you, and you knew where to seek this information, or if you knew what the technology and the systems are capable of?

If I am right, this will require a whole new way of thinking, but also a change in the way, information technology should work. It would require a far more narrow coorporation between manufacturers and governments and private organisations to ensure the validity of systems. Systems that shall ensure identity.

With the present way of legislative thinking, I doubt that laws can prevent misuse of the information technology. Instead it will be computer-code that controls legislation more than is the upposite, unless we think differently. It seems to me, that social control should be public to everyone.

I know this seems far out, but the thing is, if we don't think differently in the way we legislate now, investigating authorities or people or organisations with the proper skills and equipment may gain powers described in Orwell's "1984". The way information technology and hardware globaly connects is what one could call an architecture of control.

Who says privacy is a given right and not a public matter? The privacy rights as we know them are not more than a couple of hundred years old. Before that we lived in rather close societies, where everybody knew more or less everything about everybody.

CAUSAL PERSPECTIVES ON DESISTANCE FROM OFFENDING: DOES ANYBODY REALLY CHANGE?

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My current research concerns factors that influence desistance from offending - in other words, why people drop out of criminal careers. I am particularly interested in marriage and the mechanisms by which it relates to the desistance process. Marriage is strongly associated with desistance from crime in both cross-sectional and longitudinal data. Given their statistical association, criminologists have tended to assume that marriage causes reductions in offending. An alternative hypothesis, however, is that the kinds of people who are likely to marry - and especially those capable of forming warm and affectionate marital bonds - are the kinds of people who would have dropped out of crime anyway. This second hypothesis views the statistical association between marriage and crime as entirely spurious and non-causal. I am using longitudinal panel data covering a random sample of 1,725 subjects ages 11-27 to examine this issue within a fixed effects statistical framework. The results obtained should speak not only to the specifics of the marriage-crime relationship, but also to the broader question of whether true behavioral change is ever really possible. For if predetermined factors predict both the probability of "positive" adult life events like marriage and that of desistance, then the apparent causal relationship between these events and desistance is nothing more than an illusion. The main question thus becomes, Does Anybody Really Change?

I am an American Ph.D. student from Rutgers University, New Jersey, USA. I've been a Guest Researcher at the University of Copenhagen's Institute on Criminal Science (Det Retsvidenskabelige Institut D) for the past three years. I'd like to begin by thanking them for that honor.

My current research concerns factors that influence desistance from offending – in other words, why people drop out of criminal careers. I am particularly interested in marriage and the mechanisms by which it relates to the desistance process. Marriage is strongly associated with desistance from crime in both cross-sectional and longitudinal data. Given their statistical association, criminologists have tended to assume that marriage *causes* reductions in offending. An alternative hypothesis, however, is that important, but thus far unidentified differences exist between people, and that these differences influence both the decision to marry and the probability of desistance from crime. From this perspective, the kinds of people who are likely to marry - and especially those capable of forming warm and affectionate marital bonds - are the kinds of people who would have dropped out of crime anyway (had they ever started). This second hypothesis views the relationship between marriage and crime as entirely spurious. My research is designed to test these two competing hypotheses. The results obtained should speak not only to the specifics of the marriage-crime relationship, but also to the broader question of whether true behavioral change is ever really possible. For if predetermined factors predict both the probability of "positive" adult life events like marriage and that of desistance, then the apparent causal relationship between these events and desistance is nothing more than an illusion. The main question thus becomes, Does Anybody Really Change? I use longitudinal panel data covering a random sample of 1,725 Americans

ages 11-27 to examine this issue within a fixed effects statistical framework. While the data are American, the hypotheses being tested concern issues of free will and determinism that should be relevant to Baltic, Scandinavian, and North American people alike.

Theoretical Background

The history of criminology is filled with thousands of studies on the causes of criminality, but very few on the causes of desistance. Studies on desistance that do exist suggest that marriage plays a significant role in increasing the probability of exiting a criminal career, although the findings of this research have been somewhat inconsistent as to the strength of the marital effect or the circumstances under which it occurs.

The most ambitious analysis of the marriage-desistance relationship was undertaken relatively recently by American sociologists Robert Sampson and John Laub. They published their results as a book, Crime in the Making, in 1993. Grounded in life course sociology and social control perspectives, Sampson and Laub argue that marriage should reduce involvement in crime by instilling affectionate bonds between husbands and wives, and thereby increasing attachments to the conventional order. Sampson and Laub advance the investigation of marriage and desistance by arguing that inconsistencies in past research stem from the failure of researchers to account for the quality of the marriage. They argue that marriages come in all colors, and that there is no reason to believe that bad marriages, characterized by instability and a lack of affection, should have any positive effect on behavior at all. On the other hand, "good" marriages, characterized by warm and affectionate ties, should be expected to promote the desistance process. They test their theory (the "age-graded theory of social control") using a somewhat dated, but well-respected set of American panel data (Glueck and Glueck, 1968). Their results suggest that "good" marriages are, in fact, a primary facilitator of the desistance process.

Sampson and Laub's book, as well as most of the previous investigations of these questions, operates under the assumption that marriage causes, or otherwise increases the probability of desistance. But not everyone is convinced. Sociologists Michael Gottfredson and Travis Hirschi argue that the statistical association between marriage and desistance might just as logically be explained by the presence of some third, as yet unidentified, time-stable characteristic of the individual that influences both the decision to marry and the probability of involvement in crime. They base their assertion on well-acknowledged facts concerning the versatility and stability of deviant behavior. Criminal careers research demonstrates that offenders are unlikely to specialize in any particular form of offending (Farrington, 1992). Yet this lack of specialization goes far beyond crime itself. Decades of criminological research supports the idea that those who engage in crime are also more likely to engage in a wrath of non-criminal deviance: to smoke, to use drugs, to gamble, to have accidents, to suffer mental

instabilities, to be dishonorably discharged from military service, to get venereal disease, to fail in educational, occupational, and marital pursuits, and to die young (Robins, 1966; West and Farrington, 1977; Farrrington, 1992; Hirschi and Gottfredson, 1994). Fascinating as it is, this constellation of behaviors can be (albeit roughly) predicted on the basis of early childhood characteristics. For instance, parental reports concerning children's temper tantrums have been correlated with those children's participation in crime and various forms of non-criminal deviance in later adulthood (Glueck, 1968; Caspi, 1987). Given the long-term predictability and inter-correlation of such a broad assortment of deviant behavior, Gottfredson and Hirschi (1990) argue that the observed relationship between marriage and desistance may well be spurious as opposed to causal. This would be the case if some stable characteristics of the individual influenced both the probability of marriage/good marriage and the probability of desistance. Given the evidence for the versatility and stability of deviant behavior, Gottfredson and Hirschi view this as highly likely.

The Research Question: Social Causation or Self-Selection?

My research examines the competing hypotheses outlined above. I have chosen marriage as a vehicle for this investigation given the important role that past research has suggested marriage plays in the desistance process. But the broader question is whether any adult life event (marriage, meaningful employment, involvement with a mentor, quitting drugs, etc.) has a true, causal effect on the desistance process, or whether those who have the wherewithal to get married (maintain a marriage, hold onto a job, quit drugs, etc.) would have desisted anyway. Sampson and Laub's theory can be categorized as a social causation perspective since it suggests that important life events lead to, or cause, bona fide changes in behavior. Gottfredson and Hirschi's theory can be categorized as a self-selection perspective since it holds that stable characteristic of the individual predict both the probability of these events occurring and the probability of desistance from crime. Figure I provides graphic models of these perspectives with good marriages used as the adult life event in question. Single-arrowed, straight lines indicate hypothesized causation. The double-arrowed, curved line in Figure B indicates hypothesized positive co-variation, but non-causality.

Figure I. Social Causation vs. Self Selection

A. The Social Causation Perspective **B. The Self-Selection Perspective**

Testing these perspective proves difficult. True experiments, with randomized treatment and control groups, are the only means by which causality can be definitively tested in the social sciences. Unfortunately, involvement in an affectionate marriage (or maintenance of a good job, etc.) cannot be randomly assigned. Examination of these issues is therefore forced to proceed via non-experimental methods, where levels of criminality among married and non-married subjects can be compared. Causal attribution under circumstances such as these is far less convincing.

At a minimum, the inference of causality requires a) co-variation (when X changes, Y changes), b) temporal order (changes in X precede changes in Y), and c) non-spuriousness (the relationship between X and Y should not be explainable on the basis of any other (set of) variable(s)). There is no dispute concerning the co-variation of good marriages and criminal desistance, and longitudinal data are capable of specifying the temporal order of these variables. However, no set of non-experimental data, be it longitudinal or otherwise, can provide any magic protection from the threat of spuriousness. It is always possible that some third, unidentified factor influences both the decision to marry/ability to maintain an affectionate marriage and the probability of desistance. This unidentified third factor is presented as a question mark (?) in the self-selection perspective model in Figure I. Gottfredson and Hirschi (1990) argue that this unidentified factor is "level of self control," a time-stable individual characteristic roughly akin to risk-taking. But the self-selection perspective transcends substantive disciplines. Biologists might see it as intelligence or testosterone; psychologists as aggression or egoism; sociologists as the effects of early childhood socialization or experiences. Uniting these perspectives, however, is the belief that such individual differences are time-stable, and therefore differentiate individuals' decision-making and behavioral probabilities consistently across the life course.

Given the developmental nature of the research question at hand, longitudinal panel data would seem the logical point of departure. Changes in life event status (e.g., marriage) over time can thus be examined in connection with changes in criminal behavior. While true experiments control for important third-factor differences between subjects through the process of randomization, the non-experimental nature of longitudinal data analysis requires that such factors be controlled for statistically. While traditional controls include things such as age, gender, ethnicity (in the US), and socio-economic status, controlling for self-selection might suggest the addition of IQ, risk-taking, childhood experiences, or a host of additional psychological measures, depending on one's substantive field. Such techniques require not only a good idea of what kinds of characteristics we need to control for, but also an ability to measure these characteristics without error. Yet this is easier said than done, since we remain relatively ignorant in regard to precisely what kinds of individual-level characteristics account for self-selection. (If we knew, we wouldn't really need to do the research). Further

complicating things is the fact that longitudinal data is enormously time-consuming and expensive to collect. This means that, in reality, most researchers are forced to adopt pre-existing data as opposed to collecting their own measures. Given the elusive nature of the characteristics theoretically relevant to self-selection, researchers are hard-pressed to find them measured in existing data sets and are therefore generally required to force-fit pre-existing, second-rate proxy measures in lieu of the actual constructs they seek to control. And in some cases, the difference between the available data and the constructs of interest can be enormous. In essence, it is hard to know what to control for and where to find data that contains the required measures.

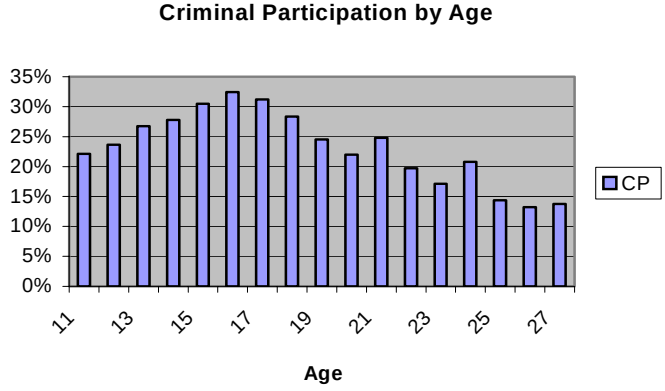
Ordinary Least Squares (OLS) regression is the traditional means by which the last two decades of social scientists have examined the relationship between a set of independent variables and an outcome measure. OLS works by examining subjects' scores on a set of independent variables and determining the extent to which the differences between subjects on these variables can explain differences between subjects on the dependent variable in question. This amounts to a test of the extent to which between-person differences in X account for between-person differences in Y. Assume that X and Y are correlated, but not causally related. Further assume that a third variable, Z, is the true cause of X and Y. If only X is used to predict Y, then X will render statistically significant results. But if Z is added to the model, the effects of X will drop out and Z will obtain its proper significance. The problem with OLS regression is that we can never be sure we have included all the Z's. There is, however, a solution. When using longitudinal data, there is a class of statistical models that will control for all time-stable individual differences between people whether these differences are measured and controlled or not. Fixed effects models allow one to examine the extent to which within-individual changes in the set of independent variables result in within-individual changes in the dependent variable. Contrary to the OLS regression, which examines factors that explain differences between people, fixed effects models use changes in a single individual's independent variable scores over time to explain changes in that specific individual's scores on the dependent variable. In this way, each individual in the sample acts as his or her own control. Since Gottfredson and Hirschi's version of the self-selection argument maintains that the important differences between individuals are time-stable, the use of fixed effects models should shed light on the question, since they allow one to examine the effects of marriage on criminal desistance independent of any time-stable, individual characteristics that could result in self-selection.

Data: The National Youth Survey

The National Youth Survey (NYS; Elliott et al., 1989) is a seven-cohort, multi-wave self-report panel study of the attitudes, life experiences, and behaviors of American youth.

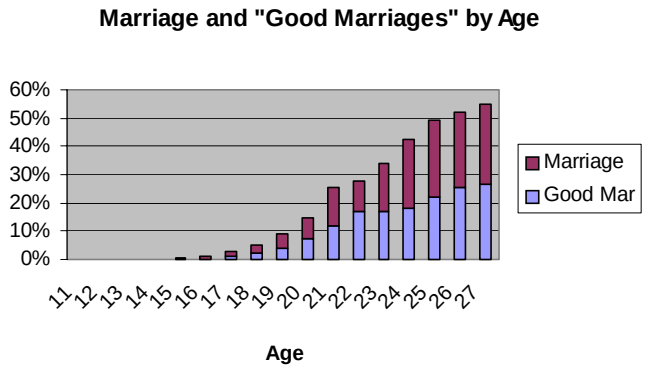
The NYS was launched in 1976 with a national probability sample of 1,725 males and females then ages 11-17. I have access to seven waves of NYS data spanning 11 years. My last wave of available data includes 1,384 subjects age 21-27. Combining the seven individual waves into a single, pooled (stacked) dataset allows for examination of a "synthetic cohort" of subjects ages 11-27. The NYS is well suited for my analyses given its nationally representative sample, relatively low attrition (only 20% over 11 years), detailed measures of marital quality, and its systematic measures of delinquency and crime. The NYS is, in fact, one of the premiere self-report panel studies in the business. It has been used extensively for examining the causes of criminality, but underused in regard to the causes of desistance.

The figure below the right demonstrates the extent of criminal participation by age among this general population study of NYS youth. (All of the charts presented are based on N=10,855 subject-wave units, a number that includes all 1,725 subjects multiplied by the number of waves in which they participated. The pooled/stacked data configuration makes use of all available data). All participation rates are self-reported and concern participation "during the past year." These participation rates are relatively high given the fact that the sample is based on all youth (not just criminal youth), is comprised of both females and males (approximately 1:1.1), and indicates participation in one or more of a relatively serious set of criminal behaviors which were measured in each of the seven waves of the study. These behaviors include: Serious Violent Offending (aggravated assault, rape, robbery, gang fighting), General Theft (stole <$5/$5-50/>$50, motor vehicle theft, burglary), and Illegal Market Involvement (prostitution, buying stolen goods, selling marijuana, selling hard drugs).



The figure below provides information on the proportion of the sample that was married and the proportion enjoying what I have defined as "good marriages" (characterized by warm and affectionate bonds). While I have never quite come to grips with the mysteries of Microsoft Excel, the column furthest to the right represents marital status among those subjects age 27. The total height of the bar represents the proportion of subjects who are

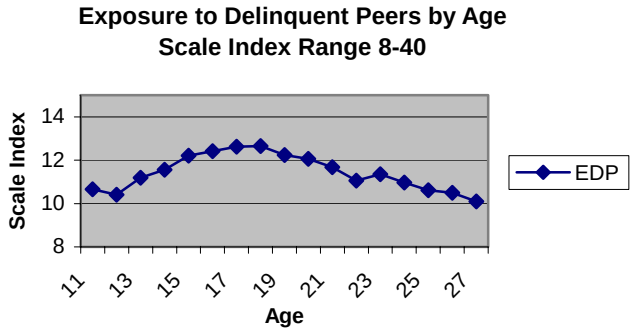
married. This was, for instance, 55% at age 27. The lower section of the bar represents the proportion of subjects involved in "good marriages," which was 28% at age 27.



Characterization as a "good marriage" was based on subjects' responses to a series of questions regarding the strength of the bond between themselves and their spouses. A representative pair of the ten individual questionnaire items used are, "How much loyalty have you and your partner had for one another?", and "How much warmth and affection have you received from your partner?" The other eight items are excluded in the interests of space. Responses to these items were summed, and those receiving scores in the top 50% were characterized as enjoying a "good marriage." While dichotomization of a continuous scale results in some loss of information, the procedure was necessary to retain all subjects, married and not, for purposes of my analyses. The statistical models discussed later treat "Good Marriages" as an indicator (dummy) variable, which is modeled in comparison to a second indicator variable for "Bad Marriages." Both of these are compared to the reference category, "Not Married."

Another relevant variable is changes in subjects' Exposure to Delinquent Peers (EDP). EDP is interesting from two standpoints. First, EDP is recognized as one of the strongest predictors of criminality known to the field. Second, Sociologist Mark Warr (1998) has suggested that the relationship between marriage and desistance may be fully explained on the basis of changes in EDP. Warr agrees with Sampson and Laub's hypothesis that marriage causally affects desistance, but he disagrees with their view that this relationship functions via the effects of marriage on subjects' social bonds. Instead, Warr argues that marriage reduces criminality indirectly via the cooling effects that marriage has on people's associations (and thus exposure) to delinquent peers. EDP certainly co-varies with marriage. But the important question for me is whether the effects of marriage on desistance are wholly explained by the effects of marriage on EDP. Were this the case, the inclusion of both marriage and EDP as predictors of desistance should result in the estimate for marriage being reduced to non-significance. The figure below shows changes in EDP as subjects age. While the metric used in this figure should not be interpreted as a proportion (it results from a summary score), the

measure of EDP is based on subjects' reports of the proportion of their close friends that have engaged in ten serious forms of delinquency "during the past year." Note that the Age-EDP curve is somewhat reminiscent of the age curve for criminal participation, although much less pronounced. In fact, the curve is actually rather flat when one considers that it is based on a measure with a possible range of 8-40.



Conclusion

This work is still in progress, so no concrete results are presented herein. However, initial results suggest the following: 1)That marriage reduces criminal participation net of the effects of any individual proclivity to marry and engage in crime; 2)that the effects of marriage are drastically reduced, but still marginally significant (p=0.045) when EDP is added to the model; and 3)that "good" marriages have strong, highly significant effects on criminal participation net of all stable individual differences as well as the effects of changes in EDP.

These preliminary results tell us nothing about whether self-selection is, in fact, at work, and if so, what individual-level characteristics are likely to account for it. They do, however, suggest one important conclusion: that regardless of whether some types of people are more likely to marry and/or better equipped to maintain those marriages, mere involvement in such marriages decreases the probability of future offending. This suggests that life events do matter and speaks to the question, "Does anybody really change." They do. This conclusion has considerable implication for both criminological theory and crime control policy. For if the self-selection perspective were accurate (and individual-level characteristics predicted both adult life experiences and desistance), then the traditional theoretical explanations of the onset or desistance of crime could not be right. For instance, if early childhood socialization experiences accounted for both one's likelihood of associating with delinquents and one's probability of committing delinquency, then Sutherland's (1939) differential association theory would hold no water. In a similar vein, confirmation of the self-selection perspective would invalidate many if not most of our individual-level crime control policies. For if the causes of poverty, drug use, school failure, and criminality were truly established in the individual's distant past, then governmental interventions aimed to change individual's

economic, educational, or substance involvement patterns would have little effect on their criminal potential. The self-selection perspective, in fact, leaves little hope for personal reformation.

The preliminary results suggest that people can and do change. This contradicts Gottfredson and Hirschi's self-selection hypotheses, and suggests that existing sociological theory and social policy retains relevance. I look forward to developing more concrete results in this regard and to presenting the findings to my friends and colleagues at the NSfK.

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KONFLIKTRÅD IN DENMARK AND THE DEVELOPMENT OF A RESTORATIVE JUSTICE PHILOSOPHY

Anne Lemonne

"Analyses are (and should be) produced in regard to specific issues from specific positions and with determinate objective in view. (...) They must have a reasonable conception of the overall pattern within which they intervene. They must have reasonable grasp of the relations between their specific object of study (for example, a particular sanction or institution, or a specific ideological discourse), and the other elements in the penal complex". (Garland and Young, 1983:p.14).

Introduction

The first victim-offender mediation program (so-called *Konfliktråd*) was implemented in Denmark in 1994. This new implementation appeared on the tracks of similar programs implemented in the Western part of the world during the last two decades. Indeed, during the 80's victim-offender mediation programs have been introduced within the field of criminal justice in many countries. At the initial stage of their implementation, programs were usually small scale, targeting young offenders having committed petty crime for which a diversion from the penal justice system was sought. Since the 90's, this situation has evolved in some countries towards a progressive introduction of victim-offender mediation programs at every stage of the penal justice system. The emergence of international recommendations promoting the use of these measures was also witnessed.

At a theoretical level, the introduction of victim-offender mediation programs has been perceived as a sign of a *paradigm shift* in the criminal justice system. Indeed, according to some scholars, the introduction of such measures should drive a shift in the rationale of our penal justice system. The latter would diverge from the retributive/rehabilitative ideal in order to encompass a restorative philosophy, a concept recognized as breaking radically with the rationale of our current modern penal justice system (Messmer and Otto, 1992; Bazemore, 1996, Walgrave and Aersten, 1996; De Munck, 1997; Fattah, 1998; Walgrave 2000).

This contribution aims at challenging whether or not the introduction of the Danish *konfliktråd* initiated a *restorative* paradigm shift in the Danish penal justice system. This discussion will constitute an opportunity to review the general idea of restorative justice and to discuss some issues at stake in the development of the *konfliktråd* in Denmark. In this context, the emergence of the Danish victim-offender mediation program will briefly be analysed within the broader context of recent criminal policy development. Indeed, it will be argued that the emergence of specific victim-offender mediation programs cannot be disconnected from other penal policy issues. The understanding of these relations is of first importance to

investigate the place and role of mediation programs in the general rationale of the penal justice system. In this contribution, attention will be given to the empirical specificity and not only to the conceptual discussion. This is why we have decided to elaborate on the concrete description of the *konfliktråd* in Denmark.

The development of a Restorative justice philosophy

The emergence of the idea of restorative justice finds its roots in the 70's in the increasing scepticism towards both the retributive and the rehabilitative justice model. At that time, growing criticisms took place, which questioned deeply the capacity of the penal justice system to handle an ever increasing case-load, to get positive effect on the trajectory of the delinquent as well as to take into account the interest of the victim. The penal justice system was considered as arbitrary, unequal, stigmatising and too far from the concerns and needs of the citizens in general. Consequently, some advocates promoted the development of new strategies of conflict resolution which should be more egalitarian, human, beneficial for the society and taking into account the citizen's needs (Messmer & Otto, 1992; Snare, 1995). In the European context, the *abolitionist movement,* lead in particular by Norwegian and Dutch criminologists, provided a theoretical framework supporting the abolition of the penal justice system and its replacement by alternative forms of dispute settlements such as community boards or victim-offender mediation programs (Bianchi & van Swaaningen, 1986). Nils Christie, *e.g.,* in his article 'conflict as property' (Christie, 1977) - widely quoted in the restorative justice literature as a *pioneer contribution* - emphasised the need to find a true and feasible alternative to the penal system. The idea was that the conflict should be placed back in the hands of the principal actors, which should be allowed to resolve their own disputes instead of having systematically recourse to the law, the police, the social workers,…. Christie's idea was that the lack of possibilities for the actors to solve their conflict was a great loss for the victim (through the anxiety generated by the crime), for the offender (through the lack of opportunity to repair) and, finally, for the society in general (because of the lack of opportunities to discuss standards, values and law). For Christie, giving back the conflict to the people was a mean to revivify and strengthen the local community. In this respect, the process of participation was understood as more important than the outcome i.e. the determination of guilt. Behind such an approach, the necessity for the participants to decide by themselves was foreseen. Instead of accepting orders from above that demanded compliance, a potential of empowerment for the people and of increasing legitimacy and efficiency for the decisions taken was stressed. Indeed, the latter result from an open dialogue during which a solution emerges which seems acceptable to the participants.

In Europe, victim-offender mediation programs, often taking different labels, organisational framework, level of institutionalisation, actors and operational philosophy, have

been developed during the 80's on the basis of experiments implemented in the United States (Snare, 1995). Progressively, the use of victim-offender mediation has gained increasing support in the Western countries up to the point that they are now implemented largely in some countries and that international recommendations favour their introduction in the penal legislation (*European Committee on Crime Problems, 1999;* Crawford, 2000)[54]. This acceptance in countries with different legal traditions and problems has been seen as taking place because mediation is touching a "critical feature of our modern civilisation" (Snare,1995).

It is only in the 90's that these initiatives embraced the Anglo-Saxon idea of *Restorative Justice* (Marschall, 1999*)*. Since then, various theoretical and ideological movements have been more or less associated to the development of this model as *f.i.* the theory of "reintegrative shaming", "care justice", "peacemaking criminology", the victim movement, religious movements,...(Braithwaite, 1989; Snare, 1995; Braithwaite, 1999; Marshall, 1999). Since an exhaustive list of all these differentiated theoretical developments cannot be provided here, the definition given by Galaway and Hudson (1996) is useful to highlight the paradigm shift introduced in the philosophy of the penal justice system by the restorative justice model but also to clarify the restorative notion. Indeed, according to this definition, in the restorative justice model, "*the crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities and offenders themselves"*, and only secondarily as a violation against the State; *"the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing injuries caused by the dispute*", rather than punishing or giving treatment to the offender; *"the criminal justice system should facilitate active participation by victims, offenders and their communities in order to find solutions to the conflict",* instead of leaving this solution to a judge and/or an expert. Based on this definition the restorative justice concept constitutes certainly a theoretical shift in the penal philosophy.

[54] As e.g. According to the general principles outlined in the recommendation of the Council of Europe on mediation in penal matters, mediation should be a generally available service at all stages of the criminal process (European Committee on Crime Problems, 1999). Recently, the 10th UN Congress on Crime Prevention and Treatment of Offenders in its conclusions, approved a summary resolution where it recognised the growth of restorative justice programmes. It called on Governments to increase the use of restorative justice interventions.

At a theoretical level, the definition of *restorative justice* as well as its appropriate techniques, actors, procedure,... are still largely debated (Walgrave, 2000)[55]. These debates are important and mirror the willingness of the tenants of the restorative justice movement to propose a viable restorative justice system.

The evaluation of restorative justice programs in various European countries has illustrated the gap forming between the theoretical ambition and its practical implementation. For instance, mediation/reparation programs have been criticised for being implemented (Snare, 1995; Wright, 2000):

- unilaterally, *i.e.* focusing only on the offender or on the victim instead of encouraging direct communication between the two parties with the aim of favouring better mutual understanding that should lead to an agreement concerning the reparation/restitution;
- in the framework of the previous aims of the penal justice system *i.e.* diversion, education, rehabilitation, retribution and restitution instead of being an empowering mechanism of reparation linked to a process of participation in which both parties choose a solution;
- in an authoritarian way, without giving the conflict back to the people and, hence, preventing the settlement of a solution resulting from a mediation lead by lay member of the community. This is typically the case when the programs are implemented by authorities or agencies working according to the previous philosophy of intervention.

The partial implementation of the restorative justice model was often considered as the result of a tension emerging from the attempt to reconcile the victim-offender mediation programs and the formal apparatus of penal justice. It appeared regularly that the decision to refer a case to mediation was handled with little care of the needs of the victims in a system merely oriented towards the offender. Moreover, because the mediation programs were often dependent of the criminal justice system via their funding, they were inevitably subjected to the goal of the traditional penal justice system. In this respect, it is important to stress that this *gradation* in the degree of implementation has given birth to typologies of the *restorative justice model* itself. The one recently presented by Wright (2000), distinguishing between *unilateral*, *authoritative* and *democratic* versions of restorative justice is a witness of such a

[55] Within the debates one can find those relating to its definition (is restorative justice characterised by its process or by its outcomes), to its techniques (is victim-offender mediation the only technique that one can use in the restorative justice philosophy or does other approaches such as family group conferencing, community service order or victim support programs fit within the restorative justice perspective); to the role of the State (should the State be active in the conflict resolution and to which extent); to the importance of coercion (is restorative justice a process that should be entirely voluntary or is it necessary to implement coercive measures) (Walgrave, 2000). For an extensive discussion of these debates, see Lemonne & Snare (2001).

trend. It is worth mentioning that most of the tenants of the restorative justice approach have agreed on the fully restorative potential of victim-offender mediation programs implemented in the community (Walgrave, 2000; Wright, 2000)[56].

On the basis of these general trends, we will now describe the development of the victim-offender mediation program implemented in Denmark.

The development of the *konfliktråd* in Denmark

The implementation of the *konfliktråd* in Denmark reflects the general interest in the Nordic countries for restorative justice programs, mainly known in these countries as *mediation* or *conflict resolution* programs (Kemeny, 2000; Lemonne & Snare, 2001). Even though the possibility to introduce such initiative in Denmark has been discussed several times since the middle of the 1970's, it is only in 1994 that the *konfliktråd* was implemented. In Denmark the *alternatives to imprisonment* were part of the debate in criminal policy since the middle of the 1970's and, in this context, the question related to the implementation of confrontation between victims and offenders was mentioned. However, despite previous propositions[57], it is only in the framework of a large action plan introduced by the Government under the name '*Bekæmpelse af vold'* (*voldspakke 1)* that, among several initiatives aiming at fighting against violence, it was decided to introduce a pilot experiment with the *konfliktråd* (Rentzman *et al*., 1994; Raahave, 1999)[58]. Indeed, in the view of the experiences already performed in other countries, the Danish government decided to conduct a confrontation experiment between violent delinquents and their victims. But in contrast to numerous foreign policies, it was decided to implement the experiment as a *preventive supplement* to the traditional system of penal justice rather than as an alternative to the latter. The main reason that favoured this specific implementation was the mistrust with respect to the *non-convincing* results of these alternative actions obtained in other countries. Carefully, the government decided to establish the *konfliktråd* as a pilot experiment in a few police districts. This

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[56] However, the practice shows that victim-offender mediation programs are difficult to implement. Indeed, the use of mediation oriented programs is limited by the voluntary character of the measure as by the capacity of the parties to settle an agreement. Therefore some of the tenants of the restorative justice approach attempt now to develop a "viable" restorative justice model which in the long run could come to replace the extisting penal justice system. This model includes the possibility to introduce other restorative measures such as community service order or work for a victim compensation fund,... These new measures could be used when a voluntary settlement cannot be reached (Walgrave, 2000).

[57] For example, the proposition of law *L 83* made by the SF, which did not came off or the project to establish dispute settlement in graffiti cases which was halted by the Ministry of Justice. (Vestergaard, 1990; Vestergaard, 1991; Raahave, 1999).

[58] The Parliament (*Folketing*) adopted these initiatives May 3rd, 1994. They are in force since June 1st, 1994. Lovforslag L78 om Bekæmpelse af vold. This plan was prepared in collaboration between various Ministers and led by the Minister of Justice.

experiment, which was supposed to be the first step in the introduction of permanent *konfliktråd*, was planned for a period of two years.

Following the governmental plan, the aim of this implementation was to give a bigger responsibility to the delinquent and to prevent further violent action. Simultaneously, the mediation process had the objective to allow for the victims to express their frustration and their fear and, consequently, to give them a better feeling of security in their daily life.

From February 1995 to 1996, five *konfliktråd* were initiated in four police districts. The participation in a *konfliktråd* was planned as being *voluntary* for both the victim and the offender. Mediation was proposed as the method of confrontation between victim and offender involved in a *konfliktråd*. The meeting was to be seen as a confidential, safe procedure, conducted with competence and neutrality by volunteering mediators. The responsibility for transferring the cases to a mediator when both victim and offender had agreed to receive more information about the *konfliktråd* was given to the police. But other institutions (such as SSP, employees in the Prison Service, leaders of youth schools,…) as well as victims and offenders themselves were also given the possibility to refer cases in *konfliktråd*. During that period, the experiment was focusing on juvenile offenders from 15 to 18/20 years old and their victims. The offender had to be unpunished or punished without serious charge against him. In order to participate in a *konfliktråd*, the offender had to plead guilty and, in accordance with the governmental plan, could only be charged with any of the criminal cases defined in *Straffelovens § 244 i.e. the less serious violent cases* (Det Kriminalpræventive Råd, 1996)[59].

However, rapidly after the implementation of the program, some conditions were revised, including older offenders (up to 21 years) as well as delinquents with a criminal record, at least if a concrete evaluation of their case proved to be suitable for mediation. The possibility to integrate other kinds of criminality in the experiment was also pointed out as long as they had an impact on the victim or on the offender. This broadening was essentially carried out in order to guarantee a sufficient number of cases for the pilot experiment.

The evaluation report of the experiment (Det Kriminalpræventive Råd, 1996) stressed that after a few months of implementation and despite the widening of the criteria of eligibility, only a few cases were mediated within the *konfliktråd*. Indeed, no case was completed during the first year and only 4 mediations were settled at the end of the second

[59] Violence and other attacks upon others are dealt with in § 244-249 of the criminal code. A tripartition is made. §244 deals with the so-called 'ordinary' offences (§245-§249 criminalize more serious violent cases) (Langsted *et al.*, 1998). The §244 mentions: "Any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to simple detention or to imprisonment for any term not exceeding one year and 6 months" (Høyer *et al*, 1999). In the project description, reference is made to violence in pubs, violence against exposed groups –as *e.g.* taxi drivers - street violence. (Det kriminalpræventive Råd, 1994).

year. In total, there were in fact 16 other cases suitable for a *Konfliktråd*, but they did not receive the agreement of the parties. The report essentially underlined the causes which could explain the lack of cases as well as the problems met during the implementation of the experiment. In particular, the report stressed that the implementation of the *konfliktråd* involved new working techniques, new ways of regarding criminal acts and their victims, inherent difficulty associated to the proper selection of the cases which all rendered its implementation difficult.

In May 1997, on the basis of the limited pilot experiment, the Parliament (*Folketinget*) required a new and larger experiment as a prerequisite for any further and permanent implementation of the *konfliktråd*. This second experiment was conceived as a three-year project, to take place from 1997 to 2000. In September 1999, the Minister of Justice extended the duration of the experiment for another two years i.e. until June 2002. The framework of the second experiment aims at reinforcing the legal position of the victim of crime[60].

In this new experiment[61], there is no more any upper limit with respect to the age of the offender (but has to be at least 15 years old); the experience now includes all form of criminality which are *suitable* for mediation, and there are no residence criteria required to participate in a *konfliktråd*. Moreover, the confrontation within a *konfliktråd* is still a supplement to the usual legal procedure even though it is explicitly mentioned that after a concrete evaluation of the case, the court may now decide to take into account involvement in a *konfliktråd* when determining the sentence.

In many aspects, the new experiment confirms some tendencies which were already present during the first pilot experiment. For instance, the aim of the councils is still to be a forum for dialogue between victim and offender that shall provide solutions to the frustrations and anxiety problems of victims while, at the same time, shall give the offender a greater sense of responsibility and, as an outcome, discourage any further criminality. Other confirmed tendencies are the possibility for an offender to participate in a *konfliktråd* even if he has previously been punished; he is still free to refuse the mediation process; but if he accepts, has to plead guilty. Similarly to the first experiment, it is still the police which transfer the cases to a mediator when both victim and offender have agreed. But other institutions (such as SSP, employees in the Prison Service, leaders of youth schools, etc.) as well as victims and offenders themselves can formally suggest cases. The project is currently implemented in three

[60] Lov nr.349 af 23/5 1997 om ændring af retsplejeloven, straffeloven og erstatningsansvarsloven.
[61] For an extensive description of the current experiment, see Det Kriminalpræventive Råd, 1997.

police districts. A recent publication by the project leader of the project gives a more concrete description on how mediation between victim and offender is carried out (Rasmussen, 2000):

"(…)Victim and offender are contacted by a mediator when both parties have agreed to being contacted. The mediator tells them what mediation is all about and what the parties stand to gain by participating.

In some cases mediators have started having separate meetings with the parties prior to mediation. At these meetings many of the partie's questions may be answered and an atmosphere of trust may be established. Consequently the parties already know the mediator in a situation where they must consider taking part in something new and unfamiliar - which mediation still is to most people in Denmark.

If both parties say yes to a meeting, a time and place for the meeting is found.

Victim-offender meetings take place on a neutral ground, e.g. in a conference room at the Town Hall, at the library, at community centres or such places. Meetings have lasted from just one hour to just under 4 hours and in some cases there have been several meetings. However, in most cases the parties have only met once. In some cases there are two mediators(…)

The process of Mediation:

- The mediator bids them welcome and they accept the rules of mediation
- The two parties each describe how they feel about the conflict
- The two parties agree and formulate what is to be solved and to [fix] an agenda
- The parties think of possible solutions
- The two parties negotiate solutions
- The agreement is made
- The mediator closes the meeting.

During victim offender mediation, the mediator helps the victim and the offender to talk to each other and if possible to reach an agreement. If an agreement is reached, the mediator writes it down and the victim and the offender both get a copy.

Mediation is confidential. Parents or other observers may be present if the parties wish it. If necessary an interpreter may be involved.

The mediator must be impartial and is bound to professional secrecy.

What happens after mediation ?

The mediator informs the police that a victim offender mediation meeting has taken place and whether the two parties have come to an agreement. If both victim and offender wish it, the mediator will give the police a copy of the agreement(…)".

While the first pilot experiment was difficult to evaluate due to the lack of cases, the second experiment showed rapidly much larger quantitative involvement. A recent evaluation of the experiment shows that the number of cases that have been dealt with in *konfliktråd* since the beginning of the project has now risen up to 75. It demonstrates that despite the fact that the criteria of case selection have been progressively extended during the development of the experimentation, the offender-population subjected to mediation in *konfliktråd* is still 'young' and the cases handled are remaining primarily violent cases (in majority assault). Despite the possibility for the community to bring their own cases in *konfliktråd*, the police is still the principal actor referring the cases. In this respect, it seems that the main difficulty *to get more cases* is to be attributed to the police which do not always offer a mediation to the offender and victim in cases "technically" suitable for mediation *i.e.* when the offender has pleaded guilty.

The evaluation gives also some information concerning the refusal of the parties to participate in a *konfliktråd.* Usually, the victims refuse any participation because it will take

time and/or because they consider that the usual procedure is enough. Sometimes, they are also afraid to meet with the offender, in particular if they have had a prior relationship with him/her. On the offender side, the main reason for not participating in a *konfliktråd* is because they feel guilty, they find the procedure too formal or they do not believe in the benefits of such mediation.

Interestingly, the evaluation also shows that the satisfaction's rate of the parties after participation in a *konfliktråd* is high. Ninety percent of the participants in a *konfliktråd* considered their involvement as being successful and found that the mediator had been neutral and that the supplementary character of the procedure as compared to the penal system had been moderated by some court decision. Examples of leniency by the court in determining the sentence for those which had participated in *konfliktråd* can nevertheless not be generalised. Indeed, it concerns only a few cases (Henriksen, 1999; Henriksen, 2000; Rasmussen, 2000).

The *konfliktråd* in Denmark recasted in the framework of a restorative justice philosophy

The restorative character of the Danish *konfliktråd* and their impact on the rationale of the penal justice system can now be discussed on the basis of their practical implementation discussed above.

If observed in a narrow perspective, the participation of the parties and the community in the process of conflict resolution leading to a constructive/ reparative solution to their settlement is potentially present in the Danish program. Indeed, a voluntary mediation process, where the parties can discuss together the aftermath of an offence and find a suitable agreement with the help of a lay mediator from the community has been introduced. In this respect, the implementation of the Danish *konfliktråd* is different from many other official experiments in Europe, where the mediation process is conducted by professionals closely related to the penal justice system that do not always allow for a real meeting between the parties (Lemonne, 2000; Wright, 2000). According to the evaluation of the program, there are enough arguments to believe that the mediators handle the cases with *neutrality* and that the parties can voluntarily/freely discuss the issues they consider at stake in their conflict. The evaluation done by the parties[62] as well as the guidelines provided by the project leader are both advocating in favour of this conclusion. Nevertheless, it is important to stress that no systematic analysis of the working practices, professional ideologies of the mediators, or

[62] In this respect, the rate of satisfaction is similar to those obtained in victim-offender programs implemented in other countries (Snare, 1995).

outcomes of the mediation process is currently available. The restorative character of the practices should therefore be investigated further before any final conclusion can be drawn[63].

According to the aim of the program introduced at the discursive level, the implementation of victim-offender mediation in Denmark has been conceived both for its preventive/educational potential with respect to the "young" offenders committing violent crimes but also in favour of the healing of the victims. In this respect, it is difficult to evaluate concretely the un*balance* between the interest given to the offender and/or the attention devoted to the victim during a mediation program. During the first experiment, the specific focus towards the *young* offender having committing *violent* crime was maybe showing a bigger interest for the offender at the expense of the victims. Indeed, in such conditions, it seems that not *all the victims of crime* were able to benefit from mediation in *konfliktråd*[64]. Today, however, this situation has evolved considerably and a large spectrum of crimes is now considered as suitable for mediation. The official discourse, in including the program in a law aiming at reinforcing the position of the victim of crime can be considered as a signal of a particular attention to the victim. The supplementary character of the program with respect to the traditional penal justice system could however indicate scepticism towards the effect of these programs on the offender. Indeed, during the procedure, the offender gets the opportunity to understand the personal consequences of his act, but at the same time is not able to expect a lenient penalty (the court decided to give a lower sentence only in few cases).

If observed now in a larger context, the program can certainly not be considered as producing the expected *paradigm shift* in the penal justice system. Indeed, the small number of cases and the supplementary character of the new measure constitute strong arguments illustrating this position. Several factors have been identified that justify the difficulties to get a bigger caseload. For instance, the fact that the police do not transfer all suitable cases for mediation combined with the fact that the offender and the victim are not always willing to

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[63] The data currently available are provided by the project leader of the program and by the institution evaluating officially the program. In this respect, the parties themselves appreciated the neutrality of the mediators.

[64] Following the project description, the main aim of the pilot experiment was to test a model in order to evaluate the possibility of setting up a supplement in the existing penal system as well as to observe the preventive element of the new experience. The second aim of the project was to give the offender more responsibility with regard to the consequences of his act and the possibility to meet the victim of the criminal act. The third aim was to give the victim the possibility to express their frustration and fear and to provide them with greater security in their day-to-day life. The fourth aim was to test a model where both victim and offender notice that there is a fast reaction to criminal offences. The fifth aim was to establish an untraditional procedure where the conflict meeting is transferred to places and actors without connection with the legal network. (Det Kriminalpræventive Råd, 1996).

participate in such a process constitute two important arguments[65]. In addition, the parties are often not willing to join spontaneously in a *konfliktråd*. These elements constitute key-issues in many countries attempting to establish victim-offender programs. They reflect probably the *habitus*[66] of the various actors interested in the implementation of the new measure (from the officials to the parties themselves), which are still oriented towards the formal/legal process and its outcomes, including the important issue of the legal guarantees provided by the State.

Finally, in introducing a victim-offender program as a supplement to the traditional penal justice system, the penal justice process –considered as a whole- irreversibly leads to the definition of a crime as a conflict against the State and, hence, conducts to the imposition of a sentence by the judge.

Based on these arguments, it is reasonable to conclude that the introduction of the Danish *konfliktråd*, which links the mediation program to the traditional justice system, *complements* rather than *contradicts* and/or *competes* with the rationale of the traditional system. This is especially true for the cases traditionally involved in a *konfliktråd* (i.e. essentially cases of violence), for which a high penalisation has been witnessed (Balvig, 2000). This fact pleads strongly for the need to consider the implementation of the restorative program in a broader criminal policy context.

Indeed, and despite the expectation of its proponents, it seems that in many countries the restorative justice philosophy is still far from constituting a coherent framework of reform for the penal justice system. For instance, in Denmark, the term restorative justice is never used in the political discourse and the program is never associated to institutions that should be relevant to the restorative justice philosophy (Justitsministeriet, 2000). In other countries, if reference to the restorative framework is more present, it has often been qualified as a "new ideology" having the function of legitimising a fundamentally unchanged penalty (Mary, 2001). Indeed, the restorative justice programs often appeared in a period where numerous countries put the criminal issue high on their political agenda and emerged therefore among reforms oriented towards a reinforcement of the classical function of punishment/treatment/ surveillance. Currently, it seems that a more pragmatic and less structured ideology is simultaneously emerging in the modern penalty (Mary, 2001). Such trends took also place in

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[65] Moreover it could also be argued that the potential for the selection of the case suitable for mediation is also limited by criteria imposed by the traditional penal justice system i.e. where offenders have *pleaded guilty*.

[66] The notion of *habitus* has been introduced by P. Bourdieu. The habitus is a system of durable dispositions acquired by the individual through the socialisation process. These dispositions are attitudes, inclinations to perceive, to feel, to do and think which have been integrated by the individuals in the course of their life conditions. These dispositions work as an *unconscious* principle of action, perception and *réflexion* (Bonnewitz, P., 1998).

Denmark where after a period of de-emphasizing the use of punishment (depenalisation in sentencing, liberalisation in correction and search for alternatives to imprisonment) (Vestergaard, 1991; Greve, 1999; Balvig, 2000), the debate about *violence* brought concurrently to the implementation of the *konfliktråd* several other initiatives such as, a fast handling of violent cases by the court, prison experiment of treatment for violent behaviour, youth contracts, efforts against *street gangs*, rapid intervention against children and juveniles who commit crime, more place in secured units and long-term courses of treatment,.... *(Ekspertgruppen om ungdomskriminalitet, 2001)*

The experimental development of the *konfliktråd* based on pilot experiments still leaves a perspective for an evolution in which the *konfliktråd* could ultimately replace, or at least circumvent the traditional penal reaction. Indeed, the final decision to implement this program officially has still to take place. However, as discussed before, the introduction of these measures should not be disconnected from broader issues in criminal policy. In such a context only the development of a *restorative* philosophy will constitute a way towards less punitive trends in the criminal justice traditionally favoured in the Nordic countries.

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CURRENT TRENDS IN THE DEVELOPMENT OF SOCIAL CONTROL

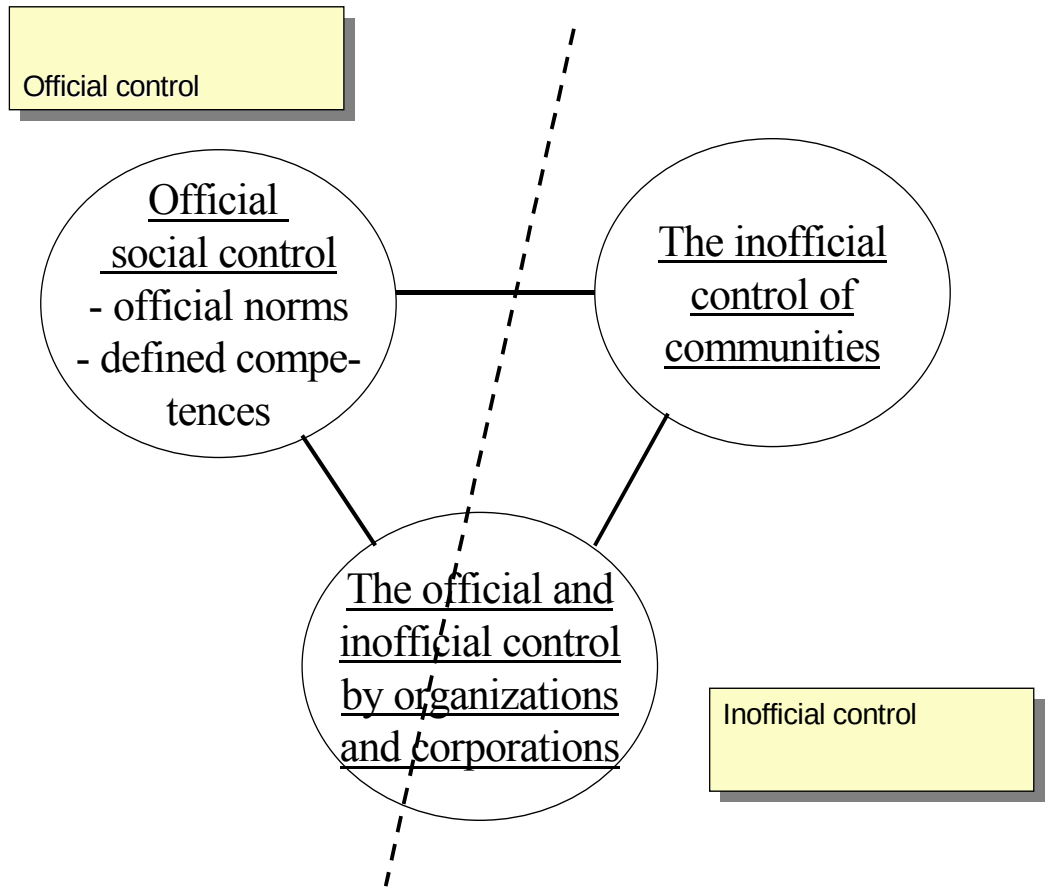
Timo Kyntäjä

Introduction

Thomas Mathiesen has in several connections (see Mathiesen 1998; Mathiesen 2000) - as well as in his excellent presentation in this publication - stressed on the dangers of the globalization of the social control during the last few decades. He has been worried especially of the European information systems that have been built up in connection to the Schengen development. Mathiesen compares the Schengen Information System (SIS) to the witch hunts of the past centuries. As it is grounded to ask, whether witches really existed, he likes to ask, whether organized crime exists. The point is that they may exist or may not exist - anyway organized crime today is used as witches previously to legitimize the centralization of power as well as to justify the strengthening of social control. The main objective of the SIS, however, according to him, is not to combat the organized crime but rather to prevent people from the underdeveloped countries to immigrate into the EU-countries. At worst, the information collected in the SIS enables discrimination on ethnic or on some other kind of grounds. Ultimately it might enable a mass destruction of certain, disliked groups, Mathiesen says.

In fact, one can with good reason ask, as Mathiesen does, whether such kind of information systems are justified and whether they work as meant, i.e. according to the rules of democratic state and to the principles of the rule of law. When considering the question, it however is important to note that the social control is not imposed only by the authorities or inofficially by different communities, but largely by private organizations and corporations, too (see Picture 1.). So, it is good to remind that all kind of registers and information systems have been and are existing independently of the European integration. In the present world it is a fact that registers exist and that they are used to classify people as well as to identify risks and risk groups, as Stanley Cohen pointed out already in his *"Visions of Social Control"* (1985). During the last few years, Jock Young (1999) has stressed on the exclusive nature of the register based social control as well as on the social divisions which are strenghtened by the control mechanisms. In the area of control, the so called actuarial administrative approach has won terrain. It is concerned with calculation of risk rather than either individual guilt or motivation. (Feeley & Simon 1992; Feeley & Simon 1994.) The task of criminal control has been redefined as restricting crime opportunities and as constructing crime prevention policy which minimizes risks and limits damages (also Young 1998, 77-78).

Picture 1. **Official and unofficial social control**



Against this background, it is motivated to ask, as first, what all this registering tells of our present societies, and secondly, which are socially and morally better, inofficial and unregulated or official and regulated registers. My intention, here, is to interprete the information systems and registers as integral parts of coping strategies of different organizations in a risk society. Further, I discuss some consequences of the registers to the social control in general and to the crime control in particular. In this connection, I try to evaluate the current developmental trends of the control. In conclusion, I raise some questions concerning the supervision and regulation of both public and private registers.

Normalization of and coping with risks

Why is registering so important for the social control today? What does it tell of our present societies? Concepts like ”risk” and ”safety” have in several senses been very central in the sociological discourse during the last few years. It has been said that the risks which are produced by the late modern society have escaped from control. The *normal* activities of social institutions and organizations are all the time giving birth to great risks which are beyond the control of those same institutions and organizations - as well as beyond the control of ordinary people, who in the last instance are the targets of the riskful development. In the

earlier phases of modern societies, says Ulrich Beck (1988), the social and technological development also brought with themselves problems and risks, but they at the same time usually offered means to solve the problems. That is, according to Beck, not the case today. On the contrary, the late modern societies have normalized the existence of risks, and the only option so well for individuals and families as for institutions and organizations is to learn to live in and to cope with a world with uncountable risks.

According to Beck (1988; Beck & al. 1995) there are huge global risks, which are connected above all to ecological threats, economic speculation and political changes. The threat of war and nuclear weapons are still present in the world of today. Otherwise than earlier, mainly civilians have been the victims in the latest wars. The dispersion of HIV and other diseases have become a global problem and risk for ordinary people. Poverty, wars and ecological crises in the third world as well as in the former socialist countries have caused strong population movements, which are seen as refugee problems and immigration to the Western countries. (see also Kantola & al. 2000.) They are seen in the development of international organized crime, too. Besides of weapons trade and drug trafficking the organized criminality is involved in trafficking in people and in organizing illegal immigration, prostitution, illegal labor power and ultimately modern slavery. (see also Lewis 1998; Gilinskiy 1998; Rawlinson 1998; Hobbs & Dunninghan 1998; Nikolic-Ristanovic 1998.) The point here is that the international and global developments of the mentioned kinds are beyond the control of any national, regional and local authorities - even beyond the control of international communities - at the same time as they immediately are affecting to the lives of very many people. So, the global threats and risks are reflected in uncertainty and unsafety which cannot be avoided by individuals or by organizations.

This kind of a lack of certainty no doubt is contributing to feelings of unsecurity among people, and that is one reason why also sociologists have given so much attention to the thematics of safety and security during the last years. At the same time, the question *how* to cope with unpredictably changing circumstances has become acute. The different methods and ways of action that try to find the answers have given birth to partly new social practices which by Anthony Giddens (1991) are characterized as a ”reflexive society”. (see also Beck & al. 1995.)

Data collection and registers combined with statistical risk calculations as well as with social scientific analysis are one typical expression of the reflexive practices which are adopted by different institutions and organizations. The objective is to be able to identify even minor symptoms of change in the surroundings as well as to be able to react sensitively to the expected developments. On organizational level, a reflexive practice is all the time monitoring the relation of the organization to the environment. On individual level such a practice means that an individual when acting and defining his or her identity continuosly is mirroring himself

or herself against other people. (Beck & al. 1995, 11-15; Giddens 1990, 38.) In organizations the need for reactivity and sensivity has had structural consequences, too. So, the high hierarchical structures have to a great extent been replaced by low and flexible structures with a clear emphasis on scholarly expertise. (e.g. Ahrne 1994; Giddens 1991, 20-35.)

Besides this kind of monitoring and mirroring, both organizations and individuals are in several ways trying to prevent, to avoid, to limit and to cope with the risks. They are prepared to actualization of risks with help of such means as insurances, economic futures, terminations of exchange positions etc. They try to avoid and minimize risks by analyzing the threats and by increasing guarding and supervision. Especially the amount of the devices and equipments of technical alarming and supervision have dramatically increased, not only in public places and corporations, but also in private homes. People aim to limit the damages by sharing the risks and by registering and identifying risks and risk groups in their environments. Community planning as well as location and housing choices offer for them means to minimize and limit risks by redistribution of urban and regional space. All kinds of enlightenment and warnings, medicalization and moralism are living in most areas of life from health and education of children to consumer choices and traffic safety. Coping with risks presupposes an awareness of them, and that is a main reason for the importance of data colletion and registering both by organizations and by individuals and families. (Beck & al. 1995; Aimre 1996; Hakkarainen 2000; Korander 1994; Tuomainen & al. 1999; Young 1999; Åkeström 1998.)

One should realize, that crime control and control of other forms of deviant behavior are only one minor area among all the risks and problems which people and organizations are trying to control and to cope with (also Kyntäjä 1998, 225-228). However, the depicted increase of control and supervision unavoidably results in a sharpening of social divisions. Yock Young (1999) has spoken of ”demonization of the evil” in the sense that certain groups of people are being strongly labelled and discriminated. To the ”evil” groups belong those who have been detected as criminals, drug misusers, HIV-positive people, a part of immigrants, those who have failed with their economic affairs, mentally ill people and simply those who are dirty and ugly. Such groups are easily isolated and excluded from the ”normal” social connections, they are feared and evaded. At the same time they become objects of repressive actions, both formally from the side of authorities and informally by communities or by ”activists” like for instance skinheads (who in turn themselves are acting in criminal ways at the ”bottom” of society). (see also Vidali 1998; Puuronen & al. 2001.) As a consequence of the increasing social control and supervision, both urban and regional space as well as the economic and social opportunities are being unequally redistributed between people.

Describing the trends of control

Two main trends have been mentioned when analyzing the development of social control during the last decades. On the one hand, several writers have maintained that we in accordance with the actuarial approach are moving from a one-sidedly repressive and reactive control to a preventive and proactive control. This view is based on the notions of community policing and security cooperation, where besides the police the schools, the social work, the churches, private enterprizes and voluntary associations etc. are participating at local or community level. The role of the police is defined somewhat differently by these two approaches, but the main idea of both of them is to develop local solutions in order to prevent crimes and in order to prevent especially young people from getting caught up in criminal career, drug use and other forms of social marginalization. Here, one of the key questions is how to connect the expertise of the different professions, including the police, the social work, the education etc., with familiarity with the local conditions. (Goldstein 1990; Graham & Bennett 1998; Green 1992; Green 1999; Greene & Mastrofski 1988; Oskarsson 1994; Toeb & Grant 1991.)

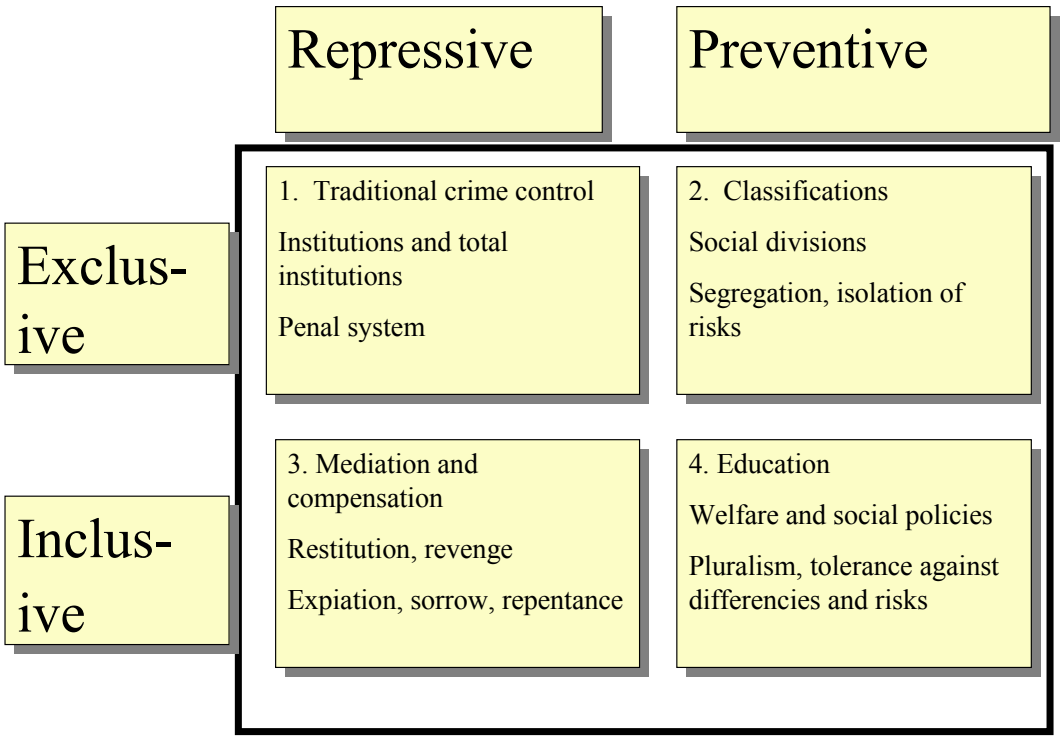
The idea of community policing tends to emphasize the role of the police, whereas the police in the local level safety cooperation are seen as one expert organization among the others. So, the idea of community policing often has been criticized for forgetting the nature of police work and for confusing the social work with the police work. The safety cooperation thinking, on the contrary, does not deny the nature of the police work, but it stresses on the importance for the police to combine their expertise to the expertise of other professional and local organizations. In any case, the scope of criminal policy and crime prevention is enlargened so, that a sound development of the local social structures as well as prevention of marginalization by proactive means are set as primary goals. Control, supervision, penalties and other repressive means of course still are needed, but they have lost their former dominant role in criminal political thinking. So, it is quite natural that the new safety thinking is accompanied by ideas about mediation and restitution instead of or besides penalties. (Weckström 1999; Virta 1998; Virta 2001.)

An other way to describe the development of social control is offered by the authors I already have mentioned, namely Stanley Cohen (1985) and Jock Young (1999). They have emphasized the exclusive character of the contemporary social control. According to them, the ways by which people and organizations are trying to cope with unpredictable risks are leading to categorization and classification of people as well as to unequal distribution of resources on the basis of to which groups people are classified. Inequality and marginalization, to be sure, are one reason to criminality, but at the same time criminality and crime control initiate and produce marginalization (also Kyntäjä 1998). According to Cohen, what we would

need is more inclusive control methods and more equality, tolerance and pluralism than is the case today.

At a first glance, it seems that the two ways to describe the development of control are almost contrary. When one characterizes the development as a transition of the primary goal from repression to prevention, from control and penalties to social support, the other one maintains that the deviant people are left outside of communities and locked in the institutions. How are the descriptions to be related to each other? A simple idea, that I one day tried, is to crosstabulate them. The crosstabulation gives the following picture (Picture 2.), with help of which it seems to be possible to evaluate the development, at least in Finland.

Picture 2. **Forms of social control**



At first, it is important to note, that the social control always consists of different combinations of repressive and preventive means as well as of exclusive and inclusive measures. It is hard to imagine control that would be only repressive without any element of prevention. Even in prisons and other total institutions the repression almost always is accompanied by some forms of social services and social support. Likewise a one-sidedly preventive control cannot be thought to work without some repressive elements the role of which is to make the preventive means effective. In the same way, the exclusive politics always include some inclusive elements and visa versa. So, the traditional crime control and

penalty system always have educational goals and mechanisms of social support. Socialization and welfare policies, in turn, widely use repressive control methods to exclude those who are not adaptable or those who do not have the right to social services (e.g. Mikkola 1979). So, the picture 2 is to be understood as an ideal-typical construction that in itself offers no description of reality. Instead it can be used in comparisons in order develop hypotheses and to evaluate developmental trends as well as differences and changes of focus in control systems. (Weber 1968, 165-167, 285-296.)

Secondly, the repressive measures tend to be used reactively, i.e. after the fact that a crime or disturbance already has occured. Preventive methods, in turn, are oriented to future incidents with aim of decreasing the probability of crimes and disturbances. In this sense the preventive control can be characterized as proactive. Even when the classical penological doctrine emphasizes the deterrence effect of the repressive means the proper targets of repression are those who already have been detected to have broken the laws. It can be said that the criminal political and criminal law discourse, which are anchored to repressive methods, have quite a narrow scope. (Kyntäjä 1998.) Crime prevention undoubtely presupposes a wider approach. It has as goal to diminish situations where crime is tempting as well as to affect people so that they would not be tempted to commit crimes (Turvallisuustalkoot 1999). Proactive methods are directed not only to those who already have committed crimes but even to those who are potential law breakers. So, the scope of proactive controls reaches from structural conditions of a society to repression, support and care of definite individuals. Community policing as well as the modern safety cooperation thinking lay much weight on proactive methods of crime prevention. So, it can be said that an ability to identify and diagnose social problems on the basis of data and social science are winning in importance when moving towards proactive, preventive control. (Toeb & Grant 1991; Virta 1998; Graham & Bennett 1998, Turvallisuustalkoot 1999.)

Thirdly, both repressive and preventive methods may have exclusive as well as inclusive effects. For instance inprisonment with its consequences usually means that the prisoned individuals strongly are excluded from the society. Even after the vindication from prison they are in danger to be marginalized and descended to the gangland which is clearly seen in the high rates of recidivism. Preparing the return of the prisoned persons to the society is one of the most difficult challenges of correctional treatment everywhere, and experience shows that this kind of an inclusion of criminals in society is, despite of all the efforts, no easy task. On the other hand, in some cases even repression has inclusive effects. For instance, violent offenders - about a hundred per year in Finland - who have killed their wives, husbands, mothers, fathers or other close relatives often combine the penalty with repentance, sorrow and restitutive elements. They seldom adopt a criminal way of life. (Zamble & Quinsey 1997, 69-94; Vankeinhoidon vuosikertomus 1999.) On the opposite side, it is

common to think that an inclusive policy consists of elements like education, welfare and social policies. It is not so common to note that even education and social support may have exclusive and marginalizing effects on individuals. This maybe is especially true if the educational and social policy are based on strategies of categorization and classification of people. Such strategies often contribute to segregation and maintain or even sharpen the social divisions in society. In this sense, the universal social services and benefits in accordance with the ”Nordic model” are less labelling and less discriminating than the means-tested benefits in other countries (see e.g. Kosonen 1997).

The risk of strengthening discrimination

When evaluating the development, the first conclusion that can be made is that there is going on certain new orientation or reorientation in the criminal political discourse. The scope of criminal policy has widened. On the one hand, preventive and proactive methods have been emphasized during the last decades. On the other hand, one-sidedly exclusive policies have been completed with inclusive views.

The classical criminal political ideas as well as criminal law thinking are circulating mainly in the cell 1 of the picture 2, i.e. the central problem is located to the relationship between the crime and the punishment. The penal institutions are seen as the most important instruments of the criminal policy. The rise of welfare states after the second world war, in Finland especially in the 1960’s and 1970’s, made people to think that the elimination of poverty and improvement of social conditions as well as the rise of the educational level of the population are factors which can be used to prevent criminality. So, ideas from the cell 4. of the picture 2 got quite a dominant position even in criminal political discourse. (Heinonen 1996; Lahti 1996.) In Finland in the 1980’s, partly inspired by Nils Christie’s *”Limits to Pain”* (1981), the experimentation with the mediation of the crimes committed especially by young people begun, and viewpoints from the cell 3. of the picture 2 where brought into the criminal political discourse. At the same time, community policing was actively discussed and in the beginning of 1990’s it became officially defined as the main strategy of the Finnish police (Virta 1998).

Ten years later, the principles of actuarial administrative crime prevention policy were expressed in a national crime prevention program (Turvallisuustalkoot 1999). In the beginning of the new millennium, local safety cooperation plans were made throughout the country. Of course, it was not the intention of the national program that the local plans would be made on the basis of an order by the ministry of interior. That however is, how it was implemented, and the police clearly took the initiative in the process. In this connection, the preventive and proactive methods are strongly stressed. The local safety plans have stressed on the policy of sharing the responsibility of crime control between the authorities and private actors in

communities. The objective is to activate the schools, social workers, voluntary associations and ordinary people to cooperate in order to prevent crimes. (Turvallisuustalkoot 1999; Weckström 1999.)

Despite of the start of the implementation of the local safety plans it seems that there is a risk that the weight in the development of social control in the near future clearly is locating in the cells 1 and 2 of the picture 2. On the one hand, the state finances have in the 1990's been cutted from education, health and social policy which are situated in the cell 4 in the picture. The attitudes against deviant people, drug users and criminals have hardened, and economic and technological values have one-sidedly been emphasized in the public discourse. There clearly exists a social commission for a harder criminal policy with a stress on penalties as well as on penal and treatment institutions. Even when the local safety cooperation potentially might lay stress on restitutive means of the cell 3 as well as on the welfare factors of the cell 4 in the picture 2, it can be expected that preventive methods of the cell 2 are winning in the local plans instead of restitutive and welfare practices. Some explaining factors can be identified to support this judgment.

At first, neither criminality nor the social control have undergone dramatic changes during the last years. In the 1990's there have not occured major changes in the numbers of crimes in Finland, and the level of criminality in total is not internationally very high. However, drugs and drug related crimes make an exception in the total picture, because they have heavily increased and become quite a central feature of the Finnish criminality today. At the same time, there are symptoms which refer to an increasing organization and internationalization of criminality in Finland. (See Rikollisuustilanne 1999.) Still, the crime control continuosly is directed selectively to the weak groups of the society. The new study by Aarne Kinnunen shows that even those who become condemned for drug related crimes usually are worse educated, poorer and more unemployed than other rapped people (Kinnunen 2001; see also the article by Kinnunen in this report). On the other hand, after the depression of the beginning of the 1990's the Finnish authorities made an internationally exceptional effort in order to detect economic crimes which often are committed by people in high positions in business and administration. Despite of the fact that this effort has given good results, there are today pressures to move the resources from economic crime investigation to the investigation of drug related crimes. The interest to control the social elites tends to be low during an economic expansion, whereas an economic recession probably effects on the opposite direction. (Alvesalo & Tombs 2001.)

Secondly, the number of police officers in proportion to the population in Finland is the lowest in Europe. There are more than 600 inhabitants per one police man, when the same number in Sweden is less than 500. For instance in Latvia there are three times so much police officers in proportion to the population as in Finland. (e.g. Kyntäjä 2000, 101.) The interest of

the police in Finland is to raise the number of police officers to the Nordic level, but the political decision makers have until now not supported the idea. Anyway, it is clear that the low number of police men has effects on how the social control is working and how it can be expected to develop in a near future. There are tendencies to strengthen the powers of police as well as tendencies to increase tecnical supervision, testing and registering. Strengthening of international police cooperation is a part of the development strategy, not least in the framework of the EU and the Schengen agreement. It is maintained that these are the means by which the drugs and the organized crime can be opposed. (e.g. Poliisin tulossuunnitelma 2001-2004.)

The technological development, thirdly, is supporting these tendencies. Finland is technologically a very advanced country, and the wireless computer and communications technologies offer ever new possibilities for data collecting, registering and using of registers for an improvement of control. For instance, the data of the prisoners have been collected in a dna-register, and a part of the political decision makers is claiming that drug tests should be introduced into work places, schools and high schools. An involuntary treatment of drug users has strongly been raised on agenda in the public discussion. Dna-tests have as well been used to ensure the identity of a part of refugees. The economic, health and social status of ordinary people are in an effectively and easily usable form in the registers, and for instance the taxable income of anyone can in a second be checked in every single police car.

It has been pointed out, that the preventive activity of the police as well as the use of registered information in proactive ways in order to get the control more effective than before are riskable phenomena from the angles of freedom and of the rule of law. Professor of public law, Lars D. Eriksson has recently given some newspaper interviews, where he has pointed out that the reactive police control which afterwards reacts to violations of law can be accepted from the mentioned points of view. However, the system of law becomes unpredictable and the control too hard if the police tries to prevent crimes by proactive means, he says. The problem here is that the current system of criminal law cannot prevent a minority of people from getting caught up to criminal career - and it is this minority that is responsible for a majority of the violence and property crimes. The same minority is moving into the criminal underworld and it is here where also the organized criminality is recruiting the labor force of its own. (e.g. Zamble & Quinsey 1997; Vankeinhoidon vuosikertomus 1999.) It can be said that a preventive policy that is directed to the youth and to this minority notably would diminish the damages, the suffering and the costs caused by criminality. From this point of view, the preventive and proactive methods can be defended, but of course it is true that the use of registered information for this purpose is limiting the freedom of those who are the objects of the preventive actions. Those groups are as well at risk to be excluded and discriminated by the rest of society. Registering the data of criminal elements, on the other

hand, also includes a risk that anyone can become registered and that the existence of the criminal minority in this sense dominates the living conditions of the majority.

At the same time, there are pressures to widen the private sector of control and supervision, and the number of whole time guards in private firms today is as high as the number of police men in Finland (a piece of information given by the data administration center of the Finnish police). In addition, the private sector of guarding and supervision is growing rapidly, which is, as said, not the case with the police. Selling of insurances and safety equipments are besides selling of safety services in growth, and these equipments are widely used by authorities as well as by private organizations. For instance, in the central parts of Helsinki it hardly is possible to take a step without being registered by several video cameras. The use of mobile phones as well as the use of bank and credit cards can be followed up, located and registered so that the moving of a single person is easy to supervise. All this potentially gives much of information on the customs and manners as well as on the ways of life of the people - information which already is widely used in profiling of people to commercial purposes. It is noteworthy, that a great deal of this kind of registering is in private hands as are for instance the credit information systems. The duty of the private organizations to deliver information to the authorities is strongly limited and regulated, whereas the ways how they use the customer registers of their own hardly are regulated and supervised at all.

The experience of the local level development in safety issues shows that the police, the social work, the schools, the churches and voluntary associations in many cases welcome the increasing cooperation with enthusiasm. The private enterprizes, on the contrary, are hard to get along in projects the aim of which is to reduce criminality by preventing marginalization. They are not interested in the social affairs of the communities or in supporting people who are in danger to be discriminated. The business firms sell goods and services to those who can pay and their interest is to make profit. There are examples on how the firms like to cooperate for instance with the police in order to eject youngsters and asocial elements from shopping centres etc., but mostly they are cooperating with the private safety industries as guarding and supervising businesses. (e.g. Virta 2001.) The result often is that certain groups of people are disliked and discriminated in public places and public spaces.

Conclusion

The development of social control as well as the local safety cooperation are objects for different and partly even contradictory interests in society. The ideas and the ideology of the local level cooperation are resting on preventive and proactive means with an inclusive bias of opposing social marginalization and preventing young people from getting caught up in criminal career, drug use and other forms of social decline. No doubt, these ideas have strong support at the grass root level of social control in local communities. In this sense, the local

safety planning opens ways and possibilities to an improved functioning of local structures and practices on a humane and rational basis so that crimes and crime opportunities at the same time can be prohibited.

However, the risk that the development will take another path is very great. In the latter case, the proactive methods will be harnessed to serve the strengthening of the traditional official control with an emphasis on punishments as well as penal and treatment institutions. That would include a hardening of the criminal policy, progresses in privatization of control and in classification and categorization of people. The consequences would be that the social divisions in society will be sharpened and that the suspicious or disliked groups will be isolated and segregated stronger than is the case today.

In the last instance, I believe, the European information systems, which Mathiesen is worried about, should be seen in the context that has been drafted above. The systems like SIS and SIRENE have been created in order to open the borders and to increase the freedom of the movement of people inside the Schengen area. They are thought to enable an effective police cooperation in Europe. On the basis of the information registered in these kind of systems it is believed to be possible to supervise immigration, organized as well as conventional criminality, telecommunications etc. The problem with the information systems is that they are, like the social control in general, objects of different and contradictory interests. So, it is well grounded to ask, like Mathiesen does, whether it really is right and necessary to collect and register all the pieces of information that the authorities would like. It is as well grounded to wonder whether the registers of SIS and SIRENE kind are not too big and complicated so that they really can be used as working tools.

Considering questions of this kind, however, should not implicate a belief that there would exist a fascist conspiracy in the very core of the democratic Europe, a conspiracy that would dominate the European police cooperation and the development of the European information systems. To be sure, those who have been responsible for discrimination and mass destruction in the past have never needed systems like SIS or SIRENE, not even in Balkan in the 1990's. There always have been appropriate means to gather the information they have needed for their cruel aims. If we think that information systems and registers as such are evil we cannot accept population registers or housing statistics or television license register, either, because they *can* be used to strengthen an exclusive, discriminating social control. Important is, however, to ask how they actually *are* used, by whom, in which purposes and on the basis of which values.

In my opinion, one of the main trends in the recent development of social control is that the official control, which is imposed by the authorities, today is better and more precisely regulated than previously. At least in Finland during the 1990's, the principles of the rule of law as well as the principles of human rights have been strengthened in the activity and in the

control of the police, of the prison authorities, of the public administration etc. The constitutional reform of 1995 is an integral part of this development. No doubt, the positive changes to a great extent result from the European cooperation, where Finland today is participating far more actively than before. Still, there are left problems and deficiences in the implementation of the rights. (e.g. Tala 2000, 383-392.)

At the same time, however, the existing pressures towards privatization in the area of social control, I am afraid, include far greater threats to the rights of the citizens than does the Schengen cooperation ever. As I understand, it is for the private registers and for private security industries easier to avoid public and transparent control than for the authorities. The private organizations are able effectively to contribute to the discrimination, to the sharpening of social divisions and to an exclusion of the weak groups of the society. (see also Christie 1993.) In many cases different registers, both public and private, are badly and undemocratically controlled and regulated. Even more, their effects upon the life of ordinary people often are very heavy. For instance, the effects of credit information systems can in this sense be more extensive and more exclusive than the effects of crime register. A Finnish study (Erola 1997) proved that it is not unusual that the credit information was used by wrong persons to wrong aims so that the registered persons were hindered to get a flat, to get a job and even to continue a love affair with a lady who accidentally had access to credit information.

Important is to study how the registers are regulated and controlled as well as to analyze the contradictory interests of those participating in controlling actions. The interests and the values of private organizations and corporations often are business-oriented and they may conflict with the values of democratic societies and with the principles of human rights and rule of law. One objective of the development of the official control and authority registers is to be able, at least to some extent, to control the private businesses, whether criminal or not. Anyway, the control and the regulation of the information systems probably is much weaker on the private sector than on the official sector. This can be defended by maintaining that the principles of human rights and rule of law above all have to be the guiding principles of public authorities. At least they should not violate the central principles, values and moral standards. On the other side, the authorities should be able to intervene in cases where the rights and laws are threatened by private actors, whether individuals or organizations.

It seems reasonable to think that the contemporary societies cannot exist without information systems and registers. There are, however, some basic principles which should be applied to the registers and information systems. It is very serious if and when the control itself is outside any legal and effective control. One basic requirement is that the supervisors should be set under control. The registers should be supervised and controlled by independent outside authorities. Even the content and use of police registers as well as SIS and SIRENE

should in this sense be opened for outside control. Of course, the information content of different registers should be precisely regulated and controlled so that it would be clear which kind of information it is allowed to collect and store and what information it is forbidden to collect. The supervision of the supervisors cannot be effective without the activity of the public. So, it is important to ensure the right of individuals to check which kind of information there is registered about themselves as well as to guarantee their right to claim corrections if the registered information is incorrect. It should be clearly regulated and supervised, how long and under which conditions it is allowed to store information of individuals and families. And it should be ensured that the information cannot come to ”wrong hands” and that it cannot be used to other purposes than those for which the information is collected. Here, the responsibility of the legislators is remarkable, but even the technical preconditions and resources for control are of importance. (See Heinonen & Hannula 1999.)

By developing authority control and information systems societies take a risk of centralization of power. It is important in a democratic society to alarm of dangerous developments and to worry of hard and heavy social controls. On the other side of the coin, however, one often can see missing sense of other people, lack of caring and absence of moral consciousnes in society. The need of control can be explained by the social conditions which today are labelled by strong and rapid changes of societies as well as by dominant economic beliefs and values (see also Taylor 1998; Sack 1998). The conflicting interests which are contesting in field of social control must be connected to the same circumstances.

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STUDIES ON THE SCANDINAVIAN CRIMINAL SCIENCE IN JAPAN

Jin Sakata

Abstract:

In the present paper the author compiles works on the Scandinavian criminal sciences by Japanese researchers. He finds that there are good many works mainly concerning to the Swedish system of treating criminals. Interests in the Swedish system were found earlier in Meiji period, about a hundred years ago. But it discontinued in war period for about 30 years. After the war it grew again. Thus the interests in the Swedish system was revived just to the appearance of Skyddslagen. And other aspect of the interest is that the new classicism of the Scandinavia attracted our interest. Johannes Andenæs, Nils Christie and others are introduced and translated. He also finds that the linguistic difficulty seems to disturb Japanese students in the study. Many students use materials written in English. There has been few who could read works in the Scandinavian languages. However, recently students seem to be increased who understand some of them. Lastly He investigates that how many journals connecting criminal sciences are subscribed by Japanese university libraries.

Content

Preface

I myself have been engaged in the study on the Swedish penal system for more than 20 years, while I wrote a good many papers. As one of a few legal and sociological students who have interest in Sweden and can understand the Swedish language, I am studying it mainly by using materials written in Swedish language.

The main part of my works are reported in the journal "Hogaku-Kenkyu" that is edited and published by the Law Faculty of Keio Gijuku University in Tokyo. They have a common title "A General Survey of Reports of the Swedish Council for Crime Prevention(Brå)." It lasted for 17 years. In 1999 I wrote and published the Survey for 1997. This I made the last one in the series. Now I am searching for another perspective.

At the changing point of my interest I have planned to compile the study on the Scandinavian Criminal Science in Japan. With this in mind in 1999 year I made a humble investigation concerning on the subject, while I have been gathering as many papers as possible which were published in Japan concerning it.

A. Studies by Japanese Researchers

Japan began to be modernized, that is to say, westernized after the Meiji Restoration in 1868. One of the conspicuous feature of her modernization was the prison reform. The unequal diplomatic relationship with western countries, such as United States, United Kingdom, and others could be removed if our prison system would be reformed as the western country would expect.

One of her sincere efforts in the prison reform is the establishment of the training institute for police and prison officials. It was established early in 1890, earliest in the world, I heard. It was often applauded by western experts in several decades thereafter. At the same time the Japanese Prison Association published the first number of a professional journal for the prison science (Gefängniskunde in German Term). Its title was "Dai Nihon Kangoku Kyokai Zasshi" literally meaning "The Journal of the Prison Association of the Great Japan" in English. It is even now published by Kyosei Kyoukai with the changed title, "Keisei (Prison Administration in English)."

In the first number of the Journal, it is very interesting, we find an article "The Design of a T-form Prison of Sweden". Its author referred to the prison system of Sweden in his lecture before prison officials. Another prison expert showed his sorry at the Death of King Oscar II and wrote about his contribution to the prison reform. These show that our prison experts at that time had great interest in the Swedish prison system.

It is, however, very short that Sweden attracted our interest. After that there were few works on Scandinavian countries including Sweden. I could find no articles that treated Scandinavial Criminal Sciences in about 40 year until the end of the Second World War.

After the war, earlier in 1948 we find one paper that treats the Swedish prison reform of 1945. This was printed in the afore mentioned journal, Keisei. And we find four papers in 1952, two in 1953, two in 1958, two in 1962, one in 1963, one in 1964 and so forth. Thus we had a few papers in every year, mainly concerning the Swedish Prison System. Then number began to increase. In eighty's we have about 25 papers. In ninety's we had more than 50 papers. This shows the interest in Scandinavian criminal sciences is growing bit by bit.

As to countries Sweden is overwhelming as shown in table 1. Why Sweden attracts our interest? I can not find answer to the question, at least in this moment. Sweden was the first country when I had started my study on Scandinavia. I had interest in Barnavårdslagen of Sweden, but not of any other countries, while I heard that the first barnavårdsnämnd was established in Norway.

The most studied field is the Swedish penal system. Why a prison expert in Meiji-period had an interest in Sweden more than hundred years ago? It is difficult to find answer. Why King Oscar II? A hint might be his father's famous Gula Bok. The solitary confinement was a fashion of the time. And S. Ogawa, then the leading expert in the government concerning prison administration, was one of the followers after Dr. K. Krohne. Ogawa was energetic in realizing his ideal in our country. It was he who wrote his memorial words about King Oscar II. But in the beginning of 20th century he left his position in the government. And the solitary confinement itself became internationally criticized.

The interest was extended bit by bit to another countries. Most Japanese researcher who had interest in Denmark unexceptionally visited Helstedvester by Dr. George Stürup. It was treated by several researchers in their papers.

According to the table 1 criminal policy and court procedure were also studied. The draft of "Skyddslag" seemed to give a heavy shock to japanese criminal scientists, specially those having Franz v. List's way of thinking. It was those who wrote papers on Swedish proposal of Skyddslagen as well as on Swedish criminal policy.

Now the lay judge system in Scandinavian countries is attracting our interest. In Japan now a committee is working for the reform in the judicial field. A study group from the Japanese Lawyers Association made study visit to Sweden and Denmark. Their reports were lately published.

In the field of criminal law a researcher who understands Swedish language wrote papers on several theoretical issues by referring to literature written in Swedish.

Most authors write one or two papers concerning Scandinavian criminal science, while a few are successively making study on it. Table 2 and Appendix 2 show this. Thus Morishita, Hagiwara, Tateyama, Maeno, and Sakata are conspicuous. The aim of this present paper is to illuminate our research situation in criminal sciences. It must be pointed here that in the field of the civil law Emeritus Doctor S. Hishiki is a leading and prolific. Emeritus Doctor K. Hagiwara has made many works in the judicial system and the law of procedure of Sweden. Besides, there would be growing young powers. They will make great progress in near future, I believe. Dr. Morishita has interest in Scandinavian criminal sciences for the longest period. He wrote his first paper in 1953. His work is continuing for more than 40 years.

B. Translations on Works by Scandinavian researchers

B-1. Seven books translated into Japanese

There are in my knowledge 7 translations concerning the work of Scandinavian criminal scientists as shown in Appendix 1. I believe that the most important should be Andreas Bjerre's "Zur Psychologie des Mordes." Bjerre was an intimate friend of Karl Schlyter. I found his name in Sundell's "Karl Schlyter." According to Sundell he was studying criminal law under Dr. Franz v. Liszt. He was a contemporary of Sigmund Freud. He made insight into the deep inside of the criminal by different way from Freud. The translator, Dr. Masahiko Satoh was a student under Dr. Eiichi Makino, then a leading professor in criminal law, of Tokyo Imperial University and had been a student under Franz v. Liszt.

5 of 7 translations that I found are concerned with Sweden. One of another 2 which are not Swedish is one of Prof. Nils Christie. His "Limit to pain" was translated by a professor of Tokai University, that has special interests in Scandinavian countries. The translator himself has often visited correctional institutions in Scandinavia. I, myself translated his small essay

on criminology with my uncertain knowledge of Norwegian. The other one is Stürup's book on Helstedvester. The translator, Kiichi Ozawa who worked as a prison official in the Japanese Government, was once a student under him.

I include Dr. Thorsten Sellin in this research because he is of Swedish origin. The translated work of Torsten Eriksson is originally written in Swedish. But the translation was done upon its English translation. So, the half of the original work is missed.

Bolding's work is translated from the original in Swedish. The translator was granted Emeritus Doctor from Faculty of Law, University of Lund.

B-2. Articles

The first translation on the Scandinavian criminal science was "A Small Biography of Dr. Gustav F. Almqvist" by E. Takeda (See Apendix 1, no. 29). This was done in 1891, more than hundred years ago. I do not know who he was, but the author of the biography is not Scandinavian writer but may be a French.

Besides this I found 14 articles that was translated before the end of the Second World War. They are divided into three groups. One is concerned with the abolishment of capital punishment in Scandinavia and the second is concerned with penal systems in Scandinavia. The third is concerned with the 9th Prison Congress of London in 1925. They were all done in the Ministry of Justice. While translators of the first and the third group are unknown, the translator of the second group is Bunsaku Nakao, one of the leading officials in our correctional fields. He worked as a director of the Bureau of Correction in the Ministry and also was once the president of Kyosei Kyokai that has more than hundred years of its own history. The third group is a translation of the National Reports submitted to the 9th Prison Congress in London in 1925, as answers to the questions from the International Prison Association. It includes several reports from the Scandinavia. The original name of the document cannot be found in this moment. The translation was done from its French edition.

After the war many translations were successively done. And more over, many Scandinavian specialists visited or were invited to Japan from various fields. According to the list provided by UNAFEI (UN Asia and Far East Institute for Prevention of Crime and Treatment of offenders) in Fuchu, Tokyo, 18 experts were invited by the Institute as a lecturer until 2000. Appendix 3 shows this. Besides, Prof. Jerzy Sarnecki was invited to a university in Tokyo, Prof. Henrik Tham was invited to the Japanese Association for Social Pathology, and Prof. Olweus of Norway was invited to a conference in Tokyo on bullying.

In 1990's several experts in Swedish Correctional field came to our country and gave lecture on the Swedish system, specially on the treatment of offenders outside institution.

B-3. Countries and fields

Sweden is overwhelming here, too, as shown in table 3. If there is one thing to explain, it is the fact that the practice in Sweden is eagerly studied. Within the Japanese Embassy in

Stockholm one of their secretaries usually comes from the Correctional Bureau in the Ministry of Justice. This reflects great interest of the Ministry in the Swedish system, I believe. They would have interest in correction in other Scandinavian countries as well in future.

Correction is overwhelming as shown in Table 3. Japanese experts would study humanistic treatment of prisoners from Scandinavia. This is the reason, I believe. On the other hand, specialties in historical development of Scandinavian judicial system, specially its lay judge (nämnde) system have come to attract our interests.

In 1980's a debate prevailed in our country concerning the crime report in mass media. Then T. Cars came from Sweden to Japan and several articles by other Swedish experts are translated.

C. Reviews on Works by Scandinavian Researcher

I find 22 reviews on works of Scandinavian researchers. Table 4 show this.

The reviews are wholly written after the second World War (Cf. Appendix 1). Before it no review is found. I do not know its cause. Maybe the difficulty in reading Scandinavian languages and the location of the countries are those which are concerned with the situation.

Among 22 reviews 17 are concerned with Sweden as shown in Table 4. J. Andenæs, and N. Christie are exceptions. Besides, the author of most of the reviews is myself. Introduction of the Swedish studies into our country has been one of my principal concerns. I wrote 13 reviews on works written mainly in Swedish. If young researchers would appear who read and understand Danish or Norwegian language, reviews on respective countries should increase.

My works are mostly concerned with Sweden, but in later works they are concerned with another countries.

Table 4 shows that Criminology and criminal policy prevail. The interest in Skyddslag just after the end of the second World War and my own interest after 1970's are its main causes, I believe.

D. A Small Investigation

In 1999 I made small investigation concerning Scandinavian studies in Japan. I tried to illuminate the present situation of studies on Scandinavian criminal sciences in Japan.

The method of investigation is to mail a questionnaire to 70 scholars arbitrary selected from directories of the Japanese Society of Criminal Law, the Japanese Society of Criminal Sociology and the Japanese Society of Victimology. An anonymous method was adopted.

In this the following questions are included.

QuestionA: In what languages are the materials written that You use?

QuestionB: Do You know any one of the following journals?

1. SvJT(Svensk Juristtidning)

2. NTfK(Nordisk Tidskrift for Kriminalvidenskab)
3. NK(Nordisk kriminologi)
4. SCCP(Studies on Crime and Crime Prevention)

The result can partly be summarised in the following 2 table.

QuestionA

Categories	Numbers	%
Swedish	3	21.4
Danish	1	7.1
English	11	78.6
German	5	35.7
French	2	14.3
Japanese	3	21.4
No answer	35	

QuestionB

Categories	SvJT	NTfK	Nordisk Kr-logi	SCCP
Have cited	1 4.5	0 0.0	0 0.0	4 18.2
Know	7 31.8	6 30.0	10 47.6	8 36.4
Don't know	14 63.6	14 70.0	11 52.4	10 45.5
No answer	27	29	28	27
Total	22 100.0	20 100.0	21 100.0	22 100.0

A special point in the questions is a fact that so many respondents did not answer them. Of 49 35 in Qustion A and about 30 in Question B did not give any answer This can be interpreted that those who did not answer might have some kind of defensive attitude towards this investigation.

Concerning languages of 14 that are consisted of those who write the books etc. 11(78.6%) uses materials written in English, 5 in German, 2 in French, 3 in Swedish, 1 in Danish, and 3 in Japanese. English is overwhelming as expected. But on the other hand a small number of researchers use Scandinavian languages. This attracts our attention. Direct links between Japan and Scandinavian countries in this field of study could and would be promoted in near future.

Concerning academical journals those 4 journals should separately be treated.

a) SvJT

Of 22 who made response anyhow, one researcher answered that he had cited it, 7 knew the journal, and 14 did not know it. SvJT is stocked in 9 University Libraries of Japan according to NII (National Institute for Information, Ministry of Education, http://www.nii.ac.jp). The journal can be said to be well known in our universities. Besides, several researchers including myself have subscribed it personally. Nevertheless, the fact that there is only one citation here, may show the difficulty in reading Swedish language.

b) NTfK

Of 20 who answered the question, only 6 know the journal. And according to NII there is only one university library who stocks it. It is the Keio Gijuku University Library. However, it stocks only vol. 1 to vol. 46. The numbers after 1949 cannot be found in any university library in Japan. The fact was not expected. I expected that there should be at least one or two libraries that keep it.

c) Nordisk kriminologi

Of 21 who answer the question, 10 know the journal. Although no one has cited this, it is most popular in the investigation. It may depend on the fact that Scandinavian Study Council on Criminology is somehow well known in a part of Japanese criminal scientists.

d) SCCP

The journal is now changed in its title. It is now The Journal of Scandinavian Studies in Criminology and Crime Prevention. But the investigation was conducted before the change.

Of 22 who answered the question 4 have cited it. 8 know it, while 10 don't know it. The journal seems to be used rather frequently in our studies, though it is rather new and young journal. But only one university library subscribes it according to NII.

Some Concluding Comments

From the above result I make following comments:

1. The Scandinavia is a minor field for Japanese students in criminal sciences. This investigation confirms this. At the same time, however, the system of treating offenders in Sweden is attracting our interests for long time.
2. In Meiji period, a hundred years ago, the Swedish correctional system attracted our interests. Our ancestors studied it. I can say the tradition exits still now as shown above. But it has not extended to another Scandinavian countries.
3. The fact that there are 9 libraries of Japan that subscribe SvJT is unexpected. However, only one university library keeps NTfK. This may show that interests in the Scandinavia are mainly concerned with Sweden but not with other countries.
4. In those days when Skyddslag was proposed in Sweden, it attracted interests of a group of our criminal scientists. But this did not continue so long. After that several

topics attracted our interests in Sweden. That is to say, crime and mass media in 80's, and the lay judge system in 90's, while the Swedish system of treating criminals is attracting our interests continuously for long time as mentioned above. And we can say works of Nils Christie are widely read in Japan.

5. Interests in the Scandinavia can be said to be growing. I hear that several young Japanese students are studying in Scandinavian universities. And persoal affiliation is now developing, I believe. However, I have not seen yet a bud of the organizational affiliation. I conclude this report with a hope that it would be developing in future.

Table 1. Japanese Studies on Scandinavian Criminal Science

	Sweden	Denmark	Norway	Finland	Nordic	Total
Criminal Policy	16	3	1	0	7	27
Criminology	2	0	0	0	3	5
Court/Proceeding	16	3	1	0	0	20
Prison	16	2	1	3	1	23
Criminal Law	6	1	0	0	0	7
Juvenile	9	2	0	0	0	11
Fine(Day fine)	3	0	0	0	0	3
Police	2	0	0	0	0	2
Victim	1	0	0	0	0	1
Probation/Parole	5	0	0	0	0	5
Approved school	3	0	0	0	0	3
Mass media	1	0	0	0	0	1
Narcotics	1	0	0	0	0	1
Total	81	11	3	3	11	109

Table 2. Japanese Authors

NAME	Number of Article	Year
Ayukawa, Jun	1	1997
Fujihira, Hideo	2	1952
Fujimoto, Tetsuya	2	1979-1997
Furuta, Yuki	1 (2 parts)	1981
Gotoh, Hiroko	1	1986
Hagiwara, Kaneyoshi	6	1985-1997
Hanashima, Seizaburou	1	1995
Hirano, Youko	1	1986
Hirose, Sadao	1	1962
Itoh, Hiroshi	1	1997
Kaito, Yuichi	1	1990
Kake, Osamu	1	1990
Katoh, Hisao	1	1983
Katsuo, Ryozo	1	1968
Kikkawa, Tsuneo	2	1971-1972
Lawyers Association in Tokyo	2	1995 1998
Maeno, Ikuzou	10	1983-1998
Makino, Eiichi	2	1952-1958
Matsuzawa, Shin	1	1994
Miyahara, Mitsuo	1	1952

Miyazawa, Koichi	3	1962-1974
Morishita, Tadashi	8	1953-1998
Nagata, Hideki	4	1989-1995
Nakamura, Hideji	1	1989
Nakatani, Kinko	2	1986-1987
Nosaka, Akihiko	2	1995
Ogawa, Shigejirou	1	1908
Ohashi, Kaoru	1	1992
Ohashi, Satoshi	1	1998
Ohmagari, Yuko	1	1993
Ozawa, Kiichi	4	1967-1981
Sakata, Jin	24	1966-2000
Sano, Hisashi	2	1888-1891
Satoh, Hiroshi	1	1998
Sawada, Ken'ichi	1	1993
Tanaka, Hachirou	1	1969
Tateyama, Tatsuhiko	6	1982-1998
Tsuchiya, Shouzou	1	1970
Usui, Shigeo	2 (6 parts)	1967
Watabiki, Nobuo	1 (3 parts)	1948
Yagi, Kuniyuki	5	1966-1989
Yamauchi, Kouko	1	1994

Table 3. Content of Translated Books and Articles (Multiple)

	Sweden	Denmark	Norway	Finland	Nordic	Other
Total						
Criminal Policy	6	2	4	0	0	0
Criminology	3	0	1	0	0	0
Court/Proceeding	4	0	0	1	0	0
Prison	9	2	1	1	1	0
Criminal Law	4	0	0	0	0	0
Juvenile	1	0	0	0	0	0
Probation/Parole	2	0	1	0	0	0
Approved school	1	0	0	0	0	0
Mass media	4	0	0	0	0	0
Capital Punishment	1	1	1	0	1	1
Murder	2	0	0	0	0	0
Prevention	0	0	0	0	1	0
Psychiatry	0	1	0	0	0	0
Total	36	6	8	2	2	1

Table 4. Content of Reviews of Scandinavian Works(Multiple)

	Sweden	Denmark	Norway	Finland	Nordic	Other
Total						
Criminal Policy	6	0	2	0	0	0
Criminology	5	0	1	0	1	0
Court/Proceeding	1	0	0	0	0	0
Prison	1	0	0	0	0	0
Juvenile	1	0	0	0	0	0
Police	2	0	0	0	0	0
Approved school	3	0	0	0	0	0
History	2	0	0	0	0	0
Prevention	1	0	0	0	0	0
Psychiatry	1	0	0	0	0	0
Total	18	0	3	0	1	0

Appendix 1.

List of Scandinavian Authors whose works are translated or reviewed in Japan

(*) Original title is unknown.

001: Almqvist, Viktor: Abolishment of Capital Punishment in Sweden, by an unknown, Keisei 44-05, 1931
002: Andenæs, Johannes: General Prevention---Illusion or Reality---, by G. Ohtsuka, Kikan Keisei Shin 03-03, 1955
003: Andenæs, Johannes: General Prevention Revisited---Research and Policy Implication--- ,by T. Fujimoto, Hanzai to Hikou 37 & 38, 1978
004: Anners, Erik: Brottet, straffet och polisen, by J. Sakata, Hougaku Kenkyu 72-03, 1997
005: Anners, Erik: Humanitet och rationalism, by J. Sakata, Ningen Kagaku 16-02, 1998
006: Arvelo, M.A.P.: Les systèmes pénitentiers en vigueur dans divers pays (Finland), by B. Nakao, Shihou Shiryo 269, 1940
007: Bishop, Norman (ed.): Crime and Crime Control in Scandinavia, by J. Sakata, Hougaku Kenkyu 54-07, 1981
008: Bjerre, Andreas: Psychology of Murderers, by M. Satoh, 1936
009: Bolding, Per Olof: Två rättegångar, by K. Hagiwara, 1985
010: Bondeson, Ulla V.: Global Trend of Correction, by T. Takemura, Hikakuhou Zasshi 33-02, 1999
011: Bondeson, Ulla V.: Importance of Negative Individual Prevention, by T. Takemura, Hikakuhou Zasshi 33-02, 1999
012: Cars, Thorsten: Jury and Lay Judge System in Sweden(*, by an unknown, Jiyu to Seigi 46-11, 1995
013: Cars, Thorsten: Freedom of the Press and the Press Ombudsman in Sweden(*, by K. Yamada, Hougaku Seminar Extra Number 39, 1988
014: Cars, Thorsten: Japanese Press and Its Responsibility(*, by K. Shiomi, Hougaku Seminar Extra Number 39: 1988
015: Christie, Nils: Death and Crime, by S. Shinmura, Keisatsu Kenkyu 62-01, 1991
016: Christie, Nils: Fagets fiender, by J. Sakata, JCCD News 51 & 52, 1990
017: Christie, Nils: Limits to Pain, by T. Tateyama & T. Kakusho, 1987
018: Christie, Nils: Trends in the European Criminology, by T. Tateyama, Hikakuhou Zasshi 23-02, 1989
019: Christie, Nils: Social Control as Industry, by Y. Suzuki, Houritsu no Hiroba 47-04, 1994.
020: Ekbom, Thomas: Crime and Correctional System Situation in Sweden, by G. Boku, Hanzai to Hikou 106, 1995
021: Engström, Gunnar.: Correction and Access to Its Information in Sweden(*, by K. Hagino, Hanzai to Hikou 117, 1998
022: Eriksson, Torsten: The Reformers, An Historical Survey of Pioneer Experiments in the Treatment of Criminals, by Hanzaikoudou Kenkyukai, 1980
023: Eriksson, Torsten: Why Japanese People Obey Laws?, by J. Sakata, Tsumi to Batsu 15-04, 1978
024: Evensen, Haus: Measures against Dengerous Abnormal Criminals(*, by an unknown, Kokusai Gyoukei Kaigi Houkokusho Shu 7 (Shihou Shiryo 158), 1910
025: Flyghed, Janne: Rättsstat i kris, by J. Sakata, Hougaku Kenkyu 67-05, 1992
026: Frey(?), S.M.: Abolishment of Capital Punishment in Holland and Scandinavia, by an unknown, Keisei 44-05, 1931
027: Goll, Auguste: Les systèmes pénitentiers en vigueur dans divers pays (Danemark), by B. Nakao, Shihou Shiryo 269, 1940
028: Grönwall, Lars: Psykiatrin, tvånget och lagen, by J. Sakata, Hougaku Kenkyu 68-07, 1993
029: Guillome(?), ?.: A Small Biography of Dr. Gustav F. Almqvist, by E. Takeda, Dai Nihon Kangoku Kyokai Zasshi, 04-05, 06 & 07, 1891
030: Hofer, Hanns v.: Fängelset, by J. Sakata, Hougaku Kenkyu 67-05, 1992
031: Hofer, Hanns v.: Intensive Supervision with Electronic Control of Offenders, by J. Sakata, & E. Yano, JCCD News 86, 2000
032: Jansson, Kjel: Correctional Treatment of Juvenile Delinquents in Sweden(*, by an unkonwn, Keisei 106-11, 1995
033: Jörgensen, Hakon: Police Activities against International Criminals(*, by an unknown, Kokusai Gyoukei Kaigi Houkokusho Shu 6 (Shihou Shiryo 157), 1910

034: Kinberg, Olof: Basic Problems of Criminology, by K. Nishimura, 1956
035: Kinberg, Olof: Réflections critiques sur la prévention, by G. Ohtsuka, Kikan Keisei Shin 03-03, 1955
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TRAFFICKING IN WOMAN FOR THE PURPOSE OF PROSTITUTION

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This paper will address trafficking in women for the purpose of prostitution, which henceforward will be referred to as trafficking in women or just trafficking.

One could get the impression from media, politicians and the amount of papers, conventions and declarations from international organisations that trafficking in women is a relatively new phenomenon. This is not true; trafficking has taken place for many years. But what has changed is, firstly, the amount of trafficking – there has been an enormous increase, and secondly - new areas have become countries of origin (that is, the countries the women originally come from). Previously, the women typically came from third world countries. Since the political changes in Eastern and Central Europe more and more women are trafficked from these countries.

The International Organization of Migration (IOM) has estimated that 500,000 women are trafficked into West European countries each year and that in 1997 approximately 175,000 women and girls were trafficked from countries in Eastern and Central Europe to Western Europe and North America into prostitution or other sexual services. These are big numbers. In reality, nobody knows how many we are talking about, though we do know that in some West European countries the majority of women in prostitution are migrants - for example in Germany and Holland. In the Scandinavian countries there has been a rapid increase in migrant women in prostitution within relatively few years. For example, in Denmark there was an increase of at least tenfold from 1989 to 1999. These women are not necessarily all trafficked, but it is among the migrant women we find the ones who have been trafficked.

Almost all persons trafficked into prostitution are females – women and girls. It should also be noted that when we talk about trafficking concrete knowledge is limited. Systematic studies are rare and no study of the amount has been carried out. This is not unusual for a new phenomenon, but it gives rise to speculations about whether it is a serious problem or not. I think one can say that by now trafficking has been recognised as a problem that must be acted upon. However the actions are still very limited.

Trafficking is a complicated and mulitfaceted problem that, amongst others, involves migration, legislation, police investigation, social and health care issues, gender issues and human rights. This requires co-operation, both nationally and internationally.

In this paper I shall present some key-issues in Trafficking, but before that I will start by presenting a definition of trafficking.

Definition

The many different papers from international organisations presents many different definitions of trafficking. Some of them have exclusively defined trafficking in connection to prostitution, others are more broad definitions concerning trafficking in human beings for different purposes.

I have chosen to present the definition from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime from last year.

It is a broad definition covering far more than prostitution. I have chosen the UN definition, because it will almost certainly be the most influential/important in the future, and because in my opinion it is an adequate definition. It is also a very long definition!

The definition goes like this:

a. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

"Child" shall mean any person under eighteen years of age.

In this forum I should maybe add that Estonia, Latvia and Lithuania have not signed the protocol.

The many means of different types of force in the definition indicate that trafficking can take various forms - from abduction to milder forms of fraud or coercion. The traffickers also can be organised in various forms: from strong criminal networks involved in other types of crime to a few individuals. However, it is true that the involvement of organised criminal network has increased. Trafficking is a lucrative business. The conditions the women live under and the means to keep the women in prostitution also differ – from the women not having any influence over their lives to being able to move freely if they just follow the rules. However common for the victims is that they cannot negotiate the conditions.

An illustration of trafficking

To illustrate trafficking, let me give an example of one way trafficking can develop. The example is from Denmark and it is the story about Thai women in prostitution in Denmark. It could just as well have been the story from other western countries; the story is more or less the same all over.

Some Thai women met Danish men on holiday in Thailand. They decided to get married and live in Denmark. After some time they have marital problems, often caused by disagreements about supporting her family in Thailand. As a result, some women started in prostitution – either still married or after a divorce. Some of the women had been prostitutes before in Thailand. This happened sometime in the 80s. Some of these women later on become managers at their own massage parlour – maybe still working as a prostitute. This, of course, has nothing to do with trafficking.

But slowly things develop. One day a Thai manager goes to Thailand where she visits one or more women – they might be prostitutes, they might not – she tells about all the money to be earned in Denmark. To support this, she can prove that she herself is wealthy according to Thai standards. She does not tell the women directly that they are going to be prostitutes. She tells them that they will work as waitresses or chambermaids. Some of the women know that this means prostitution; some do not.

The women come to Denmark on a tourist visa. In most cases the women that are interested in going abroad cannot afford the ticket. But that is not a problem. The manager can offer a loan. The loan has to be repaid during the stay in Denmark. This is the women's first debt, but not the last one.

After arriving to Denmark the women live with other Thai women or at the massage parlour. In addition to paying for lodgings, they also have to pay 40% of their earnings to the manager. The women expect to earn enough money to be able to live in Denmark as well as to send money to their families in Thailand. That is the reason why they went abroad.

The women seldom speak or understand any language except Thai and they know nothing about Denmark. There is always somebody in the Thai prostitution milieu to help the women with whatever they need – at a price. As a consequence the women quickly build up debt which they cannot pay back – they are kept in prostitution by debt bondage.

In order to solve this problem they are given an offer of extending their stay by marrying a Danish man. That also has a price. The man has to be paid an amount of some thousand Danish kroner for marrying the Thai woman – the amount varies, but can be a five-figure sum. Furthermore, he has to receive an agreed amount of money for every month they are married.

The marriage is usually agreed to last until the woman can get a residence permit, which in Denmark is after three years. The woman not only has to pay to be married, she also has to function as wife – cook, clean and sleep with the man – if that is what he wants. This means that the marriage does not look like a marriage of convenience. Most of these sham husbands do not feel obliged to help the women financially if anything happens and the women are unable to earn money. The women do not have much choice but to stay with their sham husbands, while the men, on the other hand, can chose to dissolve the marriage if they are dissatisfied.

Within the last couple of years the profit-mongers have also, started to make rules and control the sham husbands. They are not allowed to steal money and drugs from the women. Some of the women use drugs – mostly speed – to manage the long hours. Breaking rules and not paying debts carries a punishment for the husbands as well as for the women. This tells us that the development is towards a more and more organised industry that involves other than the female Thai managers.

In addition to the large amount of money these women have to pay to other people, the expenses contribute to keeping the women in prostitution. For Thai women it is not the debt alone which keeps them in prostitution, it is also the fear that the knowledge that others have of their sham marriages and prostitution activities could be used against them so they could risk deportation.

According to Thai tradition people are morally obliged to people who "help" you. It seems that in trafficking involving Thai people both as traffickers and as victims, Thai tradition plays an important role. It seems that the traffickers take advantage of the tradition. Thai women are not unfamiliar with arranged marriages, and in Thailand women are the ones responsible for the parents material needs and comforts.

In many cases the boundary line between trafficking and voluntary prostitution is not sharp. In the cases where non-Thai people get involved, the conditions are usually harsher and the exploitation worse.

Key-issues

It was not easy for the UN countries to reach the final definition. Two elements in particular gave rise to problems and long negotiations; they were the terms "prostitution" and "consent".

The inclusion of "prostitution" in the UN definition created problems because not all countries wanted the word to be part of the definition. In some countries prostitution is a legal occupation so they saw no reason to specifically mention the word; other countries did not consider prostitution to be a problem. The counties feared that if prostitution was part of the

definition, it could have influence on national legislation. I will come back to the issue of prostitution later on.

The question of "consent" was far the most difficult. As long as trafficking has been talked about, consent has been discussed. Can it be called trafficking or is a person worthy of being called a victim of trafficking if the person initially consented in going to another country to work or to be a prostitute.

Consent is one of the key-issues in trafficking. No doubt most of the people that are trafficked agree to the opportunity to go abroad to make money – or their parents does. The majority are not abducted or forced, they go willingly. But they do not always know which circumstances they are going to live under. They simply do not know what they are saying yes to. This means that a woman initially can accept to be a prostitute in another country, but end up as a victim of trafficking. This can happen, if for example, she is forced to offer sexual services she is not willing to give. If she is forced to pay more money to those that profit from her prostitution than agreed, if her passport is taken away from her, or her freedom to leave is in any other way seriously restricted.

Another key-issue is poverty. Traffickers mostly target people in countries or regions where socio-economic conditions are difficult and opportunities limited. Women are particularly vulnerable because poverty tends to strike women the hardest.

In trafficking one talks about countries of origin, countries of transit and countries of destination. There is not necessarily a clear distinction between countries of origin, transit and destination. For example, Thailand is both a country of origin and destination. Many women are sent from Thailand to western countries, but also women from East Europe are sent to Thailand. Furthermore, women and girls from neighbouring countries are trafficked to Thailand. Though many people in Thailand live in poor socio-economic conditions, some Thais are wealthy. Poland is an example of a country of origin, transit and destination.

Trafficking is a global phenomenon. Global is another of the key-issues. As trafficking is a global problem, co-operation between countries is needed to solve the problem.

The women that are offered the opportunity to go abroad are looking for better economic conditions. This is no different than what many other people do today. The difference between the others and the trafficked women is that they do not improve their socio-economic conditions and the countries of destination did not invite them.

That leads to another key-issue in trafficking - immigration. The countries of destination do not want these women to remain in their countries. From different reports from the beginning of and mid-90s it appears that the issue of immigration again and again hindered any further solutions in how to handle the problem of trafficking. According to the law, earning money during a visit as a tourist is not allowed, and in some countries prostitution is

prohibited. Consequently, the women are often faced with arrest and deportation for illegal work or illegal entry.

It has been said that the crimes the women commit are minor compared to those of the traffickers. It would therefore be better to get testimonies from the women to build up a case against the traffickers instead of deporting the women. This, however, implies residence permission for the women. Not many states have been willing to grant this. The risk that people under false pretence would get residence permission has been an issue discussed again and again. Some states have changed practice for trafficked women, among others, Belgium, Holland, and the USA, which now offer limited residence permits. The period depends of whether a woman decides to report the case to the police and for how long the case runs. Italy is the only country that offers permanent residence permission for victims of trafficking as a general rule.

In my opinion trafficked women should be offered a permanent residence permit if they report the case and give a testimonial. Partly, because the only way forward is to get information about the traffickers from the women. And partly for humanitarian reasons - they have been grossly exploited in the countries of destination - and partly for safety reasons. One cannot presuppose that they will be able to avoid retaliation upon returning to their home country.

International organisations have argued that special legislation concerning trafficking is needed. This argument has most often been based on the wish for severe punishment for the traffickers. I am not sure special legislation is necessary. What I think is important is that punishment for trafficking is commensurate with the crime and punishment for crimes of corresponding severity.

One of the most important key issues in trafficking is human rights. Trafficking is a gross violation of the human rights of the victims. They are deprived of influence over their lives, their dignity and freedom. Trafficking for the purpose of prostitution cannot merely be addressed from the perspectives of a “social problem”, a “women's problem”, a “crime problem” or a “development problem” – it is a human rights problem.

It is necessary that the governments in the states where trafficking takes place initiate protection and support for the women.

Protection first and foremost has to guarantee that the women are safe and have safe residence, to prevent them from being exposed to retaliatory measures from the traffickers during the time of investigation and possibly also during the trial.

Different types of support are important, since the women have little or no knowledge of the language and of societal conditions, and because they may have been exposed to traumatic or violent experiences. In this connection it should be mentioned that only the women that have been prostitutes before know the meaning of being in prostitution, for the

rest prostitution in itself can be a traumatic experience. The support must include either economic support or work permits, residence, and psychological treatment and legal support during the trial.

Whether or not the women wish to return to their home country, it is important to support them in planning a future, independent life. Training and education is important in this respect. Also, support in terms of counselling or treatment is necessary for building belief in a future, not only for the women themselves, but also in order to support them in reporting and contributing to a trial.

Finally, the women may need medical treatment for prostitution-related illnesses, in relation to unwanted pregnancy or to have an abortion.

Prostitution

Trafficking for whatever purpose expresses the dichotomy power / poverty and powerlessness, between the traffickers on the one side and those trafficked on the other, and between the rich and the poor parts of the world. Hence, it follows that trafficking highlights problems not only in poor areas of the world, but also in rich parts. It is not possible to traffic people into a labour market that is well organised and controlled by legislation and labour unions.

Trafficking for the purpose of prostitution highlights the problems of prostitution. Traffickers did not make a big invention, rather they take advantage of what already exists: poverty, the wish to go abroad to make money, and prostitution.

The easy conclusion would be to legalise prostitution and make it an occupation like any other occupation. Holland has done this – that is more or less. It is a legal occupation if it takes place in licensed brothels or in restricted areas assigned by the municipality. Prostitution has been restricted to specific areas because it is considered an offence against public decency. Prostitution cannot, for example, take place near churches and schools; places where people go to worship God or where children go to classes.

This tells us that prostitution is not a job like any other job. This is because the commodity that is traded in prostitution is sexuality. That is what makes prostitution special. It is not that it is illegal. That is why legalisation does not change the fundamental problems in prostitution. When sexuality becomes a commodity, something happens to the persons providing the sexual services. Inevitably, they are identified with the commodity – they become the commodity – the whore. In my opinion this does not change merely because prostitution becomes a legal occupation. Neither does it change the fact that providing sexual services to strangers, according to the wishes and fantasies of the male customers, has a serious impact on the one who is selling. Like having to give up ones private sexuality because it is not possible mentally to alter between being a prostitute and a loving partner. Like alcohol

and drug abuse to manage being a prostitute. Like disgust and hatred of men. Like the risk of getting infected by HIV and STD and other diseases or problems, etc. etc. etc. Generally speaking, the longer time in prostitution and the more daily customers, the more serious the impact. Trafficked women are expected to serve a large number of customers, which may mean 15-20 per day.

I think it is right to say that the more liberal the attitude towards prostitution, the more prostitutes you will find in a country. If one compares the four Scandinavian countries Denmark, Finland, Norway and Sweden you will find far more prostitutes in Denmark than in any of the other Scandinavian countries. Denmark has, contrary to the other countries, had a very liberal – one could say laissez faire attitude towards prostitution. Sweden, on the other hand, has from January 1st 1999 criminalized the customers - the latest weapon in the combat against prostitution. Of the four countries Sweden is the one that has the least number of prostitutes. We are talking about estimated numbers. Statistics on the amount of prostitutes do not exist.

The very different attitudes that are represented by the two countries, Holland and Sweden, are interesting, not only in relation to prostitution, but also in relation to trafficking. As well as being difficult for traffickers to operate in a country where prostitution is regulated like in Holland, one would assume that it would be more difficult for the traffickers to operate in a country with a limited amount of prostitution.

In both countries the change in legislation is recent. For Holland this means that there is still illegal prostitution. The estimated number of prostitutes in Holland in 1999 was 20,000 – 30,000, which is 4-6 times as many as in Sweden. In Sweden we still have to see if the law will change the attitude so that fewer men buy sex. Let the future judge which way was the best in limiting trafficking.

In my opinion it is hard to find good reasons to maintain prostitution. Partly because of the physical and mental impact it has on the prostitutes. Partly because it is a job without prospects for most prostitutes – age simply catches up on you. And partly because the mere existence of prostitution influences on attitudes to women and sexuality - the majority of prostitutes are female and almost all customers are male.

In different countries the frequency of men buying sex differs. This in itself should exclude mere biological explanations for why men buy sex. It is far more likely that the explanations are culturally and historically based. Probably explanations can differ somewhat from culture to culture and from time to time. The customers themselves give a variety of reasons – like their wife is ill or absent, they like to have sex with different women, they can have special sexual practices, it is easy or that *is* their sexual life. The reasons the men give have in common that they have to do with sexuality and/or women. If the explanations are based in culture and history, there should also be a possibility to make changes. I am a strong

believer in a change of attitudes and of course the necessary steps. I look forward to seeing what will happen in Sweden. By "necessary steps" I do not mean criminalization, rather, I mean gender relations and equal opportunities for women in education and the labour market. Most prostitutes – trafficked or not – are people without education or work.

Trafficking for the purpose of prostitution is a huge backlash. Prostitution is undoubtedly increasing in most countries. Naturally, this also concerns the buyers. As long as *some* men are willing to buy sex regardless of the conditions the prostitutes live under, it is hard to stop prostitution and trafficking. This is something that is seldom mentioned. Generally speaking, customers in prostitution are rarely talked about.

"Modern-day slavery"

It has been said that it is difficult to understand "modern-day slavery". There are no chains and the slaves are not as such the property of the "owner. They are nevertheless kept in slavery-like conditions by threats, debt bondage, violence and so forth. Contrary to slavery in earlier times, to-day's slaves are low-priced and there are plenty of people to become slaves. The world population has increased enormously and transportation today is much easier. This also means that there is no reason to take care of the slaves. One can profit from them and throw them away when they are not usable any more and then get new ones.

Is there a good effective way to solve this problem? – Probably not. As far as it is rooted in poverty, the best solution would be to eradicate poverty. This has far from happened. So we will have to settle for something more realistic; which means prevention, social work, repatriation and legislation, punishment of the traffickers and, most importantly, knowledge.

ILLEGAL IMMIGRATION IN LATVIA: TENDENCES OF DEVELOPMENT AND PREVENTION

(Summary)

Ilona Kronberga,

journal of Police Academy of Latvia

After re-establishing of independent Latvia we encounter problems, which were unknown for us for long years, because central instances of USSR deal with them. One of these problems was illegal immigration, prevention of it, and some time later – also forming of instances that will fight with this phenomenon.

In 1994 Immigration Police was formed – it lies under control of State Police, and who's main task is control illegal arrival and staying of foreigners, as well as deporting those foreigners who's arrival or staying in Latvia are illegal.

From the beginning Immigration Police have divided action in separate directions:

- To find those foreigners who arrive and stay in Latvia illegally;
- To deport such persons;
- To control how state and self-government institutions abide by legislation on foreigners arriving and staying in Latvia;
- To prevent violations of legislation on immigration done by state or self-government institutions.
- To analyse legislation and make suggestions of amendments of law.

Action of Immigration Police can be succeeded without co-operation with Border control, Department of Immigration, Finance Police, Customs, etc.

As experience of all world shows, illegal immigration is serious problem for almost every country. In addition, none country by itself can deal with illegal immigration.

Usually illegal immigration is connected with organised crime, also bribing state officials when crossing borders or trying to get legal documents for staying in country. But despite of huge prevention measures, illegal immigration stay's very profitable business.

In the process of leaving home country illegal immigrants are very unprotected, because there are none instance where they can ask for help due their illegal position in country. They are totally deprived of rights.

Illegal immigration in Latvia we can divided in two categories:

- Socio-economic (persons leaves homeland with purpose of better life conditions)
- Criminal:
  - For committing crime in arrival country;

- ❖ Hiding from law enforcement instances in another country;
- ❖ Committing ordered crime.

The biggest amount of illegal immigrants in Latvia was in 1995 – 661 person and in 1996 – 732 persons. The biggest number of deported persons was in 1996 – 732 persons.

Process of deporting person from country is rather difficult due to huge bureaucratic procedures that can not be avoided.

For today we can say that re-structurisation of Immigration Police is going on, which is connected with our way to European Union.

Situation Report Republic of Latvia
"Illegal Migration and related Facilitating Crime - Baltic Sea Regions"
January- December 2000

1. General development of the situation

1.1 Illegal Entry and related Facilitating Crime:

1.1.1 Extent of illegal entry and attempted entry:

In total in the Republic of Latvia 443 illegal immigrants were detained[67].

Of them:

- 65 illegal immigrants (11- Bangladesh; 10-Armenia; 10-Ukrain; 9-Russia; 5-Nigeria; 4-India; 4 –Pakistan; 2-Iraq; 2-Morocco; 2-Ghana; 2-China; 2-Byelorussia; 2-Azerbaijan):

a) 32 persons from Asian and African countries tried to enter the Republic of Latvia.

b) 33 persons from Commonwealth of Independent States (CIS) countries.

- 394 persons were detained for violation of visa regime and residence regulations.

Immigration Police has detained in total 384 persons for violation of visa regime (staying in the country after expiry date of visa - Russia, Byelorussia, Ukraine, Azerbaijan, Armenia, Georgia, Kazakhstan, Lithuania, Estonia, Pakistan, Iraq, Lebanon, China, Nigeria, etc.)

- mostly citizens of CIS countries. 264 persons were expelled under constraint, while 77 of them were issued free-will leaving orders. The total number of expelled (deported) illegal migrants in the year 2000 was 544[68].

1.1.2 Number of identified cases of facilitating:

Two facilitators of illegal immigrants were detected:

A Polish citizen tried to facilitate through Lithuania, Latvia and Estonia to Scandinavia two Iraqi citizens holding falsified Polish travel documents. Upon receiving our information this facilitator was detained by Polish and German border guards with a group of 30 Kurdish persons.

A citizen of Bangladesh permanently residing in Latvia legally invited to Latvia 11 citizens of Bangladesh and began organization of their sending to European countries.

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[67] According to data of State Border Guards
[68] According to data of Immigration Police

1.1.3. Main nationalities of the illegal entries and facilitated aliens:

According to the opinion of the Latvian Border Guards, illegal migrants are mostly citizens of China, Iraq, India. Pakistan, Nigeria, Bangladesh. Flow of illegal migration from Armenia and Ukraine has increased. According to the opinion of the Latvian Immigration Police illegal migrants are mostly citizens CIS countries.

1.1.4. Trends in the development over the last years:

Number of detained illegal immigrants in 2000 is similar to that of 1999. Though the number of foreign citizens entering Latvia legally but not leaving after the expiration of visa and doing illegal business has increased.

1.1.5. Own country rather a destination country or a transit country:

Latvia is only a transit country for practically all illegal immigrants; only small part of immigrants from CIS countries tries to stay in Latvia and work illegally.

1.1.6. Intentions of the persons entering illegally or being facilitated:

Mostly these persons want to leave their countries for economic reasons. Their main idea is to go further to West European countries, while part of people coming from CIS countries want to stay in Latvia in order to do their business (mostly illegal) without permission or to look for a job.

1.2. Illegal exit and facilitating out of the country

1.2.1. Seven persons managed to leave Latvia (4-Ukrain, 2- Iraq, 1-Russia). The persons were extradited to Latvia from Denmark-4, Estonia –2, Germany-1.

1.2.2. 39 persons were detained upon leaving Latvia for Europe and the Baltic countries in 2000 (16-Latvia, 7-Russia, 6-Ukraine, 4-India, 3-Byelorussia, 3-Nigeria, 2-Morocco, 2-Azerbaijan). Most of them entered Latvia legally with valid travel documents, but for their further route used falsified documents. Yet part of them managed to enter Latvia using falsified documents.

1.2.3. Total number- 46 persons.

1.2.4. Mostly persons try to enter Latvia in order to go to EU-countries using falsified documents or enter Latvia holding genuine passports and visas, but later try to continue their way with falsified documents. Only citizens of CIS countries try to cross the “green” border and their number is rather insignificant -11.

2. Routes of illegal migration and related facilitating

2.1 Description of the main routes:

- Russian Federation or Byelorussia - Latvian/Russian or Latvian/Byelorussia border (mostly through railroad border checkpoints) – Riga Sea Passenger Terminal or Riga Airport – Scandinavia);
- Russian Federation – Moscow – Byelorussia – Lithuanian/Latvian border – Latvian/Estonian border (Ainazi/Ikla) – Tallinn – Scandinavia;
- Russian Federation – Moscow – Riga Airport – Tallinn – Helsinki;
- Russian Federation – Moscow – Riga Airport – West Europe;
- Byelorussia – Latvian/Byelorussia border (mostly by rail or scheduled bus) – Riga Airport or Riga Sea Passenger Terminal – West Europe or Scandinavia;
- Moscow – Kaliningrad – Lithuania – Latvia – Tallinn – Helsinki – EU countries (mostly by scheduled bus, then by ferry).

When analyzing routes and tactics of illegal migration one can conclude that the tendency that the first occurred at the end of 1998 still continues – facilitators of illegal immigrants mostly try to transport illegal migrants through border check points using falsified documents. As usual nowadays they try not to use genuine passports without visas but falsify documents of the countries which citizens do not need visas for entering Western Europe. Usually railway transport and scheduled buses are used where it is possible to merge with a larger mass of people.

2.2 Migration into neighboring countries

Legal migration to the neighboring countries:

- Visa free regime exists between Latvia and 33 foreign countries. Citizens of these countries are allowed to travel without visas also to Estonia and Lithuania.
- Citizens of 8 countries are allowed to enter Lithuania and Estonia with Latvian visas
- (Australia, Canada, Israel, South Africa, Republic of Korea, Monaco, New Zealand, San Marino).
- Totally 140 898 Latvian visas were issued to foreign citizens in 2000 (largest numbers: Russia – 84 960, Byelorussia – 21 651, Ukraine – 11 986, Kazakhstan 3 872, Israel- 3421, Canada 1538, Thailand – 1481, – 1 112).

Illegal migration to the neighboring countries:

- Two illegal migrants were detained at the Latvian –Estonian border in 2000.

2.3. Land route:

2.3.1. Irregular migration and facilitation from the Baltic Sea Region states and from the non- Baltic Sea Region states:

- Illegal migration from the countries of the Baltic Sea Region. Mostly entering is from Russia and Lithuania.
- Illegal migration from the non- Baltic Sea Region countries. Mostly entering is from Byelorussia.
- 10 persons were detained on entering through road border crossing points, 7 persons - railroad border crossing points.

2.3.2. Distribution at border crossings and green borders:

10 persons were detained at the "green" border.

2.3.3. Share of certain nationalities;

Armenia, Ukraine, Russia, Nigeria, Pakistan, Iraq, Ghana, Byelorussia, Azerbaijan.

2.3.4. Mostly "land" route was used for entering Latvia (53 cases of 65).

2.4. Air route

2.4.1. An air route is used mainly for leaving the Republic of Latvia by the illegal immigrants who have managed to enter Latvia over the land border. Illegal immigrants for transit use international airport Riga that realizes 99% of the Latvian air traffic.

In total at the Riga airport 21 illegal immigrants were detained.

2.4.2. Share of certain nationalities

Bangladesh, Armenia, Ukraine, Russia.

2.4.3. 21 persons of 65 detained were using the "air" route.

2.5. Sea route

2.5.1. Illegal immigrants use this route in order to exit Latvia after they have entered it. Mainly they use ferries going to Scandinavia. Sometimes illegal immigrants arrive on cargo ships with the aim of traveling further to EU countries. Illegal migration occurs mainly from non- Baltic Sea Region countries.

2.5.2. 20 persons of 65 detained (3 of them holding falsified seaman's books were detained at railroad border crossing points:

stowaways — 10,

on scheduled ferries — 5,

in boats — 2,

using seaman's books for illegal traveling — 3.

2.5.3. 2 illegal immigrants were detained in territorial waters.

2.5.4. No illegal immigrants were detained in international waters.

2.5.5. Share of certain nationalities:

Morocco, India, Russia, Ukraine.

2.5.6. Sea route was used by 17 of 65 detained persons.

3. Facilitating crime

3.1. Facilitating methods

Following ways of facilitation are used:

- on foot over the " green" border (10 persons),
- by scheduled busses (10 persons),
- by train (7 persons).
- by sea (17 persons),
- by air (21 persons).

3.1.2. Document abuse:

Of 65 detained illegal immigrants:

- 22 used falsified passports (Lithuania - 6, Latvia - 4, Estonia – 3, Poland - 2, Slovenia – 2, seaman's books – 3, "souvenir" passports - 2),
- 2 falsified visas,
- 13 without documents,
- 28 with their country's documents not valid for traveling.
- 16 Latvian citizens were detained who used falsified documents for leaving Latvia.

3.1.3. Other methods:

3 persons used valid seaman's books, while not being seamen.

3.2. Asian and African illegal immigrants traveling by land and air routes use falsified documents of high quality. Illegal immigrants from CIS countries mostly try to legally enter Latvia and further travel using falsified documents, also via green bolder.

Most part of detected attempts of illegal migration are connected with usage of falsified documents:

1) Facilitators mostly use falsified travel documents of Eastern and Central European countries that do not require visas for entering EU countries. Quality of these documents usually is rather high. Usually already used passports are used at manufacturing of falsified documents. In these cases organizers of facilitation possess falsification facilities of high class: laminate and safety film with safety elements and ornaments is lifted. The falsifications may be detected only by usage of special equipment and by interviewing the suspicious person.

2) In order to mislead border guards about traveling routes and intensity of passport usage falsified border guard stamps of different countries are put into passports, though quality of these stamps is not very high (they contain grammatical errors and their dimensions often do not correspond to the standard);

3) Illegal immigrants do not speak the language of the country whose passport they produce; they cannot put a signature similar to that in the passport.

4. Intelligence on facilitators and facilitating organizations

4.1. Detected facilitators - 2 persons (Poland, Bangladesh). Nationalities of other facilitators cannot be specified, though, to general opinion, often they could be from diasporas of nationals of respective illegal immigrants in Western Europe.

4.2. There is no specific information on organization and back up of facilitating groups. Investigation shows that most of groups of illegal immigrants were formed in Moscow and Minsk.

4.3. According to the information at our disposal illegal immigrants pay 1000 - 5000 $ for their transportation to Europe (including manufacturing of falsified documents).

5. Combating measures

Description of the national combating measures

5.1.1. Co- operation between the competent authorities:

State Border Guard carries out supervision and control of foreigners at the state border. In inland it is done by the Immigration Police from 1994 so far. Co-operation between State Border Guard, Immigration Police and State police is regulated by a special co-operation agreement between these authorities.

5.1.2. Improvement of staffing and equipment:

Border checkpoints are technically upgraded and equipped with devices for detailed document checking.

5.1.3. Juridical questions

A mechanism is worked out for readmission of illegal immigrants in the countries, which do not have readmission agreements with the republic of Latvia (Byelorussia, Russia).

6. Prognoses

Further development of illegal migration with no doubt will be influenced by international situation as well by uneven economical development of different countries, which will keep for predictable future.

It is reason to think that the above-mentioned tendencies in illegal migration in Latvia will stay the same also in 2001.

In 2001 a special attention should be paid to the regular railroad and route bus traffic and expected new ferry lines between Latvia and Germany, Finland and Sweden.

"ILLEGAL" CONTROL? - FOCUS UPON SOME MORAL AND LEGAL ASPECTS OF THE CONTROL POLICIES OF UNAUTHORIZED IMMIGRATION

Bente Puntervold Bø

INTRODUCTION

You have in this seminar discussed organized crime and crime across borders. I will focus upon **the control policies of the state to prevent the arrival and immigration of what may be called "unwanted foreign citizens"**. The "unwanted", from the viewpoint of the receiving state, is a very mixed group of foreigners. It includes not only individuals who have committed crimes or are expected to come for criminal reasons, but also asylum seekers, work migrants without a permit, and close relatives of already settled foreign citizens, who are assumed to be motivated for immigration. It is problematic, from a legal as well as a moral point of view, that simialar control measures are applied to prevent the border crossing of this very mixed group of persons, regardless of the **purpose** of the stay or the potential **harm** the individual in question might represent to the country of arrival. The control policies do not distinguish between the professional drug dealer and the asylum seeker fleeing from persecution, - if they try to cross the border without the required documents, both groups are treated as criminals.

The state's right to control its borders is often considered to be the most important characteristic of the sovereignty of the state. I am not challenging the general principle that states must be able to control both the number of entries of foreign citizens and the kind of immigrants they want to receive. I nevertheless want to ask how far the application of this principle may be carried when it comes into conflict with other norms, - both humanitarian considerations and legal obligations according to international treaties. The following kinds of questions may be asked:

- How far is it **morally acceptable** that the state's legal right to control its borders is given priority, when the control measures prevent the border-crossing of individuals fleeing from persecution in their home countries?
- Is it in compliance with the **legal duties** of the signatories of **the 1951 UN Refugee Convention**, that the same states, by the use of visa policies and control procedures in the country of departure, try to block the access to the asylum procedures?
- Are some of the border control methods which are applied, in conflict with the **legal obligations** of the state according to other international conventions (for instance **the 1944 Chicago Convention on International Civil Aviation**)?

These questions will be discussed on the following pages.

I. "ILLEGAL IMMIGRATION" AS A RELATIVE CONCEPT

The term "illegal immigration" is normally used as a concept which includes all unauthorized border-crossing into a state by foreign citizens. It is up to each state to decide for which **purposes** border-crossing may legally take place **without formalities** and when a **permit** must be granted before entry.

There are different rules for the different purposes of the journey and for the different **nationalities;** for some nationalities a visa is required in order to cross the border legally, for others not. The **duration** of the stay must likewise be accepted by the state authorities. The policies for short visits as well as for permanent settlement, are further applied **selectively according to the nationality and social category of the foreign citizen** (Bø 1989 og 2000). Citizens from states belonging to the European union or the Schengen group, may freely arrive in other membership countries without a visa, not only for a short term visit, but also for the purpose of work or education, while citizens from the so-called 3rd world countries, might risk that their applications for a visit or work permit are turned down. Work migration from Germany is in other words legal, while work migration from Pakistan is defined as illegal immigration. A visa application from a Chinese tourist is more likely to be granted than one from a young man from Sri Lanka or Somalia; the last category of applicants is most likely regarded as potential asylum seekers since they live in "refugee producing countries"; for this reason, they will have great difficulties in getting a visa (Bø 2000:84-87).

It is also important to note that the rules and requirements concerning border crossing are frequently **changed;** visa requirements are introduced to new nationalities or re-introduced to nationalities who have been able to cross the border for short term stays without formalities in previous years. Likewise, it may vary from one year to the next whether a work permit or family reunification may be granted while the foreign citizen is in Norway on a tourist visa, or whether the person must return to the home country to apply from there. When these requirements are changed, it follows that **the kind of acts which are defined as "illegal immigration", will vary from one period of time to another, and for the different nationalities.** Policy changes in this field are most often justified by reference to what the receiving state, or a union of states, consider to be in their best interest at the time in question, balanced against what the state defines as its humanitarian and international obligations.

II. THE FATE OF ASYLUM SEEKERS: ILLEGAL ENTRY THE ONLY OPTION

The assumed **purpose** of the stay, according to the judgement of the immigration authorities, is the most important issue when applications for entry and residence are considered. Some purposes are by definition regarded as **disqualifying** for being granted a permit to cross the border. It is obvious that any suspicion of criminal activities is disqualifying for border crossing. It is more disputed, and less known, that **the need for protection against persecution** is disqualifying as well: Potential asylum seekers are as a rule not granted a visa at the consulates abroad (Ot.prp.nr.46(1986-87):116). The visa regulations issued pursuant to the Immigration Act, are defined in such a way that only short term visits are among the accepted purposes for a stay abroad (Regulations to the Immigration Act, section 106). No other kinds of entry permits are issued to foreign citizens who are assumed to be in need of asylum. It follows that visa applications are rejected if the immigration authorities have the slightest suspicion that the applicants intend to seek protection against persecution upon arrival. The result of this visa policy is that **an asylum seeker is forced to cross the border as an illegal immigrant, with false documents or without documents, in order to have his application for protection considered.** Only those very few refugees who are selected annually from refugee camps by the state authorities in cooperation with the United Nation's High Commissioner for Refugees (UNHCR), are issued a permit to cross the border to Western Europe.

A state which has ratified the 1951 UN Refugee Convention is obliged to **abstain from returning asylum seekers, who qualify as refugees** according to the Convention, to countries where they risk persecution. The state signatories are of the opinion that their obligations according to the Refugee Convention, do not come into play before the asylum seekers have actually reached the territory of the state where they want to apply for protection. The most effective way to limit the number of refugees to whom the state must offer protection, as signatories of the Refugee Convention, is to prevent the border crossing of potential asylum seekers into their territories as effectively as possible. **Extensive control procedures** are, for this reason, established to examine the validity of passports and visa stamps **in the country of departure**, before the passengers are allowed to board international flights. In this way the state authorities hope to limit the number of unauthorized entries as much as possible. The legality of some of these control measures have been questioned, ref. discussion below.

III. "ILLEGAL" CONTROL MEASURES?

It is reason to ask whether some of the control measures applied by the states to prevent the entry of the "unwanted" foreign citizens, are legally acceptable?

- **The legality of issuing fines to airlines** for bringing in passengers with unvalid documentation, is disputed among lawyers of international law in those cases where it can not be shown that the airlines have been "negligent" in their document control procedures: "Carrier sanctions", is the term used for the penalization of transporters bringing in foreign citizens who arrive with invalid passports or visa stamps, or who lack such documents altogether upon arrival. Sanctioning of carriers have been applied in many countries world wide for a number of years; in Europe, this measure was introduced already in 1987 in the legislations in Belgium, Denmark, Italy Germany and the United Kingdom. The majority of European states now have provisions dealing with carrier liability (UNHCR 1997:192).

It is highly questioned among lawyers whether it is in accordance with international conventions to fine the transporter in situations where negligence, on the part of the carrier, can not be demonstrated (Feller 1989:55, Vedsted-Hansen 1990). In 1988, the Chicago Convention on International Civil Aviation was amended to provide that states should **not** fine operators in the event that passengers are found inadmissable, **unless** there is evidence to suggest that the carrier was **negligent** in taking precautions to see that the passengers had complied with the documentary requirements for entry into the receiving state (Annex 9,para 3.36). The amendment suggests that the burden of proof should fall on the state. In fact, most legislations are drafted in such a way that the burden of proof falls on the carriers. In 1990, the Schengen Supplementary Agreement provided for carrier sanctions **without,** any proviso relating to negligence. Only some of the countries which have since then introduced carrier sanctions, have allowed for exemption where there has been no carrier negligence, such as Sweden and France, and recently Norway. Some legislations, like the Italian and Finnish, involve strict liability for carriers even when the alien is recognized as a refugee.

- Police officers are frequently asked to carry out the forced return of rejected asylum seekers or other foreigners back to their home countries. When these transportations take place by plane, **hand cuffs** have been used on "difficult passengers" during the flight. According to international treaties regulating civil aviation, the use of hand cuffs during flights is not permitted for safety reasons, in case an emergency situation occurs during the flight .

- It is further not legally acceptable to **collect the passengers' passports** during flights. This has nevertheless been done to prevent that asylum seekers get rid of their passports during the flight or upon arrival. From the asylum seeker's point of view, arrival without identification papers will delay or stop the immediate return to the country of departure and prevent the examination of false papers. The receiving state, on the other hand, must be able to identify the foreign citizen before forced return can take place. Identification in such situations

might be a difficult task if the foreign citizen does not cooperate with the immigration authorities, or the authorities do not trust the information given to them by the foreign citizen in question.

- It is also disputed whether it is in compliance with the non-refoulement principle of the Refugee Convention, when airline personell **notify the police in the country of departure**, when passengers who claim to be asylum seekers have unvalid passports and visas (Bø 2000:345). In these cases, asylum seekers risk being handed over to the same persecutors from whom they try to flee. This is done by an agent, in this case the airlines, acting on behalf of the state of arrival, who is also one of the signatories of the Refugee Convention. For this reason, to notify the police when asylum seekers try to flee without the required documents, might be considered an act of indirect non-refoulement. The UN High Commissioner for Refugees writes that "Article 33(1) requires states to respect the priciple of non-refoulement at all times, within, **outside** and at the border of their national territory. Therefore, returning refugees who have not yet crossed the borders of a state to persecution amounts to violation of the principle of non-refoulement" (UNHCR:95).

- It is further questionable whether the states' frequent practice of forced return of asylum seekers to the so-called "first country of asylum", is in compliance with the Refugee Convention. Acccording to the Convention, each of the ratifying states is obliged to judge each claim for protection against persecution on its own merits, when applicants are situated on their territories. The Dublin Convention, on the other hand, is based on the position that the state party which authorized entry is responsible for the examination of the claim for asylum. It is disputed whether parties to the Refugee Convention may pass the responsibility for examining asylum claims to other states by returning asylum seekers to the first country of arrival. If the so-called "first country of asylum" applies a stricter interpretation of the criteria which must be met to be granted asylum than the returning state, this kind of "burden sharing" might lead to a rejection of the plea for asylum which would not otherwise have taken place.

- One might question whether the application of the notion **"safe country of origin",** is compatible with the obligations of the state according to the Refugee Convention. This concept may involve an **automatic rejection of asylum claims** lodged by nationals of countries not considered to be "refugee producing" or the application of a rebuttable **presumption against the validity of their claims for asylum**. The UN High Commissioner for Refugees states that: "UNHCR opposes the use of the notion of "safe country of origin" as an automatic bar to access to asylum procedures. It considers the notion to be contrary to the necessary individual determination of refugee status under the 1951 Convention which includes assessment of the subjective element of fear of persecution. It is impossible to exclude, as a matter of law, the possibility that an individual could have a well-founded fear of

persecution in any particular country however great is the attachment to human rights and the rule of law" (UNHCR 1995:13).

IV. ARE NATIONAL BORDERS EQUIVALENT TO MORAL BORDERS?

Should the state possess the absolute authority to regulate entry into and residence in its territory, or should the question of admission be influenced by specific conditions of the non-nationals? The answer to this question will vary according to the definition of the discussion as one of **morality, law or politics.** It is embedded in the notion of the sovereign state that each country has the authority to decide whom to admit and whom to deny entry and residence. The state does in other words not question its **legal right** to dictate the requirements which must be met to be granted admission.

From the point of view of moral philosophy, this issue is not settled. A normative perspective looks at law, as well as politics, as bounded by moral considerations. Philosophers discuss the moral duties of the state to non-nationals, and ask the following kinds of questions:

- Do some non-nationals have a moral right to enter the territory of the state because of their needs, for instance a need to be protected from persecution or starvation?
- Does a close family relationship to individuals already living in the country, for instance one's parents or siblings, give the non-national a moral right to enter the territory of the state in question?
- How should the interests of the receiving state be balanced against the interests of the foreign citizens?

In other words: **what are the demands of morality for a fair and just policy, in this case a fair immigration control policy?** The following list may be regarded as a summary of what may be called general "moral concerns" or "requirements" frequently discussed in moral philosophy when the moral validity of a policy is being evaluated.

- Harms must be minimized: Consideration of harms is a central component in moral assessment: Agents must abstain from or minimize actions which produce harm.

- The interests of all affected parties must be taken into consideration.

- Conflicting interests must be balanced against each other.

- Policy decisions shall give **priority to the party suffering the greatest harms** by a decision in its disfavour.

- Existing relationsships or involvements should be considered: The existence of a relationship may give reason to treat one of the parties in a preferential manner.

- The existence of an agreement or treaty through which the agent has agreed to undertake moral obligations towards the other party, should be taken into account.

V. STANDARDS OF MORALITY AND THE IMMIGRATION CONTROL POLICIES

To what extent do the immigration control policy of Western Europe meet the moral "requirements" listed above? On the very short space available here, I can only present a few commments on the moral validity of the control policies discussed on the previous pages.

We have seen that opposing interests should be balanced and that the parties' needs, relationships and agreed-to obligations should be taken into account. We have further seen that the party most severely affected by a decision in its disfavour, should be given priority. How may we conclude, when these moral "requirements" are applied to the immigration control policies in effect today?

It is obvious that individuals who risk persecution in their home countries, have a desperate need to be granted admission to safe states. According to the present asylum practices of Western Europe, the most needy are precisely the ones most likely **not** be granted a visa or admitted into any EU/Schengen state, Norway. That asylum seekers who are prevented from reaching the asylum determination procedures in safe coountries might suffer great harms as a result of the "no-admission" policies, is obvious. Are these harms greater than the burdens the states must carry if asylum seekers are admitted? Unrestricted refugee flows are not the alternative; the number of foreign nationals each state ought to receive, must be within the limits of a reasonble burden for that country to carry. It follows that a **selection** among the candidates applying for admission must take place. In relation to refugee protection, the only relevant criteria would be the **need for protection against persecution.** In a situation of scarcity, the most needy ought to be given priority of admission. In this perspective, the closing of the state borders to asylum seekers by the use of visa policies and control measures to prevent border crossing, are **morally unacceptable**, because these measures are applied **before** the need for protection has been examined.

The common interest of the state actors in this field, seems to be the united efforts of the potential refugee receiving countries to protect themselves **against** the arrival of asylum seekers (Hathaway 1992). One might argue that the right to seek asylum, recognized by the 1951 Refugee Convention and the Norwegian Immigration Act, section 17, presuppose that persons who fear persecution are able to submit a request for protection to the ratifying states. This **treaty based obligation** of the part of the ratifying states, has not been honoured, but actively **undermined** by the use of visa policies and carrier sanctions to block the legal access to the asylum procedures (UNHCR 1997:193). The present immigration control policies are

unbalanced in favour of the interests of one of the parties, namely the immigration control authorities.

For the reasons discussed above, we may conclude that **the control policies** presented in this paper, **do not pass the test of moral validity.**

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