ALTERNATIVE SANCTIONS: REHABILITATION, DESERVED PUNISHMENT, DECREASING OF CRIME?

KLÁRA KEREZSI

Department of Criminology
Telephone number: (36-1) 411-6521
e-mail: kerezsi@ajk.elte.hu

Proportionality is not always linear.

Like every human action *the implementation of sanctions is also an activity that tends to produce some effect.* But as soon as we begin to analyse the content of this effect, the meaning of this obvious statement is not so clear any more, because immediately a number of questions arise:

What kind of effect do we expect from the application of criminal sanctions: should it decrease criminal activity in general or should it, suited to the perpetrator's personality, keep him/her from committing the next crime? Should it retain others, or should it only punish the perpetrator in proportion with the seriousness of the offence committed? Should the effect of the sanction be perceived on the short or on the long term? Should it affront the perpetrator, should it awaken remorse, or is it enough if it leads to self-examination? Should it send out a message that social control is actually working, or is it to be acknowledged that it only serves to discipline certain groups of society?

From what do we expect these results: from punishments only, or a similar effect is expected from measures of criminal law, or perhaps from diversion? Do we expect this effect to come only from the criminal sanction applied, or does the whole vertical of the justice system belong here? And, if yes, is it only the court phase or also the investigation phase? How do we evaluate the functioning of the institutional system that is negative, slow, prolongs the procedure? How do we account for unregistered criminal activity, or criminal activity that is not known by the authorities, or this has no effect whatsoever on punishments?

How do we measure this effect: with the intensity of decrease, or do we expect that another crime shall not be committed at all? If the punished does commit a crime, do we consider the sanction to have worked if the latter offence is less serious, or if a longer period of time passes between the commit-

ting of the two offences? Is it sufficient for only the majority to agree with the application of the punishment, or do we wish to involve the offender in order to maximise the effect?

What is the role of the victim in the process of imposing punishment? Is the punishment more effective based on an interpersonal relationship or based on state power? To what extent are the interests of the victim to be taken into consideration by the application of a sanction?

Crime control can assign different roles to the reinforcement of law and punishment. *Reprisal* is one of the oldest objectives, in which the idea is expressed that society disapproves of the act committed, and the punishment re-establishes the balance lost by the committing of the offence. The purpose of *neutralization* seems most simple: if we close up people that commit crimes higher than the average, then a smaller number of offenders endanger the others. The realization of *selective neutralization* is more complicated than it may first seem: the record of the offender is not the best indicator of the actual behaviour, as the offender is not found at all in many cases; furthermore, the crime itself remains latent many times. *Incapacitation* is a mechanical process, whereas *determent* builds upon the ability of the punishment to change the behaviour of the potential offender. Crime control based on *deterrence* wishes to influence this process of decision-making, it is therefore important that its possible consequence is clear and known. This aim is rooted in medieval time: the hanged body on the gallows was a spectacular illustration of the consequences of crime. However, problems with the spectators of executions existed in Dickens' times: „it seemed much more a mass entertainment, than a participation in somebody's suffering for committing his crime. … When John Holloway was executed in 1807, 45 thousand people were gathered. Twenty-seven people were trampled on or killed in the crowd; more than a hundred people were injured. Railway companies recruited travellers with cheaper fares to the execution's location."[1]

1. Why and how we punish?

The nature of punishment, the fundament of the punishment practice has been an area of concern not only for philosophers, but also for criminal lawyers and criminologists. The question has been dealt with by numerous foreign and Hungarian social scientists; I shall therefore rely upon their statements and scientific data, when examining the historical changes in the social function of punishment in order to highlight and uncover the new role and function of alternative sanctions.

[1] Taylor, D. (1998): Crime, Policing and Punishment in England, 1750-1914. St. Martin's Press, New York, p. 131.

The utilitarian approach to punishment surfaced with the Enlightenment. „The punishment of criminals should be useful. A hanged man is good for nothing – a man sentenced to public labour provides a benefit for his country on the one hand, and also serves as a living example" – claimed Voltaire.[2] Punishment is a social necessity – said Durkheim. It serves to maintain moral order, and to defend it, even if it costs more than the harm caused by the crime. Furthermore it establishes the feeling of solidarity and belonging together in the society. Foucault thought that punishment is a statement of authoritative dominance; Elias placed the enforcement of punishment into the process of civilization.

However, the recognition of the social necessity of punishment does not mean the agreement of views upon the social function of punishment. The justification of punishment corresponds strongly to what we think about its purpose. The theories concerning punishment adapt to the wider idea of the state on the justification of the use of punishment, and also mirror the views of mankind of a given age.

If we regard the function of punishment as a category already given in legal thought, which criminal law borrows from ethics, it needs no further justification.[3] „Punishment is a sanction that concerns dignity, as opposed to any other legal sanction." – claims András Szabó.[4] „The function of punishment is not other than – he says elsewhere[5] – to ensure impeccable cohesion through the preservation of the liveliness and effectiveness of community awareness, and the addressee is not primarily the criminal, but this community of decent people, in whom the lack of punishment would raise serious doubts concerning the effectiveness of the norm. In other words, the fundamental role of criminal punishment is actually the strengthening of the broken law. … Crime negates this cohesion and solidarity categorically, and cohesion and solidarity would weaken if there were no community answer, and would not equilibrate the loosening of social solidarity." Determent can be „differentiated through its distinct and unmistakable emotional nature from all other sanctions applied by non-criminal areas of law" – states István Bibó. Determent is therefore „a sanction of deep outrage in spite of its rationalized and institutionalized form of legal procedure. Consequently, we are unable to accept a system of punishment that simply aims at functional defence: we feel it is indifferent towards the crime, and it lacks the solidarity towards the outrage of the victim and the vic-

---

2 Voltaire: Filozófiai ABC Törvények. II. Budapest, Kossuth Könyvkiadó, 1966.

3 Bibó, I. (1993): Etika és büntetőjog. In: Deviancia, emberi jogok, garanciák. (szerk.: Gönczöl, K. – Kerezsi, K.) ELTE Szociálpolitikai Tanszék/T-Twins kiadó. Budapest, p. 24.

4 Szabó, A. (1993): Megelőzés és arányos büntetés. In: Deviancia, emberi jogok, garanciák. (szerk.: Gönczöl, K. – Kerezsi, K.) ELTE Szociálpolitikai Tanszék/T-Twins kiadó, Budapest, p. 99.

5 Szabó, A. (1996): A bűn és a büntetés erkölcsi kérdései. Főiskolai Figyelő 2. sz, p. 23.

timized community."[6] Can the deterring nature of the punishment be decreased? We might ask and answer with István Bibó's own words: „it can only be decreased in case and to the extent of the decrease of society's incline to outrage and determent."[7]

But did society's incline to outrage and determent really decline at the beginning of the 21st century to an extent that solidarity with the victim can be expressed not only through a deterring sanction? *Can society afford the luxury to try to provide the equilibrium between the harm, damage, and suffering caused for the victim, and the malum caused by the punishment to the offender without the application of a deserved punishment?* In order to be able to answer these questions, we must be familiar with society, its state of affairs, structure and nature. We must know what kind of social order it stands for, or wants to stand for, how it regards deviants, and what kind of measures it considers suitable for deviants – formal and criminal or informal and non-criminal measures.

The search for the causes of criminal human behaviour changed the theories about the justification and purpose of punishment. Denis Szabó divides *these criminological approaches into „consensual" and „conflict" models, emphasizing that based upon the two paradigms, these are rather to be labelled intellectual currents. The ways of the two paradigms in their views on man, and the relationship between man and his surroundings differ fundamentally*. One of them claims the great ductility of human nature, in which environmental factors play a great role.[8] The changeability of man as an idea leads to the requirement that the punishment should be effective, therefore the main function of the punishment becomes prevention. The greater emphasis placed on community interests increases the possibilities of the state to interfere to a greater extent in order to achieve the wished goal, and combine the punishment system with welfare elements. We can determine which elements of the crime are actually or potentially dangerous: this way we can cause the offender „harm" through the punishment, in order to prevent the greater damage done by the committing of a further criminal act. Szabó calls this view of man „homo socials".

The opposing approach regards man as a „homo morals", which is sceptical concerning the abilities of man to change and it claims that a man's actions and behaviour are determined by the biological and psychological boundaries of the human body. It does not take into consideration the possible consequences, when justifying crime and the possible future effects of the punishment. It evaluates the act done in the past, which in itself determines the measure of the necessarily punitive reaction.

---

6 Bibó, I. (1993): Etika… ibid. p. 26.
7 Bibó, I. (1993): Etika… ibid. p. 27.
8 Szabó, D. (1981): Kriminológia és kriminálpolitika. Gondolat, Budapest, p. 45.

By Durkheim, punishment is the metaphor of moral communication, but its practical language depends fundamentally on the cultural sensitivity of society. Punishment as moral communication is only effective, if it can be interpreted in only one way,[9] and if the one punished truly understands the message of the punishment.[10] Post-modern society is characterized by the plurality and clash of values and cultures; therefore punishment as a reaction of state authority can be interpreted in multiple ways. According to Sherman's studies for instance, members of different groups of society interpret the interference by the police in cases of family violence differently.[11] Therefore the sanction, as a definite and direct reaction to the act can be questioned, because the individual is socialized in a special form of social relationships and reactions, which in a given case may transfer values that are in opposition to mainstream culture. *The reasonableness or unreasonableness of a sanction is not always determined the same way by lawmakers, law-enforcers and the citizen.* Reasonable sanctions enforce obedience to the law through underlining the legitimacy of the validity of law. Unreasonable sanctions, however, lessen obedience to the law, as they lessen the legitimacy of the validity of law.[12] The fairness of any humiliation depends upon the offender's social bounding to the enforcer of the sanction and society itself,[13] which is emphasized by Sherman from another angle: "the effectiveness of criminal sanctions depends on the basis created by informal social control. Therefore, the more informal social control decreases, the more careful and held-back we have to be in applying criminal sanctions".[14] However, criminal sanctions can be reintegrative, but also humiliating and exclusive.[15]

---

[9] Kövér, A. (1996): A büntetés elméletének kritikai megközelítése I. In: Kriminológiai és Kriminalisztikai Tanulmányok, OKKrI. Budapest, p. 92. (Hungarian)

[10] Duff, R.A. (2001): Punishment, Communication and Community. Oxford University Press. p.xvii.

[11] Sherman, L.W. – Berk, R.A. (1984): The specific deterrent effects of arrest for domestic assault. American Sociological Review, 49. 2. p. 261-272.

[12] Tyler, T.R.: Why People Obey the Law. Cited by Sherman, L.W. (1994): Kriminológia és kriminalizálás: Dac és a büntetõ szankcionálás tudománya. In: A társadalmi-politikai változások és a bűnözés – a 21. század kihívása. Magyar Kriminológiai Társaság. Budapest, p. 35. (Hungarian)

[13] Scheff, T.J. – Retzinger, S.M.: Emotions and Violence: Shame and Rage in Destructive Conflicts. Quoted by: Sherman, L.W.: Kriminológia és kriminalizálás… ibid p. 35. (Hungarian)

[14] Sherman, L.W. (1994): Kriminológia és kriminalizálás… ibid p. 31. (Hungarian)

[15] Braithwaite, J. (1996): Crime, Shame and Reintegration. Quoted by: Rob Watts: John Braithwaite and Crime, Shame and Reintegration: Some Reflections on Theory and Criminology. The Australian and New Zealand Journal of Criminology. Volume 29, Number 2., August. p. 124.

The sentencing practice therefore not only shows the changes in criminality, but also indicates the mode of practicing authority held to be rightful, and follows the modifications in the feeling of security of citizens. The larger the tension between society's fear of crime and the efficiency of justice, the more possible the want for repressive-authoritative criminal policy, and opposing, the longer a given justice system is able to fulfil its duties with the measures available, and satisfy society's need for security, the wider room it shall have for a more humane and liberal criminal policy.[16] *The essence of criminal sanction is therefore determined by the wider cultural and social environment, which is also indicated by the fact that the sentencing practice of different countries does not necessarily correspond directly to the tendencies of criminality.* Aebi and Kuhn justified with European data that the frequency of imposing imprisonment is in no relation with the tendencies of criminal behaviour.[17] In 1979 in Sweden, the prison population decreased in spite of the increase of crime rate. Svensson claims that an explanation is provided by the attitude of Swedes, who – especially in case of crimes against property – find restoration more important than imprisonment.[18] Christie found a similar difference between crime rate and prison population.[19] Platek, based on Polish data, draws attention to the following: the increase of the male prison population resulted in an overcrowdedness of prison, the Polish government therefore targeted the decreasing of prison sentences for female offenders. The number of female offenders imprisoned declined in spite of the crime rate being constant.[20] Savelsberg compared the criminal and sentencing data of Germany and the United States for a longer period of time. He found that in Germany prison population declined, although the crime rate was up by 25%. Between 1970 and 1984, the 75% growth of the crime rate was only accompanied by a 50% growth in prison population. In the United States, in spite of the dramatic increase of crime in the 60s and 70s, the frequency of the imprisonment sentence did not change. On the other hand, along with the slight increase of the crime rate in the 1980s, imprisonment sentences doubled. Savelsberg explains the phenomenon with the treatment and labelling theories' sudden popularity in the

[16] Farkas, A.(1998): A kriminálpolitika és a büntető igazságszolgáltatás hatékonysága. In: Tanulmányok Szabó András 70. szuletésnapjára. (szerk: Gönczöl, K. – Kerezsi, K.) Magyar Kriminológiai Társaság, Budapest, p.81. (Hungarian)

[17] Aebi, M.F. – Kuhn, A. (2000): Number of entries into prison, length of sentences and crime rate. European Journal on Criminal Policy and Research, vol. 8, no. 1.

[18] Svensson, B. (1979): We can get by 3000 prisoners. Sveriges Exportrad Spaktjänst. p. 1-5. Quoted by: Platek, M.(2001): International and European Standards Regarding Alternatives to Imprisonment. In: Alternatives to Imprisonment in Central and Eastern Europe. Penal Reform International – Open Society Foundation, Romania, p. 21.

[19] Christie, N. (1998): Bűnözéskontroll Európában és Észak-Európában. Kriminológiai Közlemények 55.k. Magyar Kriminológiai Társaság, Budapest, p. 98. (Hungarian)

[20] Platek, M. (2001): International and European Standards… ibid. p. 21.

60s and 70s that hindered the dramatic growth of prison sentences. The punitive attitude of Americans developed only a little late, after the end of the great increase in crime rates. The attitude of the public to crime did not develop in itself; it was rather parallel to the strengthening of the neoconservative approach, as a result of which the responsibility for success and unsuccessfulness both economically and socially transferred from the state to the individual.[21] A large number of research experiences have been compiled to show that punishment, as a social institution does not connect to criminality only, but also to economical and social status, especially in well identifiable groups of society. John Irwin, when examining American prisons, came to the conclusion that, irrespective of sanctioning principles, the American prison serves as a means of controlling the potentially dangerous group of poor and unemployed population.[22]

2. The metamorphosis of punishment

The dilemma of „Why we punish?" is closely connected to the question of „How we punish?" In course of the arguments on sanctions, one thing seems to be agreed upon: *in the process of the metamorphosis of punishment, the greatest change occurred at the turn of the 18th and 19th century, when physical punishment was replaced by institutionalized punishment***,** what was so logically deduced by Foucault.[23]

Concerning the changes on the essence of punishment, the next big step had come in the 1960s, which evaluation is ambiguous. From among the new phenomena of the mid-20th century, Andrew Scull assigns great significance to two parallel tendencies:

1. *community corrections movement*, in which the offenders are dealt with in the community, instead of locking them up in custodial institutions,
2. *community care movement*, which treats mental patients under community circumstances along similar guidelines, and which results in the systematic closure of large-scale psychiatric institutions.[24] (Although in my opinion this does not clarify, whether the closing of large psychiatric institutions is an effect or a cause of this principle.)

---

[21] Savelsberg, J.J. (1994): Knowledge, Domination and Criminal Punishment. AJS Volume 99. Number 4 (January): p. 919.

[22] Irwin, J. (1990): The Jail: Managing the Underclass in American Society. Berkeley, California. Quoted by: Duff, A. – Garland, D. (eds.)(1994): A Reader on Punishment. Oxford University Press. Oxford, p. 32.

[23] Foucault, M. (1979): Discipline and Punish: The Birth of the Prison. New York: Random House

[24] Scull, A. (1977): Decarceration: Community Treatment and the Deviant – A Radical View Englewood Cliffs, NJ: Prentice Hall. Quoted by: Cavadino, M. – Dignan, J.(1992): The Penal System: Introduction. Sage Publications, London, p. 187.

Scull claims that the similar treatment policy of „bad ones" and „mad ones" was made possible by the policy of decarceration dominating both domains. He originates the intention of decarceration from a necessity of cost-cutting, and he does not regard it as intent to create more effective forms of treatment. In his opinion, the abolishing of institutions served neither the interest of deviants, nor that of the public. The process was not a planned one, but a quick step from treatment to non-treatment, which resulted among other consequences in homelessness and big city ghettos.

Reducing the problem to solely financial elements simplifies it to quite an extent. It implies that the state was forced to abolish institutions, because the traditional methods of treating and controlling the „problematic population" had become relatively expensive, even though the cost could have been cut in other ways as well, such as through cutting welfare costs. According to Cavadino and Dignan, this was exactly what the state did: simultaneously with decarceration, the state diminished the expenditures on public service.[25] However, why public service expenses had been cut only in the welfare services, whereas criminal justice was provided increasing financial support, demands an explanation. Stanley Cohen evaluates the above phenomena not as a changing, but as a strengthening of the essence of punishment. The changes of criminal policy connected to the appearance of sanctions enforced in the public provide strong evidence for *the control mechanisms of the state being deeply incorporated into society*.[26] He identifies a number of forms of this kind of spreading of control. Cohen regards the formation of public justice as a form of disciplinary measure, which penetrates into society through the large institutions. Mathiensen, who emphasizes the possibility of control in relation to not only individuals, but also to whole groups and categories of persons, carries on the thought. According to his example, the forms of control involving developed technical devices are furthermore dangerous, because the features of disciplinary measures change, and the application of open measures becomes more and more hidden.[27] Bottoms, however, contradicts this view.[28] In his analysis, the disciplinary measure in the Foucaultean sense contains two key elements:

---

[25] Cavadino, M. – Dignan, J.(1992): The Penal System… ibid. p. 189.

[26] Cohen, S. (1979): The Punitive City: Notes on the Dispersal of Social Control. Contemporary Crisis. Vol. 3., p. 339-363.

[27] Mathiensen, T. (1983): The Future of Control Systems – the Case of Norway. In: Garland, D.-Young, P. (Eds) (1983): The Power to Punish: Contemporary Penality and Social Analysis. London: Heinemann. Quoted by: Cavadino, M. – Dignan, J.(1992): The Penal System… ibid. p. 193.

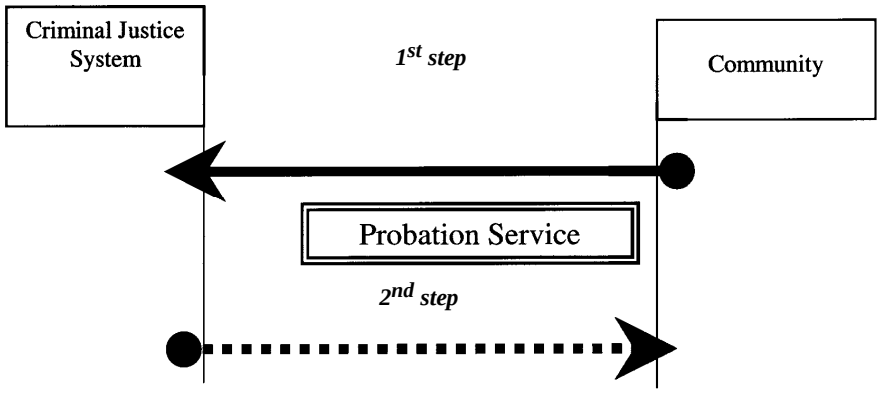
[28] Bottoms, A. (1983): Neglected Features of Contemporary Penal Systems. In: Garland, D.-Young, P. (Eds) (1983): The Power to Punish: Contemporary Penality and Social Analysis. London: Heinemann. Quoted by: Cavadino, M. – Dignan, J.(1992): The Penal System… ibid. p. 193.

authority, and the practical technique of tampering a person's soul in order to compel an obedient, law-abiding behaviour. This way the form of control mentioned by Mathiensen is a more developed one, but only a technical part of police work, and not the practical technique Foucault talks about. Furthermore, Bottoms points out an interesting fact in the post-war sentencing practice: *the significant growth in the frequency of financial sentences.* Notwithstanding it could serve as a substitute for imprisonment, *it cannot be interpreted as a disciplinary punishment in the Foucaltean sense.* This is because neither the financial sentence, nor the suspended sentence required the constant surveillance of an institution of the criminal justice system, therefore it had the role to provide equilibrium opposing to disciplinary sentence. The conclusion is thus drawn, not the disciplinary forms spread in the mid-20th century, but the so-called judicial-jurisdiction model is renewed, which, beside physical punishment, and the replacing institutional punishments, provides a third alternative. Bottoms explains the repellence of their model in the course of development with the techniques of social control, which were built upon this model and had proven ineffective at the time to maintain social order. There is indeed a second big transformation in the mid-20th century, this, however, should not be interpreted in the way that the control concentrated in the prison proliferates into society, but that institutional punishment starts moving towards judicial punishment systems. In the course of this process, the role of punishment among the instruments of social control rather decreases than grows. Contrary to institutional punishments, the offender was meant to be reformed through disciplinary measures, the aim of judicial punishment is to „downgrade individuals to objects", which is served mainly by the formation of uniform sentencing conditions. Bottoms says that the dominance of the judicial system is indicated by the fact that the enforcement of a number of sanctions is not controlled formally by an organization of criminal justice, such as the financial sanctions and lately compensation.[29]

Needless to say, *both directions mentioned are present in the criminal justice practice of today.* In spite of being able to argue – especially regarding the European development – either for the proliferation of the control of criminal justice, or for that of judicial punishment and of strengthening the symbolic function of punishment, *the first model regarding community punishments is more significant.* Bottoms, as well as Cavadino and Dignan also argue that there is no such agent of criminal justice on stage, that would help in expanding the control.

[29] Bottoms, A. (1983): Neglected Features… ibid p. 196.

In my opinion, *today's changes in community sanctions (and probably also the changes in direction) can be interpreted as a social extension of control*. This is perhaps because *there is an agent already present in the community, which is able to expand the disciplinary control of criminal justice: it is the probation service.* This role is made fulfilled by *two new features of the institution enforcing community sanctions: (1) the new approach in criminal policy that pushed these organizations into the community arena, and defines the victim and the community more and more as a client instead of the offender*. However, this change would not be in itself sufficient for the proliferation of control. There is *another identifiable element, which, connected to the former one, solves the problem: (2) the principle of zero tolerance concerning antisocial behaviour that disturbs the quality of life. Probation services, being „trapped" between the two areas, cannot do anything else but transform the expectations back and forth***.** Besides, there are two further characteristics to be identified, which underline the statement: (a) the change of the principle and philosophy of crime control, which is necessarily present in the aims to be accomplished with the punishment, and (b) the defining of those governmental goals, which connect the probation services closer and closer to the sphere of criminal justice. The mechanism can be illustrated with a relatively simple diagram.



The aforementioned process can be most plastically traced in a governmental intent conceived in the United Kingdom, which binds the probation service to criminal justice. This convergence can be experienced in other countries as well. The paper entitled „The new foundations of the parole service" published in Norway in 1993 had as one of its fundamental suggestions for change „the need to establish a closer organizational link with the criminal justice sys-

tem".[30] The new Dutch projective „Sanctions in perspective" transformed the old „task-based" legal consequences into criminal sanctions, which „are enforced under the probation service's strict supervision, from the sentencing to the withdrawing of freedom and through the phases of constraint of freedom to social reintegration."[31] The same tendency is to be observed in Eastern-European countries, where the newly formed or transformed probation services are originally in close connection with the criminal justice branch.

The degree of punishment depends upon the degree of moral outrage – claimed Denis Szabó. The degree of moral outrage, however, depends rather on how much the public trusts the effectiveness of the organizations of public safety – he adds most practically.[32] This trust can naturally be defined in a positive and a negative manner as well, and can have heightened significance in cases, which are not carried out under closed institutional circumstances. *The non-custodial penalties do not only raise the question where their place is among the arsenal of criminal sanctions, but also the question of along which guidelines and principles should they be applied***.** Do they have to be imposed in accordance with the requirement of proportionality, and if yes, how can this be achieved? Does it have any significance that these sanctions place a smaller financial burden on the criminal justice system than imprisonment? Have the special features of the „environment", in which these sanctions are carried out, to be taken into consideration? Is it important how criminal justice regards community?

The relationship between state, market participants, and citizens changes doubtlessly and is constantly transforming in late-modern societies, as did the explanation of the need for this relationship. In the past decades, the gradual dominance of the idea of community in criminal justice and in neighbouring areas was detectable. New categories such as community policing, community prosecution and community justice or community correction all indicate that *the notion of community has indeed come into close proximity with criminal justice. These phrases nonetheless also indicate that this relationship is created between participants, among which connection would have been unimaginable a few decades ago.* Among the sanctions the formation of the idea of community penalties, or the means of restorative justice (such as mediation, compensation, or family group conferences), which introduce new characters into the

[30] Larsson, P. (2002): Punishment in the Community: Norwegian Experiences with Community Sanctions and Measures. In: Albrecht, H-J. – van Kalmthout, A (eds): Community Sanctions and Measures in Europe and North America. ED. iuscrim, Max-Planck Institute, Freiburg/ Breisgau, p. 407.

[31] Sanction policy, Yearbook 2000. http://www.minjust.nl/b_organ/dpjs/engels/yb2000_sanction_policy.htm

[32] Szabó, D. (1981): Kriminológia… ibid p. 26. (Hungarian)

system of accountability, and apply formerly unknown ways of problem solving, all indicate that community has become a central notion in criminal justice. Thus, there seems to be a need to examine, which elements justify the riveting of this notion in criminal justice. Does the essence of this concept differ from that in other disciplines, does it rearrange the correlation between the traditional and new participants of criminal justice, and does it change the functioning of criminal justice? The concept of community in the aforementioned context deserves further examination from at least two aspects: from the relation between (1) crime and community, and (2) community and the criminal justice system.

3. The concept of community

Let us start by clarifying what we mean by the concept of community. According to Vilmos Csányi „the biological optimum of social aptitude is at small groups of 50-100, perhaps at tribal and clan formations of a couple of hundred members. In modern societies, people belong to numerous groups and organizations at the same time, nonetheless quite loosely. … The groups based upon relationships involving feelings and faithfulness are less significant … Modern people behave as though they themselves were a group."[33] *Community can be defined as a neighbourhood, school team, trade union, civil circles, or circles based on friendship, large family, native tribe, or any other actual group* – claim Bazemore and Griffiths.[34] Howard Zehr uses the word „shalom" to describe a group, which is *peaceful, obedient, and free*. This does not mean no conflicts, but oppositions and crimes are secured by a process that respects all rights – especially those of children.[35]

Most sources build the *concept of community upon one or more aspects of social complexity, which can be a geographical territory, consensus, division of labour, etc.* Tönnies' description relies on the distinction of the concepts of community and society, according to which all trusting, homely and exclusive coexistence should be regarded as a community (Gemeinschaft). *Community is a living organism*, whilst society is a mechanical compound, an artificial crea-

[33] Csányi, V.: A politikának szint kell vallania. Népszabadság, September 8, 2001. p. 21. (Hungarian)

[34] Bazemore, G. – Griffiths, T. C. (1997): Conferences, Circles, Boards and Mediations: Scouting the „New Wave" of Community Justice Decisionmaking Approaches. Federal Probation, 61 (2), pp. 25–37.

[35] Zehr, H. (1995): Changing lenses: a new focus for crime and justice. 2nd ed. Scottdale, PA: Herald Press. Quoted by: Wright, M. (2000): Restorative justice for juveniles and adults. Paper for Conference on 'Human rights and education: global and regional problems and perspectives', Khanti-Mansiysk, 21-24 August. Manuscript

tion (Gesellschaft).[36] MacIver and Page emphasize *the social relations of the individual and community cohesion in the definition of community*: „community is an area of social life, which is characterized by a certain degree of social cohesion. The fundament of community is locality and a feeling of community." The development of communication weakens without doubt the criterion of being bound locally, but this change in the opinion does not diminish the relation between social cohesion and geographical location in the concept of community.[37] It is an accepted statement in the social studies of today that „high modernity" is formed by the twin processes of globalization and localization.[38] It is thus an important aspect, stressed by MacIver and Page that *communities exist within larger communities, and that the basis of community is locality*. Talcott Parsons takes on a systematic approach in defining community as a special phenomenon of the structure of the social system, which can be regarded as the local arrangement of persons, as well as their actions.[39]

The *feeling of belonging together, of belonging somewhere* has a central place in many approaches of the concept of community. The close relationship, however, exactly because of the aforementioned technical development, does not necessarily mean territorial identicalness. Melvin Webber mentions professional communities as an example, members of which maintain close relationships with a wide network of fellow professionals, who may live all over the world. Webber concludes that the fundamental element of community is therefore communication. Thus, he names two defining elements of community: *mutual interest and communication*.[40]

The concept of community does not only occur in relation to the need of clarifying conceptual terms, but many times out of *emotional reasons*. The main question of this approach is: how can something, which is lost, be restored? The conclusion is – interestingly – mostly that the trouble is not with the community, but much more with the people the community is or should be constituted of.[41] Putnam's description in 1995 was that America is no longer a nation

---

[36] Tönnies, F. (1994): Közösség és társadalom. In: Gosztonyi, G. (ed.): Közösségi szociális munka. A szociális munka elmélete és gyakorlata, 3. kötet. Semmelweis Kiadó, Budapest, p. 197. (Hungarian)

[37] MacIver, R.M. – Page, C.H. (1994): A közösség az, amelyben az egyén teljes életet élhet. In: Közösségi szociális munka… ibid p. 199. (Hungarian)

[38] Giddens, A. (1990): The Concequences of Modernity, Cambridge: Polity Press. Quoted by: Crawford, A. (1997): The Local Governance of Crime: Appeals to Community and Partnerships. Clarendon Press, Oxford p. 5.

[39] Parsons, T. (1970) On Building Social System Theory: A Personal History. Daedalus, 99:826-881

[40] Webber, M.M. (1994): Az érdekközösség definíciójához. In: Közösségi szociális munka…. ibid.p. 205. (Hungarian)

[41] Wolfson, A. (1997): Individualism: New and old. Public Interest. Winter. (126): pp. 75-88.

of joiners; Americans are „bowling alone", not in bowling leagues. Some might respond so what or good riddance.[42] *The socio-psychological approach cannot be forgotten when dealing with the concept of community, which defines it as a compound of personality types, as „every community can set boundaries to the possibilities of the development of personality*".[43] It is hardly a coincidence, that the hero type of American films is the lone ranger, the 'one against all'-type, whereas in Europe the hero is more wavering, full of doubts. Community gets great emphasis in the system of arguments of conservatives, especially in regarding the possible emotional aspect, the lost community, which is not only a preserving, but also an environment full of requirements. Amitai Etzioni created the communitarian manifesto in 1991, in which great emphasis was placed on the need to establish balance between rights and obligations.[44] In defining the concept of community Etzioni mentions as important the *closeness of relationships and the community of culture.* Community can be mostly characterized by two features – he says – the creation of effective networks of relation within groups of members (opposed to simple pair attachments, or a chain of individual relationships), such, which thoroughly intertwine the group, and one strengthens the other. At the same time the concept of community also contains commitment, which means accepting the values, norms and approaches adapted by the community.[45] This approach claims that there are two simultaneous powers predominantly present: the centripetal power of community and the centrifugal power of individual autonomy. These two powers, obeying rules and autonomy are present in the tension between rights and obligations.

It is hardly a coincidence, that connection with the concept of community, the *question of the relationship of different communities is raised, just as the problem of majority/minority,* which puts the problem in a special light concerning the relation between community and crime. According to Hobsbawm, „the word community had never before been used without any consideration or content, than in the decade in which communities, in the sociological sense, were most difficult to find in real life".[46] During the past decades, the relationship to crime, as a community problem changed. It became general in public

---

[42] Putnam, R.: „Bowling Alone: America's Declining Social Capital". Journal of Democracy. Quoted by: Galston, William, A. (1997): Crime fighters. Public Interest. (126): Winter pp. 102-107

[43] Wirth, L. (1994): Adalékok a helyi közösség definíciójához. In: Közösségi szociális munka… ibid p. 203. (Hungarian)

[44] Etzioni, A.(1991): The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda. Crown. 323 pp.

[45] Etzioni, A. (1995): The Attack on Community: The Grooved Debate. Society, Volume 32, No. 5, (July/August), pp. 12-17.

[46] Hobsbawm, E. (1995): Age of Extremes: The Short Twentieth Century, 1914-1991, London: Abacus. Quoted by: Crawford, A. (1997): The Local Governance… ibid. p.148.

opinion and politics that crime is a result of the decline and malfunctioning of the community, which can be traced back to the weakening of community relations, to the moral decline of the community, and on the whole to the malfunction of the informal control mechanisms of the community. This approach leads directly to the idea that crime can be decreased through the strengthening of communities. The key element of the approach is *how to define the community – along what guidelines and principles –, the community that needs to be strengthened.* A further problem is that in some cases community norms themselves lead to breaking the law – as already proven by research on sub-culture and the football-hooliganism of nowadays. Regarding crime prevention Currie points out convincingly that community can be defined out of two premises, which evaluate the possible problem-solving capacities of a community differently. The first hypothesis, characteristic especially of political discourse, assigns a *symbolic meaning to community*, and explains it as a given allocation of common approaches, actually from a socio-psychological point of view. It relies upon the symbolic notion of community in people's minds, and if attitudes and symbols can be changed, that does not only lead to the right behaviour, but also strengthens the people's sense of community and vice versa. In the field of crime control, the principle of „broken windows" shows that the concept is easily definable on the level of symbols and attitudes being significant. Wilson and Kelling say that the „policy of broken windows" in the field of crime control means that it cannot be detached from community. On the contrary, it depends upon the success in restoring and strengthening community: „the new focus in maintaining public order is not the vigilance liberals' fear, but the new sense of optimism, in which civilization and community can be restored.[47] According to Currie, the symbolic approach of the first premise lacks the „structural awareness" of the second one. From this point of view, the community is not merely an allocation of approaches, which needs to be „implanted" or „mobilized", but an *active creation of institutions of long-term effect* (e.g. work, family connections, religious and community organizations) that are able to affect integrity of economic and social forces.[48]

The elements of the concept of local community, especially locality – 'belonging somewhere' – and the system of relations regarding a given community are extremely significant in the evaluation of the new developments of crime control. This feature is not to be neglected when examining community sanctions, because *this is the environment, the locality, in which alternative sanctions are*

[47] Wilson, J.Q. – Kelling, G.L.(1989): Making Neighbourhoods Safe. The Atlantic Monthly; February Volume 263, Number 2; pp. 46-52.

[48] Currie, E. (1988): 'Two Visions of Community Crime Prevention'. In: T. Hope – M. Shaw (eds): Communities and Crime Reduction, London:HMSO. Quoted by: Crawford, A. (1997): The Local Governance… ibid. p.155.

*realized***.** Interestingly, a small number of sources are attentive to the question of community, they rather focus on the effectiveness and the enforcing 'technique' of sanctions. The literature concerning crime prevention deals with the question in ample detail; therefore I shall use these sources to analyze the 'enforcing environment' of community sanctions. I will not deal with the quite rich literature of crime prevention; I will rather concentrate on the problems that can influence the enforcement of community sanctions.

4. New notion in the system: the 'community safety'

The studies of latency indicate that *citizens assign greatest significance to those crimes, which were committed in their residential area.* There are differences in the security of the residential areas, merely being a member of a minority can be a determining factor in victimization: black Americans have a 31% greater chance of becoming a victim than whites.[49] Crime prevention therefore aims at influencing the individual and social causes of criminality, decreasing the danger of committing a crime, reducing the harmful effects of criminality on individuals and society, as well as the fear of crime of citizens. The importance of crime prevention and the imposing of preventive factors are not questioned, and have extreme significance in dealing with petty offences and unlawful behaviour endangering the life of a local community. It is more and more accepted that this is associated with the activity of local self-governments.

Naturally, the *question arises: why did the approach emphasizing the security of the* community *prevail just in the 80s and 90s?* It is clear that by this time it became apparent that the system of crime control is no longer able to follow the growth of crime, and to bring to a halt the unfavourable changes, so new solutions were indispensable. *The loss of trust in the state had a central role in the process. Especially the faith in the state's ability to guarantee safety, and because of the escalation of social fear, people have begun to 'take back' the care for their own security from the state.* The loss of trust is characteristic not only in connection with the institutions of criminal justice, but also with governmental establishment in general. Although in the 1970s the distrust in authorities was regarded as a democratic crisis, today it is rather regarded as a requisite of the modernization process.[50] This is illustrated by the fact that in the new

[49] Sherman, L.W. (2002): Trust and Confidence in Criminal Justice. National Institute of Justice Journal, Issue No. 248., p. 23.

[50] Norris, N. – Pipa, M (eds)(1998): Critical Citizens: Global Support for Democtaric Governance. Oxford: Oxford University Press. Quoted by: Bondeson, U.V. (2003): Nordic Moral Climates. Value Continuities and Discontinuities in Denmark, Finland, Norway, and Sweden. Transaction Publishers, p. 58.

member states of the EU, 27% of those questioned trust their countries' legal system, whilst the rate was 48% in the old member states. There is a significant difference regarding the trust in the police: 45% of the citizens of the new member states as opposed to the former positive answer of 65% given by old member states.[51] Americans employ 1.5 million private police officers for duties the professional police force is unable to handle.[52] Accordingly, it is interesting to note the study, which shows that Americans trust neither their banking system, nor the education system, nor the system of state justice. In spite of this, their trust in the police is quite high. In *Sherman's opinion, the loss of trust is to be traced back to the general decline in trusting hierarchical relations*.[53] His example illustrates the symbols of inequality manifested in criminal justice by the procedures that require persons to stand up as the judge enters the room, or citizens who are required to obey instructions of the police, even though the police officer in charge is disrespectful. These rules suggest that the official is more important than the citizen, and this intensifies the distrust in law. He defines the theory of procedural equality, according to which the equal treatment of citizens encourages trust in authorities. Thus, people demand relationships based upon equality in all areas of life. Let us *examine Sherman's statements and align his claims and the aspects he does not take into consideration*. According to him, citizens do not accept hierarchy in the public sphere, as the authenticity of state establishment's declines. However, American citizens believe in the police, even though it is also an institution of state authority. Sherman explains this with egalitarian culture and the prevailing of consensual procedural equality, which he traces back to the changed relationship of police and public. The police pay attention to local problems, play a role of service, and interpret its activities according to the consensual model. All of this sounds very convincing. It fails to recognize, however, that the relation of state power and citizens cannot be interpreted simply from the point of view of equality. Especially, because people do not at all esteem each other equal in interpersonal relationships, as they do not question financial inequality. Most people accept other types of differences beside financial inequality, such as differences in sexuality or forms of coexistence in families. (This is what Moynihan refers to, when speaking about the „devaluation" of deviance.) Financial inequality is what produces actual differences, not only regarding income circumstances, but also opportunities and possibilities for the promotion of interests. In other words, the acceptance of financial inequalities cannot be fit into Sherman's consensual model of equality. The symbols pre-

[51] Eurobarometer Spring 2004. Public Opinion in the European Union. Standard Eurobarometer, European Commission.

[52] Walinsky, A.(1995): The Crisis of Public Order. The Atlantic Monthly; July, Vol. 276, No.1; pp. 39-54.

[53] Sherman, L.W. (2002): Trust and Confidence… ibid, p. 23.

vailing in criminal justice do not really represent the person wearing the judge's robe or the police officer's uniform, but rather the connotations of the role. Just like a medicine man is not respected by people as a person, but as an entity, whose function is to establish a link with gods and supernatural powers. The special treatment is for the role, and the person embodying the role. Consequently, if people do not want to stand up upon the judge's entering, or do not follow the instructions of the police officers, that is not because they feel themselves equal, but because they do not respect the role the person embodies, and do not obey the rule it represents. The theory of procedural equality does not take into consideration an important initial step, namely that the requirement of equality only arises in those cases already chosen. The theory of procedural equality therefore returns to the concept of equality before law, which it replenishes with a few new elements, but leaves the very important question open, whether it is in connection with the equality of opportunities. The consensual procedural model could indeed be significant in criminal justice, and can have an important effect in treatment of offences, especially in the assistance to proliferate measures of restorative justice. As if, beside the „consensual equality model" existed a „consensual inequality model", for the analysis of which one needs to step out of the justice system to the examination of systems of social inequality. A detailed analysis would lead far from our studied topic, however, it needs to be noted that it can have significance, when dealing with community sanctions that most people now accept the „splitting apart" of society, that is to say normalizes the phenomenon, and assigns a role to criminal justice in dealing with the consequences. The greater trust in the police is most probably due to the fact that this organization is thought to guarantee security.

Giddens claims that the main reason for the changing of the community is due to the alteration in the source of trust. The importance of local trust has been replaced by relationships, which correspond to abstract systems that are not fully embedded.[54] The research of Lawrence Friedman shows that the nature of authority has changed in modern cultures built upon fame: the former vertical point of view (in which people looked up to their leaders) has been replaced by the horizontal approach (in which people choose a leader from the centre of society, whom they know by name and face).[55] It is unquestionable, says Bottoms, that trust used to be locally based, and that most important relationships were those of family and relatives. The local community meant a geographi-

[54] Giddens, A. (1990): The Consequences of Modernity. Cambridge: Polity Press. Quoted by: Bottoms, A. (2001): Compliance and community penalties. In: Bottoms, A. – Gelsthorpe, L. – Rex, S. (eds.): Community Penalties: Change and challenges. Willan Publishing. p. 108.

[55] Friedman, L. (1999): The Horizontal Society. New Haven, CT:Yale University Press, p.14-15. Quoted by: Sherman, L.W. (2002): Trust and Confidence… ibid. p. 29.

cally well-definable territory, where members of the community knew each other. Religion was practiced in local churches, and traditions served as a guideline for actions. The local binding of trust did indeed weaken, but has not fully disappeared. Instead of local trust, financial and political guidelines have become important, and the ability to adjust to one's surroundings constantly. Personal relationships have also altered, „people increasingly define themselves as individuals rather than in the context of group affiliations. In the field of personal relationships, trust is increasingly placed on personally chosen one-to-one relationships".[56]

Liddle feels the relationship of globalization and community has to be examined, when dealing with the question of crime prevention becoming a community issue.[57] The change in this relation – in close connection with the welfare state becoming a residual welfare state – resulted in the state withdrawing himself from direct service provision to co-ordinate service delivery. The changing of this role is well illustrated by the boat example of Osborn and Gaebler: the advancing of the boat depends on the strength of the oarsman, whereas the heading depends on the skill of the boat-setter, the state therefore has become a boat-setter instead of its former position of oarsman.[58] Not only did state functions transform, but also the relationship between central and local governments, as did the structures through which central governments made an impact.

It is hardly a coincidence, that there is always a contradiction between the use and recognition of the necessity of short term (situational) and long-term (social developmental) aims of crime prevention. The practice of crime prevention shows that situational and social developmental crime prevention fuse easily in the idea of community security: it endeavours to limit the opportunity of crime in every possible and actual way, and takes into equal consideration all possible and actual motivations for committing crimes. This combination has been realized in practice with the primacy of situational measures. *New technique (such as CCTV, electronic monitoring) is applied intensively in situational crime prevention, and influences to a great extent the acceptance of measures of community sanctions, which operate along the same principles (such as electronic surveillance or house arrest).* The question of community security was supplemented with the purpose of influencing the citizens' fear of crime. The gravity of the problem is represented by the irrationally great fear of crime

[56] Bottoms, A. (2001): Compliance and community penalties. In: Bottoms, A. – Gelsthorpe, L. – Rex, S. (eds.): Community Penalties… ibid p. 110.

[57] Liddle, M. (2001): Community Penalties in the context of contemporary social change. In: Bottoms, A. – Gelsthorpe, L. – Rex, S. (eds.): Community Penalties… ibid p. 53.

[58] Osborne, D. – Gaebler, D. (1992): Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector. Reading, MA: Addison-Wesley.

compared to the general situation shown in the British Crime Survey.[59] Research data show that the lack of feeling of safety is not connected to traditional categories of crime, but rather to the disorder of the environment, which contributes to the discomfort of citizens: graffiti, neglected residential areas, parking difficulties and the growing number of beggars.[60] It is of great significance that the lack of feeling secure is not characteristic of those in actual danger of becoming a victim, but of those, who are only insignificantly endangered, and it has the consequence that they regard their environment as a hostile one, which they cannot control.[61] *The reference to community does not only mean the place in which they apply measures of crime prevention, but also the community, which invites to participate in problem-solving – it is naturally doubtful what kind of co-operation can be achieved in the general lack of feeling of safety. The approach towards crime and other breaches of law, as well as the changing of the self-image of the community can indeed have a significant impact on the enforcement of community sanctions.*

As I have already mentioned, the determining factors of belonging to a community are territory and the 'feeling of belonging somewhere'. Both raise the question, *where the boundaries of community lie, or more precisely, what are the boundaries of acceptance and exclusion*. The question is in close connection with the other important element of belonging to a community, which requires *the acceptance of community values and rules. The acceptance, however, presupposes the community to be homogeneous, and this homogeneity is exactly what simplifies the decision for crime control based on community: it can rely on social groups, in which the presupposition proves to be true*. Crime prevention provides the example, which illustrates the paradox nature of the hypothesis: the movement of neighbours for each other can best be organized in middle-class areas, where the problem of crime is insignificant (unlike the fear of crime).[62] It is also a fact that this approach does not function at the most endangered groups: it is impossible to form groups of crime prevention in areas of disadvantageous situation with a high crime rate.[63]

---

[59] Gilling, D. (1997): Community Safety: A Critique. In: The British Criminology Conferences: Selected Proceedings. Volume 2. Papers from the British Criminology Conference, Queens University, Belfast, 15-19 July 1997.

[60] See in detail: Kerezsi, K. – Finszter, G. – Ko, J. – Gosztonyi, G.(2001): A területi bűnmegelőzés lehetőségei Budapest V., IX. és XXII. kerületében Kriminológiai Tanulmányok XXXVIII. k. Országos Kriminológiai Intézet. Budapest, pp. 112-180. (Hungarian)

[61] Liddle, A.M. – Feloy, M. (1997): Nuisance Problems in Brixton – Describing Local Experience, Designing Effective Solutions. London: NACRO. Quoted by: Liddle, M. (2001): Community Penalties… ibid. p. 57.

[62] Kerezsi, K. (1999): Önkormányzat és közösségi bűnmegelőzés. In: „Bűnözés és bűnmegelőzés a válságrégiókban" Kriminológiai Közlemények Különkiadás. (A III. Országos Kriminológiai Vándorgyűlés anyaga) Magyar Kriminológiai Társaság, Budapest-Miskolc, pp. 84-110. (Hungarian)

[63] Gilling, D. (1997): Community Safety… ibid.

Undoubtedly, the community measures of problem solving applied in the field of crime prevention are innovative, meet the expectations of the community, and refer to a systematic-theoretical approach. The question remains, however, how local community is defined by the forming cooperation between the local residential groups, the local business sphere and civil organizations. *In the crime prevention strategy of community safety, the differentiation between social and situational may lead to the differentiation of „us" (those who obey the law) and „them" (those to be controlled, deterred, and punished*).[64] The policy and practice of crime prevention building upon community ideas may not only change the relationship of certain groups of society, but has also begun to reorder the relationship between citizen and state, and to draw new boundaries between public and private domains and between „legitimate citizens" and suspects or outsiders.[65] The community in this respect also demonstrates the existence of an 'in-between' area, which is situated somewhere between the individual and the far-away government, and is able to combine the conservative idea of individual responsibility with the liberal approach, which believes that individual problems should be treated within the community. The logic of prevention seeks for the earliest opportunity to intervene: so early that the problem has not even evolved, so that it can be dealt with before it becomes unmanageable. With zero tolerance, this purpose leads to even stronger control. What was regarded as pre-delinquent behaviour is now labelled as antisocial, or as an act that 'worsens the quality of life', and justifies early intervention according to the theory of 'broken windows' before the decline and the spiral of disorder starts, or the criminal career develops. This is the area of zero tolerance, which leaves little room to the constructive measures with the use of means of criminalization and control.[66] *The security of community as an objective reaches far beyond the traditional scope of criminal offences*.

It is unquestionable that *the community approach more and more characterizes the debate on the diverse measures of crime control. With this, however, the danger of substituting possibilities comes along, limited by guarantees of the institutions of criminal justice by the definition of „community", and the „community" becomes a general solution to a lot of problems relating to criminal justice.* Garland calls the attempt of the state to seek to shift responsibility to the individual and the market through making links with the community and the private sector as the responsibilization strategy, and defines it as

---

[64] Squires, P. (1997): Criminology and the 'Community Safety' Paradigm: Safety, Power and Success and the Limits of the Local. In: The British Criminology Conferences: Selected Proceedings. Volume 2. Papers from the British Criminology Conference, Queens University, Belfast, 15-19 July.

[65] Sanchez, L.(1999): Brave New Communities: On the Production of Identities and Communities in Criminal Justice and Penology. ASC Conference, Toronto, 1999.

[66] Gilling, D. (1997): Community Safety… ibid.

redistribution of the tasks of crime control.[67] The danger becomes especially big if governments prefer the community-oriented approach. In political rhetoric, the references to community indicate that in this context, community means groups of humans, which are theoretically unified, but split apart in the practical realization of community control. They split apart into groups of people living in mainly middle-class environments, whose anguishes have to be decreased and who have to face relatively few problems, and into people, whose problems, or rather the problems related to them, need to be diminished with means of control. Some approaches endeavour to make people part of symbolic places from which they were excluded, while other approaches are rather interested in identifying and isolating the social groups to be excluded, forgetting entirely the necessity of integration. The possible consequence is indicated by the formation of actuarial justice, in which the danger involving individuals is replaced by the danger involving groups, and the treatment of dangerousness requires the application of generalized measures of control, as well as the elaboration of developed techniques of control.[68]

*In the field of crime control, locality became first significant in the practice of community policing, which seeks to increase community participation in crime control***.** Tyler's research shows that Americans, especially members of minority groups are highly sensitive to how the criminal justice system treats them, and polite or rude behaviour of officials becomes more important than whether they are fined or not.[69] The prevailing of procedural equality, or the lack of it, influences the people's attitude towards authorities. However, the essence is pointed out by Szigeti in relation to community policing: „heterogeneous social norms of heterogeneous communities form the nature of social norms beyond legality in modern, pluralistic society; therefore the taking over of competence beyond legality and the control of everyday moralities could mean an unlawful interference in the life of a given community."[70] The problem is similar concerning the community relations of other institutions of criminal justice. The 'community policing' can become a notion without content (as authorization and mutual dependence), and can be easily regarded as a solution for various urban problems – warns Kaminer.[71]

---

[67] Garland, D. (2001): The Culture of Control (Crime and Social Order in Contemporary Society). Oxford University Press, Oxford. p. 124.

[68] Feeley, M. – Simon, J. (1995): The new penology: Notes on the emerging strategy of corrections and its implications. Criminology (ASC), 30, p. 452-455.

[69] Tyler, T.(1990): Why People Obey the Law. New Haven, CT: Yale University Press. Quoted by: Sherman, L.W. (2002): Trust and Confidence… ibid. p. 26.

[70] Szigeti, P. (2001): Vázlat a közbiztonság három dimenziójáról: világrendszer – nemzetállami szint és lokalitás. Jogtudományi Közlöny 4. szám., p. 161. (Hungarian)

[71] Kaminer, W. (1994): Crime and Community. The Atlantic Monthly; May, Vol. 273, No. 5; p. 111-120.

We nevertheless experience that the notion of community has a life of its own in criminal justice, and after the police all traditional organizations of criminal justice have been assigned with the attribute of community. All signs indicate that the criminal justice relies more and more on the community performing its duties, and this process continues to evolve. This can be detected not only in the United States, but also in Europe, nevertheless with different content – in the long-term as I would like to believe. The community has doubtlessly great significance in the implementation of non-custodial sanctions, although numerous factors have not yet been clarified. The recommendation of the European Union on community sanctions[72] does not deal with the defining of community in connection with alternative sanctions, it only reacts to the 'non-custodial' component, and does not at all take into consideration the environment, in which these sanctions are enforced. *The content of community sanctions is determined by the status and cultural characteristics of a given community*. In this context, it is especially important to take the ambivalent tendencies of today into consideration: *the simultaneous presence of the usually merely rhetorical global inclusion and the very practical local exclusion*. Gilling has quite a pessimistic view of the future in claiming that „although reformers and people of leftist values may regard this change as the reoccurrence of welfare values in the area of criminal justice, it is not what is happening in practice, and is highly unlikely to happen in the future".[73] McGuire on the other hand feels that the interest in rehabilitation is reviving, which is also indicated by the probation programs building upon the conscious regulating of behaviour applied by parole services and the community initiatives effective in the decreasing of repeating offences.[74] Carney has a similar opinion in evaluating the Australian situation in observing that the application of drug-courts and restorative justice are characterized by the „direct achieving of determined social purposes (such as rehabilitation and reintegration)".[75]

However, probation services, the objective of reintegration and rehabilitation should not yet be dismissed in criminal justice. It is nonetheless a fact that the approach, which eliminated the moral elements from punishment and regarded it as a purely therapeutic treatment based on social work, has indeed come to an end. As I stated in 1995, the difference between the English and the Hungarian

---

[72] Európa Tanács Ajánlása (1992): A Közösségekre Alapozott Büntetésekről és Intézkedésekről [(RC92)16])

[73] Gilling, D. (1997): Community Safety… ibid.

[74] McGuire, J.(1995): What Works: Reducing Re-offending. Chichester: John Wiley. Quoted by: Gelsthorpe, L. (2001): Accountability: difference and diversity in the delivery of community penalties. In: Bottoms, A.-Gelsthorpe, L.-Rex,S.(eds) (2001): Community Penalties… ibid. p.153.

[75] Carney, T. (2000): New Configurations of Justice and Services for the Vulnerable: Panacea or Panegyric? The Australian and New Zealand Journal of Criminology. Vol. 33, No. 3., p. 321.

parole service is that the English one is too close to social work and is too far from the expectations of criminal justice.[76] In Hungary on the contrary: there are no relations to the social sphere, only to criminal justice. The right way is somewhere in the middle, where criminal policy and social policy are overlapping each other. In other words, *the probation service can be the organization in criminal justice, which enables the cooperation of different professions, and establishes a link between the traditional and modern measures of the criminal justice system.* However, the somewhat hectic times in criminal policy do not really facilitate this evaluation. Although no final analysis can be made, we are able to enumerate the existing tendencies, and even more articulately identify the probable dangers impending upon community punishments.

5. Alternative sanctions and community sanctions: old content in new disguise?

Imprisonment roots in the principle system of the Enlightenment, and was an „alternative" sanction raising hopes as opposed to the death penalty, body mutilation, forced labour or the galley. At that time it not only seemed a humane and rational solution, but also carried in itself the possibility of rehabilitation and reforming the offender. It is more than a hundred years ago, that the idea of alternative sanctions surfaced instead of short-term imprisonment, first in connection with juveniles. Since then, perhaps only except the USA from among the defining countries, the treatment system of juveniles has always been an experimental ground for progressive initiatives. This is well detectable in the field of community sanctions.

The systematic placement of alternative sanctions and the enlightening of its other features should be started with clarifying the concept itself. As György Vókó rightly states, in the area of sanctions not involving imprisonment, the alternative is actually ambiguous: *(a)* it can mean the process before the court phase, which purpose is to hinder the case to be taken to court, *(b)* it can also mean the actual precipitation of imprisonment, *(c)* and the elimination of the harmful effects of the imprisonment.[77]

The question has even more sides, as different approaches in criminal policy may have notions with definitely different significance:

---

[76] Kerezsi, K. (1995): Pártfogók „pórázon". In: A modern büntetőpolitika problémái Nagy-Britanniában (szerk.: Gönczöl, K.) Kriminológiai Közlemények 51. k. Magyar Kriminológiai Társaság. Budapest, pp. 44-71. (Hungarian)

[77] Vókó, Gy. (1998): Szabadságvesztéssel nem járó büntetések végrehajtásáról. Magyar Jog 1998/11., p. 660. (Hungarian)

1) The concept of non-custodial sanctions in its neutral formulation does not mean anything else, than that the sanction is not enforced in a closed institution.
2) The usage of alternative sanctions in criminal policy refers to its ability to decrease prison population.
3) Community sanctions indicate that criminal policy relies on community resources during the process of enforcement of the sanction.

The development of community sanctions characterized by steps forward and backward, shows a constant search and change. This search firstly lead to *a)* formation of alternatives of short-term imprisonment, and the appearance of new forms of sanctions, and *b)* the development of effectiveness-augmenting elements, which increase the authenticity of sanctions. At the same time, the new forms of community sanctions occurred together with the rebirth of old forms.

In the first phase of development, the alternatives of imprisonment surfaced in the 1970s and 80s. The search for alternatives and new solutions was urged by the disappointment of the reforming ability of imprisonment and the extreme numbers of prison population, therefore at this time, similar to the first phase, the search aimed at alternatives for short-term imprisonment. Hudson claims that although developed countries were in modern times characterized by reform, rehabilitation and resocialization, there existed a combination in different ways with determent (USA, UK, and West-Germany), deterrence (Scandinavia), or neutralization (France, Italy). It seems that the countries, which emphasized general deterrence were the ones looking for imprisonment substituting solutions, or encouraged suspended sentences, whereas the countries preferring determent and individual deterrence moved towards the application of community based alternative sanctions.[78]

The scepticism surrounding the reforming ability of prisons in connection with the rehabilitation capacity of the prison became a part of formal criminal policy, and the criminal justice systems of almost all European countries began to look for new alternatives. This happened when suspended sentence and community service emerged. The theoretical debate of the 60s emphasized the unwanted effects of imprisonment, such as stigmatization, but at this point, in spite of the aforementioned crisis of experience, the rehabilitation of offenders still had strong support in politics as well as in public opinion. The crisis of resource of the first burst of energy prices in the mid-1970s, similar to other public services of the state, justified the decreasing of costs in criminal justice.

[78] Hudson, B. (1993): Penal Policy and Social Justice. University of Toronto Press, Toronto., p. 20.

The new sanctions had an increasingly double purpose: *(a)* certain forms still served rehabilitation *(b)* other forms aimed at cutting costs by deterrence from a penal way, or by cheaper sanctions. Furthermore, the approach according to which there should be a wide variety of sanctions at hand in the service of individualization resulted in the expansion of the types of non-custodial sanctions. In the theoretical crisis, the authenticity of the rehabilitation ideology was questioned, which not only concerned the frequency of use of the probation as an alternative sanction, but also placed the organization itself into the centre of debate. The harsh philosophical contradiction between the supporting and controlling side of the service and the sanction itself became an issue. The categories of alternative sanctions, intermediary sanctions and community sanctions have been present from this time on.

The third phase of alternative sanctions came about in the 1980s and 1990s. At this time, a number of new phenomena are detectable in the development of these kinds of sanctions. New sanctions appear, which enforce elements of control and supervision to a greater extent, at times exclusively (such as house arrest), and as a consequence of technical development, new more and more sophisticated forms of control develop (such as electronic monitoring). The management approach emerges in criminal justice and consequently, the question of the effectiveness of sanctions becomes important. This explains the fact that in most countries of Western Europe, these new forms of sanctions become applicable on their own right after a so-called pilot, a trial phase. As a result of economic hardships, more and more forms of diversion surface in criminal procedure. The measures of restorative justice appeared among these diversion forms, which do not only decrease costs, but may also serve the constructive ending of the procedure. This era coincided with the requirement of the punishment to be a proportionate and deserved reaction to the offence, which affected the contextual features of alternative sanctions.[79] *The thought on criminal policy in the 1980s pointed towards the enforcement of the repressive element of sanctions*. The re-evaluation of the concepts of punishment and control began in the United States and in some countries of Western Europe already at the beginning of the 1980s, as indicated by the appearance of intensive forms of supervision, such as the regulation in England concerning juvenile offenders. House arrest was introduced in a number of US states in 1983, and adapted later by the Netherlands, Sweden and the UK, and later its combined form with electronic monitoring as a result of technical development.

[79] Wasik, M. – von Hirsch, A., (1988): Non-Custodial Penalties and the Principles of Desert. Criminal Law Review., pp. 555-569.

In the 1990s, labelled „smart penalties" by Garland, a *new generation of punishments appears*, which in part *meet the expectations of the stricter criminal policy*, and in part *reflect the new achievements of technical development*: in the field of non-custodial sanctions, combined sanctions and forms of restraining freedom secured by electronic monitoring emerge. It is unquestionable, that the idea of rehabilitation, which has been a principle thought of criminal justice, has faded. The emphasis of criminal policy has changed: the attention is drawn primarily towards organized crime and new types of offences, towards offenders who make rational decisions, are foreign or belong to a minority group, and finally towards the criminal responsibility of legal persons.[80]

As detectable from the above, *a hundred years after the formation of alternative sanctions it became clear that the road can lead elsewhere (also): the expectations on rehabilitations in penitentiaries have not been met, and it seems as though the world would once again believe in the prison sentence. At the same time, although only on the margin of criminal justice, the system of measures of restorative justice has emerged, making room for new interpretations of resocialization.*

6. The place of alternative sanctions in the sanctioning system of criminal law

The raising expectations regarding the functioning of the justice system (such as the simultaneous securing of the timeliness of procedures, and the safeguarding of guarantees), and the increasing load of crime both burden the functioning of criminal justice. Therefore, the measures of sanctioning offenders within criminal justice and the forms of diversion all attempt to ensure that the system of measures of criminal justice be able to answer, at least partly, to the wide palette of crime. We must naturally never forget that if we try to adjust the sanctioning system to criminal behaviour and offenders, we only take into consideration those offences and offenders, which we know, that is to say non-latent crime. Regarding this characteristic the containment of crime is impossible with only the operating of criminal justice. If one compares the present, even merely the European, sanctioning system with that of 30-40 years ago, one is faced with the phenomenon that the „simple" system of sanctioning using fines, conditional sentences and suspended sentences has disappeared in most countries. The list of sanctions was complemented by non-custodial sanc-

[80] Albrecht, H-J.- van Kalmthout, A. (2002): Intermediate Penalties: European Developments in Conceptions and Use of Non-Custodial Criminal Sanctions. In: Albrecht, H-J.- van Kalmthout, A (eds): Community Sanctions and Measures in Europe and North America. ED. iuscrim, Max-Planck Institute, Freiburg/Breisgau, p. 4.

tions such as intensive probation, community service, compensation, restoration, mediation (agreement between victim and offender), or the suspension of the driver's license. Educational courses and training programs for the learning of consciously influencing behaviour – especially regarding drug and sex offenders should also be mentioned here. Sanctions prescribing supervision and participation have become part of the sanctioning system, as have the participation in probation hostel and daytime activities, curfew, house arrest, electronic monitoring, suspended sentencing with supervision, combined measures (which contains in itself two or more elements), and countless other solutions.

Besides the aforementioned changes, there is another development, which seems extremely important. *In the case of alternative sanctions, civil law „infiltrates" more and more into criminal law and criminal procedural law.* This process has been intensified by the appearance of the measures of restorative justice. Naturally, this loosened the system of criminal law from multiple aspects, but the „loss" seems to be equalled by the „profit" of the effectiveness of using sanctions. The need of solutions of civil law in the sanctioning system is indicated by the attitude studies in connection with criminal law, according to which criminal justice should ensure protection from the offenders of violent crimes, the accountability of offenders, the restoration of the damage caused, the treatment of offenders, and the possibility of participation in the decision process.[81] A lot of research data show that the expectations of citizens concerning punishments are less rigorous than politicians believe.[82]

The Directive of the European Union defines community sanctions as: *„punishments and measures which do not tear the offender away from society, but contain elements of restraining freedom through the imposing of diverse conditions and obligations, which are enforced by an authorized organization."*[83] The malum element of alternative sanctions is therefore the restraining of freedom, labour and supervision; their rehabilitative effect is based upon the reintegrating force of the community. Accordingly, community sanctions serve the defence of society; their aim is to prevent the offender from repeating the offence. Behind every alternative sanction, however, there is the possibility of a custodial sanction, consequently the non-fulfilment of the conditions may result in imprisonment.

---

[81] Evans, D.G.(2000): The rebirth of probation: The „Broken Windows" Model. CEP Bulletin, No. 17, Dec., p. 7.

[82] Roberts, J.V. (1992): American Attitudes about Punishment: Myth and Reality, Overcrowded Times, Vol. 3, No. 2.; Begasse, J.(1995): Oregonians Support Alternatives for Nonviolent Offenders, Overcrowded Times, Vol. 6, No. 4.

[83] Recommendation No.R (92) 16

The sanctions belonging to community punishments are not agreed upon in literature, supposedly because „everything" (imprisonment) and „nothing" (probation) can be placed on a wide spectrum. Neither is great emphasis placed on this by the resources, the standpoint of authors can be detected by examining which sanctions are discussed, when dealing with community/alternative sanctions. Bard mentions the suspended sentence, house arrest, and the financial sentence, whereas Lévay discusses the suspended sentence, community service, additional sanctions and measures and financial sentences. Albrecht cites the financial sentence, confiscation, confiscation of assets, suspended sentence, the parole service, compensation, restoration, and electronic surveillance.[84] Zvekic, taking into consideration the new phenomena of crime and criminal justice differentiates between traditional alternative sanctions substituting custodial ones and new types of non-custodial sanctions (confiscation, adjudication, inhibition).[85] Most authors in the United Kingdom group these sanctions based on the British sanctioning system, which is obvious to the extent that the statute itself treats the sanctions organically. The Research on Crime and Justice of the UN differentiates four groups of alternative sanctions: *(a)* non-custodial supervision, including probation as well, *(b)* warning and suspended imprisonment and the conditional sentence, *(c)* financial sentence, *(d)* community service.[86]

In the Hungarian national practice community sanctions can be placed between imprisonment and the financial sentence, irrespective of the fact that the Hungarian sanctioning system is not as polished as certain Western-European systems. I emphasize the contextual elements of non-custodial sanctions, and regard some non-custodial sanctions as community sanctions based on the following conditions:

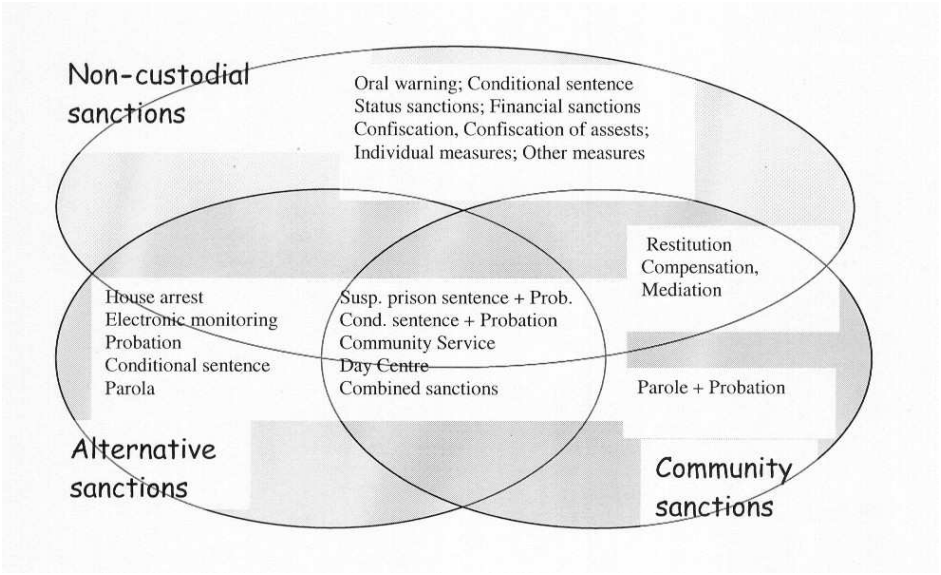
1. they serve as an alternative to imprisonment, therefore their enforcement is non-institutional, but carried out in the community,
2. they contain elements of restraining freedom and support (although to alternating extent), and
3. there is a continuous and active (personal) relationship with the parole service (as the traditional organization in charge with the supervision of these sanctions), or with non-traditional participants (such as mediation).

---

[84] Albrecht, H-J. – van Kalmthout, A. (2002): Intermediate Penalties… ibid. pp. 4-10.

[85] Zvekic, U. (1997): International trends in non-custodial sanctions. In: Ville, R. – Zvekic, U. – Klaus, J.F.(eds): Promoting Probation Internationally. Proceedings of the International Training Workshop on Probation (2-5 July 1997, Valletta, Malta), UNICRI, Publication No. 58. Rome/London, p. 21.

[86] Bondeson, U.V. (1998): Global Trends in Corrections. Presentation at the 12th World Congress on Criminology, Seoul, Korea, Aug. 27, 1998. Manuscript, p. 7.



Community sanctions are situated structurally between imprisonment and fine. The statement, however, raises numerous problems of denotation. Imprisonment deprives the sentenced totally from freedom, and during the enforcement of the punishment, isolates the offender from the community. (I do not take into consideration the temporary leave from the penitentiary in this respect.) Community sanctions are realized in the outside world, but the offender is burdened with a lot of obligations. Community sanctions can be distinguished from custodial sanctions by way that they do not contain a deprivation of freedom; they only have elements of restriction. Fines and other financial sanctions do not take away the freedom of the sentenced person; they nonetheless do contain financial restrictions. However, they miss the immanent element of community sanctions: the active relationship with one of the participants of criminal justice, and they do not require the partaking of community resources. The same element is missing by house arrest and electronic surveillance, where there is a relationship with a participant of criminal justice (either the police, or the parole service), but this is not an active one, much rather the passive behaviour of tolerating the surveillance technique. Therefore, I do not regard them as community sanctions, although they indeed function as an alternative to custodial sanctions. The commitment of the community and its participation in the enforcement are sine qua non conditions of community sanctions, especially those of community service, employment programmes, and sanctions involving the victim, and it is exactly based upon this characteristic that makes the labelling of community sanctions adequate. Consequently, „hybrid" types

of community sanctions should also be mentioned here, which combine custody with the community-part of the sanction, which do not involve the deprivation of freedom.

Most European countries do not consider legal solutions that shorten the duration of the imprisonment or moderate the severity of enforcement (such as weekend-custody, half-closed, half-open institutions, partly suspended sentence etc.) as real alternatives for imprisonment. Most resources of literature nevertheless discuss these sanctions as community punishments, as they reinforce the effect of integration. I also feel that these sanctions, if not formally, contextually do belong to community sanctions. This legal consequence meets all three requirements, because it substitutes custody when the inmate is on conditional release. In this respect, it could be risked that if we consider the capability to substitute imprisonment, conditional release is the „genuine" community sanction, as it actually substitutes imprisonment (at least during the parole phase), which is not so unambiguous in case of other community sanctions. On the other hand, this sanction does not belong to community sanctions, as it is not an independent sanction, but an additional element of the imprisonment sentence – at least in Hungarian criminal law.

The question of parole shows the insecurity of approaches, which characterizes community sanctions. Because of the insufficient theoretical fundament, these sanctions believed to be sanctions of substitution in most countries, they subordinate them to the 'real' sanction, the imprisonment. There is an uncertainty concerning the identification of the aims of community sanctions: they wish to ensure on the one hand the restoration of the consequences of the offence, and on the other hand would like to redress the personal and social problems of the offenders. This is very clearly detectable in the probation sentence. The double duty of the probation officers of treating the offender as a client, offering assistance and support, and as a participant of criminal justice exercising control and supervision, is hardly reconcilable. The support of underprivileged offenders, as they form the majority of the clientele of the probation service, is necessary, but may concur with the expectations of the public for punishment: the sanction should be taking something away from the offender, and not the other way around.[87] The point of view of the law is not at all obvious in this respect, mostly its clear and unambiguous purpose cannot be determined, and the different rationalities undermine the authenticity and application of these sanc-

[87] Comments on the Prisons-Probation Review Consultation Document (Joining Forces to Protect the Public, Home Office). International Centre for Prison Studies King's College London, November, 1998.

tions.[88] The Model Law on Juvenile Justice represents the conceptional confusion: while in many countries community service for juveniles is placed among educational sanctions, this model law treats it as criminal sanction.[89] Because of the above insecurities, judges do not realize the punishing aspect of this sanction, although Point 6 of the European Rules confirms, „that the personal circumstances of the offender should be taken into consideration, but regarding the severity of the crime".

Hamai claims that the parole service is not an outside solution to the inside problems of criminal justice and criminal studies, but a possible frame into which the necessary and applicable measures can be embedded.[90] Consequently, *the content of non-custodial sanctions and the method of enforcement are always determined by the preferred objectives of the current criminal policy. As the immanent element of alternative sanctions is the simultaneous realization of supervision and assistance, they can either be labelled as community treatment, assistance, or as community surveillance.* The central part of *the problem is constituted by the inner philosophical contradiction drawn between the functions of control and social support, one of which is emphasized by changing criminal policies.* At the same time, the British Crime Survey and the survey initiated by the minister of justice of Victoria, Australia indicated that the results of a survey very much depend on the way of posing the question of what citizens think of suitable sanctions. If the question is „What do murderers deserve?" the answer will naturally be „To be hanged!" However, if the person questioned receives information on the case, the circumstances, motives and background, we see that citizens would actually welcome even milder sanctions, than those of the existing sanctioning practice. Not to mention the fact that all studies on victimology confirm that victims assign primary importance to restoration and compensation.

In past times, the objectives connected to the use of non-custodial sanctions changed significantly.[91] New types of criminal sanctions are indeed quite flexible, because of the combination of diverse sanctions or elements of sanctions.

---

[88] van Kalmthout, A. (2001) From Community Service to Community Sanctions. In: Community Sanctions and Measures in Europe and North America. Albrecht, H-J. – van Kalmthout, A (eds), ED. iuscrim, Max-Planck Institute, Freiburg/Breisgau, p. 589.

[89] UN Centre for International Crime Prevention (1997): Model Law on Juvenile Justice, Vienna, September. Quoted by: van Kalmthout, A. (2001) From Community Service to Community Sanctions. In: Community Sanctions and Measures in Europe and North America. Albrecht, H-J. – van Kalmthout, A (eds), ED. iuscrim, Max-Planck Institute, Freiburg/Breisgau, p. 589.

[90] Hamai, K. – Ville, R. – Harris, R. – Hough, M. – Zvekic, U.(1995): Probation Round the World: A comparative study. UNICRI, British Home Office, Routledge, London, p. 207.

[91] See: Albrecht, H-J. (2003): Prisons and Alternatives to Prisons in Europe: Changes and Prospects. In: Gönczöl, K. – Lévay, M. (szerk): A bűnözés új tendenciái, a kriminálpolitika változásai Közép- és Kelet-Európában. MKT – Bíbor Kiadó, Miskolc, 2004. pp. 179-200.

The disappointment in rehabilitation altered the approach to traditional community sanctions, rehabilitation was replaced by supervision, or at least the application of control elements has strengthened significantly throughout enforcement. The new phenomenon introduced by community service that the objective of rehabilitation seized to be an element of punishment; supervision is combined with disciplinary measures nowadays, which is indicated by the increased rigour of the procedure in case of violation of rules of behaviour. These are the elements that can be „measured" quite well; therefore they can be adjusted to the requirements of the management-approach. The strengthening of the role of the victim not only influenced the content of compensatory sanctions, but serves in many cases to strengthen and discipline the self-control of the offender. The forms of sanctions of treating addicts in the 60s, or rather the rules of behaviour have changed significantly. Therapy and danger-treatment have been replaced by neutralization and risk-control, which is indicated quite amply by the approach of criminal policy towards drug-use and even more towards offenders of sexual crimes.[92] The direction of these changes is detectable from the accessibility of the personal data and address of sex-offenders on the Internet, the duties of the parole service to notify the victim of the release of the offender, the use of ankle-cuffs, and physical punishments in certain US states. *The conscious inclusion of elements of stigmatization and humiliation in punishments can be evaluated as an indication of the decivilization process in the Elias' sense.* I feel that in the mutual dependence of individuals and groups, the return to outside forces of influence, the appearance of such elements in sanctions, and the rapid proliferation of zero-tolerance, is to be regarded as taking a step backward in the phases of civilization, therefore a decivilizational process.

The question arises, which values are given preference by community sanctions, are there, and if so, what values are particularly characteristic of community sanctions. The answer can be found in article 17 of Directive No.R.(2000)22 of the European Union, according to which *„the important purpose of community sanctions is the realization of community reintegration, and the agencies of enforcement must establish an active co-operation with the local community."* The common feature of these sanctions is that they are only operational and effective if the offender is willing to obey the decision, and cooperate throughout enforcement. In this sense they indeed differ from traditional sanctions. Taking this cooperative element into consideration, states generally require the concession of the offender to use community sanctions. There are also indications that this cooperative element is decreasing (e.g. Czech Republic, United Kingdom, Russia, Germany, and Holland). In the United King-

[92] Dickey, W.J. – Smith, M.E. (1999). Five Futures for Community Corrections. In: Rethinking Probation: Report of the Focus Group. Washington, DC: U.S. Department of Justice, Office of Justice Programs.

dom, it was withdrawn because according to the reasoning, other punishments, such as imprisonment or fine, do not require the consent of the offender, either. As community service and parole are sanctions based on a judicial decision, the inclination of the offender is irrelevant. Nevertheless, the majority of European countries still require the consent of the offender in case of community sanctions.

The treatment of the question of consent represents the altered inclinations of criminal policy. The consent of the offender can be interpreted in the way that the offender has a say in the decision-making process. This condition has a very obvious professional reason: it is easier to achieve the aims with a cooperating offender, than with one that resists the enforcement of the sanction. *The abolition of the requirement of consent furthermore indicates, that the offender is excluded from a formerly given right in a time, which values participation democracy as one of the key elements of the fulfilment of democratic rights. The exclusion instead of participation illustrates the changing attitude of criminal policy towards the offender. This coincides with the opposite process of involving the victim to an increasing extent in the decision procedure.*

7. Alternative sanctions in the phases of criminal procedure

The development of the past two decades in Europe is the differentiation of the system of measures for dealing with severe, moderately severe and mild criminality. The new solutions can be detected in two areas:

1) diversion, or solutions from outside criminal justice, or those which provide an exemption from a formal criminal procedure
2) alternative/community sanctions, which provide constructive solutions within the system of criminal justice, which substitute imprisonment and enforce the effectiveness of sanctions.

Diversions and alternative sanctions have reshaped the ‘input’, 'sanctioning’ and ‘output’ phases of criminal procedure. We are not in an easy situation if we try to systematize non-custodial sanctions clearly and coherently. *The relation between non-custodial sanctions is close and quite unique: we experience more and more that the same measures of restriction and conflict-resolution are present in different forms.* They are embodied by diversion in the input phase, or by community sanctions applied by the court (as an independent sanction, or as a condition of deferment, or as a behaviour rule, etc.), or in the output phase (as parole), the same obligations are nonetheless prescribed in all three.

The input phase of the procedure: diversion

The appearance of diversion in the continental legal system indicates that the principle of legality is interpreted more and more flexibly. The loosening of the principle of legality in continental systems had been initiated by the suspended sentence and juvenile probation, and found it from then on more and more difficult to resist the arguments of rationality: the use of diversion for petty offences. I would not dare to discuss questions requiring the expertise of criminalistics, therefore I shall examine diversion only from the point of view of community sanctions.

The prosecution practice of European countries is determined by the licenses provided for the prosecution service of the given country. Therefore, three different models can be distinguished:

1) The principle of legality in its narrowest interpretation generates the prosecution to be a purely functional agency, the duty of which is to prepare cases for the judicial phase. It is neither entitled to close the case, nor to impose conditions and requirements on the accused. Every case is to be taken to court. This is the case in Ireland.

2) The prosecution service may terminate the procedure – in other words decide whether to indict the offender – but cannot impose conditions, and has no right to apply sanctions. This model prevails in most European countries.

3) Less frequently, the prosecution has discretional powers to decide, whether to close the case under certain conditions, and can even impose sanctions, such as fines.[93]

Preceding the judicial phase, there is a shift from the strict principle of legality in every European country, and there is the possibility of termination in the police or prosecution phase. This possibility has the same result in all the different systems: the number of cases that transfer to the judicial phase decreases significantly. In spite of the wide variety there is a convergence to be experienced in Europe. On the one hand, countries with a traditionally strict approach to the principle of legality move away from it, and increase the flexibility of their legal system; on the other hand countries, which assigned insignificant roles to the prosecution systematically increase the role and authority of the prosecution in their criminal justice system.[94]

---

[93] See: Jehle, J.M. (2000): Prosecution in Europe: Varying Structures, Convergent trends. European Journal on Criminal Policy and Research 8: 27–41., Kluwer Academic Publishers.

[94] Jehle, J.M. (2000): Prosecution in Europe… ibid. 27–41.

The transformation of the input phase of the criminal justice system is a result of diverse effects. A hundred years ago theoretical considerations of sanctioning, a few decades ago the increasing workload of courts and the crowdedness of prisons justified the need for reform. Scientific accomplishment also played a significant role in transformation. In order to decrease the stigmatizing effects of formal criminal procedure, the approach of non-intervention was developed, which felt the need of diverting the treatment of petty offences from formal criminal justice. Diversional measures were encouraged by research data, which indicated that labels could be a self-fulfilling prophecy, because labelling the person as a criminal or as dangerous person may encourage criminal behaviour. In the 1970s, the approach of non-intervention led to the decriminalization of numerous crimes and helped to decrease the frequency of imprisonment imposed on the offenders of non-violent crimes. Apart from its obvious advantages, there is great danger in the possible proliferation of control. Cohen pointed out that the dispersal of the social control-net resulted in many people under supervision, who would not have been treated otherwise this way.[95] Hudson also realized that throughout the 1980s „traditionally informal solutions appeared in a new format, in which they made informal into formal".[96] Therefore, programmes of diversion may be dangerous especially in cases of juveniles, because people, who formerly would have only received a warning are obliged to take part.

The diversional measures in the input phase of criminal procedure serve a double purpose. They substitute the custodial measures before the trial (bail, house arrest, electronic surveillance), other forms, however, assist the constructive closing of the case, primarily the treatment of the problem represented in the offence (mediation, compensation, parole, drug-rehabilitation, etc.). The latter, in many respects, have the characteristics of „classic" alternative sanctions with only one exception: it is not the court, which applies them as a criminal sanction.

The reallocation of the sanctioning authority is the most significant change of the past decades. In different countries, diverse solutions exist as to which authority (police, investigating magistrate, prosecution, judge) and in what phase of the procedure may apply the forms of diversion. There is an obvious identicalness, however, that diversion is only possible before the sanction is pronounced. *The process in which non-judicial agencies are bestowed upon „quasi-sanctioning" powers (formerly judicial powers exclusively) is strengthening intensively* (such as Austria, Belgium, The Czech Republic, Denmark,

[95] Cohen, S. (1979): The Punitive City: Notes on the Dispersal of Social Control. Contemporary Crisis. Vol. 3., pp. 339-363.

[96] Hudson, B. A. (1993): Penal Policy… ibid. p. 40.

Finland, Holland, Germany, Norway, Portugal, Scotland). In Europe, the reallocation of this authority is especially intensive in countries, in which the prosecution has a discretional right to commence the procedure (and even more so, where the police has such powers, such as Holland or Malta). As a Hungarian example, we might mention the institution of the postponing of indictment, in which based on the prosecution's decision the offender is compelled to fulfil the same obligations as pronounced by the judge.

The „redistribution" of judicial sentencing practice in the course of diversion is only one indication of the changed balance between the participants of criminal justice. In America the 'strait-jacket' of the court[97] are sentencing guidelines, the use of compulsory minimum-sanctions, and the 2nd and 3rd strike laws. In the Hungarian criminal code this legal consequence was called the medium size of the statutory offence sanction-scale – since then out of force. These kinds of rules all indicate the change of balance among the participants of criminal justice. *The question naturally arises, whether the „regained positions" of the government and legislation mean the unjustifiable strengthening of governmental power in the field of sanctioning. This question is especially significant in the case of diversion, where the 'reallocation of the sanctioning power' happened in favour of criminal justice agencies under government* control, as prosecution *services are under governmental supervision,* except Portugal and Hungary. One might risk claiming that *these rational solutions in the practical sense damage the principle of „justice only through the court", and question the practical realization of the theory of the separation of powers.* Especially taking into consideration that regarding the content of the sanctions and the law-enforcement agencies, there is no difference in their application in the input or output phase, or as a criminal sanction imposed by the court. The tendency is a solemn question, particularly because it can be sensed from the changes of emphasis in criminal policy that governments are dissatisfied with what they feel is a lenient sentencing practice. This vein of thinking can be attacked, as it is clear that regarding diversion, the redistribution of decisional powers is a rational, cost-effective solution considerate of the interests of the offender. It is also true that diversional measures require the confession and consent of the offender, and that may be evaluated as a sign of claiming responsibility. It is, however, also doubtless that in the field of non-custodial sanctions, there is an accumulation and combination of sanctions and strengthening of control elements. Therefore, I express my doubts rather as an open question than a statement.

---

[97] See in detail: Rex, S. (2002): The development and use of Community Sanctions in England and Wales. In: Community Sanctions and Measures in Europe and North America. Albrecht, H-J. – van Kalmthout, A (eds), ED. iuscrim, Max-Planck Institute, Freiburg/Breisgau, p.163. (No 10. reference)

Community sanctions in court decisions

The community sanctions applied by the court can be divided into two groups: supervision type and working type sanctions. However, there may be many varieties within these two basic forms. Some combine the two, while others mirror the desirable ratio of the control and support functions with the application of a multitude of rules of behaviour.

The behaviour requirements of probationers are only determined by the creativity of the judges or the prosecution in case of a postponed indictment. Naturally, there are conditions set by the legislator such as the correspondence with the probation service, the obligation to report the change of address or workplace, and the leading of a law-abiding lifestyle. *It is the field of special rules of behaviour, in which the rehabilitational and reintegrative objectives of sanctions are contained, and these are the rules that require specially trained professionals.* Mediation, compensation, the participation in social and educational programmes, the taking part in tension-relief courses, the reduction of alcohol consumption, and so forth are included among these obligations. Nonetheless, these are the programmes that function as 'black holes', as the authority cannot know what exactly will happen throughout the enforcement of behaviour requirements. This is why the necessity of standardizing the programmes has conceptualized, and the English probation service has considerable results in this field.

8. The dilemma of community sanctions: control or support

In the evaluation of the possible effect of the punishment, we must not only be familiar with the addressees, but also with the attitudes of decision making, which may fill the enforcement of sanctions with „content". There is a significant difference between the philosophy of punishment and the practical application of criminal policy. Duff and Garland mention that decision-makers (not only legislators, but also judges) translate the principles of criminal philosophy for themselves; these are, however, intertwined with eclectic elements, which are results of the characteristics of the person, the case or those of the situation wishing to be solved.[98] The relation between theory and practice is even more complicated by the fact that *sanctioning cannot be connected to a specific punishing philosophy, but can be filled with different content along the guidelines of the ruling criminal policy*. So by choosing a sanction, judges do not choose between philosophies of punishment, but adjust the constraints to the cases in practice, which are provided by the application of the given sanction. It

[98] Duff, A. – Garland, D. (eds.)(1994): A Reader on… ibid. pp. 17-19.

is doubtless that sanctions correspond to diverse conditions of sanctioning philosophies that makes them therefore suitable for diverse interpretations. A restraining, preventing, or a depriving content may be attributed to the same sanction. Although a criminal policy of a given nation represents a given philosophy of punishment, it is hardly certain that the sentencing practice, the penitentiary system or the institution system of law enforcement is altered simultaneously. It is well indicated by doubts of the public as well as politicians that in the United Kingdom, the National Standards for the probation service modified by the Criminal Justice and Court Service Act of 2000 require the probation service to automatically suggest a custodial sentence in case of the second, unjustifiable breach. The objective to increase the credibility of community sanctions leads to the establishment of intensive probation programmes, and the significant enhancement of the frequent application of behaviour requirements or special conditions. The prescription of an overly large number of rules of behaviour, however, increases the possibility of violations.

The question therefore is what content and purpose criminal policy assigns to community sanctions. In one of my other works I discussed the process in which rehabilitation ceased to be an objective of criminal policy and how this phenomenon affected the formation of the conditions of community sanctions.[99] In the following, I shall examine how these changes are manifested in the practical realization of community sanctions, and in the practice of enforcing agencies.

Apart from economic necessity, three new phenomena encouraged the loss of belief in rehabilitation. *(1)* The state of crime alarmed both politicians and the public, and resulted in the augmenting expression of the need for harsher punishments. *(2)* Secondly, the growing opposition to the conceptions on rehabilitation arguing that this approach pathologizes the offender, his will is not taken into consideration and provides large room for the abuse of discretional power. *(3)* The third and probably the most significant element surfaced upon research data, which questioned the beneficial effect of rehabilitation on the offender's behaviour. Evaluating studies in the mid 70s could not find ample proof for the continuous and positive change of rehabilitation to the impeding of criminal behaviour. Rehabilitation, which endeavoured to transform the personality of the offender in order to create a law-abiding citizen for the future did indeed malfunction if we look at the rate of recidivism. We must not forget, however, that Martinson[100] revised his point of view in 1979, and since then

[99] See in detail: Kerezsi, K.: Control or support: The role of alternative sanctions in crime control policies. (Post-doctorate thesis) Manuscript. Budapest, 2005 (Hungarian)

[100] Martinson, R. (1992): Symposium on Sentencing: Part II. Hofstra Law Review 7(2). Quoted by: Palmer, T.: The Re-Emergence of Correctional Intervention. Sage Publications, p. 28.

more and more evaluative research shows that even though rehabilitation is no cure for everything, it does produce results under certain circumstances and in case of certain offenders.[101] Even in cases, where community sanctions would not be more effective than imprisonment, there are a number of arguments for the increase of their use. Imprisonment tears family and community relationships apart, and frequently decreases the intention and ability of the offender to take responsibility, not to mention that imprisonment is significantly more expensive than community service or probation. Furthermore, studies increasingly show that with adequately planned and aimed intervention, the recidivism may indeed be decreased, and this intervention is more effective under community circumstances than in custodial settings.[102] These results are not to be underestimated as the same doubts may be raised concerning the effect mechanism of deterrence. Criminal justice is functioning, and still in criminal statistics, first-time offenders form a greater proportion of all known offenders. Can therefore deterrence only be effective in a certain circle of persons, under certain circumstances? But the same question may arise according to the incapacitation. A custodial sentence is only effective, if the offender does not commit a further offence in the penitentiary and if there is no replacement for the imprisoned offender. As L.T. Wilkins says „it would be nice to get rid of the popular belief that more punishment means less crime."[103]

Today's criminal policy constantly changes the system of requirements concerning the enforcing agencies of community sanctions. In historical development, the change of the probation sentence has always been characterized by the alternating ratios of treatment and control, individualization and legality, rehabilitation/reintegration and repression. Therefore, *non-custodial sanctions have always been characterized by a combination of support and control. However, there may be a great variety of ratios; this is why these sanctions are so diverse*. The probation service enforcing community sanctions was originally authorized to exercise professional help; it had a legal obligation of welfare support. Consequently, it is hardly a coincidence that probation and social services became known as organizations that support the offender. The welfare approach placed the greatest emphasis on the personal needs of the offender, and the fact of committing the offence became secondary.

[101] DiIulio, J.J.Jr.(1992): Rethinking the Criminal Justice System: Toward a New Paradigm. U.S. Department of Justice, BJS Discussion Paper, December, p. 2.

[102] McIvor, G.: The Management of Offenders - Rehabilitation and Community Sanctions http://www.impact.ie/pw/policy.htm

[103] Wilkins, L.T.(1991): Punishment, Crime and Market Force. Aldershot, Dartmouth, Gower Publication.

The criminal ideologies centralizing repression resulted in the greater emphasis of damages and consequences caused by the offence. The weakening of the rehabilitation approach in the enforcement of community sanctions was followed by the consequence that more and more precise criteria are needed in order to evaluate the personal dangerousness manifested in the offence (as well). The former offender-centric approach became an offence-centred one in the practice of rehabilitative intervention, as a result of the modified conditions. The offence is no longer a symptom of problems, but a problem itself, to which it must be reacted. It became important that the offender chooses to break the law, and this choice can be explained by the direct environment and the personal circumstances of the offender. *Criminal justice therefore expects a kind of professional awareness from social workers, which is able to evaluate personal dangerousness, and prognosticate the likeliness of future criminal behaviour.* The social profession must therefore adjust to the change in which the agencies of criminal justice deal with the consequences of crime, instead of its causes. It is no more needed to increase the self-esteem of the offender, or to provide services, which generally enable the offender to become a social citizen. Crime must be decreased and community must be protected. *In relation to the era of practice of rehabilitation, the rate of application of welfare measures has declined significantly, but has been enriched with the increasingly professional and established practice of risk-analysis***.** This requirement takes to a greater extent into consideration the interest of the victim than that of the offender. The expectations to acknowledge victims as 'consumers' and 'clients' is increasing for the probation officers: they „may assist victims with the services provided in the form of their testimony concerning the effects of the offence; they can take part in the validation of their rights, and may help the victims rearrange their lives after their becoming a victim."[104]

The changing social circumstances and the functioning principles of criminal justice made possible to realize that the enforcement of community sanctions is not an assistance based on social work, but a real punishment. In accordance, the probation service must re-establish itself, and must rely on its former profile of social work to a lesser extent. The offenders dealt with by the probation service are not pointedly from disadvantageous environments, which need assistance. „Instead of emphasizing rehabilitative methods that meet the offender's needs, the system emphasises effective control that minimizes costs and maximizes security" – states Garland.[105] This may be a slight simplification, as *these new conditions not only mean danger, but also new possibilities,*

[104] Alexander, E. K. – Lord, J. H. (1994): Impact Statements: A Victim's Right to Speak, a Nation's Responsibility to Listen, Washington, DC: Office for Victims of Crime, U.S. Department of Justice.

[105] Garland, D. (2001): The Culture of Control… ibid. p. 175.

and may make the probation service to become a central partaker in restorative justice. Dangers are nonetheless more easily recognizable than the new possibilities. The new English terminology concerning the parole service demonstrates the adjustment to the new conditions: from the 'woolly, cuddly, soft toy' it became a 'sharp, keen-eyed service',[106] which evaluates the seriousness and dangerousness of the offence, enforces custodial sentences, and exercises social control in order to protect the public.

On the long term, this approach fundamentally opposes the 'no-blame' attitude of social work, forces the enforcing agencies of community sanctions to re-evaluate their basic values and attitudes. In this process the professional approach of social work is transformed along the expectations of criminal justice, which expectations are in many ways unfamiliar to the attitudes of social work. Probation services must re-evaluate their ability to enforce sanctions economically, to exercise social control and to replace with these the former practice of rehabilitative elements. *Social work may receive a role in multiple areas of criminal justice,* such as in diversion, release on bail, upon the pre-sentence report of the probation service, the implementing of community sanctions, on the evaluation of failing the payment of financial sentences, the assistance during the custodial sentence, in the preparation of conditional release, and the correspondence on parole. In other words *in every angle, where criminal justice professionals may need the assistance of another profession, which is more familiar with the person, the subject of the procedure, than the jurisdiction deciding on questions of responsibility and sanctioning*. Nonetheless, the new approach is less and less interested in the ability of achievement of the service and social work of the profession, as it de-professionalizes the organization through the strengthening of the control and risk-analysis function. On the other hand, a number of signs indicate that attitudes of social work are hardly transformable: a simultaneous study in the United States, the United Kingdom, and Israel all show that students of social work, in spite of the proliferation of conservative social policy, prefer the paradigm of rehabilitation of the welfare state, and explain social problems with structural reasons.[107]

The triad of anguishes about punishments, effectiveness, and public security lead to the pretence of combining community sanctions. This on the one hand increases the frequency of applying community sanctions, but on the other hand (primarily because of the requirement to apply sentencing guidelines) strongly constrains it. Upon the application of these sanctions, judges are more

[106] Wallis, E. (2001. Nov): CEP Bulletin, p. 4.
[107] Weiss, I. – Gal, J. – Majlaglic, R. (2002): What kind of social policy do social work students prefer? A comparison of students in three countries. International Social Work, Vol. 45, Issue 01.

and more likely to define behaviour requirements, which hardly correspond to the actual situation of the offender.[108] According to the experience of American parole officers, special conditions are applied in most cases of offenders, and in more than 82% of offenders, the decision contained three or more of these conditions. The most frequent one was the prescribing of one or more financial obligations (84%), 61% was the obligation to pay the expenses of probation, 56% were required to pay a fine, and 55 % were obliged to pay the costs of the judicial procedure.[109]

The characteristics of the probationers are very similar on most parts of the world. In 1990, I described the Hungarian situation as „slightly simplifying, probation officers should deal with offenders, who are uneducated, addicts, and need professional, social assistance concerning the person, and the family".[110] The situation has not changed until 1998: „in the population of probationers, starting from 1989 (or at least from that point detectibly) we are witnessing a drastic change of positions: workplaces have disappeared, living conditions worsened, mass homelessness appeared. The number of uneducated, unprofessional, alcoholic, cumulatively deviant offenders with no family background or following a negative model increased."[111] Simon says that the determining factor of the changing conditions of parole practice should be the reaction to disadvantageous situations. The fact that 48 out of 50 of those released are placed under the supervision of the probation service has been partly caused by the disappearance of jobs for the uneducated work force, and the employment of released offenders has become utterly impossible.[112] *Consequently, strange as it might seem, this might increase the need for applying more community sanctions, as the more people are sentenced to custody, the more of them will be released on parole.*

The professionalism needed for enforcing community sanctions

Community sanctions are changing. This change is fundamentally induced by two new factors: *(1)* the conceptualisation of the role of community sanctions (and especially the parole service) in crime prevention, and *(2)* the risk-analysis

[108] Dickey, W.J. – Smith, M.E. (1999). Five Futures… ibid.
[109] Bonczar, T.P. (1995): Characteristics of Adults on Probation, 1995. (NCJ-164267) http://www.ojp.usdoj.gov/bjs/pub/press/cap95.pr
[110] Kerezsi, K. (1990): A pártfogás dilemmája: kontroll vagy segítő kapcsolat? Esély 5., p. 60. (Hungarian)
[111] Kerezsi, K. – Der, M. (1998): Mennyibe is kerül a büntető igazságszolgáltatás, avagy az alternatív szankciók költségei. In: Kriminológiai és Kriminalisztikai Tanulmányok, 35.k. (Szerk: Irk, F.) OKKrI. Budapest, pp. 47-119. (Hungarian)
[112] Simon, J. (1994): Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990. The Law and Politics, Vol. 4., No. 7 (July) Chicago: University of Chicago Press, pp. 154-55.

concerning the offender's personal dangerousness, and the practical possibilities of its decrease. The former may easily relate to the zero tolerance approach on minor misdemeanours parallel with the redefinition of the professional philosophy of the probation service, and forces that kind of practices which are unfamiliar to their former role. This direction of development might be labelled the 'American model', whereas the second model, the 'British model' transforms this role with the purpose of increasing effectiveness.

Doubtlessly, the successful enforcement of community sanctions depends largely upon the activity of the probation service. Social work fundamentally builds upon face-to-face assistance and individual case management. Besides this, however, forms of community work type problem solving have emerged throughout the years in connection with criminal behaviour, the treatment of addiction, the spending of spare time, etc. These community work methods did not make unnecessary the forms of individual treatment. *During the 1980s, probation services realized that the trust invested in their work had diminished. However, it also became clear that the politically expected new approach in enforcing community sanctions is a huge possibility for the organization itself: it provides appreciation, opens new sources, brings new status, and could strengthen the total position of the organization. It became obvious that in case of the resistance of the probation service, there are other available organizations for the enforcement of these sanctions, as indicated by the British solution of enforcing electronic monitoring, and the American practice of system of bail: participants of the market are willing and able to step into the area of criminal justice.* The question is how the situation can be solved with also preserving the assisting function of the agency, and at the same time adjusting it to the changing expectations. The question is difficult, and the end of the „road" in not yet to be seen, as some parole services are already on their way, whilst others are just „packing to set out" for finding their new way. Is there anything they absolutely must take with them? Or there is no such thing, and practice will create the profession, which hybridises functions of the police with those of social work?

Control and supervision, assistance and support all aim at influencing different dimensions of human behaviour. Meyerson defines the duty of the probation officer as: „to assist the person on probation in leading a law-abiding lifestyle and the successful accomplishment of the sanctions with an authoritive approach, in a way which corresponds both to the expectations of community security, and the rules of the sanctioning authority".[113] The definition makes it absolutely clear that any form of assistance is only to be understood as a means

[113] Meyerson, B.E.(1992): Role definition for the practitioner of correctional supervision: transcending role conflict in theory and practice. In: Hartjen,C.E. – Rhine,E.E.(eds.): Correctional Theory and Practice, Chicago:Nelson-Hall Publ. Quoted by: Junger – Tas, J. (1994): Alternatives to Prison Sentences… ibid. p. 44.

of achieving a law-obedient behaviour, so it is therefore in a subordinate situation. On the other hand, the activity of the probation officer is determined by the decision of the decision-making authority. This, naturally, does not mean that the probation service cannot make a referral to another agency of assistance in case there is a duty not relating to the committing of crimes in the future. It only signifies that the PO can only define his/her activities within the boundaries of the decision made by the judge, the Parole Board, or the prosecutor. Actually, *this restriction indicates that the probation service is part of the criminal justice system.* However, it is also part of the social sphere, therefore functions between the two overlapping fields. *The changes of the past decades resulted in the fact that the primary authorisation is given to the probation service by criminal justice; it must therefore treat the expectations of criminal justice as a priority over those of the social sphere.* However, this does not mean that the elements of social work might disappear from the range of activities of the probation officer. These are the 'things' probation officers must 'preserve', when they are trying to find their new role, and these means of social work must be applied even under stricter circumstances and conditions. This is the only way to achieve that the offenders take responsibility for their actions, face the negative consequences, and compensate for it in some form. That is what community sanctions make well possible, and ensure better solutions on the longer term, much better than imprisonment and financial sanctions. *The probation officers' authorization remained the same, only its extent has been changed, it must still try to prevent future offences with its own measures. The change is that a greater emphasis has been placed on the offence and several new elements.*

9. Community sanctions on the turn of the 21st century

The system of patronage and the development of the probation service has been a milestone in the historical change, which leads from the sanctioning philosophy of the classical school of criminal law to the positivist sanctioning theory. This difference, as of today, is embodied and symbolized by the probation service as a punishment and as a profession. Probation is the only legal institution that remained from positivist legal theory as a 'dinosaur'. We hope its fate will not be extinction. In order to avoid this fate, it must change, as must community sanctions.

The requirement of change has been expressed in many forms, and there are different demands to be identified behind the American and British models. At the same time, the expectation that the system of practicing criminal justice to become transparent is expressed in both, partly because of the safeguarding of the rights of the offender, partly because of the increasing of the restraining effect, and last but not least in order to demonstrate to the tax-paying public the

standard and effectiveness of the criminal justice system. Regarding these factors, *there is a significant difference between the American and the British model.*

1) Community sanctions are endangered in America, and it seems that American practice is preparing the script of 'hopelessness'. „The meaning of probation is to take a walk; it can be interpreted as a zero-sanction. There are simply not enough prison cells to lock everybody up, who needs punishment; we must therefore come up with a solution to make probation a real sanction. … Community service sounds as though one joined a student-parent association. What we need to talk about is a forced labour as punishment." – said Kleinman.[114] *Leading social politicians express that the rights of offenders hinder effective crime control*: „the Constitutional constraints of the American system provide countless possibilities for offenders to detain the procedure with objections, manipulate the jury, and appeal endlessly against the decision".[115] In the USA, where the best practice program of the probation service (mirroring a 'creative and critical thinking', and innovation), which started in Boston, and in which „police and probation officers patrol the streets together in order to decrease crime"[116] – one is not to expect a lot. In the present situation it seems that the *American criminal policy, under the name of 'community correction', oppresses and colonizes the organizations that implement community sanctions, and gets them to operate as a transmission strap of spreading the control of criminal justice, and degrades the probation officer to a 'technician of criminal justice'*. The role of the probation service in the criminal justice system is determined by the role assigned to it by criminal policy. If probation officers do not want to miss out on the financial boom enjoyed by law-enforcement, they must forget the altruistic roots of probation. During the arguments on the possible clients of the probation service, among the possible answers we can find the community, politicians, the victim, and – at the bottom of the list – the offender, which indicates that the step forward is still open, and the first and foremost clients of the probation service will soon become the victims. It also indicates, however, that the development of community sanctions will be joined by the further augmenting of control measures, and will cause such measures to be applicable and accepted in the field of the private sphere, and overwrite the traditional practices of traditional social control in the already mentioned way.

[114] Kleiman, M.A.R.(1998): Getting Deterrence Right: Applying Tipping Models and Behavioural Economics to the Problems of Crime Control. In: Perspectives on Crime and Justice: 1998-1999 Lecture Series. NIJ, November

[115] Wilson, J. Q. (1997): Criminal Justice in England and America. Public Interest. Winter(126). pp. 3-14.

[116] Reichert, K. (2002): Police-Probation Partnerships: Boston's Operation Night Light. University of Pennsylvania, Jerry Lee Centre of Criminology, Forum on Crime & Justice.

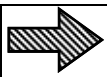
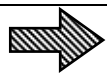
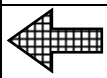
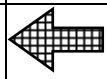
International experience regarding community sanctions shows that non-custodial sanctions are only able to decrease prison population if they are adjusted to a wider, comprehensive criminal policy, which uses other measures to achieve this. *If this intention is missing, community sanctions (similar to the prison) may be filled with content along the lines of any ideology*. *They can therefore fit into the general tendency of increasing control.* The present directions in sanctioning indicate that principles of sanctioning practice mainly build upon ideas of reprisal, according to which the offender should be punished, the avoidance of dangerous situations should be achieved, and public safety must be ensured, furthermore, the differences in sentencing practice should be diminished. This is, therefore, the script of hopelessness.

2) The script of hope, we trust in spite of the recent changes, is written by the probation officers of the United Kingdom, who realize more and more evidently that all the causes of criminal behaviour cannot be treated within the frame of criminal policy,[117] but an attempt can be made within the frame of the sanction adjusted to the seriousness of the crime, to accomplish the aims of special prevention through individualization, with taking into consideration the interests of the victim and the expectations of the public. *The probation officer is placed between the areas of criminal policy and social policy, even though this mandate seems at times insecure***.** It is doubtless that the new approaches of criminal policy need new approaches in probation. We hope that the roots connecting the British probation service to social work make it possible that the balance can be kept between assistance and control in the traditional and most frequently applied enforcement of probation. Hopefully, the professional results acquired through evaluation will develop our knowledge 'in an embryonic state' as to what functions in the decreasing of crime, by which offenders and under what kind of circumstances.

3) The European model of community sanctions cannot yet be cited as a third one. This is because *the European development of community sanctions, although it does show new features, cannot yet be defined as an individual model. In Europe, the process of 'convergence' of traditional and restorative justice is currently detectable.* Traditional criminal justice is indeed moving towards the realization of reparative elements, and away from the idea of rehabilitation, which made possible the better vindication of victims' rights in traditional criminal justice. This process is quite easily observable concerning alternative sanctions. On the European continent, restorative justice is indeed present, which started from the consideration of victims' rights exclusively to those of the offender and finally of the community. In Europe, in the development of models of criminal justice, the phases of (1) rehabilitation, (2) repara-

[117] Gönczöl, K.(1991): Bűnös szegények. KJK, Budapest, p. 115. (Hungarian)

tion, and (3) restoration can be identified. This process has opposite directions in traditional and restorative justice: traditional criminal justice progressed from the rehabilitation phase to the reparative phase, whereas European restorative justice is satisfied with serving the interests of not only the victim with reparation, but also that of the offender instead of the restorative phase.

Traditional criminal justice	Rehabilitation phase		Reparative phase		Restorative phase	
	Rehabilitation phase		Reparative phase		Restorative phase	*Restorative justice*

It may be asked why the requirement of proportionality is not defined as the 'starting point' of traditional criminal justice. This is because this requirement, not doubting its importance, cannot be so unambiguously realized among alternative sanctions, as it is possible in the case of the custodial sentence. During the last decades multiple effects have transformed the content of alternative sanctions. *The fundamental requirement of proportionality is present in alternative sanctions, so that the introduction, content, and definition of the rules of alternative sanctions must be prescribed by legal regulations, and must be adjusted to the seriousness of the offence, the personal characteristics of the offender, and the ensuring of the victims' rights***.** This is present in the requirement that judicial or authorities' discretion must be exercised within legal boundaries in case of alternative sanctions, and throughout enforcement the legal guarantees and human rights should be secured. *The requirement of proportionality therefore emphasizes that the assisting activity has limits concerning alternative sanctions*: (1) the frame of activity of the probation officer is determined by the decision of the authority, (2) the application of assisting measures can only be defined within the purpose of achieving a law-obedient behaviour, (3) the probation officer is to define the activities exercised within the characteristics of the ruling of supervision and support. Proportionality, through defining new frameworks for aiming rehabilitation, emphasized its importance, so that sentencing and implementation of sanctions are adjusted to the framework within the power of criminal justice to be exerted. This of course restrains the offender's rehabilitation, nonetheless not making it impossible within the applied sanction.

In spite of the aforementioned, community sanctions are often not convincing, neither for politicians, nor for legislators, nor for the community, which is partly due to the fact that we know little about their effect-mechanism, or more generally about the person. This is why judges apply them for offenders that have committed a less serious crime, and are average, so the use of these sanctions means no particular danger. The results of the evaluation of community sanctions might change this situation. The great deficiency of them is that there are no adequate community sanctions for important groups of offenders (such as addicts, the homeless, members of a minority group), which are also appropriate for diminishing the anguishes of public opinion. This is why they are mostly excluded from the possible subjects for community sanctions – at least in Hungary.[118] Social marginality, disorder excludes many offenders from not only the community, but also from community sanctions. Applying the statements made by Garland and Hudson[119] on the criminology of „us" and „them", community sanctions

1. Have the possible direction of development that they only serve to deal with the wrongdoings of the criminology of „us", whereas offenders and crimes of the „them" group are still treated by custodial sanctions,
2. While the other direction is that for wrongdoings of the criminology of „us", sanctions will be applied that need no formal participation of the agencies of criminal justice (e.g. fine), but for wrongdoings of the criminology of „them" community sanctions will be used, which are strengthened by strong control elements as well as imprisonment.

It may be sensed that the horizon is rather blurred. There are significant changes happening in the criminal justice systems that form the framework of the regulation and application of community sanctions. Based upon the present direction of development in Europe, the convergence of these systems is to be observed, which is characterized by the increasing use of imprisonment, the use of longer-term sentences, the development of non-custodial sanctions, the erosion of welfare and educational elements within the sanctioning system, and privatisation in the criminal justice system.[120] In order for community sanctions to fulfil the great possibilities contained in them, wider social context must not

[118] See in detail: Kerezsi, K. – Gosztonyi, G. – Bogschutz, Z. – Eliás, D. (2003): Probation and Probation Services in the EU accession countries: Hungary (Ch. 5.) In: van Kalmthout, A.– Roberts, J. – Vinding, S.(eds): Probation and Probation Services in the EU accession countries. Wolf Legal Publishers, Nijmegen, pp. 137-181.

[119] See in detail: Garland, D. (2001): The Culture of Control… ibid. p.137.; Hudson, B. (2000): Criminology, Difference and Justice: Issues for Critical Criminology. The Australian and New Zealand Journal of Criminology, Vol. 33., No. 2., August, p. 169.

[120] Pitts, J. (1996): Young People, Crime and Policy. Csp, Critical Social Policy, 16, 4(49), Nov, 83-90.

be left unconsidered during their further development. Emphasis must be placed on new research data to improve the treatment method of these sanctions. Research data must be taken into consideration, which underline that *results could be achieved with the simultaneous application of measures*. In order to ensure the effectiveness of community sanctions, *there is the need on one hand for the application of adequately elaborated and supervised methods of offender evaluation, and on the other hand the respecting of the offender's social membership. The enforcement of community sanctions must send out the message that the purpose of correction is inclusion, but the offender must take steps to achieve this, primarily to restore the consequences of the offence committed.* The criminal policy concerning community sanctions must be based upon approaches that take into account the social situation of offenders and the community they live in. And if all of the above is achieved, Vivien Stern shall be right in claiming that „for most offenders that commit the most frequent offences, the use of community sanctions is the rational measure, in order to achieve protection, the restoration of damages, and find the measures that decrease future criminal behaviour.[121]

SUMMARY

Alternative Sanctions: Rehabilitation, Deserved Punishment, Decreasing of Crime?

KLÁRA KEREZSI

The author states that punishment under the Criminal Code is a form of social control, which is based on other control mechanisms of society. If we have a look at the way alternative sanctions are regulated and enforced, we will find out what a Government thinks of the role of the state, the responsibility of the individual and about the relation between the state and the individual. Since the mid-1990s, criminal policy has shown interest in alternative sanctions and the probation service that puts them into practice. The author examines the purpose of alternative sanctions, how their role has changed in criminal policy, and whether the probation service that enforces them can play a role in extending the limits of control of criminal justice. The essay defines the status and the role of alternative sanctions among the various penal sanctions and analyses the

[121] Stern, V. (1998) A Sin against the future: imprisonment in the world. London: Penguin Books, p. 321.

changes that have occurred in the goals and principles of their practical enforcement. It addresses numerous questions. Do alternative sanctions have to adjust to the well-known requirement of proportionality and if so, to what extent is that possible? What are the characteristics of alternative sanctions in the various stages of criminal justice? Is it important that those sanctions are less expensive for the criminal justice system than imprisonment? Is there a need for taking into consideration the characteristics of the „medium", where those community sanctions are realized? Does it matter how criminal justice approaches the community? What is the impact of new tendencies of criminal policy on the practical enforcement of community sanctions in a society, where talk about „global acceptance" and phenomena of „local exclusion" can be experienced simultaneously? Does participation in the development of public security mean a wider social commitment for the probation service, than what the case was for the traditional, offender-centred probation service? Is it possible to outline the characteristics of an emerging „European" model of alternative sanctions in addition to the American and British ones?

RESÜMEE

Alternative Sanktionen: Rehabilitation, verdiente Strafe, Verringerung der Kriminalität?

KLÁRA KEREZSI

Die Verfasserin ist der Meinung, dass die strafrechtliche Strafe eine auf den sonstigen Kontrollmechanismen der Gesellschaft aufgebaute Form der gesellschaftlichen Kontrolle ist, und in der Regelung und der Vollstreckung der alternativen Sanktionen deutlich erkennbar ist, was eine gegebene politische Macht über die Rolle des Staates, über die Verantwortung des Einzelnen, oder über das Verhältnis zwischen Staat und Individuum denkt. Seit Mitte der 1990-er Jahren schenkt die Strafpolitik den alternativen Sanktionen und der Bewährungshilfe, die deren Vollstreckung sicherstellt, besondere Beachtung. Die Verfasserin analysiert deshalb das Ziel der alternativen Sanktionen und die Änderung ihrer strafpolitischen Rolle, und sie prüft, ob die Bewährungshilfe durch die Vollstreckung der alternativen Sanktionen bei der Ausweitung der Kontrollgrenzen der Strafjustiz eine Rolle spielen kann. Die Studie lokalisiert die alternativen Sanktionen und stellt ihre Rolle unter den strafrechtlichen Sanktio-

nen fest, sie untersucht die Änderungen der Ziele und Prinzipien, welche in der praktischen Vollstreckung zur Geltung kommen. Die Studie sucht nach Antworten auf zahlreiche Fragen. Müssen die alternativen Sanktionen der Anforderung der Proportionalität entsprechen, wenn ja, auf welche Art und Weise sind sie dazu fähig? Welche Besonderheiten weisen die alternativen Sanktionen in den einzelnen Phasen des Strafverfahrens auf? Spielt dabei eine Rolle, dass diese Sanktionen für das System der Strafjustiz eine mindere finanzielle Belastung bedeuten als die Freiheitsstrafe? Müssen die Eigentümlichkeiten des gesellschaftlichen Umfeldes berücksichtigt werden, in dem diese in einer Gemeinschaft vollstreckten Sanktionen angewendet werden? Ist es wichtig, wie die Strafjustiz die Gemeinschaft sieht? Welchen Einfluss haben die neuen Richtungen der Strafpolitik auf die praktische Vollstreckung der Gemeinschaftsstrafen in einem gesellschaftlichen Milieu, in dem die Prozesse der „globalen Annahme" und der „lokalen Ausgrenzung" gleichzeitig zur Geltung kommen? Bedeutet die Teilnahme an der Entwicklung der öffentlichen Sicherheit für die Bewährungshilfe eine weiter gefächerte Verpflichtung als die typische, herkömmliche, täterzentrische Bewährungshilfe? Unter den alternativen Sanktionen gibt es das amerikanische und das britische Modell. Können unter ihnen auch die Besonderheiten eines „europäischen" Modells aufgewiesen werden?