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The public opinion and the experts' views on restorative justice^(*)

The roots of the restorative justice go back to the ancient cultures while the modern world rediscovered the possibilities behind this idea in the 1970's. The thought of rehabilitation was – in the 1980's – namely defeated by control. That was the time when that period has ended which extracted the moral elements from the punishment and considered it as a purely therapeutical social work. Empirical research indicated that the instruments of the traditional criminal justice do have neglectable effect on recidivism. The appearing victim-assistance movements emphasised however that the criminal jurisdiction neglects the enforcement of the victim's consideration. The linking-up of the above two trends also assisted the strengthening of the restorative justice approach.

In the traditional criminal justice approach committing crime is something of a particular event or action which does not have any connection to the conflicts of everyday life and so the deserved punishment is also something coming "from above". This is probably the reason why some people can only imagine the punishment of criminal behaviour as a "purgatorial suffering" which perfectly excludes the enforcement of the victim's consideration from the system.¹ The conventional criminal justice is only partially thinking in the relation of Christian punishment-atonement. There is an intermediate person (e.g. priest = laical judge) who evaluates the action and levies the penitence. The reaction given on crime does not have to be necessarily "proportionate" since it accepts repentance as the condition of absolution in the exemplary case of for lust as for other crimes injuring Christian morality. This obviously results from the fundamental thesis that the individual seeking forgiveness really repented the action, and honestly wishes to earn absolution for the falling into sin.

I think that the traditional criminal justice lacks this presumption of honesty and therefore tries to punish the mentally and morally "resistant" (by the meaning of a not-repenting criminal) with "purgatorial" instruments. The novelty of the restorative justice rests exactly in the strengthening of the "conscientious/psychological element" of punishments hoping to attract the honest intention of the offender to attain absolution. This idea fits well to the demand emphasising the importance of connection between human emotions, crime, punishment, and the social control. These human feelings – like anger, happiness, contentment, sadness, shame, remorse, etc. – were subject to many fields of criminological researches: the motivation of criminal, the hatred-crimes, family aggression, fear of crime, at

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The research project „Researching restorative justice: innovative means in the Hungarian criminal justice system” (Reg. number: T 037854) was financially supported by the Hungarian Scientific Research Fund.

¹ Johnstone, G. (2004): How and what terms, should restorative justice be conceived? In: Zehr, H. –Toews, B. (eds.): Critical Issues in Restorative Justice. Criminal Justice Press, Monsey, New York, p.8.

the research of the results of victimisation or at the analysis of the importance of the media at the introduction of criminality.²

The aims of the research, the selection of samplings and the research methods

The Act on Mediation Procedure will be effective from the 1 January 2007 in Hungary. Our research hoped to assist to discover which social classes have to be addressed more directly for the acceptance of the new instruments of restorative justice. For this reason survey method was used to discover the domestic public opinion on law-abiding behaviour, how it conceives of moral norms, what does it know and what does it expect from the functioning of the criminal justice system and what does it think about the instruments of restorative justice. From the surveys of Eurobarometer of the EU it is known year by year what people think about criminal justice, how much they trust their own national legal system, how much feel of safety. In the victimological researches indirect indications may be found on the possible domestic opinions about the reparative instruments³, but there were no direct national survey records on the acceptance or refusal of the instruments of restorative justice amongst the population. There were neither any information about how the professionals working in the criminal justice field feel about restorative justice although they do play an important role in whether this new forms of justice get a function in the system of criminal sanctioning. The belief and commitment of the professional's working at the criminal justice system is required over the legislative intent for the restorative justice to become not only formally part of the legal system, but to also form and reshape the legal practice.⁴

In the frame of the research project two empirical surveys were completed. In the first survey a sample of 1200 respondents were interviewed. The study was carried out on a nation-wide survey in a representative layered sampling representing the adult population of the country. The second research was conducted by a mail-survey, and 512 public prosecutor, junior prosecutors and trainee prosecutors answered – anonymously – the posed questions.⁵

During the empirical survey a 38+24 question questionnaire has been used which included in its first block questions related to the demographical and territorial characteristics, as well as questions on the political preferences, exercise of religion, and the conservative/liberal and left/right-winged approach of the respondents – usual at empirical surveys. The special part of the questionnaire included a block of 24 – mainly complex – questions which was discussing the questions of the following categories:

1. Attitudes related to law-abiding *behaviours*, for example why the majority of people complies the acts, which social and collective institutions have the most important role in strengthening the abidance by the law, and what conditions do, or may do more colourable the abidance of law and regulations.

² De Haan, W. – Loader, I. : On the emotions of crime, punishment and social control. *Theoretical Criminology*, Vol. 6(3), 2004, pp. 243–253.

³ Zvekić, U. – Kertész, I.: Bűncselekmények áldozata a rendszerváltás országában. (Victims of crimes in the states of change of regime.) Nemzetközi vizsgálat eredményei. UNICRI – BM Kiadó, 2000.

⁴ The analysis is planned to be followed by the attitude-survey of the judges, inspectors, policemen, and professionals of penitentiary institutions.

⁵ It has to be emphasised that the prosecution sample is not representative, although according to the data available from the year 2003, the system of prosecution includes 1423 persons.

2. The *attitudes* of the respondents, the picture created upon the trustworthiness of the people, the factors of success, the attitudes towards the underprivileged social strata, and the questions related to discrimination of certain social classes.
3. What is the most important element for the respondents in regard to the issue of safety and what do they think about the *functions of criminal justice system*.
4. Information on the “*reality*” of the existing criminality, namely whether the extent of the domestic criminality is known, how did the quantity of criminal offences changed, and how do the people think about the seriousness of crime categories, as well as what do they think about the grounds of criminality and commission.
5. Attitudes related to the *criminal law legal consequences*. In particular: what do the respondents know about the existing sentencing practice like the frequency of imposition of imprisonment in certain delinquency categories? Which consequences are considered as the most serious in the system of legal consequences in relation to the criminal law sanctions? Is the death penalty approved, what is the general idea about the relation of the levy of punishments and the development of criminality, the true role of imprisonment, and what factors would be considered if they would have to bring the judgement?

The full range of the survey’s results can not be introduced therefore rather some typical detail will be emphasised in the following.

1. Law-abiding behaviour, moral conventions, attitudes to life

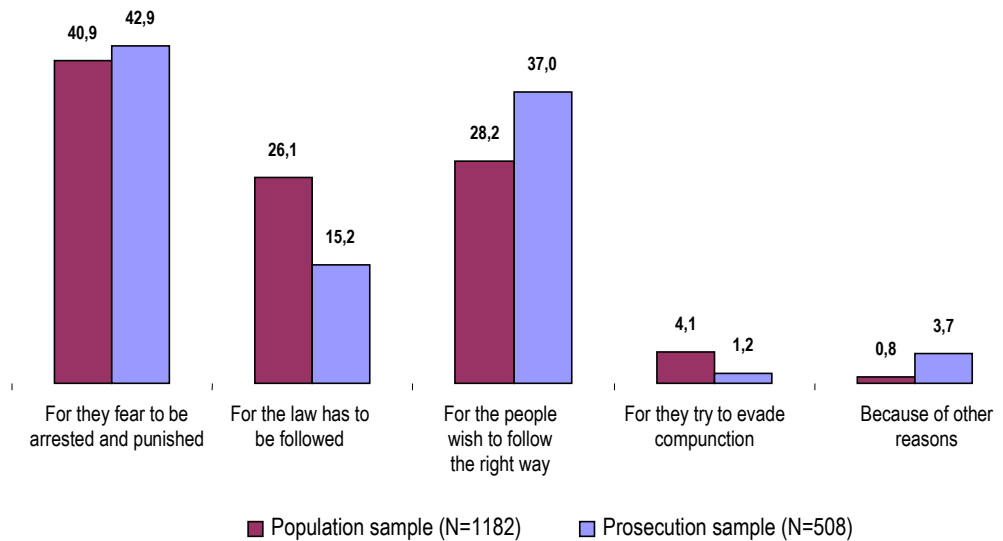
One of the fundamental questions for us has been the problem what are the key elements in relation to what people think about the abidance by the law, about the orientating content of moral conventions, and whether this is in connection to the attitudes with their own lifestyle. (The two survey databases will be referred as “population exemplar” and “prosecution exemplar” in the following.)

The respondents originate the law-abiding behaviour generally to three factors:

1. to fear („... because they fear to be arrested and punished”),
2. to force („... for the law has to be followed”), and
3. to confidence („... for the people wish to follow the right way”).

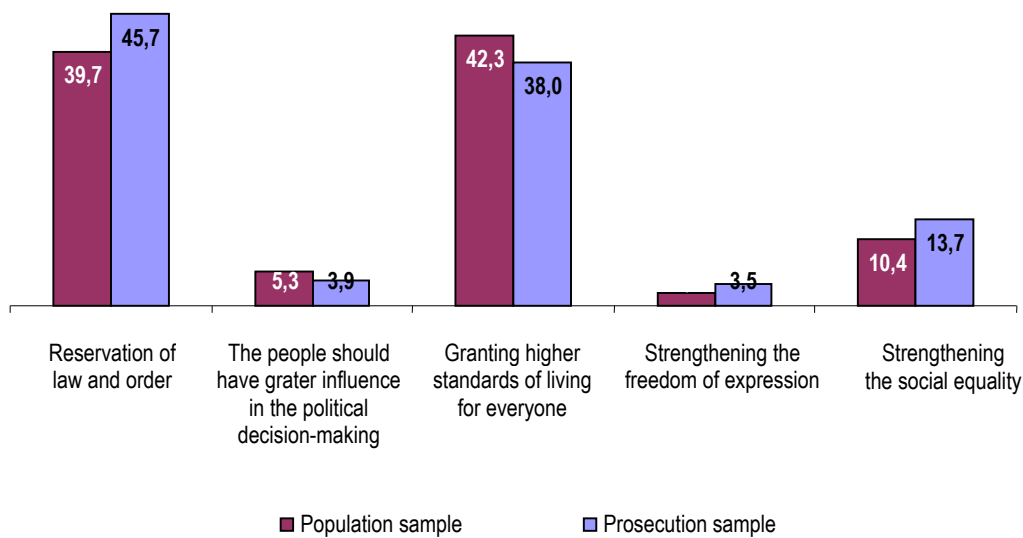
According to the majority of the respondents the *most important reason of the law-abiding behaviour* is the fear of being nabbed, the fear about the consequences. From this aspect there is barely any difference between the persons asked in the population as in the prosecution sample. From other aspects however there are significant differences in the expressed opinions. The respondents of the prosecutors sample attach much lower importance to the formalism or automatism of abidance (“for the law has to be followed”) as the respondents of the population sampling. This is indicated by the difference of almost 11% in the responses. For the respondents of the prosecution exemplar the “convinced” abidance is of much higher importance then for those responding in the secular exemplar.

Why does the majority keep the law?



The *choices of value* could be in connection with how they think about certain questions of criminal justice. The majority of the population exemplar regards the assurance of higher standards of living more important while the prosecutors take the reservation of law and order as primary objective.

What is the most important for the people according to the respondents in the population and the prosecution exemplar? (%)

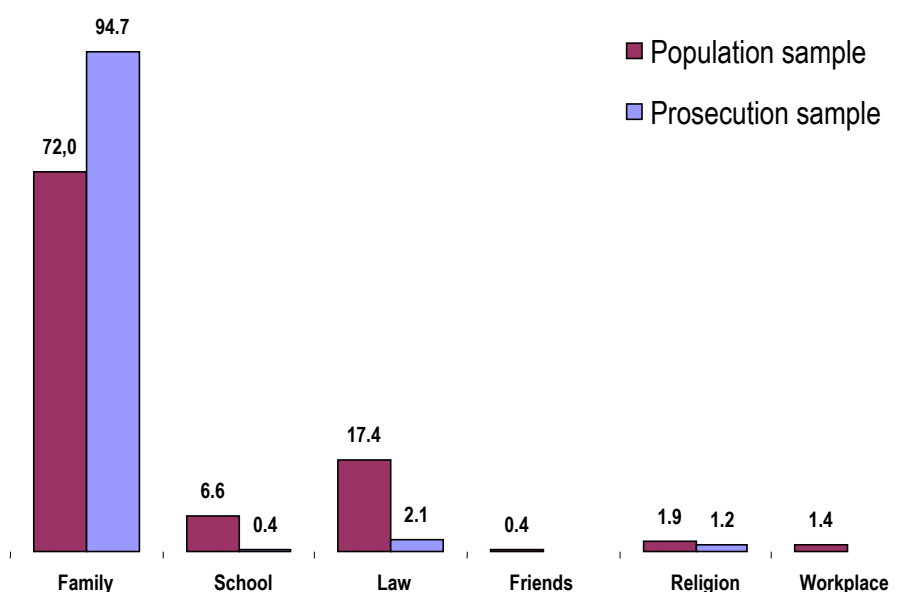


Our results are accordant to the statements of the wide-modelled attitude survey executed by the National Institute of Criminology which indicated that the lack of safety is heavily penetrating the present Hungarian society. The sources of that lack of safety are the existential problems, the social circumstances, the bondage on the labour market and not the development of criminality.⁶

⁶ Kerezsi, K. (2004): The Presence of the Different Dimensions of Crime Prevention in the Examination of Attitudes Self-image and crime prevention: the relations between the images the interviewees have of themselves and of crime prevention In: Victims and Opinions, Vol. I. (ed.: Irk, F.) National Institute of Criminology, Budapest. pp. 125-160.

The responses given to the question what factors do have the most significant role for the people complying with the moral conventions gave the expected result. It is however worth to mention that 94.7% of the persecution respondents consider the family education as extraordinarily important while “only” 72% of the population respondents gives a primer role for the family. It is also noticeable relatively how many do believe in the power of law according to the distribution appearing in the population exemplar (17.4%) and how few in the role of religion at strengthening the moral conventions (1.9%). It is conspicuous that the younger generations (18-29, and 30-39 years old) attribute much higher importance to the instruments of law as expected in this process. The role of religion at strengthening the moral values is particularly considered important amongst the youngest (18-29 years old) and the oldest (above 60).

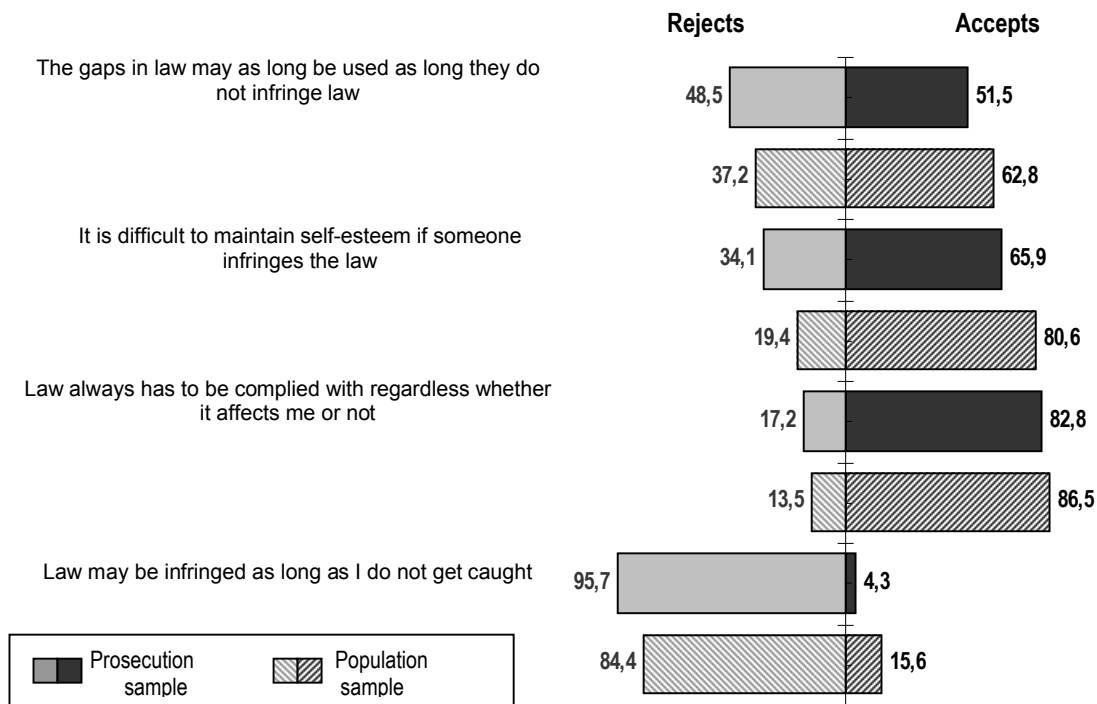
Which factors do have the most important role for the people complying with the moral conventions?



Morality and law – in particular criminal law – do connect to each other at several points. We analysed the relation towards abidance and violation of norms through the acceptance or rejection of certain statements in our survey. We shall however not forget that the same person may adjudicate the law from at least three aspects: (1) referring generally to his, or (2) concretely to a specified behaviour, or (3) as the standard of others behaviour.⁷

⁷ Sajó, A.: Látszat és valóság a jogban. (Appearance and reality in law.) Közgazdasági és Jogi Könyvkiadó. Budapest, 1986.

*Affinity towards abidance and violation of norms in the percentage of the respondents*⁸



The majority of the respondents agreed with the statement that “the gaps in law may as long be used as long they effectively do not infringe law”. In the population exemplar the percentage of respondents is higher who even agree with the statement that “law may be infringed as long as they do not get me” (15.6%). At this question the clear approach of the prosecutors becomes apparent for only 4.3% agreed with the above statement. At the same time the approach of the prosecutors may seem more permissive upon how much personal interest may affect the commitment towards the abidance of law (“law always has to be complied with regardless whether it affects me or not”) and whether the infringement of law results necessarily the losing of self-esteem (“it is difficult to maintain self-esteem someone infringes the law”). In these questions the population exemplar shows a more definite standpoint.

Certain questions of the attitude-analysis made different outlooks upon life possible as the possibility to identify oneself with these attitudes.

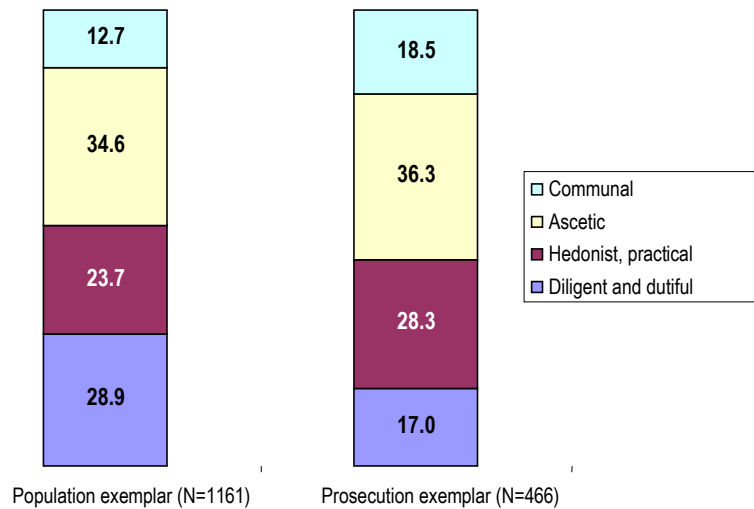
1. „Work hard and you become wealthy” (*Diligent*)
2. „Take education seriously for you will get a name through that” (*Dutiful*)
3. „Do not think about money and fame just live your life as it is the best for you” (*Hedonist*)
4. „Enjoy the pleasure of everyday life with ease and free-minded” (*Practical*)
5. „Avoid the temptations of the world, live plainly and honourably” (*Ascetic*)
6. „Do not think about you but what you could give to the others” (*Communal*)

The first two phrasings (whether related to work or education) gave the possibility for answers like “diligence brings its fruit”. These two alternatives cover in reality the same approach namely the respect and practice of duty and diligence. Possibilities number 3 and 4 indicate similar conceptions too: the preference of selfish, shallow behaviour or the

⁸ Data calculated without the „does not know” results.

acceptance of such a practical approach where the planning of future has only minor importance, role. Outlook number 5 may be named as ascetic, which by its individualism considers itself guided by moral conventions. The approach categorised in group number 6 may be called communal, which – by the refusal of individualism – intends the assistance and help of others over its personal objectives. It is interesting that in the population exemplar more than one third of all respondents selected the “ascetic” outlook. This may be resulted from the fact too that categories 1&2 and 3&4 are quite approximate to each other.

Outlook selection of the respondents (%)

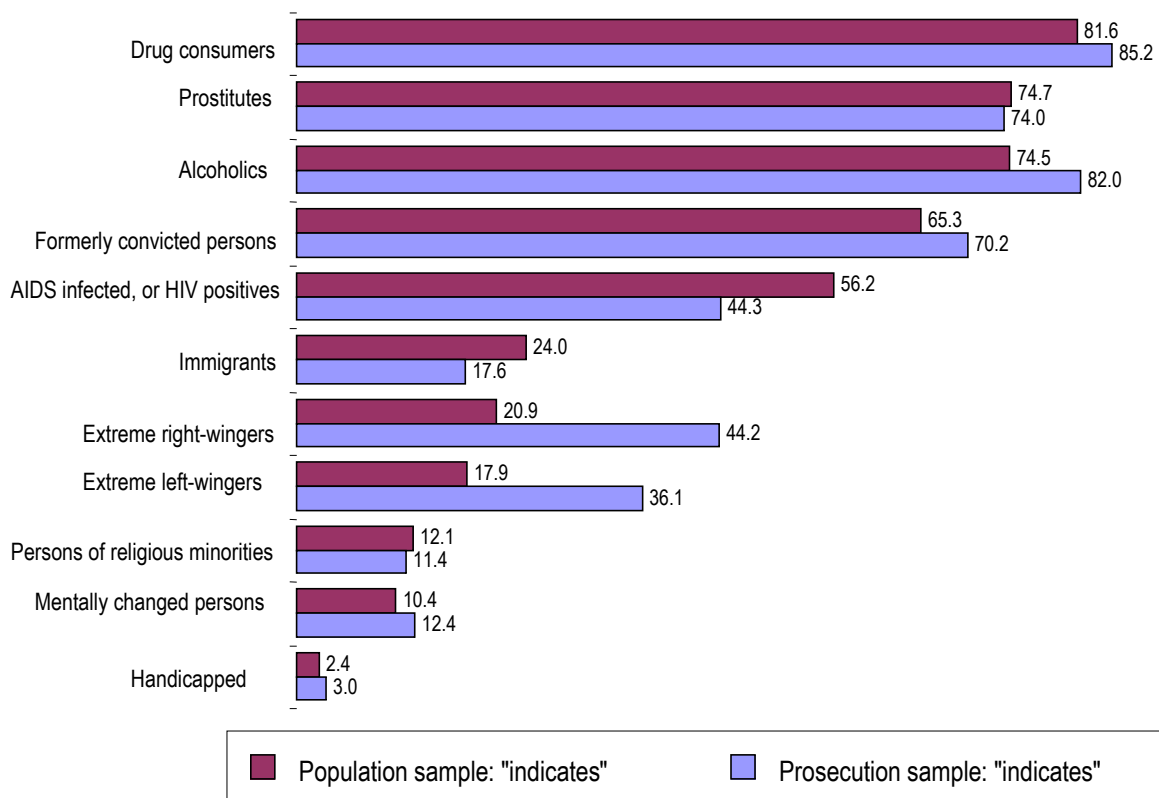


Strong correlation may be found concerning the chosen outlooks by certain ages between the prosecution and population exemplars. At the prosecution exemplar the inferior appearance of the “diligent and dutiful” category as well as the dominance of the “ascetic” category is apparent. This characteristic may not be grounded upon the age attributes of the prosecution exemplar since almost 59.3% of the respondents were below the age of 40. Amongst the respondents over the age of 40 apart the dominance of the ascetic approach the communal approach prevails and this attribute increases in the latter ages amongst the questioned of the prosecution exemplar.

3. Micro community space: who are the persons not welcomed in the neighbourhood

The personal tolerance threshold of the respondents and the ranking of their prejudices as well as their percentage are introduced at the following chart in the two samplings.

Whom would you not like to see in the neighbourhood?⁹ (%)



It has to be underlined again that – contrary to the population survey – the analysis of the prosecutors was not based upon a representative exemplar therefore the received results may only be considered as an indication. The questioned – of both exemplars – rejected the drug consumers to the highest extent, but other persons considered as deviant would not be welcomed in the neighbourhood either. For the questioned there existed five categories from which they wanted to keep the distance: 1) drug consumers, 2) prostitutes, 3) alcoholics, 4) the formerly convicted persons, and the 5) HIV-/AIDS positive persons. At the same time it is apparent that the prosecution exemplar gave a stricter declining of alcoholics and formerly convicted persons than in the population exemplar. This nevertheless may originate in the fact that the people questioned in the population exemplar come only incidentally across with these persons while the prosecutors and junior prosecutors meet them up day by day. The high level of intolerance of the prosecution exemplar needs to be emphasised towards the “extremist reasoners” – regardless of the sign of extremism – which refusal is the strongest at the age of 30-49. The population respondents are much more tolerant towards the problematic of the extreme right/left-wingers.

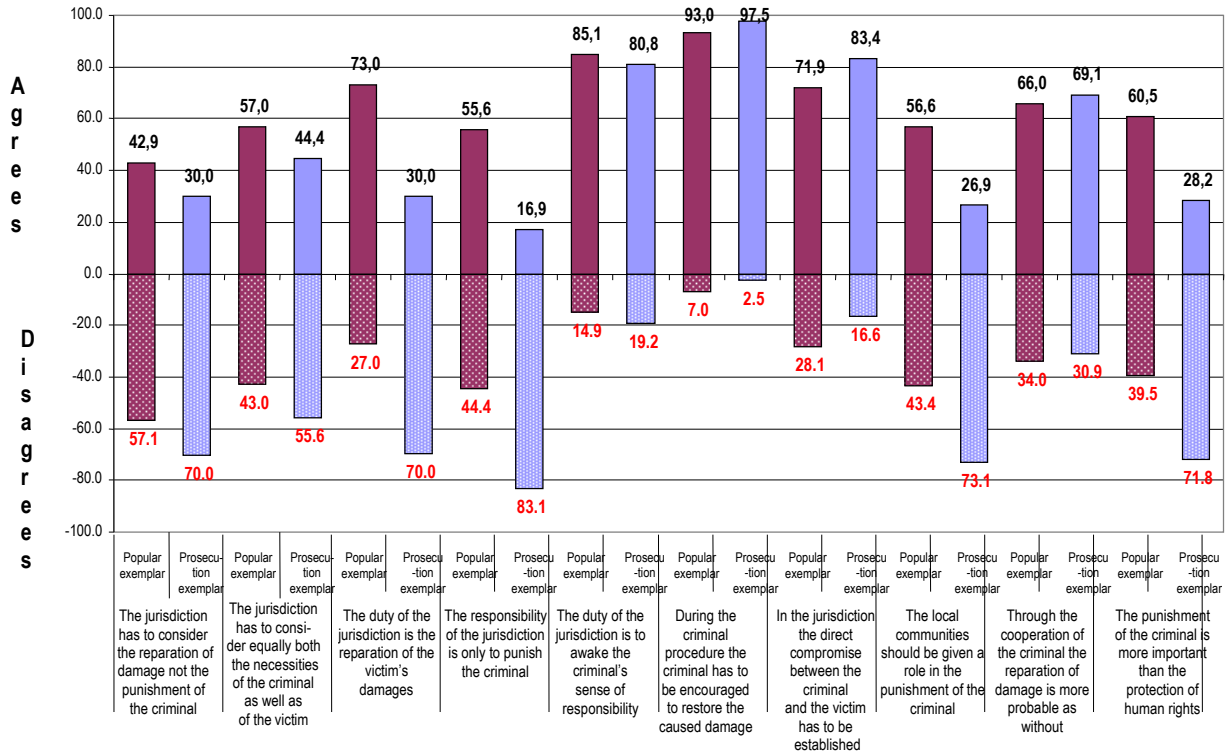
5. Duties of the criminal justice

During the survey the possible responsibilities of criminal justice – with special regard to the tasks of the restorative justice – were coupled in one block and the respondents were asked to indicate on a five-levelled scale whether they consent or reject the duties included in the

⁹ Data calculated without the „does not know” and “no answer” results.

statements. At the below flipchart¹⁰ the questions are to be followed at which the popular and the professional responses are either obviously conform or different.

Difference of the public and professional opinions about the possible responsibilities of criminal justice system (%)



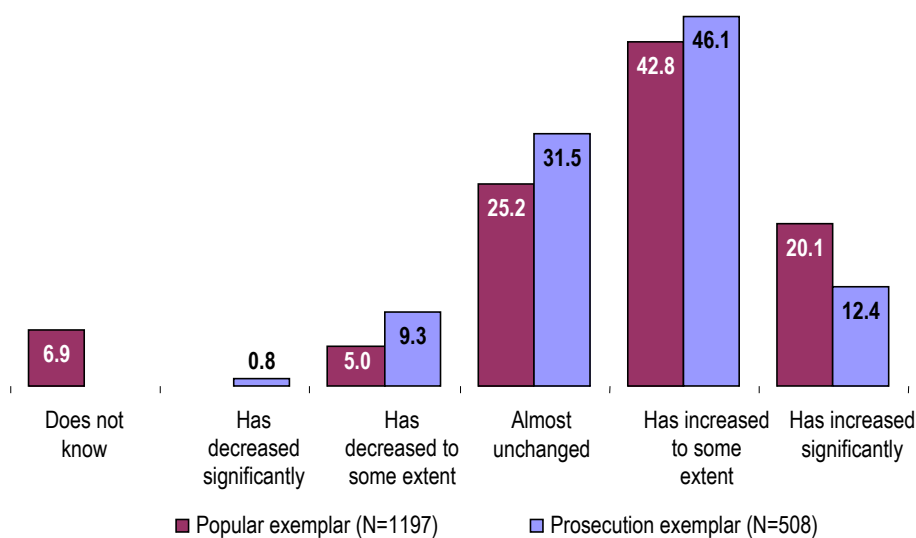
It seems as if the questioned would strongly agree that the criminal jurisdiction should serve better the interest of the victim. There is hardly any difference between the answers of the two exemplars regarding the question of reparation and the agreement of the criminal and the victim, although if we analyse the data in detail and through other connection then the picture is not that evident any more. The respondents of the two exemplars consider identically the importance of the encouragement of the offenders for the reparation of caused damage, and for awaking the criminal's sense of responsibility. Approximately similarly – just about two third of them – both exemplars believe that the cooperation would lead with greater likelihood to the reparation of damage then the application of force. The professionals however assist the possibility of compromise between the offender and the victim in a higher extent then the respondents of the population sample. This indicates firstly that the professionals estimated the likelihood of case-decrease through the mediation while on the other hand that the population should be given more detailed information in regard to mediation applicable at criminal matters.

¹⁰ The “does not know” and “no answer” results as well as the “as-as” (agrees and disagrees) answers were excluded in the above calculation.

6. Information upon the reality of criminality and on the sentencing practice

Likewise to the results of the foreign analyses¹¹, the results of our survey witness the lack of information on criminality and on the sentencing practice. The professionals have more adequate knowledge than the respondents of the popular exemplar – although even the information of the professionals is not exact in that regard. According to the opinion of 58.3% of the prosecution respondents national criminality has significantly increased in the last two years. It is truly possible that this impression of the prosecution was evoked by its incontestably increasing responsibilities, since the institution of the delay of accusation (for the release of the judicial segment of the criminal jurisdiction) increased significantly the duties of the prosecution. We may find significant difference in what the respondents of the public sample think about the volume of the domestic criminality, about its internal dimension and dynamics, and about the particularities of typically committed crimes. 42.7% of the questioned in the popular exemplar held that national criminality has increased to some extent, according to 20% the increase was significant. At the same time it seems as if even the prosecutors were not completely aware about the criminal statistical data. This is particularly interesting for the decrease of criminality is not only a national phenomenon, but similar tendencies are occurring throughout the world.¹²

The alteration of crimes become known in the last two years according to the respondents (%)



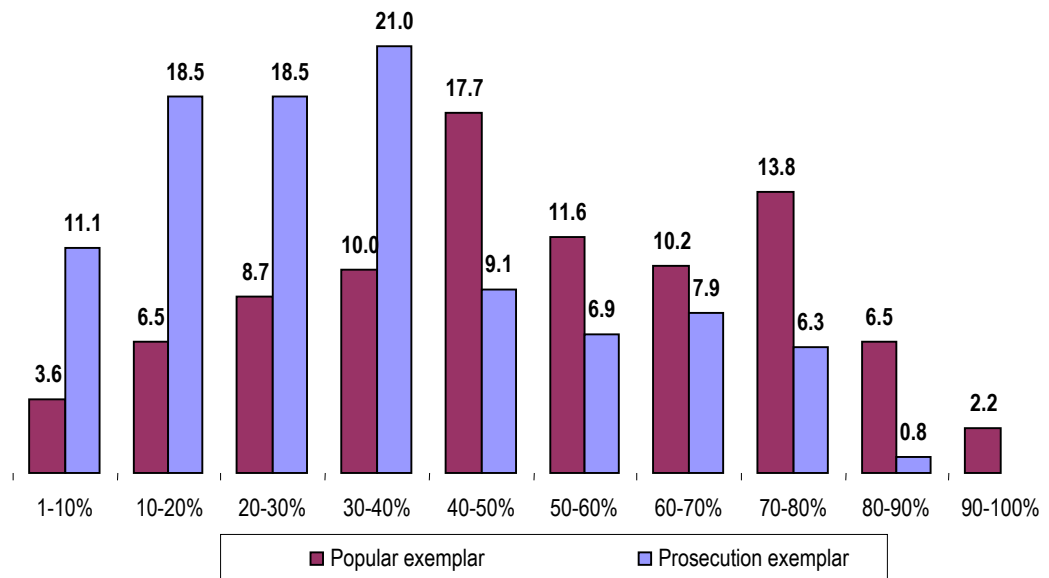
Foreign researches also indicated earlier that the attitudes towards violent crimes define how the people have their opinion about the entirety of criminality. The explanation of that is that the primer source of information related to criminality is from the news appearing in the media and the mass communication is highly interested with violent crimes discussing them in large numbers in comparison to their appearance. It may also result from this that the

¹¹ See: British Crime Survey (BCS); Pfeiffer, Ch. - Windzio, M. - Kleinmann, M. (2005): Media Use and its Impacts on Crime Perception, Sentencing Attitudes and Crime Policy. European Journal of Criminology, Vol. 2 (3), pp. 259-285.

¹² On the reasons and possible explanations of the decrease of criminality see: Blumstein, A.: The Crime drop in America, and Tonry, M.: Explaining European crime trends. The plenary lectures were held at: The First Annual Stockholm Criminology Symposium: "Recognizing Knowledge to Reduce Crime and Injustice" 15-17 June, 2006.

questioned have quite different knowledge upon the structure of the national criminality than the real.

„According to your knowledge how many crimes could be violent or committed with the treat of violence from 100 crimes?“ answers on the question given in percentage.



In 2004 the percentage of violent crimes has been 8% therefore the laity respondents overestimates considerably, while the prosecutors – although in a definitely smaller level – but also overestimate the extent of violent crimes. Only 3.6% of the questioned popular whereas 11% of the prosecutor respondents indicated the percentage of violent crimes correctly.

7. The opinion on the importance of crimes and legal consequences

The questioned do have a quite adverse opinion on the domestic practice on punishment – but neither is this different in other countries. One of the possible explanations of this phenomenon is that people do not have adequate information on the process of punishment. According to the results of foreign surveys people are susceptible to express punitive attitudes when they do have to reply widely taken general and abstract questions. When however detailed information is also available they are able to implement complex and different viewpoints – often contradicting each other – instead of the simplifying and punitive approach.¹³ Hough gets from that to the conclusion that the punitive approach witnessed at the general questions softens or disappears, when more information is available about the certain case.¹⁴ According to Hutton the abstract pro-punishment or punitive attitudes coexist with the more subtle and justice-sensitive approach to individual cases, rather reflecting the

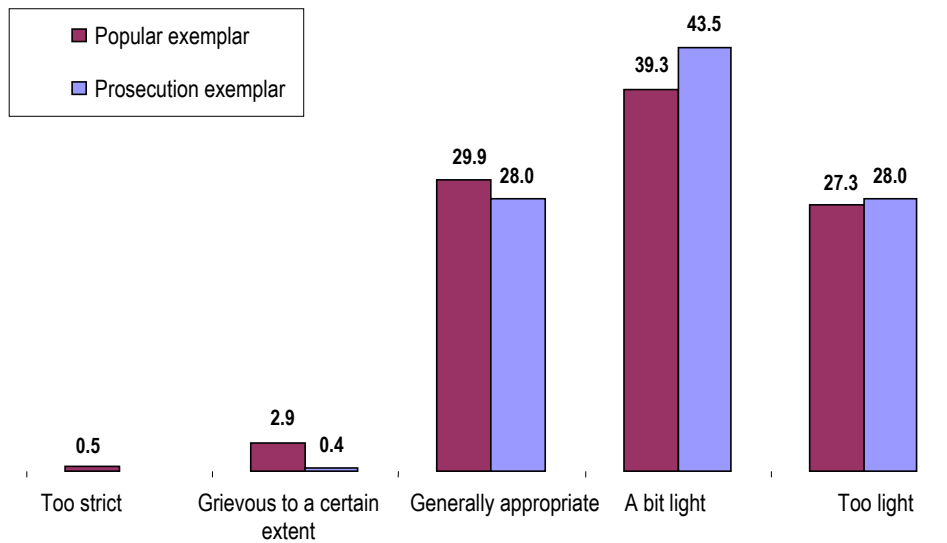
¹³ Ashworth, A. - Hough, M. : Sentencing and the Climate of Opinion'. Criminal Law Review, 1996, pp.776–787.; Doob, A. - Roberts, J.V. : Public punitiveness and public knowledge of the facts: some Canadian surveys. In: N. Walker - Hough, M.(eds):. Public Attitudes to Sentencing. Surveys from Five Countries. Aldershot: Gower,1988.

¹⁴ Hough, M. – Roberts, J. (1998): Attitudes to punishment: findings from the British Crime Survey. Home Office Research Study 179, Research and Statistics Directorate Report, Home Office, Research and Statistics Directorate, London,1998, p. 69.

considerations of justice in their approach.¹⁵ This does not mean – says Hutton – which the punitive approach disappears completely at the judging of individual cases if more information is available for the questioned. Namely when the surplus information indicates that the criminal could be of a greater danger for the community then the public opinion needs greater security – even by the more frequent application of imprisonment.

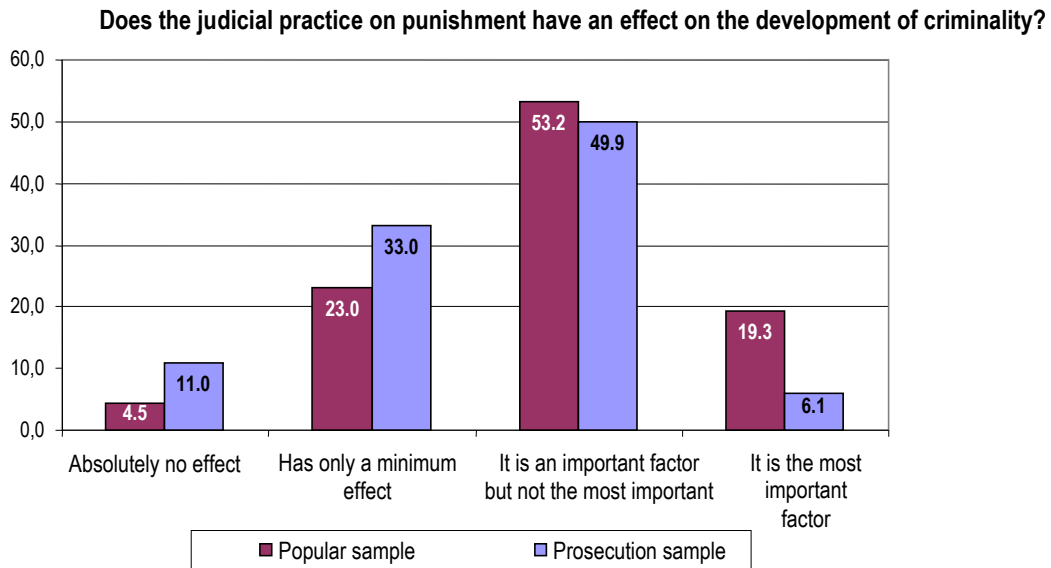
Even by the indication of the non-representative nature of the prosecution exemplar it is highly remarkable that the professionals are even less satisfied with the sentencing practice then the popular opinion. The reasons of this phenomenon should be enlightened by a more detailed analysis.

The public and prosecutorial opinion on the domestic practice on punishment in the percentage of the respondents



After the questions on the formation of criminality it was also asked whether the respondents think the development of criminality – be it positive or negative (according to them) – is in relation to the sentencing practice. About the answer on the sentencing practice it may be presumed that the respondents think there is a relation between the two phenomena: the increasement of punitiveness of the sentencing practice results necessarily the decrease of criminality. We hereby disregard the introduction of the sources filling libraries justifying the opposite of that and concentrate what the results of the survey indicate towards that relation. (At the calculation of distribution the answers uninterpretable by their content were excluded.)

¹⁵ Hutton, N.(2002): What the Scottish Public think about Crime and Punishment. Paper presented at the Second International Conference on Sentencing and Society Centre for Sentencing Research, Univ. of Strathclyde, Glasgow, June 27-29., p.12-13.



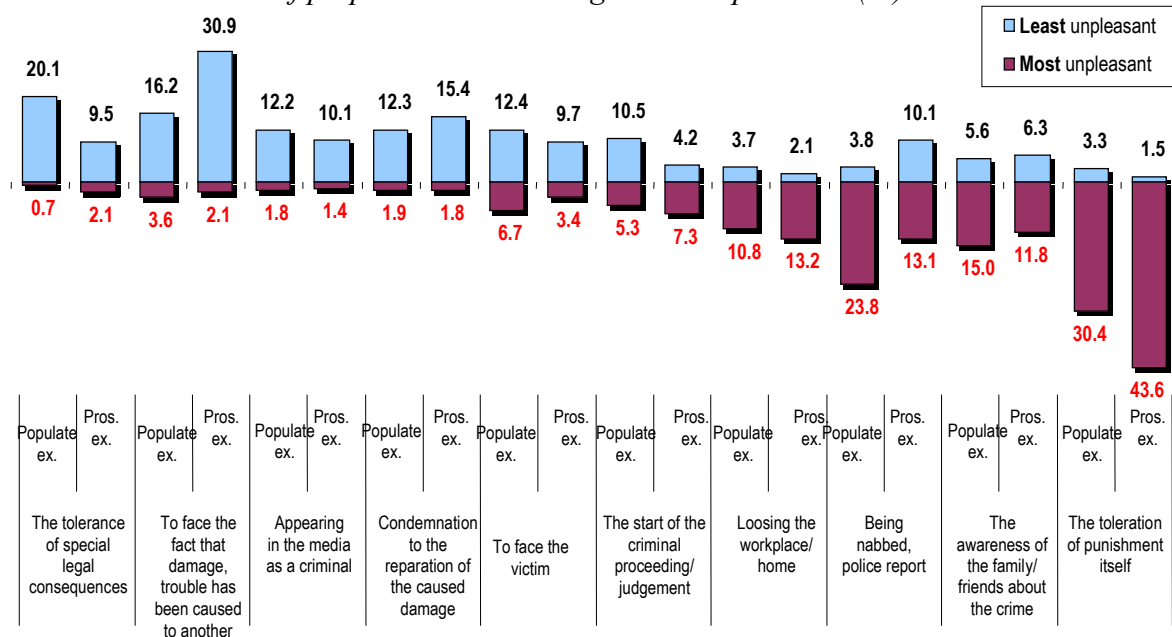
The data justified our expectations: more than two thirds of the popular questioned supposes strong relationship between the practice on imposing punishment and the development of criminality. Therefore the majority of the popular exemplar believes that the lenient sentencing practice is one of the reasons of the increase of criminality. Almost twenty percent of the questioned considers the sentencing practice as the most significant factor in regard to the development of criminality. Nevertheless the three fourth of the members of this group agreed – in a reply given to another question of the questionnaire – that “people know generally little what happens during the criminal procedure”. The replies of the prosecution exemplar differs to some extent, for more than the half of the questioned (56%) regards this connection significant, and a much higher fraction believes that there is no, or is only a weak relation between the sentencing practice and the development of criminality.

The data indicate that according to 22.9% of those who believe that criminality has increased in the last two years “to some extent” while 53.8% of those who believe that criminality has increased “significantly” considers the sentencing practice too lenient. We learn a similar connection to the number of persons convicted to imprisonment: from those who believe that the number of persons sentenced to imprisonment has decreased in the last two years almost 40% also supposed that the imposed punishment were too lenient. This is strengthened by the correlation occurring in the prosecutorial exemplar that those respondents who think that the number of condemned to imprisonment has decreased in the last two years are mostly convinced that the domestic practice on punishment is too mild.

During the analysis we asked the reported persons about what is the most and least unpleasant result of perpetration, and of the condemnation to imprisonment. The below diagram – in its diversity of both examples – shows the percentage of replies given at the first place. It seems that the replies given to this questions rhyme with the answers given on the motives of abundance of law which were already analysed earlier. It is not doubted that the respondents consider the bearing of imprisonment as the most severe legal consequence. At the same time the differences of responses in the two exemplars indicate very well that the prosecutors are rather clear about the burden of imprisonment in the practice. The prison sentence is followed by being nabbed and the police report in the line of the most unpleasant consequences. There is also a difference between the evaluation between the responses of the two exemplars which is a probable result of the information on the prosecution exemplar’s side that condemnation

to imprisonment does not necessarily follows the police report for there are other legal consequences to be applied.

What is the most and what is the least unpleasant result of perpetration according to the respondents (%)¹⁶



It has been earlier discussed that one of the responsibilities of criminal justice the respondents consider important the encouragement of reparation and the strengthening the criminal's sense of responsibility. We have to state with sadness in regard to this question that the attitudes regarding these consequences amongst the population as well as amongst the professionals show that the respondents consider insufficiently the moral consequences of criminal behaviour, and the conviction. This is particularly regrettable for the evaluation of the results may not be limited to the bearing of the punishment but the morality, as the evaluation of the "accepted believes, norms and values of the social community in the dimension of good and bad, right or wrong"¹⁷ has also a role.

We believe that the responses show a more general approach as well, and "devalue" the importance of the possibility of manipulating the psychic relation between the offender and his/her crime. The restorative justice – howsoever restitution is its central term – is primarily concerning the relation existing between the criminal and the condemned crime. According to Antony Duff the reaction does not answer the caused damage of the crime, but rather the personality of the criminal. According to his position this relationship should be strengthened by stimulating the true acknowledgement of causing damage in the criminal, the recognition that by the commission of crime damage has been caused to others, as well as by strengthening the will of reparation in him. Only this process is capable – continues Duff – to change the relations of the criminal, not only to the victim (and not least the relation of the victim towards the criminal) but also to other members of the society.¹⁸

¹⁶ The diagram indicates the division of answers in percentage in both of the exemplars.

¹⁷ Béla Pokol: Jegyzeték az erkölcs és a morál szerepéről a modern társadalmakban. (Notes on the role of morality and ethics in the modern societies.) [<http://jesz.ajk.elte.hu/pokol23.html>]

¹⁸ Duff, A.: „Restorative Punishment and Penal Restoration”. Plenary lecture at the „Positioning Restorative Justice” conference. International Network for Research on Restorative Justice for Juveniles, 16-19 September, 2001., Leuven, Belgium

Summary

Everybody has an opinion on crime and punishment. These approaches of the common people are however not in the depths of Dostoyevsky and most frequently are not based upon the directly experienced facts. They indicate rather generally the worries about living conditions, social insecurity and disorder then simply the opinions about crime and punishment.

The results of the survey indicate that – in contrast to the professional experiences – the people generally think that criminality is continuously and rapidly increasing. It is apparent that the respondents overestimate the quantity and frequency of violent crimes amongst the reported crimes. This may also result from the fact that politics and professional politics addressed certain types of violent crime categories throughout Europe as family violence, sexual offences against minors, or football-violence. The opinion about the composition of the entirety of crime may have been a victim of that “illusion”. We may identify significant lack of information about the sentencing practice as well. It is considered regrettable that the majority of the questioned considers even at serious violent crimes that such perpetrators are not sentenced to imprisonment by the national courts – and therefore the practice of punishment is believed to be lenient as it is in reality. This belief may be strengthened by the representation of criminality by the media from which picture the conclusion of increasing and more violent criminality may be drawn. The detailed discussion of extraordinarily serious crimes deforms the formable portrait on the existing criminality.

On the other hand it is not only the responsibility of the mass media to secure that the people know the real facts. It is the duty of the government and of the criminal justice institutions to provide with such comprehensible and interpretable information the public from which it becomes clear that for example what facts are considered by the court during the imposing sanctions, which sanctions may be used in regard to crimes of certain severity, and the list could be continued. It has to be considered essential for the national curriculum to include detailed knowledge concerning the criminal justice and its functioning.

For me the above deficiency is the omission of the criminologists too: as if the power or determination of the profession would not be sufficiently striking to inform the public about the real situation. The existent situation shows the stagnation of criminality while there are certain crime categories where there is a significant change: hence particularly the public domain and hooligan crimes and the crimes committed by the – most widely interpreted – “misuse of trust” which may relate to the Economic Crimes, Crimes against Goods, or to other Chapters of the Penal Code. It seems as if at the beginning of the 90’s, at the quick increase of criminality the public was successfully “alarmed” and therefore sources – although never enough – could have been allocated to the criminal justice institutions. Today it seems as if the professionals as well as the politicians would care less about informing the public about the existing situation.

The results of our research also indicate that the imprisonment, and the rising of the lengths of prison terms is a frequent answer upon criminality and the majority of the people believes that with these punitive answers crime could be diminished. Nevertheless it was also experienced that the respondents do not consider this as the sole reaction upon crime. The attitudes of the population towards the wider use of imprisonment should be considered as ambivalent the least.

The conclusion may be drawn and the duties are evident: public trust in the system of criminal justice may also be increased by the wider distribution of information on the sentencing practice. We consider as similarly important responsibility the strengthening of public knowledge upon the existing development of national criminality with special attention to the extent and characteristics of the domestic violent criminality.

The results of the analysis also show more general social-psychological relationships. The majority of both exemplars agreed with the statement that “the gaps of law may be used as long as one does not infringe the law”. We may not be too far away from the truth if we presume that the relatively high number according to the “gaps of law” question indicates that not only the common people but also the professionals are unsure in the case of conflicts of law and morality. It was conspicuous from the distribution of answers at the popular exemplar that relatively how many do believe in the power of law, and how few in the role of religion strengthening morality. „A conduct which has to be followed in the society under the pressure of necessity is not any more articulated by moral conventions but the rules of law – writes Béla Pokol.¹⁹ However we do disagree with this categorical statement amongst the behaviour-regulating equipments the re-evaluation of law is apperceived without any doubt. Not necessarily in the sense that a behavioural norm in the form of law will be followed in any cases but rather in the sense that the “wastes” disappear between the fields of behaviour-regulating devices and the law will predominate at areas where the regulative power of morality should prevail or would be enough if morality would success. The question relates to the subject of restorative justice since this approach – as detailed earlier – attaches greater importance to individual moral then the traditional criminal justice estimating the consequences upon the rule of proportionality.

The “appearance” of the victim amongst the actors of criminal justice aids not to define the crime only as an event giving the possibility to exercise the penitentiary power of the state but also as damage suffered by a person. This creates the possibility for the conflict manifested by the commission of crime to become a meaning and for the operating system to react upon this conflict (as well) by the applied legal consequence.

According to Braithwaite shame and punishment were divided it is therefore necessary to restore the historical connection.²⁰ It is an undoubtedly experienced alteration in this relation which is also underlined by the results of our analysis. In the 1990’s – when even at the theory of restorative justice the notion of “community” has appeared – brought new blooming in the expansion of the restorative justice thinking. That was the time when restorative justice became connected to the collective thinking. Braithwaite presumed that the transformation of institutional conditions is required for the “reintegrative shaming” to reach its objective both in the collective as in the individual. Braithwaite therefore speaks about humiliating and humiliation. We believe that the individual remains alone by the shame – whether in the form of humiliating or humiliation – however the re-integrative nature of that is emphasised. Therefore in the modern societies based on participation democracy it is rather the responsibility, more exactly the acceptance of responsibility which should be highlighted for only after the recognition and acceptance of that could a responsible decision be brought and the reparation of the damages caused by the crime be done. The acceptance of responsibility is however on both sides important so on the side of the offender as well as on the community for the forgiveness – and thereby for the appropriate description of the problem – since apology by itself is not sufficient. It may throughout be agreed with the phrasing that the restorative justice approach grants the possibility for the victim to get reparation, to strengthen his sense of security and to be able to settle the case in him. At the same time it gives the possibility for the criminal to meditate, to survey the reasons and consequences of his behaviour, as to take real responsibility for his action.

¹⁹ Pokol: op. cit.

²⁰ Braithwaite, J.: *Crime Shame and Reintegration*. New York: Cambridge University Press, 1989

According to our position not the connection between shame and punishment was broken: the most people do not commit crime because they condemn it morally, and not primarily because the law prohibits and punishes. In the world of globalisation therefore the stresses were removed and nowadays for reaching the objectives of the sanction necessarily other elements should come to the front. The element of shame is inevitably a part of punishment. The function of the punishment is that by its resulting it strengthens the validity of the relevant norm. The “criminal punishment makes possible, almost brings out the disapproval of the society. The revealed behaviour will become a social matter by the punishment: the exposure opens the way to the moral disapproval and gives the possibility for the outcry”.²¹

The data of our survey gave miscellaneous results on the popular acceptance of the restorative justice. The populations estimate differently the application of the restorative justice instruments and the necessity of their application depending on their age, sex and residence. At the same time openness was also experienced through the comparison of the answers which openness could be transformed to acceptance through widely spread aimed information and convincement. From the answers of the professional exemplar – although the exemplar does not represent the opinion of the entirety of professionals working at the prosecution – the idea of reparation received a very strong support. The prosecution professionals appreciate certain elements of the restorative justice positively while at the same time significant uncertainty and misinterpretation is identifiable which indicates that these questions have to be outlined at the professional trainings and studies, with particular attention to the institution of mediation.

The spread of the idea of restorative justice grants possibility for speeding up the reform processes of criminal law. Whereas Strang and Sherman take the view that the satisfaction of the victim’s demands and needs may not be satisfied by partial reforms. It seems more probable – they write – that the new jurisdictional paradigm requires the transformation of the science and values of jurisdiction to be able to value the victim on the same level as the criminal and the community.²² Katalin Gönczöl opens the optic even more and by her wording she refers that the restorative justice approach could even assist the development of democracy, the reparation of the Society’s “mental hygienic state”: “the restitutive jurisdiction may therefore become a tool of constructive problem-solving and social integration. If it works well it may compensate the reactions of populism, simplified by temper, resulting the excessive power of the state and having exclusive effects. The restitutive jurisdiction calculating with the community serves the democratic development by construing the community not from outside, but by becoming a part of the process of continuous change granting the existence of the community.”²³

²¹ Szabó, A. : A bűn és a büntetés erkölcsi kérdései. (Moral questions of crime and punishment) Főiskolai Figyelő, 1996/2. sz. p. 23.

²² Strang, H. – Sherman, L.W.: Repairing the Harm: Victims and Restorative Justice. [http://www.sas.upenn.edu/jerrylee/research/rj_utah.pdf]

²³ Gönczöl, K.: Szolgáltassuk az igazságot! (Let us serve justice!) In: Kovacsics Jné (szerk): Egy élet az igazságügyi statisztika szolgálatában. Ünnepi kötet a 70 éves Vavró István tiszteletére. ELTE ÁJK., Budapest. 2006, pp. 52-53.