

# **SURVEILLANCE AND CONTROL OVER INCAPACITATION, DETERRENCE AND REHABILITATION EFFECTS OF THE PUNISHMENT**

**Vesna STEFANOVSKA**

Associate Professor, Faculty of security – Skopje,

University “St. Kliment Ohridski” Bitola

E-mail: Vstefanovska77@gmail.com

## **Abstract**

The debate about the role and purposes of the criminal sanctions related to crime reduction, starts from the norm, that is, from the legally prescribed goals in the national Criminal Codes. The aims of the criminal sanctions are to prevent both, the offender and other potential offenders from committing a crime in the future. In addition to those special and general preventive effects, the preventive role of the punishments can be also exercised through the effects of incarceration and incapacitation. However, the positive impacts of such punishment are in question which opens up many dilemmas and debates among scholars. In this regard, the first part of the paper makes a brief analysis of specific theoretical perspectives and research results related to the dilemma whether deterrence and rehabilitation exert any influence over crime reduction. The second part refer to the theses of Michel Foucault, cited in his book *Discipline and Punish* (1975), in which he argued that punishment is a mechanism for disciplining, observing and controlling the behaviour of those who are punished. In the end, we present a short review of the current reforms of the Macedonian criminal justice policy in order to explore whether our criminal justice system succeeds in reducing (or at least) controlling crime?

**Keywords:** *Deterrence, Incapacitation, Punishment, Rehabilitation, Crime Control.*

## **Introduction**

The debate about the role and purposes of the criminal sanctions related to crime reduction, starts from the norm, that is, from the legally prescribed goals in a number of legislations. In the Macedonian Criminal Code these legally prescribed goals are interacted in the Official Gazette of the Republic of Macedonia, No. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14. The aims of the criminal sanctions are both to prevent the offender from repeating the crime, and to prevent other potential offenders from committing similar crimes. These goals are, in fact, special and general prevention of punishment (or special and general deterrence effects). They come from the period of the Enlightenment and from the Classical School of Cesare Becharia (1738-1794), which, in 1764 in his short publication *The crime and punishment*, set down the basic postulates of the modern criminal law. In addition to the deterrence effect, the preventive role of the punishment and the criminal sanctions can be also exercised through the effects of incarceration i.e. through incapacitation. The incarceration and incapacitation of the offenders have a preventive effect because they are temporarily or permanently deprived of their freedom in correctional institutions and are actually removed from the society. At the time of confinement, they are prevented and unable to commit crimes. On the other hand, rehabilitation programs and treatments in the correctional institutions strive to reform i.e. rehabilitate the convicted offenders, through development and improvement of their social and cognitive skill, the skills for stress and aggression management and for conflict resolution etc. Also, by giving them chance to gain certain work qualification, the offenders might improve their ability to be gainfully employed and so to be able to live life free of crime (Stefanovska & Jovanova, 2017, p. 64).

Taking into account the indicated effects of punishment, we raise the questions of whether punishment affects the rate and level of crime in the society. If the punishment does not reduce crime rate, then what is its role and function in crime control? Or what should be done to improve its effectiveness and usefulness? If the punishment cannot be improved, what is the reason for its existence, etc.? The above questions are subject of examination in the text that follows. In particular, the first part makes a brief analysis of specific theoretical perspectives and research results related to the dilemma whether deterrence and rehabilitation exert any influence over crime reduction. In the second part, we will refer to the theses of Michel Foucault, cited in his book *Discipline and Punish* (1975), in which he rejected the traditional goals of punishment as ineffective, and argued that punishment is a mechanism for disciplining, observing and controlling the behaviour of those who are punished.

In the end, several topics will be opened: what kind of criminal justice policy and what criminal law (penal system) we are building? Does Macedonian criminal

law and a criminal justice system succeed in reducing (or at least) controlling crime? And are Foucault's theses for punishment present in our penal and social context? In doing so, we have to bear in mind the dominant political doctrines and ideologies that have a significant influence on the basic principles and on the way in which the criminal justice policy is built.

### **The punishment and its deterrence and incapacitation effects**

The theory of deterrence assumes that criminal sanctions (those which are already imposed and those which are threatened to be imposed, like Damocles sword over the heads of the offenders) will intimidate and deter perpetrators (and potential perpetrators) from committing crimes. The basis for this effect is that criminal sanctions pose a threat and risk for punishment and cause feelings of fear. In that sense, deterrence will be effective when an offender, motivated to commit an offense refrains from such commission, because of fear of the consequences (Wikstrom, 2008, p. 376). So, the concept of deterrence based on the threat of punishment, presumes that offenders are rational and calculate the consequences of their actions, both the gains and losses. The latter means that the criminal justice system relies on trust and expectations that the criminal sanctions will deter crime, and the former, that if the losses exceed gains, motivated offender will not commit a crime. Such a choice is a calculated risk and for offenders, in certain situations, is not a risk worth taking (Paternoster, 2010, p. 783, cited in Stefanovska & Jovanova, 2017, p. 65).

In addition, the criminal sanctions have to be certain, swift and severe. In that sense, surveys which study the deterrent effect of punishment usually consider the relationship between severe penal policy and deterrence, the citizens' perception of severity, the certainty and swiftness of the punishment and the familiarity of citizens with the penal policy in their country. Empirical findings regarding the effect of deterrence of envisaged and imposed criminal sanctions are disappointing. For example, under the influence of the theory of deterrence, the United States adopted many amendments to tighten their penal policy. One situation concerns the increased application of the death penalty, which relies on data which show that each execution saves eight (Ehrlich, 1975) or 18 lives i.e. potential victims of crime (Dezhbakhish, Rubin and Shepherd, 2003). Despite the few positive views about the effectiveness of the death penalty in reducing crime, most findings suggest that it has no deterrent effect. It can even increase suicides because of its brutality (Paternoster, 2010: 783). Ultimately, we can say that the death penalty (or state execution) legitimizes the use of violence, showing that it is permitted to kill a person for a serious crime (Vito F. Gennaro, Maahs R. Jeffrey, Holmes M. Ronald, 2006, p. 60). In addition to the above, the research results gathered by the National Research Council (USA) in 2012 and

published in the Deterrence and the Death Penalty Report (Nagin, Pepper, 2012) show that the death penalty has no effect on the murder rate. Therefore, one of the recommendations is that there is no deterrence affect in the death penalty and should not be taken into account when a judge considers whether to impose capital punishment for more serious crimes (referred to Daniel S. Nagin, 2013, p. 24).

An important reform in American Criminal Law is the adoption of "three strikes and you are out" Law, which has been passed, first in California in 1994 and then in many US states. That law provides that after third offense and after second sentence, the offender may be sentenced to imprisonment for a minimum of 25 years (Paternoster, 2010, p. 783). The argument is that more than three crimes (after imposed sentences) are an indicator of offender's danger, consistency and failure of the rehabilitation program applied during previous convictions. Research on the effectiveness of the Law showed that serious crimes are reduced very slightly, or up to two (2) % (Vito F. Gennaro, Maahs R. Jeffrey & Holmes M. Ronald, 2006, p. 263). Or, in contrary, certain analysis, which is based on the initial thesis that the severe punishments and long-term prison sentences increase public safety and reduce recidivism, shows that the rate of recidivism, instead to be reduced, is usually increased. The explanation is that when inmates serve longer sentences, they, as a result of prison life under strict institutional regime, lose social contacts in the community. Such loss of links with the outside world reduces the chances of restoration, or establishment normal social relations after release from the penitentiary institutions, which increases the risk for recidivism. Thus, those studies (Cook, 1984, Nagin, 1998, Van Hirsh, 1999), have proven that severe penal policy has no, or limited deterrent effects.

Regarding the concept of general deterrence, the justification of punishment can be found in a future fact. Namely, we punish the offender in order to exert positive influence on other potential offenders to avoid crimes in belief that the criminal sanctions will deter or prevent future crimes. This means that the state, through the criminal law, i.e. through the prescribed and imposed criminal sanctions, wants to "threaten" or discipline the entire population and thus to legitimize certain criminal sanctions which are repressive in their nature. For example, the electronic monitoring, leg bracelets (O'Molloy, 2010, p. 4), the increase of the length of the prison sentence etc. represent a legal basis for the state's right to discipline its citizens. Most of the public agree with such a policy because they require more severe punishments and want just desserts for the offender. But in terms of general-preventive effect of the punishment and deterrence, we raise a few questions: Is it possible to apply sanctions (and other measures) in the name of deterrence not only to potential offenders who have the potential to commit a crime, but also to all other citizens who do not have any potential to commit a crime? Are all citizens potential perpetrators? Is the policy of risk justified for all citizens? Does the policy of deterrence increase the feeling of

fear and insecurity among the citizens? Considering the challenges and the crisis of the new penal policy, as quoted by Kambovski (2002), general prevention is reasonable and justified, but only to the extent that it does not enter in the space of undisputable human rights. Moreover, it can be more achievable, not by severity of the punishments, but by their certainty and swiftness, and, in that part, the criminal law should exercise its function (Kambovski, 2002, p. 79).

On the other hand, the concept of incapacitation relies on the preposition whereby, while the offender is imprisoned, he cannot commit crimes outside the prison. This means that if society confines more offenders, crime will decrease. In addition, crime reduction will follow as result of both, long-term imprisonment and its frequent application. This sense was supported and followed by the policy of incapacitation and incarceration. That policy becomes dominant in the US in the 1980s and following. Consequently, the United States, between 1990 and 2000, registered a huge increase of the prison population, followed by a small reduction of crime. Concretely, statistics show that for 23 years, the prison population gradually increased, from 200,000 thousand prisoners in 1980, their number reach two million in 2003. However, such an increase in the use of imprisonment only slightly reduces crime rates. For example, 10% increase in incarceration rate results in a 2% reduction in crime rate. But, despite these findings, we cannot determine with accuracy whether the reduction in crime is a result of the deterrent or incapacitation effects (Paternoster, 2010, p. 803). This dilemma arises because, for example, in Canada in the period from 1993 to 2001, both the imprisonment and crime rate is decreased. This means that, Canada had an almost equally decline in crime without a huge expansion of incarceration like that in the United States (Paternoster, 2010, p. 803). Other studies show that long-term prison sentences (or even life sentences) for murder, rape and physical assault, does not reduce the number of these crimes. Therefore, the effect of incapacitation and length of the prison sentences cannot be justified as means to prevent crime (Nagin S. Daniel, 2013, p. 5). Although the penal policy is based on several effects, the analysis and researches cannot determine which effects, what and how much influence this penal policy exerts. This is because they might have both, positive or negative impact, and instead of reducing, might actually increase the crime.

In short, the general conclusion about the preventive effects of the punishment is that traditional criminal sanctions, i.e. imprisonment cannot reduce crime. Any attempt to isolate the reasons from the criminal behaviour is impossible. Namely, the punishment and imprisonment do not address the causes of crime, but leaves them aside. And as long as society relies solely on the criminal justice system as the only solution to reducing crime, the crime simultaneously grows (Stefanovska & Jovanova, 2017, p. 73).

### **The punishment and its rehabilitation effect**

The period of penal welfare, when the rehabilitation of the offenders was the primary idea, aim and ideology within criminal justice policy and practice starts to fade away after 1970's (Selih, 2009, p. 45). This period, which was influenced by the positivist criminology (psychological and socio-psychological), strives to reveal and understand the individual factors of the criminal behaviour by applying scientific methods. In this direction, the prevention of crime aims to limit or eliminate key factors related to the individual characteristics of the offender or to his immediate social environment (family, school, neighbourhood, local community) (Kanduc, 2009, p. 75). According to positivism, the offender is a homo criminal, a person with a certain disadvantage, who is not adequately socialized and who has weak self-control and discipline. The disadvantage may be internal and related to certain personal characteristics (low intelligence, low moral feelings, insufficient empathy, insufficiently developed conscience) or external and associated with his close social environment (a lack of material goods, absence or inadequate work, low social status, absence of respect and support from others, etc.). The offenders are usually described as minority (Kanduc, 2009, p. 76), and preventive strategies include psycho-social responses towards their adverse behaviour (Hughes & Edwards, 2005, p. 17). In this regard, the rehabilitation strategies strive to change offender's behaviour by applying certain measures and activities during the execution of the criminal sanctions, mainly in prison and correctional facilities. But, scholars have different opinions regarding the possibility to change and improve the human behaviour in prisons.

On the other hand, one group scholars considers that re-socialization can be achieved by applying effective measures and activities aimed at eliminating the causes that led to criminal behaviour, which are primarily subjective in nature. According to them, through systematic work and individual treatment with the offenders based on their needs and interest, over a certain period of time, can improve their antisocial and criminal behaviour (stated in Shurbanovski, 1993, p. 32). For example, some analysis shows that rehabilitation programs based on the personality of the convicted person can cause positive changes in his behaviour, since the goal is not isolation from the society, but the creation of conditions for successful reintegration in the community. The advocates who believe in the rehabilitation model add that prison sentences can exert positive influence if their execution is based on the modern principles of the individualization of the punishment (which means that the prison treatment is adjusted to the offenders needs and interests), classification of offenders in certain treatment groups according to a branched system of objective and subjective criteria and proper categorization of prison facilities based on the level of security and freedom of movement of the inmates (open, semi-open and closed prisons). Under such conditions, supporters defend the thesis that

imprisonment might be effective tool for re-socialization, rehabilitation and successful reintegration of prisoners into society.

However, despite the beliefs of some in the success of the model of rehabilitation, others have pointed out some contradictions to the model. These contradictions are presented in a meta-analysis of 231 programs conducted between 1945 and 1967 in the United States, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* (Lipton, Wilkes and Martinson, 1974). When publishing the results, researchers concluded that, with few exceptions, rehabilitation efforts did not have a significant effect on recidivism. The strongest argument against the effectiveness of the rehabilitation process is the contradiction between the essence of the punishment (that is exercising justice and punishment in line with just desserts paradigm) and the purposes of punishment (special and general prevention). A person cannot be rehabilitated, isolated from the outside world in a company with persons who were, once or several times, in conflict with the law. The convicted person, under institutional treatment, should learn how to behave and live in the society according to the common moral values. This experience cannot be learned in prison because the institutional treatment primarily requires from the inmates to adapt to the life inside the prison facilities. The example from certain criminological studies conducted in the penal institutions shows that the rehabilitation treatment does not give better results than classical prisons, in which no treatments were applied. So, the thesis is confirmed, that prisons cannot rehabilitate and prevent convicted persons from additional crime. Also, imprisonment does not mean merely limitations of the freedom of movement. As Sykes argues, “the value system among prisoners was a problem solving mechanism, a collective response to the intrinsic problems of the environment, enabling men in captivity to deflect moral condemnation, alleviate their farers, mitigate material scarcity and stave off the practical and psychological threats that were inherent to incarceration (Crewe, 2010, p.135). So, the prisons, as institutions of social control, influence individual feelings and perceptions, and prisoners perceive themselves in a negative way (Sparks & McNeill, 2009).

As part of the large number of surveys concerning criminal behaviour in young people, those in penitentiary institutions are of particularly importance in order to consider the efficiency of institutional measures and rehabilitation programs and, particularly the consequences of imprisonment on the development of young inmates and their further behaviour. In this context, many research results confirmed several theses related to the utility of prison sentence. These include the fact that imprisonment does not reduce the rate of recidivism; imprisonment drags the young people even deeper into the criminal justice system and increases their deviant behaviour; imprisonment increases the chances of self-harm; and young people in penitentiary and correctional homes are often victimized by more aggressive prisoners. Hence, the general conclusion is that the penal institutions are anti-

therapeutic, anti-rehabilitative and inhumane institutions (Inderbitzin, 2012, p. 446). These conclusions are main theoretical perspectives by several important theories within academic community.

According to the Theory of Deprivation developed by Sykes (1958) and Goffman (1961), depriving conditions of the prison produce aggressive and self-destructive behaviour. Sykes coined the phrase “pains of imprisonment”, and he identified five specific pains i.e. deprivations (of security, goods and services, autonomy and heterosexual relations) that extend far beyond the loss of liberty (Crewe, 2010, p.135). Or, as Goffman explained, that once removed from everyday life and placed in prison, the inmate would experience “civil death”. So, the institutional life would subject the inmates to a series of degradations and humiliations. In that sense, the inmates’ previous identity will be systematically mortified and reconstructed in accordance with a new set of circumstances and power relations in the new prison environment (Hadfield & Hardie-Bick, 2010, p. 131). Hence, deprivations require from the prisoners to adapt to the imprisonment by changing their behaviour, thoughts, and self-identity. Such negative processes in penal institutions reduce the chances of a positive change in their behaviour.

However, Importation Theory argues for the importance of the characteristics of the prisoners (their previous socialization, marginalization, deviance, value system, education, etc.) and their influence on the processes of adaptation in penal institutions (Irwin & Cressey, 1962; Irwin, 1970). This theory explains the impact of their beliefs, attitudes and behaviours that are learned and acquired outside, and which prisoners bring them to prison. In other words, the prison facilities create a culture that reflects the world which was experienced before the prisoner’s confinement. This is contrary to the thesis that prison culture and behaviour are determined by the deprivations caused by imprisonment (Ogilvie & Lynch, 2001, p. 333). According to the importation theory, the connection between the confinement and the sense of identity is also the subject of analysis. The question “How do prisoners perceive themselves in the prisons?” is related to the question “How do they perceive themselves outside, in the community and society?” If, due to the structural inequalities in the society, prisoners perceive themselves as powerless, disadvantaged and with unequal chances in life, they will perceive themselves in a similar way in the prisons, as well. In this context, the prisoners believe that their position in prisons is subject to forgetfulness, inequality and abuse of power in society (Ogilvie & Lynch, 2001, p. 330). Because of those assumptions, the chances to change the personal identity and the attitudes for themselves and for the outside world are small.

According to the Sutherland Theory of a Differential Association (1939), if the individual is in company with people who manifest deviant behaviour, the likelihood of criminal behaviour increases. According to this theory, people, through various dynamic ways, actively learn from their environment. In penal institutions,



this means that the processes of criminalization and acceptance of negative behaviour patterns are intensified, in comparison with the positive models that are part of the rehabilitation programs.

Thus, criminological theories try to explain the failure of the penal institutions to terminate the initiated criminalization process with the contradictory aims of punishment and prisons (penal institutions). Prisons are artificially created institutions in which the convicted person is temporarily isolated from the outside world in order to prevent him from crime, his re-education, training for a socially useful life in accordance with the generally accepted system of legal and moral values and his successful reintegration into society. In this preparation for a free life, the convicted person is isolated from the society and his freedom of movement is limited. Recognizing that contradiction, many authors consider that prison is not a suitable place for preparing the prisoners for social living. In prison conditions, two different processes are taking place: the process of institutionalization with adoption of a standardized regime in prisons and a process of criminalization, which means accepting criminal attitudes and behaviours as a result of the fact that prisoners spend most of their free time together, in one specific prison society, with its own sub-cultural norms of behaviour, which are contrary to the norms of the formal system. By accepting the deviant and criminal system of values, the prisoner refuses to accept the value system offered by the prison staff (under condition that such system reflects positive moral and ethical social norms) and thus the person is gradually being criminalized with other offenders.

The stated theoretical perspectives and research results stem from the disappointment of traditional criminology to explain the causes of criminal behaviour that are related to the individual characteristics of the offender and to the objective factors that lie in the immediate and in the wider social environment. In that sense, Kambovski emphasizes that the time spent on great etiological, sociological, biological, anthropological and other theories has passed (Kambovski, 2002, p. 49), because they cannot explain why a person becomes a criminal and what effects are caused by the application of the criminal sanctions. Therefore, the treatment cannot correct and improve the offender's behaviour, which draw the conclusion that rehabilitation does not work. So, this model was rejected.

### **What remains? Surveillance and control?**

The failure of the punishment to intimidate and rehabilitate offenders and to reduce crime opens a series of profound moral and ethical questions such as "Who do we punish and why do we punish?" In response to those questions, an interesting approach is given by Nils Christy in his publication *Crime Control as Industry* (2000).

He advocates the thesis that the punishment is not oriented towards individuals, and in particular to their rehabilitation, but focuses on the management of certain groups that are marked as dangerous for public security. Hence, the task of criminal sanctions is not to transform the individual, but to manage his behaviour (Christie, 2000, p.117). Furthermore, Christie argues that punishment is an activity of great economic importance to those who pronounce and enforce criminal sanctions. Namely, the criminal sanctions, in some way, protect the economic interests of the institutions of crime control (i.e. criminal justice system), which are part of the system of production (that is, part of the economic system). So, the criminal justice system is actually a system that produces control. And, in order to control, we need someone to control. We need prisoners. As, Christie, (2000) argue, prisoners are needed to use cheap prisoner's work. In addition, they are necessary to recruit staff, to produce food, to buy insurance cameras, equipment, and so on. In other words, the prison means money, money for construction, for equipment, for maintenance. Thus, the movements to reduce the prison population are correct, among many other arguments, because the prisons are expensive. However, this argument is not in line with the economic interests of either the criminal justice system or the large economic and business corporations, because they have mutual cooperation. On the other hand, prisoners are needed to have someone to deal with them, to manage, to lead, to rehabilitate etc.

And, when discussing the effects of punishments, it will be valuable to recall the work of Michel Foucault, *Discipline and Punish* (1975). As some say, writing about punishment without Foucault is just like writing and talking about the unconscious without Freud. Although his work dates back to 1975, he clearly captured the process and purpose of the punishment in a very clear and vivid way, using a genealogical approach. This means that he described the phenomena and processes through a historical retrospective and genesis, and so, through that genesis, he came to the basics postulates of the time he described. And more than 40 years later, his theses are still alive and do not lose from the truth for the role of the punishment in the 21st century.

Regarding punishment, Foucault's basic theses are as follows: "the real goal of the penal reform is not to fix, but to establish a new economy of the penal policy and to ensure its better distribution; illegality is a condition for the political and economic functioning of society; the penal system should be understood as a mechanism for different organization of the illegitimacies, not for their suppression; punishment, is a way of maintaining delinquency (crime), a way of maintaining permanent surveillance and control over the population; and a way to maintain the power of the ruling class; the criminal code hides the mechanism of discipline; the prisons simultaneously sanction and create the delinquency; the offender is a result of more rigorous supervision and of growing and harder disciplinary coercion; the prison is

an instrument of the panoptic order” (Foucault, 1975). That is way, Foucault argued that “perhaps one should reverse the problem and ask oneself what is served by the failure of the prison, what is the use of these different phenomena that are continually being criticized: the maintenance of delinquency, the encouragement of recidivism, the transformation of the occasional offender into a habitual delinquent...” (Foucault, 1975, p. 272). He believed that the punishment is not aimed at preventing various forms of violation of the law (i.e. to prevent crimes), but rather to distinguish them, to deploy them and to exploit them. So, the purpose of the punishment is not only to subordinate those who are ready to violate the law, but in contrary, the violation of the law should be put into function of the general method for subordination and control of wider population. The punishment would then be a means of managing unlawfulness and determining the limits of tolerance, a means of giving space to some, and putting pressure on others. This proves the thesis that the criminal justice system, through the application of sanctions, is part of the mechanisms of domination (Foucault, 1975: 272). Or with other words, the authority to punish is identified with the authority to discipline and to place individuals under “observation” as a natural extension of a justice with disciplinary methods and examination procedures. “The ideal point of penalty today would be an indefinite discipline ... and disciplinary individual” (Foucault, 1975, p.227). So, beyond the legal, the punishments have economic and technical-disciplinary justification. In fact, Foucault asserted that we are living in a panoptic society, and the prison replicates the same mechanisms of surveillance and control that are evident in the society at large. In other words, medical, military, health, educational and social institutions and services, like the prison, perform normative and disciplinary authority. Foucault finished his book by saying that the book should serve "for various studies of the normative function of the power and for the formation of knowledge in the modern society" (Foucault, 1975).

Referring to the theoretical perspectives of Christie and Foucault, and to the fact that the choice of punishment is a cultural issue, we are confronting several dilemmas related to the punishment in our social context. Firstly, what imply the criminal justice reforms in 2004, 2008, 2009 and 2014? How far does our penal system consciously or unconsciously perform the function of controlling, observing and disciplining offenders? Since the adoption of penal legislation is increasingly a function of protecting the executive power and since the judiciary is a function of protecting the interests of those in power, the lines between the judicial, the executive and the legislative power are diffuse and foggy. And, at last, do we perceive the offenders as "others", risky for the society that need to be temporarily removed from the street?

The short review of the criminal justice reforms shows that Macedonian criminal justice system is gradually moving towards several significant processes.

One refers to prescribing and incriminating a large number of new crimes (about 65 in a period of 10 years (from 2004 until 2014) within our Criminal Code. This process means increased control, discipline and punishments of a number of new acts by the citizens. Second, the criminal justice reforms impose stricter penalties for a large number of crimes (for about 70 crimes for a period of 10 years), especially for property crimes, sexual crimes and when a child is the victim. For example, the minimum term of prison sentence is increased from min. six months to min. one year or from min. one year to min. three years for many crimes etc. Also, the long-term imprisonment can be 40 years. In addition, new measures are introduced, such as “a ban on attending sports competitions” and “medical-pharmacological treatment” for sexual offenses (chemical castration).

In general, such reforms go towards more severe penal policy, which is followed by the courts policy and practices. Namely, the latest official statistics received from the State Statistical Office (stat.gov.mk) show that the length of imposed prison sentences has been gradually increased in last decade (2004 – 2016). Having in mind the previously mentioned criminal justice reforms, we put the question whether such reforms go toward crime reduction? If we recall and accept the thesis that the severity of the punishment does not intimidate the offender against re-offending, nor does it intimidate and deter potential offenders, then relying on sentences of imprisonment to prevent criminals re-offending, is not an effective strategy in the long term. The confinement only disables the criminals and prevents them from committing crime while in prison. Third and also very important is that the prison does not rehabilitate and reform, but controls, disciplines and observes the prisoner’s attitudes and behaviours.

And, regarding the main priorities about Criminal Justice Policy of the new Government of the Republic of Macedonia, that was formed in June 2017 by the Social Democratic Union of Macedonia, SDSM, (namely, after 10 years, the previous political ruling coalition governed by VMRO-DPMNE [the Internal Macedonian Revolutionary Organization – Democratic party for Macedonian National Unity] was changed), we have made short view of the Government Work Program 2017-2020. This brief analysis shows that the new governmental top priorities are to clear the scandal of wiretaps, to fight corruption, crime and abuse of power (of the previous government), to extend the mandate of the special public prosecutor and to establish specialized court departments which will prosecute the new cases revealed from the wiretap scandal from the previous government, so as to clean up these cases and to combat the abuse of the old government. Also, in the program, priority is given to clearing and re-opening several disputable and controversial criminal cases that are still in court process, or have been completed by the Macedonian judiciary. And, all those priorities within the Government work program (2017-2020) might improve the exercise of justice and rule of law, but in a just and not selective court system with

clear distinction between judicial and executive powers. On the contrary, all these cases and trials could be a mechanism of maintaining power by the ruling class. Actually, we put the questions: who has created the above mentioned cases? Whether it was the previous government in order to maintain control, surveillance and discipline over the citizens? And now, after several years, are those criminal cases reactivated to serve the interests of the new government? Who will construct the truth now, if we agree with Foucault that every society has its own regime of truth and mechanisms that enable to evaluate who are wrong and which statements are correct. Or, who will deconstruct the dominant and imposed truth, now?

Those questions create a situation of constant alertness among scholars and other activists who try to deconstruct the dominant and “objective” truth or “privileged knowledge” and who have critical view toward abuse of power and inequality in all spheres of social life, including in the penal system. Actually, those question open up debate about the development of disciplinary society or about the disciplinary modality of power, respectively how “codified power to punish turns into a disciplinary power to observe”. As Foucault added, “the power to punish ...is the regular extension, the infinitely minute web of panoptic techniques” (Foucault, 1975: 224). In fact, he asserted that the choice of imprisonment as the predominant mode of punishment was a matter of the elaboration of techniques, “to locate people, to fix them in precise places . . . a whole technique of human dressage by location, confinement, surveillance” (state in Valier, 2004, p.18). That’s way his attitude about the dispersion of a new and subtle modality of power is so interesting and his publication *Discipline and punish* stands among the most striking and beautiful academic texts.

That way, as Joanna Shapland in her presentation 19 years ago stressed “we have to come out from behind our barricades and out of our foxholes ... and deliberately start to open up these questions publicly, as well as privately....Going public means being visible, being necessarily controversial, possibly risking research grants, moving away from the safe position of being a technocrat and plunging into the fray” (Shapland, 1999).

### **Conclusion**

Criminal sanctions and prison sentences in particular are criminal justice responses and reactions to crime. But, regardless many justifications about their utility and necessity, they fail to reduce crime, to decrease recidivism and to deter potential offenders from committing crime. Also, prison systems fail to rehabilitate prisoners. They, actually produce crime and delinquency that it is supposed to combat. Just as Foucault explains “fabrication of a delinquency”, which is possible

to supervise and control it and which is politically and economically less dangerous (Foucault, 1975, p. 277). But, however, the punishment should not be allowed to be an instrument in the hands of the government for disciplining, observing, supervising and for maintaining a powerful relationship in the society. The faith and efforts to justify the punishment should be maintained, but in a more humane and just society. A society that has a civil and inclusive character, and that nurtures the values of kindness and care, as Christie cites in his book *A Suitable Amount of Crime* (2004). If we want to talk about the purpose of the punishment, we also need to clarify other questions. Are we punishing to keep the power? Are we punishing to create a new delinquency? Are we punishing to exclude others, so as not to be excluded? Are we punishing to control and manage the behaviour of others? Are we punishing to mark others (as dangerous and enemies), so as not to be marked? Are we punishing to keep our fears? If more answers confirm the Foucault's and Christie's thesis, then the debate must constantly flow and we have to expose the main dilemmas. Thus, while the offenders are punishing and serving their prison sentence, we remain, not just to debate, to hold lectures and to investigate, but also to act against extension of "panoptical and disciplinary modality of power". Finally, we need to stand behind the movements and attitudes which call for reduction of prison population and for restrictive use of prison sentences, so as to be the last rather than the first alternative to crime, because the prison creates and increases crime. Or, more widely, as Foucault argued that the offender and the crime are direct products of the penal system, of the more insistent surveillance and disciplinary coercion (Foucault, 1975, p. 301).

## References

- Christie, N. (2000). *Crime Control as industry, towards Gulags, Western Style*, third edition. Routledge Taylor and Francis group.
- Christie, N. (2004). *A suitable Amount of crime*. Routledge Taylor and Francis group.
- Crewe, B. (2010). Gresham Sykes (1922 - ) in *Fifty Key Thinkers in criminology* (Haywars, K., Maruna. S. & Mooney, J. eds.), Routledge, Tailor and Francis group, 134 – 139.
- Foucault, M. (1975, author), Sheridan, A. (1977, translated from French) (1995). *Discipline and Punish, the Birth of the prison*. Vintage books (second vintage books edition).
- Hadfield, P. & Hardie-Bick, J. (2010). Erving Goffman (1922-82) in *Fifty Key Thinkers in criminology* (Haywars, K., Maruna. S. & Mooney, J. eds.), Routledge, Tailor and Francis group, 127 – 133.
- Hughes, G. & Edwards, A. (2005). *Crime prevention in context*. Handbook of Crime

- Prevention and Community Safety. Routledge, 14–34.
- Inderbitzin, M. (2012). Delinquency Interrupted: Research into and inside of Juvenile Correctional Facilities. *Sociology Compass* (6) 6, Blackwell Publishing Ltd, 445 – 457.
- Камбовски, В. (2002). Казнено-правната реформа пред предизвиците на XXI век. Бато и Дивајн, график центар.
- Kanduc, Z. (2009). On Various Aspects of Prevention in the Post-Modern Society. *Crime Policy, Crime Control and Crime Prevention – Slovenian Perspectives*. Research Gate, 59 - 96.
- Nagin S. Daniel (2013). Deterrence in the Twenty-first century: A Review of evidence, Research Showcase. Heinz College Research.
- O'Malley, P. (2010). *Crime and Risk*, SAGE Publications.
- Ogilvie, E. & Lynch, M. (2001). Responses to Incarceration: a Qualitative Analysis of Adolescents in Juvenile Detention Centres. *Current Issues in Criminal justice* 12 (3). 330 – 346.
- Paternoster, R. (2010). How much do we really know about Criminal Deterrence. *Journal of Criminal Law and Criminology*, 10 (3). 765 - 823.
- Selih, A. (2009). General Trends of crime policy in Europe and Slovenia. *Crime Policy, Crime Control and Crime Prevention – Slovenian Perspectives*, Research Gate. 43-58.
- Shapland, J. (1999). Reducing Crime: Implications for criminology Present and Criminology's Futures, the British Criminology Conference: Selected Proceedings, 3, Papers from the British Society of Criminology Conference, Liverpool. July, 1999. Retrieved from: <http://www.britsoccrim.org/volume3/014.pdf>.
- Sparks, R. & McNeill, F. (2009). Incarceration, social control and human rights. Research Paper, Project on Social Control and Human Rights, The International Council on Human Rights Policy, ICHRP.
- Stefanovska, V. & Jovanova, N. (2017). Deterrence and Incapacitation effects of the Criminal Sanctions. *Journal of Eastern - European criminal law* No. 1/2017, Faculty of Law, University of Timisoara, 62 – 75.

- Стефановска, В. (2017). Превенција на криминалитетот, Основи, пристапи и модели. Факултет за безбедност - Скопје.
- Vito F. Gennaro, Maahs R. Jeffrey & Holmes M. Ronald (2006). *Criminology Theory, Research and Policy*, second edition, Jones and Bartlett Publishers.
- Wikstrom H. Per-Olof (2008). *Deterrence and Deterrence Experiences: Preventing Crime through the Treat of Punishment*. *International Handbook of Penology and criminal justice*. CRC Press, Taylor & Francis Group. 345 - 378.
- Wright, V. (2010). *Deterrence in Criminal Justice, Evaluating Certainty vs. Severity of punishment*. Report within *The Sentencing Project*, research and advocacy for reform, Washington D.C.
- Valier, C. (2004). *Crime and Punishment in Contemporary Culture*, Routledge Taylor and Francis group.