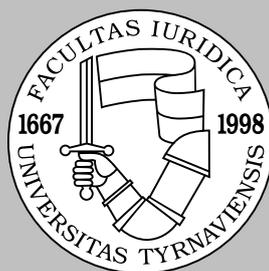


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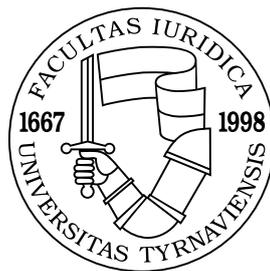


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**Tomáš Strémy**

**Criminology – Criminological Aspects  
of Property Crime  
in the Slovak Republic**



## **Criminology – Criminological Aspects of Property Crime in the Slovak Republic**

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## Introduction

In the course of the 19<sup>th</sup> century property crime was designated as crime due to poverty mainly as a result of different food prices since increase of food prices was followed by poverty crime in parallel. After 1960 this assumption proved to be incorrect since economic growth was simultaneously connected with property crime. At that time property crime was already called crime due to prosperity. This trend did not even change after the Velvet Revolution when centrally governed economy was transferred into market economy. It is comprehensible that the period after the collapse of socialism in 1989 strongly influenced also criminological factors which represent a matrix for commission of property crime. More reasons appeared for commission of crimes at that time period when our economy undergone substantial changes with related risk factors having influenced commission of crimes in the area of property crime.

In my paper I provide an analysis of a situation, a structure and dynamics of property crime in the years of 1989-2010. The period after 1989 was accompanied with enormous growth of mainly property crime reaching its peak in 1993 when 115 049 property crime offences were recorded whereas overall crime was recorded on a level of 146 125 criminal offences. The second wave of property crime occurred in 2004 when 77 098 property crimes were recorded. Continuous increase of property crime (the second wave of property crime peaked in 2004) has resulted in constant legislative changes the purpose of which was adoption of stricter punishments for crime offenders. However, it is necessary to point out at the fact that implementation of criminal liability of legal entities or increase of penalties cannot be considered the only means of crime elimination or how to ensure appropriate protection of citizens. Increasing of knowledge on both quantitative and qualitative aspects of crime in Slovakia may contribute significantly to an increase of overall social awareness on the issue. At the same time a suitable basis for legislative changes can be founded by means of assessment of current legislation efficiency level. In the latest period one of the reasons of crime growth is opening of borders which enabled the Slovak Republic to join the Schengen area and this was followed by migration of inhabitants from neighbouring countries. Thus, the borders have opened for new forms of property crime and there-

fore it is necessary for us to react in a flexible manner to this new reality by appropriate preventive measures.

It is very often children who are property crime offenders (pursuant to the Section 127 of the Act no. 300/2005 Coll., of the Criminal Act as amended the child is understood as a person under 18 years of age unless he/ she has not obtained full age earlier) which represents not only a social problem (since it is the second biggest group of offenders) but also a significant criminal factor influencing the children even at their early age. Property crime is considered to be an entrance to the world of crime especially for young people. In the recent years people have lived a consuming lifestyle which very frequently results in a change of values and predominantly to degradation of virtuous work and moral values. Persons between 18-30 years of age contribute to commission of property crime to the greatest extent. It is in particular a property crime personality that is characterized by a deformed relation towards property and by giving preference to material values. With respect to crime offenders we must not forget to mention amnesty granted by the then President of a former Czecho- Slovakia V. Havel in 1990 when approximately 30 00 prisoners were released. They committed crimes repeatedly which resulted in growth of crime (in 1993 mentioned above). The consequences connected with this amnesty have persisted until present days whereas in Slovakia preventive measures aimed mainly at prevention of property crime offenders are underestimated.

Except from natural persons property crime is also committed by legal entities and therefore my work contains an analysis of Slovak legislation of criminal liability of legal entities in the Slovak Republic. The Ministry of Justice of the Slovak Republic submitted a bill to be negotiated by the National Council of the Slovak Republic concerning introduction of (non-genuine) criminal liability of legal entities adopted on 27 April 2010 and effective from 1<sup>st</sup> September 2010. The bill introduced new criminal sanctions in form of protective measures against legal entities. Introduction of criminal liability of legal entities, nevertheless the non-genuine one meant fulfilment of obligations against the EU. In the future a lawmaker might consider to extent protective measures, however, the reality will depend on how the proposed protective measures are to be exercised and also on the development of the Community Law. I assume that in the Slovak Republic there is generally an absence of a comprehensive research in the area of criminal responsibility of legal entities. In this part I refer to legislation of criminal liability of legal entities in Switzerland. Mainly according to the typology of property crime offenders (both natural persons or legal entities) efficient preventive projects could be prepared in the future.

The objective of my paper is to define property crime not only from criminological but also from criminal point of view; to deal with the situation, structure and dynamics of property crime during the years 2000-2010 more in detail and to compare them with other crime types: to select crimes typical for property crime and to specify criminal acts which are common both for property and economic crime: to characterize any particularities of a property crime offender, to analyse legal regulation of criminal liability of legal entities both in the Slovak Republic and in Switzerland, to examine the reasons and conditions of property crime after 1989, to scrutinize dominance of property crime and its increase in 1993-2004, to summarize preventive measures in the area of property crime and to analyse the results and forecasts of property crime in the Slovak Republic until 2011.

# I. Property Crime from the Viewpoint of Criminal Law and Criminology

## I. 1. Criminological Definition of Property Crime

Property right is protected not only by a Criminal Act but also by the Art. 20, par. 1 of the Constitution of the Slovak Republic no. 460/1992 Coll., (hereinafter only as "The Constitution of the Slovak Republic") according to which every person has the right to own property. Property right of all owners has identical legal contents and protection.

Criminal protection of property rights is provided by the Act no.300/Coll., Criminal Act as amended (hereinafter only as" Criminal Act") mainly in Chapter 4 in a specific part of the Criminal Act. However, property rights and interests are also protected in some other chapters of the Criminal Act. Those are mostly business criminal offences, generally dangerous crimes and crimes against the environment. Protected interests and their group is different for facts of the case in each individual case (they are not only used for protection of property and assets but also to protect non- material assets such as damage and abuse of a record on an information medium in accordance with Section 247 of the Criminal Act).

Theory of a criminal law classifies criminal offences against property into three groups:

1. Criminal offences connected with unlawful enrichment ( e.g. theft according to Section 212 of the Criminal Act, embezzlement in accordance with Section 213 of the Criminal Act, non- payment of a wage and severance pay according to Section 214 of the Criminal Act, unlawful utilization of a thing of another in accordance with Section 215 of the Criminal Act),
2. Criminal acts connected with artificial damage of property of another and property rights (such as damage of a creditor in accordance with Section 239 of the Criminal Act, favouritising a creditor according to Section 240 of the Criminal Act, counteraction of bankruptcy proceeding, or compensatory proceeding according to Section 242 and 243 of the Criminal Act,

harm done to a thing of another in accordance with the Section 245 and 246 respectively of the Criminal Act),

3. criminal offences concerning profiting from criminal activity (such accessoryship pursuant to Section 231 and 232 respectively of the Criminal Act, legalization of incomes from criminal activities in accordance with Section 233 and 234 respectively of the Criminal Act).

General subject of this chapter are property rights, however, besides ownership some other property rights and undisturbed possession of a thing are protected. A thing of another is, as a rule, an object of an attack.

Property is protected by several provisions from Chapter IV of the Criminal Act (a criminal act of a fraud in accordance with Section 221 of the Criminal Act, or violation of duties in administration of a foreign property according to Section 237 and 238 respectively of the Criminal Act). Property is understood as various material values (accounts receivables, possessions, cash, a flat or premises and other assessable values). Foreign property is the property not owned by an offender.

Nature of a crime and the penalty are to a great extent determined by damage which is amended by the Criminal Act in provisions of the Section 124 to 126 respectively of the Criminal Act.

Minor damage	Exceeding a sum of EUR 266
Bigger damage	At least EUR-2 660
Significant damage	At least EUR- 26 600
Extensive damage	At least EUR- 133 000

According to the Criminal Act damage is defined as property injury or real decrement in property or in rights of the injured or his/her other injury which is in a causal relation with a criminal offence regardless whether it concerns harm done to a thing or to the rights. Damage is understood *inter alia* as gaining of a profit in a causal relation with a criminal offence as well as loss of profit which would otherwise be a subject of a claim by a damaged party or which could be reasonably achieved by him.

In accordance with Section 125, par. 2 of the Criminal Act if damage caused as a property consequence of a criminal offence is required in the special part of the Criminal Act as its basic facts of the case and not stating its amount it is recognized that at least minor damage must be caused (e.g. in case of a criminal

offence of damage and abuse of an information medium record pursuant to the Section 247 of the Criminal Act).

Also a mutual relationship between criminal offences against property and business offences represents a problem since this relation has been not defined systematically and it is very complex. Therefore in application practice lots of problems emerge since it is very complicated to determine which provision covers an offender's actions (whether one action is special against another one or if a one-action coercion of both property and business crime is possible).

An author's opinion towards classification of crime offences  
(based on a theory)

## I. 2. Property Crime:

Property crimes are mostly listed in provisions of Chapter IV of the Criminal Act:

- **Crimes against property** (Section 212 – 249 in accordance with the Criminal Act):

theft; fraud; non-payment of a wage and severance pay; unlawful enjoyment of a thing of another; unlawful use of a motor vehicle of another; unlawful interference with a title to a house, flat or non-residential premises; unlawful production and use of an electronic mean of payment and other payment card; falsification and modification of identification data of a motor vehicle; fraud; a loan fraud; insurance fraud; capital fraud; subsidy fraud; unlawful enrichment; fraudulent bankruptcy; intentional bankruptcy; keeping unfair games and stakes; unauthorized running of lotteries and other similar games; accessoryship; legalization of incomes from criminal activities; usury; concealment of things; violation of duties during administration of a property of another; harm done to a creditor; favouritizing a creditor; manipulation with tender and composition proceeding; counteraction of a tender and composition proceeding; violation of a ban of competition; harm done to a thing of another; harm done and abuse of a record on an information medium; ownership misuse; harm done to and depreciation of cultural heritage.

- **Criminal offences amended by other chapters of the Criminal Act:**

crimes the facts of a case of which are also included in other chapters of the Criminal Act are also classified as property crime:

blackmailing; robbery ( Chapter II of the Criminal Act );poaching ( Chapter IV of the Criminal Act ) etc.

### I. 3. Business Crime:

As far as business crime is concerned it is rather difficult to determine which criminal offences are included into this type of crime. In my opinion here the following could be included:

- **economic crime offences** (§ 250-283) which are divided into four sections (§ 212-249):

- *criminal offences jeopardizing market economy:*

abuse of participation in tenders; unlawful business activities; unlawful trading with foreign exchange values and providing of foreign exchange services; non-permitted production of spirit; violation of provisions on goods circulation in contact with foreign countries; violation of provisions on handling goods and technologies which are a subject to control; threatening of foreign exchange economy.

- *criminal offences against economic discipline:*

falsification of economic and business records data; harm done to financial interests of European communities; threatening of business, banking, postal, telecommunication and tax secrets; abuse of information in a business contact; manipulations of public procurement and public auctions; harm done to a consumer.

- *criminal offences against the currency and tax frauds:*

falsification, modification and unauthorized production of cash and securities; utter forged, modified and unlawfully produced money and valuables into circulation, production and possession of falsification tools; threatening of currency circulation; falsification, modification and unauthorized production of duty stamps; postage stamps; labels and postmarks; falsification and modification of control technical measures to label goods; tax fraud and insurance fraud; non-payment of taxes and insurance; non-payment of tax; violation of provisions on state technical measures concerning goods labelling.

- *offences against industrial rights and against a copyright*

violation of rights towards a trademark, labelling of a product origin and a trade name; breach of industrial rights, violation of a copyright.

- **offences amended by other chapters of the Criminal Act** threatening also other interest than an interest individually protected, in particular the economic interest of the Slovak Republic. It is especially in the period of economic expansion when we frequently meet the subjects breaching the law. Those are mainly the following criminal offences: general threats; damaging and endangering the operation of publicly expedient utilities; threatening and harm done to the environment (Chapter VI of the Crim-

inal Act); sabotage (Chapter VII of the Criminal Act); bribery; corruption; indirect corruption; (Chapter VIII of the Criminal Act).

#### **I. 4. Property and Business Crime**

When deciding where a criminal offence from the Chapter IV of the Criminal Act is to be included ( into property or business crime) an important role is also played by a subject of a criminal offence as well as the way how the criminal offence was committed and also whether the injured is a natural person or a legal entity. On the contrary, criminal offences against property, i.e. criminal offences from Chapter IV of the Criminal Act can be included into business crime on condition that the injured is a legal entity. Those are the criminal offences as follows: a theft; a fraud; fraudulent acts (a fraud, a loan fraud; an insurance fraud; capital fraud; a subsidy fraud; unlawful enrichment) unlawful production and use of an electronic mean of payment and other payment card; fraudulent and intentional bankruptcy; unauthorized keeping of unfair games and lotteries; non-permitted running of lotteries and other similar games; violation of duties during administration of property of another; harm done to a creditor; favouritizing a creditor; manipulation with a tender and a composition proceeding; harm done and abuse of a record on an information medium;

Criminal offences falling under property and business crime mutually overlap since some institutions classify an identical crime both as a property crime and as a business crime. This fact is a result of a different view of when a criminal offence is included into property and when into business crime. In my opinion it is very demanding and time-consuming to specify the difference. According to more accurate definition of the difference between property and business crime relevant institutions (Council of the SR Government for Crime Prevention, The Police, etc.) can implement more efficient preventive measures in respective areas.

I consider useful to determine a more accurate difference between criminal offences which are subsumed according to different institutions (General Prosecutor of the SR, Ministry of Justice of the SR and Prison and Justice Guard.) and reports (A Report on Safety Situation in Slovakia) either under property or under business crime. Their more accurate classification into a particular crime type will enable us to achieve more relevant statistic data on crime in the Slovak Republic and even more suitable targeting of preventive activities to a given area.

## I. 5. Criminological Definition of Property Crime

In the recent years internationalisation has been more and more obvious in property crime. With regard to the fact that property crime is the most frequently committed crime type in the territory of the Slovak Republic I am of the opinion that it is necessary to be provide its specification.

**Property crime** can be defined from various aspects. In a narrower sense it is defined by criminology as a criminal act regardless the manner of its commission and a form of property against which an attack is aimed by a criminally liable offender, it is threatened by him or is being captured by him with an aim of its permanent or temporary use and where a definite objective is to achieve benefit unlawfully derived from property. It is not significant whether the offender intended to gain the property for oneself or for another.<sup>1</sup> V In the broader sense criminology perceives property crime as an attack against property of another regardless the fact whether the property is possessed by an individual, by a group or by a state.<sup>2</sup> It is obvious even from the above mentioned that there are many definitions of property crime.

A typical characteristic feature of property crime is an attack towards a property of another which is at the same time a general object of Chapter IV of the Criminal Act. Property crime is the most prevalent type of crime in the Slovak Republic (in the year 2000 property crime reached nearly 60% of overall crime). Criminal offences against property have a wide range of forms of criminal offences commission. Usually the forms like burglary, robbery, stealing of motor vehicles and damage caused by other criminal offences (incendiarism, vandalism, etc.) are mentioned. Apart from this criminal offences committed by a strong organization together with institutions such as businesses and also state institutions represent relatively least dangerous criminal offences. However, property crime may also include criminal offences such as unlawful granting of a land and an extract from natural sources i.e. fruits and herbs.<sup>3</sup>

In the past (in the course of the 19th century) this crime type was designated as a *crime due to poverty*, mainly as a result of different food prices with respect to the fact that the property crime increased in parallel with growth of food prices. After 1960 this assumption proved to be incorrect since property crime grew hand in hand with economic growth. At that time property crime was already

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<sup>1</sup> Kolektív autorov: Kriminológia – osobitná časť - II diel. Bratislava, Akadémia PZ 2001. s. 165.

<sup>2</sup> Kolektív autorov: Kriminológia – osobitná časť I. diel. Bratislava, Akadémia PZ 2005. s. 39.

<sup>3</sup> O'Brien, M. – Yar, M.: Criminology. New York, Routledge 2008. s. 132.

designated as *crime due to wealth*.<sup>4</sup> This trend even has not changed after the Velvet Revolution when centrally governed economy turned into a market economy. However, on the other hand massive acquiring of property ownership is an example frequently used to explain increased property crime and in particular domestic electronics of high value, consumption goods with a long lifetime and also increasing number of car owners. Those development trends raise accessibility of potential targets suitable for commission of robberies and other crimes.

Motivation in form of financial profit is a typical example of property crime, however, criminology as a scientific discipline is aware of the fact that not all criminal offences included into property crime offer material benefits or financial reward. It is also necessary to understand emotional satisfaction of the offenders who are pleased with participation in activities such as incendiarism, graffiti, etc.<sup>5</sup>

**Structure of property crime includes:** *burglaries* (into flats, department stores, shop windows, schools, accommodation facilities, etc.), *simple thefts*<sup>6</sup>, (mainly stealing things from cars, motorcycles, pocket thefts, etc.), *other property crimes* (criminal offence of harm done to a thing of another, poaching or a criminal offence of unlawful interference with a title to a house, flat or non-residential premises, etc.)

From the viewpoint of the crime structure the most typical and the most frequently committed crime is a theft. In accordance with Section 212 par. 1 of the Criminal Act the facts of a case of a theft is fulfilled by "a person who appropriates a thing of another by its seizure and thus causing minor damage shall be punished by a sentence of imprisonment up to two years." According to Section 212 par. 2 of the Criminal Act (with its paragraph 1 representing essential facts of a case) the amount of harm done is not considered, however it is taken into account the fact that a thing of another was appropriated by an offender by seizure using one of the manner comprehensively listed in Section 212, par. 2 of the Criminal Act.

Accompanying crime is a significant sign of a *burglary* i.e. commission of a theft together with another criminal offence, e.g. restriction or deprivation of

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<sup>4</sup> Novotný, O. – Zapletal, J.: Kriminologie. Praha, Aspi – Wolters Kluwer 2008. s. 346.

<sup>5</sup> O'Brien, M. – Yar, M.: Criminology. New York, Routledge 2008. s. 132-133.

<sup>6</sup> Other thefts are designates as simple thefts acc. to the authors: Zapletal, Novotný, Kuchta a Válková. This term is also used by the author of the paper, therefore the term simple thefts is used in the text.

freedom (to Section 182 and 183 of the Criminal Act).<sup>7</sup> Burglaries contribute to a great extent to property crime causing that people are afraid of their lives, health and property not only in the streets but also in their homes (flats and family houses). According to Section 122, par. 4 of the Criminal Act burglary is defined as accession into a closed area with an unauthorized overcoming of locking or overcoming of any other protection barrier using force or a trick. According to the Article 21, par. 1 of the Constitution of the Slovak Republic habitation is inviolable and it is not permitted to access without permission of an inhabitant.

As regards burglaries the most frequent are stealing of things from cars (valuable objects on seats, car radios, navigation systems, mobiles, etc.)<sup>8</sup> As far as burglaries into flats in the Slovak Republic are concerned we have observed their downward tendency since 1993. It is a specific type of a criminal aggression the content and a nature of which threatens interests and values protected by a legal system as well as generally accepted moral standards and traditions.<sup>9</sup>

*Simple thefts* represent the most numerous group of property crimes. Generally they are designated as street crime. Pocket thefts are committed mainly in the capital of Slovakia and also in other bigger towns in Slovakia. For this type of thefts it is typical low level of clear-up rate with regards to high latency resulting from unwillingness of crime victims to inform on this fact mainly due to low damage. In this crime type we can meet with a so-called indirect crime offender<sup>10</sup> and in particular in case of thefts when some mother (esp. Roman ones) force their children to steal. After the Slovak Republic joined a Schengen area it did not result in disappearing of this crime type since opening of the borders contributed to participation pick pockets from former Eastern countries.

Thefts of motor vehicles are also classified as belonging to other thefts. It was confirmed at 1<sup>st</sup> Police Convention in Prague in 1995 that Europe suffers the most from prostitution, drugs and stealing of vehicles. At present motor vehicles are registered worldwide by VIN ("Vehicle identification number"). VIN consists of 17

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<sup>7</sup> Kuchta, J. a Válková, H. a kolektív: Základy kriminologie a trestní politiky. Praha, C.H.Beck 2005. s. 371.

<sup>8</sup> Kuchta, J. a Válková, H. a kolektív: Základy kriminologie a trestní politiky. Praha, C.H.Beck 2005. s. 371.

<sup>9</sup> Dianiška, G. a kolektív: Krádeže vlámaním do bytov. Bratislava, Akadémia PZ 1999. s. 7.

<sup>10</sup> An indirect offender is an offender using another person for crime commission and the person becoming a tool of a crime offence for an offender, i.e. an offender is the person who intentionally used a person which is not criminally liable due to low age – a child under 14 years of age, mental disease or mental derangement. (aggravating circumstance in accordance with § 37 letter i) of the Criminal Act).

signs designed according to an international standard which enables to identify the vehicle easily. It must be admitted objectively that motor vehicles are very rarely controlled by this number which is also reflected by offenders. The offenders are trying to stamp (falsify) this number and thus to get a new number to be "in accordance" with rule of law.

According to Zapletal and Novotny not only occasional but also professional offenders are typical for burglaries and for other thefts. In the recent years organized groups have come into focus making this criminal activity even more sophisticated and using methods making the crime even more difficult to reveal.

There are the following signs of **property crime**: offender's actions which is not *lege artis*, (in accordance with the law), it is neither important who and how received a direct benefit and nor disposal of property (its temporary or permanent character).<sup>11</sup> An essential difference between property and business crime is mainly a different object of an offence and the way how the offence was committed.

With respect to a present situation with property crime it is interesting that it is computer crime to have become more and more similar to property crime. Its specific features may contribute to the growth of both property and business crime. Mainly *computer crime is classified (not only) as property crime and also as economic crime in the Report on Safety Situation in the Slovak Republic*. This type of criminal activity causes major financial losses to the Slovak Republic and therefore I am convinced that it is necessary be dealt more in detail in my paper.

The term *computer* denotes a tool for processing of information performing several operations on the basis of a programme prepared by a man and delivered data, it is made of own computer corpus, its technical part (hardware) and program equipment (software) of a computer.<sup>12</sup> The term *hardware* denotes all basic computer parts (an operating unit, an arithmetical and a logical unit, operating memory RAM, an input unit and an output unit). Software is program equipment of a computer made of all programs putting a computer into operation (everything being on media: a floppy disk, a hard disc, a CD, a DVD). Among those programs made by software engineers there are Mozilla Firefox, Word, Excel, etc. The European Parliament and the states of the European Union have defined **computer crime** as *illegal, immoral and unlawful activity covering misuse of data obtained by means of computer technology or their modification*. Sometimes computer crime designates criminal offences committed by means of a computer or against a computer. Computer crime is divided into two basic groups:

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<sup>11</sup> Kolektív autorov: Kriminológia – osobitná časť - II diel. Bratislava, Akadémia PZ 2001. s. 165.

<sup>12</sup> Vlček, M.: Počítače a kriminalita. Praha, Academia Praha 1989. s. 7.

- a) direct computer crime- directed at attacks against computers
- b) indirect computer crime- crimes committed using a computer Here the following is included
  - Crimes of an economic nature ( frauds, computer sabotage, unauthorized access to the data and to programmes),
  - Crimes attacking privacy of an individual ( using of false data, illegal collection and usage of true data),
  - Crimes representing other possibilities of data misuse.<sup>13</sup>

**Computer crime types** can be divided as follows:

- a) *an attack on a computer, a program, data, communication device*- a group representing the simplest crimes. Here we include physical attacks on computing technology, magnetic media, computer network line or electric power distribution line. This type of computer crime involves computer infiltrations ( "viruses)". A virus is a computer program able to infect other programs writing its own copy into an attacked program making the copy capable of further reproduction. <sup>14</sup> A *Trojan horse* is one of the best- known infiltration means which infiltrates into a computer as an expectation of something attractive and finally it does harm to a user. Very often it is a part of really useful applications, games, etc. The application performs what has been promised- e.g. the game is playable. The reason is the fact that while the application is on, its creator can e.g. connect to a particular computer and to do actually whatever he wants (depending on a Trojan horse purpose). Next well-known infiltration means are *a worm, a dwarf or bombs*;
- b) *unauthorized use of a computer or a communication mean*- at this type of crime it is rather difficult to estimate a sum of damage with respect to its high latency. Use of computer technology, faxes, means of computer networks, etc., is included among this type of crime. The offenders committing this type of crime are mainly hackers or employees of affected organization;
- c) *unauthorized access to data, obtaining of confidential information (computer espionage) or any other information on persons, activities, etc.*- the offenders penetrate into bank systems or into computer networks of significant institutions. Direct damage is usually very extensive, however, indirect dam-

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<sup>13</sup> Gregušová, D.: Vybrané kapitoly z počítačového práva. Bratislava, PF UK 1994. s. 46 – 47.

<sup>14</sup> Gregušová, D.: Vybrané kapitoly z počítačového práva. Bratislava, PF UK 1994. s. 60.

age caused by information leak can also cause major injury. This criminal activity is performed by offenders with high professional qualification in the computer area( mainly hackers, crackers);

- d) *stealing of a computer, a program, data , communication device*- stealing of a material thing is qualified as a facts of a state of a criminal offence in accordance with Section 212 of the Criminal Act. Copying of a program or a data which remains in place and the offender gets, as a rule, a copy and sometimes also the original represents a logical theft. In some cases of digital data it is impossible to distinguish between a copy and the original;<sup>15</sup>
- e) *change in programmes and the data ( marginally also a change of technical connection of a computer i.e. communication device)*- the action consists in direct involvements into program equipment by a software engineer, changes of programmes and the data by other programs or in a modification of the connections or in other attribute of a computer technical equipment. This crime type is sometimes called as “cracking” since it enables illegal copying;
- f) *abuse of computer means to commit other crime types*- this type of crime enables manipulation with the data and with an ability to create and modify different documents, deeds, papers ( stock systems, takings, health insurance, account balances, etc.). Due to high number of traces this computer crime type can be mainly used to collect evidence, however, this must be performed immediately since the evidence can be removed easily;
- g) *frauds committed with respect to computing technology* – in this area the crimes are committed by means of a fraud, i.e. using someone’s error. Here we include well -known frauds such as various games depositing of some financial sum and sending letters to other persons promising a guaranteed profit where the computer is used as a tool in order to perform a criminal offence.<sup>16</sup> This type of a computer crime is used to be committed even without use of computing technology but its use makes it more efficient.

The internet represents a new phenomenon of a computer crime resulting mostly in an increase of property crime. First mentions on the internet date back to the year of 1969 when an Arpanet was designed by a group of “Advanced Re-

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<sup>15</sup> Gregušová, D.: Počítačový program a právo. Bratislava, PF UK 1999. s. 151.

<sup>16</sup> Lamačka, V. – Halický, P.: Počítačová kriminalita – nový fenomén Policajnej praxe. In: Počítačová kriminalita a počítačová bezpečnosť. Bratislava, Akadémia PZ 1996. s. 68.

search Projects Agency” of the Ministry of Defence of the USA. In 1983 the Arpanet changed its network protocol from NCP to TCP/IP by which the Internet in its present form was actually created. However, the Internet penetrated globally in 1991 when a project World Wide Web was published by Tim Berners-Lee but the sites were not publically available. Only as late as 1994 a 22-year-old Marc Andressen, a co-founder of a Netscape Communication Corporation offered a Netscape Navigator browser to be downloaded for free. This step awoke public to take an interest in the internet so far purely academically and technical mean.

At present we can state that the internet is used worldwide. The internet represents a source of a huge amount of information. Today there is almost no place without an accessible form of internet connection. The internet is not a legal entity with respect to a non-existence of neither a seat and nor any authorized representatives. (Section 18-20 of the Act no. 40/1964 Coll., of the Labour Code as amended), and it is not a legal personality possessing rights and duties. Identification of servers’ owners (either natural persons or legal entities) is unclear and evidence proceeding within criminal activity committed via the internet is complicated.

Even thanks to the internet some illegal activities called hacking, cracking, phreaking, carding, phishing, pharming, spoofing have emerged. *Hacking* means penetration into a system in a way other than a standard one, i.e. avoiding or breaking its security protection. Hackers are denoted by the public as the ones infiltrating into areas of computer networks, programs or computers and their users being unaware of this with the aim to explore them, however, not to do any harm. Cracking enables to avoid computer protection against copying or unauthorized use. Most of the time this activity is committed with the aim to produce illegal copies or to their unauthorized use in contradiction with not only moral standards but also legislation. In terms of computer crime the law no. 618/2003 Coll., copyright as amended (hereinafter as “Copyright”) is frequently violated mainly as far as the hacking and cracking are concerned. According to the copyright a computer program is a set of orders and instructions used either directly or indirectly in the computer. The orders or instructions can be written or conveyed in a source code or in a machine code.

A source material necessary for preparation of a computer program is an inseparable part of it; if it meets conceptual signs of an author’s work (Section 7, par.1) it is protected as a literary work. However, it is necessary to state that the computer program must be a result of creative mental work of an author and must be expressed so as it was perceivable by senses. Phreaking (the activity was at the beginning performed also by K. Mitnick) represents use of telephone ser-

vices and networks without payment to their provider. The term phreaking also denotes a production of so called telephone cards. The term carding means misuse of a payment card by many ways, e.g. by stealing of a payment card, i.e. its number, installation of a camera above a teller machine, calling to a client under the pretext to receive a payment card number, deducing a bigger sum of money than it is a real sum (in the store or when buying on the internet).



**Figure 1** A modified teller machine (with a false cover for a slot for inserting the card and a hidden telephone used as a camera to record PIN).

Bank thefts using a computer are realized by means of a *phishing* when the recipient receives an email from “the bank” requiring one’s personal data to be abused. The email or the message is not from a bank institution (even though it may seem so at first sight), but from offenders. In this respect it is worth to remind the clients not to provide any of their personal data (esp. PIN, a payment card number) via an email received from the bank or from any other subject. *Pharming* is a more sophisticated version of a phishing. It consist in redirecting of a www site name to another address, i.e. if the client enters into his computer one’s bank (e.g. [www.bankaslovakia.sk](http://www.bankaslovakia.sk)) and its perfect copy appears instead of a real www site of the bank where the client enters one’s password and this is thus obtained by an unauthorized person having created the website copy. There are several options how to fight against pharming. *Spoofing* represents methods used by hackers to change identity of messages sent.

Computer crime has an influence on several crime types (property, business, organized crime, etc.), therefore in my view it can be considered as an *open crime type*. News referring to safety situation in the Slovak Republic throughout the years does not list phenomenology of a computer crime as an independent one whole, but actions falling under computer crime are subsumed under various

crime types, in particular under property and business crime. Several provisions stated in different chapters of the Criminal Act can be breached by a computer crime. Some of them are as follows: promoting drug abuse (Section 174 of the Criminal Act), unauthorized production and use of electronic payment means and of other payment card (Section 219 of the Criminal Act) unlawful enrichment (Section 226 of the Criminal Act), keeping of unfair games and stakes, (Section 229 of the Criminal Act.), harm done and abuse of a record on an information medium (Section 247 of the Criminal Act), violation a copyright (Section 283 of the Criminal Act), spreading of children's pornography (Section 369 of the Criminal Act), threatening of morality (Section 371 and 372 respectively of the Criminal Act), unlawful handling personal data (Section 374 of the Criminal Act) support and promotion of groups leading to suppression of basic rights and liberties (Section 421-422 respectively of the Criminal Act), defamation of a nation, a race and conviction (Section 423 of the Criminal Act), and other facts of the case listed in the Criminal Act.

At a meeting held on 1<sup>st</sup> August 2007 the Government of the Slovak Republic approved in its resolution no. 621/2007 ratification of *an Agreement of the European Council on Computer Crime* by the Slovak Republic. The Agreement on a Computer Crime of 2001 contains procedures of a fight against computer crime and also a base for efficient international cooperation in this area. It amends the signs of facts of the case in the area of computer crime.

In the Slovak Republic a worldwide company *Business Software Alliance* is operating (hereinafter only "BSA") acting on behalf of a commercial software industry in relation with governmental institutions and international markets. The higher number of personal computers in households results in an increased occurrence of software crime. According to the 5<sup>th</sup> global study of BSA and IDC on a software piracy in 2007 the extent of computer crime in Slovakia reached 45% (in 2003 it was 50%, in 2004 48%, 2006 45%). BSA promotes safe and legal digital world and it represents a worldwide voice of a software industry against computer crime. BSA develops educational, preventive and repressive activity in cooperation with bodies in charge of criminal proceedings. Within educational activity it notifies both natural persons and legal entities on their duty to pay for the software.

It is comprehensible that software companies take an interest in harm done to them by production of illegal versions of software programs. Some of them even consider these pirate copies to be a net loss of their profits which is calculated using various internal templates. On the other hand it is true that some users get use to a software by using an illegal version and after some time they buy a legal one, i.e. they adopt the software unaware of this. Using of DVD media is also

interesting. Different producers implement codes to DVD media for a particular region to prevent a content of a DVD medium which has not been officially presented in a given region to get into households before it gets onto the market.

## II. Phenomenology of Property Crime in the Territory of the Slovak Republic in the Years 1989-2010

*Crime situation* is a basic quantitative indicator expressed in absolute numbers which indicate a number of crimes committed and finally representing the most general external side of crime. I suppose that a higher quality indicator used for comparison of crime with the neighbouring countries is a *crime index (level)* providing an objective assessment of crime taking into account demographic development of the society.

Crime index is calculated according to the following template

$$I = \frac{\text{Number of offenders or number of crimes (CO)}}{\text{Number of criminally liable inhabitants or total number of the inhabitants of a particular country}}$$

*Structure of crime* is a qualitative indicator expressing a share of crimes types and groups in a total number of all crimes committed in a particular territory within a particular time period. This indicator also provides data on the most serious crimes (such as moral crimes representing a significant criminological factor affecting overall crime development in the Slovak Republic. Those are mostly criminal offences of rape, sexual abuse) which are considered to be extremely dangerous for the society and therefore the findings must be specified and defined. The crime structure can be expressed by more signs which can concern not only groups of crimes but also offenders or victims, e.g. in terms of their structure, the offenders according to their contribution to crime, etc.

Apart from the above mentioned it should be realized that criminal activity is also analysed from the viewpoint of territorial occurrence and in this respect we talk about *criminal geography*. Individual data enable us to notice a different fre-

quency of crime in particular territorial units affected by different criminological factors (employment rate, economic growth, structure of population, etc.).

*Crime dynamics* displays a criminal activity on the move and its changes in a particular time period in a particular territory. It is necessary to mention that the crime is flexible and constantly changing phenomenon and especially by means of crime dynamics we can observe a development curve of a recorded crime. Each change can be explained by a changing political situation.

A term *crime tendency* or *a crime trend* is often connected with crime dynamics. According to individual facts it is indicated whether there is crime stagnation or it has an increasing or decreasing tendency in a particular period.

The term *apparent crime* defines all crimes known from statistic data, i.e. recorded crime. *Latency crime* provides relative data on recorded crime which means that the data on a situation, structure and dynamics of crime are not absolute. Latency crimes are those crimes which were not detected in the criminal proceedings and therefore they are not statistically documented. Even though some crimes were detected but they are kept confidential by competent persons and basically they are not recorded and they are designated in official statistics as *artificially latent*. In order to analyse real crime it is necessary to deal with a scope of latency crime mainly by means of criminology research. One of the most popular researches is a statement on one's own activity, so-called a self-report where the offenders themselves inform whether they have committed a crime or they received some information on a crime in any way. It is necessary to mention that a self-report has also its weak points since the participants tend to confess to the crimes that can be even disparaged. Other forms are surveys performed by informers or by criminal offences victims. All surveys are based on anonymous questionnaires' forms filling.

A term *black number* defines criminal activity not discovered by bodies in charge of criminal proceedings. *Grey number* denotes those crimes discovered by the police bodies but the offenders were not detected or when a suspect was prosecuted but not sentenced.

*Crime statistics* represent an official source of information on recorder (apparent) crime. The Police is one of basic institutions providing this information (used for elaboration of a content analysis of crime statistics - in particular police statistics), General Prosecutor of the SR, Ministry of Justice of the SR, Prison and Justice Guard.

The findings on recorded crime are published in the mentioned Report on Safety Situation in the Slovak Republic for a relevant calendar year (this work also contains the analysis of its document). The Report provides comprehensive information on registered and explained criminal activity for a respective calendar

year, deals with single crime types, traffic and safety situation, on crime offenders, the injured (victims) of the crimes, etc. The police statistics belongs to basic findings on crime. General Prosecutor of the SR, Ministry of Justice and Prison and Justice Guard provide statistic data in annual reports every calendar year. There are also objections against the statistic data reminding their relevancy and pointing out at the mentioned above latency or exaggerated interpretation which is used to be misused.

## **II. 1. Phenomenology of Property Crime in the Territory of the Slovak Republic in the Years 1989-1999**

Until 1989 crime development was relatively stabilized and its sharp growth was recorded only after social and political changes in 1989. Overall crime rate was characterized by a rapid increase reaching its peak in 1993 when 146 125 crimes were recorded. From 1994 a slight decline was observed which might be explained by the fact that in 1999 "only" 94 016 crimes were recorded. Clear-up rate of crimes was nearly 88% in 1989 (40 723 of solved crimes) whereas in 1993 a clear-up rate of crimes fell nearly to the level of 36% (52 981 solved crimes). Gradually a clear-up rate of solved crimes was on the increase and in 1999 represented 5.1%, i.e. 47 723 solved crimes).

*Property crime* grew by 2.5 times the years 1990-1993 and its share in overall crime rate increased to nearly 80% in 1993. According to this fact it is obvious that property crime was a prevailing crime type at that time in the territory of the Slovak Republic. Since 1994 it has dropped which was mainly a result of modified criminal rules. An amendment of the Act no. 140/1961 of the Criminal Act as amended as of 1994 (Section 89, par. 14) is one of the most significant amendments determining damage as damage not negligible as twofold of the lowest monthly wage which resulted in separation of delicts from crimes. A minimum wage was stipulated by the SR government by a provision on a minimum wage no. 645/1992 Coll., in the amount of Czk- 2 200 per month for an employee rewarded by a monthly wage. As a matter of fact this step resulted in decline of mainly property crime, since a number of delicts against property which were not recorded as crimes any longer was on the increase. In my opinion we have to think about the fact whether this artificial decrease of crime had a desirable effect.

As far as share of *violent crime* share in overall crime rate is concerned there was a gradual drop until 1993 however, unlike overall crime rate which culminated in that period. Since 1993 there has been a regular annual increase of violent crime share against overall crime.

*Business crime* saw not very significant changes in the monitored period. In 1990 there was a slight drop of business crime (3943 economic crimes) and from 1992 (5188 business crimes) it recorded a slight increase again. Between 1997 and 1998 it started to fall slowly again and in 1999 its repeated growth was recorded (5 902 business crimes).

There was a considerable decrease of *moral crime* after 1989 (3 543 moral crimes) compared to 1990 (1 037 moral crimes). This trend was maintained by the moral crime until the end of a monitored period, i.e. until 1999 (721 moral crimes).

## **II. 2. Phenomenology of Property Crime in the Territory of the Slovak Republic in the Years 2000- 2010**

### **II. 2. 1. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2000**

In this year elimination of crime continued which represented a successful continuation with the previous years. There was totally 88 817 crimes recorded in 2000 which is by 5 199 crimes less than it was in 1999. This data was positively influenced mainly due to adopted conceptual documents by the Ministry of Interior of the Slovak Republic and the Police of the Slovak Republic. As for overall crime it must be noted that 47 107 crimes was solved. Damage incurred reached SK 18.5 bil., in the monitored period. The highest occurrence of crime was recorded in Bratislava region and 85.7% of all criminal offences were committed only in the city of Bratislava.

It can be observed from the following chart that property crime represents the highest share in overall crime rate. Property crime has been on the first place in the number of crimes a long time and it has dropped significantly compared to 1993. The crime index shows a relatively objective indicator of a crime level taking into account also demographic development of the society which makes it even more objective. In this paper a calculation per 10 000 inhabitants is used for calculation of the crime index from 2000-2010 which is in my view more appropriate since this data is more frequently used in the European Union. At the same time it was used to calculate for the crime index in the Slovak Republic in 2010 when there was 5 431 024 citizens registered. In 2000 it was 163 crimes committed per 10 000 inhabitants. According to the crime index 97 property crimes was recorded per 10 000 inhabitants during the monitored period of committed property crime, 25 offences as regards violent crimes, 12 crimes as regards business crime

and 1 crime as regards moral crime ( A Report on Safety Situation in the Slovak Republic in 2000, electronic version).

## **II. 2. 2. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2001**

In this period 93 053 crimes was recorded which represents an increase by 4 236 crimes when compared to a year 2000. There is a trend towards organized crime, corruption, and decline of moral values. 50 818 crimes of the total number of recorded of crimes were solved which is 54.6%. Damage incurred reached SK 12.3 bil., in the monitored period which is a drop by SK 6.3 bil., compared to the previous year. From the territorial point of view the highest occurrence of criminal activity was recorded in Bratislava district (20%), but crime was gradually pushed out from the capital to districts. An opposite trend of crime growth was observed in the Kosice and Presov regions.

If we use the crime index calculated per 10 000 inhabitants it is obvious that the value of an overall crime index raised slightly again up to the level of 171 crimes per 10 000 inhabitants. At that period the crime index showed growth of all crime types selected except from moral crime. Property crime reached an index of 99 property crimes per 10 000 citizens, violent crime showed 27 crimes, business crime 14 offences and moral crime index as it was already mentioned remained the same as in 2000, i.e. one moral crime per 10 000 inhabitants (A Report on Safety Situation in the Slovak Republic in 2000, electronic version).

From 2001 amount of damage not negligible reached nearly SK 9000- and thus, a part of criminal offences became delicts. This fact might have been caused by political reasons – to declare successful fighting against crime.

In that year an increase of illegal migrants through a state border was recorded. This trend has been perceived very sensitively mainly in line with internationalism of an organized crime, extremism, terrorism and other forms of criminal activities. Growth of immigrants is demonstrated as an example in the following table where there is an obvious increase of the number of applicants to grant a refugee status in the Slovak Republic after 2000.

YEAR	ASYLUM APPLICANTS	ASYLUM GRANTED	ASYLUM NON-GRANTED	GRANTED/ NON-GRANTED UNITL *	PROCEEDINGS SUSPENDED	DECISION- MAKING PROCESS IN PROGRESS 1-degree decision	DECISION- MAKING PROCESS IN PROGRESS * * 2-degree decision	CITIZENSHIP OF THE SR GRANTED
<b>2000</b>	1556	11	123		1366	400		0
<b>2001</b>	8151	18	130		6154	2248		11
<b>2002</b>	9743	20	309		8053	3609		59
<b>2003</b>	10358	11	531		10656	2769		42
<b>2004</b>	11395	15	1592		11782	775		21
<b>2005</b>	3549	25	827		2930	542		2
<b>2006</b>	2871	8	861		1940	512	92	5
<b>08/2007</b>	<b>2045</b>	<b>8</b>	<b>886</b>	<b>52/491</b>	<b>1222</b>	<b>304</b>	<b>391</b>	<b>16</b>

\* DO – additional protection

\*\* asylum non-granted and the applications rejected are already included in a cell “ asylum non-granted” in a stage of appeal to district courts and NS SR, i.e. being further solved in an appellate procedure.

**Table 1A** *survey of the number of applicant to grant a refugee status in the SR in the years 2000-2006*

### II. 2. 3. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2002

If we compare years 2001 and 2002 it can be noted that in 2002 a slight increase in the number of recorded crimes was observed of which 107 373 offences were recorded in the monitored period ( of which 55 212 of criminal offences was solved). In that period damage caused in consequence of a crime reached the sum of SK 28.8 bil., which is more by SK 16.6 bil., compared to the previous year. Business crime has recorded the highest increasing tendency from selected crime types. After 2001 the number of committed business crimes nearly doubled (14 448 offences). This was due to a significant contribution of fraudulent acts increase prevailing in business crime together with successful reduction of latency by bodies responsible for criminal proceedings. After terrorist attacks on 11<sup>th</sup> September 2001 on the World Trade Centre in the USA (3 047 innocent people died) an activity of extreme groups was demonstrated in the territory of Slovakia as well.

The crime index recorded a slight growth when 198 crimes per 10 000 inhabitants was totally committed. The property crime index value represented 106 crimes per 10 000 inhabitants. Other crime types recorded an increase again with an exception of moral crime. The crime index value of violent crime represented 28 crimes per 10 000 inhabitants and a considerable increase of business crime was recorded. In that year by 13 business crimes more was committed per 10 000 inhabitants whereas overall value of the business crime index was 27 offences. Moral crime did not record any change and its crime index reached a value of 1 crime (A Report on Safety Situation in the Slovak Republic in 2000, electronic version).

#### **II. 2. 4. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2003**

A year 2003 was characterized by deepening social and economic differences between individual classes of the inhabitants. Also a growth of demonstrations of radicalism and extremism was recorded. Despite the above mentioned it is necessary to note that no major conflicts between the inhabitants occurred and the situation was influenced by several international attacks abroad. In 2002 terrorist attacks were committed in foreign countries, especially in Moscow where almost 1000 hostages were kept and out of which 130 innocent hostages died during the police intervention and also in Bali where 202 people were killed out of which 88 were Australians.

In that year 111 893 criminal offences was recorded. This growth was caused by several factors setting the conditions to commit criminal acts. 56 451 of them was solved and damage caused by criminal activity reached the amount up to SK 61.7 bil. Compared to the previous year a considerable increase of damage was recorded – by SK 32.9 bil. With respect to the harm done it is vital to note that in the recent period there has been a significant raise of business crime the scope and seriousness of which has been growing in the Slovak Republic recently. This growth is affected by several factors pointing out at the fact that many business crimes has had remained latent ones. Business crime causes a significant damage to a protected interest of the state in particular as regards financial harm incurred which results in weakening of income parts of the state budget.

In 2003 the overall crime index reached the highest value from 1994 (206 crimes per 10 000 inhabitants). Property crime recorded a slight increase since in the monitored period 112 crimes were committed per 10 000 inhabitants. Violent crime recorded a drop whereas value of the crime index represented 25 crimes. Value of the business crime index calculated per 10 000 inhabitants was 27 crimes

and the moral crime index represented 2 crimes. (A Report on Safety Situation in the Slovak Republic in 2000, an electronic version).

### **II. 2. 5. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2004**

This period can be characterized by raise of property crime which affects considerably overall crime rate. 131 244 crimes were recorded in 2004 which represents an increase by 19 287 crimes. In that period 51 635 crimes were solved, however, we must point out at a significant growth of solved business crimes. In the monitored period damage incurred reached the sum of SK 43.1 bil. On the basis of the above mentioned a drop of damage by SK 18.6 bil. compared to the year 2003 can be observed.

The overall crime index recorded a growth since 242 crimes per 10 000 inhabitants was committed in 2004. Property crime recorded an increase and the crime index showed a value of 142 property crimes per 10 000 inhabitants (the property crime index grew gradually from 2000 to 2004). The violent crime index represented a value of 25 violent crimes, the business crime index showed 30 business crimes and the moral crime index recorded 2 moral crimes per 10 000 inhabitants (A Report on Safety Situation in the Slovak Republic in 2000, electronic version).

### **II. 2. 6. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2005**

123 563 crimes were registered and 60 093 crimes were solved in total in 2005 which is the highest number from 1993. Damage caused by criminal activity reached SK 58.3 bil., in the monitored period. This period is characterized by a decline of not only property crime but also of violent crime. In 2005 fewer crimes were committed than in 2004, pointing out at the fact that business crime had an increasing tendency not only as regards detected crimes but also with respect to damage caused by this crime type.

An overall crime index slightly dropped and it recorded a value of 228 crimes per 10 000 inhabitants. Property crime slumped since the crime index reached a value of 120 property crimes per 10 000 inhabitants, the violent crimes index represented a value of 24 violent crimes per 10 000 inhabitants, business crime recorded 35 crimes per 10 000 inhabitants and the moral crime index had a value of 2 moral crimes (A Report on Safety Situation in the Slovak Republic in 2000, an electronic version).

### **II. 2. 7. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2006**

In 2006 fewer crimes were detected compared to the previous year. In the monitored period 115 152 crimes were registered from which 53 245 crimes were solved. Damage caused by criminal activity dropped considerably reaching the amount of SK 14.2 bil., in the monitored period. In that year a crime development trend continued, in particular of property and violent crime where a drop was recorded similarly to the previous years. Also business crime slightly decreased. An important point which was supposed to introduce a change, however, not finally adopted in the area of business crime was an effort to introduce criminal liability of legal entities. This was meant to break an old Roman principle "societas delinquere non potest", from which a principle of individual criminal responsibility has been derived in Slovakia. From the territorial aspect the highest occurrence of criminal activity was in the Bratislava region (20% share in overall crime in Slovakia).

In 2006 a new Act no.300/2005 Coll., of the Criminal Act as amended became effective and a new Act no. 301/ 2005 Coll., of the Criminal Code as amended (hereinafter only as the "Criminal Code") came in force approved by the National Council of the Slovak Republic even in May of the year 2005), pointing out at the fact that this process has finalized an effort to recodify criminal law in Slovakia. One of the basic tasks of recodification was to apply the latest criminological knowledge and thus, to react to a constant development of crime. In new criminal codes (in my view) the principles of decriminalization and depenalization which are a long-term strategy for the criminal law were omitted. And it is mainly criminological findings that should contribute to application of the aforementioned principles.

In 2006 the crime code recorded a value of 212 crimes per 10 000 inhabitants from which it can be assumed that there was a slight drop in crime compared to previous two years. The property crime index reached the value of 116 property crimes per 10 000 inhabitants, the violent crime index had a value of 20 violent crimes, the business crime index showed 35 business crimes and morality crime index 2 morality crimes per 10 000 inhabitants. (A Report on Safety Situation in the Slovak Republic in 2000, an electronic version).

### **II. 2. 8. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2007**

In this period 110 802 crimes was committed in total. In comparison with a previous year it is less by 4 350 crimes. Damage caused by overall criminal activity reached SK 16.8 bil. in the Slovak Republic in 2007.

In 2007 the crime index recorded a value of 204 of all crimes per 10 000 inhabitants. The property crime index reached a value of 111 property crimes per 10 000 inhabitants. The violent crime index showed a value of 18 violent crimes, the business crime index showed 33 business crimes and the morality crime recorded 2 morality crimes per 10 000 inhabitants.

### **II. 2. 9. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2008**

104 758 crimes were committed in total in 2008. As regards to overall crime it is essential to mention that 45 680 criminal offences was solved. Damage caused by overall criminal activity reached SK 13.6 bil. in the monitored period.

In 2008 the crime index recorded a value of 192 crimes per 10 000 inhabitants. The property crime index reached a value of 101 property crimes. The violent crime index showed a value of 17 violent crimes, the business crime index showed 31 business crimes and a morality crime recorded 2 morality crimes per 10 000 inhabitants.

### **II. 2. 10. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2009**

In the monitored period 104 905 crimes were committed in total of which 49 453 crimes was solved. Damage caused by criminal activity reached EUR 496.4 mil in this period.

In 2009 the crime index recorded a value of 193 crimes per 10 000 inhabitants. The property crime index reached a value of 97 property crimes, the violent crime index showed a value of 15 violent crimes, the business crime index showed 36 business crimes and morality crime recorded 2 morality crimes per 10 000 inhabitants.

## **II. 2. 11. Situation, Structure and Dynamics of Property Crime in the Slovak Republic in 2010**

In this period 95 252 crimes was committed. Damage caused by criminal activity reached EUR 734.9 mil. In the monitored period 46 725 crimes was solved by finding an offender and additionally 6289 crimes was clarified, i.e. in total 53 014 crimes was clarified. From the viewpoint of gender in 2010 it was men who contributed in crime the most frequently (40 671 crimes), women (7 280 crimes), juvenile offenders (4 099 crimes) and children (1 256 crimes).<sup>17</sup> The highest occurrence of criminal activity was in Bratislava region where nearly 23% of overall number of detected offences in the Slovak Republic was committed.

In this context attention must be drawn at the fact that the Criminal Act was amended by the act no. 224/2010 introducing criminal liability of legal entities in the Slovak Republic. In a continental system of law a model of both genuine and non-genuine criminal liability of legal entities is applied. In the Slovak Republic a model of non - genuine criminal liability of legal entities was introduced enabling the act to impose sanctions on legal entities non-defined as punishment in a criminal proceeding. In case of the Slovak Republic such sanctions are protective measures. The need to implement sanctions for legal entities if a criminal offence was committed in any relation with its activity resulted from several international documents.

In 2010 the crime index recorded a value of 175 crimes per 10 000 inhabitants. The property crime index reached a value of 87 property crimes. The violent crime index showed a value of 14 violent crimes, the business crime index showed 31 business crimes and a morality crime recorded 1 morality crime per 10 000 inhabitants.

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<sup>17</sup> Správa o bezpečnostnej situácii v Slovenskej republike za rok 2010.

### III. Criminological Characteristic of Property Crime

#### III. 1. Endogenous Criminology Factors of a Property Crime Offender's Personality

Internal factors are understood the factors the reason of which is an element of an observed system acting inside oneself. Also reason acting behind the system boundaries i.e. from the inside to the outside of it will be an internal reason.<sup>18</sup>

Among internal factors may be included personal disorders, intellectual disorders, neurotic disorders, etc.

The term psychopathy has been substituted by a term **personal disorder**. Psychopathy or personal disorders are demonstrated by an adaptability malfunction and inadequate, disturbing behaviour resulting in suffering of the individual oneself, however, causing problems mainly to his environment. It is a permanent condition of a person with inadequate properties and deviations in emotionality, thinking and behaviour with respect to other people and society and very frequently with no low level of one's intelligence. Their thinking is strongly egocentric and leading into conflicts. Psychopathy types are not initiated by a mental disease or affected brain, those are personal and characteristic features of a nature. Even though they can already appear at a school and adolescent age they persist throughout the whole life with oscillations. Sometimes an abnormal personality is also called as an intermediate stage between psychopathy and a wide personality standard. Personal disorders are represented in population up to 10-18 %. In the history of mankind psychopaths played very frequently important roles. Many of them gained big power, created remarkable works of arts, new learning, etc. There belonged strange people, reformers, inventors, geniuses but also criminals. There are several types of personal disorders (paranoid disorder, schizoid disorder, addicted disorder, anancastic disorder, narcissistic disorder, anxiety, emotionally unstable disorder), but in my work I only focus on those ones that are in my opinion typical for property crime offenders:

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<sup>18</sup> Khol, J.: Úvod do etiologie. Praha, Karlova univerzita 1984. s. 128.

- **Dissocial personal disorder** or also asocial disorder is demonstrated by a lack of emotions, cold behaviour with missing interest in others, carelessness towards social and ethical standards. Such behaviour can be described as asocial or amoral. The affected persons are not able to admit their fault and on the contrary, they put the blame on others. They commit crimes, frequently repeatedly and their behaviour cannot be influenced by any experience or punishment. They do not know any regret and their violent actions against others are rationalized for their benefit. They are already problematic, violent, brutal and careless in their childhood and therefore they are placed in reformatories for delinquent children and correctional institutions. It is obvious from the described features that this type of disorder is the most risky type of disorder from a criminalistics point of view. These individuals are mainly perpetual offenders with a typically various scope of their criminal activity.
- **Histrionic personal disorder** or hysterical or theatrical personality is demonstrated by an effort to receive appreciation and to attract attention, by unstable emotions, theatricality and dramatization of a situation. They are persons who are self-centred and egocentric able to manipulate and to plot, writing of anonymous letters and sometimes they break teams successfully. Essential typical feature is very often self-elevation and attracting attention of the society. This type of disorder is typical for frauds when these people are rather victims than offenders of the criminal activity.

**Intellect** is one of the endogenous factors affecting an individual. The intelligence enables to a man to react correctly and promptly to any changes of the environment and to become oriented in new situations. However, intelligence requires particular conditions to be able to develop. If those are missing, even high intelligence and intellect cannot be developed. The differences can be observed on the level of an intellect which is measured traditionally by tests and it is expressed by an intellectual quotient –IQ. Intellect measuring expects its normal distribution within a population following a Gauss's curve. Lower intellect (average, under average, light mental retardation) is typical for property crime offenders, however, also other IQ levels can occur.

<b>IQ</b>	<b>Zone</b>	<b>% of population</b>
131 and more	Highly above average	3
111 – 130	Above average	14
90 – 110	Average	66
70 – 89	Under average	14
69 and less	mental retardation	3

**Table 1** Occurrence of individuals in intellectual zones

Intellectual disorders are divided into *primary disorders* (mental retardation of a different level) and *secondary disorders* (dementias and pseudo-dementias). Mental retardation is not the only reason of committing crimes, however, investigation of criminals' personalities a high level of offenders with low IQ was discovered. There three levels of lowered intellect ( mental retardation). I assume that light mental retardation mostly occurs in property crime offenders from all retardation types and therefore I describe it more in details ( further retardation types are as follows: medium mental retardation, i. e. imbecility –IQ 49-35; heavy mental retardation, i.e. idiopathy - IQ under 35):

#### **Light mental retardation (moronity) – IQ 70-50**

It appears even at an early age and it is typical that an affected person can be trained and educated at special schools with smaller number of students and applying limited criteria. Vocabulary is insufficient even at an older age and it is limited. Main personal risks of moronity are increased suggestibility and absence of criticism. Moronity is apparent in unusual and complicated situations, in particular where it is necessary to decide quickly and correctly whereas such a person fails. Those individuals can be aware of their criminal behaviour, however, not the reason why such acting is sanctioned by the society. As regards more complicated criminal offences, a co - participation or persuasion by an intellectually higher co-offender is probable. In civil proceeding mental retardation itself usually does not result in a proposal to restrict legal capacity.<sup>19</sup>

### **III. 2. Exogenous Criminology Factors of a Property Crime Offender's Personality**

In my opinion external (exogenous) factors can be described as the environment which is a source of formation of a person where a man is a product of the environment only to that extent to which he adopts the elements and the content of this environment depending on a place he/she has in a system of social

<sup>19</sup> Heretik, A.: Forezná psychológia. Bratislava, Slovenské pedagogické nakladateľstvo 2004. s. 183.

relations in one's social activity and depending on one's social activity. Inclusion into social relationships represents a precondition for a person to become a personality.

Among exogenous factors which in my view influence the offenders of business crime to the greatest extent are the factors in the following areas: social, political, cultural, economic and a legal area. Other exogenous factors which are not dealt with in my paper into detail are the factors in victimological, biological, psychological areas and in many others.

### **Criminology Factors in a Social Area**

In the process of socialization an individual adopts habits, knowledge and rules necessary for life in the society. If the process goes normally, i.e. without any more serious deviations or defects, then a human being becomes socially capable to a full participation in life in the society; otherwise one's preparation for life is more- less limited and it can be demonstrated by failure of some social functions and even result in a criminal activity.

#### **Family**

Family is one of the most significant exogenous criminology factors in the social area affecting a personality of an offender. I am of the opinion that the family has an essential place among educational factors since juvenile crime is a potential platform for property crime growth. It is also evidenced by a preliminary crime (children's delinquency) represented by children from functionally disordered families suffering from insufficient emotional relationships, empathy, etc. It is also due to the fact that a child receives its first views of life and world in a family environment, here it spends a considerable part of its life. Family has undergone a historical development like any other social institution. Starting from matriarchate through patriarchate until current monogamous family with equal relationships between both parents. The Act no.36/2005 Coll., on a family as amended defines in the art. 2 "a family based on marriage as a basic cell of the society. The society protects all family forms by all means."

Modern family is characterized by particular signs affecting its existence and functioning:

- it is a socially acknowledged form of a partners' co-existence,
- its members live in one household, in a family environment,
- individual members are connected with a kinship,

- family members cooperate together and help each other to fulfil family tasks,
- family has its own cultural, spiritual, social and other habits, customs and traditions.

Family existence is affected by a whole range of factors such as: physical maturity, health condition, economic and material conditions, social environment, sexual agreement, etc. Current family fulfils several basic functions:

- *Biological and reproduction*: consists in biological and psychological needs of a man and a woman (sexual intercourse, mutual love) in providing of ancestors,
- *Economic*: providing of material conditions of a family existence and its members. It consists in financial incomes of gainfully employed family members, family and equipment of a household by material needs,
- *Emotional*: conveys a need of emotional relationships between spouses, between parents and between siblings,
- *Educational*: related to a preparation of children for life in the society and to their normal physical and mental development. Educational function of a family is influenced by many factors the most important of which are demographical, economic and cultural ones. Demographic factors represent a family size, age of parents when they got married, divorce rate and employment of parents. Economic conditions represent financial situation to meet the family members' demands. Cultural conditions are e.g. education and cultural level of parents, equipment of families with information means, use of free time

Slovak family as an institution has resisted some utopian visions and it has adopted to a certain extent to social changes even though it has gone through many difficulties. Mass inclusion of women into a working process caused that social impacts penetrated into a family and it has become more and more socially open. Compared to the previous family type which had predominantly a production character, an emotional part of a family has become dominant. As a result of this a family became more democratic not only for children but also for spouse since in comparison with a previous period an influence of a man - a family father decreased considerably. Industrialization of Slovakia, collectivization of villages, high mobility and massive integration of women into a working process and urbanization had a major impact on a life of a traditional Slovak family and resulted in disappearance of big families which lived together as multi-generational ones. However, despite these mostly positive changes the family has become more vulnerable than before which is evidenced by a high divorce rate.

In the period between the years 1993-1997 there were more than 50 divorces per 100 marriages concluded in the Slovak Republic (e.g. 11 890 divorce proposals was submitted in 1993, in 1995 it was 12 561 proposals; in 1997- 12 788 proposals). At the same time a number of cases of family breakdowns increased in such a way that marriage persists formally but a couple does not live together and does not participate in common upbringing of children.

In a traditional family the role of a wife and a woman is oriented towards inside and reflects its non- traditional social content. Currently we are facing a completely different situation when the social status of women has been considerably changed by their nearly full inclusion into a working process and their educational level. It is vital to note that a standardised system relating to social roles of men and women as well as their family roles does not correspond to this situation. Sociological research show that social evaluation relating to both genders reflects significantly stereotypes of a traditional society and these stereotypes persist extremely strongly inside the family, especially in the area of division of works between men and women.

One of the most serious issues of a contemporary family is a problem of their residence. Therefore each of the measures taken which enables young spouses to obtain a flat considerably contributes to the fact that the parents will be able to devote more free time to upbringing of children and their living conditions will be more harmonic which will contribute to a great extent to limitation of social and pathological influences on children. The existing material load of a family (especially the financial one) must be minimized as much as possible either by extension of the number and functions of the existing institutions such as play-schools and kindergartens or by foundation of a system of all-day treatment by means of children's nurses.<sup>20</sup>

Families with criminology effects could be divided into several groups which can be grouped by means of more methods into the following:

- *Family of a criminal type*- represents a family the member of which is a person with a criminal past and criminality is also a typical feature for the other family members,
- *Antisocial family type*- all its members a ( or at least a part of them) are permanently negatively oriented and at the same time a negative way of life persists within the family even though criminality is not a basic way of life for its members, other deviant forms are typical for them,
- *Asocial family type*- lifestyle in this family type is set according to social expectations, however, some factors strengthen demonstrations of dysfunction

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<sup>20</sup> Madliak, J.: Kriminológia, 1. vydanie. Košice, ATOM computers 1998. s. 99.

tional behaviour of the family. A typical example is when the parents do not care properly about upbringing of their children and they are brought up under the influence of the environment where they live.<sup>21</sup>

Completeness and incompleteness of the families as a significant criminology factor attracted criminologists even in the past and there are more surveys in this respect. According to an influence on forming of an individual the following family types can be distinguished:

- *Complete family* - a type of family where both parents participate in the process of upbringing until its completion. Completeness, however, does not automatically guarantee a quality upbringing pointing at the fact that a negative influence of so-called "businessmen families" or families of so-called "intelligence" is being discussed more and more frequently. One of the reasons of this statement is the fact that police bodies as well as other institutions of both formal and informal control have a different approach to the persons of higher social classes when solving problems and as a rule, they have more tolerant approach attempting to get the persons out of the problems.
- *Complete but disordered or destroyed family* – it can be families just formally complete and where the relationships between parents and other members are so broken that the family is disordered in its basic functions and therefore we can speak about dysfunctional family. Another family type that can affect children negatively is when it happens very often that even the closest environment does not have any suspicion that their influence may threaten healthy development of children. This family type does not have its internal relationships on a required level and consists mainly in failure of both educational and emotional function which is later on reflected in the relationship between parents and children itself.
- *Incomplete family*- it is typical for this family type that upbringing of children is carried out by only one of the parents or one relative. A negative impact of this family type can reflect in the process of children's socialization by a missing role of one of the parents which cannot be substituted by the remaining parent. It is important to note that it was quite a long time when a predominant opinion was that bringing up the children by a lonely parent creates a bigger space for criminal activity. This opinion was completely uprooted by statistical findings of the Ministry of Justice of the Slovak Republic. It is obvious from the statistics that vast majority

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<sup>21</sup> Madliak, J.: Kriminológia, 1. vydanie. Košice, ATOM computers 1998. s. 99.

of juvenile offenders did not come from so-called incomplete families but on the contrary they come from complete families, i.e. the families where both parents participated, i.e. should participate in upbringing.

- *Criminal family*- in this family type an individual acquires undesirable models of behaviour. With respect to a risky influence of a family on an individual several issues are topical such as: unemployment of parents, type of offenders' parents job where the individual acquires delinquent behaviour immediately and naturally.

Extraordinary significance of a family, however, results also from the fact that the family is a unit reflecting various and often important social problems such as lifestyle, habitation, employment. It reflects economic, social and cultural life and thus, the society influence on the children is performed mainly by means of a family.<sup>22</sup>

#### School

School can be considered one of the important factors in upbringing process. The term school has been derived from a Greek word *schole*, i.e. free time, not being busy. Foundation of schools dates back to the ancient period (China, Egypt, India, Greece, Roma, etc.), when responsibility for upbringing of a new generation was taken over by the society and its institutions except from the families. The main and most significant task of the school is to provide upbringing and education of children, youth and adults based on the principles of democracy, humanism and science. *Democracy* assumes accessibility to education to all people regardless age, gender and nationality. *Humanization* requires in particular, to increase an influence of upbringing in the area of education according to the principle of heuristic education. *Scientific approach* expects creation of study content according to the latest scientific findings which represent a compact and logically organized whole.

An influence of the school on a personality is important from many aspects:

- A particular regularity and organization results from a school life system, i.e. the elements that an individual should bring into one's further life after completion of school attendance
- an individual receives from the educational process such knowledge and experience that enable him to incorporate into a normal life of the society,

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<sup>22</sup> Zapletal, J.: Kriminologie – díl I. obecná část. Praha, Policejní akademie České republiky 2004. s. 49.

- moral education, forming of a feeling of responsibility-this is significant from educational process.<sup>23</sup>

It is important to point out at present status of schools in our society which is not very positive and thus in schools are reflected problems of both global and our society. Teachers are very often insecure whether to require strong discipline or a more tolerant attitude towards acquiring basic knowledge required by curriculum of basic or secondary schools. An impact of many changes- reforms in our school system also affects the students themselves and therefore we can speak about *alienation of students from the school environment*. A significant criminology factor is *avoiding school attendance*. This is a serious and actual criminological problem which is supported by the fact that the time of school lessons ( according to the police statistics) is currently the second most frequent interval ( time scope from 6 am to 2 pm) when the youth commits property crime.<sup>24</sup>

Another significant factor is *school failures*. The children who experience failure at school are frustrated and expect failures even in their future. Those students have a more difficult situation for choosing their professional preparation and also there is an increased perspective to receive a non-qualified job whereas those children start searching other opportunities how to be successful among which delinquency activities are included.

At the very beginning a teacher represents for a child the most important personality at school and therefore a relationship between a teacher and a child is crucial. Untactful behaviour of a teacher to children may result in creation of unfavourable atmosphere which affects negatively students and their attitude towards a particular subject. On the basis of the aforesaid the children derive their feeling of one's own value. Later on it is important for a children how they are viewed by classmates.

Despite of the facts mentioned above the school system is undoubtedly the most significant mean of social integration which is besides acquiring knowledge predetermined for building up of emotions and for respecting of standards, habits, customs and a system of values. If somebody is not able to adopt socially necessary knowledge this may result in formation of an unsuitable social situation. It concerns mainly the children who were not successful at a primary school and after completion of a compulsory school attendance they start working as auxiliary workers. In the system of social work division also non-qualified workers performing difficult physical works are constantly needed and they find permanent work.

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<sup>23</sup> Madliak, J.: Kriminológia, 1. vydanie. Košice, ATOM computers 1998. s. 102.

<sup>24</sup> Kolektív autorov: Kriminológia – osobitná časť I. diel. Bratislava, Akadémia PZ 2005. s. 51.

Child crime is to a particular extent also a result of carelessness or no interest of public or of unsuitable examples of the adults. Also a negative impact if various anti-social activities committed by children remain unnoticed by parents, teachers, accidental witnesses or other adults. <sup>25</sup>

As regards typical features and demonstrations of criminal activity of young people one of them is *insufficient planning of a criminal offence*. They commit offences mostly without a long-term preparation. Typical features are an accidental character of a place where the crime was committed, use of inappropriate tools or needs, choice of a wrong time to commit a delict, non-perfect planning and hiding of traces. In the last instance it is also a need to boast to their environment with their activities or classmates which in many cases results in their capture. An important sign of juvenile crime is a distinctive disability to postpone satisfaction of their needs to a later period, not to wait for a more suitable constellation of conditions to perform their intention. <sup>26</sup> Young people contribute to property crime considerably. In 1997 a share of juvenile offenders in property crime reached nearly 50% level (more information in the Chapter Property Crime Offender).

#### Roles of groups in the process of formation of a personality

Every person is born to a particular environment, society, social environment, to a particular material, social and culture level. The character of the environment where the individual grows up finally determines a type of one's personality. It is very probable that the child from a family providing quality, inspiring environment will develop in a different way than the child who is born into an incomplete or a dysfunctional family. However, each functioning family is different. In some families the child is born as the first one, in others as the fifth one, some children are born into a closed family isolated from the others, the other ones to an open family where more generations co-exist. The whole community where the child is born, all its groups together with a personality of an individual create a social system. The social system represents a social environment where we live and most frequently it is determined by a state and a legal form of the society where we are born.

Process of formation, creation and civilization of a man is called a socialisation process. The process of socialization is most frequently defined as a process of incorporation, inclusion and integration of an individual to the society, a process based on continuously expanding and deepening interaction of an individual

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<sup>25</sup> Zapletal, J.: Kriminologie – díl I. obecná část. Praha, Policejní akademie České republiky 2004. s. 49.

<sup>26</sup> Zapletal, J. – Novotný, O. a kolektiv: Kriminologie. Praha, ASPI Publishing 2004. s. 380.

into the social environment within a particular social and cultural system. The process of socialization represents for instance:

- A process of integration into the society when an individual is learning to know oneself and one's environment, adopts the rules of co-existence and possible expected ways of behaviour,
- Preparation of an individual to perform one's social role,
- A process where the individuals develop those qualities which are essential for their efficient and successful integration into the society.

We can simply state that socialization is a whole life process of social learning when a child adopts social standards, models of behaviour, attitudes, values and customs typical and desirable for the culture in which he was born. The process of socialization as a process of a personality formation is, however, it is very difficult. It develops in an interaction of more factors; social environment, specific cultural environment, innate pre-programmed elements, own will and decision-making of an individual. The process of socialization must undergo all society members, its products (adopted standards, values, skills, models of behaviour) are, however, affected by specific features of a particular culture.

*A primary group* is such a micro-group which has the decisive influence in a particular life period on an individual. A member of this group adopts its value system, a system of group standards, a value orientation ( a typical primary group is a family up to the period of children's adolescent age, later on it can be a group of friends, etc.).

*A reference group* is such a central point in a social field of individuals towards which they has the closest relationship; their behaviour is affected by it regardless whether they are already members of the group or just attempting to get there. In this second case the individuals are trying in advance to harmonize their own behaviour with standards of ones' reference group.<sup>27</sup>

As regards the issue of a personality formation ( adolescent period), it must be emphasized that the power of unfavourable personality formation can be revealed in adulthood whereas it is in particular a group of friends that can start up the deformation of a personality and finally commission of a crime.

I am of the opinion that the persons group to the groups mainly in order to achieve their goals more easily since the power of a group is bigger than the one of an individual. In this respect an issue of criminal liability of legal entities is topical (more in a subchapter on criminal liability of legal entities).

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<sup>27</sup> Madliak, J.: Kriminológia, 1. vydanie. Košice, ATOM computers 1998. s. 104.

### Free time

It is a significant criminology factor since property crime is committed mostly in free time, i.e. from 2 pm to 10 pm. It is required that attention is paid to free time of the youth systematically and conceptually from the side of the state, e.g. by means of hobbies. An expression of this process is a state juvenile police mode which should have, however, more concrete form and not to incorporate upbringing of children and juveniles into a social treatment area. An inadequate form of spending free time contributes considerably to a development of negative behaviour. There are the following negative factors affecting free time:

- Passive spending of free time and boredom which results in delinquency and criminal activity,
- Insufficient initiative, independence and fantasy how to spend free time,
- Missing interest in literature and books,
- No interest in education and activity,
- Systematic visits of bars, discos and night pubs.

### Influence of a habitation and alcohol

The role of neighbouring relationships came to the front as early as the beginning of urbanization. Relationships between neighbours still play an important role in certain social groups, especially in groups with lower educational level, in persons without a professional qualification, elderly people and women on maternity leave. With a growth of an educational level and an increase of a number of works requiring higher professional qualification a significance of relationships between neighbours falls and on the contrary, an importance of friendly relationships and number of the relationships created out of one's habitation in on the increase.<sup>28</sup>

It is not easy to determine a term of alcoholism since its effects are demonstrated in many respects, mainly in biological, psychological and social aspects. The most frequent determination of alcoholism is a definition by A World Health Organization (WHO) which is as a rule, a medical definition taking into account a social character of alcoholism. According to a so-called Jellinek's concept the process of alcohol consumption has different phases according to which the alcoholic can be defined as a "person consuming alcohol constantly and excessively and whose psychosomatic condition suffered from serious defects under the influence of excessive drinking resulting to conflicts in interpersonal relationships

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<sup>28</sup> Madliak, J.: Kriminológia, 1. vydanie. Košice, ATOM computers 1998. s. 106.

and social functions". An alcoholic can be considered a person consuming alcohol constantly and excessively and cannot stop drinking after once got started and consequently he gets into an addicted relation towards alcohol".

Even though the alcoholism is designated as a negative phenomenon it is a tolerated drug in a present-day society and no person using alcohol cannot be prosecuted (if this is not prohibited by the law in certain cases). Alcoholism is not any new phenomenon in Slovakia. People come across alcohol even at an early age. The sellers do not verify the age of an alcohol buyer in each shop. However, this is not the only way how the juveniles can get the alcohol. Very often their first contact with alcohol starts in the family where they are offered it as something being a part of a good company, celebration, joy, or as a mean how to improve one's mood. Today education plays an important role and alcoholism is starting to be viewed as a disease that should be treated. Prohibition had seemed to be as an efficient measure against alcoholism. Prohibition means a ban of production, sale and import of alcoholic products. The motivation to introduce prohibition was due to reduction of crime, improvement of social and moral circumstance. But the result was not that optimistic, since black market started to spread and people got own distilleries and the problem of alcoholism was not mitigated.

#### Mass media influence on a crime rate

I assume that the influence of excessive negative impacts by media on a percipient builds up his carelessness and tolerance (not only) towards property and business crime. Therefore I am convinced the after some time of media influence on a percipient's personality he experiences apathy of and becomes tolerant towards negative social phenomena and crimes.

*Mass media* are complex social and technical systems with a huge information potential and power aimed at public. Mass media can be divided into several groups:

- Electronic- television, radio, video, communication networks ( internet),
- Printed- daily press, magazines, books, leaflets, etc.<sup>29</sup>
- External- billboards, posters, etc.
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- System of mass media is characterized by the following signs:
- It is a system of institutions, people, activities the aim of which is to provide information to the community members on current and important

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<sup>29</sup> Bilský, P. – Erkenner, J. – Škoda, R.: Masová komunikácia a verejná mienka. Bratislava, Akadémia PZ 2002. s. 19.

phenomena on present development of the mankind as well as the whole society,

- It is a system that grows rapidly on the basis of the changes of a human society and develops quickly and dynamically,
- It is a system which has become and inseparable part of a formative way of affecting the society, their members, their goals, ideas and values,
- It is a system fully applied and with a great significance in the process of education of children and juveniles.<sup>30</sup>
- In the last ten years numerous surveys have been performed to reveal influence and effects of the television on crime. It has been proven that crime displayed on the television affects the viewers in more aspects:
- television teaches an aggressive way of behaviour which has been proven by more studies of children and juveniles,
- a later study concerning sentenced in the prison with a very high level of protection has shown that they have continued in improvement of their criminal skills watching programs on criminals,
- they are taught the best ways how to rob, how to burgle the car, commit frauds.

In relation with a negative influence of one's behaviour by mass media several surveys have proven that excessive watching television results in a "black and white way of thinking" suppressing an abstract thinking and creativity especially of children.<sup>31</sup> Mr Sturm mentions an emotional stress which may emerge with children from the fact that a popular hero does not come back any more, i.e. it is not clear when or if he comes back at all. A fear of a loss may appear which explains a desire of adults to watch again the old films, since it is not only children but also the adults who want to refresh their feelings already experienced before.

We can speak of effects and influence by media when a change of percipient's views, attitudes or behaviour emerged as a result of watching any of the media. The theories of an influence are based on more aspects:

1. *Theory of catharsis (so-called theory of purification)* came to existence at the end of the sixties and it is based on the fact that violence in media has a positive desirable effect. It serves for relaxation of own aggression in a

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<sup>30</sup> Gogová, A. – Kročková, Š. – Kurincová, V.: Sociológia výchovy. Nitra, Vysoká škola pedagogická 1995. s. 73.

<sup>31</sup> Sturm, H.: Programmausweitung: Das Problem sind die Kinder. Mediaperspektiven 1980 č. 9. s. 622.

fantasy which prevents a percipient to act accordingly in everyday life and will eliminate one's aggressive behaviour. This theory is based on a thesis that

- Violent scenes in mass media ( especially on television) have a character of catharsis, i.e. a positive effect,
- A viewer may ventilate one's aggression in one's fantasy, whereas the violence on the screen simulates and prevents from exercising of violence against one's environment,
- This theory was happily adopted by media creators who understood it in the following way: the more violence there is on the screen, the less aggressive the individuals will be in their social environment,
- According to another theory violence affects a young person especially when an act of violence remains unpunished, and thus, it is actually successful.

Such an attitude can be called a theory of successful violence.<sup>32</sup>

2. *A dissonance theory (so-called theory of strengthening)* essentially denies mass media influence on a percipient. It is based on observations of Festinger which have shown that people accept those arguments and notions that correspond to their views and opinions. The arguments, views and visions that are contradictory to their own opinions are perceived as dissonant ones, raise emotional and rational mechanisms even if those statements are logic. Such a selection of information is reflected e.g. in that the people like reading those newspapers and magazines that correspond to their views and philosophy. Information which supports our views and tendency towards some behaviour are sought by us whereas contradictory arguments and information are rejected, not perceived or forgotten.

Another model of strengthening is according to Mr Braun based on the finding that violence in media strengthens the existing behaviour of a juvenile. A viewer who tends to aggressive acting due to one's psychical, intellectual and social properties confirms correctness of his behaviour by seeing violence on the screen which is strengthening for him. Violence in media affects mainly those people who incline to it.<sup>33</sup>

3. *Theory of desensitisation ( elimination of sensitivity)* - is based on the fact that constant confrontation of people with negative aggressive forms of

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<sup>32</sup> Hapala, D.: Násilie v zahraničných televíziách a filmoch. In: Pedagogická revue, č. 5-6/1995. s. 24-33.

<sup>33</sup> Hapala, D.: Násilie v zahraničných televíziách a filmoch. In: Pedagogická revue, č. 5-6/1995. s. 24-33.

behaviour, fights, murders or torturing of people results in reduced emotional experience of such images and therefore in reality they do not view use of violence as being so wrong and take it as a common thing. This theory has been confirmed by an increasing trend of juvenile crime worldwide and emotional burn out of prisoners in correctional institutions. The latest surveys in this area have confirmed that we cannot speak about general influence of violence in films and television. It is necessary to differentiate between how often a young viewer watches violent scenes, in which conditions they are watched, which experience except the media had an influence of him with respect to aggressive behaviour.<sup>34</sup>

According to the mentioned base theories it is necessary to state that they view media influence from one point of view. In reality their effects on a percipient are joined and overlapped.

### **Criminology factors in cultural area**

Factors in a cultural area are closely related to the area of education since the result of their influence is a particular system of life values and their preferences. Except from family and school their formation is influenced by the whole system of social institutions, principles of a social morale and their practical application.

After November 1989 people started to live in the conditions of an open society and without any previous preparation for that. Suddenly a real use of civil rights and freedoms was restored. The need to acquire property and to reach success as quickly as possible came to the front whereas success is identified with a power status or obtaining material assets. On one hand a successful business class came into being and on the other hand large groups of people falling onto lower life standard. If there are insufficient internal barriers such a situation tends to imitation of successful models by a particular group of people by means of theft, falsification of documents, cash, valuables, etc.<sup>35</sup>

### **Criminology factors in political and economic area**

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<sup>34</sup> Hapala, D.: Násilie v zahraničných televíziách a filmoch. In: Pedagogická revue, č. 5-6/1995. s. 24-33.

<sup>35</sup> Zapletal, J.: Kriminologie – díl I. obecná část. Praha, Policejní akademie České republiky 2004. s. 50.

Policy affects the whole social life and it has a considerable influence on the area of law making and its execution, legal standards, affects economic living conditions of the society and an educational system either in a positive or in a negative way. Negative policy influence can rise not only in crime growth but it results in particular to anti- constitutional activity, racism, terrorism and also to violent and property crime.<sup>36</sup>

Economic sphere represents as a rule, a wide platform for origination and effect of reason and conditions of a criminal activity. The reasons of business crime can be divided from more viewpoints, e.g.:

a) By nature:

- Classical: they have common features in all crime types,
- Specific- they are valid mainly in economic sphere. They can be specific compared to the other crime types, however, their specific character may consist within individual forms of business crime.

b) According to the time perspective:

- Reasons of a long- term character,
- Reasons of a short- term character.<sup>37</sup>

From the most general viewpoint it can be stated that business crime reflects a condition and development of economic sphere of a state. It is comprehensible that criminology factors which are a matrix for crime commission were strongly influenced by the period after the breakdown of socialism in 1989. More reasons for crime commission emerged at that time period accompanied by radical changes in our economy and related risk factors that influenced crime commission.

One of the first and most important steps of that period is a regular transmission of state property to private hands and a gradual development of private enterprise. The beginnings of private business activity were accompanied with many problems which in social and economic context infiltrated into criminology factors. It was in particular conditioned by the fact that a lot of new businessmen did not have much knowledge on legal regulations enabling private trading, however, many of them did not even have enough capital to start their business. Objectively, the necessary basic conditions for private entrepreneurship were not set out, so fresh businessmen came across with a lack of material, means

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<sup>36</sup> Zapletal, J.: Kriminologie – díl I. obecná část. Praha, Policejní akademie České republiky 2004. s. 51.

<sup>37</sup> Kolektív autorov: Kriminológia – osobitná časť II. diel. Bratislava, Akadémia PZ 2001. s. 200.

of production or suitable premises for their business which resulted in an effort to obtain it in any other way.

### **Criminology factors in a legal area**

State legislation represents a significant political factor. Criminal policy established by a state has an essential impact on both property and business crime. It is mainly holes in law that affected negatively many aspects of life of the society. Legislation becomes non-transparent, chaotic and a respect towards law and acts is missing in the society which even more weakens legal awareness, though, rather weak anyway. Respecting of law is anticipated in a democratic society with a market economy. If this is not performed by strict following of legal regulations, this will contribute neither to security of ownership and other relations and nor to foundation of a functioning market economy.

In a short time after the revolution a lethal sentence was abolished in our legislation. In a specific part of a criminal act facts of a case which were the most abused in fight with political opponents and prevented from free market economy was cancelled.

Another important criminology factor in the area of law was the fact that on 1<sup>st</sup> January 1990 the President declared an amnesty that touched nearly 30 000 prisoners. A major part of released prisoners abused the trust and committed new serious crime. Opening of the borders resulted in access of new crime forms so far unknown in the territory of our state (trafficking with women, drugs, new forms of blackmailing, dirty money laundering and some new forms of business crime).<sup>38</sup>

An activity of a then powerful safety apparatus was undermined whereas its main constituents were abolished (SSS) and the others were substantially reorganized. Their credit in public decreased as a result of their previous operations since they refused to cooperate in revealing of crime and its punishment. After 1990 a criminal activity was affected by already mentioned amnesty granted by a former President. The analysis of the data obtained resulted in the following conclusions:

- The amnesty declared by the President in January 1990 was one of logical social changes and unlike the previous ones since it was granted in the period of radical changes and vast decriminalization of criminal offences for which many persons were imprisoned,

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<sup>38</sup> Kuchta, J.: Kriminologie. Brno, Masarykova univerzita 1999. s. 62.

- amnesty is in a causal relation with a growth of crime is and mainly release of imprisoned persons, however, it is not a primary decisive factor,
- it is rather doubtful whether release of serious crimes offenders or persons sentenced from several reasons designated as dangerous persons from prisons was correct in such a non-transparent social situation. In such cases, however, it was an amnesty of a particular part of a punishment – shortening of a sentence of imprisonment by a particular time period- a new sentence was ended up in the first months in 1990. It is true, that release of those particular offenders had their consequences - euphoria and a vision of impunity or reduced crime rate for committed crimes even for other criminals enjoying their freedom in the period of amnesty. The result was an increased occurrence of criminal activity in this category of offenders.<sup>39</sup>

Radical social changes having occurred at the end of the year 1989 reflected in a state, structure and dynamics of criminal activity. The following determinants have had an essential influence on criminal activity since 1990:

- Improperly understood democracy,
- Freedom of travelling,
- Wide amnesty,
- Disproportionality of rights and duties of a suspect (a convicted) and his advocate against the rights and duties of an injured, a witness and a person involved,
- Transfer from a centrally governed economy to a market economy,
- Growing social polarization of the society,
- Insufficient legislation,
- Artificial decriminalization.<sup>40</sup>

### III. 3. Legal Entities as Property Crime Offenders

The term a legal entity is a systemically complex integrated phenomenon in terms of its structure and it is observed and studied by a lot of scientific fields.

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<sup>39</sup> Marešová, A.: Amnestie 1990. Praha, Institut pro kriminologii a sociální prevenci 1992. s.7-8.

<sup>40</sup> Mikuš, P.–Zoňová, V.: Stav, štruktúra, dynamika trestnej činnosti a determinanty ovplyvňujúce jej vývoj v SR v rokoch 1988-1995 a trendy jej ďalšieho vývoja v nasledujúcom období. In: Trestní právo 7-8. Odborný časopis pre trestné právo a odbory súvisiace 1997. s. 30.

Therefore a legal entity must be perceived as a complex social phenomenon originated in particular social conditions and fulfilling its social role.

In the past guilds founded in towns associations of craftsmen were included among corporations (later on also tradesmen). The guilds were known in this form throughout Europe whereas this institution was not brought into our country by means of German law as a complete institution, but was developing later on a domestic territory under a constant German influence. Originally the membership in a guild was obtained by joining and by acceptance and it was becoming much stricter and stricter since the guild masters protected their labour and sales market; but also a town conditioned obtaining a membership for many reasons (trade and police reasons).

Gradually the guilds acquired a considerable power not only in the town but also in the economic life of a state and therefore they became a subject of interest of a state economic policy and legislation and mainly when in the 18<sup>th</sup> century it was proven that they are not bearers of progress, but their conservative views hampered development of industrial production. Even the craftsmen production declined due to sharpening of a guild hierarchy and a ban on access of new members into the guild where the membership remained to certain families. Business companies were introduced in Hungarian Empire within the first business legislation in 1840 by an act no. 18/1840; according to this act public and unlimited company, limited partnership companies were introduced in our country.<sup>41</sup>

The roots of a legal entity institute were already mentioned in Roman law and in an ancient Roman society, however, the term does not denote any generally unified legal structure, but a primarily spontaneously originated need to transfer human properties to another unit with completely specific and mutually absolutely different objectives and thus, a mutually different legal structure. Break in the thinking and implementation of the structure apart from thinking of determined circles required further hundreds of years of development of human thinking towards abstract models of thinking and to interconnection of these structures with suitable social conditions.<sup>42</sup>

### **Criminal liability of legal entities in the Slovak Republic**

An identification theory represented a base of the corporate liability bill of 2004. This theory is based on the fact that a legal entity can only be prosecuted for acting of its bodies or representatives. It developed on the basis of series of crimes when a court decided that it is necessary to prove the fault. The problem

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<sup>41</sup> Luby, Š.: *Dejiny súkromného práva na Slovensku*. Bratislava, Iura Edition 2002. s. 213-215.

<sup>42</sup> Hurdík, J.: *Právnické osoby a jejich typologie*. Praha, C. H. Beck 2003. s. 2.

of this theory is to determine the criteria whether a particular person is or is not a legal entity authorized representative. According to a juridical practice delegation of powers by legal entity representatives to other constituents of a legal entity is not an obstruction to apply this theory. According to a Constitutional Committees of the National Council of the SR (NC SR) by introduction of criminal liability of a legal entity a collective punishment would be implemented also for the employees of a legal entity which are not liable for illegal acting of its authorized representatives. This should be according to the Constitutional Committee of the NC SR a violation of a principle "not to act twice in the same matter" and also a violation of equality of criminal liability subjects.

Identification theory is based on a vision of a legal entity personification. In a criminal context the personification of a legal entity hints that in the time of intention to commit a crime and also in the time when the crime was committed a legal entity representative is at the same time a legal entity. Legal entities in a legislation of the Slovak Republic are founded as private, legal and public subjects by making a decision of either natural persons or legal entities amending their rights according to private and legal regulations, namely the Act no. 513/1991 Coll., of the Commercial Code (hereinafter only as the "Commercial Code") as amended (Section 56 and subsequent regulations) and the Act no. 40/1964 Coll., of the Civil Code as amended (Section 18 and subsequent regulations). The reasons to introduce criminal liability of legal entities in 2004 were mainly as follows: economic growth, increase of business crime, organized crime and corruption, spreading of negative impacts of economic activity on the environment, etc.

In proposed legislation from 2004 in the Slovak Republic criminal liability of a legal entity should not relate to the state, state authorities, municipalities and self-governing regions. This legal regulation specified when the crime will be considered to be a crime committed by a legal entity. The scope of criminal liability of legal entities was criticised since it was said to be above the framework of the obligations of the Slovak Republic. Except from the members of authorized representatives or supervisory bodies it also contained a proposal to introduce criminal liability of another person who was authorized to act on behalf of a legal entity. A criminal act according to the proposal was to be committed by a legal entity if while performing the offence it was acted in contrary to generally binding legal regulation by:

- Its authorized representative or its member,
- A member of a supervisory body or
- Any other person authorized to act on behalf of a legal entity.

As regards any other person authorized to act on behalf of a legal entity mainly a Section 15 of the Commercial Code was used as an argument since a person authorized to act on behalf of a businessman is any person who was empowered to perform a particular activity in the course of a business operation. This is a case of so-called external empowerment when authorization to perform a particular activity during a business operation in a business contact is at the same time considered to be an authorization to perform legal acts on behalf of a businessman which, as a rule, occur during execution of such an activity. It must be noted that criminal liability of a legal entity should not exclude criminal liability of a natural person.

A criticised part of the proposal of 2004 was a circumstance that legal entities should be liable for all crimes with the exception of the cases when an offender should have a specific feature, capability or status to commit the crime. During a negotiation process in the Parliament the Ministry took into account negative comments by businessmen and professional public and submitted a narrowed proposal so that legal entities should be only liable for the crimes listed in Chapter VIII and XII respectively of a special part of the Criminal Act, however criminal liability for all crimes against property was still considered. After persisting disagreement the Ministry of Justice limited a scope of criminal liability to 24 listed crimes against property and to 102 crimes of other types.

Another problem to have become a topic of discussion is an absence of protection of the third persons non-participating in a criminal activity, however, connected with a legal entity and each property punishment for activities of persons authorized to act on behalf of the legal entity will be in particular, imposed on those persons.<sup>43</sup> In my opinion protection of third persons in such cases is unsubstantiated since it concerns a business activity with the main target to gain profit.

*Applicability of the Slovak Criminal Act* towards criminal liability of legal entities should be determined by:

- a place of a crime commission whereas according to this principle punishability of a criminal offence committed by a legal entity should be judged, if it was committed in the territory of the Slovak Republic regardless where the legal entity having committed a crime has its seat.
- A seat of a legal entity. According to the Slovak law punishability of a crime should be judged if the crime was committed abroad by a legal entity having its seat in the Slovak Republic or by a legal entity having a business or its organizational part in the Slovak Republic.

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<sup>43</sup> Goga, R.: Právna úprava trestnej zodpovednosti u právnických osôb. Bratislava. Justičná revue roč. 58, č.10. Ministerstvo spravodlivosti SR. 2006. s. 1506.

- International agreement. Punishability of an offence committed abroad by a legal entity having its seat outside the territory of the Slovak Republic and not being an owner of any enterprise or any organizational part in the Slovak Republic should be judged in accordance with a Slovak law if this is stipulated by the international agreement ratified and declared in a manner stipulated by the law and which is obligatory for the Slovak Republic.<sup>44</sup>

A proposed bill in the Slovak Republic indicated the following *punishment types*:

- Monetary punishment,
- Sentence of the forfeiture of property,
- Sentence of a legal entity termination
- Prohibition to undertake a determined activity,
- Sentence of prohibition or restriction to accept public subventions or subventions,
- Sentence of prohibition to participate in public procurement,
- Seizure of a thing
- Juridical supervision over activities of a legal entity.

On the other hand it must be noted that the identification theory has been criticised for many years as insufficient. The critics in professional works point out at the fact that this theory does not reflect reality of internal dynamics of corporations, especially of major corporations.

The need to introduce corporate criminal liability has resulted from the following documents: An Agreement of the European Council of Money Laundering as of 1990, An Agreement of the European Council on Money Laundering and Funding of Terrorism as of 2005, A General Agreement of the European Union Council Acceptation of Pecuniar Sanctions as of 2005 and a General Decision of the Council of the European Union on Acceptation of Confiscations as of 2006 requiring to confirm decisions of foreign authorities with a criminal nature in matters of monetary sanctions and forfeiture of property against legal entities by the authorities of the Slovak Republic.<sup>45</sup>

If the Slovak Republic was not bound by the mentioned documents it could introduce civil or administration liability of legal entities for crimes committed by

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<sup>44</sup> Záhora, J.: Trestná zodpovednosť právnických osôb. In.: Rekodifikácia trestného práva. Bratislava, Akadémia PZ 2004. s. 72-73.

<sup>45</sup> Šimovček, I. a Jalč. A.: Procesné práva právnických osôb v trestnom konaní. In: Dny práva – 2008 – Days of Law. Brno. Masarykova univerzita 2008. s. 222.

natural persons. But since the Slovak Republic is bound by the above mentioned documents it is obliged to introduce an execution of criminal sanctions against legal entities imposed not only by foreign authorities but also by the Slovak ones. If this was not introduced an unjustified disproportion would emerge in terms of internal law lying in that the execution of sanctions of criminal nature against legal entities could be exercised only in the case when they were imposed by foreign authorities. The necessity to introduce criminal liability of legal entities also results from the fact that within an assessment of implementation of general decisions content into internal law both Slovak and Czech Republic were subjected to a criticism due to missing legislation of criminal liability of legal entities.<sup>46</sup>

A model of genuine (direct) criminal liability of legal entities is typical for an Anglo-Saxon legal system and also for some European Union states which already implemented criminal liability of legal entities and which was proposed in the Slovak Republic in the years 2004 (the first governmental motion was submitted to the National Council of the Slovak Republic on 23 February 2004) and 2006 (the first version was submitted in the same year as a member's bill on 23th February 2006 and the second version was submitted in the same year and as a governmental motion to the National Council of the Slovak Republic on 24<sup>th</sup> February 2006).<sup>47</sup> Genuine criminal liability of legal entities requires deduction of common punishments as it is with natural persons (see Section 32 of the Criminal Act).

Within a continental system of law a model of non-genuine (indirect) criminal liability of legal entities is also applied where criminal liability of legal entities is not expressed but only natural persons are criminally liable (acting on behalf of a legal entity). At the same time the act enables to impose some criminal sanctions which are not defined as punishments (e.g. criminal legislation in Sweden) legal entities in a criminal proceeding. In this case it concerns so-called secondary consequences of a criminal offence of a natural person which are rated to a legal entity.

Ministry of Justice of the Slovak Republic submitted a motion to be negotiated by a National Council of the Slovak Republic relating introduction of non-genuine criminal liability of legal entities which was approved on 27<sup>th</sup> April 2010 and became effective from 1<sup>st</sup> September 2010. The motion has introduced new criminal sanctions which represent protective measures against legal entities (the main difference between genuine and non-genuine criminal liability consists in the fact that genuine criminal liability requires imposing of punishments). A legitimate intention to punish legal entities for criminal offences is a general preven-

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<sup>46</sup> Jelínek, J.: *Trestní odpovědnost právnických osob*. Praha, Linde, Praha, a.s. 2007. s. 162.

<sup>47</sup> Jelínek, J.: *Trestní odpovědnost právnických osob*. Praha, Linde, Praha, a.s. 2007. s. 161.

tion.<sup>48</sup> If we look at the previous attempts to introduce criminal liability of legal entities (dating back to the years 2004 and 2006), it can be stated that the Slovak Republic has set off a journey of compromises via non-genuine criminal liability of legal entities following a Spanish model. In some EU states a non-genuine criminal liability of legal entities is solved mainly by this pseudo-liability of legal entities which is amended in the Criminal Act so that the sanctions are not called punishments.

International obligations of the Slovak Republic do not determine explicitly a type of sanctions from the viewpoint of criminal law and therefore the Slovak Republic has chosen a model of indirect criminal liability of legal entities where the following criminal sanctions will be used in a form of protective measures:

a) *seizure of a particular sum of finances:*

consists of a court statement on the fact that at first financial sum is imposed to which a legal entity should respond by its settlement and if it is not settled then an imposed protective measure is exercised by seizure of financial funds thus determined.

b) *seizure of property*

is bound to commission of comprehensively determined crimes with a punishment of forfeiture of property, if the court sentenced a natural person for their commissioning and if it has been proven that the property was acquired from the incomes obtained from criminal activity, however, an exemption from an obligatory application of this rule and its potential

Imposition of the listed protective measures will be proposed by a prosecutor by a motion submitted to the criminal court. The motion by a prosecutor to start criminal prosecution will not be conditioned by any imprisonment. It can be submitted in that moment when a result of the investigation will be the finding (proven without any reasonable doubts) that:

1. management (representative, decision-making and control tasks) have neglected supervision and control and a crime was committed as a result of this neglecting by persons subordinated to a legal entity.
2. managing persons (representative, decision-making and control tasks) have committed a crime.

It is necessary to focus the attention to legal conditions of imposing protective measures as this has been emphasized by a Substantiation Report to Introduce Indirect Criminal Liability:

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<sup>48</sup> Mašláňová, D.: Úskalia trestnej zodpovednosti právnických osôb. In: Trestná zodpovednosť právnických osôb. Bratislava, Eurokódex, s.r.o. 2009. 196.

Section 83, par.1 and 83b of par. 1 of the Criminal Act defines basic conditions when a protective measure can be imposed on a legal entity. It is actually a positive formulation of imposition of sanctions against legal entities for crimes committed by natural persons within authorizations, i.e. subordination against a legal entity. A substantial difference in a structure of both provisions is in the nature of a sanction- seizure of a financial sum can be imposed by the court, seizure of property will be imposed by the court if the conditions stipulated by the law arise.

In Section 83, par. 2 and Section 83b of the Criminal Act negative conditions of imposing both protective measures are defined. It results from this that on one hand there are specified legal entities on which a proposed protective measure cannot be imposed and on the other hand an impossibility of imposing protective measures is defined depending on the nature of the property affected by the decision –property of the state, the European Union, foreign authorities or an international organization of public law. In this case the concept is identical for both protective measures.

Seizure of a financial sum will affect a sum determined by the court. In case of property seizure the property that can be affected by this protective measure is identical with the case of forfeiture of property. In the cases of a merger, amalgamation or division of a legal entity it will be proceeded in accordance with Section 83a, par. 4 and Section 83b, par. 5 of the Criminal Act. A criminal sanction may also affect a legal ascendant (ascendants) of a legal entity.

A liberalisation reason for non- imposing a protective measure of a property seizure is specially solved in Section 83b, par. 3 of the Criminal Act. Imposing of property seizure under the conditions in Section 83b, par. 1 of the Criminal Act is obligatorily; provision of Section 83, par. 3 of the Criminal Act is an exemption from this principle. The words “significant public interest” amended in these provisions must be viewed individually with an account taken on all circumstances of the case. At the same time we must be focused on significant state interests carried out in the course of a public power execution prevailing over an authorized interest of a natural person or a legal entity bringing a property advantage or any other advantage to other persons or to many of them and without their execution extensive or incurable harm might arise. This provision may be applied e.g. in the cases when imposing and execution of a protective measure of property seizure might result in liquidation of a large number of working positions, etc.<sup>49</sup>

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<sup>49</sup> A Substantiation Report to a Governmental bill amending the act no. 300/2005 Coll., Criminal Act as amended as of 12 February.2010.

Proposed provisions relating protective measures within introduction of criminal liability of legal entities in the Slovak Republic are listed intentionally in their full wording for better transparency like they were published in a governmental motion as of 2010. Provisions of Section 83a and 83b were inserted instead of Section 83 of the Criminal Act.

#### *Section 83a*

##### *Seizure of a financial sum*

1. *Seizure of a financial sum can be imposed by the court to a legal entity if a criminal offence was committed nevertheless in a phase of an attempt if there was a participation in a crime related to*
  - a) *execution of authorization to act on behalf of the legal entity,*
  - b) *execution of authorization to make decisions on behalf of this legal entity,*
  - c) *execution of authorization to perform control within this legal entity or*
  - d) *neglecting of a supervision or appropriate care within this legal entity*
2. *According to the paragraph 1 protective measure cannot be imposed on a legal entity the property of which as a debtor cannot be arranged according to a special regulation amending bankruptcy procedure or if property of state or of the European Union was harmed by this measure, to foreign authorities and international organizations of a public law. Neither it can be imposed if criminality of a criminal offence listed in the paragraph 1 ceased by limitation of criminal investigation of a criminal prosecution or on the basis of effective repentance.*
3. *Seizure of a financial sum may be imposed by the court from EUR- 800 to 1 660 000. When determining the amount of a seizure of a financial sum the court will consider seriousness of a crime, scope of a crime, acquired benefit, harm done, circumstances of a crime commission and consequences for a legal entity. Seizure of a financial sum will not be imposed by the court if a protective measure of a property seizure was imposed to the legal entity according to Section 83b.*
4. *If it concerns amalgamation, merger or division of a legal entity the court will impose a protective measure in accordance with paragraph 1 to a legal ancestor of a terminated legal entity.*
5. *Monetary sum paid or exacted shall devolve on the state unless it was otherwise decided by the court in accordance with a declared international agreement which is obligatory for the Slovak Republic.*

#### *Section 83b*

##### *Seizure of property*

1. *Seizure of property shall be imposed on a legal entity by the court if a criminal offence was committed nevertheless in a phase of an attempt if there was a participation in a crime listed under Section 5 8, par. 2 and if the legal entity acquired property or its part by a criminal activity or from the incomes from a criminal activity related to*
  - a) *execution of authorization to act on behalf of the legal entity,*
  - b) *execution of authorization to make decisions on behalf of this legal entity,*
  - c) *execution of authorization to perform control within this legal entity or*
  - d) *neglecting of supervision or appropriate care within this legal entity*
2. *According to the paragraph 1 a protective measure cannot be imposed on legal entity the property of which as a debtor cannot be arranged according to a special regulation amending bankruptcy procedure or if a property of the state or the European Union would be harmed by this measure, on foreign authorities and international organizations of a public law. Neither it can be imposed if a criminality of a criminal offence listed in the paragraph 1 ceased by limitation of criminal investigation of a criminal prosecution or on the basis of effective repentance.*
3. *According to the paragraph 1 a protective measures shall not be imposed if, with regard to the seriousness of the crime committed, a scope of the crime, acquired benefit, harm done, circumstances of the crime commission and consequences for a legal entity or a significant public interest the protection of the company can be ensured even without property seizure. If seizure of property is not imposed by the court in such a case a protective measure of property seizure is imposed on the legal entity according to the Section 83a.*
4. *Property seizure shall affect in the scope relating to a legal entity in the course of execution of a protective measure of property seizure after termination of a bankruptcy proceeding the following:*
  - a) *proceeds from the realization of property,*
  - b) *property excluded from a list of property of subjects*
  - c) *property subjected to a bankruptcy proceeding unless realization of property occurred*
5. *If it concerns amalgamation, merger or division of a legal entity the court will impose a protective measure in accordance with paragraph 1 to a legal ancestor of a terminated legal entity.*
6. *Property seized shall devolve on the state unless it was otherwise decided by the court in accordance with a declared international agreement which is obligatory for the Slovak Republic.*

The fact that in the course of the investigation it will not be required to detect an offender of a committed crime is in my opinion a very crucial point within new legislation relating to criminal liability of legal entities effective from 1<sup>st</sup> September 2010.

This means that if a crime offender has not been investigated and the conclusion will be drawn without any reasonable doubts that the managing persons neglected supervision and control and a crime was committed as a result of such neglecting by the persons subordinate to a legal entity or that the managing persons have committed the crime the prosecutor shall be obliged to submit a motion to adopt a protective measure.

Criminal liability of legal entities cannot be viewed separately since the sanction itself results in impacts on internal and private relationships the subject of which is a relevant legal entity. The authors of a Substantiation Report on Introduction of Indirect Criminal Liability of Legal Entities point out at the fact that both criminal and private nature are interconnected especially as far as a protective measure of property seizure is concerned.

Let me assume that a legislator will consider extension of protective measures in the future, however, a particular fact will depend on application of proposed protective measures as well as on the development of the Community Law. I am of the opinion that a comprehensive research in the area of criminal liability of legal entities is missing in the Slovak Republic. In this respect I appreciate a smart remark of Mr Burda who is convinced that the quality itself of the existing legislative bills of criminal liability of legal entities in the Slovak Republic was the reason why the criminal liability of legal entities was not adopted. He also provided his statement to a bill of indirect criminal liability of legal entities at the conference "Days of Law" in Brno in 2008 as pro futuro. According to Mr Burda the introduction of indirect criminal liability of legal entities is the worst solution ever that could be adopted. "Criminal liability of legal entities, however, has not been implemented but negative consequences related with it de facto yes."<sup>50</sup>

I am of the same opinion and the authors Centes and Prikryl agree with it thinking that the model of direct criminal liability of legal entities would be probably the most efficient in the conditions of the Slovak Republic. Mr Klatik also tends to incline to the model of direct criminal liability of legal entities who is of the opinion that criminal liability of legal entities cannot be established without an individual guilt of an offender since from the viewpoint of a fault any criminal

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<sup>50</sup> Burda, E.: Prečo nám trestná zodpovednosť právnických osôb naháňa hrôzu. In: Dny práva – 2008 – Days of Law. Brno, Masarykova univerzita 2008. s. 208.

offence of a legal entity would be, as a rule, a criminal offence of its members or bodies, i.e. individual natural persons. He things that introduction of indirect criminal liability of legal entities is just a plaster on international obligations.<sup>51</sup>

### **Criminal liability of legal entities in Switzerland**

Before 1<sup>st</sup> October 2003 a predominant opinion in Switzerland was that it is only natural persons that can be criminally prosecuted whereas legal entities cannot be accused of a crime and therefore they are excluded from criminal liability. As an exception existing for a longer time period was an option to consider a legal entity a subject of responsibility relations and thus, to impose on it a penalty in accordance with an infractions law: "If according to an article 7 of an Administrative Infractions Act a penalty in the highest sum of CHF 5 000. 00 is acceptable then the public authority shall be entitled to require payment of the penalty from a legal entity in which the crime was committed."

In 2003 special provisions (Section 102 and 102a respectively of A Swiss Criminal Act) were incorporated to the Swiss Criminal Act (hereinafter as "CSA" od a "Swiss Criminal Act") which in fact anchored the institute of criminal liability of legal entities in Switzerland and in accordance with this legislation a legal entity shall be sanctioned in accordance with a criminal law. The mentioned provisions (Section 102 and 102a respectively of SCA) have a significant practical relevance and each legal entity providing a business activity in Switzerland must be aware of their applicability.

Section 102 of the Swiss Criminal Act contains anchored material assumptions for imposing of a sentence and Section 102a of the SCA amends special procedural regulations applied in a criminal proceeding with a legal entity. The provision of Section 102 SCA is listed in its full wording:

#### *Criminal liability of legal entities, Section 102*

#### *Liability in accordance with the Criminal Law*

1. *If a crime or a delict committed by a legal entity within its business activity is compliant with a purpose of the legal entity and it is impossible to attribute commission of this illegal acting to any particular individual as a result of*

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<sup>51</sup> Klátik, J.: Individuálna trestná zodpovednosť verus trestná zodpovednosť právnických osôb. In: Trestná zodpovednosť právnických osôb. Bratislava, Eurokódex, s.r.o. 2009. s. 201-207.

*insufficient organization of a legal entity then the crime or the delict can be assigned to a legal entity. In such a case the legal entity can be sanctioned by a penalty amounting but not exceeding the sum CHF 5 000 000.*

2. *If according to Section 260<sup>ter</sup>, 260<sup>quinquies</sup>, 305<sup>bis</sup>, 322<sup>ter</sup>, 322<sup>quinquies</sup> or 322<sup>septies</sup> paragraph 1a crime was committed or a crime in accordance with Section 4a, par. 1, letter a) of a Federal Act as of 19<sup>th</sup> December 1986 on a non-transparent tender was committed, a legal entity can be sanctioned independently from a natural person if a legal entity was accused of non-adopting all necessary and reasonable measures to prevent from such a crime.*
3. *The court will determine the amount of a penalty in particular, with an account taken on a seriousness of a crime, severity of organizational defects and on harm done or a loss and on a possibility of a legal entity to settle the penalty.*
4. *The above mentioned provisions relate to the following legal entities:*
  - a) *any legal entity in accordance with a private law,*
  - b) *any legal entity in accordance with a public law with an exception of local state authorities,*
  - c) *companies,*
  - d) *sole-traders.*<sup>52</sup>

Unlike individual criminal liability, the Swiss Criminal Act in Section 102, par. 1 has limited the space for application of criminal liability of legal entities, i.e. in the Swiss legislation we can speak about limited criminal liability (it must concern a criminal act or a delict committed by a legal entity within its business activity in accordance with the purpose of a legal entity). Section 102, par.1 of SCA contains the principles amending so-called *secondary criminal liability of legal entities*. The following conditions must be met:

1. „The company” is a legal entity defined in accordance with SCA.

The Swiss Criminal Act in Section 102, par. 4 amends the list of legal entities falling under its competence. There are the following legal entities:

- a) legal entities founded in accordance with a private law ( limited company, public limited company, co-operative, foundations, association);
- b) legal entities founded in accordance with a public law ( e.g. Swiss Federal Railways, SBB, hospitals under the administration of cantons ) with an exception of local state authorities (federation, cantons, municipalities);
- c) personal companies (limited partnership company, public limited company, simple partnership).

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<sup>52</sup> The Federal Authorities of the Swiss confederation [electronic version].

The Swiss Criminal Act does not amend general responsibility of legal entities for all crime types amended by the Swiss Criminal Law. Criminal liability of legal entities is limited only to the crime offences that have been committed with respect to a business activity. It is absolutely irrelevant whether a legal entity really serves for commercial (business ) purpose or not. Therefore the effect of the provision may relate to non-profit organizations as well on condition that they act as commercial companies at least to a certain extent.

2. Limitation of a scope of crimes and delicts committed "within a legal entity or for the purpose of a business activity." Criminal liability of legal entities is limited to the crimes committed in the course of execution of a business activity within this legal entity. Therefore a legal entity can also be liable for a crime of an employee if it was committed within one's job performance and even in the case if this was contrary to internal business regulations.

3. Failure of "attribution" of an illegal activity to an individual.

An exclusive criminal liability can only be attributed to a legal entity for the crimes committed within a legal entity if it is impossible to "attribute" any criminal liability to an individual.

4. An organizational malfunction as a special requirement for criminal liability of legal entities.

An obligatory constituent of criminal liability in accordance with a provision of Section 102 SCA is an intention of a legal entity. According to the Swiss Criminal Act an organizational malfunction (i.e. insufficient, incorrect management of a legal entity, failure to provide its proper functioning) is required for establishment of criminal liability. On the other hand it must be noted that Section 102 of SCA does not contain any definition of a term organizational malfunction". It means in practice that commission of a criminal activity cannot be assigned to an individual for an organizational malfunction (Section 102,par. 1 SCA) or because of the fact that a legal entity was not able to provide all necessary and reasonable measures to prevent from criminal activity regardless any particular individual (Section 102, par. 2 SCA). However, the fact itself that the crime was committed within a business activity of a legal entity cannot be considered to be evidence of organizational malfunction. Also it is not a sufficient proof if an organizational malfunction only enables or makes it easier to an individual to commit a crime. This malfunction must also cause that the criminal activity cannot be "attributed" to an individual. It is not always the fact that insufficient organization results in criminal liability of legal entities.

Liability is only bound to a serious organizational malfunction (missing sufficient description of duties, confusing delegations, non- appointment of at least one supervising person per an employee, etc.)<sup>53</sup>

The Swiss Criminal Act amends in Section 102, par. 2 a *primary criminal liability of legal entities*, however only in relation with a determined and limited number of serious crimes which are considerably much more serious. It relates the following crimes: a criminal group (Section 260ter.), funding of terrorism (Section 206quinquies), legalization of income from a criminal activity (Section 305bis), bribery of the Swiss public persons (Section 322ter.), providing of an advantage (Section 322quinquies), bribery of foreign public persons (Section 322septies) or bribery in a private sector (Section 4a, par, 1, letter a of the Swiss Act on protection of economic competition).

Unlike Section 102 SCA par. 1, par.2 of this provision remains unchanged, regardless whether a particular individual has been identified as an offender or not. The subject of a legal entity liability is a question of a proper organization and in this respect also an issue whether the legal entity has adopted all necessary and reasonable measures to avoid such criminal activity.<sup>54</sup>

If any of these crimes is committed within a legal entity, even without an account taken of non-awareness of persons responsible for a legal entity management, a legal entity is considered to be a legally liable on condition that it has not adopted all necessary and reasonable organizational and preventive measures. It means that in this case a legal entity shall be criminally liable regardless criminal activity of a particular individual.<sup>55</sup>

If any particular natural person has been classified as an offender, as a result *cumulative liability* can be applied. In this case both- an offender and a natural person as well as a legal entity shall be criminally liable and a criminal prosecution shall be started against them.

According to the Swiss legislation legal entities can be criminally prosecuted and criminally liable for the acts committed by their employees with respect to performance of their job duties. Supporting of a criminal act or a positive attitude

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<sup>53</sup> Criminal liability of legal entities – Schellenberg Wittmer [electronic version].

<sup>54</sup> Radha Ivory, Mark Pieth: Corporate Criminal Liability: Emergence, Convergence, and Risk [electronic version].

<sup>55</sup> Mark Pieth, Lucinda A. Low, Peter J. Cullen: Komentár – The OECD convention on bribery [electronic version].

from the side of persons responsible for a legal entity management<sup>56</sup> is not required to establish criminal liability of a legal entity.

Persons responsible for a legal entity management are personally responsible for their unlawful behaviour regardless whether they have acted in the best interests of the company or not. Pointing out at liability of persons responsible for a legal entity management for criminal acts of subordinate employees the Swiss Federal Criminal Court in an important decision *Bührle vs. Oerlikon* declared that the director was criminally liable for omission with respect to a criminal activity of an employee. Bührle's decision has influenced founding of a provision within administration law stipulating that the person responsible for management of a legal entity can be liable for criminal acts committed by its employees if one's omission (intentional or due to a negligence) has been proven within prevention against more serious crimes. A mother company or an authorized representative that has a competence to interfere to a legal entity management can be *de facto* considered to be a director and thus, to be a subject of criminal liability.

From the viewpoint assumptions of criminal liability of persons responsible for management of a legal entity, the Swiss legislation leaves a wide space in this area since the persons responsible for a legal entity management can be criminally liable for any criminal offence that they have committed with respect to performance of their job duties, i.e. duties resulting from execution of their functions. With regards to the fact that selection, management and execution of supervision are as a rule, a part of their duties, they can be punished for actions of their subordinate employees unless they fail to ensure adequate management, organization of a legal entity, selection, management, issuance of commands, timely interference or if they do not fulfil duties stipulated by the law. An account must also be taken of the fact that it must be proven that personal failure of persons responsible for a legal entity management had to enable commission of a crime. Criminal liability of persons responsible for a legal entity management might thus, arise for example even in the case when other director, manager or an employee has not been properly selected, instructed, directed by a manager in charge or a legal entity was not organized appropriately.

Persons responsible for a legal entity management bear responsibility for regulation, establishment, continuity and a regular supervision over an internal control system. They must be aware of their duties and liability. The persons responsible for a legal entity management can be deprived of liability only if an

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<sup>56</sup> I consider the persons liable for a legal entity management (for the purposes of this part of my work dealing with the Swiss legislation on criminal liability of legal entities) executive employees on significant managing positions (e.g. managing director), as well as authorized representatives and authorized representative members.

internal control program based on systematic risks analyses and their supervision has been prepared by them. This means that persons responsible for a legal entity management ensure that all significant risks are recorded, mitigated and supervised and thus, a risk of their own criminal liability was minimized.

The cases of establishment of criminal liability for acting of other persons do not apply, as a rule, to a relationship of mother and daughter companies or to a relationship of holding or other associations of legal entities and single constituents operating within. A mother company or an association of legal entities cannot be prosecuted for crimes committed within a daughter company. It is applied, as a rule, that criminal liability is established primarily in that part of a legal entity where a crime was committed and where organizational malfunction resulted in a crime commission.

Here criminal liability can only be established if particular legal conditions are met. A holding, associations of legal entities or a mother company must be factually or contractually liable for organization of their daughter company or they must cause an organizational malfunction to their daughter company or to one's constituent by own failure. They must be both economically and factually (organizationally) interconnected and joined into one independent and a compact whole. In this case activities or operations of daughter companies (or their constituents) are reviewed as activities and operations of a mother company, a holding or another association of legal entities.

According to the Swiss law a *penalty* is the only punishment that can be imposed on a legal entity. Nevertheless, the Swiss Criminal Act contains a range of measures (e.g. home imprisonment, termination of a legal entity, ban of driving, publication of a judgement, seizure of property), that only relate to natural persons and cannot be applied to legal entities.<sup>57</sup> The law does not enable to the judge prohibit a legal entity to perform a particular activity or to order termination of a legal entity. The Swiss Criminal Act enables to impose a penalty on legal entities up to the sum of CHF 5 mil (Section 102, par. 1 SCA). However, the SCA contains also assessment criteria that each court should consider for determination of the amount of a financial penalty: *gravity of a crime, organizational defects, seriousness of a harm done and a financial situation of the company*.

Swiss law amends material preconditions of facts of the case of crimes in an abstract manner. If an illegal acting is provably negligible, with respect to its "organizational" guilt of an offender and its consequences actually do not represent any danger a relevant authority shall be obliged not to start criminal prosecution or to stop a criminal proceeding already started. Whether the consequences are negligible or not, it depends on how strongly an internal organization deviated

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<sup>57</sup> Criminalisation of corruption [electronic version].

from the standard of the organization according to a relevant set of internal regulations of a particular legal entity. In case of non-existence of internal regulations a deviation of a legal entity organization from a common business practice is assessed. If here is a failure in an organizational activity of a legal entity the decision not to start criminal prosecution should be considered only in less significant cases when a serious criminal activity was not committed.<sup>58</sup>

It would be of a particular interest to think about the question if there are any types of sanctions in other fields of law which could be applied against legal entities acting contradictory to the law. It can be stated that there are different legal regulations (e.g. an action on contractual law, an act on road traffic, an act on liability for a product quality), containing sanctions if the persons responsible for a legal entity management acted contradictory to the law (like e.g. violation of a contractual duty).

Administrational and legal financial sanctions amended by a Swiss Anti-Monopoly Act are one of extremely important sanctions for legal entities. According to this law a fine up to the amount of 10% from the turnover realized in Switzerland for the last three accounting periods can be imposed for intentional acting causing limitation of economic competition or which resulted in abuse of a dominant position on the market. Also according to a Swiss tax law legal entities can be criminally liable for tax delicts (tax frauds, an attempt to commit tax frauds, violation of procedural duties). A penalty amounting to CHF 10 000 can be imposed on a legal entity for violation of tax and procedural duties and in case of a tax fraud up to the amount of the triple of a tax sum payment of which was avoided. A tax fraud attempt can be fined up to the amount of three thirds of a sum determined similarly to a tax fraud. Except from the situations where an objective liability is expected such as in the act on road traffic and act on quality products liability in majority of the cases a legal entity shall be responsible for own negligence and also for the negligence of persons responsible for a legal entity management.

Criminal prosecution of legal entities is not only limited to crimes committed by a particular hierarchy of a legal entity employees. All and any activity of a legal entity must comply with a law and a legal entity can be criminally prosecuted for its violation irrespectively which person acted or was supposed to act within the legal entity.

An essential principle of criminal liability of legal entities is "direct application of liability". Unlike intermediated liability, liability of legal entities for delicts committed by a legal entity or by its employee is based on a failure to establish and to maintain a relevant organizational activity (so-called organizational malfunction).

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<sup>58</sup> Allens Arthur Robinson: Corporate culture as a basis for the criminal liability of corporation [electronic version].

A prosecutor must prove commission of a crime and a necessary fault to establish criminal liability of legal entities. It was not until 2003 when specific provisions on criminal liability of legal entities were adopted when the Swiss concept of a criminal law was administered by a principle *societas delinquere non potest* (*individual criminal liability*). Therefore until 2003 it was impossible to punish legal entities in Switzerland in accordance with a criminal law and legal entities were in consequence excluded from criminal liability. The provisions stipulating criminal liability of legal entities relate directly to mens rea of a legal entity- whereas mens rea of an individual is irrelevant in this aspect.

A fact that a crime has been committed is not relevant for accusation of a criminal activity but the crime could have been committed as a result of an organizational malfunction. Two basic strategies to determine liability according to a legal entity fault are used in the Swiss Criminal Act: organizational malfunction preventing from identification of an offender (Section 102, par. 1 SCA) or organizational malfunction that enabled to commit a crime (Section 102, par. 2 of SCA).<sup>59</sup>

*Objective criminal liability of legal entities when a fault is not required generally does not exist in Switzerland.* A legal entity may be objectively liable only for some serious crimes such as a crime of participation in a criminal group, funding of terrorism, legalization of incomes from a criminal activity, bribery and corruption.

The Swiss Criminal Act does not require identification or detection of an offender to start a criminal prosecution against a legal entity. In Section 102, par. 1 SCA it is permitted that a legal entity can be prosecuted and it is even required that an individual offender is not identified. In that case a legal entity can be accused for crimes only if an organizational malfunction was established. A burden of proof that the organizational malfunction was not established arise burdens on a legal entity. An accusation against a legal entity can be cancelled if at least one of these two facts is proved: if it has been proven that a particular offender has not been identified not due to an organizational malfunction (Section 102, par. 1 SCA), or if it has been proven that all reasonable organizational measures necessary to prevent from a particular crime (Section 102, par. 2 SCA) have been adopted. According to specific provisions on criminal liability of legal entities in a Swiss Criminal Act a legal entity can avoid punishment if it avoids an organizational malfunction in accordance with an article 102 par. 1 and 2 SCA respectively.

I assume that the existence of legislation for criminal liability of legal entity could in practice result in the fact that a potential employee might try to transfer liability to a legal entity and thus to object an organizational malfunction. Therefore a legal entity can be easily confronted with investigation. Whether such ac-

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<sup>59</sup> Corporate criminal liability: a jurisprudential and comparative approach [electronic version].

cusations can be defended or not depends mostly on evidence, in particular on documentation proving that adequate organizational measures were adopted.

To avoid risk or a possibility of criminal liability establishment followed by criminal prosecution requires meeting of particular conditions on which legal entities in Switzerland are instructed. Those are as follows:

1. Legal entities shall be obliged to control, modify or accommodate their organizational structure. According to the Swiss Criminal Law every legal entity performing a business activity in Switzerland should adopt such an internal organizational structure and to ensure such management and organization which explicitly defines and specifies liability, own will within decision-making competence or information flows.
2. Employees on all levels must be aware of their tasks and must understand significance of their responsibility.
3. Similarly it is required from legal entities to implement additional control mechanisms inside their organization to prevent their members to participate in a crime.

Failure of the mentioned acting might result in a risk of occurrence of criminal liability in the future. As regards setting of the organizational structure and a system of legal entities management it is common that the expectations are higher for the legal entities with international activities than for smaller ones performing mostly domestic business activity. Also models of business management must be adopted with regard to the features of particular forms of legal entities such as a level of internal organization depending on the size of a legal entity, area of business, business partners, etc.

*In the next part I will be dealing with a procedural legislation of criminal liability of a legal entity.* In case of criminal liability of a legal entity it is necessary to start a criminal prosecution against a particular person in order to receive a status of a suspect at first. According to a Swiss law a legal entity acquires a status of a suspect from the moment when relevant authorities contact the legal entity for the first time due to the fact that a crime might have been committed. Investigation of the crimes listed in or related to Section 102 SCA, is aimed against the legal entity itself. Thus, the legal entity receives a status of a suspect from the beginning of the investigation and even during the criminal proceedings.

According to the Swiss criminal law the investigation aimed against the suspect is not, as a rule, opened officially. It begins when relevant authorities contact the legal entity for the first time due to the fact that it might have committed a crime. Later on during a formal court investigation preliminary or any other

measures could be applied against a legal entity mainly relating to property of a suspect entity.<sup>60</sup> At present the Swiss procedural criminal law is regulated individually by single cantons. The acts in some cantons enable preliminary blocking of bank accounts such as the act on criminal proceedings of a Zurich canton. Therefore the property of suspected persons can be prematurely confiscated if it is to be served as evidence or if it is necessary to ensure court fees, sanctions, monetary fines as well as potential compensation. In my opinion inclusion of a provision of preliminary measures into criminal legislation is not only suitable but it is necessary with regard to gravity of crimes committed by legal entities, in particular with respect to their property damage in majority of cases.

*If the investigation which was started against a legal entity and a natural person is based on the same or similar set of circumstances the thing can be merged into a common proceeding against both offenders (see Section 110, par. 4, the Swiss Criminal Procedure Code). A cumulative criminal liability of legal entities anticipates the beginning of a criminal proceeding against two subjects - a natural person and a legal entity. Under certain circumstances, however, the proceeding against a natural person and a legal entity join into a common proceeding. Here we can see the breakthrough in criminal law, mainly in terms of a perception of the term offender. An option of a common proceeding against both a natural person and a legal entity is a significant sign of crashing down the concepts of the fact that only a natural person can be an offender. A view of an offender as an individual when one of the most significant features is in particular inseparability of one's subjective acting had been thus overcome and both subjects have been put into an identical position in the criminal proceeding by special adopted provisions on criminal liability of legal entities in Switzerland.*

In the course of the criminal proceeding a legal entity has the same rights and duties as a natural person, e.g. the right to remain silent (*nemo tenetur se ipsum accusare*), to refuse submission of documents, to ban an access to legal entity premises without an order to inspect the premises, refuse to testify, answer the questions and others.

Here identical rules are applied as in criminal proceeding against a natural person. Every person regardless the fact if it is a natural person or a legal entity accused of a crime has the right to be interrogated by an investigation judge in a preliminary proceeding and by a judge in a criminal proceeding including the right to submit or to propose all liberating or aggravating evidence. Therefore criminal authorities must inform as soon as possible a suspect legal entity on all reasons for which the legal entity has become a subject of a criminal proceeding.

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<sup>60</sup> Global Legal Group: The international comparative legal guide to: Business crime [electronic version].

An interesting seems to be the method of application of these rights which is performed via a person acting on behalf of a legal entity, i.e. a vicarious of a legal entity, i.e. all rights and duties admitted in a criminal proceeding are exercised by a person acting on behalf of a legal entity, i.e. its authorized representative. A person acting on behalf of a legal entity as its representative must have an unlimited power to be able to represent a legal entity. In the course of the proceeding another person can be appointed by a legal entity as a representative on condition that a competence of the representative has been transferred to a relevant person (either in accordance with the law, a deed of foundation or by a decision made by a legal entity). According to Section 102, par. 2 of a SCA a person acting on behalf of a legal entity in a criminal proceeding has identical rights and duties as the accused. Therefore standard procedural rules and principles must be also maintained in a criminal proceeding against a legal entity, especially a presumption of innocence as a basic principle of a fair legal proceeding, *nemo tenetur se ipsum accusare* and maintaining of legal procedures.

In case of a conflict of interests between a legal entity and a person acting on behalf of a legal entity, i.e. a legal entity representative (e.g. in the case when a legal entity and its representative are a subject of the same criminal proceeding), a legal entity shall be obliged to appoint another legal or appointed representative. If such a person cannot be appointed an investigating authority or a court shall be entitled to appoint a suitable third person.

The right to testify in a criminal proceeding against a legal entity have, as a rule, the persons liable for a legal entity management as well as other employees of a legal entity. However, there is an exception which excludes in some cases that the persons responsible for a legal entity management testify against a legal entity in a criminal proceeding. According to the Swiss law a witness and an accused cannot be identical. Therefore the persons acting on behalf of a legal entity as well as its representatives cannot be forced to testify as witnesses against a legal entity on behalf of which they act, i.e. which is represented by them in the proceeding. The persons acting on behalf of a legal entity, i.e. the representatives are a priori excluded from a position of a defendant for the same reason.

The persons with unlimited power to act on behalf of a legal entity as well as its representatives (e.g. directors and managers) thus, shall not be obliged to submit evidence in a criminal proceeding against a legal entity. On the contrary, the employees of an accused legal entity shall be obliged to testify in a criminal proceeding even against a legal entity for which they work.

### III. 4. The Injured and a Victim of Property Crime

#### III. 4. 1. The Injured by Property Crime

The term **the injured** is used in the Criminal Procedure Code. According to the Section 46, par. 1 of the Criminal Procedure Code the injured is understood as *“a person having suffered a health, property, moral or any other injury or any rights or liberties protected by the law were violated or jeopardized by a crime”*. Within a criminal law no legal definition of a term a crime victim does not exist. According to Mr Musil from the victimological point of view the victims unlike the injured are considered to be only natural persons and not legal entities. Further, Musil states that in the interests of homogeneity of an object being examined it is more advantageous from a methodological viewpoint if a victim is considered only a person immediately affected by a crime. On the other hand Mrs Turay reminds that the term the injured is in one respect much broader and at the same time it is more limited in relation with the term victim. It is broader in that the rights and obligations are assigned not only to natural but also to legal entities. It is more limited in the fact that the person can be considered to be a victim regardless the fact whether an identity of an offender was discovered, whether the offender has been detained, criminally prosecuted or recognized guilty and regardless one's relationship to the victim.<sup>61</sup>

#### III. 4. 2. Property Crime Victim

In this part I mention the term a victim of a crime with regard to the fact that it is a criminological term and I also come out of the statement by Mrs Turay that in a narrower sense the victims are either natural persons or legal entities having suffered harm on property, body, reputation or on other rights.<sup>62</sup> At the same time I would like to point out at the statement by Mr Holomek indicating that the victim is a physical person having suffered any harm on life, health, property, reputation or any other rights by a crime.

The name victimology as a scientific field which is a part of criminology comes from a Latin word **“victima”** which means a victim. It is obvious from the translation that the subject of its focus is a victim, in particular his biological, psychical

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<sup>61</sup> Turayová, Y. a kolektív: Vybrané kapitoly z kriminológie. Bratislava, PF UK 2005. s. 81.

<sup>62</sup> Turayová, Y. a kolektív: Vybrané kapitoly z kriminológie. Bratislava, PF UK 1999. s. 81.

and social properties; a relation between him and an offender; his role in a process of victimization; in a process of revealing, investigation and legal hearing of a crime; help to victims; methods of their indemnification and also protection of individuals against victimization. Victimology is considered to be a part of criminology. It turns the attention to the victim of a criminological process and thus, victimology contributes to enrichment of criminological knowledge and etiology of a criminal activity.

From a *vicimological* point of view the victim is understood as a "person immediately affected by a crime as a result of which a harm on life, health, property and reputation, freedom or other rights was done to him/her."<sup>63</sup>

*Declaration of basic principles of justice for victims of crimes and abuse of competences* adopted by the UN in 1985 defines victims as: "persons who suffered a collective or individual injury including physical and psychical injury, emotional suffering, economic loss or serious violation of their basic rights as a result of acting or non-acting which means breaching of criminal acts or internationally recognized standards relating to human rights."<sup>64</sup>

**Victimity** designates vulnerability, preliminary tendency of a man to become a victim of a crime. However, it is not just one specified factor, it is a set of biological, social and psychological signs which are typical for victims, i.e. which increase one's probability to become a victim of the same crime. From this perspective it can be assumed that the risk to become a crime victim also depends on properties, physical features, social role, behaviour as a potential victim.

**Victimization** denotes a process in the course of which a potential victim becomes a real victim. It is an offender's contribution by his behaviour; a victim by one's behaviour; social environment by its reaction; a victim by the way how he adopts his role as a victim. Within this process the following is distinguished:

- a) a.) *primary victimization* (related to an offender's activity. It means direct damage of a victim by a crime, e.g. health injury),
- b) b.) *secondary victimization* (occurring only secondarily related to the crime already committed. It is caused by an inappropriate reaction by the environment, by investigation of a crime, threatening by an offender to prevent the victim to announce the crime).

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<sup>63</sup> Zapletal, J. – Novotný, O.: Kriminologie. Praha, Eurolex Bohemia 2001. s. 128.

<sup>64</sup> Sejčová, Ľ.: Deti a mládež ako obeť násilia. Bratislava, Album 2001. s. 26-27.

- c) c.) *tertiary victimization* a condition when an individual is not able to come to terms with a traumatic event, even though from the objective viewpoint correction, recovery or indemnification has already occurred.)<sup>65</sup>

From the viewpoint of a theory we differentiate victims according to the extent of their contribution to have become a victim of a crime:

1. victims who caused their victimization
  - a) individually ( e.g. a victim- a provocateur)
  - b) membership to a risky, negatively evaluated group ( e.g. a prostitute)
2. who did not cause their victimization
  - a) individually ( e.g. stands for a defence of an attacked and becomes injured)
  - b) membership to a risky, positively evaluated group (e.g. a policeman).

Literature mentions different victim types. Here I list only some of them:

- a voluntary victim (agreed with an injury, e.g. a victim of masochistic practices),
- a victim-recidivist (becoming a victim repeatedly, e.g. by one's naivety),
- provoking victim (by one's activity provoking violent behaviour).
- participating victim (enabling a delict, makes it easier to happen or otherwise participating in it),
- latency victim (the one hidden from the police, justice authorities),
- pre-disposed victim (a person with a high risk of victimization),
- pretending victim (an injury being only pretended).<sup>66</sup>

In the recent years there has been a considerable decrease of *property crime* victims, whereas there are several reasons for this. One of them is the fact that an active attitude of citizen towards protection of their property has improved. Representation of men and women among crime victims has been nearly identical in some years, however, a bigger difference has been observed in the last few years. Victims of property crime are men and women between 26 -55 years of age.<sup>67</sup>

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<sup>65</sup> Sejčová, L.: *Deti a mládež ako obeť násilia*. Bratislava, Album 2001. s. 83.

<sup>66</sup> Zapletal, J. – Novotný, O.: *Kriminologie*. Praha, Eurolex Bohemia 2001. s. 137.

<sup>67</sup> Holcr, K. a kolektív: *Kriminológia*. Bratislava, Iura Edition 2008. s. 255.

## IV. Criminological Prevention of Property Crime

### IV. 1. Reasons and Conditions of Property Crime

**Property crime** can be characterized as a crime due to wealth since the wealthier we are, the more opportunities are to commit property crimes.

Until 1989 some citizen of the Czech and Slovak Socialistic Republic were stealing socialistic property which was justified by the slogan "the one who does not steal robs one's family." This was possible to do because of the fact that this phenomenon was tolerated not only by individuals but also widely by the public. Our society has undergone many significant changes since the Velvet Revolution which were affected mainly by a change of a political system and a transfer from a centrally governed economy to a market economy. An expansion started mainly in a business area in order to gain rapid financial profit without any capital. Many of the new businessmen did not realize and did not understand that freedom of a human being is connected not only with a free will but also with responsibility for one's acting.

This period is characterized by a considerable increase of property crime with a contribution of dangerous perpetual offenders released after the president amnesty in 1990. In spite of an effort exercised by competent authorities those criminals were not able to re-incorporate into the society and they committed new serious crimes including the property ones. One of the reasons of property crime increase in that period can be considered non-solving of social and economic problems of the society, mainly high level of unemployment and also raising number of citizens depending on an unemployment benefit from the state. Therefore "social crime" has been spreading more and more in an attempt to ensure basic family needs.<sup>68</sup>

Artificial elimination of property crime by the state was performed by means of increased amount of damage not negligible, i.e. minor damage (in 1992-2001,

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<sup>68</sup> Šurayová, E.: *Mládež a spoločnosť* ročník IX 2/2003. (Slovenský časopis pre štátnu politiku a výskum mládeže), Bratislava, Akadémia PZ 2003. s. 28.

since 1<sup>st</sup> January 2006 – a sum exceeding Sk-8000). By this step a part of crimes was transferred among delicts and thus, property crime was artificially eliminated. If such an act, which is contrary to the law is qualified as a delict, the chance to be expressed is lower than if it was qualified as a crime. In fact common people have been damaged by this since they are in many cases persuaded not to submit a criminal information since harm done to them does not represent a sum (mainly concerning thefts) to be qualified as a crime. So the citizens with a lower level of legal awareness are persuaded not to inform on the act to the authorities. It still remains valid that citizen remains harmed regardless the qualification of an act and from there confidence towards the police of the SR evolves.

According to an Annual Report from the research from 1999 prepared as a study material: "Thefts by burglaries" behind the reasons of burglaries to flats there are low punishments for burglaries (17%), increase of citizen addicted to drugs and automats (17%), low numbers of policemen (14%), decline of educational influence of a family and school (13%), a desire to buy luxury goods and a deformed value system of citizen (11%).<sup>69</sup>

In the recent years one of the reasons of total crime growth is economic crisis resulting in increase of unemployment in the Slovak Republic. According to statistic data of the Police of the SR unemployed people contributed to the crime by more than 50% from January to April 2009. Other actual reasons of property crime is opening of borders, i.e. access of the Slovak Republic into a Schengen area followed by a migration of the inhabitants. Thus, the borders for new forms of property crime have been opened and therefore it is important for the Slovak Republic to react in a flexible manner to this reality by reasonable preventive measures.

*Criminology factors* affecting property crime offenders are based on a general etiology of a crime. At the same time with respect to acceleration or elimination of property crime they deserve a specific analysis which is listed in a subchapter Personality of an Offender focusing primarily on the environment influences (exogenous crime factors).

A new phenomenon of a society is represented by computers improving mainly its qualitative aspect. The internet has become global and it is spreading regardless state borders and computers are publicly available goods that can be obtained literary anywhere. The offenders of computer crime have now available all means to commit this crime type which is for them undoubtedly less "dirty"

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<sup>69</sup> Dianiška, G. a kolektív: Krádeže vlámaním do bytov. Bratislava, Akadémia PZ 1999. s. 31.

compared to bank robberies or real frauds. **There are more reasons for computer crime** and therefore let me list here only some of them:

a) *latency*- represents a main aspect of this type of crime commission. In many surveys latency between 90-95% is indicated which provides a sufficient protection for an offender.

b) *low legal awareness of victims* (e.g. trustworthiness of a buyer when buying a material thing on the internet) and offenders (e.g. unconscious use of illegal operating programmes on a home computer and their contradiction to the law).

c) *poor protection of software and high costs to protect information technologies* –every year protection of information machines requires higher costs and according to a main research analyst of Gartner- Mr Rugger Conta in 2012 a world market with information technologies protection will exceed the level of USD 13 mil. The companies are aware of importance of communication via information technologies and therefore their protection has become a significant aspect for the future.

d) *low purchase ability of the inhabitants in Central and Eastern Europe* (mainly young people often make copies of CDs, DVD- media and various programmes that are in some cases in market chains too expensive without any reason).

## IV. 2. Means and Procedures of Property Crime Prevention

Crime prevention is extraordinary important in particular with respect to property crime as for crime control. In the process of crime control it is no longer sufficient to respond using criminal means even though the modern ones. It is far more human and cheaper to concentrate on activities preventing the crime and negative social phenomena. Crime prevention is an important constituent increasing security of a citizen in a state not only by means of criminal means but using activities of non-criminal character focusing on elimination of criminology factors, criminology situations and use of victimological findings in practice. *Basic task of prevention* is to prevent criminal activity of a legal state and public order. The aim of preventive measures implementation is to reduce an extent of anti-social activity and thus, to achieve an adequate increase of citizens feeling of safety which may contribute to increase of quality of life of citizens and communities.<sup>70</sup>

The term prevention closely correlates to the term prophylaxis since according to Bubeliny both of them could be denoted as synonyms which mean in translation: crime prevention. Crime repression is a complementary term for a crime prevention which consists in imposing of punishments using legal means. Even though both the forms are relatively independent they must be mutually

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<sup>70</sup> Stratégia prevencie kriminality v Slovenskej republike na roky 2003 – 2006. s. 7.

complementary and overlapping. Their superior term could not only be a fight with crime but also a crime control which is a unity of prevention and repression. According to a German author Mr Kaiser the term control means all state and social facilities, strategies and sanctions aiming at conformity of behaviour in a criminal area of standards.<sup>71</sup>

**Crime prevention** has more definitions. According to the Governmental Council of the Slovak Republic for Crime Prevention it represents a scientifically justified, intentional, determined, planned and coordinated influence on reasons and crime conditions with the aim to prevent them, to remove them, or to eliminate them using appropriate forms and methods of acting or to limit their negative effects at least partially and at the same time to support formation of anti - criminology conditions.

Criminal law amends both general and individual prevention in Section 34 par. 1 (*the purpose of a punishment*) of a Criminal Act: "A sentence should ensure protection of the society against offenders in preventing of commission further criminal activity and shall set the conditions for an offender's re-education to live a normal life and at the same time to discourage others from committing criminal acts; a sentence at the same time shall express moral condemnation of an offender by a society." An element of individual prevention is included in reeducation and in ensuring of an appropriate life of an offender and an element of general prevention lies in educational effect on other society members. A traditional purpose of a sentence is general threatening and reforming for applying repression besides crime prevention.

The preventive strategy itself is carried out mainly within criminal prophylaxis implemented by different subjects. On a national level it is a Governmental Council of the Slovak Republic for Crime Prevention the chairman of which is a Vice-Chairman and the Minister of Interior of the SR and its Deputy is a Minister of Justice of the SR, the members being the state secretaries of selected ministries, representatives of state self-governmental regions and non-governmental organizations and professional public. Except from 21 permanent members invited members participate in meetings of the Governmental Council for Crime Prevention (e.g. General Prosecutor of the SR). On a regional level those are commissions for prevention established as a part of local state administration – regional offices, and district offices until 31 December 2003. After district offices were cancelled crime prevention was not included under competencies of new offices. On a local level city, municipal commissions or other subjects are (schools, civil associations, non- governmental organizations) are founded for prevention.<sup>72</sup>

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<sup>71</sup> Kaiser, G.: Kriminologie. Praha, C.H.Beck 1994. s. 80.

<sup>72</sup> Stratégia prevencie kriminality v Slovenskej republike na roky 2007 – 2010. s. 9.

The first strategy of crime prevention was already approved by the Decision of the SR Government for the years 1999-2002, however, this strategy had already contained implemented documents of the European Council and UN. The second strategy was adopted for the years 2003-2006. The strategy of crime prevention in the Slovak Republic for the years 2007-2010 represents the third comprehensive relevant document for the area of crime which is submitted in quarterly intervals to be approved by the SR Government. Strategy of crime prevention for the years 2007-2010 is an important material which affected considerably further direction of crime prevention not only within a membership of the Slovak Republic in the European Union but also in NATO. Until the end of 2011 no strategy of crime prevention for the years 2011-2014 was adopted and therefore I decided to point out at the Program Declaration of the Government of the Slovak Republic for the period of the years 2010-2014. However, the Program Declaration of the RS Government for a respective period mentions crime prevention only on a minimal level, which is astonishing.

An increasing tendency of crime is still anticipated and therefore it is significant to apply preventive measures in practice. Within crime prevention it is important to focus on its effect which is wide and has an influence on every individual. Its objective is mainly to affect the causes and conditions of crime and finally to elaborate various methods and forms how to be avoided, i.e. eliminated.

Crime prevention has an *interdisciplinary character*, i.e. it is based on several scientific disciplines dealing with crime. Some authors are of the opinion that prevention as a whole should be based on findings mainly from a scientific discipline which is *criminology*.<sup>73</sup> Another scientific discipline related to prevention is *criminalistics*. Prof. Simovcek defines it as an independent science examining rules of generation, course and demonstration of relevant events from the viewpoint of criminalistics with the aim to elaborate criminalistics methods and methodologies of their application in the process of criminalistics clarification of those events. Prevention has found its place also in a standardized science such as *criminal law*. Its purpose is to protect the society against commission of crimes by a legal regulation of behavior since it defines what is considered to be a crime in a particular state. *Penology* is applied in tertiary prevention examining a personality of a sentenced person, one's re-socialization, effectiveness and efficiency of punishments. Among social sciences prevention it uses findings mainly from *sociology*, *psychology* and from medical sciences it is *juridical psychiatry*.

The Governmental Council of the SR for Crime Prevention included the following among *crime prevention*:

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<sup>73</sup> Nezkusil, J., Přenosil, G.: Prevence zločinnosti v ČSSR. Praha, Panorama 1986. s. 206.

- Principle of repression and prevention unity,
- Principle of constituency and a legal character of prevention
- Principle of up-to-date and objectivity of prevention,
- Principle of prevention coordination,
- Principle of prevention being ensured institutionally and personally,
- Principle of mass participation of citizens in prevention,
- Principle of providing funds for prevention,
- Principle of providing of information for prevention
- Principle of prevention comprehensiveness,
- Principle of intentional and planning character of prevention
- Principle of scientific character of prevention,
- Principle of international cooperation in prevention,
- Principle of prevention continuity.<sup>74</sup>

Preventive activities of prevention can be divided according to their **content** to social, situational and victimological prevention and by a **group of** preventive activities **recipients** into primary, secondary and tertiary prevention. The content as well as a group of recipients mainly in respect to business crime is not adequately prepared and will require special scientific activities in the future.

*Repressive strategies* are focused mainly on the fact that commission of property crime to be not profitable for offenders. If the criminal sanctions are so low that it will pay to offenders to take a risk, they will undertake the risk. A new Criminal Act started with criminalization which resulted in stricter sentences, but at the same time in the criminal law an emphasis should be put besides sentencing on a thing or forfeiture of property in i.e. in civil law on restoration of an original state (natural restitution) or providing of monetary equivalent (relutary compensation).

*Preventive strategies* are mainly aimed at crime prevention. Property crime prevention is applied to the greatest extent within a situational prevention. Social prevention is mainly demonstrated in its wider effect within a territory and thus, it may have a deeper influence on citizen and to point out at problems of the society. Social prevention is focused predominantly on legislative activities, education of young people, criminal policy, residential policy, economic situation of the inhabitants, i.e. unemployment.

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<sup>74</sup> Rada vlády Slovenskej republiky pre prevenciu kriminality [electronic version].

Within a situational prevention in property crime the emphasis is put on physical protection of property in order to make it more difficult for the offenders to perform their activities. As regards property crime the situational prevention is carried out e.g. by means of camera systems on pedestrian zones, better lighting in safe zones, protection of vehicles and bikes by higher quality security devices and also by neighbouring wards.

Victimological prevention deals with activities in the area of victims, in particular how to avoid becoming a victim. They are addressed mainly to the persons with higher probability of being endangered (children, flat and restaurant owners, park visitors, etc.).

It is necessary to define the following terms for individual preventive activities and projects:

**Preventive activity** - a particular activity in its practical implementation with a target to reach set objectives. It is a meaningful and a focused practical activity. It has a practical significance and represents an action itself.

**Preventive project**- with respect to a preventive activity it is a more detailed and a more general term. It includes comprehensive information on a title, purpose, recipient, length of duration, date and place of its implementation as well as the data on budget, personal sources and on an expected impact. Preventive project documentation is registered as a written document at a respective department of the Police department.

**Preventive measure**- a comprehensive term used to denote preventive activities and preventive projects (e.g. in the text: "Different preventive measures have been adopted...").<sup>75</sup>

At present there are several preventive projects in the area of property crime. In my paper I attempted just briefly inform the readers on only some of them. The preventive projects mentioned bellow have been implemented by the Department for Prevention of the President of the Police of the SR or by regional directorates of the Police in 2007 continuing in the following years.

In 2007 the Department for Prevention of the President of the SR Police implemented a project with a title: "**Behave Normally.**" This project is addressed to primary school students (in particular to the students of class 5 of primary schools) how to avoid becoming a victim of a crime, how to manage certain difficult situations, where to search for help. *The objective of this project* was to establish a

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<sup>75</sup> Total number of preventive activities and projects performed by the Police members in 2007. Bratislava. Prezídium Policajného zboru, odbor komunikácie a prevencie Prezídia Policajného zboru 2008. s. 2.

relationship between the Police, children and the public based on confidence. Besides an informational role the project also fulfils mainly a preventive role. *An estimated impact of the project* is as follows: in Slovakia 365 schools with 12 923 students were involved in the project in total; prevention of social and pathological phenomena of children and juveniles and increase of their legal awareness; increase of professional level of lectures for working with children.

A preventive project: **"We Know that..."** is focused on prevention of criminal behaviour of children and juveniles (problematic behaviour of children and juveniles, racism, xenophobia and multicultural education, anti-criminal behaviour of children and in cooperation of the Police with schools). *The project recipients are* students of classes 7-9 of primary schools, students of classes 1-2 of secondary schools, students of classes 1-7 of secondary grammar schools with 8-year study program. *The objective of the project* is to fight against evil, violence, addictions, prejudices and non-productive way of life. *An estimated project impact:* within Regional Directorates of the Police 116 schools were involved in the project with a total number of 2 576 students; a solution of social and pathological phenomena of children and juveniles and increase of their legal awareness in respective areas.

In Bratislava region a preventive project called: **"Seniors and a Letter to Seniors"** the recipients being seniors, i.e. the persons above 55 years of age and higher. The aim of the project is to raise legal awareness of the citizen above 55 years of age and higher, eliminate their level of participation in a crime as victims, to warn on home thieves and frauds. *An estimated impact of the project* is to eliminate participation of this age group in crime as crime victims.

Another project that has been implemented in the Bratislava region is a **CRI-MI-IFO stand** focusing on prevention of criminal activity, starting closer cooperation with the police, information on possible protection of health and property. The recipient of the project is public. *An estimated impact of the project* is to avoid crime, building of trustworthiness of the Police, starting a closer cooperation with citizens.

A preventive project **"Safe Community - a Community is our Home"** is aimed at children and their parents with involvement of the public in order to help to realize risks of life endangerment and to learn how to avoid them. The project recipients are children from kindergartens and pupils of class 1 of primary schools. *The project objective* is to increase safety of citizen in a community and to build habits of safety behaviour. *An estimated project impact* is to raise safety of children in the mentioned areas.

I am of the opinion that a significant preventive project within property crime prevention is a project: **"Let's Live Safely"**. The project recipients are inhabitants of residential houses. *The objective of the project* is to protect a house and

entrance by an electromagnetic DEG key, to eliminate an impact of criminal activity in common premises of residential houses; a residential house is under police supervision. *An estimated impact of the project:* the implementation helps to prevent crime, positive responses from citizens. The police organized a wide promo campaign within this project carried out by performances in media, distribution of leaflets and various brochures. The Police listed some recommendations to residential houses inhabitants of which the following can be mentioned:

- lock the door carefully and close the windows. Do not even forget the attic, floors, small roof windows and cellar windows. The thief is able to get in through a hole bigger than human's head,
- ensure quality safety door or at least safety lock in combination with other safety means,
- if you live on a ground floor, install decorative grids and safety foils on windows, balconies, loggias, together with reliable windows closing. Increase your dwelling safety,
- never leave the keys on so-called agreed places ( under the mat, in a flower cup, etc. ) They are the very first places searched by thieves. If you give the door keys to somebody when you are not present carefully consider whether the person is reliable and trustworthy,
- install time locks on lights which will switch on during your absence giving an impression that the flat is not abandoned, etc.<sup>76</sup>

In Bratislava region the above mentioned projects: **"Behave Normally"** and **"We Know that.."** have been implemented.

In a Trenčín region a project **"Did You Know That?"** has been implemented. The recipients are students of classes 8-9 of primary schools and students of secondary schools. *The aim of the project* is to raise legal awareness, elimination of criminal activity and victimization. *An estimated project impact:* pupils and student take a lively interest in possibilities of their protection against offenders, sometimes they turn to help with their particular problem.

The recipients of a preventive project: **"Seniors, Defend Yourself!"** are according to the title people of retired age. *The project objective* is crime prevention, starting cooperation with these citizens and get their confidence. *An estimated project impact:* there is an interest in information and methods of protection of their property from the side of Academy of 3<sup>rd</sup> age and clubs of pensioners.

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<sup>76</sup> Bývajte Bezpečne. Preventívny projekt odboru komunikácie a prevencie Prezídia Policajného zboru a ADLO Bezpečnostné dvere.

A preventive project: "**A Handbook of Safety and Security**" is aimed to reach confidence in the Police, raise of legal awareness and prevention of victimization. The project recipients are students of classes 3-8 of the primary school. *An estimated project impact:* 65 primary and secondary schools.

Other preventive projects implemented in this region in the area of property crime are the projects **Knowledge, Attitudes, Behaviour; Why to Say No!; Decide Yourself**. The project recipients are students of classes 6-7 of primary schools. *The aim of the project no.1* is prevention of drug addictions and increase of legal awareness in connection with drugs. The recipients of a project no.2 are pupils of primary, secondary schools and special schools students. *The aim of the project no.2* is a preventive influence on young people in the area of drugs (alcoholic addiction); clarification of risks, criminal activity and possible criminal consequences. *An estimated project impact:* from the side of schools and the students themselves there is an interest in this project, games and activities performed with the students. The recipients of a project no.3 are pupils of primary and secondary schools. The objective of the project no.3 is elimination of drugs use and their distribution in schools. Preventive influence on young people in the area of drug (alcoholic) addiction. Clarification of risks, criminal activity and consequences of an illegal activity. *An estimated project impact:* the schools and the students themselves took an interest in this project.

In Trenčín region the mentioned above project: "**Safety Community**" has been implemented.

In Nitra region the aforesaid preventive projects "**Behave Normally**" and "**We Know That...**" have been implemented in the area of property crime.

In Banská Bystrica region a preventive project with a title: "**I am Big but Still Not an Adult**". The recipients of a project are students of secondary schools. *The objective of the project* is to raise legal awareness of the young people; notification of juveniles on risks of employment abroad; juvenile crime. *An estimated project impact:* elimination of crime committed by juveniles and on juveniles; victimization prevention; increase of credibility in the Police.

The recipients of a preventive project: "**Do not Give a Chance to a Thief**" are drivers, students of primary and secondary schools. *The objective of the project* is to prevent commission of crime by stealing things from motor vehicles. *An estimated project impact:* elimination of an idea to commit crimes by stealing things from motor vehicles; raise of knowledge of the citizens towards the issue; increase of legal awareness concerning protection of one's property.

Next preventive projects implemented in the Banska Bystrica region are: “**I Learn and I Know**” and “**A Policeman-my Friend- a regional round**”. The recipients of the first project are children from kindergartens and pupils of primary schools. *The objective of the project* is production of a promotion material in order to increase legal awareness of children and juveniles, realization of responsibility for one’s behaviour, prevention of victimization. *An estimated project impact*: the material was useful as a supplement of lecturing and discussion activities. The recipients of the second project are pupils of class 4 and classes 7-8 of primary schools. *The objective of the project* is to develop legal awareness of children and juveniles; reduction and stabilization of crime of children and adults after realization of responsibility for their behaviour; prevention of victimization; improvement of cooperation and strengthening of confidence between the police and the youth. *An estimated project impact*: 216 students were involved into the project in the school year 2007/08. The project was successful in practice and there is a major interest in participation in the project by both teachers and the students.

In Banska Bystrica region the mentioned above preventive projects “**Behave Normally**” and “**We Know That...**” and “**Safety Community- community is our home**” have been implemented in the area of property crime.

A preventive project **Criminal Liability** was implemented in Zilina region. The recipients of the project are children from kindergartens, primary and secondary schools, parents, teachers and seniors in a Dolny Kubin district. *The aim of the project* is a cycle of lectures, discussions, video projections within systematic education in the area of violent, drug and economic prevention with the aim to increase legal awareness of the Slovak Republic citizens. *An estimated project impact*: to increase legal awareness of children, juveniles, parents, teachers, seniors and thus, to eliminate crime in a police district of Dolny Kubin.

The recipients of a preventive project: “**A Car is Not a Shop Window**” are motor car drivers who when parking leave things in a car such as cameras, video camcorders, car radios, bags, briefcases, shopping, clothes, leather clothes and other different things attracting occasional thieves. *The aim of the project* is to reduce a number of thefts or prevent from stealing things from motor vehicles. The project is focused on burglaries into cars parked on the streets of housing estates, on non-guarded car parks or on other areas. *An estimated project impact*: elimination of criminal activity- burglaries into motor cars.

Similar projects carried out in Zilina region are: **Prevention of Motor Car Stealing** and **Prevention of Burglaries into Flats**. *The recipients of the first project* are motor car owners, importers and authorized distributors of car and security equipment and car shops owners, the juveniles in secondary schools, etc. *The*

*aim of the project* is to contribute to elimination of criminal activity connected with stealing of motor vehicles, to limit criminology factors in order to increase probability of detection motor car thefts offenders. *An estimated project impact:* elimination of an idea to steal motor cars and their components. *The recipients of the second project* are citizens, i.e. owners of flats, family houses, flat renters, flat associates and communities. *The aim of the second project* is to initiate preventive behaviour of citizens, forming of social coherence, an orientation towards common solution of problem, cooperation in control of one's environment and the closest area and thus, to contribute to elimination of a criminal activity- burglaries. *An estimated project impact:* elimination of criminal activities of the youth-burglaries into flats, family houses and recreational facilities.

In Zilina district the mentioned projects: "**Behave Normally**" and "**We Know That...**" and "**Safe Home**" have been implemented.

In Presov region the mentioned projects "**Behave Normally**" and "**We Know That...**", "**A Handbook of Safety and Security**" and "**Safe Community- community is our home**" have been implemented.

In Kosice region a project: "**Autumn of Life**" has been implemented, the recipients being seniors. *The aim of the project* is to focus on the principles of safe behaviour not only in the streets but also at home. *An estimated project impact:* by providing some appropriate advice to minimize an undesirable phenomenon of crime the victims of which are seniors and to apply suitable measures to protect this risk group against negative phenomena. Prepared at own expenses of this region with leaflets containing advice for seniors.

Another preventive project in this region is a project called: "**Seniors 2007**". The project recipients are seniors in the district of Spisska Nova Ves. *The aim of the project* is to affect a risk group of seniors with the aim to minimize an undesirable phenomenon of crime committed on elderly citizens, to adopt measures to protect this risk group against negative phenomena. *An estimated project impact:* to minimize an undesirable phenomenon of crime committed on elderly citizens, to adopt such measures that the risk group of seniors was protected against negative phenomena.

The preventive projects in the area of property crime: "**Behave Normally**" and "**We Know That...**" have been mentioned and implemented in other regions as well and therefore I am not going to deal with them in the next Section.

Next preventive projects being implemented in the area of the Slovak Republic are e.g. "**Prevention of Car Crime**" *the objective* of which is to contribute to elimination of criminal activity connected with car crime in the Slovak Republic

with an emphasis put on localities with the highest crime rate and many others such as: **“A Holiday Card”**. **STOP 24**, etc.

### IV. 3. Forecast of Property Crime in the Slovak Republic

According to a content analysis of professional literature the following conclusion can be drawn: on the basis of a qualified estimation the Ministry of Interior of the SR and its institutes can have a direct influence on less than 15% of factors that accelerate or decelerate the crime. It is probable that the above mentioned also applies to other bodies responsible for criminal proceedings. The remaining subjects of both formal and informal control including every person regardless his place in the whole society structure should be responsible for influencing of other factors.

On the basis of analogical non-professional and unqualified concepts criminal liability is limited exclusively to the highest authorities of public, in particular state administration. Thus, no categorical conclusions can be drawn from the forecasted crime development in their advantage or disadvantage.

Those prejudices will be persisting in a considered time period and the citizens will only gradually adopt a higher share of responsibility for their safety. They will only gradually get rid of their illusory visions that their safety guarantees can be transferred absolutely to the subjects of a crime formal control. The mentioned opinions (mainly the passive), attitudes of majority of citizens will affect the development of a criminal scene in a more negative way rather than positively.

Current demographic development of the Slovak Republic will be demonstrating rather unfavourably in a distant future mainly by deformation of an age pyramid, ageing of citizens and decreased natural reproduction.

The structure of a crime scene of the Slovak Republic will be formed predominantly by property, business and violent crime (see a graph 14) in the near future. The remaining crime involves different crime types such as: drug, moral, computer and organized crime, etc. The structure of offenders of overall crime will consist mainly of property crime offenders (30%), business crime offenders (15%) and violent crime offenders (10%). Drug crime offenders will form approximately 2% and moral crime up to 1%. As regards the victims it will be mainly be represented by persons in a productive age (mainly from 16 to 65 years) which will represent more than 80% of all victims. The persons older than 65 years of age and under 18 will represent less than 10% of all victims.<sup>77</sup>

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<sup>77</sup> Holcr, K. a kolektív: Prognóza kriminality a jej kontroly v Slovenskej republike. Bratislava, Iura Edition 2008. s. 60-71.

Mr Holcr limits the forecast of a possible development of a crime scene in the Slovak Republic to 3 basic variants:

1. **Realistic-** if a situation with overall crime will further correspond with property crime development. Under the conditions that the citizens will further improve their care of property protection it is highly probable that the crime will not exceed 115 000 criminal offences and will not fall under 100 000 of criminal offences. The overall crime structure will remain nearly unchanged since property criminal offences the share of which on overall crime will not drop under the level of 50% will prevail. Business crime will be on the level around 15% and violent crime with approximately 10% in total crime. Moral crime will not change and together with drug crime it will participate in total crime by about 1%.
2. **Pessimistic-** anticipating qualitative deterioration of factors affecting development of a crime scene and thus, strengthening of accelerating and weakening of decelerating factors. Present economic situation results in the growth of social differences, raise of corruption in public administration and with criminal bodies. Latency in corruption and money laundering is estimated to be fivefold of a current registered business crime. As regards frauds and tax evasion the latency is a bit lower (twofold of recorded business crime).<sup>78</sup>
3. **Optimistic-** this scenario is even less realistic than the pessimistic one. It would be characterized by a significant decrease of mainly property and violent crimes, slight decline of moral crime and stoppage of growth of business, drug and computer crime and taking steps resulting in gradual elimination of a base for organized crime. It estimates qualitative strengthening of deceleration factors and weakening of acceleration criminology factors, it expects improvement of prognostic background (consisting of both internal and external components).

Comparison of our criminal scene with the neighbouring countries is still more favourable and encouraging. At present the Slovak Republic has maybe the biggest chance to maintain relatively low index of criminality of all central European countries, of course, if good basic assumptions are not to be destroyed in the future.

**Property crime-** will respond in the most sensitive way to development of crucial areas of a social life, however, most of all towards economic and social de-

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<sup>78</sup> Holcr, K. a kolektív: Prognóza kriminality a jej kontroly v Slovenskej republike. Bratislava, Iura Edition 2008. s. 139.

velopment. It will be in particular increasing property differentiation of the Slovak citizens as one of the factors to accelerate property crime in a considered period, only slowly falling unemployment rate and inflation, persisting low level of property crime clarification (the lowest of all crime types, approx. 30%). Mass drug abuse and addition on game winning machines (mainly children and adults of lower age groups) as well as strengthening of organized form of property crime are very probably to become especially significant acceleration factors.

Similarly other inhibition factors will effect on property crime in terms of its weakening. Their presence is already visible these days and there is a real assumption of their further growth.

The following may be included among the inhibition factors:

- Care of citizens of their property protection,
- Attention and commitment in protection of neighbours property,
- Willingness of citizens to cooperate with the police,
- Wider implementation of elements of property technical protection,
- Professional training of the police,
- Stricter legislation and faster criminal punishment of offenders.<sup>79</sup>

Development of actual property crime will not be identical with any prognostic variant describing a possible development of registered property crime. It is highly probable that the dynamics of all property crimes will have relatively stable tendency throughout the following period and their status will be oscillating between 55 000 and 65 000 recorded crimes. The increase by more than 10% is improbable.

Men will be participating in property crime commission by more than 75%. Probably a slight increase of female offenders can be expected, however, not very significant in its volume. Minor thefts in department stores, stores, workplaces, means of transport, in hotels and pubs will prevail.

Educational structure of property crime offenders will be composed of nearly two thirds of inhabitants with incomplete or complete primary education, nearly one third will be offenders with secondary education and the rest to be with a university degree (approx. 5-8%). Each educational group of property crime offenders will include relatively specific crimes.

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<sup>79</sup> Chalka, R. – Holcr, K. – Holomek, J.: Prognóza vývoja kriminality v Slovenskej republike, Bratislava, Akadémia PZ 2000. s. 39.

Offenders with incomplete or basic education will mainly commit burglaries to cottages, stealing in recreational areas, burglaries into flats and other thefts among the employees, thefts in stores, schools, pubs, kiosks, etc.

University educated offenders will only be rarely represented among immediate "doers" of other thefts and even less among immediate offenders of burglaries. They will participate in property crime as its originators, co-offenders in a position of "advisors" or "pioneers" by stealing valuables.

Offenders with secondary education will be the most universal offenders. However, they will participate in property crime commission especially by burglaries, car burglaries and stealing of things from cars.

## Conclusion

In the Slovak Republic property crime is very frequently connected with an unfavourable social situation mainly as its consequence and therefore it is sometimes designated as a social crime. As a contradictory argument a statement can be used that property crime has a high share in overall crime even in developed countries and also in the period of economic conjuncture as well as of stagnation. Current findings on property crime are still insufficient in the Slovak Republic. It is necessary for application practice to use criminological knowledge on offenders, a situation, structure, dynamics and reasons, conditions and opportunities for its prevention. As useful seems understanding of crime policy in its latest version, e.g. by formation of a state juvenile policy. Criminological findings are used for prevention of crime and set the conditions to make commission of crime more difficult for the offenders and that following of legal provisions "paid" to them.

In my opinion property crime is considered to be the most significant crime type not only with respect to its share in overall crime but mainly for the extent of harm caused by it. I came to the conclusion that the Criminal Act involves the crimes that can only be included into property crime or criminal offences belonging only to business crime or to both crime types, i.e. a criminal offence of a fraud or a criminal offence of embezzlement are also included into both business and property crime (Chapter IV of the Criminal Act). As an answer to a question what causes a problem in preparation of statistics on property and business crime I came to the following conclusions. I assume that the problem is in insufficient differentiation of crimes falling under property and business crime by competent persons who classify criminal offences into property and business crime according to different criteria. Therefore I suggest to prepare a methodology of statistic data processing on property and business crime.

It can be obvious from the examined years of 1989-2000 that property crime culminated between the years 1993-2004. In an intermediate period of the years 1990-1993 property crime raised by 2.5 times and its share in overall crime increased by nearly 80% in 1993. Its subsequent drop recorded in 1994 was mainly due to amended legal standards, in particular by an amendment of the Criminal Act of 1994 (in particular Section 89, par. 14 of the Criminal Act), by which damage

not negligible was determined as at least twofold of the lowest monthly wage which resulted in separation of delicts from crimes. Thus, and artificial decrease of property crime occurred since criminal offences against property transferred into category of delicts against property. The most frequently committed crime not only within property crime but also within overall crime is theft (Section 212 of the Criminal Act).

The offenders of property crime are predominantly persons suffering from dissocial and histrionic disorders (endogenous criminology factors). From the viewpoint of exogenous criminology factors the personality of a property crime offender is influenced (in my opinion) by criminology factors in the social area which are family, school, groups where the individual gets as a result of socialisation; a way how he spends his free time; influence of habitation; mass media influence on crime, etc. Property crime offenders are besides natural persons also legal entities. I am of the opinion that a working group should be established in Slovakia to perform a comprehensive (criminological) research focusing on models of criminal liability of legal entities in the European Union. It is important to mention that a systematic research to solve the issue still does not exist in Slovakia. This research should be used by working groups for examination of foreign legislation within the European Union having already implemented criminal liability of legal entities.

According to this analysis a particular conclusion could be drawn about which theory is the most similar and the most suitable for our legislation. The data obtained will enable us to deepen knowledge on models (theories) of criminal liability of legal entities applied in the EU. Since all previous attempts to introduce genuine criminal liability in Slovakia failed, the conclusions of this research could be highly valuable for our legislation and they could serve as a base for drawing of *de lege ferenda* proposals.

It should be in particular criminological surveys pointing at the gaps in law or suggesting alternative solutions how our society should react to developing social phenomena. The surveys should be performed mainly by the Criminological Institute in the Slovak Republic, however, such an institution has not existed in the SR since 1993. Foundation of the Criminological Institute would contribute to theoretical, researching, analytical, publishing and other activity leading to strengthening of safety of citizens in relation with crime. Foundation of such an institute would be undoubtedly significant since criminological research would be of a particular importance of the Slovak Republic the evidence of which are positive results of similar institutes operating abroad. At the same time it would strengthen the position in the area of international network, international scientific and technical cooperation and joining of new strategic partnerships (e.g.

a membership in international professional associations such as International Criminological Society, European Criminological Society, International Society for Criminal Law, the World Victimological Society).

I assume that institutions are personally and financially insufficiently prepared to enable preparation of effective preventive projects on a satisfactory level. Among important institutions performing property crime prevention there are in my view mainly the Governmental Council of the SR for crime prevention and the Police. Implementation of some preventive projects, however, is difficult to imagine without a private sector. On the other hand it is necessary to take into account complexity of preparation and implementation of preventive projects which, in my opinion, have been brought into life even though a compromise between a private and a public sector was required. It can be stated from the mentioned above that prevention is not only an issue of a state policy but also of a private sector.

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