Selected aspects of criminal policy and tools to measure recidivism risk in probation

MARTIN LULEI

Abstract

This expert article is a partial synthesis of the author's scientific knowledge concerning selected topics covered in the expert presentation on the topic *Tools to measure recidivism risk in probation* held in Budapest in 2014 in the framework of the project *Judiciary and Protection of Victims*. The author focused on criminal policy, basic characteristics of the risk factor paradigm and examples of specific tools to measure recidivism risk. The article features also selected findings from implemented research studies targeting criminality and victimization in the Slovak Republic.

Key words

Crime, Probation, Recidivism, Risk, Criminal justice social work, Victimization.

Foreword

The criminal justice system stands above criminal policy that (among other elements) contains also the institute of probation and alternative corrections. The term criminal policy is described in a number of national strategies, action plans, political parties' platforms, government platforms, etc. Some authors claim that criminal policy has become subject of political competition (Soľaníková, 2011), others talk about a so-called populist criminal policy (Rodriguez, 2012). There is no doubt about the cause-effect relationship of political decisions and crime (the control of which is the aim of criminal policy)[1]. In criminal policy, science and practice are linked through the term evidence-based practice, which however is not only used in criminal policy. In some publications (this unfortunately is true also about expert literature) there is a wrong translation of the English term evidence-based practice into Slovak. US authors Meghan and Enver (2009, p. 11) in their publication concerning EBP implementation in the field of criminal justice emphasize that EBP is an objective, balanced and responsible use of current research and best available research data and findings to implement policies and practical decisions to enhance the quality of the measures for the user. In the context of criminal justice, the scope of the term *user* comprises mainly offenders, victims and communities. Criminal policy measures should be designed based on EBP and the current mainstream of restorative justice.

Based on the data in *Social development trends in the Slovak Republic* (ŠÚ SR, 2013), crime resulted in a material damage of 701.4 million Euros in 2012, which is a 26% increase from 2011. Despite increasing material damage due to crime, the general registered crime rates in Slovakia have declined by 3 % between 2011 and 2012 and by 14% from 2008; there was a 31% reduction between the years 2004 and 2012. The crime rate has a decreasing trend, which is true even if Slovakia's demographic development is considered. The number of criminal offences between 2004 and 2012 decreased, whereas Slovakia's population grew in the same period. Currently there is no counterfactual analysis of the impact of political decisions on overall registered crime available, but research findings provide answers to many questions, e.g. whether Slovak citizens trust the criminal justice system. Public polls (Flash Eurobarometer 385, 2013) implemented from 30 September to 2 October 2013[2] show that less than 3 out of 10 respondents tend to trust Slovakia's justice system. Considering the fact that Slovakia ranked second from the bottom from among all EU Member State in terms of trust, this finding is alarming. Burrell (2005) considers one of the key points of trust in

[1] E.g. repressive US criminal policy in the 1980s (so-called get tough era).

[2] Research sample of 26,581 respondents from 28 Member States using the method of a (phone) interview conducted in the mother tongue with possible answers: a) I tend to trust, b) I tend to distrust, c) I'm unsure.

probation (as an element of the criminal justice system) trust in the courts (and other key institutions) and trust of the general public. Trust in the courts results in increased use of probation, which potentially leads to a lower prison population.

Probation as an element of the criminal justice system is one of the tools to decrease prison population and public protection. The importance of probation is stressed also by prison population statistics and the number of persons under specialized/probation supervision. E.g. in Germany, the prison population counted 73,000 individuals in 2008 and nearly 225,000 people were under specialized supervision in the framework of the criminal justice system. Similarly in England and Wales, the prison population was 83,500 and 241,500 people were under supervision (McNeill, 2011).

The question is how to design and implement an effective probation system, limited mainly by adequate funding. The authors of *Probation in Europe* calculated the percentage share of probation services funding from the total correctional services funding (i.e. what % from the correctional service budget is allocated to probation service). E.g. the probation service in Malta had 3.1% of the correctional services budget allocated, in Luxembourg the percentage was 18.4, it was 25% in Sweden, 21.8% in Scotland, 12.5% in Catalonia (Durnescu, Kalmthout, 2008, p. 33). In Slovakia it was 0.72% in 2005 and 0.97% in 2010 (Lulei, 2011). In 2013 correctional system expenditures (and/or the respective State budget chapter's program 070 Prisons) amounted to 148,923,828 € (Ministry of Justice of the Slovak Republic, 2014). Probation and mediation service and/or probation and mediation authorities acting at the district courts do not have specifically allocated budgets and their expenditures are not monitored separately. Their expenditures are included in the expenditures budgeted under the program *08P Judiciary funding*. It is impossible to get the requested data from the program *08P Judiciary funding,* and hence 2013 expenditures cannot be calculated.

In the context of probation and mediation offices acting at district courts in the Slovak Republic, Cehlár (2011) states that the number of allocated probation supervisions (probation cases) exceeded 6,000 in the period 2006–2009. 5,472 files (and 9,239 more files were transferred from the previous year) were allocated to probation and mediation officers in the Slovak Republic in 2010; as of 31 December 2010, the prison population in Slovakia counted 10,031 individuals (Correctional Service ZVJS data, 2010). According to the Internet labor market server (ISTP) job classification, the position probation and mediation officer under ISCO-08 Classification is numbered 2619: *Specialists in the field of law, social insurance and healthcare insurance not classified elsewhere*. Based on the Information system on average earnings (Slovak Ministry of Labor, Social Work and Family, 2014), the average gross monthly salary of this category was 894.00 € in 1Q/2014. This figure of course does not represent the average gross monthly salary of only probation and mediation officers. Probation systems differ in the V4 countries and e.g. the Czech Republic and Austria classify similar positions in the ISCO-08 Classification under the number 2635. In Slovakia, the above number is allocated to the position *Specialists in the field of social work and counseling*, whereas based on the Information system on average earnings (Slovak Ministry of Labor, Social Work and Family, 2014), the average gross monthly salary in this category was 721.00 € in 1Q/2014. In the Czech Republic (Information system on average earnings) this code (2635) is used for the position *Specialists in the field of social work* with the subcategory *Social workers of specialized probation centers, correctional and other institutions*, where the average gross salary was 26 585 Kč in the 1st half of 2013, which corresponds to 964.20 € based on the current exchange rate of the Slovak National Bank. In Austria this code (2635) stands for the position *Social worker* with the subcategory *Bewährungshelfer* (probation officer), whereas the Austrian national professions system states an average monthly gross salary of 1,960.00 € upon hiring (AMS, 2014) for this category at present.

One of the criminal policy efficiency indicators is the number of clients under probation supervision and the number of alternative corrections. Table 1 below shows a clear increase of the above indicators in selected countries.

Table 1 Increasing number of alternative corrections and probation clients in selected countries (McNeill, Beyens, 2013)

Country	Time period	Increase in %
Denmark / clients	2006 - 2011	6
France / clients	2002 - 2012	23
England and Wales / alternative sanctions	1999 -2009	28
Ireland / alternative sanctions	1980 - 2011	450
Switzer / alternative sanctions	1996 - 2007	400

Criminal offence risk and protective factors

The risk factor paradigm (which also identifies protective factors) has a broad scope of practical application (e.g. in designing probation programs, criminal justice social work interventions targeting the youth, recidivism risk assessment and offender needs assessment, in designing probation plans, etc.). The risk factor paradigm was defined by Farrington (In Shader, 2003) as the identification of key risk factors for committing criminal offences and preventative tools to mitigate them. A protective factor focused approach is used especially when working with young people. Research conclusions in the field of protective factors are used also in the development of tools used for recidivism risk assessment and offender needs assessment (risk/needs assessment tools). Protective factors are characterized as internal and external resources, the existence of which has a positive effect on the selected target group (e.g. youth at risk, convicted individuals, etc.). Protective factors include e.g.:

- intense social support,
- strong link to a pro-social adult,
- flexible personality,
- marriage,
- move to a different location,
- employment and others (Lulei, 2011).

Protective factors may include personal resources (e.g. self-control), social resources (family cohesion, emotional support provided in the family) and community resources (positive strengthening at school, in the community etc.) (Walsh, 2006 in Maschi et al., 2009: 236). Shader (2003) states that scientific opinions concerning protective factors differ, but two orientations in defining protective factors are predominant:

1. the absence of risk and something notionally different (the opposite on two parts of a continuum) e.g. a pupil's excellent school results may be considered a protective factor, since it is the opposite of a pupil's bad school results, which is a well-known risk factor),
2. characteristics or conditions that have a mitigating effect on risk factors (e.g. poverty is characterized as a risk factor, yet support from parents can mitigate the negative effects of poverty as well as the probability to start a crime career).

These two main opinion orientations in defining protective factors are stated also by the Youth Justice Board (2005) in its information bulletin:

1. factors that mean the opposite or the absence of a risk factor and that help to protect children and youth from partaking in criminal activities, substance abuse and other antisocial behavior,
2. factors mitigating the effects of exposure to risk factors; this helps to explain why some children may be exposed to groups of various risk factors, yet shall not develop an antisocial behavior in the future or commit crime (Youth Justice Board, 2005).

Ioan Durnescu (2010) from the University of Bucharest, based on the results of a longitudinal study differentiates four main categories of risk factors of criminal offenders:
– historical (the age at the time of the first offence, the number of past accusations),
– dispositional (demographic characteristics of the offender's personality),
– contextual (antisocial peer group, antisocial parents),
– clinical (substance abuse, impulsiveness, intelligence level, mental health).

Risk factors can be divided into static factors (that cannot be changed, e.g. the offender's age at the time of the first offence) and dynamic factors (that are subject to change, e.g. an antisocial attitude, substance abuse, etc.). Durnescu (2010) based on a meta-analysis of 131 studies that was published in 1995 makes the following differentiation between static and dynamic factors:
a) static factors:
1. age,
2. history of criminal offences,
3. history of antisocial behavior,
4. family factors: history of criminal offences, education, structure
5. gender,
6. intelligence level,
7. race
b) dynamic factors:
1. antisocial personality, psychopathy,
2. peer group,
3. criminogenic needs: antisocial attitudes, leisure time, education, etc.,
4. interpersonal conflicts,
5. personal problems: depressions, low self-esteem, etc.,
6. social success: marriage, education level, income, etc.,
7. substance abuse.

The risk factor paradigm is based on current research and scientific data. Risk and protective factor assessment is used mainly in the probation process and in the development of tools to assess recidivism risk and offender needs with the aim to establish an effective intervention. Failure to assess recidivism risk and offender needs shall however lead to an incompatible intervention (e.g. in terms of probation program intensity), which is counterproductive and leads to recidivism.

Recidivism risk measurement tools, scope and practical application

In criminal policy terminology, risk is a recent term adopted in the 1990s in Western countries when terms such as risk assessment, risk management, public protection started to be discussed. In terms of etymology, the word risk comes from the Spanish *riesgo* or the Italian *risco* denominating danger posed to vessels by underwater rocks, and also from the term *rixicare* used by the Ancient Romans that meant to threaten someone with violence. In general, risk may be described as something negative to be better prevented whenever possible.

Risk/needs assessment tools:

- help distinguish the degree of the determined risk, which enables adoption of the necessary intensity and work methods,
- enable to set individual cooperation goals with the offender and to focus efforts to gradually achieve the set goals,
- ensure more objective work with the offender,
- serve to monitor and assess the process of gradual changes in the offender's behavior,
- provide a means to determine the need to adopt measures aimed at achieving safety in working with the offender and enhance public protection against reoffending after reentering the society (Štern et all, 2010).
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The above tools are used

- as reports for the court,
- to plan interventions in the framework of the probation and the correctional system,
- to match the assessed risk with supervision intensity,
- to classify a client /a convicted individual or a person on probation,
- to establish the development and/or progress and its effects,
- in parole decisions (Durnescu, 2013).

Bonta (1996) and Durnescu (2010) have (historically) divided risk/needs assessments tools into the following 4 generations (the categories are based on e.g. objectivity, structure, factors):

1. subjective and unstructured risk assessment (past experience, professional estimate, scientific validity is out of the question),
2. the first tool structures are based on implemented research (factors include e.g. the type of criminal offence, offence committed by conspiracy, etc.), they are more objective than the 1st generation, empirically-based (however predominantly based only on static factors),
3. inclusion of also dynamic factors (employment, housing, abuse, etc.), therefore the term risk/needs assessments is being used,
4. inclusion in case management and supervision (risk factor identification is included), targeted interventions, plans to achieve objectives and applied approaches, progress and/or development monitoring, activity and completion checklist aimed at a coherent and consistent re-socialization.

A broad range of risk/needs assessment tools exists in various specializations e.g. the Center for Sex Offender Management (CSOM) in the US developed a specialized tool in 2000 that was later modified and published in 2003 as a research paper *Sex Offender Treatment Needs and Progress Scale* (McGrath, Cumming, 2003). In England and Wales, a specialized clinical tool *The Offender Assessment System (OASys)* is used, which was developed to determine and define offender needs, probability of recidivism and risk of serious harm by the offender. The OASys started to be used on a nationwide scale from 2001 and as of November 2005, some 870,000 assessments of 370,000 individual offenders were completed. This tool has three main components to determine offender needs, risk assessment and management, and development and assessment of a work plan with the offender. Offender needs measurement or determination is associated with some characteristics in relation to offending or re-offending. The OASys makes a distinction between static criminological factors (that cannot be changed, e.g. past accusations) and dynamic criminological factors (that are subject to change, e.g. substance abuse). This clinical tool defines 12 basic factors associated with criminal offences:

- information on offending,
- offence analyses,
- housing,
- education, training and employability,
- financial management and income,

- relationships,
- lifestyle and related aspects,
- drug abuse,
- alcohol abuse,
- emotional comfort,
- way of thinking and behavior,
- attitudes.

Application of this tool was highly effective in offending predictions and/or measurement (Howard, 2006, pages 1 – 3). Evaluated versions OASys1 and OASys2 are available, as well as their combined version. Croatia has seen a recent successful implementation of this tool. Of course there are many risk/needs assessment tools and they differ based on the specific target group (e.g. sex offenders). One of the examples are tools of this type, namely e.g. RRASOR (Rapid Risk Assessment for Sexual Offence Recidivism), STATIC-99, STATIC 2002, RM 2000 (Risk Matrix 2000), SORAG (Sex Offender Risk Appraisal Guide), STABLE 2007, SARN (Structured Assessment Risk Need), ACUTE 2007, SARPO, SAVRY, KARA etc. Recidivism risk/offender needs assessment tools are support tools (just like e.g. the electronic monitoring of domestic violence offenders) to an effective re-socialization process and public protection.

Victimization and selected findings from conducted research

Heretik (1994) states a victimological classification and/or the following victimization stages:

- primary – direct harm inflicted on the victim by the offence,
- secondary – caused by the reaction of the environment, offence investigation, subjective victimization processing,
- tertiary – emanation of the criminal offence and its consequences on a broad circle of originally uninvolved people such as close relatives, survivors, etc. Čírtková (2000, p. 182) defines tertiary victimization as a "state when an individual is unable to adequately cope with the traumatic experience, even though from an objective point of view there has been remedy or healing and compensation. The individual's psyche is changing dramatically, he/she has been diverted from the original life journey, e.g. he/she is unable to continue on the same job, his/her lifestyle has changed significantly".

Based on the data drawn from the research of victims of criminal offences in the Slovak Republic (Košecká, Ritomský, 2013) implemented from 2007 using the 1886 structured interviews method, more than half of all victims of violence (50.9%) have declared that after the victimization they have less trust in the people around them. Sleep disturbances following victimization are reported more often by older victims and sleep disturbance incidence is high among respondents in the age brackets 45 – 54 years and 55 – 64 years, and on the opposite, younger respondents report sleep disturbances as the least common symptoms. This tendency is shown in age brackets 15 – 24 years, 25 – 34 years and 35 – 44 years. The most commonly reported symptom nearly in all age brackets (with the exception of 45 – 54 years) was anxiety and fear of revictimization. The age bracket 45 – 54 years was the least affected category from among respondents affected by post-victimization symptoms, of whom as many as 50% didn't experience any difficulties, and to the contrary, post-victimization difficulties were experienced most often by the category of respondents 65 and older, none of whom declared not to suffer from any of the above symptoms.

What follows is a selection of research findings from research projects targeted at the correlations between social work and probation from the perspective of 31 foreign experts and the opinions of the general public in Slovakia concerning selected aspects of restorative justice. The survey was conducted in 2008.

Based on the information and communication with the Slovak Statistics Office, we based our findings on the data in Table 1 below. Since accurate data concerning the education structure of the entire Slovak population was unavailable at the time of the research (the most recent comprehensive statistics were from 2001), the above criterion was not included in the quota criteria. We used three quota criteria of gender, age categories and permanent residence. Since a questionnaire distributed based on the quota criteria was used in the survey, the selected sample may be characterized as „quota-based“, and similarly the term „general public“ may apply (considering the valid operational definition). We implemented a research survey respecting the quota criteria and selection of the sample (we used a questionnaire), and the research tool was distributed in June and July 2008 by 4 people trained to conduct the survey (2 were from a village and 2 were from a city). Table 2 below shows the numbers and the percentages of the research set based on the quota criteria.

Table 2 Characteristics of the research set based on the quota criteria

Quota criterion				**TOTAL**	
		%	**n**	**%**	**n**
GENDER	men	47.5	105	100	200
(as of 31 Dec, 2007)	women	52.5	95		
AGE	0 – 17	20.0	40	100	200
	18 – 40	36.5	73		
(as of 31 Dec, 2007)	41 – 64	31.5	63		
	65 and older	12.0	24		
PERMANENT RESIDENCE	village	45.0	90	100	200
(as of 31 Dec, 2007)	city	55.0	110		

The following 13 Slovak cities were represented in the facto-graphic item “city”: Levice, Martin, Bratislava, Prievidza, Zvolen, Trnava, Nitra, Partizánske, Prešov, Topoľčany, Piešťany, Želiezovce, Šahy. In the factographic item “village” were represented the following 32 municipalities in the Slovak Republic: Lehnice, Rohovce, Hrubá Borša, Chynorany, Čeladince, Ludanice, Norovce, Mýtne Ludany, Koľačno, Solčany, Bošany, Rajčany, Brodzany, Veľké Bielice, Oslany, Tehla, Radobica, Krušovce, Devičany, Kozárovce, Kubáňovo, Žirany, Ivánka pri Nitre, Cabaj Čápor, Hronské Kosihy, Starý Tekov, Hronské Kľačany, Kukučínov, Santovka, Pohronský Ruskov, Podlužany, Nitrianske Hrnčiarovce.

The following question was asked:

“In general, do you believe that people who have served an imprisonment sentence for non-violent criminal offences and have reentered the society are now more, less or equally likely to commit an offence in the future compared to prior to their imprisonment?”

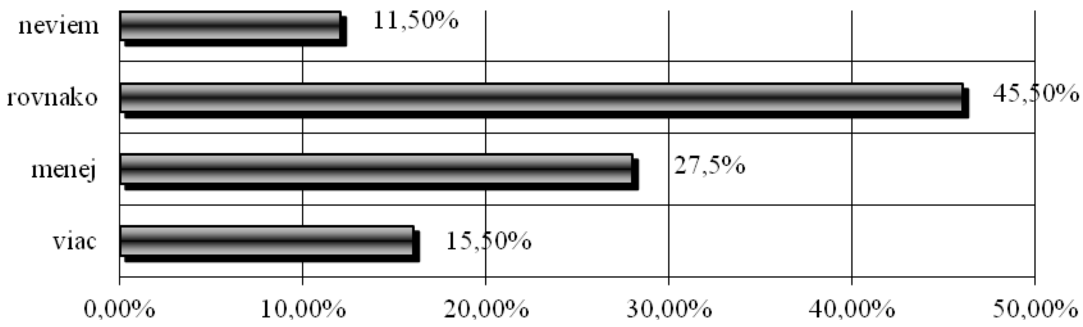

Chart 1: Change of the offender as a result of imprisonment
(top to bottom: unsure, equally, less, more likely)

Table 3: Change of the offender as a result of imprisonment

Item	**n**	**%**	**Krisberg, Marchiona, 2006 – USA %**
more	31	15,50	31,00
less	55	27,50	14,00
equally	91	45,50	51,00
unsure	23	11,50	4,00
total	**200**	**100,00**	**100,00**

Based on the above results, it may be said that on the interval scale the highest percentage of 45.50% was attributed to the answer *equally*. It is evident based on the graphic percentage Chart 1 that the least represented answer was *unsure.* However, when coefficients were attributed to the single positions, the arithmetic average was 2.53, and the closest coefficient was 3, which is *equally***.** Methodological comparison of the research conducted in the US and of our research set is unacceptable of course due to the failure to meet the criteria of a representative sample in our research. Therefore we state only an informative percentage from the research study conducted in the US in 2006 (Krisberg, Marchiona, 2006). It is a paradox that the answer represented with the highest percentage score in the above study was *equally* (51.00%) also. (Table 3).

Question:

"The correction (penitentiary) system is funded from the state budget, meaning also from your taxes. If you were to choose, which of the following areas would you invest <u>more</u> in?"

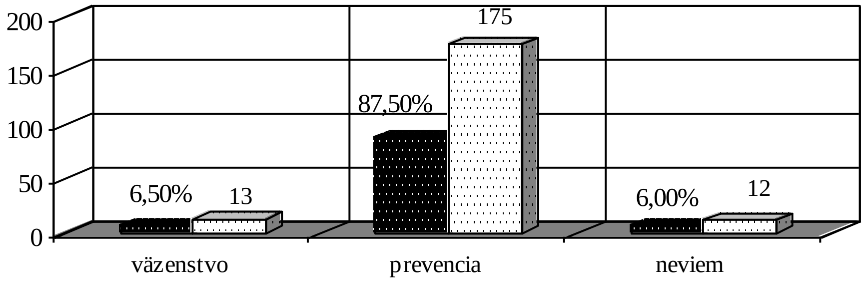

Chart 2 Prevention vs. correction (penitentiary) system
(Left to right: prisons, prevention, unsure)

Conclusions from the meta-analysis (secondary analysis) published in the US in 1999, in which among other things it is stated that "the general public is strongly in favor of timely intervention and supports timely intervention programs, also when it comes to the disbursement of tax payers' money and this option is preferred to expansion and building of prison capacities" (U. S. Department of Justice, 1999, p. 10). As many as 87.50% (n=175) respondents from our research set would invest in prevention and measures leading to crime prevention. Only 6.50% respondents from our research set (n=13) would invest in expansion of prison capacities. *Unsure* was stated by 6.00% (n=12) respondents. Percentages and figures are shown in Chart 2.

Question:

> *"In your opinion what is the main factor (which of the following options has the biggest impact) why people released from imprisonment commit a criminal offence <u>again</u> (meaning <u>repeatedly,</u> which is also referred to as recidivism)?"*

We realize how complicated the question is, but we decided to include it in our research survey mainly due to the fact that the item was used also in the research conducted in the US (Krisberg, Marchiona, 2006), and we included among the factors also a complementary item "insufficient supervision" that concerned probation. Percentages of the single factors are stated in Chart 3. Table 4 shows figures and percentages, and the highest values are underlined. In Chart 3 we state recidivism factors based on percentages of data obtained in the above study conducted in the US.

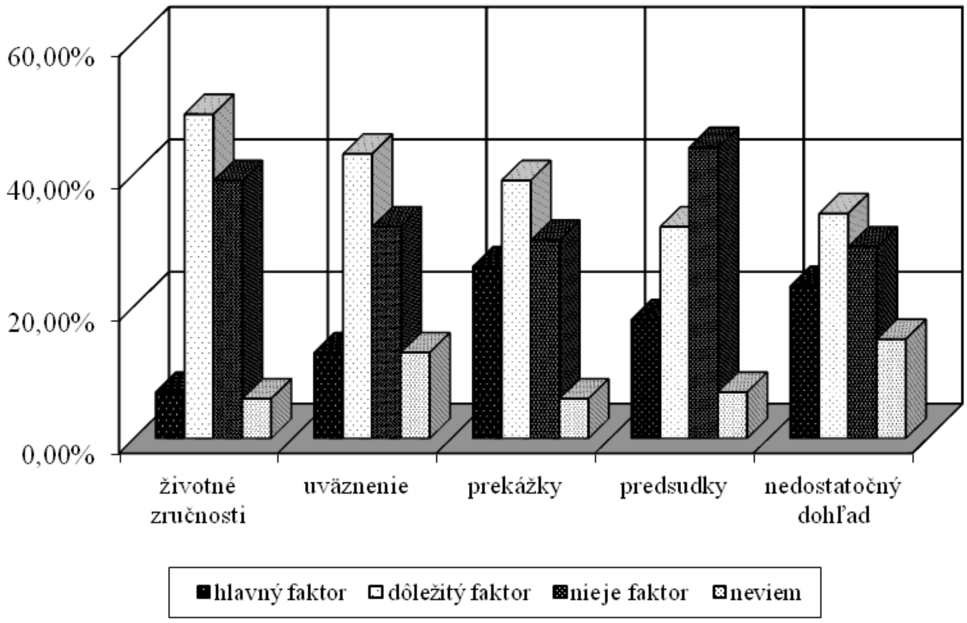

Chart 3 Recidivism factors
(From left to right: life skills, imprisonment, obstacles, prejudice, insufficient supervision
From left to right: major factor, minor factor, not a factor, unsure)

Table 4 Recidivism factors

Item	**Main factor**		**important factor**		**not a factor**		**unsure**		**total**	
	n	**%**	**n**	**%**	**n**	**%**	**n**	**%**	**n**	**%**
life skills	13	6,50	98	49,00	78	39,00	11	5,50	**200**	**100**
prison experience	25	12,50	86	43,00	63	31,50	26	13,00	**200**	**100**
obstacles	52	26,00	77	38,50	59	29,50	12	6,00	**200**	**100**
prejudice	35	17,50	64	32,00	87	43,50	14	7,00	**200**	**100**
insufficient supervision	46	23,00	67	33,5	58	29,00	29	14,50	**200**	**100**

Based on the results shown in Table 4 it may be said that as many as 26% (n = 52) of the respondents involved in the research survey stated that obstacles were the main factor ("People reentering society after serving a term in prison experience too many obstacles to live a life without committing offences"). 49% (n = 98) of the respondents involved in the research survey considered life skills an important, but not the main factor ("When people leave prison, they don't have more life skills than when they entered prison"). This statement concerning life skills was the main factor in the US study (Chart 4).

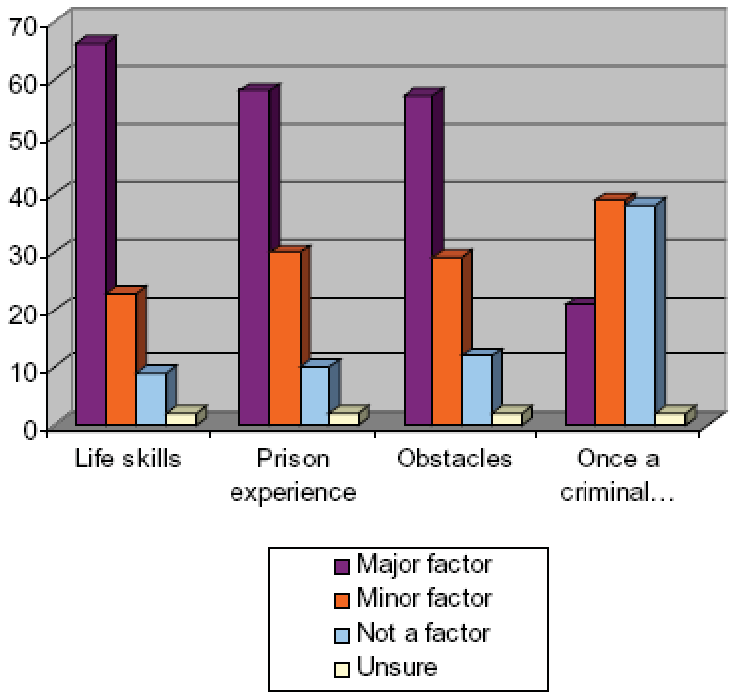

Chart 4 Recidivism factors – research study conducted in the US

Conclusion

The prison population and the number of people under specialized/probation supervision is one of the indicators of criminal policy efficiency. Funding plays an important role for a probation system to be designed efficiently, the popularity of which (e.g. compared to the funding of the prison system) is low among the general public in Slovakia due to lack of knowledge. The consequences of an inefficient criminal policy are not only an increased overall registered criminality, but also increased property damage due to crime and an increased number of crime victims.

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Author:

PhDr. Martin Lulei, PhD.
Faculty of Education
Institute of Social Studies and Curative Education
Research Center
Šoltésovej 4
811 08 Bratislava
Slovak Republic
e-mail: lulei@fedu.uniba.sk