Snezana Sokovic*

THE CONTEMPORARY PENAL POPULISM: THE GLOBAL TRENDS AND THE LOCAL CONSEQUENCES

Abstract

The penal populism as a special approach to shaping the social reaction to crime has a global character and has been present for a few decades already. The global social changes connected with the appearance and strenthening of the neoliberal socio-economic system, contributed to its appearance together with the role of the media, the changes of the appearing perception of the crime and the politization of crime. The basic characteristics refer to the establishment of new strategies of crime control, significant criminal-legal expansionism, more severe penal policy, the strengthening and expansion of the formal control, new penology. The most important consequence of the new criminal control practice is a great increase in the number of convicts with the prison penalty, which cannot be explained solely by the increase in crime. Since apart from the global character of the relevant social changes, the penal populism with its controversial consequences has not overtaken all the countries with the same intensity, a special attention is drawn by the countries which have kept the functional criminal-legal system out of the new punitiveness. The relevant research show that the level of punitiveness is in a significantly stronger correlation with economic policy, i.e. investments into the social policy, than with the real state of crime. The local reception of the global trends, both generally and in the criminal legislation system of Serbia, is characterized by inconsistence and neglect of the institutional and cultural incompatibility and the standardisation of thy hybrid law institutes which have a great difficulty of fitting into the national legal systems.

***Key words:** penal policy, public perception of crime, crime emotionalisation, new penology, the crime populism.*

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* LLD, Full-time Professor, University of Kragujevac, Faculty of Law (ssnezana@jura.kg.ac.rs).

1. INTRODUCTION

The penal populism marks the populistic approach[1] to the problem of the formal social crime control. The causes as well as the consequences of the penal populism are of the global character. The expansion and strenthening of the crime-populistic approach was marked in mid-eighties, whereas during the 90es the crime populism becomes recognizable on the global level, only to influence significantly almost all the segments of the social reaction to crime in the follwoing period. The penal populism is closely connected with the public perception of the high crime endagerdness and the visible fear of crime, parallel to the perception of the police as inefficient, and the courts as slow and unjustifibly mild. The populistic political option uses all that in order to achieve their political goals, competeing with their opponents concerning the severity of the response to crime.[2]

A few decades of priominent penal populism have significantly transformed the system of the social reaction to crime.[3] The globalistic character blurs to an extent the real scales of these proceses, so it seems as if

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[1] The populism, generally, refers to the policy „familiar to the people", which in order to achieve their aims emotionally instrumentalizes the fears of the people, their discontent, the current and temporary conflicts, instists on instincts and simple solutions, and strives or claims it strives, to work in the interest of the broadest walks of life, i.e. people, as opposed to the remote, alienated and uninterested social elite. As a rule, the target group of populism are the layers of the society which feel neglected in the existing political and economic system. By the media campaigns, good organization and deft use of the legal instruments the existing fears and insecurities are strengthened, the calls for change are sent and simple solutions are offered for the socially complex situations, populists, no matter to which area the activity is pointed to, emphasizes „being close to people", different from the alienated economic, political and professional elites, insist on the simple „common sense approach" to the question in stead of the „unproductive" expert analysis. They criticize their opponents by the well-prepared and catchy expressions and slogans „which the simple people understand", they talk about what masses want to hear. Their highly affective statements deepen the existing conflicts and misunderstandings, they stir emotionally a great number of supporters and often achieve a high level of the national cohesion in respect of the ceratin matters. By gaining power and real influence, as a rule, they try to above all „put under control" the legal system and public media and decides for popular, but in the long run unsustainable and harmful measures (T. Meyer, *Populismus und Medien*, in: Populismus (Hrsg. F. Decker), Wiesbaden, 2006, 81-89).

[2] J. Pratt, *Penal Populism*, London-New York, 2007, 14.

[3] S. Soković, *Savremene globalne tenedencije u kontroli kriminaliteta (karakteristike, perspektive i osvrt na domaće prilike)*, Crimen, (II), 2/2011, 212-226:

everything does not happen here and now, but in some other spaces and in an undefined time. Facing the consequences of the globalistic changes happens as a rule when a certain practice has stabilized and is kept alive parallely with the ambiguity surrounding its usefulness and theoretical-conceptual groundedness.[4] The consequences of the penal populism can be seen both in the ultimately dissonant contemporary penological-theoretical concepts, and in the increase in the prison population and putting under some kind of control, a great number of citizens, through alternative measures of non-imprisonment or the measures of preventive control, independent from the real state of crime.

2. THE GLOBAL CAUSES

2.1. The Global socio-economic and cutural changes

The development of the penal populism correlates with the broader socio-economic changes, above all with the global tendency of rejecting the model of the social wealth and the reduction of assests spent from the state budget. The prominent advantage of the market economy over the social policy makes the constant social insecurity, whereas new technologies simultaneously bring about the visible and everyday physical insecurity in all segments of life.[5] Modern society is becoming the society of risk[6], and the security becomes a fetish of modern age. The general social and physical insecurity becomes ontological, generates both the pesonal and emotional instability, alienation and identity crisis.[7] Furthermore, we cannot count on the safe system programs of state help because the direct state control in many services important for everyday life of citizens is missing or is extremely weak. The privatisation of public services or establishing of the public-private partnerships reduce the costs of the state, but do not reduce its responsibility. In the areas which are not under the direct control of the state the responsibility becomes significantly fragmented, no entity has the full competence, and thus not full responsibility.

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[4] E. Gidens, *Sociologija,* Beograd, 2007, 71.

[5] A. Giddens, *The consequences of Modernity*, London, 1990, 7; K. S. Williams, *Textbook on Criminology,* Oxford, 2008, 585.

[6] E. Gidens, *op. cit.,* 73.

[7] F. van Marie, Sh. Maruna, „*Ontological insecurity" and „terror management": Linking two free-floating anxieties,* Punishment & Society, 12/1, 2010, 17-26.

In the social sense, the result of adapting to the transformations of the modern society is making the so called control culture.[8] The crime loses the character of exquisitenss and becomes a normal phenomenon, the risk which is counted on in everyday life. It is expected that every citizen adapts his / her behaviour and thus to a great extent avoids the risk of the criminal victimization. The causes of the criminal behaviour are not sought after, rather it is strived for the control of crime with the least possible expenses. The system of the formal control of crime does not strive for the rehabilitation and re-integration of offenders, but is grounded on the risk management of the future criminal behaviour, above all through the control and locking up the offenders. The most important characteristics of the new model of social reaction to the crime are: the loss of the rehabilitation idea; the strenthening of the demand for more efficient application of law and strict punishment; „the return to the victim"; the politization of crime and the new populism; the importance of the public saftety; the come back of the belief in imprisoning the offenders; the transformation of the criminological attitudes towards crime into the understanding of crime a normal, routine, inseparable activity of the modern society which should be controlled, and not suppressed; the expansion of the prevention, safety and security idea; the strengthening of the role of the private sector in crime control and safaety maintenance; the acceptance of the idea about „the crisis of the character". Moreover, the emotionally burdened states of insecurity, the bitterness and anger supress the expert analysis of the state of crime and the rationally perceived humanity in the form of the formal reaction to crime.[9]

2.2. The Role of the Media

With the help of the informational technologies the mass media make it possible for the contemporary society to have an unimaginable level of interconnectedness and interactivity and as a fact create a special world information order, and re-shape a great number of information, based on which we function in everyday life. The weakening of the internal cohesion of the modern social communities influences the fact that the majority of necessary information is not acquired in the immediate communication, but by distant and abstract sources.

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[8] D. Garland, R. Sparks, *Criminology, Social Theory and the Challenge of our Times,* British Journal of Criminology, 40(2), 2000, 189-204.

[9] D. Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society,* British Journal of Criminology, 36(4), 1996, 445-71.

At the same time „the media imperialism is stronger and stronger"[10], the ownership over the media is more and more concentrated in the hands of big media congglomerates, and the media companies operate outside of the national state borders. The advantage in the media reporting is given to the contents which provide higher viewer ratings and bigger sale, because the income of the commercialized media depends on the commercials. The partcipation of the citizens in the public activities is weaker and weaker, and at the same time their understanding of the matters important for the public is being reduced. The consequence of that is „the entertainment culture"[11], simultaneous glamourisation and simplification of the contents of media reporting, the triumph of entertaining programmes and „famous" people at the expense of the controversial maters, debates and expert analyses. The crime becomes a great media topic, as it attracts the public. At the end of 90es the crime reporting took up over 20% of the media reporting, when compared to the modest 4% in the period from after-the-war till the 70es, and one should bear in mind the scope of qualitative and quantitative increase in the overall media space.[12] The reporting about the crime has as an aim to, not only inform, but to entertain. Instead of that the expert discussions of the competent individuals based on the valid data, and the crime is discussed in public in the style of sensational tabloid rethoric, in episodes, through highly personalized single cases.[13] The level of sensitivity of the public to the crime problems is raised by the special ineterest in violence, sexul felons, juvenile crime[14], recidivists and antisoacial behaviour, as the most obvious form of endangerement,[15] with the simultaneous sensationalistic compassion and moral identification with the victims.[16] The

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[10] E. Gidens, *op. cit.*, 483.

[11] *Ibid*, 485.

[12] J. Ditton, J., Daffy, *Bias in the newspaper reporting of crime news,* British Journal of Criminology, 23(2), 1983, 159-165.

[13] Reiner, R, *Media Made Criminality: The representation of Crime in the Mass Media*, The Oxford Handbook of Criminology, Oxford, 1997, 199.

[14] S. Soković, *Maloletnički kriminalitet i recidivizam: pravilo i/ili izuzetak,* Revija za kriminologiju i krivično pravo, 51(3), 2013, 23-37.

[15] L. Mikieli, *Jedno nasilnije društvo? Društveno istorijska analiza interpersonalnih nasilja u Francuskoj od 1970. godine do danas, I deo,* Anali Pravnog fakulteta u Beogradu, 1/2008, 26-48; L. Mikieli, *Jedno nasilnije društvo? Društveno istorijska analiza interpersonalnih nasilja u Francuskoj od 1970. godine do danas, II deo,* Anali Pravnog fakulteta u Beogradu, 2/2008, 5-24; M. Filipović, *Evolucija nasilja: pokušaj racionalizacije ideoloških diskursa,* u: Istraživanja u specijalnoj pedagogiji (ur. D. Radovanović), Beograd, 2009, 195-211.

[16] J. Pratt, *op. cit.*, 71.

emphatic affective-emotional approach with the broader message about the deteoriation of moral values provides a great attention of the audience, but at the same time generates fear of crime and creates a picture about the violence and lawlessness which threatens to ecompass the whole society, about the crime epidemics, in front of which the inefficient police and the mild and complacent courts are powerless.

2.3. The Public Perception of Crime

In the society full of risk and insecurity the perception of the crime is the result of the presentation of the crime by the media and does not show the real state of affairs. The real crime is surpassed by the myths about the crime which is spread by the media,[17] a and the crime does not represent only the possibility to cause the damage of the property and individual injuries, but also the materialized confrimation of the deterioration of the social and moral norms, the desintegration of the civil order and the moral cohesion of the society. The emotional crime is subject to unobjective estimation, dramatisation and exaggeration, and thus the crtitical approach was replaced by the emotional impulses of anger and rage.[18] The Fear of crime[19] and the crime risk victimisation evasion[20] are in the contemporary society almost institutionalized, because they influence where we live and how we live („safe suburbs", „defendible space", the safety as the necessary factor of urban planning, the security alarms, interphones, video seurveilance, avoiding the risky locations, and similar). The citizens are expected to behave rationally and to avoid risks, and the crime prevention becomes more and more the responsibility of „the active citizen", and less of the state structures.[21] Thus an important part of general and permanent insecurity,

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[17] Đ. Ignjatović, *Kriminologija,* Beograd, 2010, 139.

[18] S. Monterosso, *Punitive Criminal Justice and Policy in Contemporary Society*, Queensland University of Technology Law and Justice Journal, 9/2009, 13-25.

[19] It is well known that the application of the quantitative approach solely in studying fear from crime overrates the real state, because of which the implications of such research on the political decisions are utterly dubious. See: H. Kury, G. Woesner, A. Lichtblau and A. Neumaier, *Fear of Crime as Background o Penal Politics? Policing in Central and Eastern Europe,* in: Dilemmas of Contemporary Criminal Justice (eds. G. Mesko, M. Pagon, B. Dobovsek), Maribor, 2004, 126-133.

[20] It is important to note that the risk arises and is present in the social interaction, and that as such it is prone to the objective estimation, dramatization and exaggeration.

[21] D. Garland, „*Governality" and the problem of Crime: Foucault, Criminology, Sociology,* Theoretical Criminology, 1(2), 1997, 173-214; J. Loader, Fall of Platonic Guardians,

uncertainty and endangerment of citizens in the contemporary society of risks is connected to the state of criminality / crime and inadequate social reaction to crime.

2.4. The Crime Politization

The state of „the moral panic", significantly created and constantly fed by the enormously powerful media, demands an adeqaute response, i.e. ever more severe punishment, due to which there is a turn in the public policy priorities.

The security problem and „the ever growing crime" become the main subject of the political campaigns, from local to the presidential ones,[22] and the criminal-legal system of response to crime becomes the source of the internal politics.

The politicians „get even with" crime by advocating the reform of the penal legislation and much more sever punishment policy „which will stop the violence and lawlessness which threatens the society". The advocating of more severe punishment („three strikes and you are out") and punishing for the smallest violations of law („the zero tolerance" of crime) in the time of general insecurity gets the favourable view of the public, provides plitical support and satisfies the conservative nostalgia for the classical retributivism[23] expressed above all with the wealthy ones and thus very powerful groups of the society.When once reached, this desire of the public is insatiable, and the very practice of severe punishment starts a life of its own, and keeps being alive for a long time due to completely different reasons when comaired to the ones why it came about in the first place. [24]

Liberalism, Criminology and Political Responses to Crime in England and Wales, British Journal of Criminology, 46(4), 2000, 561-586.

[22] The placing of the question of control of crime in the center of the political campaign can have serious consequences for the outcome of the campaign as well as for the criminal legislaton. The decision of the not so popular governor of California in 1993 to revitalize his campaign by advocating more severe penal policy, resulted in the political support but also imposing the law which introduces the principle „three strikes and you are out", and in a specially restrictive form („two strikes"), not for the most serious crime, and without parole. J. Pratt, *op. cit.*, 90.

[23] C. Shearing, *Punishment and Changing Face of the Governance*, Punishment & Society, 3/2, 2001, 203-220.

[24] D. Garland, *Epilog: The New Iron Cage,* Punishment & Society, 3(1), 2001, 197-199; D. A Green, *Feeding Wolves: Punitivness and Culture*, European Journal of Criminology, 6(6), 2009, 517-436.

3. THE GLOBAL CHARACTERISTICS

3.1. The New Strategies of Crime Control

The populistic approach to crime problems supresses the strategies which essentially deal with the causes of crime (poverty, inequality, uneployment) and gives advatage to the measures and techniques which are relatively simply introduced and applied, and work as a means of calming down the citizens and create the impression decisive actions are taken against crime.[25] Although certain results cannot be denied, the success of these measures is short-term, directed only to certain segments of the society and often leads to dislocation of criminal activities to other areas. Contemporary states do not guarantee security to their citizens, the activities of the state policy are directed towards the control of insecurity and risk,[26] and in reality are most often visible through the realization of measures from the context of the strategies for the situation prevention, risk removal strategies and risk management strategies.[27]

The situational prevention shifts the focus of prevention from the perpetrator to the physical locations where the criminal acts are commited. It is directed to the „criminal situation" and endeavours to remove, neutralize or replace the outside, physical factors which contribute to carrying out the decision to commit a crime, or to preclude their group acting, which as such makes it easier to the motivated ciminal commiting of future crimes. The situational prevention does not influence the criminal affinities and motives of the perpetrator, but understands them as realistically given.[28]

The risk removal strategy is based on the approach that criminals should get what they deserve due to the fact that they commited a crime, without truning to other factors of individual crime etyology and stipulates the appliaction of the prison punishment, the control of the perpetrators by the use of electronic surveilance, the appliaction of medicament therapies in order to control the behaviour and similar measures. The treatment of the convicts entails the severity and discipline.

The strategy of risk management and risk reduction in its foundation represents a special way of prevention acting with the aim of making the citizens responsible to a greater extent for their own security and their own

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[25] S. Soković, *Kazneni populizam: uzroci, odlike i posledice*, u: Kaznena politika: zakon i praksa (ur. S. Bejatović), Beograd, 2013, 185-232.

[26] E. Gidens, *op. cit.*, 231.

[27] S. Williams, *Textbook on Criminology*, Oxford, 2008, 595.

[28] S. P. Laub, *Crime prevention, Approaches, Practices and Evaluations*, 2004, 39.

assets. The surveilance of movement which often represents a breech to privacy and the application of different programmes with the aim of developping the patterns of behaviour recognizible from the point of view of security should reduce the risk of victimization. The control of the behaviour does not include the estimation of the moral-ethical aspect, every behaviour which corresponds to the safety standards is allowed.

3.2. The Criminal-legal expansionism

The contemporary criminal-legal model follows (or is preceeded by!) also the economic analysis of crime and the economic rationality, as well as the criminological control theories which consider the criminal act as a puproseful choice considering the circumastances (the theory of the rational choice, the theory of the routine activity). The intensive legislative activity leads to piling up of laws which should fulfill above all the political expectations, which are more declarative than reformative, and to a great extent represent the decisiveness and engagement of the government, and to a much lesser extent the way to solve the real problems.

In the context of the cultural control and the new model of the social reaction to crime the criminal-legal system should keep the security of the society because the reason for the criminal- legal resactions becomes more and more the danger, and less and less the committed crime.[29] The contemporary criminal law is globally characterized by the introduction of the new criminal acts and from the delator criminal activities and the criminal activities of threatening / endangerement, the prohibition of the risky activities without the contretisization of the risk,[30] the stipulation of the punishment for the finished criminal activity for the activities which actually represent the remote preparatory activities, the departing from some basic principles, the weakening of the principle ultima ratio, the multiplication of incriminations in the areas in which the existing ones are not applied (organzied crime, terrorism, corruption, the internatioanl criminal activities).[31] The overemphasized preventive orientation of the criminal legislation, which has mostly arisen as the consequence of the pressure by the media and politicians, strengthens actually the retributtional characteristics of

[29] Z. Stojanović, *Preventivna funkcija krivičnog prava*, Crimen (II), 2011/1, 3-26.
[30] M. Bock, *Über die Positive Spezialprävention in den Zeiten des Feindstrafrechts*, u: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, IV deo (ur. Đ. Ignjatović), Beograd, 9-32.
[31] C. Roxin, *Besitztdelikte*, u: Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, II deo (ur. Đ. Ignjatović), Beograd, 2010, 9-25.