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Possibilities of Using Criminal Statistics by the Criminal Justice Authorities

Introduction: Statistics as a criminal-political tool and (old) new technology

The aim of the paper is to introduce the possibilities of using statistics as a new technology to streamline the operation of the criminal justice authorities into a public, professional discussion. It can be hypothesized that the purpose of criminal proceedings will be more effectively fulfilled by streamlining the operation of the criminal justice authorities.¹ In this text, the author will show that, in certain areas, statistics significantly streamline the work of criminal justice authorities or their equivalents abroad. The author will rely primarily on foreign studies and established practice, as innovative methods are used in criminal proceedings abroad. In the introduction, the author will focus on the history of the use of statistics by criminal justice authorities.

In the second, pivotal part of the paper, the author describes what can be achieved using statistical methods in the work of criminal justice authorities. The author has divided this part into 2 subparts: criminal procedural aspects of criminal statistics (the usability of statistics in criminal proceedings) and criminal-political aspects (the usability of statistics in effective allocation of resources). It is important to mention at the outset that the author does not address all important areas of the use of criminal statistics are, in particular, the prevention of crime (e.g., statistical mapping of crime in a certain area and sending police patrols to certain places at a certain time)³ and the area of punishment and execution thereof (e.g., examining the effectiveness of penalties for recidivism on the basis of the statistics of penalties imposed).⁴

¹ See Section 1 of the Code of Criminal Procedure: "(…) properly ascertain criminal offences and to rightfully punish their offenders in accordance with the law."

² Thus, the author does not include the whole topic of punishment in the criminal proceedings, because it is a complex, standalone topic, which receives sufficient attention. However, this is an important topic and it is good that some authors in the environment of the Czech Republic started to pay qualified attention to it; see, for example, the JakTrestame.cz website, which is devoted to the statistics of sentences imposed and can serve as a discretionary aid for judges, available online: https://jaktrestame.cz/, accessed on 15. 11. 2021.

³ The so-called Hot Spot Policing; see, e.g., BICHLER, G.; SCHMERLER, K. & J. ENRIQUEZ. (2013). Curbing nuisance motels: an evaluation of police as place regulators. *Policing: An International Journal of Police Strategies & Management*, *36*(2), 437-462.

⁴ It is a separate, complex area of research; in the Czech Republic, see, e.g., papers by JUDr. Jakub Drápal, M.Phil., PhD.

Statistics - a criminal-political tool?

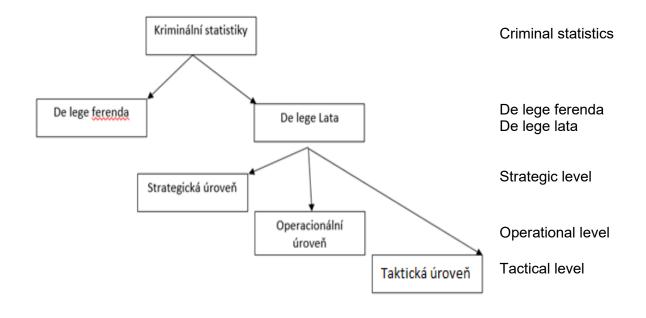
The word 'statistics' is etymologically derived from the word 'status' - state.¹ From the linguistic point of view, 'statistics' is a science of the state. Not only for this reason, entities devoted to the practical 'leadership of the state', which undoubtedly include bodies implementing criminal policy, should focus their attention exactly on this area, this field. At the same time, the word statistics has two meanings: it is the method and the result of the method.2 Statistics is a scientific discipline that deals with the collection, organization, analysis, interpretation, and presentation of empirical data in order to deepen the knowledge of a specific field, usually a mass phenomenon.³ The study of statistics involves extensive use of numbers and data intended to describe the situation or to derive a logical conclusion. Statistics generally refers to a number of techniques and procedures for data-driven analysis, interpretation, imaging, and decision-making. The growing amount of data available, general collection of which allows technological progress, runs counter to the need to make sense of this data, in other words - statistical analysis has never been more important. Thanks to statistical analysis, data becomes information that can further help in the managerial decisionmaking (e.g., for the chief investigator in criminal proceedings or the director of a police authority).

Criminologists all over the world are paying attention to this tool. Using criminal statistics, many findings can be achieved. The author of the paper proposes to divide the use of criminal statistics for criminal proceedings according to the traditional legal dichotomy: *de lege ferenda* and *de lege lata*. The first category will include findings concerning, in particular, the functionality of the legislation. Criminal statistics brings findings that can be used to create legal standards. For example, the effectiveness of penalties can be examined. The second category includes all the use of criminal statistics 'pursuant to law', i.e., at the strategic level, for example, determining the effectiveness of allocated resources (e.g., whether increasing the budget of a given regional directorate of the Police of the Czech Republic results in the decrease in crime), at the operational level, e.g., whether it makes sense to conduct certain criminal proceedings with regard to the effectiveness of the result, while at the tactical level, for example, statistics can be used for ongoing criminal proceedings (determination of a specific area). This paper focuses only on the use of criminal statistics in the set of *de lege lata*.

¹ The etymological origin of the word statistics can be derived from the Latin word 'statisticus', which is the result of two parts: the root 'status', the synonym for state, and the suffix '-icus', which is used to denote 'in relation to'.

² This article focuses primarily on statistics as a method, but base on the context the word will be sometimes used as a result of the method.

³ ROMIJN, Jan-Willem. Stanford Encyclopedia of Philosophy [online]. 2014 [cit. 15. 11. 2021]. Chapter Philosophy of statistics.



Schematics of the use of criminal statistics

Source: prepared by the author

Statistics - an (old) new technology

Historically, criminal statistics can be traced back to France in the 1820s, when, at the instigation of Adolphe Quetelet (physicist) and André-Michel Guerry (lawyer), data on crime began to be systematically collected.¹ As a result, criminal statistics were compiled by other occidental states, followed by other countries. In the Czech lands, the representatives of criminal statistics included Jaroslav Kallab, Vladimír Solnař, and recently, e.g., prof. JUDr. Oto Novotný, CSc. Despite the fact that the above-mentioned states, including the Czech Republic, started *de facto* at the same time, the developments were non-linear. While criminal statistics in the Czech Republic remained almost at the same level of development as in the early 19th century (primarily collecting and monitoring trends in the sums of offences), in other countries, e.g., the Netherlands or the United Kingdom, criminal statistics have become a 'new weapon' of the authorities fighting crime. In this sense, it is a new technology that enables a more effective fight against crime. The specific form is discussed below.

Usability of statistics for criminal justice authorities: in criminal proceedings

Criminal justice authorities include police authorities, public prosecutors' offices and courts. While public prosecutors' offices and courts are separate homogeneous sets, police authorities represent a set composed of many subsets. These subsets

¹ Statistics: Reporting Systems and Methods. Law Library - American Law and Legal Information. Available online at https://law.jrank.org/pages/2163/Statistics-Reporting-Systems-Methods-History-crime-statistics.html

include, for example, the Military Police, Police of the Czech Republic (by far the largest subset), bodies of police intelligence and customs administration, and last but not least, the 'watchdog of watchdogs', the Inspectorate General of the Security Forces. According to the available information, all these police bodies maintain crime statistics within their scope of activities.¹ However, the usefulness of these statistics remains a problem. What are these statistics really good for? The author of the article wants to show that the usability of statistics has an enormous potential for criminal justice authorities.

Criminal proceedings represent a statutory procedure of criminal justice authorities and other bodies involved in this procedure, the purpose of which is to determine the crime and its perpetrator, to issue a fair decision on guilt, punishment and remedial action, or on the injured party's claim for compensation for damage, nonmaterial damage or unjust enrichment, as well as the enforcement of these decisions.² Therefore, it is always a specific procedure performed by specific representatives of specific police authorities against specific individuals (even unknown). Criminal proceedings begin with an order to initiate acts of criminal proceedings and end with the execution of a sentence in the broadest sense.³ Criminal proceedings have several stages and it can be hypothesised that at all of these stages, statistics can be used to fulfil their purpose. In this respect, the statistics used, as a certain new type of means of fighting crime, a new technology, must help answer the questions of criminal proceedings, i.e., at least whether an act occurred, who committed it and what punishment (or protective measure) should be imposed on the perpetrator.

Detecting the perpetrator of a crime can be a difficult task, wherein criminal justice authorities use all possible information. Statistics can also serve as an operational-tactical means of tracing persons in criminal proceedings. For example, it was statistically established in the US already in 1998 that, in the case of continuing serial crime in the form of rape, the average distance between the victim and the perpetrator's residence was 1.66 miles (2.67 km).⁴ If such a research were replicated in the Czech Republic, the results could be used for police authorities in pre-trial proceedings. It would also be a supporting means of evidence, but mainly a tactical method to identify the suspect.⁵ In criminal proceedings, this method would have its place primarily in the examination or, where appropriate, in the investigation.

¹ See, e.g., Zpráva o činnosti GIBS za rok 2019, p. 17. Also available online: https://www.gibs.cz/images/podstranky/cinnost-analyza-ukonu/zprava cinnosti 2019.pdf

 ² ŠÁMAL, Pavel; MUSIL, MUSIL & Josef KUCHTA. *Trestní právo procesní*. 4th, revised ed. Praha: C. H. Beck, 2013. Academia iuris (C. H. Beck)., p. 5. ISBN 978-80-7400-496.

³ In this paper, criminal proceedings are conceived *stricto sensu* fot the sake of complexity and autonomy of the use of statistics in punishment. The inclusion of this topic would far exceed the scope and message of the paper.

⁴ The distance between the home and the place of the offence of serial rapists (Warren et al. 1998), also available online:

https://www.researchgate.net/publication/226202308_Crime_Scene_and_Distance_Correla tes_of_Serial_Rape

⁵ Suspect in a general, tactical sense; see VANTUCH, Pavel in ŠÁMAL, Pavel; MUSIL, Jan & Josef KUCHTA. *Trestní právo procesní.* 4th, revised ed. Praha: C. H. Beck, 2013. Academia iuris (C. H. Beck). ISBN 978-80-7400-496, p. 195.

Another similar example of using statistics in pre-trial criminal proceedings is the work of Richard Block and Wim Bernasco in 2009, which describes the method of ascertaining the likely place of residence of the perpetrator of theft based on the places where the offences have occurred. The method is called 'empirical Bayes journey-tocrime estimation'. This method uses a computer program for spatial mapping of crimes called CrimeStat.¹ Again, it is a method directly available to Czech criminal justice authorities. However, it is necessary to replicate it in Czech conditions - 'bohemianize'. Again, it is astonishing that in the environment of the Czech Republic such works have not been published in professional journals, treated in qualification papers, or are not subject to examination at analytical departments of specific police authorities. The results of this work, if they pass professional discussion and examinations and are approved by the relevant commander, can be incorporated into the information-analytical tools of the police, e.g., the Kriminalisticky sledovaná událost (Forensically Monitored Incident) information system.²

Usability of statistics for criminal justice authorities: in efficient allocation of resources

From a managerial point of view, it is proven that efficient allocation of resources leads to an appropriate number of people working on an appropriate number of tasks. Thus, it does not happen that in a certain part of the organisation there is someone who has 'nothing to do' and in another part of the same organisation there is someone who cannot keep up and does not manage their work. With regard to the police management, it is clear that the police authorities need to allocate resources effectively, which may lead to the acceleration of the activities of criminal justice authorities. But how to appropriately allocate resources?³ Based on population? If we assume that the main task of the police authorities, or the majority of the security forces, is to protect security and public order and to solve crimes,⁴ should it be based

¹ CrimeStat is a software program for crime mapping. CrimeStat is a Windows-based program that performs spatial and statistical analysis and is designed to interface with a geographic information system (GIS). The program was developed by Ned Levine & Associates led by Ned Levine with funding from the National Institute of Justice (NIJ), an agency of the United States Department of Justice. The program and manual are distributed by NIJ free of charge. For example, on the Internet portal (as of 15. 11. 2021): https://www.icpsr.umich.edu/CrimeStat/

² "The KSU system keeps information about events - crimes, (but also some types of offences), injured parties, perpetrators, secured clues and things that were stolen or used to commit crimes. The KSU system is primarily used to evaluate crime according to the forensic aspects of 'modus operandi', to identify suspects, to evaluate knowledge of the crime of the same type and to identify serial crime. It has one central database and is webbased." - quotation from DOSTÁL, Petr. Policejní informační systémy a jejich využití v trestním řízení. Bachelor's thesis. Department of Criminal Law, Faculty of Law, Masaryk University. 2008, p. 27. Also available online:

https://is.muni.cz/th/186134/pravf_b/bakal_pr11.pdf

³ It is irrelevant for the purpose of the paper, whether human or financial resources. This would have to be addressed in each specific case, as funds have their own budget chapters and human resources are allocated centrally on the basis of a tabular system.

⁴ Cf., e.g., Section 2 of Act No. 273/2008 Coll., on the Police of the Czech Republic: The police serve the public. Its task is to protect the security of people and property and the public order, to prevent crime, to perform tasks under the Code of Criminal Procedure, and to perform

on the so-called scope of crime?¹ I firmly believe that it is statistics, i.e., a well-designed statistical analysis, that should be the basis for decisions on the allocation of resources.

The fundamental problem is that it is not sufficient to statistically measure the extent of crime and make decisions based on it. The extent of crime can be very confusing. The basic logical rule 'the more..., the more...' can be applied as follows: the more police officers operate in a given territory, the more crimes will be documented, i.e., the more the scope of crime will increase, at least in terms of statistics. Moreover, the fact that a documented number of different crimes is growing in a given territory does not mean that their seriousness is increasing.

Inspiration for this topic can be found in foreign research and methods. For the correct allocation of resources, some police headquarters in the UK, Denmark, Sweden, New Zealand, or, for example, Western Australia,² decided to use the socalled Crime Harm Index. This statistical 'new technology' was introduced by Sherman and Neyroud from Cambridge University in 2016.³ It is a complex statistical system for measuring crime in a given territory, which consists of 7 separate statistics. The essence of this innovative solution is twofold: firstly, the severity of crime is measured, and secondly, statistics do not include knowledge proactively acquired (not only) by the police, but only reactive reporting.⁴ The severity of crime is measured by multiplying each recorded offence by a certain value that determines its severity. The value is determined based on the recommended length⁵ of imprisonment. The whole system is based on the hypothesis that not all crimes are equal, and therefore it is not possible to measure the scope of occurrence of crime (all the more so, it is not possible to redistribute money on the basis of this scope). For example, murder under Section 140 of the Criminal Code and theft under Section 205(1) of the Criminal Code cannot have the same value in statistics.

What is the main difference in the result of the statistics? In particular, if the frequency of crime (scope) is lower in a given territory, the severity (harm) of crime does not necessarily have to be lower, too. In many territories, it has been proven that while the frequency decreased, the severity of crime according to the above-mentioned

other tasks in the field of internal order and security entrusted to it by the law, directly applicable regulations of the European Union or international treaties that form part of the legal system (hereinafter referred to as the "international treaty").

¹ "The scope of crime means the number of acts that can be defined from the point of view of criminal law as crimes, or otherwise criminal acts (provided that the person who committed them is not criminally responsible), committed in a defined territory, e.g., in the territory of the state, self-governing unit or municipality, over a certain period of time." See KELLNER, Michal. Vybrané problémy kriminální statistiky v ČR. Rigorous thesis. Department of Criminal Law, Faculty of Law, Charles University, 2009, p. 9.

² CAMBRIDGE UNIVERSITY CENTRE FOR EVIDENCE BASED POLICING. All Crimes are not created equal. Internet article on the portal. On 15. 11. 2021 available online: https://www.cambridge-ebp.co.uk/the-chi

³ SHERMAN, L.; NEYROUD, P. W., and E. NEYROUD. 2016. The Cambridge crime harm index: Measuring total harm from crime based on sentencing guidelines. *Policing: A Journal of Policy and Practice*, *10*(3), pp. 171-183.

⁴ For the above reason - in order to avoid the 'the more, the more' effect.

⁵ In the UK, the Criminal Code does not provide for a fixed prison sentence, but there are only recommended 'sentencing guidelines'.

index increased (specifically, for example, in Denmark).¹ This means that in the case of the allocation of money to a certain area on the basis of the results of statistics. it could happen that the objective danger in a certain area increased whereas the subsidised funds were reduced based on the fact that the frequency of crimes decreased. Once again, in the Czech Republic, it is a 'virgin territory'. The measurement of the severity of crime has not yet been competently implemented in the Czech Republic.² The Crime Harm Index itself deserves an independent, 'bohemianized' attention in the Czech Republic. I firmly believe that if criminal justice authorities used the new statistical methods and applied the results resulting from them, more efficient allocation of resources would be achieved, whether this concerns human resources - more people to allocate where there is a greater severity of crime, or funds - more money to allocate where there is a greater severity of crime. Beyond internal efforts for efficiency by the authorities in question, it may also, to a certain extent, be a performance indicator that will help assess the effectiveness of these authorities 'externally'. When it comes to the question of how tax paying citizens of the country can know that the money provided to criminal justice authorities is spent effectively, Jan Urban proposes two solutions: either to determine competition (direct or indirect), or to use performance indicators.³ While the former, by its very nature, cannot be considered by the police authorities entrusted with powers (the democratic imperative that the state has a monopoly on violence can be considered unshakable),⁴ the latter makes sense. The Czech Crime Harm Index would be more than a suitable candidate for a high quality performance indicator.

Conclusion: Quo vadis, crime statistics in the Czech Republic?

On the first of December 2020, the Police of the Czech Republic published the project called "Crime Maps", which is supposed to "reduce the already record low crime in the Czech Republic, increase its clarification, plan police patrols and preventive measures in the most risky places in a targeted manner, reduce the administration, and, in turn, increase the presence of police officers in the streets" by providing the police authorities, citizens of the Czech Republic, and selected municipalities with a spatial view of offences in the Czech Republic.⁵ It is certainly a step forward. Furthermore, an electronic unification system of all criminal statistics, across sectors,

¹ ANDERSEN, H. A.; MUELLER-JOHNSON, K. The Danish Crime Harm Index: How It Works and Why It Matters. Camb J Evid Based Polic 2, 52-69 (2018). https://doi.org/10.1007/s41887-018-0021-7

² For fragments only, see, e.g., GŘIVNA, Tomáš; SCHEINOST, Miroslav & Ivana ZOUBKOVÁ. *Kriminologie*. 4th, updated ed. Praha: Wolters Kluwer, 2014. ISBN 978-80-7478-614-3, p. 31, or KELLNER, Michal. Vybrané problémy kriminální statistiky v ČR. Rigorous thesis. Department of Criminal Law, Faculty of Law, Charles University. 2009.

³ URBAN, Jan. Veřejné peníze? Za mnoho peněz málo muziky. Article for IDNES.cz of 13 September 2021. On 15. 11. also available online: https://www.idnes.cz/finance/dane/daneverejne-finance-stat-urednici-obcane-sluzby-volby.A210909_090819_p_dane_sov

⁴ WEBER, Max (1978). ROTH, Guenther; WITTICH, Claus (eds.). *Economy and Society*. Berkeley: U. California P. 54.

⁵ RENDLOVÁ, Kateřina a Klára DLUBALOVÁ. Ministerstvo vnitra a Policie ČR zveřejňují mapy kriminality. Press release of the Police of the Czech Republic from 1. 12. 2020. On 15. 11. 2021 also available online: https://www.policie.cz/clanek/mapy-budoucnosti-prinesou-vetsibezpecnost-do-obci-a-mest.aspx

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is being prepared.¹ The consequences of this project are obvious, as the quality of statistics increases with increased coherence and complexity of data (but it is all the more necessary to be able to work with these statistics). These actions of the state are a clear indication that the Czech Republic does not want to be left behind in the field of criminal statistics.

The author of the article is of the opinion that criminal statistics, apart from nationwide criminal-political and preventive uses, can also be used in criminal proceedings. Examples of application in foreign countries are numerous and some of them are mentioned above. However, it is necessary to first scientifically 'bohemianize' these examples to suit the Czech environment. In addition, it is necessary that the leading figures in criminal justice authorities (whether police authorities or prosecutors - courts are not involved in this respect) are willing to incorporate the results of this research into the activities of preparatory criminal proceedings or into strategic decision making regarding the allocation of resources. A 'zero option' is also possible, i.e., that the above-mentioned procedure will not take place. However, this would deprive the Czech criminal environment of greatly facilitating 'new technologies'. It is to be hoped that, on the academic level, internal security research will be promoted, which will have an actual impact and usefulness for criminal justice authorities, rather than just l'art pour l'art research. In this respect, the area of gualification theses on the above-mentioned topics also come forward. Even these works can strengthen and extend the impact of analysis of criminal statistics. Furthermore, it is to be hoped that the quality and usefulness of the work will be such that it will be noticed and used by criminal justice officials. Finally, let us hope that this use will be so frequent that it will be noticed by the heads of individual criminal justice bodies and will become systemically incorporated into the activities of criminal justice authorities. In other words, the way for the real and systemic usability of criminal statistics in criminal proceedings is at the beginning of a difficult journey, still, 'fortes fortuna adiuvat'.

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SUMMARY

The paper deals with the possibilities of using statistics not in the usual usage in crime prevention or in the evaluation of criminal policy, but in criminal proceedings. The author presents foreign approaches to the issue, including the results of scientific work. The contributor sees the benefits of statistics for criminal proceedings in the operational and investigational use and as means for efficient allocation of resources. The author concludes that usage of statistics in criminal proceedings in Czechia is a scientifically not fully explored area with great potential for fulfilling the purposes of criminal proceedings in Czechia.

Keywords: statistics, criminal proceedings, Czechia.

RESUMÉ

KUČERA, Václav: MOŽNOSTI VYUŽITÍ KRIMINÁLNÍCH STATISTIK ORGÁNY ČINNÝMI V TRESTNÍM ŘÍZENÍ

Příspěvek pojednává o využitelnosti statistiky nikoliv v obvyklém využití při prevenci kriminality nebo při vyhodnocování trestní politiky, ale v trestním řízení. Autor představuje zahraniční přístupy k problematice, včetně výsledů vědeckých prací. Přispěvatel přínos statistiky pro trestní řízení vidí v operativně pátracím využití a v prostředku pro efektivní alokaci zdrojů. Autor dospívá k závěru, že užití statistiky v trestním řízení v Česku je vědecky ne zcela prozkoumaná oblast s velkým potenciálem pro naplňování účelů trestních řízení v Česku.

Klíčová slova: statistika, trestní řízení, Česko.