

## The idea of rehabilitation: A criminological view

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### Summary

*This article presents the complex problems of the idea of rehabilitation. Special attention is paid to the distinction between the penal sanction and rehabilitation. In connection with this, the author tries to justify the idea of rehabilitation (as the convicted person's right) independently of the normative concept of punishment (and no longer as the »purpose« of punishment). Rehabilitation is presented as the part of a wider abolitionary strategy, i. e. as the practical »antithesis« of punishment (particularly, of the prison sentence). Such idea is supported by the recent critical definition of rehabilitation, which stresses the necessity to overcome the shortcomings and misuse of the rehabilitation methods in the past. Along with this, the article indicates some of the most important obstacles in the implementation of the »alternative« or humane – as opposed to former authoritative – model of rehabilitation.*

**Key words:** rehabilitation, penology, punishing

### 1. Introductory note

If there is something that is indisputable about the idea of rehabilitation, then it is undoubtedly its manifold disputability. This disputability is partially noticeable already from the diverse and divergent multitude of its definitions. The term »habilitate« comes from the Neolatin word *habilitare*, which means »to train or educate« for something. To re-habilitate someone would then accordingly mean to re-train or re-educate someone for something or to try to redevelop his ability (-ies) for something. In the context of penal (sub)system that »something«, for what someone should develop the adequate ability, has a very specific connotation, that is, it means to become included into the society (after the committed crime) and to live within it without breaking certain generally valid rules (i. e. penal code).

In that sense, the indisputable and essential purpose of »rehabilitation« would be: to prevent or to »prepare« somebody who had already violated some valid norm not to repeat that act again. Such understanding of rehabilitation is in no way different from other penal strategies (with exception of the »pure« retributive model, the sole aim of which is to retaliate, to make the criminal pay for the evil he caused with just as much suffering as he deserves). Maybe this purposeful sameness or at least, similarity, is the main cause of so many misunderstandings. One of such deeply rooted misunderstandings is the assumption that the punishment »corrects« the criminal offender.

### 2. Punishment does not correct

Rehabilitation is often interpreted as variety of measures which should reform the perpetrator of criminal acts. In such cases, the attention is as a rule directed only at the question of (un)effectiveness of proposed or applied measures, disregarding the inherent doubtfulness of implied aim, i. e. to »correct« a person. In other words, the above concept does not explain what it really means to »correct« a person. Certainly, on one hand, »correcting« should logically include »changing« or »making different«, which suggests at least two possible forms: (1) some *creatio ex nihilo* or transition from one psychological and social state A in the time X to a completely new state B in the time Y (the state which did not exist in the time X); (2) transition from the state Abcde... (in the time X) to the state aBcde... (in the time Y), which of course imply that the changed person becomes (remains) the same as it was (before the change), at least in the background, as some potential/virtual person or a person forced back into the psychological background. On the other hand, correcting is undoubtedly more ambitious undertaking than mere changing. Namely, it suggests that its subject knows which particular human state is »good« or even »best«. In connection with this, the problem was not (and still is not) in the multitude of good ideals imposed on people. The difficulty is that those ideals are, as a rule, mutually exclusive.

The paradox of correcting/reforming was recognized already by Nietzsche, the least exploited author in the

field of traditional/modernistic criminology: »How desirable it is for a man to become more virtuous? Or wiser? Or happier? If we realize that we don't know a man's 'why' at all, then such intent has no sense; and if we want the one, maybe we shouldn't want the other? Is the increase of virtue concurrent to the increase of reason and insight? There are many examples which can prove the opposite. Is it not evident so far, that virtuousness, as an aim in a strict sense, is contradictory to happiness? And that, on the other hand, unhappiness, want and self-torment are essential as necessary expedients? If the aim would be the highest possible degree of insight, shouldn't exactly this COMPEL us to dismiss the gradation of happiness? And to chose danger, adventure, distrust and seduction as the way which can lead us to acquiring of an insight? And if we desire happiness, maybe we should join those 'poor in spirit'?« (1991:224–225).

Of course, the idea of rehabilitation is not essentially (or logically-rationally necessary) connected with the ideal of »correcting«. Still, the word »correcting« seems to have some intuitive or inherent power of attraction, which can be used to the advantage if we, at least on a rhetoric level, connect the punishing with correcting. Namely, then we can say that we are not punishing someone for the sake of punishment (that is, merely to inflict physical or mental pain) but to do that person some good (and he/she should be even grateful for that). In fact, it soon became evident that punishment, for instance imprisonment, does not bring on those positive effects which were used for its justification or at least, for an attempt of justification. Exactly this realization that »punishment does not correct« has brought to the famous »punishment crisis« (Garland, 1990:7). If we are criticizing the existing penal practice because it does not rehabilitate, then it means that we are starting from the presumption that it is possible to rehabilitate by punishment. This presumption is very doubtful, to put it mildly: »In general, what is possible to achieve with punishment, both, in human beings and animals, is an increase of fear, a sharpening of wits, a curbing of desire: the punishment tames the man, but it does not make him 'better' – we could claim the opposite with much better justification.« (Nietzsche, 1988:269) Well then, let's say that the punishment really does not (and cannot) correct. If it would be possible to base the punishment only on the ideal of correcting, then it could not be (normatively) founded.

But the punishment can be justified in many different ways – as the history of punishment clearly shows – starting with pure »taming«: in a »scientific« discourse it would be called »special intimidation« or »incapacitation«. Intimidation – general and individual – as the purpose of punishment, was recommended already by Beccaria: »The purpose of punishment, then, is nothing other than to dissuade the criminal from doing fresh harm to his compatriots and to keep other people from doing the same. Therefore, punishment and the method of inflicting them should be chosen that, mindful of proportion between crime and punishment, will make the most effective and lasting impression on men's minds and inflict the least torment on the body of the criminal« (1986:23). It is quite interesting that the classical penal policy was criticized and continuously attacked – from the scientific fort of positivistic criminology – among other things also

because of its probable ineffectiveness (maybe it's even more interesting that the renewal of classical penal ideas during the 70-ties was motivated primarily by the ineffectiveness of positivistically based criminal policy). Namely, if the perpetration of criminal act is determined (and not »freely« chosen) by certain biological, psychological or social factors which are outside the perpetrator's control, how can we expect to dissuade him from that act by the threat of punishment. There are two possibilities: (a) to eliminate the »criminal disposition« (if it is possible); (b) to neutralize a dangerous criminal (if we cannot eliminate the immanent – innate, acquired or self-acquired – source of his dangerousness). The first possibility became somehow, most frequently, identified with »rehabilitation«.

### 3. Positivism and rehabilitation

Positivistic criminology introduces into the field of criminal policy a significant change of direction: away from the socially dangerous act and toward the socially dangerous perpetrator (example Foucault, 1988). What is, in fact, changing is the view of the »criminal«. He is no longer seen solely as the perpetrator of the forbidden act, but also as a potential or even – if we use the Aristotle's term – virtual source of future forbidden acts. More important than what he did is what can be expected (in regard to his nature, constitution, degree of degeneration, character features, pathological variables, patterns of thinking, subcultural values and sim.) that he might (most probably) do in the future. Exactly there, in that space between »already« and »not yet«, should enter the rehabilitation, envisioned as a measure or group of measures, which, although applied within the framework of the penal sanctions, are not »only sanctions« (in the traditional, limited sense), but something more, for instance, an attempt to influence (»non-punishing« means) the perpetrator's »disposition« or »criminality«. Within the framework of this general intent it is really possible to propose (and realize) very varied measures. The difference between them is primarily in the direction or »object« of desired effect or influence: (a) the internal aspect (for instance, the »soul« as presumed moral center of human subjectivity, character, personality, attitude, patterns of thinking, emotions, knowledge, values, and sim.); (b) the external aspect (only the sensorial cognition).

Of course, these two models are not necessarily mutually exclusive. This is particularly obvious in the first model (where it is expected that the internal change, for instance, an appropriate inner or spiritual »insight«, will have as its consequence an adequate external change, in the first place – a conformable behaviour). However, it is possible to (at least) assume that in the case of the other model, too, the external change will, sooner or later, be followed by the internal change (although the latter is not absolutely necessary as long as the external change remains unchanged, that is, quite stable).

More significant, however, are the changes evolving in the field of proposed measures for realization of desired transformation of the criminal or his future behaviour. With regard to that, the history of rehabilitative programmes knows three recognizable models, which – as a rule – were not always applied in their pure »ideally

typical« form; on the contrary, in practice they were often combined or complemented, whereby the only change was mostly in the placement of the central accent. The first model can be described as »disciplinary regime«. Similar to all the others rehabilitation models, the disciplinary model (today we would prefer to call it »behavioristic model«) can also appear in either generalized, or individualized form. The discipline can be simply imposed on convicted person or it can be based on a tested method of »the carrot and the stick«. For instance, in the case of so called »progressive stages«, when the degree of repressive measures depends on convicted person's cooperation and attitude. On the other hand, the internal differences within the framework of the general disciplinary model have to be also taken into consideration, the differences which are, in the first place, ensuing from external changes (»paradigm«) and which are followed by the prison regime. That regime can be based on the principles of monasterial, military/barracks (for instance, »boot camps« type) discipline or on the principles of work discipline in a factory.

The next rehabilitation model is based on the treatment of a pathological, criminogenous disposition (Cusson, 1983:63–67). The interesting thing about this is that this therapeutic model of rehabilitation (regardless whether it is based on biological, psychiatric, psychoanalytical or psychological discourse) is often – and quite inadequately – understood as the embodiment of rehabilitation. Most of the critical remarks directed at the idea of rehabilitation were in fact referring (only) to the model of changing through this or that therapy. The doubts about such rehabilitation – for instance, »treatment game«, »point scoring« (Samenov) or »double misunderstanding« (Cusson) – are for the greater part well known, so it is quite unnecessary to repeat them here. Let us, however, point out also the third possible »paradigm« of rehabilitation, the one that is usually called the »learning method« (example Heinz and Korn, 1973:203–231). Like the two others, mentioned before, this paradigm also presupposes the specific etiological theory of criminal behaviour. In this case, it supports the thesis about inadequate or insufficient primary or secondary socialization: the proposed pedagogical model of rehabilitation should eliminate exactly this insufficiency through the form of, for instance, (re)education or (re)socialization. This model does not imply strictly individual treatment, but various intersubjective, collective and communicational mechanisms which should generate individual's positive social experiences and improve his abilities, skills, knowledge and motivational structure. The most important element is that the model of learning logically assumes (at least gradual) »decarceration« of otherwise total or segregative penal institution, its opening toward the outer world, the planned preparations for life after prisoner's release (for instance, work outside of prison, weekends, etc.), and generally, such organization of prisoners' activities which strengthens their sense of responsibility, their self-respect and autonomy (that is, the ability of independent decision making and acting), mutual trust, intensive (two-way and horizontal) communication between the penal institution's staff and the prisoners, clearly defined rights and duties (with possibility of the court protection), etc.

#### 4. Questionable questionability of rehabilitation

Although the idea of rehabilitation is not at all unified or homogenous, it already became, such as it is (in its unanalyzed form) – at least in academic circles – distinctly unpopular. There are several reasons for that.

One of them is certainly the realization of the empirical investigators – who apparently have proved this to be correct – that rehabilitation does not work (»nothing works«), or that at least it does not work better than the other non-rehabilitative, i.e. exclusively penal measures (example Conrad, 1965). Even more surprising than such scientific realizations is the readiness with which those realizations were accepted in the mainstream criminology as more or less indisputable (attention given to otherwise disputable conclusions of Martinson are clearly indicative of this). In fact, the things are much more complicated, at least to that measure that it would be advisable to remain sceptical toward positivistic attempts at (statistical) enumeration of successfulness or unsuccessfulness. First of all, we should ask ourselves do we know at all how to measure or evaluate a rehabilitated state (for instance, how to classify a case when someone is rehabilitated, but later becomes »unrehabilitated«, due to the reasons which are totally contingent in regard to the realized rehabilitative programme). On what should we base our conclusion that someone is successfully »rehabilitated«? Besides, one should keep in mind that the advocates of rehabilitation can always challenge the thesis of impossibility of rehabilitation with following arguments: (a) implemented programmes were not correctly planned; (b) implementation of otherwise correctly planned programmes was inadequate (for instance, due to the insufficient financial means, or inadequate training of those realizing the programme, or some other reason); (c) there are researches which show that some programmes have been indisputably successful (Ross and Gendreau, 1980).

In connection with this, there is one more significant circumstance that should be pointed out. Namely, it is a known fact that eventually majority of perpetrators of criminal acts stop violating the legal norms, regardless of the way in which they were (or even were not) treated by the agents of the penal law system.

How to explain this indisputable fact? Theoretical answers to that question can be roughly divided in two groups (Gottfredson and Hirschi, 1990:141–144). In the light of the theory of situationally conditioned ceasing of criminal activity, the number of criminal acts perpetrated by an individual decreases with age, since the outer (anti-criminogenous) factors, such as employment, family (wife, children, home) and similar, change the criminality of the criminal offender. According to another theory, the criminality of an individual decreases with age regardless of his criminal disposition (his wish to continue with his criminal activity). According to this explanation, subjective criminality should be just one of the elements in the constellation of causes which lead to the criminal act (so that the number of criminal acts is rather deficient standard for measuring of criminality). In other words, this means that the frequency of criminal activity can change in time and space, regardless of changes of criminality (as a relatively stable subjective characteristic): af-

ter all, criminality can exist even without the perpetration of criminal act. If we accept such explanation, then for instance, the absence of recidivism is not an absolutely secure indication of successful rehabilitation, if rehabilitation is understood as ceasing of criminal activity.

In spite of all the problems of rehabilitation, we should not forget that most criticisms were politically (or ideologically) motivated. For instance, radical criminologists regard as questionable any criminal policy measure directed exclusively at the problematic individual (Taylor et al., 1973:281). What is essential for them is the radical change of structurally determined constellation of economical and political power (but they don't say what should be done with the offender during that time while the repressive and exploitative society remains unchanged or even becomes more repressive and economically violent). The conservatives, on the other hand, regard as disputable any measure which smacks of permissivity and which does not ensure intimidating, frustrating or at least, the »just« (retributive) repercussions (Tame, 1991). They know (they are, namely, the good guys) who are the bad guys and how they should be treated. The liberals are concerned, first of all, about human rights, the due process of law and about the constant threat of the expansion of therapeutical state. On top of all that, there is the standpoint of the »new penology«. In its light, all specifically modernistic dilemmas of criminal policy and penal practice become totally irrelevant (Feeley and Simon, 1996). The aim of the new penology (or »actuarial criminology«) is not to punish or rehabilitate individuals, but to identify permanently problematic aggregates (categories) and to control them (in accordance with the model of instrumental – and no longer moral – discipline) at as little cost as possible (in accordance with the managerial or technocratic rationalities, for instance, according to the cost/benefit analysis). So, the expectations of criminal policy are considerably lowered: the aim is no longer the elimination or reduction of crime, resocialization or reintegration of convicted persons, public security or similar, but the control of superfluous and actually or potentially dangerous (risk) population segments.

In that light the recidivism (the nightmare of the modernistic penology) is no longer problematical: it is either irrelevant or even interpreted as the indicator of successfulness of various institutions (for instance, suspended sentence or conditional release) purely as instruments of control.

The new actuarial orientation is an example of postmodern administrative criminology in the contemporary society of instrumentalized discipline. In that social context the social control is differentiated (Shearing and Stenning, 1996). The population, its major part, is controlled by various mechanisms of seduction with products and services of the capitalist economy. Their participation in the (privatized) control process (of which the most obvious examples are the big shopping centers or malls – »cathedrals of the big cities« – or big airports) is voluntary and cooperative (the effects of the control remain therefore, as a rule, unnoticed). The minor part of the population, the economically and/or culturally superfluous population segment, is controlled with regard to the level of risk of the aggregate they represent: the highest

risk groups are isolated in prisons with the highest degree of security, the lower risk groups are kept under various less costly forms of control. In that concept of control the traditional rehabilitation is replaced by or reduced solely to the efforts at precluding further criminal activity or taming (overpowering) criminal offenders.

### 5. To make further criminal activity impossible or to rehabilitate?

The idea of making further criminal activity impossible may seem very attractive (Greenwood, 1983). Namely, it starts from the assumption that a small group of dangerous individuals (»chronical« or »career« criminals) is responsible for the greatest part of criminal activity. If they could be somehow removed from the society, then with relatively insignificant expenditure we could solve most of the problems of security. But, here again, we are facing the same problem as with rehabilitation: how to identify this small group of dangerous individuals before they realize their antisocial potentials and become notoriously »chronical« (rehabilitation should be directed primarily at the persons with highest criminality potential and in fact, before they stop their criminal activity for some reasons of their own, for in that case, we would be solving a problem that no longer exists). This is the well known problem of the prognosis of criminal future (McCord & McCord, 1959). Criminology has otherwise made some promising steps in that area, but not such which would justify rigorous restrictive measures implied by the ideas of selective prevention. The only palpable discriminating factor (for recognizing hidden chronic offenders) offered by the advocates of prevention of continuing criminal activity is an already perpetrated criminal act (or several such acts), exactly the same element which the penal law system takes into account in administering its penal sanctions (recidivism).

In spite of the above mentioned problems the ideal of making further criminal activity impossible (which, quite logically, is not incompatible with the idea of rehabilitation, because it can be represented as a measure against the »incorrigibles«) is becoming increasingly popular. The reason for this may be that it means facing the lesser problem of empirically measurable successfulness/effectiveness: while the convicted person is locked up in a prison, he/she is prevented from doing further damage to the society (rendered harmless). At least in this aspect the incarceration is effective (this positive image can be threatened only by a possible escape, which is, after all, an exception to the rule). The same applies to the retributive penal policy (Duff and Garland, 1995:25). Here, too, one needs not fear reproaches about ineffectiveness: if it really secures that the offender is getting the »just measure« of pain. We should not ignore the problem pertaining to the domain of selective prevention. The people in question are those in whose case all the usual (formal and informal) control mechanisms have proved ineffective and who represent the threat to the others. Even the abolitionists admit that for such group some sort of prison is inevitable (although they prefer using different names, like »asylum« or »quarantine«). In spite of that, we should not forget the number of difficult questions. How

many such people are there (and how to identify them)? Let us, for instance, consider an answer from the abolitionist point of view: »Perhaps, if we improve our legal system, the number of dangerous people will be so small that, even in a large country like the United States, two or three small places of quarantine will be sufficient, and certainly not the huge store of hundreds of thousands of human beings which that country has today« (Bianchi, 1994:342). In connection with this, the abolitionists usually point out two groups of problems: (a) the convicted person is usually (sooner or later) released from prison, so that effect of making his criminal activity impossible is only temporary, on top of which one should not disregard the possibility that he might return from prison even more dangerous than before;

(b) in every society there is a great number of dangerous people who were never brought before the court, nor have they ever been in prison (at least, not in the role of convicted person), in fact, it's even possible that they are holding some very important and even highest positions in economy, politics, administration or military hierarchies.

Regardless of its form or organization (and regardless of what we may call it) the prison is still inevitable, so we should consider what it should look like. For instance, Bianchi describes his »quarantine« in this way: (a) the detained person would have the right to the complete medical and social care; (b) the treatment of detained persons would be regulated by strict rules (this should prevent abuse); (c) the detained person would have the right to have a contact with one unprofessional person of his own choice outside of quarantine whom he or she can trust; (d) the court would decide about every prolongation of detained person's stay in the quarantine; (e) the government would submit annual reports to the parliament (or the state council) about all persons held in quarantine.

It is quite apparent from this description that the abolitionist »quarantine« is in fact the old, well known institution of prison, of course, with certain modifications. Their demand that only »really dangerous people« should be detained in a »quarantine« corresponds to the implications of the theory of selective prevention: both ideas are necessarily facing the same difficult problem how to recognize/identify those »really dangerous« individuals, as also the problem what alternative sanction should be used in cases when, for instance, the retributive reasons would demand certain punishment, but not necessarily a prison sentence, since it would be sufficiently evident that the offender is no longer dangerous. Other implications of the abolitionist idea of quarantine are very similar to the model of rehabilitation as convicted person's right.

## 6. Rehabilitation as convicted person's right

We have already mentioned that there are few advocates of rehabilitation in the academic circles of today. There are several reasons for that. Apart from political reasons (which we have already mentioned), there are also pragmatic ones (rehabilitation seems too costly in regard of the achieved results), and first of all, »practical-realistic« reasons: what to do with the »rehabilitated« individual after he returns to the world outside, where he

has no job, no place where he can live, no attractive possibilities (other than criminal) to make the living and no favourably inclined or benevolent social environment (even worse, all these social advantages are becoming less and less available even to the loyal, noncriminal people). Still, the idea of rehabilitation continues to survive – even in academic circles (and even more on the practical and normative level). In connection with this, we should mention here, for instance, the so called new treatment ideology, which on one side openly admits failing of most of the programmes of resocialization realized so far (within penal institutions); but on other side insists on that ideal, in order to neutralize, in the first place, the neoclassic ideas which recommend the »pure« punishment (either for utilitarian or retributive reasons).

Cullen and Gilbert (1982), for instance, are among the more important supporters of the idea of rehabilitation. The arguments they used in explaining their proposals were as follows: (1) rehabilitation should be defended because it implies an obligation of the state to care (also) for the needs of convicted persons, to improve the conditions of life in a prison and to generally endeavor to make the execution of penal measures more humane; (2) rehabilitation provides the conceptual and moral starting point for the opposition against conservative ideas, according to which the increased and more severe repression would decrease criminality, since such measures (longer prison sentences, more severe regime in prisons and greater number of prisoners) would raise the »price« of crime to such point that it would no longer be worth all that trouble; (3) rehabilitation still enjoys considerable support within penological circles (i.e., within sanctions execution systems) which should continue to support it; (4) rehabilitation was – historically speaking – the motive for the effort on humanizing and improving conditions in prisons and for introduction of different (alternative) sanctions.

Even more interesting is the rehabilitation model conceptualized by Rotman (1990). In his concept he tries to avoid the faults of the older models (particularly of the paternalistically/therapeutical model). Rotman's intention was to present a possibility for articulation of the humanistic (as opposed to the authoritarian) rehabilitation, which would be based on respect for offender's dignity, on strengthening of his human potentials and self-determining capacity, on his voluntary participation, control of the execution of penal sanctions by the court, limitation of unnecessary suffering (deprivation) during the prison term, on searching for alternative (less damaging) sanctions, securing of real possibilities for social reintegration and similar.

In other words, Rotman starts from the assumption that offender's rights were violated not only in the cases of forced »medical treatment«, »brainwashing« or other violent intrusions upon his body or personality, but also in such cases when there are no positive measures or programmes aimed at alleviation or neutralization of various negative consequences of the prison sentence, for instance, depersonalization, diminishing of already existent capabilities and potentials, deterioration of the health status, desocialization, changed concept of time, etc. So, Rotman is not only taking into account the fact that prison as such is not reforming or correcting (as pointed out by

»realists«); he is, first of all, warning of the deteriorating effects of prison on an individual's physical and mental state.

Rotman's starting point is no novelty (or »discovery«), quite the contrary. This is something that many other authors have been pointing out before him. Let's take, for instance, this observation: »Generally, punishment causes hardness and coldness; it concentrates the sense of alienation and makes it more severe; it strengthens the resistance. If it leads to a breakdown, discouragement and self-humiliation, then the result is certainly less encouraging than the average effect of punishment, characterised as sombre resistance« (Nietzsche, 1988: 268). Later sociological analyses of life in prison have only deepened and widened similar impressions. Let us recall, for instance, descriptive and theoretical explanations of »prisonization« (Clemmer), or the »barbed wire« syndrome (Gibbens), or »institutional neurosis« (Barton), »mental deterioration« (Morris and Morris), or the changed sense of time as one of the essential existential dimensions (Galtung, 1961; Cohen and Taylor, 1972). Such epiphenomena occurring as result of the prison term are problematical not only because they can considerably diminish the possibility of successful or »normal« social reintegration of the released prisoner. They are disputable because they intensify the penal effect of the prison sentence. The important question is whether it is still possible to designate those mentioned (and similar) repercussions as something that forms the part of the sentence determined by the law. This is certainly a very complex problem, already on an abstract level, and even more so *in concreto*.

Let us say that the key element in the prison sentence is deprivation of freedom. That occurs when the convicted person is sent to prison, where he/she is subjected to the certain regime (which, of course – contrary to the possible normative uniformity or conformity – differs from prison to prison, so that, in fact, there are as many different sorts of prison sentences, as there are prisons). Here we come to the question why is the convicted person sent to prison: is he/she going to prison in order to be punished there or perhaps, because this very act is already punishment in itself?

This is not a tautological question, although in reality it often boils down to the same thing. We can divide it in several subquestions: What sorts of deprivations form the characteristic part of the prison sentence as penal sanction? In what measure should those deprivations be realized? Is the purpose of prison sentence to weaken convicted person's health in all its psychological, physical and social aspects? Or to jeopardize or limit convicted person's human potentials and already existing capabilities? Only the answers to these questions could, at least partially, solve the dilemma what is in fact (or what it should be) the content of the prison sentence as a form of punishment in the sense of specific (political) response to the certain problematical phenomenon.

## 7. Rehabilitation as the antithesis of the prison sentence

It seems that from the above mentioned considerations we could deduce some elements for a different un-

derstanding of rehabilitation (in comparison with the traditional »incarnations«). The following conclusions (and assumptions) could offer us the reason for contemplating the whole idea once again: (a) prison does not and cannot rehabilitate, it even obstructs the process of rehabilitation; (b) we shouldn't therefore justify prison sentences (and other forms of punishment) with an ideal/idea of rehabilitation (there is really no problem with that, since there is otherwise no shortage of justifications based on philosophy of law and criminal policy); (c) in spite of that, we should not renounce the idea of rehabilitation (by this we are primarily referring to the idea of rehabilitation as a network of various possibilities for normal reintegration into the conventional social structure); (d) rehabilitation cannot be considered the »purpose« of punishment, instead it should be conceptualized as practical abolitionist »antithesis« to the prison sentence. Consequently, we could try to realize its purposes in spite of the prison sentence and not with a help of prison sentence (in connection with this, let us recall Baratta's remarks how from the point of view of convicted person's social reintegration the best prison is the one that is nonexistent. That does not, however, mean that – with regard to this purpose – we cannot differentiate between better and worse prisons); (e) rehabilitation includes more than just humanistic (or reformists) efforts on making prisons »better«, it requires primarily such measures which will diminish the influence of the prison sentence (within the frame of such measures there are several possible strategies, for instance, decriminalization of certain problematical patterns of behaviour, substitution of prison sentence by other legal or political sanctions and similar); (f) rehabilitative measure (for instance, within a penal institution) cannot be left only to the »good will« of the prison management, they should be reconcepted as rights (under appropriate court control) and should be understood first of all as »services« (put at the convicted person's disposal, should he/she wish to use them); (g) rehabilitation can be considered, roughly, as an essentially abolitionist strategy, which – at least, as the long term policy – wishes to abolish the institution of prison. As the short term policy, this strategy implies gradual decarceration, that is, gradual opening of penal institutions toward the external social environment (example Baratta, 1991:74).

We should not forget various obstacles that can present themselves in the realization of the above described idea of rehabilitation. One of them is connected with the still widely present morally polarized evaluatory comprehension of the perpetrator of criminal acts (Claster, 1991). Namely, they are still generally comprehended either as embodiment of evil (as beigns essentially different from the loyal, »good« people and as ones who do not deserve a »kid gloves« treatment) or on the other hand, they are being depicted as angels »led« astray, i.e. to the dark side of the law, by some external or internal reasons (unhappy childhood, criminally inclined peers, poverty, unemployment, psychological compulsions and sim.). There is one banal, but nevertheless very important factor, which should be taken into account and this is the limited social resources. If a large number of noncriminal/loyal citizens are lacking the basic existential conditions for self-determining activity (for instance, satisfactory housing situation, secure employment or social

security), how can we justify the increased expenditure for people who have (even several times) broken the generally accepted or valid »rules of the game«? We have to point out that the belief that the problem of criminality is primarily the problem of repressive (legal) mechanisms is still widely popular, as also the opinion that, consequently, this problem should be dealt with exclusively by means of penal methods, for instance, by raising the level of police effectiveness and by more severe penal sanctions (Roshier, 1989:128).

## 8. Concluding note

Any contemplation of rehabilitation will necessarily remain incomplete (or abstract) if it does not include, within the context of its meaning, an analyzed and elaborated plan of criminal policy. This is, perhaps, the core of the problem. In practice, the criminal policy is still reduced to penal policy. In other words, this means that the real criminal policy (in the sense of various measures which would alleviate criminogenous social determinants and enable solving of various social problems by non-repressive means) is actually nonexistent. In fact, the problem is even more serious. In the contemporary »transitional« or non-transitional postmodern (capitalist) society there is no vision or ideologically-theoretical point of support for solving of essential social problems: How to secure social cohesiveness? How to rationalize production process? How to solve the problem of social exclusion or marginalization (of people who have no employment, no home of their own or regulated housing situation, no social security and who are structurally separated from the mainstream of social life)? How to eliminate or at least, alleviate the differences in economical, cultural, ideological, political and legal power? All those questions revolve around one common axis: How to constitute rationally – not by using irrational means, for instance, national pride (cheapest), religious feelings, historical mythology or quasi »natural« elements (like language, folklore, and sim.) – social cohesiveness (and solidarity) in the postmodern relations (example Mžda, 1995:285–291). How to conceptualize the society as reality *sui generis* (and not only as an aggregation of individuals connected exclusively by the network of trade markets) with its specific values and goals (»common good«)? Without such clearly formed conception of the society the state cannot function as a symbol of social cohesiveness, that is, as the frame for realization of specific social goals (and solving of the essential social problems), but only as the hostage of the most powerful interest groups and its right remains the right of the stronger (strongest), most often the richest. As long as this remains so, the propositions how to face the problems of criminality (and security in general) in a rational way – as also the propositions regarding other urgent social problems (such as destruction of natural resources, unemployment, economic differences, structural violence and sim.) – will remain only the wishful thinking.

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