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ON (MEASURING) RECIDIVISM, PENAL POPULISM AND THE FUTURE OF RECIDIVISM RESEARCH: NEUROPENOLOGY¹

It is common criminological knowledge that recidivism – relapse into criminal behaviour – is a major predictor of future criminal behaviour, one could say a ‘hard-core’ criminogenic factor, esp. when displayed at a young age. Yet, despite its prominence and importance in both criminology and the discipline and practice of criminal law, there is an ongoing confusion about the concept and social construction of recidivism, its basic terminology, approaches to its measurement (methodology), and finally about the best ways to deal with it. In the paper at hand, we aim to unravel at least some of the grand mysteries surrounding recidivism and its research, targeting particularly domestic criminal justice professionals and researchers, since we have found a certain lack of relevant and up-to-date Croatian publications on this topic. Instead of simply presenting or arguing for any of the competing perspectives, such as the criminological, normative or penological, or a more practical instead of a scientific perspective (to name but a few), we critically analyse each of these perspectives, highlighting their pros and cons, while leaving it to the readers to choose any or all of them – depending on their own perspectives and purposes. Thus, key findings from recidivism research are discussed in the context of steadily growing penal populism, which is characterised by broadening the scope of criminalisation and increasing sentencing frameworks as well as harsher punishment practices, targeting in particular recidivists. All this occurs in the context of populist public and media discourse about crime and criminals, which effectively undermines any notion of evidence-based crime policy. But times are changing and the future of recidivism research, spearheaded by neurope-

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nology, might very well provide us with a new kind of knowledge and understanding needed to put a check on penal populism.

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1. INTRODUCTION WITH A REVIEW OF THE STATE OF THE ART IN CROATIAN RECIDIVISM RESEARCH

The **measurement of crime** lies at the very core of criminology as a scientific discipline. It includes, among other things, the *measurement of offending*, *victimisation* as well as *punishment*.² This measuring is done by gathering and analysing empirical data on criminal occurrences (crime), criminals, victims, and criminal justice processes, including their various outcomes, such as for example convictions, sentences, imprisonments etc. On this basis we gain insights into the phenomenology of crime, which in turn enables us to develop and test theories of crime, all with the ultimate goal of gaining knowledge and understanding of the causes of crime in order to advance the way in which we tackle it.

Well, so far, so good, where it not for the conceptual matter of crime essentially being a social construct, or in *Christie's* words "*Crime does not exist. Crime is created*."³ Due to this, from the very onset all crime-measurements are doomed to be (more or less) flawed and largely incomparable through time, space and contexts. At least if one aims to measure the empirical reality of crime, rather than its normative and social construction, perception, (re)interpretation and reflection.⁴ Nevertheless, it is still a sensible and worthwhile endeavour to measure crime (and/or its social construc-

² In the sense outlined above, criminology is understood as the transdisciplinary and holistic scientific study of crime, criminals, victims, and societies' reaction towards them, thereby encompassing victimology, penology, and crime policy, while being inseparably connected to criminal law and its practice. In more detail on criminology's inherent transdisciplinary nature and (disputable) disciplinary independence see: *Getoš Kalac*, 2020.

³ Cit. *Christie*, 2017, p. 10. See also *Christie*, 1977. On (a normative theory) of criminalisation see for example *Duff et al.*, 2010, as well as subsequent six volumes published in the Criminalization-Series, to be found online: <https://global.oup.com/academic/content/series/c/criminalization-crim/> [11.07.2023].

⁴ For a concise explanation of the conceptual challenges of constructing crime and its dark figure with a focus on realist vs. institutionalist perspective see: *Getoš Kalac & Pribisalić*, 2020, pp. 654-658. For instance, by counting homicide cases, be it reported, indicted or finally adjudicated ones, one measures only a fraction of all actual violent human deaths – those normatively constructed, detected and processed as homicides, whereby the actual size of the measured fraction remains largely unknown in relation to the share of actual violent human deaths that occurred, either due to the dark figure of crime, or due to normative and/or institutional processes of classifying such deaths as crimes others than homicide (e.g. manslaughter or involuntary lethal consequences within the scope of countless other types of crime), or due to a lack of certain normative elements (e.g. justified killings, self-defence, insanity, statute of limitations etc.), or simply proof of the crime. See in more detail: *Getoš Kalac*, 2021, pp. 3-7, pp. 36-37 and pp. 101-103; *Getoš Kalac & Šprem*, 2020.

tion), whereby the degree of stability or fluency of the crime-construct itself through time, space, and contexts eventually determines the degree of meaningfulness or senselessness of such measurements.⁵

Now, the **measurement of recidivism** faces the same conceptual, definitional, terminological, and practical challenges as does any other type of crime-measurement, but additionally it also duplicates, quite often even multiplies these challenges along the way of repeated criminal offending and the necessary repeated normative and social construction, perception, (re)interpretation and reflection of crime. Self-evidently, this dupli- and multiplication of measurement-challenges vastly increases the possibilities of errors, or put differently, it negatively affects the degree of meaningfulness and positively adds to the senselessness of such measurements. Nevertheless, just as with measuring crime, measuring recidivism is extremely important and meaningful, not only from the scientific point of view, but also from a very practical one. It is the basis for predicting crime and recidivism and enables researches as well as criminal justice professionals (e.g., prosecutors and judges, social workers and probation officers) to assess the probability of future criminal behaviour when making scientific and practical decisions that ought to prevent future crime (so-called “*prevention-through-prediction strategy*”⁶). Thus, the purpose of collecting recidivism data is also grounded in the concept of evidence-based national crime policy and its periodical evaluation, as well as the need of various criminal justice actors to calculate, estimate, and predict national trends and costs of (dealing with) crime.⁷ Besides this national purpose, which essentially reflects the underlying general purpose of collecting any type of crime and victimisation data, there is also an international and a temporal purpose to be found in the need to compare recidivism data across space and time.

However, subscribing to *Albrecht's* assessment that “*a direct international (or even European) comparison of recidivism rates is currently impossible, as the data selection processes and public prosecution settings differ too much*”⁸, an assessment that is commonly accepted and still accurate in criminology,⁹ the paper at hand will not engage in inter-

⁵ For more detail see *Halvorsen*, 2014, p. 347.

⁶ Cit. *Monahan*, 26.07.2023, s.p.

⁷ *Albrecht*, 2014, p. 14.

⁸ Cit. *ibid.*

⁹ *Aebi et al.*, 2021, p. 284: The European Sourcebook of Crime and Criminal Justice Statistics (ESB) for example does not collect recidivism data due to the diverse methods by which these data are measured, leading to substantial variations between countries and rendering them non-comparable. *Yukhnenko et al.*, 2019, p. 17, conclude that international comparisons between countries remain problematic, and they suggest using a checklist to enhance consistent and transparent reporting of recidivism rates. *Fazel & Wolf*, 2015, p. 6, conclude that international comparisons of recidivism data are currently not valid.

national comparisons. We will rather focus on an overview of the state of the art in Croatian recidivism research (see following paragraphs), followed by an attempt to unravel at least some of the grand mysteries of recidivism, including differing perspectives and their basic terminologies (see section 2); approaches to measurement (methodology) and how one should deal with recidivism as compared to how recidivism is dealt with in Croatian criminal justice (see section 3). Now, particularly the last issue on how Croatian criminal justice deals with recidivism has to be understood and critically reflected upon in view of the current domestic crime policy context – one that is markedly shaped by penal populism and thus lacks any notion of evidence-based approaches. Here we take an optimistic glimpse into the future of recidivism research and identify a new field of research – *neuropsychology* – that might provide us with a new kind of knowledge and understanding needed to put a check on penal populism (section 4).

Coming back to assessing the state of the art in Croatian recidivism research, we identify a certain lack of relevant and up-to-date Croatian publications on recidivism. This comes as no surprise and reflects the relatively small Croatian criminological (including penological) research community, rather than a lack of interest in or knowledge of the topic.¹⁰ Based on a keyword search in the Croatian scientific bibliography CROSCI a total of 23 recidivism-relevant publications could be identified.¹¹ Out of these 23 publications, a total of 13 publications with a major or at least significant focus on recidivism and its research were reviewed.¹² Their key findings are briefly presented in order to provide for a sense of the topical focus, type and methodology of current Croatian recidivism research.

The reviewed publications mainly present findings originating from original empirical studies conducted among incarcerated populations (prisoners).¹³ Apart from research based on samples of inmates, there is also research that derives its find-

¹⁰ This is by no means a Croatian *specificum*, but rather a regional feature, again reflecting a rather small criminological community throughout Southeastern Europe. See in more detail *Getoš Kalac*, 2021, pp. 28-30; *Getoš Kalac & Karlović*, 2014a; *Getoš Kalac & Karlović*, 2014b; *Getoš*, 2011.

¹¹ The review was conducted in late July 2023 using the Croatian keywords “recidivizam”, “recidiv” and “kriminalni povrat” as well as the English term “recidivism”. Non-relevant publications (e.g., medical recidivism) and papers published in non-Croatian (foreign) journals as well as books/chapters published by non-Croatian (foreign) publishers were manually excluded, whereas qualification-works (e.g., student seminar papers, diploma, masters and doctoral thesis) were automatically excluded, since the literature review focused solely on domestic Croatian peer reviewed publications.

¹² A total of 10 publications were excluded from the analysis due to: insufficient relevance of their subject to the paper’s focus on recidivism research, publications based on previously collected data in prior studies, inability to access the publication via online databases, publication not being recent, or publication with a predominantly historical focus.

¹³ So, for example: *Stashević*, 2019, pp. 128-132; *Lotar Rihtarić et al.*, 2017a, pp. 544-546; *Lotar Rihtarić et al.*, 2017b, p. 88; *Mejovšek et al.*, 2001, pp. 92-93; *Doležal*, 2009; *Gracin*, 1998, pp. 89-90.

ings from samples of offenders who were involved in extrajudicial settlements.¹⁴ Less frequently we find publications resulting from secondary data analysis, such as official crime statistics,¹⁵ statistical data on the prison population,¹⁶ police records and court judgments,¹⁷ factors that are considered to influence recidivism,¹⁸ Croatian criminal legislation,¹⁹ or an overview of relevant literature.²⁰ Furthermore, there is also research that is not empirical, nor does it involve secondary data analysis, but is solely of a descriptive nature, focusing on the description of recidivism prevention programs.²¹ The topics investigated range from educational systems in penal institutions,²² the connection between the sociodemographic characteristics of families and minors, and recidivism,²³ challenges in reducing criminal recidivism,²⁴ risk factors of belonging to specific groups of penal recidivism,²⁵ the role of empathy in relation to intelligence and criminal recidivism,²⁶ differences in aggression between recidivists and non-recidivists,²⁷ prevention of recidivism in sexual offences,²⁸ the influence of different models of restorative justice on recidivism²⁹, differences in involvement in criminal lifestyle considering age, recidivism and violent behaviour,³⁰ to correlations between long-term imprisonment and repeated recidivism.³¹

In conclusion, we find that most Croatian recidivism publications focus on the causes of recidivism, recidivism trends, differences among various groups of recidivists, as well as the prediction and prevention of future criminal behaviour. The main disciplinary approach is penological, whereby most publications present findings from original empirical research conducted on samples of incarcerated persons. The terminology and methodology used to define and measure recidivism is somewhat consistent, whereby empirical studies mainly focus on quantitative rather than qualitative approaches. Interestingly, none of the reviewed publications that are

¹⁴ Miroslavljević et al., 2010, p. 77.

¹⁵ See: Gracin & Herceg, 2022, p. 91.

¹⁶ Butorac et al., 2017, pp. 116-119.

¹⁷ Martinjak et al., 2016, p. 133.

¹⁸ Buljevac et al., 2016.

¹⁹ Gracin, 1998, p. 75.

²⁰ See: Gracin & Herceg, 2022, p. 91; Miroslavljević, 2010, pp. 53-54.

²¹ Mužinić & Vukota, 2010, pp. 619-621.

²² Gracin & Herceg, 2022, p. 91.

²³ Stašević, 2019, p. 128.

²⁴ Butorac et al., 2017, pp. 116-119; Martinjak et al., 2016, pp. 133-145.

²⁵ Lotar Rihtarić et al., 2017a, p. 545.

²⁶ Lotar Rihtarić et al., 2017b, p. 88.

²⁷ Mejovšek et al., 2001, p. 92.

²⁸ Buljevac et al., 2016, p. 256; Mužinić & Vukota, 2010, p. 619.

²⁹ Miroslavljević et al., 2010, pp. 77-88; Miroslavljević, 2010, pp. 53-60.

³⁰ Doležal, 2009.

³¹ Gracin, 1998, p. 89.

based on original empirical research conducted amongst prisoners problematises any of the numerous ethical aspects of research involving prisoners, being “the classic “captive population””³². Therefore, we find ourselves compelled to fill this lack and highlight some of the main ethical challenges that typically arise when conducting research with prisoner-participants (see section 3.1.).

2. RECIDIVISM: TERMINOLOGICAL, NORMATIVE AND PENOLOGICAL (MIS) UNDERSTANDINGS

As already briefly discussed in the introductory section, there is continuous confusion about the concept and terminology of recidivism. Obviously, the paper at hand will not be able to universally solve this ongoing struggle, but at least for the purpose of terminological clarity in the following sections it is both necessary and possible to create some common ground (see section 2.1.). On this basis we will explore the normative construction of recidivism and critically reflect upon its dubious practical implications, both in terms of scientific research as well as daily professional criminal justice practice (see section 2.2.). Lastly, we will briefly focus on how the penological perspective adds to the (mis)understanding of recidivism, or rather how it seemingly manages to further complicate an already extremely complex matter, by introducing the term “penal recidivism”.

2.1. Unravelling the Terminological Confusion on and around the Meaning of Recidivism

Recidivism is generally understood as a *relapse* into a previous condition or mode of behaviour, which in the context of crime is obviously criminal behaviour (Latin: *recidivus, recidere*; meaning ‘to fall back’; German: *Rezidiv* or *Rückfall*; Croatian: *recidiv, recidivizam, povrat*).³³ On first thought it is rather difficult to think of reasons why there should be any confusion on and around such a rather straightforward meaning of the word *recidivism*. And indeed – the meaning of the term is evidently clear. The point where it gets extremely tricky and complex has little to do with terminology, but everything to do with conceptualisation and construction and thus the underlying perspective taken on crime and recidivism.

³² Cit. Gostin et al., 2007, p. 21.

³³ According to the Merriam-Webster Dictionary “Recidivism means literally “a falling back” and usually implies “into bad habits.” It comes from the Latin word *recidivus*, which means “recurring.” *Recidivus* itself comes from the Latin verb *recidere*, which is a composite of the prefix *re-* and the verb *cadere* (meaning “to fall”) and means “to fall back.” *Recidivists* tend to relapse, or “fall back,” into old habits and particularly crime.” Cit. Merriam-Webster Dictionary, 2023, s.p.

In criminal law one rather conservatively speaks of recidivism only in those cases in which a person who was previously finally convicted of a crime and/or misdemeanour is finally convicted of a crime and/or misdemeanour again. In criminology one might however want to focus on the reality of crime and speak of recidivism in all those cases in which a person actually displays criminal behaviour after having done so in the past, regardless of whether this initial or later (criminal) behaviour was reported, prosecuted and adjudicated in 1st, 2nd or final instance by a conviction. Now, from a purely penological perspective (focusing on the purpose and effectiveness of punishment and treatment) one is most likely particularly interested only in those cases in which a criminal was sentenced/penalised and relapsed into criminal behaviour in spite of the punishment and/or treatment. Obviously, the confusion starts when normative, criminological and penological perspectives collide and everybody ends up speaking 'gibberish' in the ears of the others.

In an attempt to solve such perspectival, thus constructional and conceptual (mis) understandings one now adds some finesse to the conversation by simply introducing additional or more specific terms such as *re-offending*³⁴, *re-arrest*³⁵, *re-conviction*³⁶ or *re-incarceration*³⁷. While this might bring some relief on the practical and operational level both in the science and practice of criminal justice, it does not manage, however, to solve the underlying constructional, conceptual and perspectival issues. To this we must add another crucial stumbling block: the temporal element that makes the confusion complete – how much time should be allowed to pass between two (or even more) criminal behaviours for someone to still qualify as a recid-

³⁴ The term **re-offending** is surrounded by additional confusion. Some consider the concept of re-offending to be broader than that of recidivism (so for example Nagin et al., 2009, p. 120), while others view it as narrower (e.g., Falshaw et al., 2003, p. 209), whereas others believe it to be synonymous (so for example Kuriakose, 2019, p. 416). Some authors consider the term of reoffending to vary from post-intervention arrest to reconviction (so for example Hayes, 2007, p. 428.) In this paper, we will align with the definition according to which reoffending refers to the act of committing new criminal offences.

³⁵ The term **re-arrest** is mainly understood as those occurrences in which an individual who has previously been arrested for a criminal offence is arrested again for a subsequent offence. See, for example: *National Academies of Sciences, Engineering, and Medicine*, 2022, p. 43, or Miller, 2009a, p. 6.

³⁶ **Re-conviction** usually means that an individual who has been previously detected, successfully prosecuted, and convicted for a criminal offence is again convicted for a subsequent offence. So, the *National Academies of Sciences, Engineering, and Medicine*, 2022, p. 44, or Falshaw et al., 2003, p. 209.

³⁷ Recidivism research commonly defines **re-incarceration** as those instances in which individuals who have previously been incarcerated and released are sent back to prison following their release, either due to committing new criminal offences or violating the terms of their release. For instance, in *National Academies of Sciences, Engineering, and Medicine*, 2022, p. 46, the definition is expanded to encompass not only a re-entry into prison but also a return to halfway houses or community correctional facilities. Also, in the literature, definitions can be found that narrow the concept by specifying it as the first return to prison or a violation of parole. In: Leon et al., 2006, p. 90; Wexler et al., 2004, p. 109.

ivist?³⁸ This temporal element has thus both a duration (6 months? 2 years? 5 years? 10 years?)³⁹ and a starting, as well as an ending point (e.g., from the day of actual commission of the crime or rather the later conviction-day or the day imprisonment starts or day of release? until the day of actually committing another crime, or day of re-arrest, re-conviction or re-incarceration?).⁴⁰ In the context of criminal recidivism, two primary types emerge: general and special, each with two variations: single and multiple.⁴¹ A single relapse involves a person committing a criminal act once after a previous conviction, while a multiple return signifies habitual recidivism following multiple prior convictions.⁴² A special relapse applies when the new offence resembles the prior one (same or related type of offence), while a general relapse pertains to instances in which the new offence differs from the previous one.⁴³

In conclusion, recidivism is the recurrence of prior criminal behaviour by a person with at least one past offence “falling back” into criminal activities, often evaluated over a suggested follow-up period of 2 years.⁴⁴ Such a criminological definition of recidivism not only reflects the reality-focused perspective of criminology, but is also inherently meaningful as it does not lose sight of the essential purpose of measuring recidivism as a “hard-core” criminogenic factor that helps understand and thus predict criminal behaviour. Finally, it also takes into account the necessary minimal phenomenological connection that should be present regarding the type and severity of the 1st, 2nd and any following criminal behaviour for it to be sensible to assume any kind of correlations. This does not mean that prior commission of a crime that is

³⁸ The time period that should be allowed to pass between two (or even more) criminal behaviours for someone to still qualify as a recidivist can vary depending on jurisdiction and context. In Croatian criminal legislation, a person will not be considered a recidivist if the judgment has been expunged from the criminal record according to Article 17 of the Act on the Legal Consequences of Convictions, Criminal Record, and Rehabilitation, Official Gazette 143/12, 105/15, 32/17, 53/22. Article 19 prescribes time frames after which rehabilitation is deemed to have occurred; these time frames depend on the severity of the committed criminal offense and range from 1 to 20 years, starting from the completion, pardon, or expiration of the sentence.

³⁹ According to the *National Institute of Justice* (s.a.), s.p. “*recidivism is measured by criminal acts that resulted in rearrest, reconviction or return to prison with or without a new sentence during a three-year period following the person’s release.*”

⁴⁰ In the literature, the starting point of an observation period is frequently defined based on specific events like an offender’s release from prison, while the ending point typically involves an arbitrary time interval, such as two years post-release. In: *Farrington & Davies*, 2017, p. 22; *Payne*, 2007, pp. 45-46; *McKean & Ransford*, 2004, p. 11.

⁴¹ *Derenčinović & Getoš*, 2008, p. 174.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Andersen & Skardhamar*, 2017, p. 617, 619. See similar definitions in: *McKean & Ransford*, 2004, p. 11; *Ruggiero et al.*, 2015, p. 1. Additionally, narrower definitions are present in the literature, limiting recidivism to only those offenders previously sentenced to imprisonment. So, for example in: *Musa & Mdahb*, 2015, p. 28.

phenomenologically not related to the one at hand should not be measured. Clearly it must be, just as any other relevant characteristic, since it might be relevant to explain the causation of criminal behaviour. However, that does not qualify such a phenomenologically very distant and perhaps even totally unrelated type of criminal behaviour to be referred to as recidivism.⁴⁵

2.2. The Normative Construction of Recidivism and its Dubious Practical Implications

In this chapter, our focus will be on the normative approach to the phenomenon of recidivism, examining it through the lens of predefined norms, rules, and principles. In the context of recidivism, the normative approach focuses on interpreting this phenomenon based on legal regulations, ethical principles, and fundamental values of justice, rights, and legality, with less emphasis on empirical reality or the investigation of actual events.⁴⁶ The normative perspective can be linked to the institutionalist viewpoint, also referred to as “constructionism”, emphasising that crime gains meaningful significance solely within the context of organised and legitimate societal reactions to it, while the criminological perspective aligns with the “realistic” approach aiming to reflect actual criminal phenomena through data.⁴⁷ The mere fact that there is a repetition of a criminal offence by an offender is not sufficient to be considered recidivism in a normative sense; it is necessary for this repetition to occur under specific legal conditions.⁴⁸

In the literature, recidivism is frequently legally defined as the recommitment of a criminal act by an individual who has previously been convicted of a criminal offence.⁴⁹ By this approach, an individual is normatively considered a recidivist until their conviction is expunged from the criminal record or until rehabilitation occurs. A perpetrator of a criminal offence who has been definitively sentenced or acquitted has the right, after a legally stipulated period, to be regarded as a person who has not committed a criminal act; their rights and freedoms cannot be distinguished from those of individuals who have not committed a criminal offence.⁵⁰ As previously mentioned, these are long rehabilitation periods ranging up to 20 years (see foot-

⁴⁵ More about whether a person can be considered a recidivist after committing a new offence of a different kind following a longer period of time (using the example of a child who was previously an abuser and later committed a robbery) in *Maltz*, 1984, pp. 54-55.

⁴⁶ *Jež & Dunderski*, 2010, p. 39.

⁴⁷ *Getoš Kalac & Pribisalić*, 2020, p. 655.

⁴⁸ *Pinatel*, 1968, p. 593.

⁴⁹ *Vilić*, 1977, p. 389; *Cracin*, 1998, p. 76; *Feuerbach*, 2022, p. 23.

⁵⁰ Article 18 of the Croatian Act on the Legal Consequences of Convictions, Criminal Record, and Rehabilitation, Official Gazette 143/12, 105/15, 32/17, 53/22.

note 38), and their effectiveness could be subject to a separate discussion, as some studies indicate that after a period of 7 to 10 years from the commission of the prior criminal act, the risk of committing a new criminal offence among recidivists is not higher than the risk that exists for any individual without a criminal history.⁵¹ The normative understanding of recidivism presented above is conceptually narrow in its procedural dimension, while in its temporal dimension it encompasses a considerably wide scope. This framing underscores the need for a comprehensive examination of the interplay between legal definitions, rehabilitative timelines, and empirical evidence, thus fostering a more nuanced understanding of the phenomenon.

Clearly, such a normative construction and understanding of recidivism is justified and extremely meaningful in the normative world and therefore non-disputable. Nevertheless, at the point where the criminal justice system enters the field of non-normative empirical assessment, prognosis and prediction of potential future criminal behaviour in order to minimise dangers and risks (e.g. sentencing or detention decisions), a purely normative understanding of recidivism is no longer tenable. It undermines the very task at hand (empirical assessment, prognosis and prediction) and obscures the decision-making process, at the very least in those instances in which a previously not convicted actual criminal is normatively viewed upon as a first-time offender, regardless of any previous arrests, investigations, indictments or known criminal associations etc. The same applies *vice versa* in those instances in which a previously convicted offender relapses after an extremely prolonged period of time and for a criminal offence that has little if any phenomenological relation to the prior crime. Whether and how such dubious practical implications of the normative construction of recidivism might be resolved would be the topic of another future paper. For now, we conclude that normative understandings of recidivism are justified and tenable in the normative world, but only up to the point where they enter the empirical terrain of criminology, crime prognosis and penology.

2.3. Adding to the Confusion: Penology and “Penal” Recidivism?

Criminology, as an interdisciplinary social empirical-theoretical science, seeks to address questions pertaining to the occurrence of criminal behaviour in reality, the nature of these behaviours, the manner in which they transpire, and the underlying causes driving their manifestation.⁵² Although criminal law and criminology share a common subject matter and their interrelation is crucial for effective strategies countering criminal behaviour, their perspectives on the phenomenon of recidivism

⁵¹ *Bushway et al.*, 2004, p. 376.

⁵² *Derenčinović & Getoš*, 2008, p. 24, 30.

diverge significantly.⁵³ The normative approach is narrower than the criminological one because criminal law deals with punishable behaviours within legal frameworks and procedures, focusing only on the aspect of repeated criminal behaviour that is covered by legal regulation.⁵⁴

In addition to the aforementioned approaches that aim to conceptualise and terminologically define recidivism, it is essential to mention the penological approach. Penology, as the science of punishment, in its multidisciplinary approach, focuses on the execution of prison sentences, but it also deals with the execution of other types of penalties, alternatives to punishment, and other criminal sanctions.⁵⁵ Additionally, penology addresses the individualisation of punishment during the execution phase, involving the adaptation of the regime of serving sentences, which is particularly crucial in the context of offender rehabilitation and the formulation of criminal policy to prevent recidivism.⁵⁶ Therefore, the answer to the questions of why punishment does not succeed in dissuading offenders from returning to criminal behaviour, and what distinguishes recidivists who persist in breaking the law despite punishment from those who have been successfully rehabilitated through the system of applying criminal sanctions, should be sought in penology.

The penological approach further narrows the concept of recidivism, defining penal recidivism as the re-entry of an offender into a correctional facility to serve a sanction for a criminal offense committed after having already completed a prison sentence for a previous criminal act.⁵⁷ In a general sense, it can be argued that criminological definitions encompass a wider range than those originating from criminal law and penology. However, there often arises a challenge in precisely demarcating one from the other, as they frequently share partial similarities, leading to a prevailing sense of confusion regarding this issue. In this sense one might argue that the notion of “penal” recidivism neither conceptually nor terminologically contributes to the recidivism debate – rather, it adds another confusing term to the discourse which turns into ‘gibberish’ as soon as criminological, normative and penological perspectives collide.

3. ON MEASURING, ASSESSING AND UNDERSTANDING RECIDIVISM

In this section, we discuss the main features, challenges, and methodologies of recidivism research, as well as present its key findings: how do we study recidivism and what do we know about recidivism thus far? This includes a brief reflection upon

⁵³ Getoš Kalac & Šprem, 2020, p. 119.

⁵⁴ Ibid.

⁵⁵ Derenčinović & Getoš, 2008, p. 24.

⁵⁶ Ibid.

⁵⁷ Lotar Rihtarić et al. 2017a, p. 540; Gracin, 1998, p. 79; Vilić, 1977, p. 389.

specific ethical considerations when conducting research involving incarcerated persons – a topic that has so far received virtually no attention in Croatian recidivism publications. In the second part of this section, we will shift our attention to the Croatian criminal justice system. Here we analyse how different actors throughout the criminal processing should deal with recidivism (normative analysis) and try to find out whether and to what degree this seems to be reflected in daily practice (empirical analysis).

3.1. Recidivism Research: Methodology & Key Findings

Research carried out with incarcerated individuals serves as an essential and invaluable source of data pertaining to crime, deviant behaviour, and the criminal justice system, concurrently holding relevance in the context of studying recidivism.⁵⁸ Although the contribution of such studies is significant, they should be conducted with consideration for the ethical aspects, given that they pertain to a captive, vulnerable population that has a history of being subjected to abusive research practices.⁵⁹ One of the central challenges in conducting such research is obtaining informed consent from prisoners who are research participants.⁶⁰ Establishing a relationship of trust between researchers and participants in prison conditions is also challenging, and this is a prerequisite for ensuring the validity of findings and inmates' willingness to participate in the study.⁶¹ Moreover, in the process of conducting research, it is imperative to take into account the psychological needs of interviewees, alongside ensuring the personal safety and well-being of the researchers.⁶² Finally, the question arises as to what extent (and if at all) incarcerated persons as prospective participants of scientific studies are in a position to freely give (or withhold) their consent to participate in a study? This dilemma essentially comes down to treating inmates either as active subjects or merely as objects of scientific investigation and this is an issue that the Croatian prison administration has thus far neglected to address on a systematic and institutional level. Here we see ample space and opportunity for action and improvement in the future.

In addition to ethical considerations, research on recidivism is also characterized by various methodological challenges. Recidivism is measured in widely disparate ways, which underscores the need for the initial task of transparently defining the constituent elements to be considered and the methods for data collection when conducting research on this concept.⁶³ The primary challenge lies in defining the

⁵⁸ Roberts & Indermaur, 2008, p. 309.

⁵⁹ Ibid, pp. 309-310.

⁶⁰ Ibid, pp. 316-319; Gostin et al., 2007, p. 56.

⁶¹ Roberts & Indermaur, 2008, pp. 319-320.

⁶² Ibid, pp. 320-322.

⁶³ Andersen & Skardhamar, 2017, p. 614.

sample, precisely determining the group of offenders for whom recidivism is being measured.⁶⁴ Furthermore, it is necessary to identify specific events as indicators for recognising recidivism, determine the data sources that will be utilized, and outline the methods by which the collected data will be processed.⁶⁵ It is crucial to ascertain the temporal duration for which the sample is observed, i.e., the specific time frame during which the assessment of recidivism takes place.⁶⁶

Prior research on recidivism has revealed significant variations in recidivism rates depending on the measurement methods employed.⁶⁷ The outcomes are closely tied to factors such as the examined sample size, the attributes of the offenders, the duration of the observation period, and the conceptual definition of recidivism.⁶⁸ Although a considerable amount of research has attempted to establish a link between imprisonment and recidivism, valid empirical evidence demonstrating that harsher prison sentences can lead to a reduction in recidivism is still lacking.⁶⁹ Furthermore, interventions focused on treatment demonstrate greater efficacy in mitigating recidivism compared to punitive measures alone.⁷⁰ Longer follow-up periods result in higher recidivism rates than shorter ones, and recidivism rates are most pronounced in the early stages of the follow-up period.⁷¹ Notably, property crimes, sexual crimes, and crimes related to drug abuse stand out as categories with the highest recidivism rates.⁷² It is important to highlight that the share of women in recidivism is significantly smaller than that of men.⁷³ Ultimately, recidivism is considered a key indicator of the success or failure of rehabilitation programs within correctional systems, thus it is vital to enable data comparison and draw conclusions about 'what works' for whom, in what settings, and why, by utilising uniform definitions and measurements conducted over identical periods for the same sample.⁷⁴

⁶⁴ Ibid, p. 616; Payne, 2007, p. 8.

⁶⁵ Ibid, p. 616; *ibid*, p. 12.

⁶⁶ Ibid; *ibid*, pp. 45-46.

⁶⁷ Andersen & Skardhamar, 2017, p. 627; Aebi et al., 2021, p. 284.

Aebi et al., 2021, p. 284.

⁶⁸ Ibid.

⁶⁹ Berger & Scheidegger, 2021, p. 27; Estelle & Phillips, 2018, p. 270; Gendreau et al. 1999, p. 11.

Latessa & Lowenkamp, 2006, p. 521.

⁷⁰ Ibid.

⁷¹ Durose & Antenangeli, 2021, p. 1; Hunt et al., 2019, p. 34; Andersen & Skardhamar, 2017, pp. 619-620; Johnson, 2017, p. 53.

⁷² Feuerbach, 2022, p. 29; Ozkan, 2017, pp. 1-6; Sentencing Guidelines Commission, 2008, p. 2; Derenčinović & Getoš, 2008, pp. 174-177.

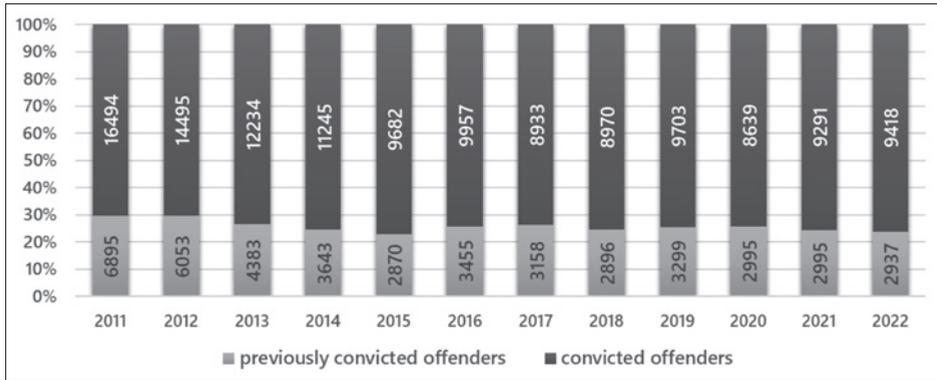
⁷³ Žakman-Ban, 1993, p. 185; Miller & Marshall, 2019, p. 16.

⁷⁴ Fischer, 2005, p. 4.

3.2. Recidivism in Croatian Criminal Justice Practice

Official crime statistics show that the share of (normative) recidivists in Croatia is relatively stable throughout the past 12 years, slightly fluctuating between 24% and 29% of those convicted adult criminal offenders who have previously already been convicted for a criminal offence (see figure 1).⁷⁵

Figure 1: “Normative” Recidivism in Croatia between 2011 and 2022⁷⁶



The significance of an individual being a recidivist is assessed by various stakeholders within the criminal justice system, and its importance varies depending on whether it involves the work of the police, the state prosecutor's office, the court, the prison administration's Diagnostic Centre, as well as probation and social services. Police officers utilise recidivism data to assess the risk of reoffending and as a basis for implementing security measures to protect victims from perpetrators.⁷⁷ Information about recidivism is also important for the state attorney in the context of assessing the risk of repeating a criminal offence, which, according to the Criminal Procedure Act, is the basis for imposing detention and proposing pre-trial detention.⁷⁸ Furthermore, the state attorney can file an appeal against the court's decision on the sanction, in order to draw attention to the perpetrators of criminal acts who continuously

⁷⁵ The research was based on data from the Croatian Bureau of Statistics, and recidivists were considered to be adult perpetrators of criminal offenses who had previously been legally convicted. For more details on the methodology and reasons for oscillations see: *Feuerbach, 2022*, pp. 7-12.

⁷⁶ The data has been partially derived from *Feuerbach, 2022*, p. 8, and was thus supplemented with the latest data available from the Croatian Bureau of Statistics for the year 2022.

⁷⁷ *Matijević, 2011*, p. 223; *Martinjak et al., 2016*, p. 137.

⁷⁸ Articles 112, 123 and 127 of the Croatian Criminal Procedure Act, Official Gazette no. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019, 80/2022. (Hereinafter: Criminal Procedure Act).

violate regulations and for whom too lenient sentences are imposed.⁷⁹ When selecting the type and length of a sanction, the court is obligated to consider the offender's prior life and previous sentences, with the legislator granting courts discretionary authority to determine whether the fact that the offender was previously convicted in a specific case is a mitigating or aggravating circumstance.⁸⁰ Although a past conviction is not strictly defined as an aggravating circumstance, it is more frequently utilised in court to justify harsher punishments.⁸¹

The prison administration's Diagnostic Centre plays a crucial role in addressing recidivism within Croatia's prison system by conducting comprehensive assessments of prisoners' medical, psychological, social, and criminological features, thus facilitating the implementation of the principle of individualised punishment, with the ultimate aim of formulating personalised prison sentence execution programs and recommending specific penitentiary facilities for the inmates' sentences.⁸² Additionally, the Diagnostic Centre performs a multiple risk assessment, which includes an assessment of the risk of repeating the criminal act.⁸³ In its operations, the Diagnostic Centre approaches recidivism from a criminological perspective, aiming to determine whether recidivism exists in reality, regardless of whether any prior criminal offence remains undetected, unsanctioned, or expunged from the criminal record.⁸⁴ For this reason, in addition to utilising data from the criminal record, the Diagnostic Centre uses information gathered from prisoners, court expertise, data available on the internet, information obtained from other individuals, and other accessible sources in its work.⁸⁵ The information collected in this manner is crucial for determining treatment needs and assessing risks; by disclosing these aspects, the prisoner is not placed in a worse position due to offences for which they have already served sentences.⁸⁶ Accurate information about whether an individual is a recidivist or a first-time offender is important in order to distinguish between different types of offenders and prevent potential "criminal infection".⁸⁷

⁷⁹ This possibility is prescribed by Articles 464 and 467 of the Criminal Procedure Act. More about the appeal of the state attorney's office due to the imposition of too light sentences by the court in: *Report of the State Attorney's Office of the Republic of Croatia for 2015*, p. 52.

⁸⁰ Article 47 of the Croatian Criminal Code, Official Gazette no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.

⁸¹ *Grozdanić et al.*, 2004, p. 570, 572, 580.

⁸² *Feuerbach*, 2022, p. 22.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p. 23.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

4. PENAL POPULISM IN VIEW OF THE FUTURE OF RECIDIVISM RESEARCH: NEUROPENOLOGY

For quite some time we have been witnessing a constant increase in **penal populism**⁸⁸ in Croatia. This should neither be assessed as “good” or “bad”, but rather as an objective factual observation. The question however arises whether there are any empirical grounds that would justify such populist discourses and whether their transposition into criminal law and practice through populist crime policy reduces crime and recidivism or rather adds to it?

Focusing on Croatia, there is little if any empirical evidence that would justify or support penal populism in terms of the need for a wider scope of criminalisation and increased sentencing frameworks or harsher punishment practices – at least not if the purpose of punishment is supposed to be any other than mere retribution and isolation of the criminal through punishment and/or incapacitation. Conviction rates have been steadily declining for the past 70 years⁸⁹ and Croatia may be assessed as one of the safest countries in Europe, esp. when considering public safety and street crime. Nevertheless, the public and policy discourse is dominated by (penal) populism with the media commonly outraged about too lenient sentences, not nearly enough criminalisation and lack of early (punitive) action towards (retrospectively discovered) potential or even repeatedly dangerous and/or violent individuals. This is particularly obvious concerning certain types of crimes, most notably sexual and violent crime, esp. committed against women and children and/or within the family.

The criminal science community which should voice some reason and facts into such discourse is either silent or even actively engages in penal populism, whereas only exceptionally we find attempts to advocate for evidence-based crime policy. To be sure, one of the reasons is to be found in the complexity of the issue at hand (crime) and the impossibility to provide simple and quick solutions, esp. none that would fit into the populist and penal tone of the current discourse. Contemplating about how to address this lack of (scientific) reason in public debates and crime-policy decision-making one might want to take a glimpse into the future of crime and recidivism research in order to predict what it has to offer in terms of strengthening the evidence-based versus the penal-populist rhetoric. Among numerous promising developments we will focus only on one in the following discussion – in our view the most interesting one for criminal justice professionals and researchers rooted in the

⁸⁸ Penal populism might best be described as use of punitive policies and rhetoric by political leaders to gain public support, often prioritizing harsh measures over evidence-based solutions in response to crime concerns. In: *Stevanović & Igracki*, 2011, p. 120; *Kovčo Vukadin et al.*, 2009, pp. 712-713; *Pratt*, 2007, pp. 8-13.

⁸⁹ For recent data on conviction rates in Croatia between 1953 and 2021 see: *Getoš Kalac & Bezić*, 2023, p. 79.

social sciences: *neurocriminology* and its specific branch which we refer to as *neuropsychology*.

Neurocriminology, a growing field of research situated at the intersection of criminology and neuroscience, “*examin[es] whether the presence of specific biological factors, such as hormone levels, neurotransmitter levels, physiological indices or brain impairments, is predictive of future offending*”⁹⁰, with an “*increasing convergence from different disciplinary perspectives that neurobiological influences partly predispose an individual to offending*”⁹¹. Essentially neurocriminology builds upon the growing knowledge that there is a neurobiological basis for criminal behaviour.⁹² Now, the idea about criminal behaviour being (neuro)biologically rooted is itself not new. It can be traced back to the very beginnings of criminology and the work of *Cesare Lombroso*, and countless others that followed.⁹³ But what is new, one might even say revolutionary, is the technological advancement that has resulted in extremely powerful and highly convincing visualisations. These have not only found their way into courtrooms, but also into the study rooms of academics from the very distant social sciences with rather limited in-depth knowledge on neurobiology. Such visualisations, admittedly, are quite convincing and have already proven to be rather persuasive in argumentation, particularly with non-expert and non-medical audiences.⁹⁴ What once was mainly gibberish to judges and jurors when listening to neuroforensic expert witnesses, and thus probably less convincing, can now be visualised as easily as putting up a normal/noncriminal brain scan next to an abnormal/criminal brain scan with colourfully highlighted regions that do not match. Just as this is to a certain extent quite convincing for jurors and judges, it is likely to be rather convincing for policymakers and the general public. It is exactly here that we predict that neurocriminology will make a major future impact by dramatically changing the way we “see” criminals and based on that decide how to treat them.

Now, for the purpose of demonstration, we make use of visualisation in order to showcase our point. The following figure according to *Glenn et al.* “*shows a schematic diagram of brain regions that are activated only in moral decision making (green), regions that are impaired only in antisocial groups (red), and regions common to both antisocial be-*

⁹⁰ Cit. *Glenn & Raine*, 2014, p. 1.

⁹¹ Cit. *ibid*, p. 8.

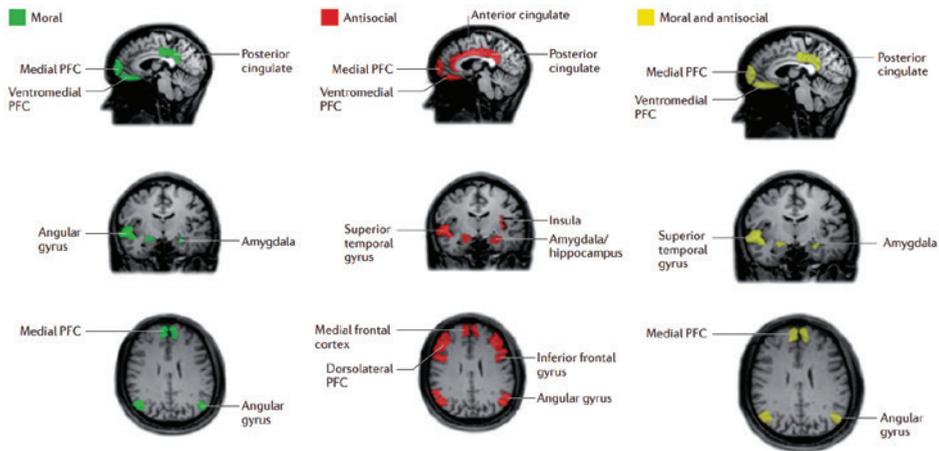
⁹² *Ibid*, 2014, p. 1.

⁹³ For basics about the history and evolution of theory in criminology see for example the relevant chapter on criminological aetiology in: *Derenčinović & Getoš*, 2008, or chapters 22-41 in *Miller*, 2009.

⁹⁴ For a review of studies investigating the effects of neuroscientific evidence on general and legal decision-making, esp. studies examining the effect of neuroscientific evidence (both imaging and non-imaging) on verdicts, sentencing recommendations, and beliefs of mock jurors and judges presented with a criminal case, see for example *Aono et al.*, 2019, s.p.

haviour and moral decision making (yellow)⁹⁵, whereby the displayed “overlap gives rise to the ‘neuromoral’ hypothesis of antisocial behaviour, which states that some of the brain impairments that are observed in antisocial individuals disrupt moral emotion and/or decision making, thereby predisposing individuals to rule-breaking, antisocial behaviour.”⁹⁶

Figure 2: Common neural circuits in moral decision making and antisocial behaviour⁹⁷



Having looked at the figure and the displayed differences in brain regions one is rather easily persuaded that there actually is a neurobiological root of criminal behaviour, even if one has no clue of how the brain works or what this might or might not imply, let alone prove. Fact is – the **visualisation power of neuroimaging** is enormous and as the technology producing it gets more available, we will see a steadily growing increase in its usage throughout the criminal justice system, where it will surely also empower evidence-based crime policy – be it for the better or the worse.⁹⁸

Finally, in the context of neurocriminology and for the purpose of the paper at hand we refer to the area of neurocriminology which deals specifically with sentencing (impacts and consequences) and recidivism as **neuropenology**. By providing a selection of exemplary neuropenological findings we do not aim to advance current knowledge and understanding of recidivism and the best ways of dealing with

⁹⁵ Cit. Glenn & Raine, 2014, p. 4.

⁹⁶ Cit. ibid, with reference to Raine, 2013.

⁹⁷ Figure and figure title are reproduced from Glenn & Raine, 2014, p. 4.

⁹⁸ The power of visualisation and “simplification” of complex criminological phenomena and even crime in more general terms cannot be underestimated. For a rather recent development (and case in point) on the power of data visualisation by using “crime indexing” see for example section 3 of *Der-enčinović & Getoš Kalac*, forthcoming 2024.

it based on neuropenology – in order to achieve such a goal, a separate and much broader review is needed. We rather strive to point out that such research exists and – even though it is extremely far away from social sciences and sometimes challenging to fully comprehend – that it is worthwhile to get familiarised with. There have already been first feasible examples of using only neuroimaging data for recidivism prediction on forensic psychiatric samples,⁹⁹ while other studies have checked for the added value of neurobiological measurements used in addition to demographic and behavioural measurements, and found that the neurobiological measures improved the predictive models.¹⁰⁰ Another study found that “*structural brain components related to age [...] distinguish offenders who are likely to re-offend from those who do not re-offend*”¹⁰¹. Traumatic brain injury (hereinafter: TBI) has been highly associated with criminal behaviour, but few studies have been conducted to predict recidivism by focusing on TBI. One such study “*examine[d] whether inmates with TBI are more likely to be rearrested post release than those without TBI*”¹⁰² and its results “*suggest a link between TBI and rearrest following incarceration*”¹⁰³. Now, clearly this is only a first and very limited glimpse into a few examples of research going on in neuropenology and/or using neuroimaging, but it nevertheless enables us to predict that criminology, just as criminal law and practice, will in the future have to approach the subject of their engagement – crime – in a far more transdisciplinary way than has been the case thus far. This would in turn also increase the prospects of evidence-based crime policy and the chances for introducing (scientific) reason into the current populist public and media discourse about crime and criminals.

5. CONCLUSION

Recidivism research – internationally as well as domestically – still faces countless challenges. In relation to evidence-based crime policy and the question of “what works” in preventing individual recidivism as well as overall rates of recidivism, the most evident one is the lack of solid evidence on the actual effectiveness of rehabilitation programs and measures or their power to reduce recidivism.¹⁰⁴ To a considerable extent, the same applies to statistical and clinical predictive and prognos-

⁹⁹ For example: *Delfin et al.*, 2019, s.p.

¹⁰⁰ So: *Zijlmans et al.*, 2021.

¹⁰¹ Cit. *Kiehl et al.*, 2018, p. 819.

¹⁰² Cit. *Ray & Richardson*, 2017, p. 475.

¹⁰³ Cit. *ibid*, p. 483.

¹⁰⁴ In more detail: *Day*, 2020. See also: *Ellison et al.*, 2017, or *Beaudry et al.*, 2021, who “*report modest effects, at best, for psychological interventions delivered in prison*” based on their systematic review and meta-analysis of “*randomised controlled trials that evaluated the effect of psychological interventions, delivered to adolescents and adults during incarceration, on recidivism outcomes after release.*” Cit. *Beaudry et al.*, 2021, p. 759 and 771.

tic methods and tools that aim at identifying probable recidivists throughout their criminal justice processing as the basis for (scientifically informed) decision-making about detention, sentencing, incapacitation, (post-penal) treatment etc. Although here we have come a long way in evidence-based predictive decision-making, “[p]rimary reliance is [still] placed on the use of intuitive human judgment in many situations calling for a prediction of future crime”¹⁰⁵. Based on such a current state of the art in recidivism research, esp. the one detected in the Croatian context, it might be worthwhile to more actively consider qualitative as well as ethnographic research approaches and to shift our attention to *convict criminology*¹⁰⁶, perhaps even to replicate and further develop a recent pilot study on the causes of recidivism conducted by the United Nations Office on Drugs and Crime in late 2019 and early 2020.¹⁰⁷ Such approaches not only enable a deeper insight into crime, recidivism and their causes, but simultaneously ensure that convicts and prisoners are not degraded to mere objects of scientific research, rather than its active subjects to be treated as (the most) relevant stakeholders of crime and recidivism reduction efforts.

In the Croatian context such a shifting perspective would first and foremost call for a systematic and institutional approach towards the ethics of prison research. This would include the establishment of a specialised ethics committee tasked with reviewing research proposals involving prisoners, with the aim of ensuring compliance with ethical guidelines and minimising potential biases. Obviously, a precondition would be to come up with clear and comprehensive guidelines for conducting research involving incarcerated individuals. These guidelines should encompass aspects such as informed consent, participant protection, data privacy, and the psychological well-being of participants. Facilitating collaboration between prisons, research institutions, and community organisations is of great importance, and a transparent review and approval process should be considered as a prerequisite for conducting research in this highly sensitive context. A more systematic approach should thus enable the prison administration to gain maximum benefits from the conducted research and its findings in terms of evidence-based crime policy with focus on reducing recidivism as well as crime in much more general terms.

Finally, the perspective we (unconsciously) take on crime and recidivism fundamentally determines how we see and understand criminal behaviour. Whether from a criminological, normative or penological perspective, or a practical, vs. scientific perspective, our efforts must ultimately be rooted in empirical realities with the aim of crime and recidivism reduction. Otherwise, we simply continue adding to the ‘gibberish’ discourse about criminal behaviour, instead of advancing insight into harmful

¹⁰⁵ Cit. *Monahan*, 26.07.2023, s.p.

¹⁰⁶ See *Richards & Ross*, 2001; *Jeffery et al.*, 2016, p. 168.

¹⁰⁷ *UNODC*, 2022.

behaviour that might enable us to better protect society and individual victims from harm and suffering. That is why we see much room for improvement and urge for transdisciplinary approaches in the study of crime and recidivism in Croatia, most notably by introducing the idea of *convict criminology* and thus focusing on evolving new fields of research such as *neurocriminology* and *neuropsychology*.

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Sažetak

O (M)JERENJU RECIDIVIZMA, PENALNOM POPULIZMU I BUDUĆNOSTI ISTRAŽIVANJA RECIDIVIZMA: NEUROPENOLOGIJA

Opća je kriminološka spoznaja kako recidivizam – povrat u kriminalno ponašanje – predstavlja ključni prediktor budućeg kažnjivog ponašanja, odnosno riječ je o 'hardcore' kriminogenom faktoru, posebice kada se javlja u mladoj životnoj dobi. No, unatoč njegovoj istaknutosti i važnosti kako u kriminologiji tako i u kaznenopravnoj znanosti i praksi, postoji stalna konfuzija oko koncepta i društvene konstrukcije recidivizma, njegove osnovne terminologije, pristupima njegovom mjerenju (i metodologiji), te konačno o tome kako se s recidivizmom najbolje nositi. Predmetnim radom nastojimo razotkriti barem neke od velikih prijevora koji okružuju recidivizam i njegovo izučavanje, adresirajući posebice domaće kaznenopravne stručnjake i znanstvenike, budući da smo uočili stanoviti nedostatak relevantnih i ažurnih hrvatskih publikacija o ovoj temi. Umjesto pukog predstavljanja i zagovaranja bilo koje od konkurentnih perspektiva, poput one kriminološke, normativne i penološke ili pak one praktične ili radije znanstvene, kritički ćemo analizirati svaku od njih, ističući njihove prednosti i nedostatke, dok se čitateljima prepušta odabir jedne ili više njih – ovisno o vlastitim perspektivama i potrebama. Pored navedenoga u radu se raspravljaju ključni nalazi iz područja izučavanja recidivizma u kontekstu stalno rastućeg penalnog populizma, a kojeg obilježava rastuća kriminalizacija te proširivanje okvira kažnjavanja kao i stroža praksa kažnjavanja, što posebice pogađa recidiviste. Netom navedeno se odvija u kontekstu populističkog javnog i medijskog diskursa o kriminalu i kriminalcima, a koji učinkovito potkopava svaki pokušaj uvođenja kaznene politike utemeljene na dokazima. Međutim, vremena se mijenjaju i budućnost istraživanja recidivizma, predvođena neuropenologijom, mogla bi nam pružiti novu vrstu znanja i razumijevanja potrebnih za suzbijanje penalnog populizma.

Ključne riječi: recidivizam, kriminalni povrat, penologija, penalni populizam, neuropenologija