

*Bulgarian Sociology:  
Reflections on the Discipline and Disciplinarity*

**PUNISHMENT AND POWER:  
TOWARD THE HISTORICAL SOCIOLOGY OF SOCIALISM**

Martin Kanoushev

*abstract:* The motive that guides me in such a study is utterly simple and extremely complex: this is curiosity – in any case, the only type of curiosity that deserves the effort to practice it with some degree of perseverance – not the one that tries to appropriate what is suitable to know but the one that allows you to get free from yourself. How much would the strife for knowledge cost if it were supposed to propel only the acquisition of knowledge rather than – in a certain way and as far as possible – the confusion of the one who cognizes? For what is sociological reflection in one of its inseparable parts, if not a critical work of thinking on the thinking itself? And, instead of legitimating what is already known, does it not consist in the endeavour to understand how and how far it is possible, to think differently? There is always something unworthy in a sociological discourse when it wants, from without, to be the law for the other human sciences, to point out to them their truth and how they should discover it, or when it gets down to accusing them of uncritical positivity; but it is its right to study what can be changed in its own thinking, through the exercise of a knowledge otherwise foreign to it. ‘Experience’ – which is a changing trial of yourself in the game of truth, rather than a simplifying appropriation of the other for the goals of communication – is the foundation of historical sociology, at least as long as it is understood as a critical work on our own thinking.

**The Total Codification of Social Danger**

The Bulgarian Penal Act of 1896 does not have the notion of ‘danger’ as related to either the deed or the doer. It has justly been described as a product of ‘the classical school in law’ and as subjected to ‘the formal-dogmatic method’. Its Article 1 reads: ‘A crime or a perpetration is any deed that has been declared by the law as being such.’ Although the creation of this Act took into account ‘the newest inquiries in criminal law and of those legislations that are deemed the realization of the latest developments of science’, there is no concept of danger here. Here is the opinion of the Act’s authors on death penalty: ‘the Commission, in taking into account the geo-

graphical location and the experience of our courts, as well as the diverse degrees of cultural development that can be found in our territory, found it necessary not to eliminate capital punishment. In the same time, however, it did restrict its negative aspects: it is provided solely for four types of offence that have extraordinary importance'. You can see it well: even death penalty is related not to the social dangerousness of the deed but to crimes that have extraordinary importance. And criminals 'by habit or by way of craft' and repeated offenders, after serving one punishment, are not qualified as subjects dangerous to society.

Socialist law makes an important historical change through the total codification of social danger in two modes: danger of the deed and danger of the doer. Thus, Article 2 of the Penal Code of 1956 qualifies crime as 'any socially dangerous act (action or inaction) that has been done guilty and has been declared by the law as punishable'. Article 3 then add that 'socially dangerous is the act that threatens or damages the state order or social order of the People's Republic or the legal order that it has established'.

The logic of the socialist legislator is this: 'in clarifying the concept of crime, the old formalistic bourgeois notion of a deed declared a crime by the law was abandoned as completely useless. In its stead, the legislator adopted the socialist notion that has a new content and has already established itself in Soviet science and practice. The most important qualitative feature of crime is its social danger. It is through social danger that the class nature and the material essence of the deed became clear.'

Crime in socialist law has three elements: social danger, class nature and material essence.

1. Social danger is due to the objective contradiction between the deed and the interests of society. Every crime has a negative impact on the development of society; it destroys social relations, counteracts their strengthening, undermines their state, changes them and decomposes them. The danger of the deed obstructs the regular process of progressive social development that is directed toward the construction of socialism.

2. The class nature of the crime reflects the fact that it is always an act directed against the interests of the class that dominates in the given society. However, only under socialism is there a coincidence between the interests of the ruling class and the interests of society; hence the coincidence between class danger and the social danger of the crime. Therefore crime as an act of danger to the working class is also socially dangerous. And conversely, what obstructs social development, contradicts also the interests of the working class.

3. The material essence of the crime consists in its being dangerous to the system of social relations that correspond to the interests of the working masses organized into a ruling class. The bourgeois formal definition as a 'illegal, guilty, and punishable deed' does not put forward the material content of the crime, does

not demonstrate its social and class essence, namely that it is a derangement of the conditions of existence of socialist society.

To sum up: the line of ‘danger – protection – order’ constructs the juridical normativity in which crime and punishment function in socialist law. If the social danger of the crime consists in its having a negative impact on progressive development, then the punishment has the task to protect the interests of the working class and the whole working people from illegal crimes, with the purpose of maintaining the established socialist order.

## **The Double Role of Socialist Punishment**

In the eve of the October Revolution of 1917 in Russia, Lenin formulated the three tasks of the penal politics of the future socialist state. First, the proletarian revolution must destroy the bourgeois judicial apparatus and create new penal bodies. Second, the working class cannot keep the power without decisive struggle, including with the means of penal justice, against every resistance of exploiting class. Third, as early as in the very first days of the revolution, penal justice must be a tool also for the education of people in the spirit of the socialist society.

Against this background, one can see the double role of punishment: it must combine repression and persuasion. Hence the specific requirements for an efficient penal politics: a) Punishment as a form of coercion is only necessary as far as the pursued goals cannot be achieved by educational means and by the way of persuasion; b) Death penalty and imprisonment are justified only in case that the other sanctions, in which educational elements are predominant, are not sufficient; c) In executing the punishment, the goals of correction and re-education of convicts and of educational influence on citizens have priority over the goals of deprivation of the possibility to commit new crimes and the goals of intimidation.

Thus, during the transition period, the punishment must rest on the principle of revolutionary expedience: it has a class nature and is a weapon in the hands of the working class for the protection of the state and social order that this class has established. The criminal actions of the overthrown hostile elements against the people’s power are a direct expression of class struggle and invoke decisive measures against them. The victory of the revolution requires the merciless suppression of the resistance of reactionary classes. The principal bases of revolutionary expedience require that no crime be left undiscovered and no criminal unpunished.

But, together with that, punishment has also another crucial role. It is a ‘fully appropriate means’ not only of repression but also for the construction of a whole sphere of positiveness – it must support the progressive development of the socialist society. There is the principle of moderation of repression, of a penal minimum

without which the goals of protecting the society and of restraining crime could not be achieved, despite the fullest recourse to other methods. Yes, indeed, ‘the enemies of the people’ must be liquidated, and as soon as possible, but all others need a corrective technology. The preventive importance of punishment depends not on its severity and cruelty but on its inevitability. Hence the third principle: not a universal ‘penal clemency’, a universal restriction of repression, but a differentiated and individualized approach; therefore not uniform and monotonous punishments but a real diversity of preventive, corrective and educational measures.

Such an ‘economy of repression’ can be also read in Article 21 of the Penal Code of 1956. ‘Punishment is imposed with the purpose of: 1) Disabling the enemies of the people; 2) Depriving the doer of the possibility to commit other crimes; 3) Correcting and re-educating him toward observing the rules of the socialist society; and 4) Exerting an educative influence on the other members of society’. We see again this double role: punishment is a power instrument of constructing socialism and a pedagogical method of overcoming the legacy of capitalism. It must contribute to the socialist education of the working people who are ‘contaminated with the illnesses of bourgeois rot’; it must serve as a means of overcoming the remnants of capitalism in their consciousness that lead to breaking the socialist rules. And, since the social danger of the doer directly depends on the degree in which the remains of bourgeois education that have found their expression in the committed crime are ingrained in his consciousness, this also determines the possibility of educative impact on him.

But what is that generalized means of re-education of unstable members who have to become an adequate part of the future society? It is labour – the labour that is ‘the duty and honour of every citizen’, corrective and collective labour, the educative and beneficial impact of labour for the public good.

There is no doubt that here ‘coercive labour’ means social labour with two related elements: a collective interest in punishing the convict and a visible, controllable nature of the punishment. In this way, the criminal subject pays double: first by the work he does and second by the signs he produces. And due to the fact that idleness is the main cause of a large part of crimes, this means a universal socialist pedagogy of labour. Corrective labour must be an essential part of the re-education and gradual transformation of the convicts. It should not be viewed as a complement and an aggravation of the punishment but as an alleviation of which one can no longer be acquitted. Every convict has the duty to work. But nobody can be forced to stay idle. In short, labour is a fundamental principle, being both a duty and a right.

In comparison to the bourgeois juridical development, the socialist law creates in the 1944-1956 period only two new punishments: corrective labour without deprivation of freedom, and public censure. No doubt, both innovations are directed not to the repressive purpose of punishment but to its positive task – the re-education

of convicts. Therefore, the core of legal punishment is not so much death penalty and freedom deprivation (yes, they are necessary and justified against the enemies of the people and criminals) than corrective labour as an instrument of corrective intervention. It is not only an independent and alternative punishment but also the most important tool of re-education of prisoners: ‘their punishment is accompanied by an appropriate work, as two working days count as three days of imprisonment’.

To sum up: in the centre of the penal economy of the socialist society, there is the labour-corrective impact on its unstable members. It is not by chance that there was, among Bulgarian jurists in the 1944–1956 period, the consensus that it is ‘this impact that represents the radical difference between socialist systems of educational influence from the regime of bourgeois penitentiary systems’. Thus the political testament of Lenin to the whole future history of the socialist law becomes understandable: in 1919 he stated that the sphere of enforcement of punishment by justice needs: 1. A greater percentage of suspended sentences; 2. A greater percentage of public censure; 3. A more frequent replacement of freedom deprivation by corrective labour; 4. A more frequent replacement of prison with educational institutions; 5. The introduction of comrades’ courts (mostly in the army and among workers), and the engagement of the whole working population in performing the duties of judges in these courts, and thus the system of punishments should be replaced by a system of educative measures.

But what is the goal of educative punishment, what is the final aim of the labour-corrective impact on convicts? This aim is their overall transformation and gradual creation of a new type of man. The penal system, through the correction and re-education of the unstable members of the society, represents a machine of producing socialist people.

### **Punishment and Education: toward a New Economy of Repression**

On 15 March 1968, a new Penal Code was passed in Bulgaria. The question is: what state policy to implement through that law which corresponded to the ‘established developed socialist society and guarantees its efficient protection’. The economy of penal repression in the Bulgarian version of classic socialism contains three main requirements.

The first one is to use the possible minimum of repression, optimally combining coercive and educative elements in punitive measures. In the socialist society, there is the tendency for crime rate to decrease, as a result of which the sphere of state intervention in fighting crime is narrowed down while the sphere of application of the ethical factor is widened. The second is to maximally increase the efficiency

of educative impact by differentiating penal liability and improving the system of punishments. Therefore, severe punishment is provided for grave crimes and dangerous recidivists, while for the lighter offenses there is the possibility for judicial intervention without the isolation of the doer from the society. The third is to urgently increase the role of the socialist public in the fight against crime by replacing penal repression by measures of public impact. The result: personal persuasion and educative impact are the key elements for the successful application of legal norms.

Thus, the power strategy is to increase the social efficiency of the punishment, which is supposed to correspond to the new historical conditions, as the result of the establishment of developed socialist society. Let us make a demonstrating comparison. According to the Code of 1956, the purpose of punishment is: 1) to disable the enemies of the people; 2) to deprive the doer of the possibility to commit other crimes; 3) to correct and reeducate him toward observing the rules of socialist society; 4) to exert an educative impact on the other members of the society. The Code of 1968 points that it punishment is imposed with the purpose: 1) to correct and reeducate the convict toward observing the laws and rules of socialist community; 2) to act preventively on him and deprive him of the possibility to commit other crimes; and 3) to act educatively and preventively on the other members of the society.

The differences are evident: for the 1968 Code, special and general prevention are achieved first of all by educative impact, then by preventive impact, and only finally by the preemptive impact of imprisonment. Hence the need for the differentiation of methods, for a greater diversity of punishments: widening the scope of non-imprisonment punishments; severe procedure of determining the punishments in repeat offences and recidivism; flexible rules for application of educative measures on juvenile offenders; more opportunities for suspended sentences and pre-term release; wide application of discharge in replacing imprisonment by measures of public impact. The slogan: this diversity is directed toward a fuller utilization of the potential of penal repression in the fight against crime, with regard to increasing its efficiency in applying the softest possible forms of educative impact.

Let us now compare the systems of punishments: in 1956, there are capital punishment, imprisonment, correctional labour, confiscation of a part or the whole of property, fine, deprivation of rights, and public reprobation. In 1968, there were capital punishment, imprisonment, correctional labour, confiscation of extant property, fine, compulsory settlement without imprisonment, deprivation of the right to occupy a certain state or public position, deprivation of the right to exercise a certain profession or activity, deprivation of the right to live in a specific locality, deprivation of the right to receive medals, decorations, honorary titles and insignia, degradation of military rank, public reprobation.

The logical conclusion is: there is a process of overall alleviation of repression according to the principle that the most important in fighting crime is not the

severity or length of punishment but its inevitability. This is a process of humanization of socialist law and justice, of decreasing the severity of sanctions for light crimes, of increasing the moral and educative elements, of restricting coercion and isolation, of a wide application of suspended sentences and discharge. This is supported also by the logic of the legislator who, in creating the system of sanctions in 1968, was guided by the actual state of criminality. There was a relative stability and in some periods even an increase of the absolute number of some types of crime. This imposed the retaining of the most severe types of punishment but also the introduction of new measures that would contribute to the achievement of the goals of the law with the most sparing use of repression. The result: the main part of heretofore applied punishments are retained, the uniform ‘deprivation of right’ is replaced by deprivation of diverse types of right, only one new punishment is introduced – compulsory settlement.

The first question is: does a new rationality of penal economy lie behind the official manifesto of socialist law, justice and the legal profession claiming a ‘universal alleviation of repression’, behind what is represented as a homogeneous process of ‘sanction frugality’? In fact, rationality is related to an all-round, detailed and precise differentiation of the ‘object’ of power intervention: on the one hand, maximum punitive severity against repetitive and recidive crime, on the other hand, preventive and educative measures against light crimes, first-timers and juveniles. The second issue is: yes, indeed, if certain alleviation can be observed at the level of the intensity of the punishment, at the level of its social dimension one must diagnose a move thorough and more profound penetration into the Bulgarian society. For the diminished severity of repression, jurists most often cite the argument of restricting the field of application of capital punishment. As an additional argument, they adduce the significant widening of the scope of non-imprisonments: correctional labour, confiscation, and fine. But all of these arguments only cover the intensity of repression and not its all-inclusiveness. The reverse side of the process is seen in the split of the unified punishment of imprisonment into five independent sanctions representing deprivations of ‘social’ rights. This demonstrates a new phase in the development of punishment at which it is already directed toward an increasingly wider range of diverse rights; therefore it aims at subduing increasingly more aspects of the life of the individual, related to his public, professional and personal activity. An important example of this direction of development is a punishment introduced in 1958: deprivation of the right to live in the country’s capital and the centers of the counties. In the 1968 Code it is already formulated in a new way: as the deprivation of the right to live in a specific locality. The purpose of this punishment is to take the convict out of a community that has influenced him negatively, to detach him from an environment that has facilitated his criminal activity, to put him under conditions would precluding the possibility to continue with that activity. But the restriction of

the sanction only to depriving of the right to live in the capital and the county centers could not fulfill the task. As a result, the new juridical formula was introduced in 1968, which widened, in practice, the social scope of the punishment to the maximum. The court received the discretion to decide what would be the locality of which the convict is to be deprived, with regard to the past negative influence and the future need to overcome it. The third question is: are we not witnessing, in fact, an important transition in the very dominating principle of socialist punishment, a transition from legal sanction to security measures, from correctional confinement to constant surveillance, from imprisonment to compulsory settlement? In short, does the 'progressive humanization of punishment' not conceal another process related to the accelerated creation of a new system of security whose purpose is to guarantee total control over convicted individuals? This system of security measures does not coincide with either the prison institution ('deprivation of freedom' where the convict is under the surveillance of specialized staff), or the state enterprises and institutions ('correctional labour' where he is under the surveillance of the collectivity of comrades), or the sanction of property and finance ('confiscation' and 'fine' which have an important but one-off function). This is proved by the only new punishment codified in 1968: the compulsory settlement that may be ordered separately or follow an imprisonment. In this punishment, both the preventive character and the educative direction stand out: it aims at restricting the convict's ability to commit new crimes, at exerting an educative impact on him and preparing his transition to complete freedom. The punishment consists in depriving him of the right to leave a certain locality without the permission of the People's Militia (i.e. the police) for a term of 1 to 3 years, and in the case of dangerous recidivism, up to 5 years. The containment of convicts is guaranteed both by the right of the People's Militia to return them forcefully in any case of defection and by the liability postulated for this crime: whoever leaves without permission the place where he is serving the sentence of forceful settlement, is punished by imprisonment of up to 1 year. The punishment aims at keeping the convict constantly in a locality of which it is believed that his residence would be least dangerous with regard to committing new crimes and exerting corruptive influence, at creating the possibility of constant surveillance on his behaviour and of timely prevention of antisocial actions. Together with that, the forceful inclusion into socially utile labour and organized educational work aims at his gradual development as a genuine working citizen of the socialist society. Those sentenced to forceful settlement may be released, before the end of the term, from serving the rest of the punishment, if they prove their correction by their good behaviour and honest attitude to work.

## **The Prison: Deprivation of Freedom or Ideological Re-education of Convicts**

The prison is a place of execution of the punishment and an apparatus of reform; the confinement must comprise both the deprivation of freedom and the technical transformation of individuals. Therefore, the prison is not a simple continuation of the legislative and the judicial institutions; it is always laden with a penitentiary addition. In its turn, the socialist law can function efficiently only if the prison is an all-round endeavour of transforming the convicts. And if the juridical principle is the deprivation of freedom – the pure essence of confinement – the penal institution is justified solely by its results of re-education.

Firstly, what is the socialist doctrine on the peculiarities of the deprivation of freedom? This punishment is justified: when it is necessary for the convict to be deprived from the possibility to commit other crimes; when an intensive preventive impact is necessary on him and on the unstable members of the society; when it is necessary to subject him to a systematic and organized educative influence under specially created conditions. If any one of these social necessities is missing, the deprivation of freedom, even if deserved and just, is not socially justified because the purposes of punishment may be achieved by lighter measures.

Secondly, how does socialist confinement surpass the simple deprivation of freedom? First of all, the prison must be a totalizing, differentiating and individualizing apparatus. Totalizing, because it must encompass all aspects of the personality of the convict, with his physical and ideological change, with his ability for work, with his everyday behaviour, with his moral attitude, with his propensities. Differentiating, because it must obliterate the harmful consequences to which it leads by bringing together diverse categories of detainees: it cannot turn them into some kind of homogeneous and united criminal population. Individualizing, because it is based on the principle of isolating the criminal from the outer world, from all that has motivated the crime, from the complicities that have facilitated it and the environment that has formed him. But the prison also aims at becoming an instrument of modulation of the punishment. The correct length of freedom deprivation must vary not according to the gravity of the crime but parallel to the concrete development of the punishment. For it is the results of confinement that are to define its mandatory stages, temporary aggravations, consequent alleviations. In short, the conditions of serving the sentence will have to be modified according to the changes in the personality of the convict. If in terms of the law the punishment may be really is deprivation of freedom, the imprisonment that provides that punishment contains a project of transformation of the individuals.

There are seven principles through which socialist prison exists, but there is also one meta-principle that overrides them: the political educative work.

The principle of correction: the penal confinement must have as an essential function the transformation of the behaviour of the individual. The regime in the prison is the key tool of correcting the detainees, but also an element of the deprivation of freedom. Therefore, it plays a double role: it punishes and it educates. The repressive aspect is expressed in the restrictions of the legal status of the convicts. The educative impact is achieved by the means of order and discipline. Rewards are: public expression of gratitude; extra visit, additional letter or food parcel; extending the time of staying outdoors; increasing the sums for personal needs for 1 month; monetary and object prizes; furlough for up to 5 days. Punishments are: calling to order with warning; reprimand; extra cleaning shift for up to 7 days; deprivation of the right to cultural or sports events for 1 month; decrease of the sums for personal expenses for 1 month; deprivation of right to correspondence for 3 months; deprivation of the right to food parcels – for 3 months; deprivation of the right to visit for 3 months; isolation into a punitive cell with being taken out to work – up to 14 days; isolation into a punitive cell without being taken out to work – up to 14 days.

The principle of classification: convicts must be isolated according to the penal gravity of the crime but first of all in accordance with their age and inclinations, according to the used corrective techniques, according to the phases of transformation and the occurring changes in the person. Differentiated confinement aims at restricting the negative sides of freedom deprivation and creating optimal conditions for educative efficiency. Hence the differentiation of the places of confinement: prisons for recidivists, for women, for convicted for crimes against the People's Republic, and for the rest of convicts; penitentiary houses for minor boys and girls; closed, semi-open and open boarding houses of labour and correction. The differences are the types of prisoners placed in them, the degree of isolation and the restrictions of legal status. There is also the differentiated confinement of convicts according to the type of regime of security within prisons: light, general, strict and enhanced strict security regimes. There is no light regime in the prisons for recidivists but there is a special regime for misdemeanors during the serving of the sentence. In penitentiary houses, the regime is only general and strict, and in the prison for women it is light, general and strict. The differences are the degree of isolation, the character of guarding and checking, the participation in work and the political-educative work, the number of visits, letters and parcels, the stay outdoors and the sums for personal needs.

The principle of modulation of punishments: the deployment of punishments must be modified in accordance with the individuality of detainees, the achieved results, the proven manifestations of progress and incorrigibility. ‘The punishment corresponds to the crime’, says the law and justice. But the prison adds: the gravity of punishment depends not only on its type and amount but to the specific manner of its execution. Hence the necessity of a specific method: the progressive system is a

gradual alleviation of the conditions of serving the sentence in dependence of the positive changes in the behaviour of the inmate which are to represent results of the stages of the educative influence on him. The closed case: the court may order pre-term suspended release (acquittal from serving the rest of the sentence) to a convict who, with his exemplar behaviour and honest attitude towards work, has given proof of his correction and has factually served not less than half of the punishment.

The principle of labour as an obligation and labour as a right: labour must be the most essential part of the transformation and gradual re-socialization of detainees. It must not be considered as an addition to and an aggravation of punishment, but as an alleviation of which it is not possible to be deprived. Every convict has the legal obligation and right to work, nobody can be forced to stay idle. This is a universal pedagogy of the labour that must be socially useful, systematic, and intense; to be collective and qualified; to correspond to the political-educative work and to impose personal interest. And although labour is obligatory, it is not a punishment for the committed crime but a means of creating positive habits in the convict; it is useful not as an activity of production but through the positive effects that it has in the human constitution: the principle of order and discipline. Punitive labour must be conceived as a power technology that transforms the inmate into a particle fulfilling its role with perfect regularity. Two days of labour are equalized to three days of freedom deprivation, since in labour, the process of re-education is accelerated, and thus the working inmate will become corrected very soon. The law, however, may permit the cancellation of taking into account some working days: this is because it is possible that the educative process is decelerated and the progress toward correction is minimal.

The principle of penal education: it is simultaneously a preventive measure in the interest of the society and an obligation before the detainee; all inmates that do not have the basic degree of education are subject to general education. Therefore, it serves as a penal instrument; the question of taking one to the prison institution is a question of educating: this is the thesis of socialist law. The treatment imposed on the inmate must aim at his general and professional education, to its improvement and enhancement. Penal education is an independent tool of correction and re-education. Its importance is determined by the link that exists between education and criminality. In its turn, the increase of the education of inmates will have a direct relation to the decrease of criminality. On the other hand, training exerts an educative impact not only by increasing the level of education but through the very process which creates working habits and teaches order and discipline to the convicts. And finally, the schools in prisons are ideological centers that contribute to the implementation of political-educative work.

The principle of the technical control of confinement: the regime in the prison must be controlled and taken on by a specialized staff having the moral and technical

abilities to take care of the correct reforming of individuals. The detachment commander is a key figure in the organization of the socialist prison; it must be ‘a perfect supervisor and pedagogue’. His tasks are: to study systematically and purposefully the personality of each convict; to see to the quality implementation of study classes; to organize collective political-educative events; to carry out individual educative work; to reinforce the relations of inmates to their families; to review their correspondence; to contribute to the observance of regime, order, and hygiene; to stimulate the participation in socially useful labour and the work competition; to take care of the general and professional education; to aid the guards; to make proposals for rewarding and punishing; to give opinions on pre-term releases; to conduct final conversations with those about to be released; to lend them assistance in employment and housing.

Principle of additional institutions: confinement must be followed by measures of control and support up to the definitively new adaptation of the former prisoner. The stabilization of the results of the correction of released inmates is a long process encompassing their employment and housing, the surveillance and monitoring of their behaviour, the carrying out of post-penitentiary work in accordance with their personal particularities. An example of this is the monitoring commissions whose activity is related not only to the re-education of convicts but also to the arrangement of their life after releasing. These commissions exert public control over the activity of correction; assist the political-educative work and the labour process; make proposals of changing the regime and transferring inmates; take care of the inmates’ families in the education of their children; they assist the released persons to find employment and housing and take care for their good behaviour and correct development. Therefore, the monitoring commissions not merely exert public control over the process of re-education of the convict during the serving of the sentence. They are an additional institution to the prison which aims at monitoring him also after the release; it is one of the mechanisms of constant surveillance over the whole behaviour of former prisoners.

The meta-principle of ideological re-education: the political-educative work permeates and overrides each principle of the socialist prison. The participation in this work is a right and an obligation before the detainees. It encompasses the regime, the labour and the education, since it is supposed to create the ideological prerequisites for the increase of their efficiency. But parallel to that, by its specific methods of ideological impact, it must eradicate the negative traits and the incorrect beliefs of the inmates. The political-educative work has the following tasks: enhancing the general education and culture of convicts; formation of a correct worldview and political awareness; eradication of the remnants of capitalism and enlarging their socialist legal awareness; creating a correct attitude towards the committed crime; inculcating habits of collective life and comradely aid; strengthening the links

to the family and the working collective; eradicating the negative and forming positive traits of character; protection from the negative influence of the prisoners environment. Thus we may understand the statement of Makarenko that ‘labour and training without political education are a neutral process that does not yield any positive result. They are only possible as a part of the overall system of political-educative work. Its goal is the ideological re-education of those deprived of freedom.’

### **From Confinement to Half-freedom: on the In-efficiency of Punishment**

In 1982, an overall reform was conducted in the serving of punishments, which marked a gradual transition from correctional confinement to a life in half-freedom. Its principles constitute the social logic of functioning of the punishment under the conditions of late socialism: the heavy punishment does not educate, therefore crossing a certain limit in repression makes it meaningless and turns it into an end in itself, it undermines its educative and preventive-restraining impact. The reform aims at the accelerated and detailed implementation of penal responsibility: heavier sanctioning of crimes and criminals representing a higher degree of social danger, especially recidivists, but also the provision of more possibilities to acquit persons committing for the first time actions with a low degree of social dangerousness.

Thus, the central point of the reform of 1982 is the maximal perfection of the regime of serving the punishment of imprisonment: as an affiliation to prisons, boarding houses of penal labour are created of three types: open, semi-open and closed; the differentiated placing of convicts by places of confinement and within these is made more thorough; the rules of regime and discipline correspond more fully to the qualitative peculiarities of the different categories of prisoners. The open boarding houses of penal labour is where first-time offenders are placed who are sentenced to imprisonment up to 1 year for premeditated and 3 years for negligent crimes. Those sentenced for the first time to imprisonment from 1 to 3 years for premeditated and over 3 years for negligent crimes serve their sentences in semi-open boarding houses of penal labour. A number of alleviations are provided for these two categories of prisoners: in open boarding houses, convicts are under an alleviated surveillance and work outside the controlled area without guards. In the semi-open boarding houses prisoners are under an alleviated surveillance and guard. Separate groups of them can be sent to work outside the area without guard. These two categories of convicts can be transferred into a prison or a closed boarding house only if they grossly and systematically violate the order, systematically defect from work or have a negative influence on other inmates.

It is forbidden to place in open and semi-open boarding houses of penal labour the following categories of convicts: juveniles; persons convicted for crimes against the People's Republic (high treason, betrayal, espionage, diversion, subversive activities, anti-state agitation and propaganda) and under Art. 279–281 (escape across the border, non-returning to the country), Art. 380–382 (defection from military service) and Art. 386 (defection from military service with the purpose of leaving the country) of the Penal Code; persons who are not Bulgarian citizens or have no citizenship; those under strict and reinforced strict security regime; those sentenced to imprisonment of over 5 years for negligent crimes committed under intoxication. These categories of convicts are excluded from serving their punishment in open and semi-open boarding houses because it is them who could have a negative influence on other inmates or there are reasons to expect them to commit an escape or another crime.

Thus, the most important goal of the reform of 1982 is the maximal restriction of the negative influence of prison environment on those inmates who come to the penal institution for the first time. Therefore, it seems to have been really necessary to place those sentenced for less than 3 years for premeditated and for negligent crimes, who amount to nearly one-third of all detainees, into open and semi-open boarding houses under half-free conditions. Hence the results: the work and social activity are increased; the violations of the regime and discipline are in sharp decline; escapes during home leave are extremely rare; the rate of recidivism among these categories of convicts is very low.

At the other end of the reform of serving the punishment, there are the newly created closed boarding houses of penal labour, designed mostly for recidivists. Their inmates are under reinforced surveillance and guard and they only work in a controlled area or on isolated sites. They can be transferred into another prison in extraordinary cases, if they have become corrected and there is no danger of their negative influence on others. Recidivists may be put under a special security regime in which they are necessarily isolated. They are placed in locked rooms under reinforced surveillance and armed guard; they cannot be used to work in the staff of prisons; they have the right to 1 visit and 1 food parcel per year, to send 1 letter once every two months and have 5 levs per month for their personal needs. A special attention is given to the individual educative work with them and with the other inmates who are difficult to re-educate. Recidivists are those who have been sentenced two or more times to imprisonment for premeditated crimes, if they have already served such punishment.

To sum up: the reform of corrective imprisonment of 1982 is the direct result of the practical unrealizability of the goals of punishment – and most of all of the strategic goal of 'correction and re-education of convicts' as formulated in the Penal Code of 1968. The criticism is: in the prison institution, it is fundamentally impos-

sible for real correction and re-education to take place. The key arguments follow.

First, prisons do not diminish considerably the crime rate: indeed, we can enlarge, multiply and reform them, create diverse types of boarding houses of penal labour, but the quantity of offences and offenders remains the same or, even worse; it becomes higher in certain periods. Since 1974, a number of specific measures were taken for the further differentiation of the placement of the different categories of convicts by institutions and within them. It is no chance that in 1982, the open and semi-open boarding houses were created, which in fact create a life under the conditions of half-freedom. It is at that moment that the crucial conclusion was made that Bulgaria has a relatively stable crime rate, a certain increase of the number of convicts and a constant growth of the number of convicted recidivists.

Second, penal detention leads to recidivism: after leaving the prison, one has more chances to return than before; convicts are largely former detainees; throughout the whole period of late socialism, recidivist crime amounts to one-fourth of convicts each year. The high growth of penitentiary recidivism shows that the strategic goal of punishment was not achieved in the course of its being served. Therefore, rather than releasing corrected and re-educated individuals, the prison multiplies dangerous criminals among the population. On the contrary, the rate of recidivism among those sentenced conditionally is minimal. The de-criminalization of 1982 aims precisely at eliminating the negative impact of imprisonment on first-time convicts.

Third, it is impossible for prison not to produce criminals. It creates them by the type of human existence that it imposes on inmates. The prison produces criminals also by imposing forceful coercion on them; its purpose is to apply the laws and to teach respect of them; but its whole functioning is deployed in the mode of excessive power. Moreover, the stay in a school of labour and education or a penitentiary house facilitates the landing of the former juvenile in prison. In short, the main cause for the commitment of a new crime is the negative impact of the environment itself and of the other inmates.

Fourth, the prison makes possible and even favours the organizing of a milieu of mutually solidary criminals, hierarchicized, prepared for any future complicities. On one hand, the probability for the first-time inmate to turn into a genuine criminal is a real possibility. On the other, a lengthy stay there leads to deformations in the personality of the convict which seriously obstructs his adaptation to the conditions of life in freedom.

Fifth, the conditions created for released convicts inevitably doom them to recidivism: because they are put under administrative surveillance; because they have a compulsory place of residence or a prohibition from residing. The separations caused by compulsory settlement, the impossibility to find a suitable job, vagrancy and begging are the most common factors of recidivism. Separated from his family,

his friends and acquaintances, the convicted person is placed in a milieu of strangers that looks upon newcomers as a factor of demoralization of the local population. Gathering convicts without families at the same place, in the absence of social control, leads to the deepening of their demoralization. Adding to the picture also the problems with arranging everyday life and employment, it becomes clear why almost every person released from prison and compulsorily settled commits recidivism.

Finally, the prison produces criminals indirectly, bringing the family of the inmate to derangement and poverty. The break of natural contacts is a key cause for the commitment of new offences; the closest social environment where healthy ties exist becomes estranged from the convict. Throughout the punishment period and immediately after release, it abandons him because he is already stigmatized. Thus a specific kind of ‘vacuum’ is created which, if not overcome in due time, leads to the impossibility of re-socialization and therefore to the return of the former convict into the criminal milieu created and reinforced in the very penal institution of detention.

Where does the juridical rationality of late socialism find the ‘solution’ to these insoluble problems? It finds it in the all-round implementation of the progressive system in the execution of the punishment of imprisonment. This system involves the creation of optimal conditions for differentiated educative impact with a double perspective: neutralizing the existing negative impact in prisons and creating legal and moral habits in inmates. It represents a gradual modification of the conditions of serving the imprisonment and increasing approximation to the reality of free life for the smooth transition upon release. The logic is: the process of alleviation of penal conditions for the separate inmate depends on the positive changes in his behaviour; they must represent stages in the results of educative impact on him. However, there must be also conclusions on the accelerated decrease of the probability of committing new offences; this is the penal tool for efficient prevention of recidivist criminality.

To sum up: the progressive system is an instrument for the creation and maintenance of total educative impact in the places of deprivation of freedom. The goal is the constant stimulation of the re-education of inmates by their own cooperation, and their preparation for the free life by bringing prison conditions closer to those outside. In dependence of their individual development, the rules of the progressive system are applied: every convict passes through its different stages, incessantly motivated toward his correction, while finally, on one legal ground or other, and also by the action of the highest element in the system – pre-term release, he becomes again a free socialist citizen.

## References

- Arendt, H. 1960. *Between Past and Future: Eight Exercises in Political Thought*. New York: Viking.
- Berman, H. J. 1983. *Law and Revolution. The Formation of the Western Legal Tradition*. Cambridge: Cambridge University Press.
- Darendorf, R. 1984. *Law and Social Order*. Oxford: Oxford University Press.
- Dgambazov, A. 1990. *The Justice System in Bulgaria (1978-1944)*. Sofia: Nayka i Izkystvo (in Bulgarian).
- Dolapchiev, N. 1994. *Criminal Law*. Sofia: Bulgarian Academy of Sciences (in Bulgarian).
- Dugue, L., C. de Malberg, G. Yellinek. 1993. *General Theory of State*. Sofia: Sofia University Press (In Bulgarian).
- Erlich, E. 1936. *Fundamental Principles of the Sociology of Law*. Cambridge: Cambridge University Press.
- Fotev, G. 1999. *Legitimization Crisis*. Sofia: University of Sofia Press (in Bulgarian).
- Ganev, V. 1998. *Works on General Theory of Law*. Sofia: Bulgarian Academy of Sciences (in Bulgarian).
- Gierke, O. von. 1950. *Natural Law and the Theory of Society*. Cambridge: Cambridge University Press.
- Habermas, J. 1998. *Structural Changes of Public Space*. Sofia: Nayka i Izkystvo (in Bulgarian).
- Hayek, F. A. 1996/98. *Law, Legislation and Liberty*, Vol. 1, 2, 3. Sofia: Sofia University Press (in Bulgarian).
- Hunt, A. 1978. *The Sociological Movement in Law*. Philadelphia: Temple University Press.
- Kelly, J. M. 1992. *A Short History of Western Legal Theory*. Oxford: Oxford University Press.
- Kelsen, H. 1995. *The Pure Theory of Law*. Sofia: Sofia University Press (in Bulgarian).
- Nenov, I. 1990. *Criminal Law of Bulgaria*. Sofia: Nayka I Izkystvo (in Bulgarian).
- Palikarski, M. 1992. *Criminal Executive Law of Bulgaria*. Sofia: Legakon (in Bulgarian).
- Pavlov, S. 1989. *Criminal Procedure of Bulgaria*. Sofia: University of Sofia Press (in Bulgarian).
- Patterson, D. (ed.). 2003. *Philosophy of Law and Legal Theory*. Oxford: Blackwell Publishing.
- Robinson, O., T. Fergus. 2005. *European Legal History: Sources and Institutions*. Oxford: Oxford University Press.
- Spenser, A. (ed.). 1968. *Modern French Legal Philosophy*. New York.
- Torbov, T. 1992. *History and Theory of Law*. Sofia: Bulgarian Academy of Sciences (in Bulgarian).
- Vladikin, L. 1935. *General Theory of State*. Sofia (in Bulgarian).
- Weber, M. 1923. *Rechtssoziologie*. Tübingen.
- Weber, M. 2001. *Genesis of Western Rationalism*. Sofia: Critique and Humanism (in Bulgarian).

*Biographical Note:* Martin Kanoushev is Associate Professor at the Department “Philosophy and Sociology”, New Bulgarian University, Sofia. He teaches sociology of power, law and medicine, author of one book and number of papers in sociology. Editor of *Critique and Humanism* journal.

E-mail: mkanoushev@gmail.com