

Dr Konrad Buczkowski, dr Paulina Wiktorska

Zakład Kryminologii Instytutu Nauk Prawnych PAN

Relapsing Into Crime Versus a Notion of Criminal Career in Polish Criminological Studies ¹

ABSTRAKT

Zespół badawczy Zakładu Kryminologii INP PAN od 2017 r. prowadzi badania dotyczące mechanizmów powstawania i rozwoju karier przestępczych osób popełniających uprzednio czyny karalne w okresie nieletniości. Warto podkreślić, że przyjmowane w kryminologii definicje powrotności do przestępstwa, kariery kryminalnej czy kariery przestępczej, są znacznie szersze od definicji recydywy w znaczeniu jurydycznym, którą operuje polskie prawo karne. Punktem wyjścia do naszych badań jest odpowiedź na pytanie o to, jak definiujemy pojęcie „kariera kryminalna”. Na gruncie polskiego prawa karnego formalnie zdefiniowano pojęcie recydywy a w nauce prawa karnego zdefiniowano także pojęcie recydywy penitencjarnej. Kryminologiczne definicje pojęcia „kariery kryminalnej” są jednak znacznie szersze i dość zróżnicowane. Teorie kryminologiczne, wpisane w trzy podstawowe paradygmaty: klasyczny, pozytywistyczny i antynaturalistyczny, w różnym stopniu odwoływały się do problematyki powrotności do przestępstwa i przestępczości wielokrotnej.

Artykuł ma na celu syntetyczne zestawienie wybranych koncepcji dotyczących definiowania pojęcia kariery kryminalnej oraz zaprezentowanie definicji sformułowanej przez nasz zespół badawczy na potrzeby dalszych badań w tym zakresie.

Since 2017, the research team of the Department of Criminology, INP PAN has conducted research into the mechanisms behind the formation and development of criminal careers of persons who have committed criminal offences while still minors.

It is worth stressing that the criminological definitions of relapsing into crime and criminal career are much broader than the legal definitions of a recidivist in Polish criminal law.

The starting point for our research is the answer to the question of how we define the term “criminal career”. On the basis of Polish criminal law, the concept of repeat offender (recidivist) was formally defined, and in the field of criminal law, the concept of a penal repeat offender was also defined. However, criminological definitions of the term “criminal career” are much broader and relatively diverse. Criminological theories, inscribed in three basic paradigms: classic,

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positivist and anti-naturalistic, referred to the problem of relapsing into crime and repeated offending to varying degrees.

Recidivism in the legal sense means a relapse into crime, which the act combines with specific legal consequences resulting in a more severe punishment (Zoll, Wróbel, 2010: 526). Apart from activities as a repeat offender, criminal law distinguishes two further premises resulting in a stricter penalty for perpetrators, defined by criminal law doctrine as professional offenders or offenders acting as part of an organised group or association aimed at committing crimes (article 65, § 1 of the Penal Code).

A professional offender is an offender who has made the carrying out of offences a permanent source of income, and this income does not have to be exclusive or basic. What is important, however, is its continuing nature and regularity, as well as the stability and repeatability of income generation analogous to income obtained from work. An organised criminal group can: “be occasional or permanent in nature. Such a group requires a certain degree of organisation, including decision-making, organisational links, minimum structure and division of roles. (...) An association, on the other hand, differs from a group in its higher degree of organisation and more extensive hierarchy, as well as in its formalised membership”. (Zoll, Wróbel, 2010: 523).

The concept of recidivism is also used by criminal punishment law, defining it as penitentiary recidivism. Recidivism in the penitentiary sense “means a return to committing an offence resulting in a further prison sentence”. (Zoll, Wróbel, 2010: 526). This type of recidivism depends on a kind of “advance” by the criminal up the successive levels of the institutional system of crime prevention and the development of the social identity of a recidivist (Szczepaniak, 2015: 13). Put simply, the term penitentiary recidivist is used to describe a criminal who is serving a mandatory prison sentence for at least a second time.

Criminological theories, inscribed in three basic paradigms: classic, positivist and anti-naturalistic, to varying degrees referred to the problem of relapsing into crime and repeated offending.

An attempt to explain the causes of a relapse into crime through the prism of the classical paradigm, which assumes the natural inclination of man to do evil and break the order introduced by the social contract, comes down practically entirely to perceiving this phenomenon in the context of rationalism.

In a more exhaustive way, attempts were made to explain the “rationalism of a relapse into crime” by the concepts developed within the neoclassical criminology trend, whose representatives were particularly active in the USA in the 70s and 80s of the 20th century, although they

were still characterised by a common vision of a free and elective perpetrator (Krajewski, 1994). For example, Hirschi believed that in order to explain repeated criminality it is not important to determine why some people commit crimes but why most people do not commit crimes. If the mechanisms of social control fail, an individual is subjected to the influence of evil, inherent to every human being. Thus, repeated offences should not be explained through the prism of an individual's rationality, but through the selectivity and ineffectiveness of social control mechanisms (Hirschi, 1969). Felson, on the other hand, explained a relapse into crime through the theory of routine behaviour. He argued that it was fostered by a certain type of social supply of perpetrators, by the supply of opportunities to commit crimes and by the weakening of the mechanisms of social bond formation (Felson, 1994).

Positivist criminological theories try to explain a relapse into crime primarily on the basis of the ineffectiveness of control mechanisms, in particular criminal sanctions. However, they also draw attention to certain specific characteristics of convicted repeat offenders and their vulnerability to the influence of the criminogenic environment in which they operate (Błachut et al., 1999: 309). The deterministic concept of the individual, underlying the theory, assumed the influence of both biopsychological and environmental factors on committing crimes in general, including a relapse into crime. The consequence of the theoretical assumptions of positivist concepts is the inability to blame and place responsibility for the choice of criminal behaviours on the individual, including relapses into crime, which are caused by various factors resulting, for example, from the social structure, including cultural structure, or the course of the socialisation process, including the mechanisms for learning criminal behaviours.

Finally, theories using an anti-naturalistic paradigm, such as the theories of social marking, social conflict, radical, critical, phenomenological, or even extremely abolitionist theories, trying to find "the answer to the 'reactive' question as to why certain behaviours are considered criminal, while others are not, and why some people gain the mantle of criminal, while others do not", found the reasons for the relapse into crime as the authoritarian and selective action of social control mechanisms, and of professional agencies responsible for their implementation. However, a criminal career was originally understood as a certain construct consisting of a sequence of crimes committed by one perpetrator during a specific period of time.

However, the generality of this definition leads to an attempt to describe and compare more detailed definitions of a "criminal career", which have evolved in Polish and world criminological thought. For example:

According to the definition in the Handbook of Criminology, a criminal with a criminal career is an onerous criminal, who continuously returns to crime and even chooses a criminal lifestyle.

Blumstein understand a criminal career as an observable sequence of crimes committed by a specific individual.

Farrington believes that a criminal career only applies to individuals who have a tendency to be antisocial, which has been present in the individuals throughout their entire lives and became active at different stages in their lives.

Walters assumed that a criminal career is the result of crime as a lifestyle, initiating from a difficult childhood, a difficult start into adult life and a lack of positive family role models, while pointing out that institutions such as schools, care facilities and correctional facilities are the precursors to a criminal future.

Becker and Goffman were supporters of the theory of the acquisition of a criminal identity, with the initial starting point being detention in a prison.

Based on the research of those Polish criminologists associated exclusively with the Institute of Legal Sciences at the Polish Academy of Sciences, engaged in research on criminal careers and minors, including among others: Kołakowska (1960), Ostrihanska (1965), Szelhaus (1965, 1969), Kołakowska - Przełomiec (1977, 1990), Ostrichańska, Wójcik (1990), Klaus (2009), Rzeplińska (2009 - 2013), we had the opportunity to conduct further research into the mechanisms behind the formation and development of criminal careers.

However, it is impossible in such a short paper to carry out an overall review of the definitions of “criminal career”, which, of course, we carried out prior to adopting the definition of “criminal career” for the purposes of our research.

In every society there is a group that can be referred to as ”chronic criminals”. Different research point to 5-10% of individuals committing criminal offences (Moffitt 2009). The existence of reoffenders poses a serious problem and their activity is a cause for considerable social concern. Hence the importance of thorough and regular study of the group, especially in the context of the constantly changing world. The bigger and more accurate the knowledge about the causes of their persistent criminality, the more efficiently we will be able to react to it and halt it.

In order to be able to identify the motifs of reoffending criminals, it is important to identify the mechanisms and risk factors, which vary slightly from generation to generation. One way to broaden the knowledge relevant to the subject is to carry out longitudinal study, focusing on following the lives of young offenders (catamnesis) as well as the criminal and social past of adult convicts (anamnesis).

At the present stage of our research, we have identified a potential offender with a criminal career as a person who has committed an offence during his or her youth, as recorded in a representative group of minors studied by us since 2000, and then checked in the National Criminal Register in 2017, and on the basis of this we have concluded that at a later stage he or she committed at least 3 crimes and served at least one mandatory custodial sentence.

Using this method, we selected a representative group of over 550 people who met the criteria we adopted for an offender with a criminal career. The results of this research will be presented in the next article.

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ABSTRACT

Powrotność do przestępstwa a pojęcie kariery kryminalnej w polskich badaniach kryminologicznych.²

The Criminology Department of the Institute of Law Studies of the Polish Academy of Sciences, has launched the study over criminal careers backgrounds and advances - of those who committed punishable acts of juvenile offenders. It should be stressed that definitions of relapsing into crime, or of criminal career, are much wider than those of recidivism in the meaning of the Polish criminal law. In this endeavor, we took the "criminal career" definition as our starting point. Polish criminal law strictly defines "recidivism", while legal scholars moreover define the "penitentiary recidivism" (the one consisting in serving more than one custodial sentence/s). The definitions of "criminal career", as formulated by criminologists, are however much wider, and also rather diverse. Criminological theories that arise from the three basic paradigms – classical, positivistic, and anti-naturalistic ones – are to different degrees connected with the problems of relapsing into crime and repeated crime. In this paper we present some selected concepts to define the term "criminal career", as well as the definition adopted by our research team to be used in further studies.

Słowa kluczowe: powrotność do przestępstwa, kariera kryminalna

Key words: relapsing into crime, criminal career

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