

SOCIÁLNA PRÁCA V TRESTNEJ JUSTÍCII – DIALÓG HODNOTOVÝCH SVETOV

SOCIAL WORK IN CRIMINAL JUDICIARY – DIALOGUE BETWEEN WORLDS OF VALUES

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Abstrakt

Vzdelávanie sociálneho pracovníka musí reagovať na spoločenské zmeny a súvisiace nároky profesie. V oblasti kriminality hľadá spoločnosť najvhodnejšie postupy, ktorými by mohla reagovať na spáchaný trestný čin a jeho dôsledky. Preto sa rozvíja nová teoretická a aplikovaná oblasť sociálnej práce; je to sociálna práca v trestnom súdnictve, ktorá je v skutočnosti kombináciou dvoch samostatných oblastí spoločenskej praxe – trestného súdnictva a sociálnej práce. Práca sa zaoberá identifikáciou hodnôt, poslania a ideologických základov sociálnej práce a trestného súdnictva, ich dlhodobému napätiu, simultánnemu dialógu a spojenectvu.

Kľúčové slová

Sociálna práca, trestné súdnictvo, hodnota, dialóg.

Abstract

Education of a social worker must react on societal changes and on related demands of the profession. In the criminality field a society searches for the most suitable procedures, by which it would react on a committed crime and its consequences. Therefore a new theoretic and applied field of social work is developing; it is social work in criminal judiciary, which is in fact combination of two separate fields of societal practice – criminal judiciary and social work. The paper deals with identification of values, mission and ideological bases of social work and criminal judiciary, their long-term tension, simultaneous dialogue and alliance.

Key words

Social work, criminal judiciary, value, dialogue.

Introduction

Social work is relatively newly applied in the field of criminal judiciary. It is gaining wider area of performance as a consequence of introducing concepts of restorative justice and attempts to make amends by an offender and to improve societal relations which were disrupted by the crime. Therefore qualified social workers are needed as well as discussion on a form and a content of their professional training. It is important to realize that goal and content of education of social workers in criminal judiciary is dependent on a clear definition of meaning, goals and tasks of social work in this field. If we do not agree on this, it will be difficult to prepare and realize such education. This paper is a reflection on values, mission and goals of criminal judiciary and social work and it shows their (certain) differences, simultaneous dialogue and alliance required by needs on societal and individual levels. The paper is meant as an introduction into the issue and we are prepared to develop it further both theoretically and empirically.

1. Criminal Policy and Criminal Judiciary

Criminal policy is a set of penal provisions by which a society reacts on criminality to control, reduce and suppress this undesirable phenomenon. According to Musil (1998, p. 3)

“Criminal policy, as a part of common policy, formulates goals and means of societal control of criminality through penal law.”.

Purpose of criminal judiciary is based on a constitution and international agreements on human rights and basic freedoms to protect rights and justified interests of individuals and legal personalities, interests of a society and a constitutional system of a republic by penal means. Based on a society’s reaction on a crime two basic conceptions developed historically (Zeman a kol., 2011). In a traditional model of retributive (punishing) justice the primary victim is the state. All means are focused on a protection of the state against offenders which threaten the public interest. A crime is considered as an act of offender’s free will, punishment is its natural consequence. Punishment has a meaning per se, its imposition is a moral imperative. A concrete victim is in rather passive position. She/he participates peripherally on the process, only in relation with reparations. There is insufficient focus on an interpersonal character of the criminal activity, as well as on specific needs, interests and problems of people who were directly affected by the crime. Victims are not sufficiently involved in judging guilt, neither are they allowed to relevantly express themselves in decision-making on punishment. They receive only limited information on advancement of the process and mostly they do not receive any reparations.

A concept of restorative justice follows some ideas which refuse a state monopoly on criminal conflict resolution. However, its paradigm is seen in a very old perception of justice (Karabec, 2003, p. 5). A crime is not considered as a violation of societal order, but mainly as harm (material, physical, psychic, societal, moral) of a victim and a threat to society’s safety. Reaction on a crime shall contribute to reduction, in ideal case elimination, of the harm and the threat. The main purpose of a societal reaction on a crime is no punishment, no re-education nor deterrent of an offender, but establishment of conditions to eliminate consequences of criminal activity. Therefore an offender is led to active participation on reparation of the harm. At the same time an offender shall possess all rights as other citizens. Despite this, a victim of a crime cannot be forced to deal with the offender. Great attention is given to victim’s needs to get information, apology, explanation, reparation, appreciation, to feel safe etc. At the same time there is a focus on offender’s needs (they were themselves very often victims). The goal of restorative justice is reconciliation. The aim is to initiate a remedial process which in ideal case may lead to reconciliation.

Retributive and restorative justice belongs to current trends of penal law. Both theories deal with a basic concept, that committing a crime disrupts balance. In both trends this assumption leads to the situation where a victim shall receive something and an offender shall give something or owe something. Both trends also agree on the fact that it is necessary to preserve proportional relation between the act and the response to it. Nevertheless, they differ in the way how to reach it (Zehr, 2003). It is not easy to decide which procedures as a reaction on a crime (which is therefore unjustified activity from the point of individual interests and society) shall be chosen. Basic decision-making is between repression and compensation, their combination, and a degree of their representation. Arneson (2007, p. 33) formulated his opinion on this issue by saying that a “decent” society cannot completely abjure morally acceptable usage of disgrace, societal stigmatization and ethical rejection of a criminal offender as means of social control. He criticizes the opinion of Nussbaum (2001) who says that the society which proclaims respect to dignity of every person cannot use repressive means. Arneson, on the other hand, believes that their usage is a symbol of moral maturity of the given society. According to Hulmíková (on-line source, cited 13. 4. 2012) in the Czech Republic but also in many other countries one may perceive disillusion from the fact that

rehabilitation approaches applied mainly in 1960s⁶⁶ did not lead to expected results in reduction of criminality, respectively their effectiveness became very difficult to measure. Because of new phenomena in criminality (e.g. terrorism) and the public's increasing fear of criminality, one may observe tightening the criminal policy up, mainly on serious forms of criminal activity. Nevertheless it is important to distinguish between acceptance (rejection) of a person and acceptance (rejection) of her/his deeds. Restorative justice is based on an ideal of dignified treatment of every person in the sense of tolerating and accepting the person. It does not argue over a necessity of society's rejection of offender's criminal activity. However it introduces new alternative approaches to arranging reconciliation on both societal and individual level.

The central category of law and its basic value is justice. According to Derrida (2002, p. 22): "Law claims to exercise itself in the name of justice and justice is required to establish itself in the name of a law.". Večeřa (1997, p. 17) considers justice as one of the basic criteria for assessing arrangement of societal relations. Individual's just behaviour and thinking belongs to the field of ethic, while objective interpretation of justice belongs into law theory (Kubů, Hungr, Osina, 2007, p. 268). It is a basic principle in law theory and law practice but it is hardly definable. It is interesting to mention, that the term "justice" is not defined in the Czech law code.⁶⁷ This leads us to a question how the principle which is not defined may be applied and controlled.

When analysing justice it is important to think about law principles. Law principles are certain minimal standards of justice, basic rules. In application of law they settle disputed questions and situations which are not included in any concrete norm. Principles of penal law are rooted in the Constitution and the Charter of Fundamental Rights and Basic Freedoms, amended mainly in §2 of the Criminal Procedure Code (Act No. 141/1961 Coll., on Criminal Judicial Proceedings). The Criminal Code (Act no. 40/2009 Coll., Criminal Code) does not literally formulate its purpose (mission). It is expressed by defining the subject of the act and by basic principles of its origins. Basic principles of the criminal code⁶⁸ are:

1. Subsidiary role of penal law⁶⁹ (principle of "ultima ratio") as a last resort of individuals' and society's protection.
2. An offender may be found guilty of a crime and penal sanctions may be imposed on an offender only on bases of law.
3. Prohibition of retroactivity⁷⁰ of a stricter law in accordance with the Charter of Fundamental Rights and Basic Freedoms.
4. Impermissibility of widening conditions of criminal liability, conditions when deciding on punishment and protective measures, including conditions of their imposition.
5. Individual criminal liability of individuals, liability only for own actions, collective liability is prohibited.
6. Criminal liability is based on fault.

⁶⁶ Rehabilitation (also utilitarian) theory of punishment views committing a crime as a consequence of certain identifiable influences, such as shortcomings of upbringing, family background, existential distress, biological and psychological preconditions. The main goal of punishment is that during punishment an offender is provided with professional treatment in order to eliminate causes of the crime (Zeman, P. a kol. *Veřejnost a trestní politika*. Praha: Institut pro kriminologii a sociální prevenci, 2011. ISBN 978-80-7338-113-4).

⁶⁷ The Czech law code uses only the term fair, so e.g. § 1 A. no. 99/1963 Coll., Civil Procedure Code, as amended, speaks about provision of fair protection of rights, §§ 79, 80 A. no. 6/2002 Coll., Act on Courts and Judges, as amended, mentions fair decision-making of judges, Art. 28 CFRBF from the Constitutional Order establishes right on fair reward for work.

⁶⁸ Basic principles of the criminal code are universally accepted both in theory and practice. However they are not clearly defined there, only expressed in an overall concept and in definition of penal protection. In particular statements of the criminal code they are expressed as their factual contents and concrete provisions of particular institutes.

⁶⁹ Subsidiary principle of penal law is a principle of criminal policy which is related mainly to creation of penal law and to penal law as entirety. Therefore it is mentioned as one of the general principles of penal law.

⁷⁰ Retroactivity of law means a situation when an approved law has also effect from a date before it was approved. It is perceived as inadmissible legislative technique, because it is in contradiction with a requirement of legitimate expectation and legal certainty.

7. Imposition and implementation of sanctions is proportionate to seriousness of a crime and to an offender's personality (Vantuch, 2011).

If we attempt to express the mentioned principles (principles of criminal judiciary) in terminology of social work, we may speak about principle of proportionality, personal liability, respect of basic rights and freedoms, principle of causality, individual approach. And based on the following text, but even now, we are asking a question if criminal judiciary and social work are really two completely different fields of values.

2. Social Work

In the most general sense the mission of social work is to conduct a dialogue between this that wants the society in its norms, and people who are in conflict with these norms or are harmed by this conflict. The purpose of this dialogue is to find solution acceptable to both a society and an individual. The International Federation of Social Workers (IFSW) characterizes social work as activity which leads to elimination (repression) or prevention of individual's or society's problems which develop from conflicts between individuals' needs and a societal institution.

According to Mühlpachr (1999) social work may be defined as a set of activities which aim is effort which is direct and has immediate effect on a person. Its goal is an attempt to preserve person's integrity i.e. effort to preserve individual's relation to the society, the closest environment, to education, employment and so on. It is socially diagnostic, consultative and educational work. "The aim of social work is a support of social functions of a person in a situation, when this need is perceived and expressed either by group or individually." (Navrátil, 2000, p. 7). If social work is defined like this (even though agreement on a universal definition has not been reached yet), then it is necessary that it reacts on actual needs of individuals, groups and the society. Paradigm based on needs of practice is world-widely scientifically approved and applied. It rests on a reflection and result assessments of research on practice, it answers the questions "what works?" and "how is it practiced?".

2.1. Values of social work

Social work developed from humanistic and democratic ideas and its values are based on esteem, equality and respect of human dignity. In 1959 Werner Boehm pointed out the relation of wider societal values and values of profession. Therefore there is a danger of conflicts' eruption between them as well as conflicts between systems of values within the profession itself. In 1996 the values of social work were expressed in the Ethical Codex of Social Work which was approved by the National Association of Social Workers (NASW). In the preamble of the Ethic Codex NASW it is mentioned that the mission of social work profession is rooted in a set of basic values which are social justice, human dignity, quality of interpersonal relations, integrity, and competence.

Despite the general agreement on demand of ethical behaviour of social workers, there is no unanimity on which values determine this ethically-professional behaviour. Meinert (1980) argues that values of social work are a myth. Gottschalk (1974) claims that values of social work are excessively individualistic and politically conservative. Levy (1973, p. 37) even warns, that social work is based in a principle of accepting diversity but its ideology is itself excessively unified power. It may be noticed that these radical opinions on values of social work are dated in 1970s and 1980s and they are scientifically obsolete. From our point of view, they do not point out their non-existence or redundancy, but they rather provoke us to

complex assessment when defining them. International Federation of Social Workers (IFSW) has recently focused on values of social work and it defined two basic principles of social work:

1. Human rights and human dignity. Social work is based on respect of value and dignity of all people and on rights resulting from it. Social workers support and protect physical, mental, emotional and spiritual integrity and welfare of every person.
2. Social justice. Social workers are obliged to support social justice in relation to the society generally and also in relation to the people they work with (Nečasová, 2004).

The Ethical Codex of the National Association of Social Workers is based on four basic problematic areas:

1. Loyalty of social workers is often in the centre of contradictory interests.
2. Social workers are employed in social assistance and social control.
3. Social workers get involved in conflicts between obligation to protection of interests of people they are working with, and societal demands for effectiveness and usefulness.
4. Resources in the society are limited.

As we will demonstrate below, all the problematic areas may be identified (and mainly combination of social assistance and social control) also in social work in criminal judiciary.

3. Social work in criminal judiciary

The issue of an increased proportion and seriousness of criminal behaviour, new forms of criminal activities and consequences on an individual and a community demands a reaction of a society. For the practical solution of these complicated questions, the complex interdisciplinary approach of many sciences (such as law, criminology, sociology, psychology, psychiatry, pedagogy) is applied. The role of social work is irreplaceable. Therefore the new theoretic and applied field of social work is being established – social work in criminal judiciary (SWCJ).

Social work in criminal judiciary represents combination of two separate fields of social practice – criminal judiciary and social work. To ensure effective activity of a social worker in judiciary it is necessary to create its theoretical basis and conceptual foundation from which it will further develop (Holá, 2011). The professionals from abroad or at home have not reached agreement on what more concrete nature and goals of SWCJ are. For example McNeill and Whyte (2007) emphasize the long-term tension when defining SWCJ. It is given by diverse (often contradictory) expectations of authorities active in criminal procedures, of offenders, victims, and of other involved parties. Also by unavoidable tension which is created by clash of two involved systems (of judiciary and social work) with different ideological bases. Diversity of opinions is identifiable also among the professionals from theory, practice, and representatives of a government and legislative authorities. On one hand there is clear wide support for the government effort to protect the public and to reduce recidivism; on the other hand it deals with concerns over financial means for new initiatives and approaches. These concerns are justified mainly in current economically unstable environment. At the same time the tension rises because of efforts to balance the public protection and questions of justice and law (Tate, 2007).

Reamer (2004) believes that “alliance” between criminal judiciary and social work is uncertain. This ideological, theoretical and application uncertainty causes that interest in employment of social workers in criminal judiciary has decreased abroad since 1980s (e.g. Knox, Roberts, 2002, McNeece and Roberts, 1997). Sarri (2001) declares that one of the causes in the ethical dilemma between the mission of social workers to assist and the work

with unwilling clients in sanction facilities. Nevertheless thanks to the society's interest in a complex solution of problems connected to criminality, comeback of a crucial role of a social worker in a criminal procedure is becoming a priority.

There is still little focus on relation between criminal judiciary and social work. If social work desires to establish itself in this field as a theoretic and practical discipline, it must clearly define visions of its approach and the public commitment (mission and goals), which it will fulfil (Immarigeon, 2002). This will contribute to fulfilling of an professional identity of social workers and their adequate position in the system of criminal judiciary.

As an example we may present mission and goals of the Probation and Mediation Service CZ (on-line resource, cited 29. 3. 2012). The PMS CZ defines its mission as such:

1. The probation and mediation service attempts to arrange effective and socially beneficial resolution of conflicts connected to criminal activities and simultaneously it organizes and ensures effective and dignified implementation of alternative punishments and arrangements with emphasis on interests of victims, protection of the community and criminal prevention.

2. The probation and mediation service CZ represents a new institution within criminal policy; it develops from cooperation between two professions – social work and law, mainly penal law. By their balanced combination a new multi-disciplinary profession in the system of criminal judiciary is being created.

Goals of the PMS:

1. Offender's integration – The probation and mediation service seeks to integrate a defendant i.e. an offender into the community life without any other violation of law. Integration is a process which leads to restoration of offender's respect for legal status of the society, his employment and self-realization.

2. Victim's participation – The probation and mediation service attempts to include a victim in the "process" of own reparations, to restore her/his feeling of safety, integrity and trust in justice.

3. Society's protection – The probation and mediation service contributes to society's protection by effective resolution of conflict and risk situation connected with criminal procedure and effective provision of realization of alternative punishments and arrangements.

Again we get back to the role of social work in criminal judiciary. According to McNeill et al. (2005) it is fulfilment of three goals which are: 1. reduction of number of convicted people to prison sentence, 2. society's protection as a consequence of reduction of recidivism, 3. offender's rehabilitation and social inclusion. According to McCulloch, McNeill (2010) the task of social work in criminal judiciary is in three key areas: 1. provision of information essential for decision-making of judiciary authorities, 2. support for reconciliation procedures in criminal conflict resolution and 3. provision of help to convicted people to custodial sentence.

4. Foundation and development of social work in criminal judiciary in Czech Republic

In the Czech and Slovak professional literature we may find diverse labels and different characteristics of social work with offenders and victims in criminal procedures. For example Matoušek and Kroftová (2003) label it as "social work in criminal judiciary", Justová (2005) as "social work with criminal offenders", Lulei (2010) as "probation social work" and Tokárová et al. (2003) as "social work in prisons and aftercare".

For understanding of context it is necessary to return to beginnings of activities which led to development of new manners of work with criminal offenders. Professionals of helpful professions were involved there; in the end of 1960s they focused on elimination of causes of breaking the law norms.

The decisive moment for social work in penitentiary care became the Act no. 59/1965 Coll. on prison sentence implementation which enabled tutors, social workers, pedagogues and psychologists to work with the convicted people.⁷¹ Workers educated at high schools and universities became to be employed in prisons. However their professional activities were meeting with resistance of long-term (army-oriented and bureaucratically oriented) functionaries. Social workers were subordinated to orders of the Chief of Union of Detention Education, they had to follow laws and guidelines. Situation started improving with employment of social custodians from 1970s. They were following guidelines of the Ministry of Labour and Social Affairs and they performed similar activities to probation activities. By cooperation with social workers in prisons they gradually influenced also a conception and forms of their work. Voňková and Chalupová (1992) say about this era that early and continuous social assistance to the criminally prosecuted people and the convicted offenders was rather symbolic and in the beginning of 1990s it lagged behind a common level in the member states of the Council of Europe at least by twenty years. They believe it is necessary to define theoretic and conceptual questions of social assistance within the field of continuous care about a criminal offender and within the field of criminal policy, where social intervention should accompany an offender from a pre-trial to an adaptation phase. The Act no. 169/1999 Coll. on imprisonment⁷² established main principles of punishment which are respect to dignity of a convicted individual, maintenance of her/his health, support of positions and skills which would help her/him to a smooth return to society and enable her/him to live a self-sufficient life in accordance with law.

Within the project “Research on recidivism factor” the experimental centre of post-penitentiary care was established by the then prosecution office in cooperation with the National Committee of the Capital City of Prague and the Research Institute of Criminology. Its goal was to verify within the conditions of metropolis effective working methods with so-called socially maladjusted citizens including those who were sentenced to prison (Větrovec et al., 2002). This was the beginning of a new profession of social custodians. According to the then conviction that it is essential to focus on the worst situation, they dealt mainly with recidivists. After several years the centres of specialists working with delinquent youth, so-called custodians for the youth, were established. But the social control prevailed in their activities. In the end of 1980 this institution changed and it led to reduction of social control element and to rise of arranging the assistance to the youth under investigation and to their families. Centres of social workers in prisons were being established with the purpose to arrange contacts between the convicted people and their natural social environment and to arrange conditions for their release from prison. Because of the political situation at that time the projects in this field were not developed as in other countries.

The year 1989 brought a principle change. In 1991 the experiment “The Out-of-court Alternative for the Delinquent Youth” was launched. The project authors were mainly inspired by the Austrian experiment from 1985 focused on settlement between a youth offender and a victim of less serious crimes (Válková et al., 1996). Within the framework of

⁷¹ Development of prisons and therefore of position of social work in prisons was dependent on the political situation in our republic. Positive results in prisons between years 1918-1938 were depreciated by events in and after 1948. Mainly in years 1953-1968 when prisons were subordinated to the Ministry of National Security and later to the Ministry of the Interior, the goal of imprisonment was repression with emphasis on economic usage of convicted people for labour within the needs of national economy. The staffs of prisons were mainly formed by army officials.

⁷² Effective since 1 January 2000.

the Czech Republic the element of active offender's involvement – an offender had a possibility to influence the process of own atonement – was verified. For the first time the elements of mediation between a victim and an offender were applied. This led to the changes in criminal legislation, mainly the introduction of so-called diversions. In 1993 the institute of conditional suspension of prosecution⁷³ was introduced, then other institutes: settlement⁷⁴, sentence of community service⁷⁵, conditional prison sentence with supervision⁷⁶ and possibility of conditional discharge with supervision⁷⁷. The development of probation and mediation brings changes also in social work in the Czech Republic; it became a professional discipline and it entered an academic field and it still attempts to be applied in new areas.

Important inspiration for a work's content of probation officials, whose jobs were created afterwards, was brought by the Association for Development of Social Work in Criminal Judiciary (SWCJ, currently the Association for Probation and Mediation) established by a group of students and lecturers from the Department of Social Work of the Faculty of Philosophy and Arts at Charles University in Prague in 1994. They prepared projects on criminal conflict resolution from the point of new methods of social work⁷⁸, which they submitted to the Ministry of Justice. Despite the fact that the projects were not officially accepted by the Ministry, they were very beneficial for the development of SWCJ. Because there were increasing attempts to reach similar legislative standards of the EU member states and because of prevailing tendencies in the social sphere and judiciary, a coherent system of activities for wide application and effective realization of well-established alternative punishments and procedures in criminal prosecution became a necessity. Therefore in 1994 the government approved the Crime Prevention Strategy and obliged the Minister of Justice by a resolution no. 341 to create jobs of probation officials at regional courts since 1 January 1996 (Doubravová, Ouředníčková, et al., 2001). Court workers and senior court officials were mostly delegated to fulfil the purpose of probation activities; they focused mainly on administrative technical provision of community service sentence and on formal control of offenders' behaviour during alternative punishment (Sotolář, Ouředníčková, et al., 1998). However the practice was not uniform. The next development level became the pilot project of model workplaces of the Probation and Mediation Service at district courts in Prague, Ostrava and Karlovy Vary effective since 1 July 2000. Qualified workers of social work were employed there. Their task was to develop and verify new methods not only during implementation procedure but also during preparatory procedure. They focused on the work with drug addicts (Větrovec, et al., 2002). The project was continuously observed while it was assessed in following areas: 1. practical application of alternative procedures in a criminal procedure; 2. effectiveness of conflict resolution related to criminal activity; 3. financial effectiveness; 4. verification of model functionality and personal employment of model workplaces.

Based on the positive results, preparation of bill on probation and mediation service began. The act became effective on 1 January 2001⁷⁹. It created legislative, financial and personal conditions for practical application of restorative justice principles in the Czech Republic.

⁷³ Act no. 292/1993 Coll., effective since 1 January 1994, §§ 307-308 of CPC.

⁷⁴ Act no. 152/1995 Coll., effective since 1 September 1995, §§ 309-314 of CPC.

⁷⁵ Act no. 152/1995 Coll., effective since 1 January 1996, §§ 45-45a of CC.

⁷⁶ Act no. 253/1997 Coll., effective since 1 January 1998, § 60a of CC.

⁷⁷ Act no. 253/1997 Coll., effective since 1 January 1998, § 26 of CC.

⁷⁸ These projects were: 1. Judicial assistance, 2. Out-of-court negotiation – settlement and 3. Probation.

⁷⁹ Act no. 257/2000 Coll., on Probation and mediation service ČZ.

Conclusion

Social work in criminal judiciary is a specialization of social work which was established on basis of practical requirement. It is a combination of two fields – criminal judiciary (more generally law) and social work. As we have shown above the literature brings rather opinions on their differences, value tensions and difficult combination possibility (e.g. McNeill and Whyte, 2007, Tate, 2007, Reamer, 2004). We focused on finding elements which connect both fields. It creates conceptual basis for their cooperation. The practical needs demand this cooperation.

In the paper we analyze basic values and principles of social work and criminal judiciary. Both fields aim to justice. Criminal judiciary with emphasis on law justice, social work with emphasis on social justice. Together with Večeřa (1997) we consider justice as one of the basic criteria for assessment of arrangement of societal relations. Is there any difference between law and social justice from this point of view? And are there then two different worlds of values? We believe there are not.

Penal law as well as social work is based on similar values and principles which are human rights and human dignity, justice, principle of proportionality, personal liability, principle of causality, individual approach. In our opinion, the tension described in the literature is based on forms of value application by law and social work and not on value differences between them. According to us it is limits of practice which create ethical conflicts of social workers in this field.

The goal of the paper was to contribute to legitimization of social work in criminal judiciary and to show that it is about combination of two not different but very similar worlds of values. To contribute to their dialogue and to support looking for mutually acceptable methods for social work to fulfil these values within criminal judiciary. Connected to it is a necessity of well-qualified social workers and discussion on what form and content should their professional preparation have. Because of increasing demand on width and depth of knowledge and interdisciplinary education of social workers with diverse emphasis on knowledge of particular science fields according to their employment, we prefer specialization already within their pre-gradual preparation. It is also necessary to realize that aim and content of education of social workers in criminal judiciary is dependent on clear definition of mission, goals and tasks of social work in this field. If we do not agree on this, it will be difficult to prepare and realize such education. We assume that it is necessary to discuss this issue on several levels.

Literatura:

- Arneson, R. Shame, Stigma, and Disgust in the Decent Society. In *Journal of Ethics*. ISSN 1382-4554, 2007, roč. 11, č. 1, s. 31-63, 33 s.
- Boehm, W. Objectives of the social work curriculum of the future. In Council on Social Work Education. 1959, roč. 1.
- Derrida, J. *Síla zákona: mystický základ autority*. Praha : Oikoymenh, 2002. ISBN 80-7298-049-1.
- Doubřavová, D., Ouředníčková, L. et al. *Příručka pro probaci a mediaci*. Praha : Institut pro probaci a mediaci, 2001. 180 s. ISBN 80-902-998-0-6.
- Feeley, M., Simon, J. Actuarial justice: The Emerging New Criminal Law. In Nelken, D. (ed.) *The Futures of Criminology*. London: Sage, 1994.
- Garland, D. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago : University of Chicago Press, 2001. 307 s. ISBN 9780198299370.
- Gottschalk, A. *Symposium on Neuraminidase*: March, 10-12, 1974, Marburg/Lahn. Behringwerke AG, 1974.

- Holá, L. Respekt k důstojnosti pachatele jako faktor pocitu nespravedlnosti u oběti. In: Michančová, S. (eds.). *Restoratívna spravodlivosť ako výzva: etické hodnoty, otázky a dilemy*. 1. vyd. Prešov: Prešovská univerzita v Prešove, 2011. s. 57-75. ISBN 978-80-555-0389-9.
- Hulmíková, J. K efektivitě trestně politické strategie „nulová tolerance“. In *iPrávník*. [online]. [cit. 13. 4. 2012] Dostupné na: http://www.ipravnik.cz/cz/clanky/trestni-pravo/art_3787/k-efektivite-trestne-politicke-strategie-nulova-tolerance.aspx
- Immarigeon, R. Community Corrections Report on Law and Corrections. In *Practice*. ISSN 0263-841X, 2002, č. 3, s. 35-36.
- Justová, M. *Cisár je nahý: represia verzus prevýchova*. Bratislava : Otto Németh, 2005. 119 s. ISBN 80-88949-79-3.
- Karabec, Z. Koncept restorativní justice. In Karabec, Z. (eds.). *Restorativní justice*. Sborník příspěvků a dokumentů. Praha : Institut pro kriminologii a sociální prevenci, 2003. ISBN 80-7338-021-8. s. 5-21.
- Knox, K. S., Roberts, A. R. Police social work. In Greene, G., Roberts, A. R. *Social workers' desk reference*. New York : Oxford University Press, 2002.
- Kubů, L., Hungr, P., Osina, P. *Teorie práva*. Praha : Linde, 2007. ISBN 978-80-7201-637-2.
- Levy, B. *Legacy of death*. New Jersey : Prentice-Hall, 1973. ISBN 978-01-3529-990-6.
- Lulei, M. Current Developments of Probation and Social Work in Slovakia – Theoretical Enthusiasm and Practical Scepticism. In *Revista de Asistenta Sociala*. ISSN 1583-0608, 2010, č. 3, s. 59-68.
- Matoušek, O., Kroftová, A. *Mládež a delikvence*. Praha : Portál, 2003. 335 s. ISBN 80-71-7822-6-2.
- McCulloch, T., McNeille, F. Criminal Justice Social Work in Scotland. In *Revista de Asistenta Sociala*. ISSN 1583-0608, 2010, č. 3, s. 21-38.
- McNeece, C. A., Roberts, A. *Policy and practice in the justice system*. Chicago : Nelson Hall, 1997. 269 s. ISBN 9780830414178.
- McNeill, F. et al. Remembering probation in Scotland. In *Probation Journal*. ISSN 0264-5505, 2005, č. 52, s. 25-40.
- McNeill, F., Whyte, B. *Reducing Reoffending: Social Work and Community Justice in Scotland*. Cullompton : Willan Publishing, 2007. 246 s. ISBN 9781843922186.
- Meinert, R. Values in social work called dysfunctional myth. In *Journal of Social Welfare*. ISSN 1468-2397, 1980, roč. 6, č. 3, s. 5-16.
- Muhlpaehr, P. *Sociální a postpenitenciární péče*. Brno: Institut mezioborových studií, 1999.
- Musil, J. Úloha trestní politiky při reformě trestního práva. In *Trestní právo*. ISSN 1211-2860, 1998, č. 1, s. 3-5.
- Navrátil, P. *Úvod do teorií a metod sociální práce*. Brno : Marek Zeman, 2000. 67 s.
- Nečasová, M. Mezinárodní etický kodex sociální práce – principy. In *Sociální práce/Sociálna práca*. ISSN 1213-6204, 2004, roč. 4, č. 4, s. 31-34.
- Nussbaum, M. C. *Upheavals of Thought: The Intelligence of Emotions*. Cambridge: Cambridge University Press, 2001. 751 s. ISBN 9780521531825.
- Poslání a cíle Probační a mediační služby České republiky. [online]. [29.3.2012]. Dostupné na: <https://www.pmscr.cz/poslani-a-cile/>
- Reamer, F. Social Work and Criminal Justice: The Uneasy Alliance. In *Journal of Religion & Spirituality in Social Work*. ISSN 1542-6432, 2004, č. 23, s. 213-231.
- Roberts, A. *Battered Women and Their Families: Intervention Strategies and Treatment Programs*. New York : Springer Publishing Company, 2007. ISBN 9780826145925.
- Roberts, A., Springer, D. W. *Social Work in Juvenile and Criminal Justice Settings*. Springfield: Charles C. Thomas Publisher, 2007. 438 s. ISBN 9780398076764.
- Sarri, R. C. *Decision Making in the Juvenile Justice System: A Comparative Study of Four States*. Michigan: Institute for Social Research, University of Michigan, 2001.
- Sotolář, A., Ouředníčková, L. et al. Mediační a probační služba v ČR. In *Éthum*. 1998, č. 18, s. 13-14.
- Tate, W. *Counting the Dead. The Culture and Politics of Human Rights Activism in Colombia*. London: University of California Press, 2007. 379 s. ISBN 9780520252837.
- Tokárová, A. et. al. *Sociálna práca: Kapitoly z dejín, teórie a metodiky sociálnej práce*. Prešov: Akcent print, 2003. 572 s. ISBN 9788096836758.
- Válková, H. et. al. *K vybraným otázkám novel trestních kodexů*. Sborník příspěvků z konference, Srní, 15.-17. 11. 1995. Praha: Sdružení pro rozvoj sociální práce v trestní justici, 1996. ISBN 978-80-902-1991-5.
- Vantuch, P. *Trestní zákoník s komentářem*. Praha : Anag, 2011. 1364 s. ISBN 978-80-7263-677-8.
- Večeřa, M. *Spravedlnost v právu*. Brno : Masarykova univerzita, 1997. ISBN 80-210-1644-2.
- Větrovec, V. et. al. *Zákon o mediaci a probaci: komentář*. Praha : Eurolex Bohemia, 2002. 115 s. ISBN 978-80-864-3232-8.
- Voňková, J., Chalupová, J. *Sociální práce s pachateli*. Praha : Leges, 1992. 125 s. ISBN 978-80-8563-801-1.
- Zákon č. 59/1965 Sb. o výkonu trestu odnětí svobody.

Zákon č. 169/1999 Sb. o výkonu trestu odnětí svobody.

Zákon č. 40/2009 Sb., trestní zákoník.

Zehr, H. *Úvod do restorativní justice*. Praha : Sdružení pro probaci a mediaci v justici, 2003. 48 s. ISBN 978-80-902-9981-8.

Zeman, P. et al. *Veřejnost a trestní politika*. Praha : Institut pro kriminologii a sociální prevenci, 2011. ISBN 978-80-7338-113-4.

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