

HANS JOACHIM SCHNEIDER

Crime, Criminological Research, and Criminal Policy in West and East Germany Before and After Their Unification

I. Aim and Method of the Study

1. Aim of the Study

On October 3, 1990, the German Democratic Republic (East Germany) united with the Federal Republic of Germany (West Germany). On October 14, 1990, elections were held in the five new east German states (Länder), which have constituted anew. Now the Federal Republic of Germany consists of 15 federal states and the capital, Berlin. The country's population amounts to 77,3 million. Economic and social problems arise from the unification, since the new federal states have lagged behind the older ones in their economic, social, and technical-scientific developments by decades. Of course, the unification causes criminological problems as well, three of them I shall go into detail about, together with a fourth, complicating one:

— In which way will the forthcoming economic, social, technological, and scientific development influence crime causation?

— Which effect will the total transformation of the political and economic structure in the five new federal states have on the development of criminality?

— In which way will the newly-emerged society in the Federal Republic of Germany cope with the problems caused by the fact that the leaders of the former German Democratic Republic acted in a criminal way themselves, that they built an oppressing state which monitored all its citizens' movements and that the criminal justice system threatened all those citizens with penal prosecution who were in opposition to the then ruling communist system or who wanted to leave the state territory?

These three complex problems are worsened by the fact that presently a massive migration from East- to West Germany as well as from Eastern Europe and the developing countries into the Federal Republic takes place. My mandate is not only to cover these four problems on an empirical-criminological basis,

but also to influence their solution in such a way that as little criminality as possible emerges — in other words, to develop recommendations for the prevention of crime causation. There do exist empirical-criminological studies carried out by German criminologists about the influence of World War I on the development of criminality in Germany and Austria¹ and also studies about the effects of the post-World War II depression on the development of criminality in the remaining part of Germany². The results of these studies, however, are of very limited use for the solution of these complex problems we are faced with at present.

2. Method of the Study

In order to solve the above outlined prediction- and prevention problems of the five new federal states, we must in the first place take a closer look at the extent and structure of criminality and its control in the German Democratic Republic during its forty years of existence in comparison to the Federal Republic of Germany and also at the extent and structure of the criminality in the five new states today. These questions are very hard to answer. This is because criminologists in the GDR were for forty years occupied with the task to mask the factual situation of criminality in their country and thus to secure the all encompassing control of the communist bureaucracy. The communist leadership allowed them no insight whatsoever into the real criminal statistical data which constituted a state secret and were regularly and systematically faked and varnished. The leaders themselves had no wish to be informed about the real situation because they were convinced of the dogmatic thesis which held: "Criminality is a phenomenon of capitalism; it is incompatible with socialism"³. Hardly ever was criminological research carried out in the German Democratic Republic, but if it happened the results remained unpublished, they were made a state secret. Should the findings have revealed the true situation of criminality, it could have proved disadvantageous for the career of the empirical-criminological scholar. Communist bureaucracy in its entirety held the belief that "criminality is a remainder of capitalism. With the extinction of capitalism criminality will die out". Thus almost all studies of criminologists from the GDR are irrelevant for answering our question concerning the factual situation.

In order to nevertheless answer the question, I attempted to examine the documents and other material stored in the East Berlin ministries. The files are in a chaotic state. It will take years to sort them out and to analyse them adequately. To find answers for the time being I collected observations and

¹ Moritz *Liepmann*: *Krieg und Kriminalität in Deutschland*. Stuttgart / Berlin / Leipzig / New Haven, 1930; Franz *Exner*: *Krieg und Kriminalität in Österreich*. New Haven / Wien 1927.

² Karl S. *Bader*: *Soziologie der deutschen Nachkriegskriminalität*. Tübingen 1949.

³ John *Lekschas*, Harri *Hartrand*, Richard *Hartmann*, Günter *Lebmann*: *Kriminologie*. Berlin 1983.

questioned experts on the territory of the five new federal states and in East Berlin. I held a series of lectures about controversial criminological subjects to extremely mixed audiences. I have carefully observed and analysed reactions, questions, and critical remarks on the part of the listeners. I then went on to interview a considerable number of experts, police chiefs of several cities, public prosecutors, judges, heads of correctional institutions, and professors of penal law and criminology. Their information, however, must be interpreted with great caution for the reason that the criminal justice system on the whole and all universities were staffed in a way that only committed communists were given key positions. Very probably a large number of those persons questioned by me will lose their top posts in the near future and will be replaced by other people. In order to maintain maximum objectivity during my observations and interviews I was accompanied by our visiting professor Denis Szabo (Montreal), who controlled my observations and hearing. My research continues. In the planning is a research symposium with some 30 criminological theorists and practitioners from East- and West Germany, which is due to be held in Münster/Germany in spring 1992. About five foreign criminologists, who all were visiting professors at my department at one time, and who are familiar with methods of comparative criminology as well as with German conditions are to have advisory functions.

II. Criminality, Criminological Research, and Social Control Before the Unification

1. Political, Economic, and Social Structures of the Two German States Before Their Unification

Like the Federal Republic of Germany, the German Democratic Republic was founded after World War II in the year 1949. After three million people left the country and resettled in the FRG, a wall was erected between both countries in 1961. The GDR border police was given order to shoot fugitives. In the German Democratic Republic a one party dictatorship of the Communist Party was installed following the Soviet Union's model. The Federal Republic of Germany developed to a constitutional, pluralistic democracy after the model of the Western European and North American countries. In the GDR, the state was organized centralistically, whereas the FRG is a decentralized, federative state. In the GDR, a unitarian, socialistic planned economy was set up; in the FRG a free social market economy developed. Private ownership of the means of production was abolished in the German Democratic Republic after their nationalization. Large estate owners were expropriated; industry was nationalized. Leading officials of the Communist Party were given charge of the means of production and the power to distribute the goods of state production as well as social positions. Decisions and orders from the Party's top floor had to be accepted by the "masses" without objection. The Party elite was furnished

with privileges of all kinds. Although it only represented 1,8% of the country's population⁴ the elite ran a perfected surveillance network aimed at dissidents, the "Department of State Security" (Staatssicherheitsdienst, StaSi). Members of the underground opposition and dissidents were subject to penal prosecution. The StaSi, which nominally had to protect the state against spies from outside as well as to protect industry against sabotage from within, was assigned the task of suppressing any kind of opposition and also to safeguard the power held by the Communist Party. The elite firmly believed to be in possession of absolute truth. Crimes were considered personal problems since the opinion prevailed that societal problems would disappear with the consequential construction of socialism. Criminology was an instrument of propaganda; it was bound to protect the one party dictatorship of the Communist Party. The belief was that the nationalization of the means of production would invariably produce a new type of man, a "socialist personality", who would not commit any offences. The whole elite in politics, economy, and the sciences were selected under political and ideological aspects and educated accordingly.

The construction and upholding of this political, economic, and social framework by force led to its complete collapse in the years 1989 and 1990. Large proportions of the young, creative, and innovative population turned their back on their country and left via Hungary, who had opened her borders. In the most densely populated, industrialized south of the German Democratic Republic peaceful mass demonstrations took place every Monday with hundreds of thousands participants. The Soviet Union did not intervene with her military forces stationed in the GDR. The peaceful revolution led up to the unification of both the German states on October 3, 1990, with a rapid self fulfilling prophecy. The following reasons were decisive for the political, economic, and societal collapse of the German Democratic Republic:

— The totalitarian system, which had lost its reproductive ability, choked on its ever growing bureaucracy and on the spying on its own population. The Department of State Security employed 85.000 staff and at least 109.000 "freelance" agents⁵. At least one in twenty of the working population worked for the StaSi (total population of the former GDR: 16,7 million). The political system proved unable to modernize and reform the country by means of adapting production and public life to the requirements of a progressing technology.

— The more heavy the pressure on the population grew as a consequence of the state intelligence network the less prepared people were to work hard in the state owned factories for the existing system. Hand in hand with this ever decreasing will to perform the country fell behind the technical standard. Modernization of the country via up-to-date technology would have

⁴ Dieter Voigt, Werner Voß, Sabine Meck: Sozialstruktur der DDR. Darmstadt 1987, p. 171.

⁵ Karl Wilhelm Fricke: "Polizei und Staatssicherheitsdienst". Alexander Fischer (ed.): Die Deutsche Demokratische Republik. Darmstadt 1988, pp. 113-116.

required free, innovative, open minded, socially and regionally mobile people, who would have had to be paid adequately. This, however, is exactly the group of citizens who were suppressed most severely in the GDR. Not the busy, creative, and competent persons climbed up the career ladder, but they who adopted the communist ideology totally and who submitted themselves to the communist apparatus.

— Following this lack of ability to modernization and self renewal, which was system immanent, were major economical and societal crises. Frequently there were shortages in the supply of consumer goods. GDR products could not any more compete on the open world market. And in spite of the fact that the number of weekly working hours steadily increased, productivity — the output per head of the work force — came down rapidly compared with the FRG. Towards the end it was no more than half of that in the Federal Republic of Germany⁶. Another consequence of this economic decline is the fact that construction and maintenance of roads and houses as well as the modernization and extension of the telephone network were totally neglected. This, too, goes for environmental protection and generally for the upkeep of the whole infrastructure. Historically valuable town centres and culturally important monuments decayed; ruins of houses can be seen everywhere. Brown soft coal, gained in open-cast mining, contributed prominently to air pollution. Likewise, the pollution of drinking water and of the soil had long become intolerable.

— In the face of pressure on the part of the state the population suffered for decades from these adverse conditions. Held back by wall and mine strips the people did not have got a chance to see for themselves the far superior economic and social development of the Federal Republic of Germany, although the electronic mass media of the FRG, which could be received almost throughout the GDR, conveyed a relatively reliable picture.

2. Extent and Structure of Criminality, Criminological Research, and Social Control in Both German States Before their Unification

If we compare the older states of the Federal Republic of Germany with comparable industrialized nations we find that extent and severity of crimes committed is more or less similar to that of France or Britain. There are, however, industrialized countries where criminality — according to their official statistics — is far higher and much more severe (e.g. USA) and also countries where criminality is notably lower and less severe (e.g. Japan)⁷. Apart from crimes against property, like burglary, theft, or fraud, road traffic offences play a considerable role. Violence and sexually motivated offences are of lesser

⁶ Karl C. Thalheim: "Volkswirtschaft". Alexander Fischer (ed.): Die Deutsche Demokratische Republik. Darmstadt 1988, pp. 86-91.

⁷ Hans Joachim Schneider: Kriminologie. Berlin / New York 1987, pp. 284/5.

significance. Widespread, however, are professional, environmental, economic, and organized crime.

Criminality in the GDR was much lower before she united with the FRG. The crime rate (i.e. the number of offences per 100.000 inhabitants) for the year 1988 was pretended to be 715⁸. In the same year the Federal Republic had a crime rate of 7.114⁹. This would mean that criminality in the Federal Republic was nearly ten times as high, but this is totally unrealistic. Criminal statistics in the GDR were manipulated for propaganda reasons. Political crime was not included in that figure. The extent of offences against the communist system was to remain a secret. Offences committed by the Party leadership themselves were not considered criminal. A considerable part of criminality, namely offences of lesser or average gravity, were dealt with by "societal" courts of justice, the "Workers' Conflict Commissions" (Betriebskonfliktkommissionen). This type of criminality also did not appear in the crime statistics. Almost no indictment was brought in against environmental offenders. Finally, criminal statistics were falsified up to 25%. We know at least that criminality in the GDR was similar, although violent crime had a marginally bigger share, and economical crime was significantly different in its appearance than in the FRG. The mere uttering of a differing opinion already constituted political criminality against the communist system (agitation against the state), and so did the attempt to flee the republic.

The members of the "Politbüro" (the Party élite) lived in Wandlitz near East Berlin, a sealed-off colony, in 23 houses surrounded by Western luxury goods. Up to 600 personnel was at their command. In the shopping centre of the village, western consumer goods were available to them at spectacularly low prices. They had houses built for their sons and daughters paid for by the state. They had themselves built luxurious guest houses and went out hunting in grounds of enormous size which were declared military zones out of limits for the public. The German federal public prosecutor currently investigates against numerous communist leaders for corruption and abuse of power. The élite are said to be tied up in illegal arms- and currency deals and allegedly sheltered internationally wanted terrorists. The Communist Party leadership installed the Department of State Security which was to suppress any opposition of people holding differing opinions — this was called "political underground activity", whereas the criminology merely had propaganda tasks, criminalistics were developed with great personal and financial efforts. The StaSi not only spied on the opposition but also on their own people. Every work brigade had one or two members who passed on information and reports to the StaSi. Countless citizens were forced to cooperate with the Department by blackmail. Many others received privileges. For instance, students of theology had their studies paid for and in return delivered reports from inside the church organizations. No important decision was made without consulting the Stasi files. The Staatssicherheitsdienst opened mail, read and analysed it. By using key replicas

⁸ Dokumentation: Aus der DDR-Kriminalstatistik 1988. Neue Justiz 1989, p. 324.

⁹ Bundeskriminalamt: Polizeiliche Kriminalstatistik 1988. Wiesbaden 1989, p. 11.

they broke into flats. They also applied psychical torture. For example, suspects were locked up for months in cells not larger than 10 square metres and were questioned daily.

The reasons for the low crime rate in the German Democratic Republic in comparison with the Federal Republic of Germany are manifold. They are, however, not rooted in the emergence of a "socialist conscience" or a "socialist personality" as a consequence of the nationalization of the means of production, as the "socialist criminology" wanted us to believe. Rather, the following reasons for a lower crime rate can be named:

— The criminal justice system extinguished a considerable part of criminality by acting criminally through its close connection with the StaSi and its lack of constitutionalism. It was not as tolerant as its counterpart in the FRG: Around 79% of all suspects were subject to penal conviction compared to a figure of 33% in the FRG. The work collective was used as a means of control during and also after working hours.

— The population density and the share of people living in big cities were both lower in the German Democratic Republic than in the Federal Republic. There was less urban concentration; the population lived in small or middle towns or in the country. The proportion of foreigners was lower than in the FRG. Thus the GDR's population was more homogenous. Less social disorganization developed although the divorce rate was much higher in the GDR than in the FRG.

— Societal mobility was lower in the GDR than in the FRG. Professional and regional mobility was restricted. Travel opportunities, e.g. mass tourism, were strictly limited. Road traffic offences or vehicle theft were far less common; many crimes did not occur simply because the motorization level was far lower.

— The gross national (inland) product of the German Democratic Republic was lower than that of the Federal Republic of Germany. Material goods were harder to obtain and socially less visible than in the FRG. Thus the saturation level of material goods was far lower than in the FRG. Consumer goods were held in higher esteem and were watched more closely.

— The young were tightly incorporated into society. They were controlled more closely by the communist youth- and childrens' organizations and were weighed down by the production process at a much earlier age.

It is obvious that these tight informal and formal social controls are incompatible with the free, constitutional, and democratic social system of Western tradition. Also obvious is the fact that the reasons for the lower crime rate are the totalitarian, dictatorial, and partly criminal social controls and the economical and social underdevelopment of the former GDR, as opposed to the claimed emergence of a "socialist personality".

III. Crime, Criminological Research and Criminal Policy in the Two Former German States after their Unification

1. The Present Situation

On October 3, 1990 a treaty between the Federal Republic of Germany and the German Democratic Republic became effective according to which the West German criminal justice system was by and large extended upon the territory of the former GDR. This abrupt change of the GDR's legal system following the unification will have its effects upon the political structure, later on upon the economic, and finally upon the social structure of the former German Democratic Republic. These all will be long lasting social processes. Together with this change of the social framework the structure of criminality will alter significantly.

Not much, however, has changed up to now. The political structure of the new federal states is forming. Although with the introduction of the West German currency the amount of consumer goods in the shops has increased greatly, the diversity and variety has by now reached only about 40% of the West German level. The number of motor vehicles has nearly doubled in this short time because the people in the former GDR have bought up nearly all used cars in the FRG. The road network, already in bad shape, cannot take this increase in the number of cars. Since the people were not used to this amount of traffic, the number of road traffic offences has risen sharply. Also, shoplifting is on the up. Vandalism, too, has grown since. Already several spectacular bank robberies have occurred because safety measure of the banks are not yet up to standard and the employees of the banks have not yet accustomed themselves to the new situation.

Criminality has not yet risen unproportionally, for the economic underdevelopment has not changed considerably. Because of the low wages mobility still is restricted. Many young people still prefer settling down in one of the older West German states to living in East German cities, so that up to now no conurbations, no congested areas after West German models have emerged. Supply of consumer goods has not yet as widely distributed as in West Germany. The criminal justice system still employs the old personnel, who, however, are faced with the population's mistrust. One good point is that the East German criminal justice system is now bound to apply West German law. Political prisoners have been released from the correctional institutions.

2. Prognosis for the Federal Republic of Germany With Special Reference to the New East German States

a) Criminality. In the Western part of the Federal Republic criminality will rise further. As a consequence of the massive influx of resettlers from East Germany and Eastern Europe as well as of people seeking political asylum and of economic fugitives from the developing countries the emergence of

disorganized urban ghetto- and slum areas must be anticipated. As things stand the housing problem will be solved by building gigantic high rise blocks of flats where no lively social structure or a community feeling has the chance to develop. With the imminent abolition of borders throughout Western Europe a rise of organized crime can safely be expected.

In the new East German states and in East Berlin criminality will slowly but steadily rise to the West German level in line with the economic and social development. The following reasons are relevant for this process:

— Closely connected with the social and economic change are social and economic ascents and descents of people. Many will be unhappy with their own drop or their insufficient rise compared with other. Many, too, will have exaggerated expectations which will never be met. Therefore, many crimes will be committed out of the feeling of deprivation or frustration.

— The social and economic change and development will bring about changes in the value notions system, in the role of models, and in the population's lifestyles. During the process of this shift, old and new attitudes and lifestyles will exist alongside each other. This will produce interpersonal conflicts, which need to be solved in a peaceful manner. Since a part of the population, namely the young and the lower classes, have never properly learned peaceful strategies of conflict solution, a rise in the crime rate is almost inevitable.

— A sharp rise in the number of property offences following the societal and economic change and development will be attributable to an increased access to material goods and to the increased difficulty of enforcing controls. This rise will happen especially in metropolitan urban areas, for the anonymous urban lifestyle on the one hand makes committing a crime much easier for the offender and on the other hand complicates his seizure and his conviction. The easy access to consumer goods changes their appreciation in the population. Potential victims are not watchful enough of their property.

— With the emergence of a social market economy interpersonal competition and occupational pressure will grow; better performance will be expected. At the same time the variety of leisure time activities grows. Life becomes faster and more interesting. The strain on the adults caused by job and leisure activities leads to neglecting children and adolescents. Parallel to this, the education of the young becomes longer and harder. Juveniles try to escape the pressure of grownup life. Youth subcultures will emerge: societal retreats with their specific juvenile language, clothing, and music. The young cannot sufficiently identify themselves with the adults such as parents or teachers, and become increasingly susceptible for delinquency.

— The ongoing exodus of people from East- to West Germany and the shortage of tax revenue of the new federal states lead up to the underdevelopment of the East German and the overburdening of the West German infrastructure. For example, there exists a shortage of well educated skilled workers in East Germany due to their low income; road and communication networks and also environmental protection about the speed of

the social and economic development on the one hand and the factual possibilities on the other opens the door to mounting dissatisfaction and ensuing criminality.

— Finally, all these social and economic changes will further speed up the societal disorganization which had set in decades ago in the German Democratic Republic. Social and interpersonal interaction will become defective. Social groups such as schools, families, neighbourhoods, occupational and leisure time groups lose their capacity of informal social control. This must not be confused with self help or the extension of the state control network; much rather it constitutes a voluntary, democratic self control.

b) Criminology. Empirical-criminological research has not developed adequately well in the Western part of the Federal Republic of Germany; too great are the reservations against this discipline from the left as well as from the right side of the political spectrum. The liberal mainstream criminology is personally underrepresented in the Western part of the FRG. Now the East German regression adds to the problem. The East German criminologists — few as they are anyway — are poorly trained in Western European and North American criminology, to say the least. Many are still tangled up in communist ideology, or in what is left of Marxism-Leninism. A sociologically oriented criminology could not develop in the former GDR. Those precious few criminologists of a younger generation are psychologists and therefore concentrate chiefly upon the personality structures of offenders. Those experts in criminal law who also carry out criminological research in their spare time will be busy for years incorporating the West German penal law. The complete judicial system in East Germany has to be thoroughly revised. For the time being, it can only be adapted to the West German system — there simply is no time for the necessary reforms.

c) Social Control. Together with the development of the communist system into a liberal, democratic one and also with the social changes in the new federal states in the East of Germany social control — the reaction upon criminality — will change, too. Emphasis will be placed upon the fact that the criminal justice system has to be built in accordance with constitutional rights. Constitutionality, however, is a process; it has to be fought for every day anew. Communist resistance in East Germany must not be underestimated. The criminal justice system will become more liberal and tolerant. If it will be based upon liberal and democratic principles of facing criminality this will lead to a reduction of crimes in the long run because the population's faith and trust in justice will be reinforced. In the growing process of humanization of society the population will become more sensitive to violence — this, too, goes for offences in the social vicinity — and also will be more prepared to report petty crime to the police.

d) Criminal-Political Recommendations. There is no space for differentiated recommendations. For that reason I shall only evolve a few principal theses:

– The organization of the criminal justice system under constitutional aspects can only be welcomed wholeheartedly. Still, there is a danger that constitutionality will be applied to the offender only but not to the victim as well.

– The constitutional reorganisation of the criminal justice system must not lead to social control being restricted too much to the criminal justice. The democratic element, the voluntary, free, and individual responsibility of the citizens for informal social control as well as their participation in the criminal justice system must not be neglected.

– The population must be informed truthfully about the criminality problems and their causes so that they can realize them. This is because criminality can only be controlled within and together with society, not without or even against it.

– It is not enough to rely solely on the adaptation of the economic and social structures in the new East German to the old West German federal states. Rather, the state must aid the societal learning process in which new norms, ideals, and lifestyles will be adopted.

– The populations's trust in the criminal justice and in the trustworthiness of the police, judges, and correctional officers must be reinstated by way of removing all those persons from their positions who do not feel committed to constitutionality and democracy in the Western sense.